

THE FIRST AMENDMENT (part 3 in presentation of 11/9/15)

*Carol Mellor read the amendment, then presented the following:*

The First Amendment's protection of the right to free speech guarantees the right for us to express ideas and, also, our right to be exposed to ideas. The intention of the amendment is to ensure a free exchange of ideas and viewpoints. We can express our beliefs and ideas to others and we cannot be deprived of the opportunity to hear what others have to say on a topic, issue or candidate.

So, although the constitution protects the right to free speech, that does not mean that the government cannot put some restrictions on the exercise of that right. Actually, no right in our constitution is absolute and many Supreme Court cases have decided the extent to which the needs of government or society outweigh our personal rights. For example, you have the right to practice the religion of your choice, but if the practice of that religion poses a threat to safety, the government can limit the exercise of that right.

The government can limit both the content of speech (i.e. what is said) and the means whereby the speech is expressed.

Examples of limiting content: obscenity, incitement to violence, libel or slander

Example of limiting means: putting reasonable limits with respect to time, manner and place of expression. For example, noise regulation, limitations on occupation of public spaces.

The right to free speech includes the right to disseminate that speech. What is the value of being able to voice an opinion if we cannot do what is necessary to share that opinion with others. The dissemination of speech often costs money, which brings us to the relationship between speech and money.

There are two opinions on this:

1. Some say speech is money so any limit on campaign spending is unconstitutional .
2. Others say the speech and money are not synonymous and a corporation spending billion or dollars is not the same as a single person speaking up at a town meeting.

Supreme Court has since the 1970's been unanimous in agreeing that regulating the financing of political speech raises first amendment issues because political speech costs money:

- paid advertising
- Paid voter mobilization
- Other ways of reaching voters which cost money: mailings, robo-calls, etc.

Having said that, there is a relationship between first amendment rights and political speech, and that political speech is protected by the first amendment raises more questions:

- what can a person spend to be elected to office, which seems to be clearly implicated by first amendment ?
- should special interest groups be allowed to spend unlimited amount of money so as to drown out speech of others?

- Should corporations and other organizations be treated the same as individuals . It was the supreme courts answer to this question which raised the consciousness of many voters to the first amendment issues in the Citizens United Case.
- Should the press have the same rights as individuals

In considering these and other questions, the court must weigh three factors to decide if limitations can be placed on free speech:

1. Is there a compelling governmental interest which justifies the limitation
2. Does the limitation apply too broadly to situations where the governmental interest is no longer in play
3. Is it the least restrictive means of protecting the governmental interest

An example:

Congress passed a law to protect minors from harmful material on the internet.

Two provisions criminalized the display of "indecent" or "patently offensive" online communications. Court considered whether there was a compelling governmental interest.

**Yes,** The government has a very important interest in protecting minors from harmful material.

Does the limit apply too broadly to situation which governmental interest is no longer in play?

**No:** But the government cannot silence adult free-speech rights simply to protect minors, the law effectively suppressed a large amount of speech that adults have a constitutional right to receive and to address to one another.

Was the solution the least restrictive means of protecting the governmental interest?

**No.** These provisions swept in sexual speech that was not obscene.

In context of campaign finance, the focus is on the first: what significant or compelling governmental interests can justify campaign finance regulation?

Answer supplied by the Supreme Court: guarding against corruption. And what is corruption and how it can be protected against has been the crux of the decisions of the Supreme Court which Naomi will explain.