



How First Amendment Theories Will Need to Develop Post-COVID-19

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Abstract

Theories aim to justify and grant clarity on court decisions regarding the First Amendment rights. However, the recent outbreak of COVID-19 and the spread of misinformation about health precaution behavior and the COVID-19 vaccine has shown flaws in First Amendment theories. The Democratic Process Theory, Self-Realization/Self-Fulfilment Theory, Marketplace Theory, Social Responsibility Theory (SRT), and the Gatekeeper Theory will be reviewed to determine how COVID-19 has impacted their development and has exposed flaws in their foundational principles. The deficiencies identified are data deficits, persuasion principles used by misinformation, gatekeeper's self-regulation flaws, gatekeepers' algorithms, professional privilege, and lack of separation from opinion and fact-based reports. This research concludes with recommendations for the development of the theories post-COVID-19. Questions that future research will need to address and answer regarding First Amendment theories post-COVID-19 are also presented.

Keywords: Democratic Process Theory; Self-Realization/Self-Fulfilment Theory; Marketplace Theory; Social Responsibility Theory; Gatekeeper Theory; COVID-19; misinformation

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Introduction

Tourism is a The world has recently been enduring an on-going pandemic caused by the COVID-19 virus that has changed the landscape of communication. With technology ever-expanding and communication being offered on more platforms than ever before, it has become difficult to differentiate between fact and opinion. When an opinion on how Americans should practice healthy behaviours is perceived to be fact, it may have unwavering effects on public health.

The COVID-19 virus has accounted for 4,017,050 deaths globally and 621,831 deaths in the United States of America (Real time coronavirus statistics, 2021). The alarming death toll proves that the COVID-19 virus is no threat to take lightly. Due to the impact that the COVID-19 virus has had, many businesses have shifted to a remote workforce to protect their employee's health. Other companies have been forced to close due to restrictions that their state has enforced. With many Americans now working from home or unemployed due to the COVID-19 virus, there is more time to watch news stations on the television. According

to Graham (2020), a news station called WDIV-TV has seen a 70% increase in viewership in the year-to-year ratings, proving that more Americans are watching the news during the pandemic. Many news stations have different opinions on the COVID-19 virus and recommend different health precautions to their viewers. However, those opinions and misinformation being offered to viewers have consequences as they can be perceived as facts and may result in the spread of the virus. Misinformation is incorrect information that is not intended to mislead others [1].

Currently, under the First Amendment of the United States Constitution, the freedom of expression protects those news stations' opinions and misinformation [2]. Cable television, online videos, and radios produced speech (displayed or printed) completely protected under the First Amendment [3] The First Amendment protects many rights of the American people who include the media. Those rights include freedom of speech, press, and expression; the freedom of speech is completely protected on the internet as it is a form of expression [3, 4] with freedom of speech being protected, the First Amendment allows many news stations to post live content, recordings, and other material viewed

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as expressions. News stations range from television news stations to YouTube channels run by civilians with a massive following. Under Freedom of Press, the First Amendment also allows the media to determine who they interview, what information they use. It allows them to determine if they will publish information presented to them [5]. Those protections that the media has been granted under the First Amendment can be extremely dangerous when it comes to adopting health precautions of the American people as opinions may be perceived as facts.

This paper will investigate a study conducted by Bursztyn et al. (2020) on how the spread of disinformation during the COVID-19 pandemic has affected viewers' health behaviours. Disinformation is incorrect information that is purposely and strategically spread [6]. A study conducted by Smith et al. (2020) on the effects of misinformation on the COVID-19 vaccine on its adoption will also be reviewed. The current literature on theories of the First Amendment will be explored and detailed on how the spread of disinformation during COVID-19 has exposed the flaws of theories. This study will conclude with recommendations on the future development of existing First Amendment theories.

