SHORT ARTICLE

The Paradoxical Effect of Speech-Suppressing Appeals to the First Amendment

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While the Free Speech Clause of the First Amendment prohibits government from imposing adverse consequences for speech it dislikes, in popular discourse this part of the Constitution is often referenced in an attempt to suppress nongovernmental criticism of controversial statements. To assess whether inappropriate, speech-suppressing appeals to the First Amendment cause intolerance of criticism or, unintentionally, promote tolerance of adverse responses to controversial statements, we employ a survey experiment and find evidence of the latter effect. Appeals to the Free Speech Clause that seek to suppress speech have the unintended consequence of increasing public tolerance for speech. Invoking freedom of speech is what matters, not the specific direction of the appeal.

The US public values the Free Speech Clause more than any other First Amendment freedom.[1] As a result, invoking freedom of speech can increase tolerance of unpopular expressive activities (Nelson, Clawson, and Oxley 1997). Despite its cherished status, though, the precise scope of this constitutional protection is not necessarily understood by the public. The Free Speech Clause prohibits the government from imposing adverse consequences for speech it dislikes. In popular discourse, however, the Free Speech Clause is often referenced in an attempt to suppress nongovernmental criticism of controversial statements. As a recent example, when comedian Rob Schneider was publicly criticized for his controversial statements about child vaccinations, he claimed that his First Amendment right to free speech was being violated. The intended effect of invoking the First Amendment here was to inhibit further criticism of Schneider's controversial ideas, thus limiting debate and effectively privileging his statements.

This is not an uncommon pattern of public debate. A public figure makes a controversial political statement, a private actor criticizes the statement, and the public figure and/or his or her supporters claim, inaccurately, that First Amendment rights are being violated by this adverse response. Indeed, a recent report on the state of free speech on college campuses highlights this problem by observing that "at times protests and forms of expression are treated as if they are incursions on free speech when in fact they are manifestations of free speech" (PEN America 2016, 8). Presumably, illegitimate First Amendment appeals are made because people believe they are effective in suppressing critical speech, raising the question of whether, paradoxically, free speech appeals promote intolerance of criticism. Yet, as mentioned, free speech appeals are powerful frames that can promote tolerance (Nelson et al. 1997). To evaluate whether inaccurate First Amendment appeals diminish tolerance of criticism or, unintentionally, promote tolerance of critical responses to controversial statements, we employ a survey experiment and find evidence of the latter effect. In other words, even appeals to the Free Speech Clause that seek to suppress criticism can increase public tolerance for this type of speech.

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1. See Vanderbilt University's First Amendment Center survey (http://www.firstamendmentcenter.org/madison/wp-content/uploads/2013/07/SOFA-2013-final-report.pdf).

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Invoking freedom of speech is what matters, not the specific direction of the appeal. Interestingly, these appeals do not increase tolerance of the initial controversial statement.

SPEECH-SUPPRESSING FIRST AMENDMENT APPEALS

People often exhibit ambivalence about civil liberties. People are generally highly supportive of civil liberties in the abstract, but can be more restrictive in their application (McClosky and Brill 1983; Mondak and Hurwitz 2012; Stouffer 1955). This means that framing matters, and there is evidence that rights-based (Nelson et al. 1997) or Constitution-based frames (Chong 1993) can be particularly effective in increasing support for civil liberties. But what happens when a constitutional, rights-based appeal is made in an effort to limit a civil liberty? Does the reference to constitutional authority make the liberty-suppressing appeal effective, or does it unwittingly increase support for the liberty due the rights-based frame?

These are relevant questions for the operation of the First Amendment's Free Speech Clause. Although a cherished bedrock freedom, at least in the abstract, the Free Speech Clause might be easily misunderstood by a public with a limited understanding of how democratic politics works (Hibbing and Theiss-Morse 2002). As illustrated above with Rob Schneider's controversial antivaccination comments, a commonly made illegitimate appeal to the First Amendment implies that controversial statements are shielded from criticism by nongovernmental actors (e.g., "It's his right to free speech").

