

Proposed Constitutional Argument, Speech That Harms

Refining Free Speech Protections to Address Coercion and Exploitation

The First Amendment protects the free exchange of ideas that is essential to a democratic society. The Supreme Court has recognized that this protection is not absolute. Certain categories of expression fall outside constitutional protection when they are directly connected to unlawful conduct.

In *Brandenburg v. Ohio*, the Court held that expression may be restricted when it is directed toward inciting imminent lawless action. In *Miller v. California*, the Court confirmed that specific forms of obscenity are not protected. These decisions establish that limits may be applied where expression is tied to harm.

Statement of the Problem

Modern exploitation often relies on communication as a means of control. This includes:

- Coercion into producing explicit material
- Nonconsensual recording or distribution of intimate content
- Manipulation and intimidation connected to sexual exploitation
- Organized activity that uses communication to facilitate trafficking or abuse
- Coordinated campaigns that pressure individuals or groups to avoid reproduction or engage in reproductive decisions through coercion, threats, or exploitation

Existing statutes such as the Trafficking Victims Protection Act address many of these harms. There remain gaps where communication that enables these acts is shielded under broad interpretations of free speech protections.

Core Legal Argument

When expression is used to coerce, exploit, or enable nonconsensual harm, it functions as part of unlawful conduct. Expression used in this manner falls outside the intended protection of the Constitution.

The Constitution does not protect:

- Expression used to pressure individuals into nonconsensual acts
- Expression that facilitates sexual exploitation or trafficking
- Expression that enables the creation or distribution of nonconsensual explicit material
- Expression that is knowingly used to coerce or intimidate individuals or groups in matters of reproduction or bodily autonomy

These uses of communication support harm and undermine individual autonomy.

Proposed Amendment Language

“The protections of free speech shall not extend to expression that is knowingly used to coerce, exploit, or materially facilitate nonconsensual sexual conduct, human trafficking, or the creation or distribution of nonconsensual explicit material, or to coerce individuals or groups in decisions relating to reproduction through threats, intimidation, coordinated campaigns or exploitation.

Congress and the States shall have the authority to enforce this article by appropriate legislation, provided that such laws are narrowly tailored to prevent direct harm and preserve lawful expression.”

Union of Saints