



We Have Free Speech, For Today

By Deborah D. Thornton

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; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.
— *The First Amendment to the U.S. Constitution*

The United States Bill of Rights, the first ten amendments to the Constitution, was passed in 1791 – over 200 years ago. Of the ten, possibly the most important, which is presumably why it is first, is the amendment protecting freedom of religion, speech, press, assembly, and petition. The First Amendment Center was set up at Vanderbilt University in 1991 as a center for the collection and dissemination of information, and education about the First Amendment.¹

According to their website, over the years there have been many attempts to control and limit free speech and assembly. Some succeeded, some failed. The intent behind many of these attempts might have seemed reasonable to those who proposed them, but less so to others. They conduct an annual “State of the First Amendment” survey on knowledge of and attitudes toward the regulation of free speech. Important to the Taxed Enough Already (TEA Party) and health insurance reform efforts is that only 56 percent of those surveyed could name “freedom of speech” and only three percent could name “petition for redress of grievances” as part of the First Amendment. In addition, only 20 percent could name religion, press or assembly.² It will be interesting to see if that changes following the actions of Congress and the White House.

In general, the U.S. Supreme Court has ruled that the limits on free speech are narrow and restricted. For example, in the 1964 case of *New York v. Sullivan* (376 U.S. 254), Justice William Brennan wrote that even libelous speech must be considered, “against the background of a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.”³ The key phrase is the last one – “may well include vehement, caustic and unpleasantly sharp attacks on public officials.” Additionally the ruling said that “erroneous statement is inevitable in free debate, and that it must be protected if the freedoms of expression are to have the ‘breathing space’ that they ‘need . . . to survive.’”⁴ Someone should send Speaker of the House of Representatives, Nancy Pelosi (D-CA) and most of the current members of Congress a copy of this ruling.

Recently Speaker Pelosi, and her deputy, Congressman Steny Hoyer (D-MD-5) made the unfortunate decision to write and have the *USA Today* publish an editorial in which they referred to those vocally, vehemently, caustically, and unpleasantly opposed to the proposed health care “reforms” as “un-American.” Their specific language was, “Drowning out opposing views is simply un-American.”⁵ This statement was misleading in that in general the term “opposing views”

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would refer to the minority views, or those of the party not in political power. However, Speaker Pelosi and Congressman Hoyer are members of the majority party, not the minority, and they were referring to drowning out the views of the current Administration and Democrat controlled Congress. They were not supporting and encouraging robust debate, but trying to stifle it. Closer to home, in March Iowa Speaker of the House Pat Murphy (D-Dubuque) threw over 500 “boisterous” citizens opposed to tax increases out of a public hearing at the State Capitol.⁶

In 2003 former First Lady Hillary Clinton said, while opposing the actions of President George W. Bush, “I am sick and tired of people who say that if you debate and you disagree with this administration, somehow you’re not patriotic. (W)e should stand up and say we are Americans, and we have a right to debate and disagree with any administration.”⁷ The Supreme Court would agree with Mrs. Clinton’s statement, as would the Public Interest Institute. As an attorney it appears she has read *New York v Sullivan*. All Americans have both the right and the obligation to debate any action and topic of our government, either agreeing or disagreeing with it.

However, it would appear that the current President of the United States has not listened to Mrs. Clinton, or read either the First Amendment or *New York v Sullivan*. On August 6, Barack Obama said in discussing those opposed to his economic proposals, “I don’t want the folks who created the mess to do a lot of talking, I want them just to get out of the way so we can clean up the mess.”⁸ I’m sorry, Mr. President, but whether or not Wall Street, American business owners, members of Congress, or former Presidents – from George Washington to George Bush “created a mess” – in your opinion – it is not their duty to shut up and get out of the way.

September 17 is Constitution Day, in addition to being the anniversary of the Bill of Rights. As Americans come to learn more about the proposals and operating approaches of the current Congress and White House, we should learn just what these documents say, and all continue to exercise the freedoms outlined – before we lose them.

(Endnotes)

¹ The First Amendment Center, <http://www.firstamendmentcenter.org/about.aspx?item=about_fac> (August 11, 2009).

² “08 survey finds most Americans would accept limits on some freedoms” News release, First Amendment Center, <<http://www.firstamendmentcenter.org/news.aspx?id=20534>> September 7, 2008.

³ *New York v Sullivan*, 376 U.S. 254

⁴ *Ibid.*

⁵ Nancy Pelosi and Steny Hoyer, “‘Un-American’ attacks can’t derail health care debate” *USA Today*, August 10, 2009, p. A1.

⁶ Jason Clayworth, “Unruly crowd evicted from tax plan hearing,” *The Des Moines Register*, April 1, 2009, p. A1.

⁷ Hillary Clinton, 2003 <<http://www.youtube.com/watch?v=NJxmpTMGhU0>> (August 11, 2009).

⁸ “Obama Tells Economic Critics to ‘Get Out of the Way’”, President Barack Obama speech, Virginia, August 6, as reported by Fox News, August 7, 2009.

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