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## 2016 Constitution Day Essay Contest: Honorable Mention

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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?

## Shawn Murphy – Honorable Mention

### Assessing the Cost of Proposed Amendments

Americans have exceedingly rarely forfeited what they perceive to be a basic human right in order to obtain pleasantries, prosperity, safety, or just about anything really. The core values of freedom, democracy, the right to pursue happiness, and equality of opportunity permeate America's culture. Safeguarding these values is entrusted to those who uphold the Constitution, those who have the power to amend the Constitution, and American citizens who –directly or indirectly– select them. So, when the American citizenry becomes aroused against actions that the United States courts declare as constitutionally defended, Congress ought to consider proposing amendments to the Constitution such that those actions can become punishable by law. The 2016 presidential campaign has unearthed two such issues: flag burning and campaign finance. Both cases were defended by free speech, although neither issue's actions are intuitively classified as 'speech.' In response, Congress should ratify an Amendment limiting speech if and only if they determine that the value of the freedom gained exceeds the value of the freedoms lost.

Examining the flag burning case, the freedom to burn flags is pitted against the freedom to not see flags burnt. When posed as stated, the issue seems obviously unbalanced; the freedom not to be exposed to something is a weak argument unless backed by a serious threat to safety. However, the argument against gains steam because the issue is not just burning *a* flag, but burning the *U.S.* flag. And suddenly, many people feel the act is so despicably wrong that it ought to be illegal. This position is hinged on the flag's symbolic meaning. If the U.S. government were to pass an Amendment, it would protect this value. However, it would also shift the source of power for the symbol from Americans' collective agreement to a governmental mandate of its power. To do so would be to tarnish the symbol's value. The freedom of supporters is intrinsic to a symbol's significance. Like morality, patriotism cannot and should not be legislated. But not only should it not be legislated, it should not become a national discussion. Attempting to control the beliefs of citizens is so detrimental to Americans' freedom and anathema to what America stands for, Congress should not propose an amendment protecting national symbols.

The central question concerning campaign finance law is "does allowing organizations and/or individuals unlimited spending restrict others' freedom of speech?" In general, expressing oneself does not limit the expression of someone else, but there are conceivable cases where it might. Suppose organization A wants to buy an advertisement slot to support candidate A, but finds organization B has bought the slot at a price organization A cannot afford in order to support candidate B. In this case, it could be argued organization A's expression was limited because organization B had more money to spend. Still, organization A could express itself at a different advertisement slot or by a different medium altogether and because there are infinite mediums of expression, they have no legitimate argument that organization B has abridged their freedom. They could argue that organization B has limited the receptiveness of their speech, yet this is not a matter of freedom of speech anymore, but of democracy. And now, the question becomes, "does granting unlimited spending distort American democracy?"

Answering this question is difficult because surely democracy is distorted to some extent, but to what extent? And surely some level of free speech is given up, but how much? Empirical evidence should be gathered and lengthy, national discussion had. For these reasons, Congress should propose an Amendment to limit national campaign spending.

Amending the Constitution is no light task. Even in the case of limiting campaign spending, Congress is by no means obligated to propose the amendment. If Congress believes that freely spending money is indeed tantamount to freely expressing oneself, then it should not propose the amendment. In short, adjusting campaign finance law is a controversial issue that comes up year after year, and does impede (at least to a minimal degree) American democracy; therefore, Congress is justified should it choose to propose the amendment. On the other hand, an amendment to protect national symbols does not stand on a pillar of American government. Patriotism flows from citizens into the government, not the other way around. American government should have no say in determining the values of American citizens. Any attempt to propose an amendment with an article allowing the government to protect national symbols should be struck down.

