



2016

2016 Constitution Day Essay Contest: 2nd Place

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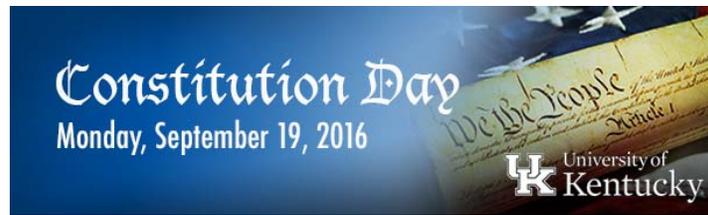
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Constitution Day, created in 2004 by an act of Congress, mandates that all publicly funded schools provide educational programming on the history of the U.S. Constitution, which was adopted by delegates to the Constitutional Convention on Sept. 17, 1787. This year's Constitution Day at UK is Monday, September 19th (see <http://www.uky.edu/UGE/constitution-day-2016>). Under direction from the Office of the President and the Provost, the Division of Student and Academic Life will lead a cross-campus gathering of support for offering Constitution Day activities at the University of Kentucky. Staff and faculty work with many different student organizations and units on campus to develop a campus-wide approach to the celebration of our rights and responsibilities as citizens of the U.S. and to develop habits of citizenship in a new generation of Americans. The general thematic topic this year is focusing on "Freedom of Expression, Identity and the U.S. Constitution."

An essay contest for undergraduates is sponsored by the UK Scripps Howard First Amendment Center, the Office of the President and the Provost's Division of Student and Academic Life. The essays are blind-judged by former UK journalism students who are lawyers, UK professors and media law professors at other universities. The entries are scored on the following criteria: historical and legal accuracy of the content, the strength and logic of the argument, the original ideas presented, the organization of the argument, including the thesis, and the quality of the writing. The winners are announced the First Amendment Celebration, 7:00 p.m. Tuesday, Sept. 27, in the Kincaid Auditorium of the Gatton College of Business and Economics.

The essay, which cannot exceed 750 words, addressed this writing prompt:

During the Republican National Convention in Cleveland in July, protesters tried to burn a flag of the United States. Although such an act offends many people, the Supreme Court ruled in 1898 and again in 1990 that burning the flag is expressive conduct – an act of speech – and protected by the First Amendment. In another First Amendment decision, the Supreme Court ruled unconstitutional the attempt by Congress to regulate the spending of money during political campaigns. In the *Citizens United* decision in 2010, the majority said campaign contributions are also protected speech. That means businesses, unions, and organized groups can spend as much money as they choose for ads supporting or opposing candidates as long as they don't coordinate such spending with the candidates' campaigns.

Essays must address this question: Should Congress propose an amendment to the Constitution that would allow the federal government and states to make it a crime to burn the United States flag and another amendment to allow legislatures to place limits on the amount of money flowing into political campaigns?

Second Place – Zoe Gabrielson

[No Title]

The First Amendment was not written to protect the speech of loyalists who praised the king of England. It was written to protect the revolutionaries who questioned everything about what it meant to be a free nation and in doing so, ignited the fire of democracy that still flickers in each uniquely American liberty we enjoy today. The First Amendment protects the voices of those whose unpopular opinions would otherwise be silenced by the masses. In fact, the very people protesting the proceedings of American government are the people who most need the protection of free speech. Flag burning, a symbolic representation of distrust or hatred for government, is a prime example of the type of speech that the founding fathers meant to protect with their principal addition to the Bill of Rights. A central theme in the first ten amendments is prevention of government tyranny recurring as it did in British-governed colonies: the right to bear arms, refuse unwarranted searches and seizures, and be free from cruel and unusual punishment are evidence of the founders' desire to create the more perfect union that England never could, one that was more strongly protected against government corruption and unfair treatment. Perhaps the most important of these, however, was the protection of free expression. The founders themselves could not have broken free from England's rule without protest, petition, and political demonstrations. If burning a flag is heretical, then the Sons of Liberty's protest of Andrew Oliver, a Stamp Tax enforcer from Massachusetts, which involved stomping on and beheading Oliver's effigy, was downright sacrilegious. Remarkably, however, the Sons of Liberty are praised in American History textbooks as freedom fighters for their role in the Revolutionary War. Perhaps this is because victors are allowed to write the history books. Conversely, fiercely patriotic Americans often abhor the burning of flags, despite the fact that the very ability to burn a flag symbolizes America's role as a free society. These individuals might argue that flag burning should not be allowed because it's offensive. If, however, every "offensive" act were banned, what would happen to the other protections of the Constitution? Would the opinion of the many be allowed to silence the protests of the few? If Congress were to pass a law prohibiting flag burning, it would be negating the principles set forth in the Constitution of freedom of expression and this would be a far greater threat to what the flag represents than any flame.

The First Amendment has, however, also been applied in court cases *like Citizens United v. FEC*, a case in which the Supreme Court ruled that because political campaign contributions by large organizations and corporations are speech, they are protected by the First Amendment and thus, Congress shall pass no law abridging them. This reasoning rests upon two fallacies, however: it assumes that corporations are people, and thus entitled to the same protections as American citizens (even though they don't bear the same burdens, like the potential to be prosecuted and imprisoned for wrongdoings), and that money is speech. The first premise is fallacious because, in the words of Justice Stevens, ". . . corporations have no consciences, no beliefs, no feelings, no thoughts, no desires...they are not themselves members of 'We the People' by whom and for whom our Constitution was established." Secondly, it assumes that money is equivalent to speech. This is patently false. The deregulation of campaign contributions has actually detracted from the quality of democracy in this country because the interests of corporations

and powerful interest groups are valued over those held by people with less money but whose opinions are just as valid. Furthermore, even if one could successfully argue that money is speech, the Supreme Court has upheld in the past that speech that is inherently threatening to society and causes a harmful secondary effect (like yelling fire in a crowded movie theater), is *not* protected speech, and thus subject to regulation. Research has shown that lobbying does indeed affect legislative outcomes, disproportionately favoring the interests of those who are affluent and powerful and demolishing the democratic principle of allowing everyone - regardless of their income level or political status - to participate. If money is speech, then deregulating the campaign finance system is akin to allowing a handful of wealthy, powerful corporations to broadcast their interests on loudspeakers while less privileged citizens and groups are forced to whisper. Congress should pass laws regulating campaign contributions because doing so *will* protect speech by everyone, not just a select few.