If the First Amendment is a positively viewed source of legal authority or "honorific principle" (Chong 1993, 869), then appeals to its authority, even if they are legally inaccurate, may be persuasive. When supporters of controversial speech reference the First Amendment in an effort to quell criticism, they seek to leverage this authority in order to persuade others that critical speech should not be allowed or tolerated. This logic suggests the "debate-stifling hypothesis": Speech-suppressing appeals to the First Amendment will *decrease* tolerance of critical responses to controversial statements.

Despite the intentions of those who wish to curtail criticism of controversial statements, a misguided, speech-suppressing First Amendment claim may inadvertently frame the debate in First Amendment, free speech terms. This type of frame has been shown to increase tolerance of controversial speech (Coe et al., forthcoming; Nelson et al. 1997). Thus, speech-suppressing First Amendment-based arguments could have the unintended effect of increasing tolerance of criticism of controversial statements. Accordingly, we offer the "debate-stimulating hypothesis": Speech-suppressing appeals to the First Amendment will *increase* tolerance of critical responses to controversial statements.

EXPERIMENTAL DESIGN

To test these rival hypotheses, we conducted a survey experiment in which participants were randomly assigned to one of three scenarios. The first involves comedian Bill Maher's post-9/11 statements that it was the US military, not terrorists, who were acting in a cowardly manner. He was roundly criticized for these comments, and some advertisers withdrew from his show. The second scenario, discussed above, involves comedian Rob Schneider's antivaccination comments, which led State Farm to end his role as spokesperson. The third scenario centers on statements made by Dan Cathy (the chief operating officer of Chick-fil-A) against same-sex marriage, which prompted an effort to boycott Chick-fil-A restaurants. All three scenarios have the same structure—a controversial statement is made, there is a critical backlash involving both criticism and an adverse economic consequence, and supporters of the controversial speaker invoke a First Amendment defense. Note that Maher's statement could be construed as liberal (particularly in that it contradicted President Bush), Schneider's declaration is not traditionally ideological, and Cathy's comments are conservative.

After random assignment to a scenario, participants were randomly assigned to either receive the speech-suppressing First Amendment treatment or the control condition. In the former, a participant is informed, for example, that "supporters of Schneider argued that due to the First Amendment's protection of the freedom of speech he should not be criticized or fired for expressing his views." This type of speech-suppressing First Amendment appeal was made in all three scenarios when they actually occurred. In the control condition, subjects are instead simply told that "supporters of Schneider argued that he should not be criticized or fired for expressing his views."[2] If misleading appeals to the First Amendment have the intended persuasive effect, then participants receiving the treatment should be less tolerant of the criticism and adverse responses aimed at the initial controversial statement. If these appeals instead act as unintended free speech frames, then "treated" participants will express greater tolerance of critical responses.

We include two, related dependent variables: one question gauges tolerance of criticism of the statement and one assesses tolerance of an adverse economic response (e.g., State Farm's firing of Schneider). Responses are recorded on

2. Text of the treatment and control versions for each scenario is on page 1 of the appendix.

a 5-point scale with higher values corresponding to greater tolerance of the critical response (see pages 2 and 3 of the appendix, available online). Since there may be differences between tolerance of "mere" criticism as compared to adverse economic consequences (a stronger repercussion), we analyze them separately.

To examine the effect of other possible determinants of tolerance, we also asked questions that measured attitudes toward the issue in question, overall ideological position (see Suedfeld, Steel, and Schmidt 1994), knowledge of the First Amendment's Free Speech Clause, and education level. Agreement with the position indicated in the relevant controversial statement is measured on a 3-point scale (increasing with agreement), ideology is measured on the traditional 7-point scale (increasing with conservatism), and education is measured on a 6-point scale (increasing with education). Knowledge of the First Amendment is measured by the number of correct responses to four knowledge questions (see page 4 of the appendix).