Spread of Misinformation and Disinformation during COVID-19

Due to the increase in viewership that media outlets are experiencing during the COVID-19 pandemic [7] media outlets have seized the opportunity to insert their opinions and misinformation into their viewers. The messages that media outlets project to their viewers are commonly viewed as objective facts as it is perceived to come from a trusted source [8]. The issue with messages being viewed as an objective fact from a trusted source is that different media outlets project different messages, leading to a variety of different information being viewed as authentic and accurate. Depending on what media outlet a viewer watches will determine what messages they perceive to be true, even if the messages are misinformation. The current issue with the spread of misinformation is that due to the various social media outlets, public forms, and other outlets' disinformation spreads faster than the actual threat [9]. This could be a problem because if misinformation of the virus is spread stating that the virus is harmless, then those who believe that misinformation may not partake in health precautions. In a setting that involves a virus, the spread of misinformation can be extremely dangerous as viruses are contagious; a rapid increase in exposure to the virus can result from the widespread adoption of virus misinformation [10]. The increase in exposure to the virus due to the adoption of misinformation could result in an increase in infections.

With the danger of falsehood potentially causing a spread of the Coronavirus infection, it is essential to decide the degree to which news sources have influenced the general population. That need was perceived, and an examination was led by Bursztyn et al. (2020), which compared two of the most well-known news T.V. programs on the same news station, Fox News, yet had dissimilar coverage of the COVID-19 pandemic; the two mainstream news shows Tucker Carlson Tonight Show and Hannity. During the start of the pandemic in February, the Tucker Carlson Tonight Show

cautioned that the COVID-19 infection could cause grave health effects, while in February, the Hannity Show passed on that COVID-19 was merely a plot to undermine President Trump and that COVID-19 had relatively minor health effects when compared to the common flu [11], implying that even two news shows on the same station can spread unique opinions and guidance on the same topic. Bursztyn et al.'s (2020) study at that point followed the two shows into March, where the Hannity show started to change their position on COVID-19 and joined the Tucker Carlson Tonight Show's position by March's end. By late March, a lot of Americans had to remain at home. The Tucker Carlson Tonight Show started advising its watchers to play it safe and adopt healthy behaviours such as wearing a face cover, washing hands more frequently, and remaining socially distant from others, whereas the Hannity show did not begin advising watchers until late March [12]. With the two shows prompting their viewers to avoid potential risk on various occasions, it became possible to see how users responded. To discover when viewers began changing their behavior, Bursztyn et al. (2020) distributed a survey on April 3rd, 2020, to 1,500 Fox News viewers ages 55 and older, where 1,045 replied; the survey's respondents contained exclusively of conservatives, who watched the Fox News station at a minimum of once every week. The respondents expressed which show they watched and if on the off chance that they watched the two shows, and which one did they watch regularly and responded to what exact date they changed their health conduct. This implies that a particular date that an adjustment of health conduct happened might have been attributed to the exact show participants observed more. The aftereffects of Bursztyn et al.'s (2020) study found that viewers of the Tucker Carlson Tonight Show changed their conduct three days sooner than Hannity's viewers. This distinction in reception may not seem like a lot, yet those couple of days might have brought about a mass spread of the COVID-19 virus.

With different news and media platforms taking different stands on the COVID-19 virus, the multiple stances have caused widespread uncertainty surrounding the safety of the newly developed COVID-19 vaccine. Numerous narratives and conspiracies have flooded social networks regarding the vaccine's safety: the political and financial narratives behind such a strong push for its adoption [13], the pace at which the vaccine was developed and released has driven the concerns of its safety, and the timing at which it was released fuels the conversations of its political narratives. The mass spread of misinformation has caused data deficits, where there is a great demand for credible information regarding a topic, but the supply of credible information is hard to come by [14]. When the supply of credible information is not there regarding the COVID-19 vaccine, it drives uncertainty and misinformation, which is then perceived as credible information. The misinformation then drives the conversation, and finding the truth becomes even more difficult. The spread of misinformation regarding the vaccine has resulted in many people's unwillingness to take the vaccine [15, 16]. With the death total of the COVID-19 virus currently reaching over four million [17] the vaccine's effectiveness and protection will need to be trusted to be adopted.

