

Policing Hate Speech: Not the Government's Job

Tony Mauro

On the campaign trail last September, then-presidential candidate Barack Obama told the Congressional Hispanic Caucus of the need to “stop the hateful rhetoric filling our airwaves” that tainted the national debate over immigration reform.

Now that Obama is president, the National Hispanic Media Coalition has latched onto those words to urge the Federal Communications Commission to launch an inquiry into hate speech in the media.

It's fair game for citizens to hold candidates to their statements and promises. But the coalition took the wrong message from Obama's words. Yes, Obama criticized hate speech against Hispanics. But in his remarks, Obama went on to urge enactment of comprehensive immigration reform. He said nothing about targeting the media for investigation.

Obama had it exactly right, and the media coalition has it exactly wrong. The FCC should stay out of the business of scrutinizing media content, however benign the motives. We don't need a return to hate speech codes.

In 1927, Supreme Court Justice Louis Brandeis minted the classic remedy for bad speech: “more speech, not enforced silence.” Obama took that axiom a concrete step further; his remedy for hate speech about immigrants is to tackle the underlying problem

with immigration policy. Then, with luck, the trash talk will fade away. Sounds like a plan.

The immigration reform effort will be difficult enough, without a distracting FCC inquiry into the roots and manifestations of anti-Hispanic rhetoric in the media. That kind of inquiry can accomplish nothing good, and could lead to First Amendment harm.

The Hispanic media coalition, in its January 28 petition for inquiry, was of course quick to preemptively criticize First Amendment concerns. “The NHMC understands that those who would prefer hate speech to remain under the radar will claim that such an inquiry violates the First Amendment,” the coalition states. “No doubt they will raise the red herring of the restoration of the fairness doctrine, trying to divert the attention of the vast majority of Americans who find hate speech reprehensible.”

To the contrary: Hateful speech directed toward Hispanics or any other group should be on the public radar.

When radio talk show host Michael Savage talks about “an invasion force from Mexico,” and says the Statue of Liberty has been “raped and disheveled” by illegal aliens, as he did just last year, the public ought to learn about it. It's destructive and disrespectful to a large segment of the population, and adds nothing to the debate over immigration.

But exposing that hateful rhetoric is not the job of the FCC or any other government entity. The media coalition and others ought to do whatever they can, on their own, to expose this trend, and to counter it. (See Brandeis.) But enlisting the government to join its cause is unnecessary.

As the coalition notes, the National Telecommunications and Information Administration has scrutinized this problem already. In 1992, at the behest of Congress, the NTIA looked into the impact of telecommunications on hate crimes. It found the evidence to be “scattered and largely anecdotal,” and ultimately shied away from recommending government action because of First Amendment concerns.

“Bigotry is antithetical to the basic tenets of this nation, [but] government should address the problem in a manner that protects fundamental liberties, such as those provided under the First Amendment,” the report stated.

There is no point in charging up this hill again. An inquiry into hate speech now would end up in the same place as the last

investigation: recommending more study and more unspecified action to remedy the problem. Any inquiry that led to more than that would chill speech and perversely make heroes out of the bigoted talk show hosts and others who are singled out.

Hate speech codes were in vogue on campuses and elsewhere in the 1980s and early 1990s, but the Supreme Court’s 1992 ruling in *R.A.V. v. St. Paul* slowed down the trend considerably. It struck down a local ordinance that made it a crime to display symbols that aroused “anger, alarm, or resentment” based on race, religion, or gender.

“Let there be no mistake about our belief that burning a cross in someone’s front yard is

reprehensible,” wrote Justice Antonin Scalia for the majority. “But St. Paul has sufficient means at its disposal to prevent such behavior without adding the First Amendment to the fire.”

So, too, with hateful rhetoric on the airwaves about immigration. Speak out against it. Solve the immigration policy mess. But don’t torch the First Amendment in the process.

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