We implement our survey experiment with a national convenience sample recruited through Amazon's Mechanical Turk (MTurk). While not representative of the American public, MTurk samples are often superior to local convenience samples and are common in social science research (Berinsky, Huber, and Lenz 2012). After discarding three problematic participants, we have a sample size of 1,480.[3] As found in many MTurk samples, our participants skew somewhat young and Democratic, but there is meaningful variation in all the demographic and political variables.[4]

RESULTS

The first two columns of table 1 present the results of OLS models of the tolerance of criticism of the controversial statement and tolerance of adverse economic consequences, respectively.[5] The independent variable of interest for both models is the speech-suppressing First Amendment treatment. For purposes of presentation, both models include data from all three vignettes. To allow for vignette-specific intercepts, we include indicators for the Maher and Cathy vignettes and thus allow the Schneider vignette to serve as the baseline.[6]

The results reveal that the presence of the speech-suppressing treatment exerts a positive and statistically significant effect on tolerance of both criticism of the statements and adverse economic responses. This is strong evidence for the debate-stimulating hypothesis. When defenders of controversial speech claim that the First Amendment protects such speech from criticism, the result is an *increase* in tolerance of such criticism. Arguments that make illegitimate speech-suppressing First Amendment appeals have the unintended consequence of enhancing freedom of speech presumably because they frame the debate in these terms.

The results for the other independent variables suggest that supporting the issue position taken in the controversial speech decreases tolerance for criticism. The participant's ideology has an interesting effect, as increasing conservatism decreases tolerance of critical responses to controversial speech, even accounting for agreement with the speech (see Suedfeld, Steel, and Schmidt 1994). Knowledge of the Free Speech Clause and education level increase tolerance of critical responses. An examination of the partial eta squared for each of the estimates reveals that, not surprisingly, the speech suppressing treatment has a smaller effect size than issue agreement, conservatism, or First Amendment knowledge (see page 11 of the appendix). The speech suppressing treatment, however, has a slightly larger effect size than education.

EXAMINING TOLERANCE OF THE CONTROVERSIAL STATEMENT

Although we have shown that speech suppressing appeals to the First Amendment have the unintended effect of increasing tolerance of critics, we have not addressed the important question of whether they increase tolerance of the

3. Two participants failed a bot check, and one participant's self-reported age was outside the range of possibility. In the same experiment, another 1,522 participants received the same set of treatments but were also given accurate information about the Free Speech Clause prior to the controversial speech vignette. If inaccurate speech-suppressing appeals to the First Amendment decrease tolerance of critical responses, then these participants could have been used to examine whether an information treatment can prevent this effect. Instead, however, we found that speech-suppressing appeals to the First Amendment increased tolerance, thus eliminating the need to test this effect. We also estimated the models from table 1 including these participants and found that the information treatment and the speech-suppressing First Amendment appeal are largely substitutable framing treatments. See pages 6, 7, and 10 of the appendix for details.

4. For example, 25% of the sample are 40 years old or older, 24% identify as Republican (compared to 61% identifying as Democrats), 48% are women, 24% are nonwhite (8% African American and 5% Hispanic/Latino), and 51% do not have a four-year college degree.

5. The raw, unadjusted effects for the speech-suppressing treatment are very similar to the regression estimates presented here. See page 12 of the appendix for details.

6. Vignette-specific results for these models are in the appendix, 5, 8–9. While supplementary analyses reveal that there is no statistically discernible difference between the vignette-specific estimates of the effect of suppressive First Amendment appeals on either tolerance of criticism or tolerance of economic consequences, in the disaggregated models the estimate for this treatment effect is not consistently significant for the latter type of tolerance.

Table 1. Effect of Speech-Suppressing First Amendment Appeals on Tolerance for Responses to Controversial Statements

Independent Variable	Tolerance of Criticism	Tolerance of Economic Consequence	Tolerance of Initial Statement
Suppressive First Am. appeal	.234*	.159*	.071
	(.063)	(.062)	(.050)
Issue agreement	−.492*	−.505*	.188*
	(.042)	(.041)	(.033)
Conservatism	−.109*	−.090*	.020
	(.021)	(.020)	(.016)
First Am. knowledge	.296*	.284*	.232*
	(.030)	(.030)	(.024)
Education	.088*	.057*	.038
	(.026)	(.025)	(.020)
Maher/Sept. 11	.017	−.008	.133*
	(.079)	(.077)	(.062)
Cathy/Same-sex marriage	−.217*	−.008	.193*
	(.079)	(.077)	(.062)
Constant	3.11*	3.06*	3.01*
	(.168)	(.165)	(.133)
N	1,480	1,480	1,480
F	54.2*	52.4*	19.3*
R^2	.205	.199	.084

