

Weakening the First Amendment

Testimony of Senate Republican Leader Mitch McConnell
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Mr. Chairman, Mr. Ranking Member, and Members of the Committee:

Americans from all walks of life understand how extraordinarily special the First Amendment is. Like the Founders, they know that the free exchange of ideas and the ability to criticize their government are necessary for our democracy to survive.

Benjamin Franklin noted that “whoever would overthrow the liberty of a nation must begin by subduing the freeness of speech.” The First Amendment is the constitutional guarantee of that freedom, and it has never been amended.

Attempts to weaken the First Amendment—such as the proposal before this Committee—should therefore pass the highest scrutiny. Senate Joint Resolution 19 falls far short of that high bar.

It would empower incumbent politicians in Congress and in the states to write the rules on who gets to speak and who doesn't. And the American people should be concerned—and many are already—that those in power would use this extraordinary authority to suppress speech that is critical of them.

I understand that no politician likes to be criticized — and some of us are criticized more often than others. But the recourse to being criticized is not to shut up our fellow citizens. It's to defend your ideas more ably in the political marketplace, to paraphrase Justice Holmes. Or it's simply to come up with better ideas.

The First Amendment is purposefully neutral when it comes to speech. It respects the right of every person to be heard without fear or favor, whether or not their views happen to be popular with the government at a given moment.

The First Amendment is also unequivocal. It provides that “Congress shall make no law . . . abridging the freedom of speech.” The First Amendment is about empowering the people, not the government. The proposed amendment has it exactly backwards. It says that Congress and the states can pass whatever law they want abridging political speech—the speech that is at the very core of the First Amendment.

If incumbent politicians were in charge of political speech, a majority could design the rules to benefit itself and diminish its opponents. And when roles reversed, you could expect a new majority to try to disadvantage the other half of the country. And on it would go.

You can see why this is terrible policy. You can also see how this is at odds with the First Amendment.

That's why the last time a proposal like this was considered, in 2001, it was defeated on a bipartisan basis, with Senator Kennedy, Senator Feingold, and several other Democratic colleagues voting against it. A similar proposal was likewise defeated in 1997.

Our colleagues who voted against those proposals were right then. And I respectfully submit that they would be wrong now to support the latest proposal to weaken the First Amendment. That is especially clear when one compares the language of the amendments.

Senate Joint Resolution 4 in the 107th Congress would have empowered the government to set "reasonable limits" on political speech. The same was true of Senate Joint Resolution 18 in the 105th Congress. As bad as those proposals were, they at least limited the government's power to setting "reasonable limits" on speech. By contrast, the amendment we're discussing today would drop that pretense altogether. It would give the government complete control over the political speech of its citizens, allowing it to set *unreasonable limits* on their political speech, including banning it.

Not only would S.J. Res. 19 allow the government to favor certain speakers over others, it would guarantee such preferential treatment. It contains a provision, not found in prior proposals, which expressly provides that Congress cannot "abridge the freedom of the press." That's great if you're in the business of buying ink by the barrel; it's not so great for everyone else. The media wins and everyone else loses.

Now, everyone on this Committee knows this proposal will never pass Congress. This is a political exercise.

The goal here is to stir up one party's political base so they'll show up in November by complaining loudly about certain Americans exercising their free speech and associational rights, while being perfectly happy that other Americans—those who agree with the sponsors of this amendment—are doing the same thing.

But the political nature of this exercise should not obscure how shockingly bad this proposal is.

When it comes to free speech, we shouldn't substitute the incumbent-protection desires of politicians for the protection the Constitution guarantees to all Americans.

That's something we should all be able to agree on.

So I urge the Committee to reject this dangerous proposal to dramatically weaken one of our most precious freedoms.

And I thank the Chairman and the Ranking Member for the opportunity to testify.