



CRS Issue Statement on Freedom of Speech

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Many legislative goals for campaign finance reform, the communications industry, indecency, and crimes, such as cyber-harassment, implicate the Free Speech Clause of the First Amendment. The constitutional implications of proposed laws must be taken into account if the law is to survive judicial review. In 2010, the Supreme Court is set to decide at least two important free speech cases. Depending upon the outcomes of those cases, Congress may choose to respond with legislation that comports with the announced constitutional standards.

Political Speech

Whenever the government seeks to restrict the ways in which political campaigns solicit, receive, and spend money, the First Amendment may be implicated. As the 111th Congress considers potential reforms to campaign finance laws, restrictions on campaign communications, or restricting certain politically related speech, the application of the First Amendment in these areas may need to be analyzed in order to ensure the effectiveness of the proposals. In *Citizens United v. FEC*, the Supreme Court will decide whether a spending restriction on corporations in the context of an election is constitutional under the First Amendment. If the Court finds the spending restriction to be unconstitutional and strikes down the provision at issue, Congress may attempt to craft a new expenditure restriction in line with the Court's decision.

Mass Media and Communications

Many communications-related legislative proposals that have obtained significant Congressional attention in the past have First Amendment implications. Legislative proposals affecting the speech of broadcasters and journalists would likely raise First Amendment questions. The Supreme Court, in *United States v. Stevens*, is considering whether a law making it illegal to create, sell, or possess images of animal cruelty for commercial gain violates the right to free speech. It is undisputed that the depictions at issue in the case are not indecent or obscene, though they may be violent and unpleasant. Therefore, in order for the speech to be proscribable, the Court would have to recognize a new category of speech that does not receive full constitutional protection. If such a category is recognized, Congress would have wider latitude to proscribe speech within the category defined by the Court.

Other Issues

Many other legislative issues may be limited in their scope by First Amendment considerations. For example, laws that ban burning the American flag or other types of symbolic speech may be unconstitutional under the First Amendment. Proposals intended to protect children from online harassment and sexual predation would be affected by the First Amendment as well. Nearly any time the government attempts to dictate what may or may not be said or expressed, the First Amendment must be taken into account. This CLI will maintain reports on these issues as they become important to Congress.

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