To gauge the narratives surrounding the COVID-19 vaccine during

its development, a study was conducted by Smith et al. (2020), where online social media posts on Facebook, Instagram, and Twitter that referenced the vaccination and vaccine were collected. Those posts were collected in three different languages to gauge the world's narratives surrounding the vaccine. Those languages consisted of Spanish, English, and French and were collected from June until September 2020 [18]. A total of 14,394,320 posts were gathered, but only 1,200 posts were used as those posts generated 13,136,911 interactions; the overwhelming posts on Facebook and Instagram that were the most popular were regarding news sources and posts from verified account holders were removed from the sample to analyze natural social media conversations (Smith et al., 2020). Out of the 1,200 posts analyzed by Smith et al. (2020), the two most popular categories were the posts that mention the necessity of the vaccine and its safety—the political and financial incentives behind the vaccine's development. Behind the two most dominating topics found in the data analysis were the development, provision, and access of the vaccine; conspiracy theories; liberty and freedom concerns around potential requirements mandating vaccines; and lastly, religion and morality [17]. Facebook and Instagram posts totaled 71% of the 13 million interactions that were measured in the form of retweets, shares, likes, and emoji reactions; differences in languages were unique as Spanish consisted of religion and morality where English consisted of freedom and liberty-related posts; conspiracy theories accounted for 720,916 interactions regarding the vaccine (Smith et al., 2020). The 1,200 social media posts that were generated the most interactions displayed four underlying tactics consisting of older anti-vaccine conspiracy narratives resurfacing and displacing trust toward the COVID-19 vaccine: data deficits around the technology and ingredients used with the vaccine that unreliable alternative news outlets and individuals filled; pages and groups were formed news stories and alerted them to fit their anti-vaccine agenda; lastly, Bill Gates totaled six percent of the total post, where his trustworthiness and credibility were questioned, and organizations that associated with him lost credibility (Smith et al., 2020). The most predominant finding of Smith et al.'s (2020) study was that communities and groups are coming together regarding the safety concerns surrounding the COVID-19 vaccine and the possibility of mandatory vaccination.

The lack of credible sources has been filled with misinformation from unreliable sources and has caused distrust in the COVID-19 vaccine for many people. Such distress is generated from a combination of news stations portraying different opinions regarding the same topic [19], data deficits that have led to numerous narratives dominating social media networks [17] and the fact that those narratives and different news takes are perceived as facts as they are viewed to come from a trusted source (Alesina et al., 2018). These factors/different narratives about safety concerns/vaccine effectiveness have led to the adoption of a potentially safe and death-reducing vaccine being questionable. The questions behind the adoption of the vaccine and the health behavior could have led to an increase in cases and, tragically, an increase in deaths. It raises the question: why is this allowed and protected under the First Amendment?

Theories of the First Amendment

Scholars have theorized about the First Amendment in an attempt to justify the founding fathers' reasoning behind its creation. The Democratic Process Theory is one such theory that attempts to defend the founding fathers where the government should have been restricted too little to no regulation over the creation and movement of ideas [20]. The reasoning behind the Democratic Process Theory is that if the governed determine the government's legitimacy, then it is dangerous to allow the government to limit, determine, and conceal the ideas that the governed may be exposed to [20]. In theory, the Democratic Process Theory seems to be a fair and reasonable justification for little to no government restrictions on the content of ideas. Especially when the content that the American people are exposed to and in many cases leads them to choose a side when election season comes around. The Democratic Process Theory was designed to remove any government restraints over the public, leaving the public to determine what content is expressed and viewed, ultimately encouraging the people to seek the truth to create a more balanced society (Weaver, 2020). According to Post (2018), the Democratic Process Theory allows a collection of people to form groups that adopt and believe certain ideas and perspectives, forming a collective identity. Forming a collective identity undoubtedly has many benefits when it comes to freedom of expression and speech. Through the Democratic Process Theory of forming collective identity, many charities, churches, and organizations have been created that benefit society's wellbeing. However, many organizations have also been formed that harm society's wellbeing. Those organizations throughout history are the Nazis or Germany who slaughtered millions of people, especially Jewish people; the Ku Klux Klan (KKK) was formed in America out of hate for African Americans. The Black Lives Matter organization was recently formed that burned down, vandalized, and stole from many communities across America. On every side, no matter what an individual's viewpoints or beliefs are, a collective extremist identity can be formed. When extremists get together to form a collective identity, it seemingly overshadows many, if not all, the benefits that the Democratic Process Theory was designed for.

