reversed the lower court's judgment for the plaintiff. To the contention that the First Amendment did not protect libelous publications, the Court replied that constitutional scrutiny could not be foreclosed by the "label" attached to something. "Like . . . the various other formulae for the repression of expression that have been challenged in this Court, libel can claim no talismanic immunity from constitutional limitations. It must be measured by standards that satisfy the First Amendment." [1220] "The general proposition," the Court continued, "that freedom of expression upon public questions is secured by the First Amendment has long been settled by our decisions . . . . [W]e consider this case 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." [1221] Because the advertisement was "an expression of grievance and protest on one of the major public issues of our time, [it] would seem clearly to qualify for the constitutional protection . . . [unless] it forfeits that protection by the falsity of some of its factual statements and by its alleged defamation of respondent." [1222]

Erroneous statement is protected, the Court asserted, there being no exception "for any test of truth." Error is inevitable in any free debate and to place liability upon that score, and especially to place on the speaker the burden of proving truth, would introduce self-censorship and stifle the free expression which the First Amendment protects.[1223] Nor would injury to official reputation afford a warrant for repressing otherwise free speech. Public officials are subject to public scrutiny and "[c]riticism of their official conduct does not lose its constitutional protection merely because it is effective criticism and hence diminishes their official reputation." [1224] That neither factual error nor defamatory content could penetrate the protective circle of the First Amendment was the "lesson" to be drawn from the great debate over the Sedition Act of 1798, which the Court reviewed in some detail to discern the "central meaning of the First Amendment." [1225] Thus, it appears, the libel law under consideration failed the test of constitutionality because of its kinship with

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[1220] 376 U.S. at 269. Justices Black, Douglas, and Goldberg, concurring, would have held libel laws *per se* unconstitutional. Id. at 293, 297.

[1221] 376 U.S. at 269, 270.

[1222] 376 U.S. at 271.

[1223] 376 U.S. at 271–72, 278–79. Of course, the substantial truth of an utterance is ordinarily a defense to defamation. *See* Masson v. New Yorker Magazine, 501 U.S. 496, 516 (1991).

[1224] 376 U.S. at 272–73.

[1225] 376 U.S. at 273.