



Commercial Speech

On an average day, people hear far more commercial speech than political speech. Companies are trying to sell us countless goods and services on every type of media outlet. In fact, studies show that Americans are more familiar with many advertising slogans than with First Amendment rights.

The courts traditionally have viewed commercial speech as being less worthy of free speech protection than political speech because the government has a legitimate interest in protecting consumers from deceptive advertising. If the advertising is not deceptive, however, the Court will protect it. The Supreme Court, for example, has invalidated a Virginia regulation making it unlawful for a pharmacy to advertise the prices of its prescription medications⁵² and has supported the constitutional right of lawyers to advertise the prices of routine legal services.⁵³

Symbolic Speech

At the time the Bill of Rights was written, political protesters expressed themselves through impassioned speeches and printed publications. Changing technology, however, has multiplied the channels for delivering and receiving political messages that go beyond the spoken or written word. Today, a protest march or a flag burning is more likely to receive media coverage than a forty-five-minute speech or a twenty-page pamphlet. When such activities convey a political message or viewpoint, courts may consider them to be **symbolic speech** worthy of First Amendment protection.

The Supreme Court has ruled that governments may suppress symbolic views if doing so serves an important purpose other than the suppression of unpopular speech. Using that reasoning, it has supported the federal government's authority to ban the burning of draft cards because the cards contain information necessary for the implementation of a military conscription system.⁵⁴ On the other hand in the *Tinker* case, it struck down a school ban on the wearing of black armbands to protest the Vietnam War, ruling that the symbolic speech did not negatively affect the school's educational mission.⁵⁵ The Court has even held that desecration of the American flag may be considered a form of protected speech. In 1989, the

The Supreme Court has ruled that flag burning may be protected as symbolic free speech if the act does not produce violence or a serious disturbance. (© Amos Aikman/Getty Images)

symbolic speech Ideas expressed by actions or symbols rather than words.