The Democratic Process Theory aims to create a freer, balanced society, allows the public to determine what content is viewed, and expresses the hopes of creating a balanced society that seeks the truth [21]. However, the Democratic Process Theory in America today does not create a more balanced society. Those who have a stronger following on social media or those perceived as professionals have a greater say in what is viewed and expressed. Perceived professionals have a privilege that the majority of American society does not have. According to Broom and Sha (2013), this privilege is awarded to those who work for news media outlets as a professional privilege, which is earned via practice, preparation, knowledge, skills, and the commitment to upholding professional standards. It appears that news media outlets' professional tasks involve keeping the public confined to listening rather than producing news. The Cable Televisions Consumer Protection and Competition Act of 1997, which was designed to oblige cable television companies to offer broadcast time to local television stations, was only applied in principle, not

in practice according to a Supreme Court judgment [21], Even if mainstream news media outlets did allocate time for local television stations, it would be assumed that the professional privilege applies to local stations as well, which would mean that the average citizen would not be able to walk into a local station and request media time because they had discovered the perceived truth.

In terms of COVID-19, even if normal citizens found a reliable source that through science identified the truth towards the vaccine, if they were allowed to go on a major news station and project their findings, they could be viewed as an actor or someone being paid by the news station. Even if they were viewed as a legitimate citizen telling the truth, their source would be questioned, their message would most likely be viewed during a time with minimum viewers, and the content of the news station would overwhelm the mere minutes that they would have to report their findings. The findings of Bursztyn et al.'s (2020) study also proved the viewer's loyalty to their most-watched show strongly determines their behavioural patterns. It would be extremely unlikely that viewers would alter their beliefs that their favorite news station has for a short clip of a normal citizen telling them their findings. Especially since news stations and individuals with a large following on social media are often portrayed as legitimate, typically persuading their followers. According to Cialdini (2001), the persuasion of authority can be achieved through an "aura of legitimacy" (p.80), which means that the feeling that something or someone like news stations or social media influencers can persuade people to believe that they are legitimate and telling the truth. When someone is perceived as legitimate and truthful, it is easy to follow them, hence why these news stations and social media influencers have many followers. The persuasion of authority was proven effective in Bursztyn et al.'s (2020) study because followers of one show adopted behavioural patterns differently from those on the same station. Social media and streaming applications have also granted the perception of authority to celebrity figures who can take advantage of the persuasion of authority and professional privilege. Due to the influx of media channels and perceived professionals, data deficits are formed, and people fill those deficits with misinformation (Smith et al., 2020), which makes the truth seemingly impossible to find or determine. Thus, creating a more divided society that argues with each other defending sources that provide misinformation. Now that the world is in a state of a pandemic, it appears that the old saying "the boy who cried wolf" has surfaced. Meaning that media outlets have dispersed so much disinformation that the public does not know who to believe and it has harmed the adoption of the COVID-19 vaccine. That has been proved in Smith et al.'s (2020) study, where various opinions flood social media channels and negatively impact the COVID-19 adoption. The overwhelming data deficits or misinformation leads to an array of opinions, all of which question one another and negatively impact a vaccine that could potentially slow the spread of COVID-19 and benefit the wellbeing of society. Recently, President Biden announced that his administration would be going "door-to-door" to persuade people to take the COVID-19 vaccine [22] resulting in questions from the public about the political incentive behind the push for

the vaccine (Smith et al., 2020). President Biden's "door-to-door" campaign can be perceived as just one of the consequences that Democratic Process Theory has caused due to the division of society towards the adoption of vaccines. Had more truthful and trusted information been easily accessible to the American people, the COVID-19 vaccine may have had a larger adoption, and the "door-to-door" tactics may not have been needed. Thus, the Democratic Process Theory fails to recognize professional privilege [23] and the persuasion of authority [24].

Another popular theory regarding the First Amendment is the Self-Realization/Self-Fulfillment Theory, which has been addressed by scholars as to the Self-Realization Theory [25], the Self-Fulfillment Theory or the Self-Realization/Self-Fulfillment Theory [26]. Therefore, moving forward, it will be addressed as the Self-Realization/Self-Fulfillment Theory in order to not cause confusion. According to Barendt (2019), the First Amendment can best be justified and explained through the self-realization and expression of those involved in speech. The Self-Realization/Self-Fulfillment Theory aims to grant the freedom to an individual to speak their mind to achieve self-fulfillment [27]. When someone is free to express themselves through speech, it makes an individual feel self-fulfilled that they would not have if their opinions were restricted to themselves. The Self-Realization/Self-Fulfillment Theory also supports a free society where individuals have the right to express their opinions and ideas and have the right to hear others. Weaver (2020) also suggested that the Self-Realization/Self-Fulfillment Theory suggests that an individual must have the right to listen to others and access knowledge to develop their views. Through the access of knowledge, an individual can explore and mold their thoughts and opinions, and through the right of expression, they can voice and share them with others. When access to knowledge and the freedom of speech is restricted, it makes the individual is limited from expressing themselves, communicate with others, and access knowledge to develop their own opinions (Jongbloets, 2019). The Self-Realization/Self-Fulfillment Theory also suggests that restricting one's ability to listen to knowledge and opinions restricts their access to knowledge [28].

