

Speech and Fraud

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Body

'Is anyone really surprised that another Clinton confidante has been indicted?' the chairman of the New York State Republican Party, Stephen Minarik, asked over the weekend. He was referring to Senator Clinton's former campaign finance director, David Rosen, whose indictment for concealing the cost of a Hollywood fund-raiser from the Federal Election Commission was unsealed last week in Los Angeles.

It could not have come as much of a surprise. The two organizers of the August 2000 fund-raising event, billed as the "Hollywood Gala Salute to President William Jefferson Clinton," are already in prison. The principal financier of the gala, Hollywood producer Peter Paul, resides in the federal wing of the Nassau County Correctional Facility, awaiting trial for stock fraud - a charge unrelated to the Clinton fund-raiser. The other organizer, Aaron Tonken, was sentenced to 63 months in prison last August for defrauding donors and underwriters of charitable and political fundraisers he organized - including the Clinton gala. The court further ordered Tonken to pay \$3.8 million in restitution to his victims.

Tonken even authored a tell-all book, "King of Cons: Exposing the Dirty, Rotten Secrets of the Washington Elite and Hollywood Celebrities," which describes his role in the fraud and implicates Mr. Rosen.

Paul, who filed a lawsuit against the Clintons in 2001, claims he spent nearly \$2 million to underwrite the gala to honor Mr. Clinton and to help raise funds for Mrs. Clinton's Senate campaign. But the Clinton campaign never reported his expenses - considered an in-kind contribution - to the FEC.

The indictment of Mr. Rosen claims he knew the costs of the fund-raiser to be more than \$1.2 million, but he deliberately understated the costs to increase the amount of funds available to Mrs. Clinton's campaign activities. The required disclosure forms from Mrs. Clinton's campaign put the costs at only \$400,000.

To avoid the campaign spending limits, according to the indictment, Mr. Rosen resorted to fraud, including the production of a fictitious invoice that was ultimately forwarded on to the federal government. Fraud is a serious matter, and there is no excuse for such behavior. But we cannot help but observe that America's campaign finance regulations, which were originally adopted to promote clean and open elections, have instead created huge incentives for campaigns to engage in criminal activity. Far from cleaning up our democracy, our campaign finance laws - even the spending limits at issue in the Rosen case - have made electioneering even more disreputable.

For Mrs. Clinton's campaign contributors to spend as much as they want promoting her candidacy and honoring Mr. Clinton's legacy only enhances the public debate. It's an expression of free speech protected by the First Amendment. Yet when the Congress decided to restrict such freedom by limiting political contributions, it led politicians to resort to actual criminality. Now, campaigns commit fraud to secure the rights to free expression and petition once guaranteed by the Constitution.

So while it's easy to fault Mr. Rosen for filing fraudulent documents, it's hard to defend the laws against campaign spending that he was attempting to subvert. Such laws undermine the rights of free speech and assembly granted

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by the Constitution. Mrs. Clinton may have inadvertently acknowledged this. It's not clear how much the candidate knew about her finance director's activities, but Tonken writes that she was at least somewhat aware - because he told her - and she let it go on. There would be a silver lining to all this if Mrs. Clinton and other supporters of McCain-Feingold started to think about what they've wrought.

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