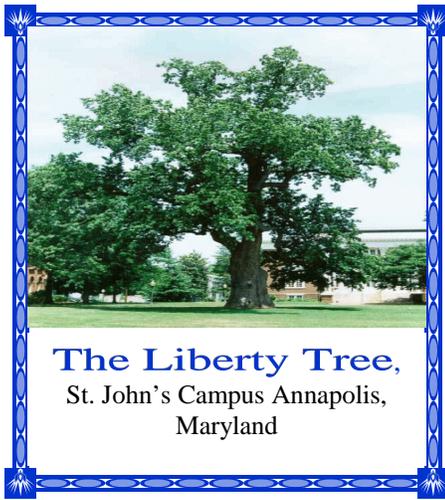


# LIBERTY TREE

Vol. 9, No. 4 — March, 2007

## Is Political Speech soon to be banned?



**The Liberty Tree,**  
St. John's Campus Annapolis,  
Maryland

*Editorial by Jim Kerr, staff paralegal*

**K**ing George III took the matter of free speech very seriously: he was against it. So much so, that he even required preachers to be licensed, so that their speech could be more easily regulated. Once Americans declared their independence of the Crown in 1776, a constitution was written and ratified in 1787, and the first ten amendments were made to the constitution on December 15, 1991. Amongst other fundamental rights—all of which come from God—the very first amendment guaranteed our right to free speech.

While our federal courts today deem there to be at least three types of free speech—personal speech, political speech, and commercial speech—there is no doubt that political speech, including criticism of our government, is the essence of the protections afforded by the First Amendment.<sup>1</sup> Demonstrating the importance of this right, Thomas Jefferson (the first Anti-Federalist president) commented in his inaugural speech: “If there be any among us who would wish to dissolve this Union or change its republican form, let them stand undisturbed as monuments of the safety with which error of opinion may be tolerated where reason is left free to combat it.”

Even where the Communist Party is concerned—a party that advocates the overthrow of our constitutional republic—our courts have remained true to this principle.<sup>2</sup> Communism, as a more totalitarian variety of socialism, advocates wealth redistribution. You know: take from these people, and give to those people. And that calls for a big government to decide whom to fleece and who will profit from the spoils, and of course, to take a big commission for conducting this legalized plunder. None of our federal regimes of recent decades have had a problem with that. However, since socialism involves cycles of war and peace, socialist governments must squelch libertarian thought in times of instability. Libertarians (in the general sense)

### **- REMINDER -**

#### **The injunction order against SAPF has NO force and effect at the present time.**

The Court STAYED its own order pending our appeal to the 4th Circuit. Therefore, the injunction order mailed out earlier can be disregarded.

The legal work continues with respect to the appeal, and your prayers and donations toward this end are greatly needed!

believe in *limited* government, where the Constitution does nothing more than protect our right to life, liberty, and property. Unfortunately, the virtual monopoly of large media outlets has made *We the People* lose sight of this ideal. Inculcating this politically correct mindset keeps our currently unstable government viable (for a time).

However, groups like SAPF, with its educational outreach, espousing not only libertarian principles, but viable solutions to getting our government back under the law, are very frightening to our federal oligarchy, for theirs is a house of cards—and they know it. So much so, that the Department of Justice is working tirelessly to squelch SAPF’s political speech via a back-door approach: our speech is declared “commercial speech,” which is afforded less protection; this commercial speech is then declared “false and fraudulent,” making it forbidden speech ostensibly because it is bad for the federal government’s purse. It is a variation upon the principle “the ends justify the means.”

Yet the truth remains: “Necessity is the plea for every

1. The USSC (United States Supreme Court), in *McIntyre v. Ohio Elections Commission*, 514 U.S. 334 (1995) goes into some interesting historical detail to emphasize this point.