The ability to access knowledge, express oneself, and hear others' opinions to develop one's own opinion is a tremendous benefit in many scenarios. However, when it comes to listening to misinformation and forming one's opinion in support of that misinformation, it can be harmful to oneself and society. Weaver (2020) suggested that expanding speech in a way that the Self-Realization/Self-Fulfillment Theory suggests may harm society because free speech is protected for anything and everything that someone chooses to engage in or finds fulfilling. The Self-Realization/Self-Fulfillment Theory fails to consider the spread of misinformation and the persuasion principle of likeability. The persuasion principle of likeability refers to the combination of rapport, affinity, and affection; how people would rather say yes to those they like than yes to those they dislike [29]. A study conducted by Gueguen et al. (2010) found that if similarities are established between the sender and the receiver, the receiver is more likely to agree with the sender. In terms of COVID-19, this can be extremely dangerous as if the receiver establishes rapport, affinity, or affection towards the sender and the sender

disagrees with health precautions or the vaccine, the receiver is more likely to take the stance of the sender. The persuasion principle of likeability was proven in Smith et al.'s (2020) study when individuals formed groups and pages on social media for individuals who established rapport/similarities where perceived legitimate news stories were alerted to fit their anti-vaccine agenda. The formation of groups spreading misinformation to fit their agenda is a dangerous and harmful realization that leaves the Self-Realization/Self-Fulfillment Theory in question. Is all information that is engaged and expressed to fulfill oneself constitutional protected under the First Amendment? Under the Self-Realization/Self-Fulfillment Theory, the spread of self-fulfilling knowledge, no matter how harmful, appears to be protected, as the groups that were found as the participants' of Smith et al.'s (2020) were spreading and promoting misinformation that could lead to an increase in COVID-19 infections and possibly contribute to the death total of the virus.

The Marketplace Theory is another popular theory used to support the founding fathers' creation of the First Amendment and helped guide many United States court decisions. The Marketplace Theory is based on several notions: if any media that contains even partial truths is censored, then the chance that the truth being discovered is reduced; if two contradictory opinions, much like the early coverage of Hannity and the Tucker Carlson Tonight Show, clashes, then the only way to progress towards obtaining the whole truth as the competition between them should produce the truth. Lastly, viewers are not confined or restricted to freely seeking the truth, even if a source is completely false; having the freedom to challenge and seek the truth openly is the right of the people [30]. The Marketplace Theory grants people the ability to obtain the truth on their own accord. However, it permits the news media outlets to spread misinformation openly and freely.

The Supreme Court adopted the Marketplace Theory as they believe there is no incorrect idea under the First Amendment. The problem with this approach is that even when the public seeks and finds the truth, their ability to display it is minuscule compared to the new media outlets on cable television. The First Amendment also grants and protects freedom of the press to the American people (Ruane, 2014). The problem with that is that the normal citizen cannot walk into a major news media outlet and release press of their discovery of the truth. This is an ongoing problem that our country has faced since the 1970's when Bollinger (1976) shed light on the sudden outburst of articles that addressed the strict access regulations and restrictions on the press. The average American does not hold the privileged position that news media outlets and their staff produce the press. Broom and She (2013) describe this privilege given to those that work for news media outlets as a professional privilege, which is granted through the practice, preparation, knowledge, skills, and the obligations to honor professional values. It appears that the news media outlets' obligations to honor professional values include keeping the public confined to listening rather than producing press. The First Amendment protection was found by the Supreme Court ruling in the Cable Televisions Consumer Protection and Competition Act of 1997, which was supposed to require that cable television stations grant broadcast time to

local television stations; however, this was only applied in theory (Ruane, 2014). Even if mainstream news media outlets did allot time for local television stations, it would be implied that the professional privilege applies to the local stations as well, which would mean that the average citizen would not be permitted to walk into the local station and request media time because they have discovered the truth.

