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REPEALING THE FIRST AMENDMENT: "THE CAMPAIGN FINANCE REFORM CONSTITUTIONAL AMENDMENT"

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> *What we have here is two important values in direct conflict: freedom of speech and our desire for healthy campaigns in a healthy democracy. You can't have both.*
>
> House Minority Leader Richard Gephardt[2]

> *The basis of our government being the opinion of the people, the very first object should be to keep that right; and were it left to me to decide whether we should have a government without newspapers or newspapers without a government, I should not hesitate a moment to prefer the latter.*
>
> Thomas Jefferson[3]

> *In the free society ordained by our constitution, it is not the government, but the people—individually as citizens and candidates and collectively as associations and political committees—who must retain control over the quantity and range of debate on public issues in a political campaign.*
>
> U.S. Supreme Court, *Buckley* v. *Valeo*[4]

A constitutional amendment to permit the imposition of campaign spending limits currently is being debated in the U.S. Senate. This proposed amendment addresses the core not only of the First Amendment, but of the electoral process that undergirds the entire system of U.S. government.

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1 The author thanks Michael Barrie for his research assistance with this paper.
2 Quoted in *Time* magazine, February 3, 1997, p. 25.
3 Letter to Edward Carrington, 1787.
4 424 U.S. 1 at 57 (1976).

Note: Nothing written here is to be construed as necessarily reflecting the views of The Heritage Foundation or as an attempt to aid or hinder the passage of any bill before Congress.

S.J. Res. 18, introduced by Senators Fritz Hollings (D–SC) and Arlen Specter (R–PA), would permit Congress (and states for state elections) to establish "reasonable" limits on campaign contributions and spending. Senate Minority Leader Tom Daschle is a leading proponent of the amendment. In the House, Minority Leader Richard Gephardt and others have introduced a campaign spending limitation amendment with more detailed restrictions on the collateral effects (on free speech and debate) of the limits.

Proponents of S.J. Res. 18 and similar measures argue that the amount of money spent in campaigns has become, in itself, a corrupting factor. They also complain about the amount of time required to raise funds for campaigns, about the tone of campaign ads, and about the unfairness of rules allowing wealthy candidates to spend unlimited sums of their own money while requiring other candidates to raise funds in small amounts.[5]

Advocates of the proposed amendment argue that our government has been shaken to the core by recent political scandals. Some even argue that our political system is rotten to the core. But the centrality of free speech to political liberty is not in dispute. S.J. Res. 18, were it adopted, would represent the first time an American government claimed the power to limit, and therefore to regulate and control, political discussion.

Since the time of ancient Athens, the right of open debate has been considered an essential element of self-government. As elections expanded the reach of democratic government beyond the confines of a single city, so freedom of the press expanded the right of free speech. U.S. courts have held consistently and logically that restrictions on spending for printing, mailing, or advertising are, in fact, substantial restrictions on the ability to communicate ideas. Without free debate, elections cannot be an effective means of self-government.

The claim that our politics are so unhealthy that only restrictions on the system can save it is, logically, nothing other than a direct attack on our political system. Why (or where) limits stop short of a complete ban on election spending is difficult to discern. And if limits are to be imposed, a string of problems follows:

- Are limits to be equal for every party; for well-known incumbents as for obscure challengers?
- Are persons or groups other than candidates permitted to spend money for political advertising? If so, are candidates' limits to be somehow equalized?
- Are issue ads to be limited or forbidden? And who determines the difference between free speech and campaigning?
- How is the government to be prevented from abusing its power to set limits that help the party or politicians in power?
- Are new technologies that make mass communication less expensive to be limited because of their effects, or is money alone the problem?

5 See statements of Senators Hollings and Specter on S.J. Res. 2 (an identical amendment), *Congressional Record,* January 21, 1997, pp. S 555–563.

In addition to the constitutional and administrative questions, there are substantial policy objections to campaign spending limits. The best evidence indicates that increased campaign spending produces increased voter turnout[6] and more competitive elections,[7] while spending limits are usually designed in ways that benefit incumbents.[8]

A Question of Self-Government

The most fundamental problem with having the government regulate elections is that elections are intended to control the government. Among the most vigorously debated of the provisions of the Constitution was the power of Congress to make exceptions to the general principle of state control of congressional elections.[9] Alexander Hamilton justified this power as necessary only for self-defense: to ensure that states did not attempt to control Congress by controlling elections. But if the federal government is now to restrict participation in elections, who is to restrain the government?

