


# GS Insight

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## Free Speech When Limited, is Lost

*As workers in the marketplace of ideas, we all take an active part in encouraging broad discussion of world-wide public issues. This month, Kathy Cripps, president of the Council of Public Relations Firms, reminds us that we must be vigilant protectors of the right to express ourselves fully. The recent decision of the California Supreme Court in Kasky v. Nike is a blow to a company's ability to participate in matters of public interest and to defend itself against allegations designed to damage corporate reputation. We concur that Nike should enjoy the same unfettered ability to share its views with the public vigorously exercised by its detractors. By doing so, public discussion is enriched.* 

### California Supreme Court's Gagging of Nike in Debate on Workers Must Be Reversed

By Kathy H. Cripps

NEW YORK CITY - Just suppose that your bitter and vindictive next-door neighbor is quoted in a local newspaper article falsely charging you with mistreating the day laborers helping you build a new garage. He accuses you of "exploitation and cruelty," even "slavery." He claims you withheld wages and refused to allow lunch or rest breaks.

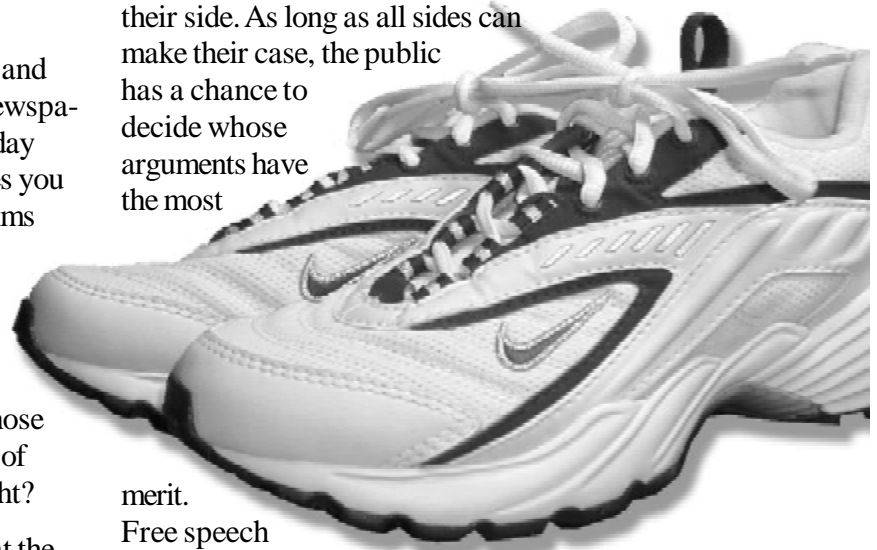
You can't wait to set the record straight. But before you can, a local court issues an order saying you could be sued if you dared to publicly respond to those charges. An outrageous and inconceivable muzzling of your First Amendment guarantee of free speech, right?

Yet incredible as it may seem, that is essentially what the California Supreme Court did to Nike, the Oregon-based maker of athletic shoes, in a recent decision that has chilling implications for corporations, consumers and our Constitution.

California's highest court, by a 4-3 vote, ruled recently that Nike's responses to critics who charge it with mistreating overseas workers should be classified as commercial speech that does not deserve full First Amendment protection. Despite the fact that the ruling threatens our freedom of speech, it has not received the attention and condemnation it so clearly merits.

The ruling resulted from a 1998 lawsuit filed by a San Francisco environmental activist who accused Nike of unfair competition and fraud for stating that its overseas workers not only earned enough to live on, but were paid, on average, twice the local minimum wage. In ruling that the plaintiff can sue Nike for publicly defending itself against its critics, the California Supreme Court is seeking to silence public debate on one of the vital issues of the day.

In the clamor and heat of democratic debate, each side usually believes that they, and they alone, have truth on their side. As long as all sides can make their case, the public has a chance to decide whose arguments have the most



merit.

Free speech often is imprecise and flawed, but unless a free exchange of ideas is permitted truth has little chance of being uncovered. As Voltaire famously observed, "in the exchange of views, might truth emerge."

The California Supreme Court ruling, however, adds a new and disturbing twist. If it remains in place, lawyers will begin counseling businesses to withdraw from the public forum rather than risk a lawsuit over a viewpoint expressed in an advertisement or op-ed commentary. And the public, all of us, will suffer.

Nike has indicated it will appeal the decision all the way to the U.S. Supreme Court, which consistently has come down on the side of commercial free speech by striking down local and state bans on advertising. Of course, businesses are not allowed to fraudulently promote their goods and services. And they must, quite reasonably, obey government safety and labeling requirements.

Writing for the U.S. Supreme Court's majority in another case, an April 30th decision removing a ban that prevented pharmacies from advertising drugs mixed and created for a patient's specific needs, Justice Sandra Day O'Connor put it bluntly: "if the First Amendment means anything, it means that regulating speech must be a last — not first — resort."

My organization, the Council of Public Relations Firms, represents America's public relations industry. We are taking a strong stance against the California Supreme Court decision as a matter of principle — and yes, self-interest as well. Our 126-member firms are constantly advising corporations, trade associations, charitable organizations, educational institutions and public interest groups on the best ways to respond to their critics. Their cardinal rule is to make your best case, but always tell the truth. If these firms and their clients can be sued for simply seeking to

broaden the scope of public debate, the public will be short-changed by hearing only one side.

We wholeheartedly agree with the opinion of Ann Brick of the American Civil Liberties Union's Northern California Chapter, who argues the California Supreme Court's decision "shuts businesses out of the public debate on issues that directly affect them. At bottom," Brick added, "it's up to the people, not the government, to decide who's right and wrong in a public debate on an issue like this. That's really what the First Amendment is all about."

Our freedom as a country depends in large part on our freedom of expression, and limiting our right to express our opinions and ideas erodes and may destroy that precious freedom. The four California Supreme Court Justices who voted to restrict Nike's right to defend itself in the public arena should ponder the words of Thomas Jefferson: "It is error alone which needs the support of government. Truth can stand by itself."

"Difference of opinion," he added, "leads to enquiry, and enquiry to truth."

And perhaps, at this turbulent time in our history, another quotation is apropos: during the early, dark days of World War II, the legendary broadcast journalist Edward R. Murrow noted: "We cannot defend freedom abroad by deserting it at home."

*Kathy H. Cripps is president of the Council of Public Relations Firms, the organization representing America's public relations industry. Readers may contact Ms. Cripps by email at [kcripps@prfirms.org](mailto:kcripps@prfirms.org) or by writing to her at Council of Public Relations Firms, 90 Park Avenue, 16th floor, New York, NY 10016.*

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