

# HOW TO EXTERMINATE LITTLE PLATOONS

John Zmirak

*The Intimidation Game: How the Left Is Silencing Free Speech*

By Kimberley Strassel  
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Most Americans agree that police should not be able to raid citizens' homes at dawn without notice and seize their personal records and computers at gunpoint, in order to scrutinize their political activities. That's what police did in Wisconsin in 2015 to a wide range of private citizens who'd opposed the recall of Governor Scott Walker, in the infamous "John Doe" investigations—which included a shocking "gag order" threatening those citizens with legal punishment even for revealing that their homes had been raided.

Nor should private citizens who support a political cause have their names exposed, so that they can be harassed, boycotted, and fired. That is what happened to Brendan Eich, cofounder of Mozilla, for a years-old contribution in defense of traditional marriage.

Nor should voters who try to organize educational or activist groups in defense of the Constitution be subject to interrogation, demands for private information, and retaliatory tax audits by the IRS. That is what happened to hundreds of citizens who were targeted by IRS head Lois Lerner in her campaign to quash the Tea Party movement.

All these abuses are detailed in Kimberley Strassel's carefully reported and deeply alarming book, *The Intimidation Game*. It

tells the wrenching stories of grassroots activists, small businessmen, and other ordinary Americans who tried to play by the rules and take part in our country's civic discourse, yet were targeted by attorneys, regulators, and even prosecutors who opposed their political views. Kimberley Strassel is a veteran journalist and author, and a member of the editorial board at the *Wall Street Journal*, where she writes the weekly column "Potomac Watch." Her reporting skills bring an otherwise potentially dry subject vividly to life.

As Strassel documents, the Democratic Party, its appointees in federal agencies, and a vast network of allied nonprofit advocacy groups have shown themselves over eight years to be masters of legal intimidation. They have used government power to censor political speech and expose citizens (who dare to use it) to retaliation at the hands of either the public or the private sector. Given the election of Republican Donald Trump, defenders of free speech might well feel that they dodged a bullet in the form of Hillary Clinton. But there is no reason for complacency: Donald Trump rightly alarmed journalists with loose talk of widening libel laws to allow individuals and corporations with deep pockets to punish their critics. Those with memories of Watergate will know that Republicans are not above employing the bloated powers of the executive branch for crass partisan purposes.

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Strassel tells the personal stories of a dozen or so Americans who were civic-minded enough to organize small, local groups to speak out on issues of moral and political concern. These topics ranged from racial segregation in the 1960s to voter fraud, deficit spending, climate activism, and public employee unions in the 2010s. Strassel shows how these citizens were subjected by government agencies to campaigns of harassment, unwarranted tax audits, interrogation, false prosecution, and in some cases armed raids on their private homes that put their families' lives in danger.

Citizen organizations are among the "little platoons" that Burke, Tocqueville, and later Russell Kirk cited as crucial to the healthy functioning of democracy. As students of history know, those who control the big levers of power in society often resent such little platoons, seeing them as obstacles to grand social policy, or (more crassly) as threats to their own access to influence and money. Our First Amendment was written broadly to offer the maximum protection to citizens wishing to push back against the government, by men who had seen how royal governors used their power to silence and prosecute patriots for insisting on their rights as Englishmen.

One of the indispensable aspects of free expression from colonial times to the present, as Strassel demonstrates, was the protection of anonymous or pseudonymous speech. Those who wish to combat entrenched political and economic power on controversial issues are frequently subject to intimidation and retaliation—which is precisely why they need to be able to express their views (and financially back those who agree with them) without being forced to disclose their identities and livelihoods to potential retaliation. From the Patriots who hired printer John Peter Zenger to publish their broadsides against the British, to today's conservatives who defend tra-

ditional marriage or unborn life, those who take unpopular positions in an effort to sway public opinion need protection from exposure. Our laws for most of American history offered that protection. They no longer do, and both free speech advocates and political conservatives need to understand the danger this new situation poses to democratic participation.