Sponsors of the spending limit amendment declare citizens unable to distinguish among competing political claims without government intervention. Only if government controls the political debate, they argue, can citizens be expected to make rational choices. This theory abandons even the pretense of self-government. If it is necessary for the government to control the debates that control the government, citizens are no longer in charge. If the situation is as dire as advocates of the amendment claim, then even their amendment cannot save our political system.

Fortunately, the history of debates over free speech in the United States indicates that there is an alternative to limiting speech as a solution to political problems: a more vigorous pursuit of the truth. Thomas Jefferson won America's first great battle over free speech, declaring in the end that "error of opinion may be tolerated where reason is left free to combat it."[10] The answer to special interests and other problems in our political process is not the shortcut of a government takeover, but by an even more vigorous public debate about how we ought to be governed.

Contrary to Representative Gephardt's claim, free speech and democracy are not in conflict. In fact, you cannot have one without the other, and limiting free speech inevitably restricts democracy.

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6 For a useful summary of this research, see Ruy A. Teixeira, "Campaign Reform, Political Competition and Citizen Participation," in Teixeira, ed., *Rethinking Political Reform* (Washington, DC: The Progressive Foundation, 1994).

7 See, for example, Larry J. Sabato, *Paying For Elections* (New York, NY: The Twentieth Century Fund, New York, 1989), pp. 22–23.

8 David M. Mason and Steven Schwalm, "Advantage Incumbents: Clinton's Campaign Finance Proposal," Heritage Foundation *Backgrounder* No. 945, June 11, 1993; and Bradley A. Smith, "Campaign Finance Regulation," Cato Institute *Policy Analysis* No. 238, September 13, 1995.

9 See *Federalist No. 59*.

10 First Inaugural Address.

A Brief History of the First Amendment

The link between free speech and democracy appears at the very beginning of self-government. In ancient Athens, the principle of free speech "extended even to the criticism of the basic principles of Athenian democracy itself."[11] Plato was perhaps the first of many utopian reformers to complain about abuses of this liberty, criticizing Athens in *The Republic* that the "city is full of liberty and free speech and everyone in it is allowed to do what he likes...each man in it could plan his own life as he pleases."[12]

At the time of the founding of the United States, free speech was identified most often particularly with freedom of the press, with Jefferson as the most eloquent advocate of the diffusion of written knowledge as essential to human advancement, and particularly to the democratic governance of an extended republic. But freedom of the press was only one species of the generic liberty of speech. The Founding Fathers also recognized a "right of free correspondence,"[13] and the right to meet and discuss issues in public. Thus, the rights of speech, press, assembly, and petition were protected in the same amendment to the Constitution in the same way.

Among the "Intolerable Acts" passed by the English Parliament in reaction to the Boston Tea Party (and which finally sparked the American revolution) was a restriction on town meetings in Boston. This restriction on assembly was recognized clearly as an effort to suppress political criticism of the government. Colonists reacted by forming covert "committees of correspondence" to communicate among the colonies in opposition to measures of the English government.

There was no conception of an "institutional press" apart from ongoing political debates. Newspapers and pamphlets were partisan political tools, and thus the Founders' declarations about the absolute necessity of freedom of the press can and should be extended to today's debates over paid political advertising. Nor were there any illusions about abuses of press freedoms, "I deplore...the putrid state into which our newspapers have passed and the malignity, the vulgarity, and the mendacious spirit of those who write for them," complained Jefferson in one letter, going on to observe that these evils were "produced by the violence and malignity of party spirit."[14]

Commercial boycotts were used successfully by the colonists to pressure Parliament indirectly through London merchants. Commercial embargoes were used, in turn, to punish the incipient rebellion in Boston. Thus, the Founders would find curious indeed the claim that the use of financial resources to secure political goals was not among the liberties they fought and died to secure.

Once independence had been obtained, the constitution setting up a unified national government would not have been ratified without the promise of a Bill of Rights, including a provision protecting freedom of speech and of the press.[15]

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11 Henry B. Mayo, *An Introduction to Democratic Theory* (New York, NY: Oxford University Press, 1960), p. 38.