2. See e.g., *Communist Party v. Subversive Activities Control Board*, 367 U.S. 1 (1961) and *Communist Party of Indiana et al. v. Whitcomb, et al.*, 414 U.S. 441.]

infringement of human freedom. It is the argument of tyrants; it is the creed of slaves." (William Pitt the Younger, speech on the India Bill, November, 1783)

**'Everything is Queer To-day'<sup>3</sup>**

Lewis Carroll, a famous mathematician, logician, humorist and poet, wrote, in *Through the Looking Glass*, "Contrariwise," continued Tweedledee, "if it was so, it might be; and if it were so, it would be; but as it isn't, it ain't. That's logic." Alas, if those who brought the injunction suit against us had a grasp of logic and intellectual honesty equivalent to Tweedledee, they would not label SAPF a "tax shelter," "plan or arrangement" and a "business" with "customers," engaged in "false and fraudulent speech."

One of the better analyses I have seen on this matter, is the *Seton Hall Law Review's* article, *United States v. Schiff: Commercial Speech Regulation or Free Speech Infringement*.<sup>4</sup> Author Jacqueline Hall commented: "the [Supreme Court] has thus recognized that 'speech concerning public affairs is more than self-expression; it is the essence of self-government.' The Court has also recognized that the high value of free speech can often lead those in power to seek to suppress it. Free speech and expression therefore have special significance with respect to government because '[it] is here that the state has a special incentive to repress opposition and often wields a more effective power of suppression.' The Supreme Court has acknowledged '[t]he door barring federal and state intrusions into this area cannot be left ajar; it must be kept tightly closed and opened only the slightest crack necessary to prevent encroachment upon more important interests.'"

While the article doesn't actually say so, it appears the courts distinguish between pure commercial speech and ideological expression, and purport to have the authority to regulate the former via the Interstate Commerce Clause of the Constitution, hence the assertion that the commercial speech doctrine "represents an accommodation between the right to speak and hear expression about goods and services and the right of government to regulate the sale of such goods and services."<sup>5</sup>

The remedies at law that the government invokes in their jurisdictional statement of their Complaint are found in IRC §§ 7402 and 7408. Further, the statutes the government cites as those SAPF are deemed to be in violation of, so as to invoke these remedial statutes, are IRC §§ 6700 and 6701. It is the latter two statutes the government relies upon, so as to invoke the limitations of free speech the Supreme Court has mandated. In order to do that, the government must establish that SAPF engages in "commercial speech,"

because that is the variety that enjoys less protection. Moreover, the government must show that this "commercial speech" is both "false and fraudulent." To the intellectually honest, the government has failed to make a substantial showing on all counts. To be sure, the authority to prohibit such speech is not within the scope of the Internal Revenue Code, nor has it been given to the IRS. Therefore, despite their bogus commercial speech theory, the government must instead prove the following elements of IRC § 6700:

1. *the defendants organized or sold, or participated in the organization or sale of an entity, plan or arrangement;*
2. *they made or caused to be made false or fraudulent statements concerning the tax benefits to be derived from the entity, plan, or arrangement;*
3. *they knew or had reason to know that the statements were false or fraudulent'*
4. *the false or fraudulent statements pertained to a material matter; and*
5. *an injunction is necessary to prevent recurrence of this conduct.*<sup>6</sup>

Nonetheless, it is helpful to look into Congress' intent in passing the Act codified in IRC § 6700, which may be gleaned from Public Law 97-248, known as TEFRA—the Tax Equity and Fiscal Responsibility Act. On May 12, 1982, the Joint Committee on Taxation prepared a comparative description of two bills then proceeding through Congress—H.R. 6300, *The Tax Compliance Act of 1982*, and H.R. 5829, *The Taxpayer Compliance Improvement Act of 1982*. According to the report, H.R. 5829 contained no provision for this new penalty, but H.R. 6300 did:

