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The First Amendment states: “Congress shall make no law ... abridging the freedom of speech, or of the press. ...” Many Americans view the First Amendment protection of free expression, encompassing speech and writing, as a constitutional lodestar.¹ In this vein, numerous Supreme Court justices and legal scholars have proclaimed that democracy cannot exist without robust free expression. Yet, free speech and a free press have not always held this exalted legal status. While courts throughout American history have interpreted free expression in accord with contemporary...

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