12 Quoted in *Ibid.*, p. 38.

13 Thomas Jefferson, letter to James Monroe, 1797.

14 Thomas Jefferson, letter to Walter Jones, 1814.

15 See quotation from the Virginia Resolutions in Appendix below.

The Alien and Sedition Acts

Controversy over alleged abuses of free speech rights was not long in coming to the new nation. In 1798, the "XYZ correspondence" purported to reveal a French-backed plot against the American government. Although the letters subsequently were shown to be fraudulent, Congress passed several laws targeted at anti-Federalist editors, many of whom were of French extraction.[16] The Alien Acts allowed the deportation of suspect resident aliens. The Sedition Act made it a crime to publish criticism of the government, Congress, or the President, including efforts to oppose or defeat laws.

It is difficult to overstate the alarm produced by congressional attempts to regulate speech. The laws were seen as such a threat to democracy that Thomas Jefferson and James Madison encouraged the legislatures of Kentucky and Virginia to pass resolutions not only opposing the laws but blocking their enforcement within those states, and arguing that the laws were unconstitutional. (Excerpts of the Virginia and Kentucky Resolutions are in the Appendix). Virginia legislators noted that their state, among others, would not have ratified the Constitution without the guarantees included in the First Amendment. Jefferson claimed that the First Amendment was so absolute as to prohibit even federal laws against libel.[17]

In part because the Supreme Court had not yet enunciated the power of constitutional judicial review, Jefferson and Madison advanced claims of state powers to "nullify" these unconstitutional acts. Perhaps recognizing the nullification doctrine would (as it later almost did) spell the end of the Union, Jefferson and Madison waged a political campaign against the acts, forming the first national political party, and eventually taking over the government in the election of 1800.

The controversy over the Alien and Sedition Acts has several lessons for current campaign controversies. The first, as the most recent, proposals to restrict speech are linked in part to allegations of foreign influence. The fact that the most salacious of the allegations in 1798 later proved false should caution against hasty action today. It is noteworthy that the authors of the Sedition Act, realizing the danger of the power they were wielding, scheduled it to expire prior to the change in administrations in 1800.

But most worth noting was the response of Jefferson and Madison, authors of the nation's founding documents. Rather than passing new laws, much less amending the Constitution, their solution was to argue their case to the people and by so doing correct abuses by winning election. Complaints about special interest influence today might be met best with the same response: not by efforts to restrict legitimate if narrow interests, but by vigorous appeals to broader and higher interests; not by attempts to suppress debate, but by enlarging it.

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16 Henry Steele Commager, *Documents of American History,* Seventh Edition (New York, NY: Appleton-Century-Crofts, 1963), p. 175.

17 Thomas Jefferson, letter to Abigail Adams, 1804.

Money and Politics

Controversies over money and politics also began early in American history. Disputes within George Washington's Cabinet between Thomas Jefferson and Alexander Hamilton revolved largely around the government's relation to moneyed interests. Andrew Jackson's 1828 campaign against Eastern money was successful largely because he was able to amass a campaign treasury sufficiently large to wage a successful grassroots campaign.

Financial controversies revolving around corporate power in the 1870s and 1890s were met with new laws against corruption and laws providing for disclosure of campaign contributions (in 1910). But more fundamentally, those controversies were resolved through broad political reform movements. Allegations of excessive union power resulted in new laws on union organization and politicking in the 1940s.

Direct constitutional confrontations over laws limiting or restricting spending by political campaigns, corporations, and unions were generally avoided prior to the 1976 *Buckley* v. *Valeo*[18] decision through narrow construction or enforcement of laws (for example, exempting activities protected by the First Amendment from spending limits) and court decisions focused exclusively on the facts of particular cases.[19]

What Did *Buckley* Say?

The 1974 amendments to the Federal Election Campaign Act (FECA) were very substantially different from earlier campaign regulations, which had focused largely on disclosure and, to a lesser extent, on specific prohibited acts (such as corporate and union donations to campaigns). The FECA limited political contributions and spending for House, Senate, and presidential campaigns. It also imposed very low limits ($1,000 annually) on campaign-related spending by anyone other than candidates or political parties. The 1974 law required comprehensive reporting and disclosure by campaigns and political groups and created the Federal Election Commission (FEC) to monitor and enforce the law. The same statute also provided public funding for presidential campaigns, with partial public funding for presidential primary contests.

The sweep and reach of the FECA was such that the Supreme Court could not avoid or finesse a ruling on the law's constitutionality. Although the *Buckley* opinion is often described as complex or disjointed, its theory is actually simple and easily understandable: the Supreme Court declared that Congress may limit political contributions, but that it may not limit political spending. This distinction was based on the court's reasoning that the only legitimate reason for Congress to curb First Amendment rights in political campaigns is to prevent corruption or the appearance of corruption. Thus, large contributions, which hold the potential for corruption, could be prohibited, but independent spending, spending on one's own behalf, or even aggregate spending by campaigns could not be limited.