"H.R. 6300 would impose a new civil penalty on persons who organize or participate in the sale of abusive tax shelters. An abusive tax shelter would be any partnership or other entity, any investment plan or arrangement, or any other plan or arrangement having a purported effect on Federal tax liability in connection with which the person makes or furnishes either (1) a false or fraudulent statement with respect to the allowability of any tax benefit or (2) a gross valuation overstatement (whether or not the accuracy of the statement is disclaimed)." [Emphasis added]

Right from the beginning, this new penalty against abusive tax shelters was described as prohibiting only those shelters whose promoters made false statements about the

*(Continued on page 3)*

3. Quote from Alice in Lewis Carroll's *Alice's Adventures in Wonderland*.

4. (Vol. 36:551, available at [www.paynoincometax.com](http://www.paynoincometax.com))

5. *Liquormart, Inc. v. Rhode Island*, 517 U.S. 484, 499 (1996).



tax benefits of participation in the shelter.

On May 18, 1982, the House Ways and Means Committee held a hearing on H.R. 6300. John Chapoton, Assistant Treasury Secretary for Tax Policy, gave a prepared statement to the committee (Exhibit 10). Mr. Chapoton said the abusive tax shelter penalty:

“... would apply to persons who organize or assist in the organization of a partnership (or other entity), an investment plan or arrangement, or a plan or arrangement that has (or purports to have) an effect on Federal tax liability, as well as to a person who participates in the sale of such an entity, plan or arrangement, if the person either knowingly makes a false or fraudulent statement concerning a tax benefit of the offering, or makes a gross valuation overstatement.” [Emphasis added]

Not only does he recognize that the penalty is explicitly limited, Chapoton gives that as his reason why the penalty is not overly broad:

“We believe that the penalty must be applicable to a wide variety of investment plans and arrangements in order to be effective. The scope of the penalty is not, in our view, overly broad because it will apply only in the situation where the promoter makes a representation as to tax consequences of the investment that he knows or has reason to know is false or fraudulent as to any material matter, or where a valuation approaches fraud because it exceeds a reasonable estimate by a very wide margin.” [Emphasis added]

The Senate Finance Committee included this penalty provision in its amendments to H.R. 4961 (TEFRA). Senate Report No. 97-494, dated July 12, 1982, is the Committee’s report on H.R. 4961. (Exhibit 11, p. 267). Their explanation for the addition of § 6700:

“The bill imposes a new civil penalty on persons who ... make ... a statement ... with respect to the availability of any tax benefit alleged to be allowable by reason of participating in the entity, plan or arrangement ...” [Emphasis added]

This element was also confirmed by the Conference Report for H.R. 4961, dated August 17, 1982 (Exhibit 12, p. 572), where the explanation of § 6700 states, in pertinent part:

“Senate amendment

A new civil penalty would be imposed on persons who ... make ... a statement... with respect to the availability of any tax benefit said to be available by reason of participating in the investment, ...”

Conference agreement

... when a person makes ... a statement with respect to the availability of a tax benefit with respect to the investment, he will be liable for the penalty if he knew or had reason to know the statement was

false or fraudulent as to any material matter.” [Emphasis added]

Finally, on December 31, 1982, the U.S. Government Printing Office published a report by the Joint Committee on Taxation titled “General Explanation of the Revenue Provisions” of TEFRA (Exhibit 13, p. 211). It states:

The Act imposes a new civil penalty on persons who ... make ... a statement which the person knows or has reason to know is false or fraudulent as to any material matter with respect to the availability of any tax benefit alleged to be allowable by reason of participating in the entity, plan or arrangement... [Emphasis added]

The essential nature of the prohibited tax shelters has remained the same since it was first enacted. The statute was never intended to apply to false statements generally, nor even to all false statements with respect to the allowability of any deduction or credit, or the excludability of any income. It only applies to false statements with respect to the availability of any of these tax benefits *by reason of participation in the shelter*. That is, unless tax benefits are claimed to be derived from participation in the plan or arrangement, that essential element is missing.

