Although a majority of the Court has not joined in Justice Stevens' theory,[1156] the Court has in some contexts of covered expression approved restrictions based on content,[1157] and, in still other areas, such as privacy, has implied that it would approve some content-based restraints on expression.[1158] Moreover, the Court has emphasized numerous times the role of the First Amendment in facilitating, indeed in making possible, political dialogue and the operation of democratic institutions.[1159] Although this emphasis may be read as premised on a hierarchical theory of the worthiness of political speech over other forms of speech, it is more likely merely a celebration of the importance of political speech, and not a suggestion that other kinds of speech enjoy less protection under the First Amendment.[1160]

If a category of speech is protected under the First Amendment, then it cannot be restricted on the basis of its level of "outrageousness." In *Hustler Magazine, Inc. v. Falwell*,[1161] the Court refused to recognize a distinction between permissible political satire and "outrageous" parodies that are "doubtless gross and repugnant in the eyes of most."[1162] "If it were possible by laying down a principled standard to separate the one from the other," the Court sug-

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[1156] In New York v. Ferber, 458 U.S. 747, 763 (1982), a majority of the Court joined an opinion quoting much of Justice Stevens' language in these cases, but the opinion rather clearly adopts the proposition that the disputed expression, child pornography, is not covered by the First Amendment, not that it is covered but subject to suppression because of its content. Id. at 764. *See also* id. at 781 (Justice Stevens concurring in judgment).

[1157] *E.g.*, commercial speech, which is covered by the First Amendment but is less protected than other speech, is subject to content-based regulation. Central Hudson Gas & Electric Co. v. PSC, 447 U.S. 557, 568–69 (1980). *See also* Rowan v. Post Office Dep't, 397 U.S. 728 (1970) (sexually oriented, not necessarily obscene mailings); and Barnes v. Glen Theatre, Inc., 501 U.S. 560 (1991) (nonobscene nude dancing).

[1158] *E.g.*, Cox Broadcasting Corp. v. Cohn, 420 U.S. 469 (1975). *See also* Zacchini v. Scripps-Howard Broadcasting Co., 433 U.S. 562 (1977).

[1159] *E.g.*, First National Bank of Boston v. Bellotti, 435 U.S. 765, 776–77, 781–83 (1978); Citizens Against Rent Control v. City of Berkeley, 454 U.S. 290, 299–300 (1982).

[1160] *E.g.*, First National Bank v. Bellotti, 435 U.S. 765, 783 (1978); Consolidated Edison Co. v. Public Service Comm'n, 447 U.S. 530, 534 n.2 (1980). *Compare* Erie v. Pap's A.M., 529 U.S. 277, 289 (2000) ("nude dancing . . . falls only within the outer ambit of the First Amendment's protection") *with* United States v. Playboy Entertainment Group, Inc., 529 U.S. 803, 826 (2000) ("[w]e cannot be influenced . . . by the perception that the regulation in question is not a major one because the speech ['signal bleed' of sexually oriented cable programming] is not very important").

[1161] 485 U.S. 46 (1988).

[1162] 485 U.S. at 55, 50 (applying the *New York Times* "actual malice" standard for defamation to suits by public figures for the intentional infliction of emotional distress). The parody in this case, which contained the disclaimer, "ad parody—not to be taken seriously," had Jerry Falwell, a nationally known minister, stating that he lost his virginity "during a drunken incestuous rendevous with his mother in an outhouse." Id. at 48.