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18 424 U.S. 1 (1976).

19 In *United States* v. *UAW*, 352 U.S. 567, for example, the Supreme Court refused to rule on the constitutional validity of a law prohibiting union contributions or expenditures in connection with elections until a long series of facts, any of which might obviate the controversy, were resolved.

Curiously, proponents of S.J. Res. 18 claim not to "understand" (Senator Daschle) or "fathom" (Senator Hollings) the distinction between individual contributions on the one hand and aggregate spending on the other.

Rationale for the Amendment

Sponsors of the Campaign Finance Reform Amendment make four basic arguments for it:

- Excessive campaign spending is corrupting;
- The amount of time required to raise funds is excessive;
- The tone of campaigns, especially TV ads, is overly negative; and,
- Permitting wealthy candidates or independent groups to spend freely in campaigns is unfair.

Little or no evidence of actual corruption related to congressional campaign spending is offered. Instead, amendment sponsors argue that spending levels are somehow corrosive and undermine public confidence in the electoral process. These general charges, however, do not provide an adequate argument for limiting campaign debates any more than complaints about negativity or unfairness by the news media justify restricting press freedoms.

Neither do complaints about the demands on politicians' time provide a valid reason for limiting their opponents' political spending. Congress could easily (and constitutionally) reduce the time required to raise a given amount of funds simply by increasing contribution limits.

Complaints about the tone of campaign discourse, particularly about negative or attack ads, bear little logical relation to spending limits. There is no reason to assume that limiting spending by campaigns would change the tone of debate. In fact, many campaign professionals argue that limiting spending would tend to encourage ads designed to rivet the public's attention. In any case, arguing for spending limits based on objections to the substance of ads reveals that S.J. Res. 18 is, in fact, a direct attack on the First Amendment: some candidates should be required to shut up because others do not like what they say or how they say it.

Equity arguments provide one of the strongest rationales for spending limits. The problem is that allowing the government to handicap some candidates in order to help others requires a balancing act that could never be genuinely fair. Incumbents, for example, begin campaigns with far higher name identification and with other advantages over challengers: should challengers then enjoy higher limits, for fairness sake, and how much higher? The Supreme Court explicitly rejected the fairness argument as a justification for spending limits in *Buckley*, recognizing that such limits inevitably would restrain groups who legitimately wished to communicate through advertising.

Personal Complaints

The degree to which sponsors of S.J. Res. 18 argue for a constitutional amendment based on their personal situations is remarkable. The introductory statements on the

amendment by both the lead sponsors substantially involved complaints about their own campaign experiences.[20] Although it is understandable that politicians will view campaigns through their own experiences, political campaigns in a democracy are not personal contests between politicians in which citizens are spectators. Campaigns are the exercise of self government. Regulating campaigns based on the convenience or equity claims of candidates overturns the principle that it is the people who govern. The highly personal cases made on behalf of spending limits lend credence to the suspicion that incumbents will set limits to benefit themselves and to hobble challengers.

FLAWS IN THE AMENDMENT

The philosophical arguments against spending limits are buttressed by the practical problems in imposing them. A fundamental flaw in S.J. Res. 18 is its admission that limits might well be unreasonable. The amendment would limit Congress to "reasonable" limits, but there is no indication of what "reasonable" might mean. The House version of the campaign finance amendment contains several additional limiting phrases and conditions (assuring a full discussion of all issues), but these fail to provide much additional clarity. Testifying in favor of the House version of the amendment, Minority Leader Gephardt refused to provide any further explanation of these conditions, saying it would be up to the courts to determine what they mean.[21] Proposing to correct an allegedly flawed Supreme Court decision with a constitutional amendment that leaves broad leeway for court interpretation could prove pointless.

Spending limits clearly would put Congress in the position of doling out speech. Senator Hollings, for example, asserts that, even though he outspent his opponent in 1992,

> my opponent's direct expenditures were supplemented by hundreds of thousands of dollars in expenditures by independent organizations and by the State and local Republican Party. When you total up spending from all sources, my challenger and I spent roughly the same amount in 1992.[22]

Hollings clearly suggests that it is his intention to count spending by independent organizations under the limits that would be established under his amendment. But why should one candidate be handicapped or advantaged (if limits are to be increased to offset "negative" independent expenditures) due to the actions of citizens participating in the electoral process?