The Marketplace Theory that drives the First Amendment, although in theory alone can be justifiable in practice, is a nightmare. The Marketplace Theory justifies and quite frankly appears to promote the spread of misinformation with the notion that the public can seek the truth if they want to. The issue with the Marketplace Theory is that when misinformation is permitted to spread on health concerns like the COVID-19 virus, it leads to different adoption patterns of behavior for viewers based on what news media shows they watch [31]. The different adoption patterns toward health behavior could cause the vital spread of the virus. Fortunately, the adoption pattern of health precaution behavior was only different for three days for the viewers of the Hannity and Tucker Carlson Tonight Show [32]. Although it is extremely difficult to track the spread of the COVID-19 virus from the sample's participants in that three-day difference, the spread of even one COVID-19 infection could have been deadly to the receiver. Had the adoption of health behavior been much longer than three days, the spread of the infection for COVID-19 could have been devastating to the American people. According to Weaver (2020), the Marketplace Theory is broken as the United States does not have a formal system designed to identify what is true, nor does the United States government have the power to declare that certain ideas are the truth. Without a formal system to identify what truth is from lies, data deficits have formed? The search for the truth that is the foundation of the Marketplace Theory is filled with misinformation and persuasion principles; authority and likeability are manifested to make misinformation seen as the truth.

The social responsibility theory (SRT) builds off the Marketplace Theory in access to and publishing the press. The SRT essentially states that the media plays a vital role in society and has functions that it must fulfill; those responsibilities include delivering accurate, truthful, objective, authentic information and balanced news reporting. The media's obligations regarding the press and society traditionally benefit the privileged as they are the ones who traditionally control media organizations [33] with the privilege of controlling the media organizations, press again becomes difficult for the average citizen to access the published press. Therefore, the privileged hold responsibilities toward society are accomplished by setting professional standards high toward communicating news reports. However, these standards are self-regulated by the media organization. With media organizations self-regulating the content that they publish, there is no one holding them accountable for their social responsibilities. The privileged hold access to the press, thus controlling what is produced by the mainstream media. Media that does come from smaller media channels is perceived as not authentic or reliable unless the mainstream media covers the report. With media from smaller media channels being perceived as not authentic or reliable, the SRT's relationship between the media and the public

is asymmetrical, where the privileged media controls who can access and benefit from their resources.

With the privileged media-controlling who can ultimately benefit from their resources, the SRT falls victim to the persuasion principle of reciprocity. Reciprocity, according to Cialdini (2001), refers to receiving a kind gift or favour and returning the jester; it does not always have to be in the way of favours and gifts, and it can be in the form of adjusting to a smaller request (pp. 76-77). An example of this would be if an organization or group did a favour or gave a large gift to a mainstream media outlet, then the media outlet returned the favor and produced press that targeted the organization's objectives and opinions. The perception that someone does something for another instills the feeling of debt. This feeling of debt that the news media would have in the earlier example could lead them to air the organization's or group's story. Hypothetically speaking, if a group that was found in Smith et al.'s (2020) study that was altering truthful news stories to fit their anti-vaccine agenda did a favour, such as in the form of a large donation, the favour would instill a feeling of debt to the mainstream media. The mainstream media could then publish the altered media fitting the groups' anti-vaccine agenda and persuade those that read it not to get the COVID-19 vaccine. The published media could also be seen as coming from an authority figure, instilling the persuasion principle of authority onto its followers. Thus, the SRT fails to consider reciprocity and authority's persuasion principles and fails to consider that the media is self-regulated by privileged positions.

The gatekeeper theory builds off of the self-regulation of those privileged media organizations of the SRT. Those that are in privileged positions of mainstream media are then seen as the gatekeepers of the press. The gatekeepers are the barriers that determine the type of news that the public has access to. In the past, the ability to produce media and the freedom of the press was only guaranteed to those that could afford or own one (Napoli, 2018). Which would have been limited to those in privileged positions such as television stations/ networks, newspapers, journals, and magazines as the average citizen did not have the means to produce such press as technology was not as advanced or readily available as it is today. With the advancement of technology and its easy availability, the internet is accessible to nearly everyone. The internet has granted the opportunity for the vast majority of the population to produce media. However, with the increase in opportunities to produce news and media, the distribution cost has drastically decreased. The cost of producing media in today's world is free for those that create social media accounts where content, posts, articles, images, and more can be shared. Due to the cost of producing misinformation being free, drastically reduced distribution cost, and the ability of gatekeepers being reduced, the financial incentive to produce misinformation has drastically increased due to technology rapidly growing the potential market of receivers (Napoli, 2018). With the market for misinformation expanding through the advancement of technology and social media applications, one would perceive that the gatekeepers would be put to rest. However, the gatekeepers have adapted and evolved just as technology has to the point where they use algorithms to control what information appears in ads, search results, and the

