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2015 Constitution Day Essay Contest: 3rd Place

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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 Thursday, September 17th (see more at the website: <http://www.uky.edu/UGE/constitution-day-2015>). Under direction of the Office of the President and the Office of the Provost, the Division of Undergraduate Education (UGE) has led the charge in organizing the many different events under the theme: *"Learning, Leadership and Civic Engagement."* UGE has teamed with various student and campus organizations to promote civic engagement and learning and to celebrate our rights and responsibilities as U.S. citizens.

An essay contest for undergraduates is sponsored by the UK Scripps Howard First Amendment Center, the Office of the President and the Division of Undergraduate Education. The essays are blind-judged by former UK journalism students who are lawyers, UK professors and media law professors at other universities. The winners are announced the First Amendment Celebration, 7:30 p.m. Tuesday, Sept. 29, in Alumni Auditorium of the William T. Young Library.

The essay, which cannot exceed 750 words, must address this issue:

The 2015 race for governor is well under way, and as was to be expected, the TV advertising offers a lot more heat than light. In other words, voters are learning less about the issues and witnessing more of the dirt the candidates are shoveling at each other. Address two questions:

1. Should the General Assembly pass a law before the 2019 state elections requiring candidates to abstain from using half-truths and lies in their advertising so that voters can be better informed on the important issues facing the state?
2. Would such a law survive a court test?

Third Place – Shawn Murphy

Deception in Political Advertisements Cannot and Should Not Be Legislated Away

The level of mud slung at opposing candidates in today's political campaigns is tremendous. Rarely do candidates campaign in terms of how beneficial they could be, but in terms of how terrible the opposition would be. Often, advertisements choose not to mention the promoted candidate until the final seconds, using the rest of the time to besmirch the opposition's reputation. Politics centered on such hostility have instilled a bitter attitude towards politics among the populace. In order to counter the cynicism found in politics, the General Assembly may consider penning legislature to prohibit the use of half-truths and lies during campaign advertisement. However, such legislation would neither improve the voting population's knowledge of key political candidates and issues, nor be constitutionally sound due to the infringement of freedom such a law would create.

Intended to better inform voters, the law would ultimately serve to highlight the influence of wealth in political campaigns. As seen by the Supreme Court case *Near vs. Minnesota*, prior restraint is never constitutionally acceptable by a US governing body (Wilson & Dilulio, 2008). In essence, this means the General Assembly could not prevent half-truths and lies in political campaigns from being published, but is limited to punishing the publication of half-truths and lies in political campaigns. The punishment would almost certainly be a hefty fine. Given the absurd amount of money already spent on campaigns, any fine would be a miniscule part of a campaign budget. Therefore, a law against inaccurately informing the public would not deter campaign coordinators from the malicious advertisements currently in use. Ultimately, the only significant impact of enacting a law which forces candidates to abstain from using half-truths and lies is to increase the need for a heavy financial backing in politics. The role of money in politics is already too great; the General Assembly should not legislate a law such as the one proposed.

Directly flouting the Constitution to the United States of America, a law that punished candidates for using half-truths and lies in their political advertisements should not be legislated because it would soon thereafter die by judicial review. In the 1st Amendment, it is stated, "Congress shall make no law... abridging the freedom of speech, or of the press" (U.S. Const. amend. I.). As a part of the national constitution, one may argue the state legislature need not obey it. However, through incorporation, the Supreme Court has dictated certain aspects of the federal constitution apply also to the states (Wilson & Dilulio, 2008). Therefore, a law requiring candidates to abstain from using half-truths and lies in their commercials would not survive a court test. A citizen's freedom extends until it interferes with another's freedoms. In regards to verbally tarnishing another's reputation, slander and libel laws already exist to mark that border; a new law would tighten those borders, limiting freedom beyond what is allowed. It would be pointless to pass a law that would soon be nullified by judicial review.

However, even if such a law could survive a court test, the General Assembly should not pass a law restricting the voice of candidates. The US Constitution is based in the beliefs American citizens hold most dearly. Freedom is the underlying theme for the American Constitution, and in turn, freedom is an underlying theme for the American way of life. If the US hopes to remain the Land of the Free, it cannot

begin having freedoms stripped away. While robbing candidates of the ability to lie and mislead may not be terribly oppressive, it creates a gray area as to when the government can and cannot limit freedom. At what point is the government justified in stealing freedoms for a greater good? The more black and white the answer to that question is, the more free America will be. Observing that freedom is as vital to America as food or water, the General Assembly should not take any freedom away, and should not formulate a law that prevents campaign advertisements from misinforming the voters.

Admittedly, there is some merit to the proposed law. Alongside freedom, democracy is an essential part of American government. In an ideal world, the law would be enacted, candidates would diligently follow the law, and voters would be better able to fulfill the civil duty of voting. But in an ideal world, there would be no smear campaigns to begin with. Virtue cannot be legislated, and never should such an attempt be made at the cost of freedom.

References:

Wilson, J.Q. & Dilulio, J.J. (2008). American government (11th ed.). Boston, MA : Houghton Mifflin Co.
U.S. Const. amend. I.

