

The First Amendment and Free Speech

The biggest misnomer of the First Amendment freedom of speech clause is the guarantee you must be heard. That is not what the First Amendment says, or does it?

Over the last decade SCOTUS, in a paralleled First Amendment focus, addressed the embodied provisions of religious restrictions by the Government, or Government actors like school officials and teachers. An interesting theme continually emerged which Sandra Day O'Connor (1984) eventually spoke clear of.

“... government actions that endorse a particular religion or religious belief are disfavored because such endorsements send a message to nonadherents that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community.”

Justice Breyer (2006) went further to include acts that promote “social conflict.” Essentially the court identified a First amendment violation occurs when outsiders, who are not members of the political community, are accused of not being a favored member of the political community. Basically, SCOTUS was saying you cannot “interfere” with someone as they exercise their religious right. That objective “interference” holds true to other First Amendment freedoms; The Press, Peaceably Assemble or even when you Petition the Government, but not when you speak?

So, we have a conservative speaker attending a Liberal school to give a talk about racial injustice. Some of the attendees chant and disrupt the speaker so he could not be heard. Is their chant a message against the speaker because he is an outsider and not a member of their political persuasion? Does that chant and disruption not sit squarely on SCOTUS definition of “interference”? Is censorship a form of interference? You betcha.

So why is that speaker not suing the school for a Free Speech violation of First Amendment? Well, he did and it's before the courts as we speak. But is his argument incorrectly focused just as those that came before him?

Why is Twitter, Facebook, etc. not being sued under First Amendment rights violation? Their government licensing and Congressional special liability protection makes them government actors and squarely puts their offering to the public “under the color of State”.

These current day “speech police” continue a relentless attack on not only words, but upon the speaker of the words. They censure the words spoken, then the speaker on their fear of words *yet to be spoken*. They have become thought police. Will they stop there?

So why is their censorship of not just tweets, but authors of the tweets, not the very “interference” of a First Amendment right SCOTUS spoke of 35 years ago? SCOTUS needs to act and preserve the very fibers of the First Amendment freedom of speech. Think of it. Before words become words, they were thoughts.

Before a newspaper opinion was printed, there were discussions, exchanges of words and ideas all stemming from exactly the same origin; “thought”.

Twitter, Facebook et al are self-appointed crusaders who embody the concept of we don’t like you because we don’t like the way you think, or may think. The last is fearful. Mind control in its simplest form. In 1931 Aldous Huxley wrote a novel titled *Brave New World*. Ninety years in the making for reality to catch up to a piece of fiction. But most interesting is not all of what Huxley foretold, has yet to mature.

My argument to SCOTUS would be of a different focus. The Free Speech clause of the First Amendment embodies the essence of thought. If thought remains thought, then there is no speech. The essence of free speech is found in the word “free”. The speaker had the right to freely speak his thoughts, which are nothing more than his opinions, beliefs and fears, without reprisals. In the same vein is speech, speech, if no one can hear it, or read it. There is my argument.

The first amendment protects speech from reprisals. Not just in a political atmosphere proclaimed by O’Connor where outsiders of a political community were rebuked by those on the inside “just because they have different views”. But as Breyer articulated, social conflict. He separated the adjective from the noun. He said it did not need to be political. In fact, he used the word “social conflict”. Breyer said reprisals from free speech that create social conflict, violate the First Amendment. When Facebook or Twitter or other public domains abridge speech so it cannot be heard, just because they disagree, they create a social conflict.

We agree and rest our case.

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Footnote: *What are the crusaders going to do when we develop mind telepathy?*