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How the feds have abused the Sarbanes-Oxley law

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In 2016, three staffers on Ron Paul's 2012 presidential campaign, including campaign manager John Tate, were convicted of helping arrange for money to be funneled through a vendor to former Iowa State Sen. Kent Sorenson. They did this in exchange for Sorensen's endorsement of Paul in the 2012 Republican presidential primary, and then hid the transaction by reporting it to the Federal Election Commission as something else.

Earlier this year, the U.S. Court of Appeals for the Eighth Circuit in St. Louis upheld Tate's felony conviction, and he has now asked the Supreme Court to take up his appeal.

This week, the Coolidge Reagan Foundation filed an amicus brief urging the high court to take the case. Why? Because in the government's pugnacious prosecution of Tate lies a profound threat to the free speech and due process rights of all Americans.

The question isn't what Tate did or didn't do. It's that although Tate's offense was a campaign reporting issue, governed by

the Federal Election Campaign Act, the Department of Justice instead prosecuted him under a law that has nothing to do with campaign finance or political campaigns. That law, the Sarbanes-Oxley Act of 2002, was created to regulate corporate reporting in the financial services industry as a way to protect shareholders, employees, and the general public from accounting errors and fraudulent financial practices. Passed in the wake of the Enron scandal, Sarbanes-Oxley has about as much to do with campaign finance reporting as professional basketball does with potato farming.

The government's intention in applying this inapplicable law in Tate's case (and other recent prosecutions) is clear: Sarbanes-Oxley carries penalties four times as severe as FECA; it requires a much lower standard of proof for intent; and it completely lacks the FECA's extensive bipartisan protections for political speech which, for more than four decades, have prevented politicized prosecutions.

Enacted in 1972 and later amended by the McCain-Feingold Act in 2002, the FECA was carefully crafted to regulate political speech and campaign activities, balancing constitutional rights against the narrow scope of permissible regulation. It created and it still regulates the process by which political candidates file campaign finance reports with the FEC. FECA was designed to regulate campaign expenditures in nonpartisan fashion.

The use of Sarbanes-Oxley to criminalize campaign reporting subjects individuals like Tate to an increasingly partisan Justice Department. This is the same Justice Department once run by Eric Holder and Loretta Lynch, the same DOJ that oversaw the "Operation Fast and Furious" gun trafficking scandal and targeted journalists critical of the Obama administration. It's the same DOJ that Senate Minority Leader Chuck Schumer, D-N.Y., described as "partisan." Yet it's now being used to make criminals of political staffers — the "wrong kind" of staffers, at least.

Whether you're a Democrat or a Republican, is that really the path we want to go down? To leave campaign finance law in the hands of the Holders and Lynches and Comeys of the world? Where does that leave individuals like Tate, whose political activities are all the more vulnerable to witch hunts and political vendettas? Where does that leave anyone else wanting to engage in political speech, and completely unaware of the legal hodgepodge that could be used to prosecute them?

Under no circumstance should we allow federal prosecutors to draw on whichever law they want to prosecute activities Congress clearly intended to be governed by a specific, hard-negotiated, Supreme Court-tested law, especially when our most fundamental rights are at stake.

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