In the 1950s and '60s, as Strassel recounts, Southern segregationists used every means within their power to silence civil rights advocates attempting to repeal the vast array of unjust laws imposing racial separation. What most readers will learn for the first time is that one of the white supremacists' most powerful weapons was...campaign finance reform. No, they didn't think to call it that. But Southern governors used existing laws or passed new ones to require advocates of civil rights to reveal the names and affiliations of their supporters. For instance, the state of Alabama demanded a complete list of the members of the NAACP, which backed a civil rights boycott of segregated buses—fully aware that, if these people were exposed, they might be subject to bombings or assassination attempts. Indeed, by 1957, civil rights opponents had filed twenty-five separate cases demanding such membership information. Had they obtained it, the movement to dismantle segregation could have been set back by decades, and thousands of citizens endangered. Strassel shows how the U.S. Supreme Court, in case after case, ruled in favor of protecting free speech and free association, rejecting those states' attempts to "out" civil rights supporters. The right to support quietly a civic organization, the court ruled, is part of each American's civic freedom.

Strassel lauds the court for taking that stand but quickly demonstrates how that crucial protection has been dismantled piece-

meal in the name of contemporary campaign finance reform. This time the effort was led by the left, which saw the business community's general support of smaller government and lower taxes as an obstacle to progressive programs. Liberal lawmakers and organizations that wished to turn off the supply of campaign donations from the U.S. Chamber of Commerce, or oil companies, lobbied in the late 1990s and early 2000s for restrictions on such spending. They did so in the name of fighting "corruption" and preventing "the rich" from "buying elections" by funding... free political speech. (The very same federal courts struck down, remember, any meaningful restrictions on pornography on the Internet, citing the First Amendment, whose authors certainly had no such intent in mind.)

Crucial Republican support for this "reform" was provided by Senator John McCain, who was reeling from his collusion with jailed influence-peddler Charles Keating, and the McCain-Feingold Bill became law in 2002, sharply restricting most direct means for businesses, labor unions, and other organizations to weigh in on elections and legislation. Most Republicans who opposed the bill, Strassel points out, adopted a fallback position that opposed restrictions on political speech but favored government mandates that "outed" the identities of those funding that speech. This piece of tactical cleverness, she proves, turned out to be a key strategic error.

Strassel shows how conservative activists crafted a powerful legal challenge to McCain-Feingold, in the form of the *Citizens United* case, which saw federal bureaucrats attempt to censor a film aimed at criticizing Hillary Clinton—a blatant attack on the clear intent of the First Amendment. The challenge was successful, and in 2010 the court overruled key provisions of McCain-Feingold. In arguing their side of the case, however, the defenders of free political

speech failed to insist on the importance of protecting the identities of citizens and organizations that contribute to such campaigns. The court left such public-disclosure provisions of McCain-Feingold intact. And that is what opened the door to an unprecedented campaign of intimidation aimed at voters and activists who attempted to advocate for conservative causes. Strassel's book unfolds in careful detail the most egregious instances of abuse of citizens by government agencies in the past eight years—most of which have been made possible by the failure of free speech advocates to insist on shielding the identities of political activists.

Public disclosure laws have been used, as Strassel demonstrates, to target and intimidate corporate executives serving on the boards of companies that opposed labor union demands, climate change activism, or gay activism. Academics she interviewed spoke of being afraid to contribute to Republican candidates for fear that their contributions (currently listed, by law, on the Internet—you can look up my Ron Paul donation in 2008) would be used to destroy their careers.

For Strassel, only a strong countermovement that revokes the government's right to expose and shame citizens, business owners, and activists for supporting unpopular causes will restore full and free political discourse in America. It is far from clear that Republicans will support such a move, however. The (hacked) revelations that Wikileaks provided, which exposed the apparent foreign influence-peddling of the Clinton Foundation with foreign governments, are likely to push voters and lawmakers in the opposite direction—toward misguided demands for more "transparency" in political donations. As Strassel shows convincingly, such innocuous-sounding initiatives can backfire badly, damaging the rights and squelching the political involvement of ordinary Americans. †