



## Excerpts from the Debate in the House of Representatives

The excerpts that follow are from [\*The Annals of Congress\*](http://memory.loc.gov/ammem/amlaw/lwac.html) [<http://memory.loc.gov/ammem/amlaw/lwac.html>] for the 5th Congress, Second Session, available on the EDSITEment resource [American Memory](http://memory.loc.gov/) [<http://memory.loc.gov/>].

**1. Mr. S. Smith:** Strike out the words “by any writing, printing, or speaking shall threaten... [an] officer in public trust, with any damage to his character...” as I conceive them to be in direct contradiction to the third amendment of the Constitution, and as I have not forgotten the oath I took to maintain the Constitution, I would never consent to vote for these words. (pp. 2133-34)

**2. Mr. Thatcher:** If a judge was to pronounce judgment in a case, and the person upon whom it was passed were to come to him and threaten to shoot him, or to burn his house, if he suffered the sentence to be executed, would it be a breach of the Constitution to pass a law to punish him? (pp. 2133-34)

**3. Mr. T. Claiborne:** As to what the gentleman from Massachusetts had said with respect to a person’s threatening the life, etc... of a Judge, such law is certainly not necessary to punish such a person. (pp. 2133-34)

**4. Mr. T. Claiborne:** I view the principle of this bill as radically wrong, and ... fraught with the most serious mischiefs, from its creating crimes which were never before thought of in this country... Suppose that abusive paragraphs are published against the President, if they are calumnies, they will have no weight; and, if they are truth, they ought to be published. (pp. 2133-34)

**5. Mr. W. Claiborne:** Prosecutions of this kind have very rarely happened; in some of the States, a cause of this kind has never been tried... The age, however, seems now to be at hand, when they may be expected to increase, and I believe such a provision proper to prevent any misunderstanding on the subject.... (pp. 2135-36)

**6. Mr. Nicholas:** I want an explanation of the principles upon which this bill is founded. I confess it is strongly impressed on my mind, that it is not within the powers of the House [of Representatives] to act on this subject. I have looked in vain among the enumerated powers given to Congress in the Constitution, for authority to pass a bill like the present (one); but I found instead an express prohibition against passing it... One of the first acts of this Government was to propose certain amendments to the Constitution... It is now expressly declared... “that the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people;” and also, “that Congress shall make no law abridging the freedom of speech, or of the press.” (pp. 2139-40)

**7. Mr. Nicholas:** I wish you gentlemen would inform me where you draw the line between this liberty and licentiousness of which they speak... It has been the object of all regulations with respect to the press, to destroy the only means by which the people can examine and become acquainted with the conduct of persons employed in their Government... It is not lying that will be suppressed but the truth... If printers are subject to prosecution for every paragraph which appears in their papers... it cannot be expected that they will exercise that freedom.

**8. Mr. Nicholas:** I have heard it said that all the states take cognizance of offenses of this sort. But does this give the power to the General Government? (pp. 2141-42)

**9. Mr. Nicholas:** The publication of one falsehood in a paper would do it more mischief than the abuse of its enemies. (pp. 2145-46)

**10. Mr. Otis:** The present bill is perfectly harmless and contains no provision which is not practiced... under the laws of... several states... Every independent government has a right to preserve and defend itself against injuries and outrages which endanger its existence; for, unless it has this power, it is unworthy of the name of a free Government and must either fall or be subordinate to some other protection. (pp. 2145-46)

**11. Mr. Otis:** Unlawful combinations to oppose the measures of Government, to intimidate its officers, and to excite insurrections, are acts which tend directly to the destruction of the Constitution, and there can be no doubt that the guardians of that Constitution are bound to provide against them. (pp. 2145-46)

**12. Mr. Otis:** The National Government is invested with a power to protect itself against outrages of this kind, or it must be indebted to and dependent on an individual state for its protection, which is absurd. (pp. 2145-46)