top of social media feeds. Even with technology advancing and the ability to produce media at the majority of the population's fingertips, the economic benefit of producing misinformation skyrocketed. The economic production of misinformation had rapidly grown during the 2016 United States Presidential election in an attempt to persuade voters.

The economic incentive is not the only time the spread of misinformation has increased, as proven in Smith et al.'s (2020) study where a content analysis showed a mass spread of misinformation regarding the COVID-19 virus and the COVID-19 vaccine. The increase of media regarding political and financial incentives behind the vaccine in Smith et al.'s (2020) study shows that even when the gatekeepers push their agenda, the public can question their true incentive. The public questioning the media's true incentive very well could be a consequence of the 2016 United States Presidential election where gatekeepers flooded media outlets with misinformation [33]. With the public questioning the media's information in Smith et al.'s (2020) study, it proves that even if true information is shared with the public by gatekeepers, the public will question it. The public questioning the shared media from gatekeepers then alters the media and forms it to fit their agenda (Smith et al., 2020), thus creating more misinformation that has a larger outreach on society. Whether the public questions the gatekeeper's media or not, the public itself can publish disinformation, and misinformation has been what has drawn society to clicking, reading, and reposting media (Brake, 2017). The success of misinformation produced and altered by group's influences and flooded the available market of information. When the misinformation that is spread regarding questioning the COVID-19 vaccine finds success through clicking, sharing, and liking, then it may be perceived as authentic information due to its popularity and the likeability of the sender. Thus, the perceived authentic misinformation may negatively impact the adoption of a health behavior or the COVID-19 vaccine itself, which would promote the spread of the COVID-19 virus. With the misinformation having success, gatekeepers strategically use it for advertising and marketing campaigns. With gatekeepers and the public flooding the available market with misinformation, it proves Smith et al.'s (2020) claim of the overwhelming existence of data deficits to be true. The gatekeeper theory holds truth towards gatekeepers controlling the media that the public sees to a certain extent and negatively impacts COVID-19's health behavior and vaccine adoption due to the consequences of misinformation's success.

Conclusion

Moving forward, First Amendment theories such as the Democratic Process Theory, Self-Realization/Self-Fulfillment Theory, Marketplace Theory, SRT, and the Gatekeeper Theory will have to develop towards prioritizing the facts of reliable sources and separation from opinion-based. More speech is no longer the solution, as the spread of misinformation has promoted data deficits, diminishing the public's likelihood of being exposed to truthful information and sources. If people are capable and permitted to be misled by free speech, then restrictions on speech will make us freer because self-realization of the truth is not what free speech has led us to; it leads to misinformation and

deception. The Democratic Process Theory, Self-Realization/Self-Fulfillment Theory, Marketplace Theory, SRT, and the Gatekeeper Theory all fail to consider Cialdini's (2001) persuasion principles of authority, likeability, and reciprocation, thus promoting the spread of misinformation that negatively impacts the health of the American people in regards to COVID-19 health behavior and adoption of the COVID-19 vaccine. All theories discussed in this paper also fail to consider the consequences of professional privilege and their negative effect on the American people. The Democratic Process Theory, Self-Realization/Self-Fulfillment Theory, Marketplace Theory, SRT, and the Gatekeeper Theory's approach toward the First Amendment fails to consider the

negative health side effects that the spread of misinformation causes. A new approach to the First Amendment that does take in the negative health consequences needs to be considered.

Moving forward, future research should aim to answer these three questions: 1) how can First Amendment theories promote the spread of truthful health information while maintaining First Amendment rights; 2) how can First Amendment theories prevent the spread of misinformation about health information while still protecting the public's First Amendment rights; and 3) how can First Amendment theories be used fill the data deficits caused by the spread of health misinformation?

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