



Durbin's First Amendment

August 13, 2013

We are unaware of Dick Durbin credentials as a constitutional scholar, but that hasn't stopped Illinois' senior senator from playing one on Capital Hill.

That's certainly how it appears as the Senate Democrats' second-in-command's words and deeds suggest he's prepared to reinterpret if not rewrite that bedrock of the Bill of Rights, the First Amendment.

In late May, for example, Sen. Durbin was talking on Fox News about the value of a reporter shield law, a measure which has gained ground as the Obama Justice Department takes heat for monitoring the activities of journalists.

The Senate majority whip chose the occasion to say America needs to redefine what a journalist is in today's America. Or, more accurately, to narrowly limit those to whom freedom of the press protection applies.

Though he said he supports a media shield law, he added, the matter "still leaves an unanswered question, which I have raised many times: What is a journalist today in 2013? We know it's someone that works for Fox or AP, but does it include a blogger? Does it include someone who is tweeting? Are these people and journalists entitled to constitutional protection? We need to ask 21st century questions about a provision in our Constitution that was written over 200 years ago."

While the senator did not exactly say he thinks new media do not qualify, past actions speak volumes. In 2009, for example, he and Sen. Dianne Feinstein, D-Calif., drafted an amendment to a shield bill that would have excluded from its protection student journalists, amateur bloggers and freelancers working without a contract.

Sen. Durbin is right that when the Founders drafted the Constitution they could not have conceived of today's wired-in Internet world anymore than they could have anticipated radio or TV. But the courts have wisely chosen to read the amendment as broadly as the patriots who wrote it intended.

Indeed, we suspect those drafters would say that we ought to be looking at ways to expand First Amendment freedoms rather than contract them.

Sadly, Sen. Durbin's recent efforts to curb free speech aren't limited to journalists. Recently, he sent letters to hundreds of businesses and organizations which have supported the American Legislative Exchange Council.

That group of conservative state legislators is being castigated for supporting so-called stand-your-ground laws like the one at the heart of the controversial acquittal of George Zimmerman in the slaying of Trayvon Martin.

Sen. Durbin clearly intends to use replies to that letter to shame organizations and businesses which help to fund ALEC. Or, as the Wall Street Journal concluded in an Aug. 8 commentary, "Translation: If your company engages in political debate or supports conservative groups, he will tie your name to controversies or force you to publicly disclaim positions taken by groups you support. Mr. Durbin knows that if he can drive a wedge between ALEC and its corporate donors, it will help cripple the group's influence on issues like tax policy and education and remove a significant voice for conservative reform in the states, including Illinois."

The entities on the list included such "subversive" groups as Deere & Co., Cracker Barrel, State Farm and Pepsi. As the WSJ notes, "Mr. Durbin knows that companies making hamburgers or allergy drugs don't care about stand-your-ground laws. His goal is to scare them with reputational damage by mentioning them in the same breath as Trayvon Martin."

In response to Sen. Durbin's letter, Cato Institute President John Allison called his actions a "subtle but powerful form of government coercion" and he worried that business leaders will "hesitate to exercise their constitutional rights for fear of regulatory retribution."

We fear he's right. (We also can't help wonder how Sen. Durbin would respond if one of his colleagues were to target people or organizations which made donations to the senator's own campaign. But we digress.)

It's important to note that while we believe wholeheartedly in the need for full disclosure when it comes to political donations of all stripes, we cannot countenance efforts to pick and choose to single out individuals and groups for public ridicule and government censure in an effort to scare them into abandoning their right to be involved in the political process.

Perhaps Sen. Durbin, a lawyer, could benefit from a refresher course in constitutional law that focuses on the First Amendment demand that people in power must not infringe on the American people's "right to the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."