**13. Mr. Otis:** If we go to Virginia, we shall read in their constitution that "the freedom of the press cannot be restrained, except in despotic Governments;" but in the act passed December, 1792, it is provided, "that if any person shall, by writing or speaking, endeavor to instigate the people to erect or establish any Government, separate or independent of the Government of Virginia, he shall be subject to any punishment not extending to life... which the court may adjudge." They have another act against cursing and swearing, which is merely using the liberty of speech. (pp. 2149-50)

**14. Mr. Otis:** The gentleman from Virginia had inquired how a line could be drawn between the liberty and the licentiousness of the press? I would inform him that an honest jury was competent to such a discrimination, they could decide upon the falsehood and malice of the intention. (pp. 2149-50)

**15. Mr. Otis:** Where lies the injury in attempting to check the progress... of falsehood? Or how is society aided by the gross and monstrous outrages upon truth and honor, and public character and private peace which inundate the country? (pp. 2149-50)

**16. Mr. Otis:** The gentleman from Virginia is fearful that an impartial jury will not be found in the present excited state of opinion; but if twelve honest men cannot be found to acquit a (libeler), he ought to be convicted.

**17. Mr. Macon:** The same section of the Constitution which forbids any interference with the freedom of speech and of the press, extends also to religious establishments... This bill ought to be considered, therefore, as the commencement of a system which might as well be extended to the establishment of a national religion. (pp. 2151-52)

**18. Mr. Macon:** Gentlemen might call this a harmless bill; however harmless it may be, it is a beginning to act upon forbidden ground, and no one can say to what extent it may hereafter be carried... This subject of the liberty of the press is sacred, and ought to be left where the Constitution had left it. The States have complete power on the subject. (pp. 2149-50)

**19. Mr. Livingston:** The Constitution seems to have contemplated cases which might arise at a future day. It seems to have foreseen that majorities--far be it from me to believe the present majority is of the number--might be actuated by dispositions hostile to the Government; that it might wish to pass laws to suppress the only means by which its corrupt views might be made known to the people, and therefore (the Constitution) says, *no* law shall be passed to abridge the liberty of speech and of the press. (pp. 2153-54)

**20. Mr. Livingston:** Many writers have... instructed the world... the means by which free Governments become Despotisms... I will take the liberty of reading an extract out of one of the best writings I have seen on this subject... The book I allude to is John Adams' Defense of the American Constitution. Remember as I read that it has been declared on this floor that none but men of a certain political opinion would be chosen by the President to office... "The Judges will be appointed by them and their party, and, of consequence, will be obsequious enough to their inclinations. The whole Judicial authority, as well as the Executive, will be employed, perverted, and prostituted to the purposes of electioneering."(pp. 2155-56)

**21. Mr. Dana:** No honest man wants the liberty of uttering malicious falsehood—and this law would operate against no other publications. (pp. 2155-56)

**22. Mr. Gallatin:** The principles of the law of political libel were founded in the worst Emperors of Rome... Governments... (with) pure motives... know that the proper weapon to combat error is truth, and that to resort to coercion and punishments in order to suppress writings attacking their measures is to confess that these could not be defended by any other means. (pp. 2163-64)

**23. Mr. Harper:** Gentlemen who oppose the bill have said that hitherto the Government of the United States had existed and prospered without a law of this kind, and then... asked, "What change has now taken place to render such a law necessary?" The change, in my opinion, consists in this: that heretofore we had been at peace, and are now on the point of being driven into a war with a nation which openly boasts of... its "diplomatic skill," as the.. means of paralyzing our efforts. Of the operations of this skill among us, by means of corrupt partisans and hired presses, I have no doubt. (pp. 2163-64)

**24. Mr. Harper:** I cannot believe... that our safety... ought to lull us into security now... unless gentlemen can convince me that, because a person had existed in health for nine years, he ought to refuse medicine when he.. feels the approach of disease. (pp. 2165-66)