Soft Money and Issue Advocacy

One oddity in the campaign finance amendment is that it apparently would do nothing about the fastest-growing, and perhaps most controversial, categories of political spending: soft money and issue advocacy. The Supreme Court has ruled that political parties and other groups have the absolute right under the First Amendment to issue

20 *Congressional Record*, January 21, 1997, pp. S 555–563.

21 Subcommittee on the Constitution, February 27, 1997.

22 *Congressional Record*, January 21, 1997, p. S 556.

related ads so long as they do not "expressly advocate" (that is, use terms such as "vote for," "support," or "oppose") the election or defeat of a candidate. Against this background, the court would not interpret an amendment that permits limits on campaign spending as allowing Congress to limit spending on issue advertising such as that done by labor unions, political parties, and others in 1996.

Like price controls, spending limits are sure to be frustrated by citizens' creative attempts to get around them. The widespread use of politically potent, but First Amendment-protected issue advertising provides an obvious way around spending limits. In order to be effective, Congress would have to expand the reach and scope of limits on a continuing basis, providing a clear recipe for the suppression of free speech.

Conclusion

Advocates of a constitutional amendment for campaign spending limits deserve credit for addressing the question of campaign regulation head-on. Their proposal is not, however, a limited attempt to reverse a single flawed Supreme Court decision. Since its *Buckley* ruling in 1976, the Supreme Court has continually expanded its definition of the range of political activities protected by the First Amendment and consistently has restricted the government's ability to regulate political discourse. The court's rulings are fully consistent with the Founding Fathers' insistence on the protection of free speech, without which the Constitution itself would not have been ratified.

The campaign spending problem, as Senator Specter pointed out in quoting Justice Stephen Breyer, is one of "core 1st Amendment activity."[23] Unraveling the First Amendment clearly would begin unraveling the Constitution. Indeed, it is clear that free speech is one of the "inalienable" liberties established by the Declaration of Independence, which no government might legitimately take away. The argument of a limited aim and the promise of reasonable application is no justification for abridging this fundamental liberty.

Democracy is often a noisy, tumultuous process. But attempting to suppress debate inevitably creates more problems than it solves. Indeed, there is no evidence that spending limits would actually produce a fairer, more issue-oriented electoral process. Limits have no logical relation to the tone of campaigns. Limiting campaign spending in order to control objectionable ads makes no more sense than limiting spending on gasoline to control reckless driving. And the animus against certain kinds of ads reveals that the real complaint is not about the volume but about the content of campaign debate.

The problem with a campaign finance amendment is that it seeks an easy way—but one that leads to perdition. If American voters no longer can "throw the bums out" in response to scandals, then laws regulating campaigns and restricting speech are unlikely to help. Such laws have ever been the bane of outsiders and reformers, and are likely to make things only worse. If the American political system has become corrupt, then citizens need to purge it. The corrupt government, by definition, cannot do so itself. Self-styled reformers who urge Congress to pass laws designed to achieve this political

23 *Congressional Record*, January 21, 1997, p. S 558.

objective are attempting a shortcut around the democratic process. Regulating democracy necessarily weakens it.

Criticizing the amendment proposal is not denying that there are significant problems in our political process. But Madison and Jefferson showed us, in the nation's first crisis over free speech and political debate, that the solution to such problems is not in attempting to alter or subvert the Constitution. Reformers should not devote their energies to efforts to change the Constitution but rather to changing, enlarging, and focusing public opinion. If public opinion is not sound, no constitutional amendment will save it. Conversely, if opinion is sound and engaged, constitutional alterations will not be necessary.

Appendix: Selected Quotations on Free Speech and the First Amendment

A statute which, in the claimed interest of free and honest elections, curtails the very freedoms that make possible exercise of the franchise by an informed and thinking electorate, and does this by indiscriminate blanketing of every expenditure made in connection with an election, serving as a prior restraint upon expression not in fact forbidden as well as upon what is, cannot be squared with the First Amendment.

Mr. Justice Rutledge
United States v. *C.I.O.*, 335 US 106, 144

One of the amendments to the Constitution...expressly declares that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press," thereby guarding in the same sentence and under the same words, the freedom of religion, of speech, and of the press; insomuch that whatever violates either throws down the sanctuary which covers the others.

Thomas Jefferson
Kentucky Resolutions, 1798

The liberty of speaking and writing guards our other liberties.

