cacy of violence or unlawful activity has become more restricted. Obscenity abstractly remains outside the protective confines of the First Amendment, but the Court's changing definitional approach to what may be constitutionally denominated obscenity has closely confined most governmental action taken against the verbal and pictorial representation of matters dealing with sex. Commercial speech, long the outcast of the First Amendment, now enjoys a protected if subordinate place in free speech jurisprudence. Freedom to picket, to broadcast leaflets, and to engage in physical activity representative of one's political, social, economic, or other views, enjoys wide though not unlimited protection. False statements, long derided as being of little First Amendment value, were brought within the ambit of free speech, although the standard of protection afforded to such a law—here, lying about one's military record—remains unsettled.

While First Amendment doctrine remains sensitive to the make-up of the Court, the trend for many years has been a substantial though uneven expansion. In particular, the association of the right to spend for political purposes with the right to associate together for political activity has meant that much governmental regulation of campaign finance and of limitations upon the political activities of citizens and public employees had become suspect if not impermissible. For example, during the last decade, confronted with renewed attempts by Congress to level the playing field between differing voices with disparate economic resources, the Court first accepted, and then rejected these new regulations. In the process, corporations, long barred from direct political advocacy, were given even greater access to the political arena.

SECTION IV

Unremarked by scholars of some sixty years ago was the place of the equal protection clause in constitutional jurisprudence—simply because at that time Holmes' pithy characterization of it as a "last resort" argument was generally true. Subsequently, however, especially during the Warren era, equal protection litigation occupied a position of almost predominant character in each Term's output. The rational basis standard of review of different treatments of individuals, businesses, or subjects remained of little concern to the Justices. Rather, the clause blossomed after *Brown v. Board of Education*, as the Court confronted state and local laws and ordinances drawn on the basis of race. This aspect of the doctrinal use of the clause is still very evident on the Court's docket, though in ever new and interesting forms.

Of worthy attention has been the application of equal protection, now in a three-tier or multi-tier set of standards of review, to legislation and other governmental action classifying on the basis of sex, illegitimacy, and alienage. Of equal importance was the elaboration of the concept of "fundamental" rights, so that when the government restricts one of these rights, it must show not merely a reasonable basis for its actions but a justification based upon compelling necessity. Wealth distinctions in the criminal process, for instance, were viewed with hostility and generally invalidated. The right to vote, nowhere expressly guaranteed in the Constitution (but protected against abridgment on certain grounds in the Fifteenth, Nineteenth, and Twenty-sixth Amendments) nonetheless was found to require the invalidation of all but the most simple voter qualifications; most barriers to ballot access by individuals and parties; and the practice of apportionment of state legislatures on any basis other than population. In the controversial decision of *Bush v. Gore*, the Court relied on the right to vote in effectively ending the disputed 2000 presidential election, noting that the Florida Supreme Court had allowed the use of non-unified standards to evaluate challenged ballots. Although the Court's decision was of real political import, it was so limited by its own terms that it carries no doctrinal significance.

In other respects, the reconstituted Court has made some tentative rearrangements of equal protection doctrinal developments. The suspicion-of-wealth classification was largely though not entirely limited to the criminal process. Governmental discretion in the political process was enlarged a small degree. But the record generally is one of consolidation and maintenance of the doctrines, a refusal to go forward much but also a disinclination to retreat much. Only recently has the Court, in decisional law largely cast in remedial terms, begun to dismantle some of the structure of equal protection constraints on institutions, such as schools, prisons, state hospitals, and the like. Now, we see the beginnings of a sea change in the Court's perspective