If Congress had intended the penalty to apply to false statements generally, they would only have had to *not add* the explicit condition regarding participation. However, since they *did* add it, the scope of the law cannot now be construed so as to render that explicit condition a nullity. The evidence of the committee reports shows that the legislators clearly intended the penalty to be restricted to those situations where false claims of tax benefits were used to promote participation in a tax shelter. In fact, the evidence shows that the element of participation was deemed to be necessary to prevent the penalty from being “overbroad.”

As such, we see that the government’s plan to make an end run around the First Amendment’s guarantee of free political speech must fail, logically and legally. The injunction suit against the Fellowship is the latest case of misapplying the aforementioned provisions of the Internal Revenue Code to silence political speech. However, I think the government’s effort will fail. As the Communist dialectic goes: “Two Steps Forward, One Step Back.” It is just too soon to silence political speech. Indeed, how do you explain squelching libertarian speech, yet blessing Communist speech?

In the final analysis, we must consider this: do we still have the right to think as we will, and speak as we think? The decision of the Court of Appeals for the Fourth Circuit is faced with answering that question in the context of the IRC, and prohibited commercial speech. Nonetheless, the current standard still stands, the essence of which, according to Justice Oliver Wendell Holmes, is: “The ultimate test of a belief in free speech should be whether it can be extended to people you hate.”



## SAPF Still Needs Your Prayers And Support!

Last month we devoted the entire Liberty Tree to informing the membership of the circumstances surrounding the government's attack on the Fellowship, and how our legal status of unincorporated First Amendment association was recognized in the 1996 Federal District Court decision. We informed you that, due to that legal status—which, even in the worst case scenario, the injunction order would not change—the Fellowship remains the best vehicle for educating the American public by way of a talk radio network. You evidently understood, and responded in such a manner that we were able to meet the Fellowship's current financial obligations.

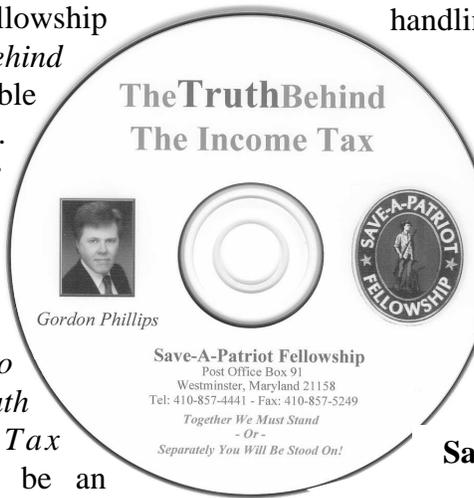
Now, we are asking you to continue your support as we strive to overcome this most vicious attack on the First Amendment, and establish the radio network. To that end we do pledge our life, fortune and most sacred honor. The motto of the Fellowship has never been more meaningful than it is right now. Thank you for continuing to stand together with us.

## Truth Behind the Income Tax DVD SPECIAL !!

With government socialists stepping up their attacks on Patriot organizations in an effort to stop the education of the American public to the truth about the fraudulent Federal Reserve system and the misapplication of the tax laws, Save-A-Patriot Fellowship has decided to make *Truth Behind the Income Tax* DVDs available for an unbelievably low price.

Sine *Truth Behind the Income Tax* is an excellent complement to Aaron Russo's latest film, we will include a free DVD of his *America—Freedom to Fascism* with every *Truth Behind the Income Tax* purchased. This offer will be an excellent educational tool for widespread distribution to family, friends and

acquaintances. To encourage you to take advantage of this special promotion, we are offering this *Truth Behind the Income Tax + America—Freedom to Fascism* Special for just 5 FRNs plus 2 FRNs for shipping and handling. Order some today!



Orders: Send 5 FRNS + 2 FRNS postage. Please write how many copies you want, your mailing address, and send your order with a blank postal money order or FRNs in the correct amount to:

**Save-A-Patriot Fellowship**  
**P. O. Box 91**  
**Westminster, Md. 21158**