Thomas Jefferson
Reply to Address, 1808

The basis of our government being the opinion of the people, the very first object should be to keep that right; and were it left to me to decide whether we should have a government without newspapers or newspapers without a government, I should not hesitate a moment to prefer the latter. But I should mean that every man should receive those papers and be capable of reading them.

Thomas Jefferson
to Edward Carrington, 1787

The force of public opinion cannot be resisted when permitted freely to be expressed. The agitation it produces must be submitted to.

Thomas Jefferson
to Lafayette, 1823

The functionaries of every government have propensities to command at will the liberty and property of their constituents. There is no safe deposit for these but with the people themselves, nor can they be safe with them without information. Where the press is free, and every man is able to read, all is safe.

Thomas Jefferson
to Charles Yancey, 1816

I am...for freedom of the press, and am against all violations of the constitution to silence by force and not by reason the complaints or criticisms, just or unjust, of our citizens against the conduct of their agents.

Thomas Jefferson
to Elbridge Gerry, 1799

Since truth and reason have maintained their ground against false opinions in league with false facts, the press confined to truth needs no other legal restraints. The public judgments will correct false reasoning and opinions on a full hearing of all parties, and no other definite line can be drawn between the inestimable liberty of the press and its demoralizing licentiousness. If there be still improprieties which this rule would not restrain, its supplement must be sought in the censorship of public opinion.

Thomas Jefferson
Second Inaugural Address, 1805

To demand the censors of public measures to be given up for punishment is to renew the demand of the wolves in the fable, that the sheep should give up their dogs as hostages of the peace and confidence established between them.

Thomas Jefferson
to William Branch Giles, 1794

I think the best remedy is exactly that provided by all our constitutions: to leave to the citizens the free election and separation of the aristoi from the pseudo-aristoi, of the wheat from the chaff. In general they will elect real good and wise. In some instances wealth may corrupt and birth blind them, but not in sufficient degree to endanger society.

Thomas Jefferson
to John Adams, 1813

Under out Constitution it is We The People who are sovereign. The people have the final say. The legislators are their spokesmen. The people determine through their votes the destiny of the nation. It is therefore important—vitally important—that all channels of communication be open to them during every election, that no point of view be restrained or barred, and that the people have access to the views of every group in the community.

Mr. Justice Douglas
Dissenting opinion
United States v. *Auto Workers*

The most complete exercise of those rights is essential to the full, fair and untrammeled operation of the electoral process. To the extent they are curtailed the electorate is deprived of information, knowledge and opinion vital to its function.

Mr. Justice Rutledge
United States v. *C.I.O.*, 355 U.S. 106, 144

Making a speech endorsing a candidate for office does not, however, deserve to be identified with antisocial conduct. Until today making political speeches has never been considered a crime. The making of a political speech up to now has always been one of the preferred rights protected by the First Amendment. It usually costs money to communicate an idea to a large audience. But no one would seriously contend that the expenditure of money to print a newspaper deprives the publisher of freedom of the press. Nor can the fact that it costs money to make a speech—whether it be hiring a hall or purchasing time on the air—make the speech any less an exercise of First Amendment rights.

Mr. Justice Douglas
Dissenting opinion
United States v. *Auto Workers*

One has a right to freedom of speech not only when he talks to his friends but also when he talks to the public. It is startling to learn that a union spokesman or the spokesman for a corporate interest has fewer constitutional rights when he talks to the public than when he talks to members of his group.

Mr. Justice Douglas
Dissenting opinion
United States v. *Auto Workers*

...and the other of which acts exercises, in like manner, a power not delegated by the Constitution, but, on the contrary, expressly and positively forbidden by one of the amendments thereto, —a power which, more than any other, ought to produce a universal alarm, because it is leveled against the right of freely examining public characters and measures, and of free communication along the people thereon, which has ever been justly deemed the only effectual garden of every other right.

Virginia Resolutions
December 24, 1798

That this state having, by its Convention which ratified the Federal Constitution, expressly declared that, among other essential rights, "the liberty of conscience and of the press cannot be canceled, abridged, restrained or modified by any authority of the United States," and from its extreme anxiety to guard these right from every possible attack of sophistry or ambition, having, with other states, recommended an amendment for that purpose, which amendment was in due time annexed to the Constitution, —it would mark a reproachful inconsistency and criminal degeneracy, if an indifference were now shown to the palpable violation of one of those rights thus declared and secured, and to the establishment of a precedent which may be fatal to the other.

Virginia Resolutions
December 24, 1798