Note. Entries are OLS coefficient estimates (and standard errors). The vignette involving Schneider's comments on vaccinations serves as the baseline. For vignette-specific results, see pages 8 and 9 of the appendix.
* $p \leq .05$ (two-tailed test).

initial controversial statement. After all, these appeals aim to privilege the initial statements. The third column of table 1 presents the results of an analysis in which tolerance of the initial statement is the dependent variable. Interestingly, the estimate for the speech-suppressing treatment, while still positive, is not statistically significant. It thus appears, ironically, that there is greater evidence for the unintended effect of increasing tolerance of critical responses than there is evidence for an increase in tolerance of the controversial statement that is intended to be protected by the First Amendment appeal. Taken together, we speculate that this pattern of results could mean that the public is already mindful of the First Amendment affording controversial speaker's free speech rights (pretreated) but need to be reminded that critics of those speakers also possess these rights. Thus, contrary to the wishes of those who invoke the First Amendment to quiet critics of controversial speech, invoking free speech serves as a valuable reminder that everyone has these rights.

THE CONDITIONING EFFECT OF FIRST AMENDMENT KNOWLEDGE

Lastly, we examine whether someone's knowledge of the First Amendment conditions the tolerance-enhancing effect of being exposed to a speech-suppressing appeal. To test this possibility, we performed a set of analyses in which we included an interaction term (suppressive First Amendment appeal × First Amendment knowledge). The estimates for the interaction terms in all three models are statistically insignificant, indicating that knowledge does not condition the treatment effect. An examination of the conditional coefficients suggests that, if anything, the positive effect of the treatment may increase in size with First Amendment knowledge (see pages 13–15 of the appendix). Speech-suppressing appeals may increase tolerance most for those who are knowledgeable of the First Amendment.

CONCLUSION

Those who make controversial statements and their defenders often invoke the Free Speech Clause with the intention of dampening criticism and other adverse responses from nongovernmental sources. Such appeals are legally unfounded, though, as the Free Speech Clause only limits governmental responses to speech. Nonetheless, these appeals are frequently made and, perversely, rely on the authority and cherished status of the Free Speech Clause to suppress freedom of speech. However, our results suggest that such attempts have the unintended effect of increasing tolerance for critical

responses while having no effect on the initial statement. Normatively speaking, we find this reassuring as it reveals that aberrant and potentially cynical appeals to a fundamental constitutional liberty fail.

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REFERENCES

Berinsky, Adam J., Gregory A. Huber, and Gabriel S. Lenz. 2012. "Evaluating Online Labor Markets for Experimental Research: Amazon.com's Mechanical Turk." *Political Analysis* 20 (3): 351–68.

Chong, Dennis. 1993. "How People Think, Reason, and Feel about Rights and Liberties." *American Journal of Political Science* 37 (3): 867–99.

Coe, Chelsea M., Kayla S. Canelo, Kau Vue, Matthew V. Hibbing, and Stephen P. Nicholson. Forthcoming. "The Physiology of Framing Effects: Threat Sensitivity and the Persuasiveness of Political Arguments." *Journal of Politics*.

Hibbing, John R., and Elizabeth Theiss-Morse. 2002. *Stealth Democracy: Americans' Beliefs about How Government Should Work*. New York: Cambridge University Press.

McClosky, Herbert, and Alida Brill. 1983. *Dimensions of Tolerance: What Americans Believe about Civil Liberties*. New York: Russell Sage.

Mondak, Jeffery J., and Jon Hurwitz. 2012. "Examining the Terror Exception: Terrorism and Commitments to Civil Liberties." *Public Opinion Quarterly* 76 (2): 193–213.

Nelson, Thomas E., Rosalee A. Clawson, and Zoe M. Oxley. 1997. "Media Framing of a Civil Liberties Conflict and Its Effect on Tolerance." *American Political Science Review* 91 (3): 567–83.

PEN America. 2016. "And Campus for All: Diversity, Inclusion, and Freedom of Speech at U.S. Universities." PEN America, New York.

Stouffer, Samuel. 1955. *Communism, Conformity, and Civil Liberties*. New York: Doubleday.

Suedfeld, Peter, G. Daniel Steel, and Paul W. Schmidt. 1994. "Political Ideology and Attitudes toward Censorship." *Journal of Applied Social Psychology* 24 (9): 765–81.