

MALADIES IN THE MISINFORMATION MARKETPLACE

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ABSTRACT

The marketplace of ideas theory of the First Amendment's Free Speech Clause holds that good ideas will win out over inferior competitors if competition is uninhibited. Although seductive, this theory rests on several problematic assumptions, including one thus far not considered. The theory assumes that participants in the marketplace are able to discard bad or false ideas without those ideas impacting participants' attitudes. Experimental evidence suggests that this assumption is false: the attitudinal effects of misinformation can linger even after a person recognizes the misinformation to be false. This Article explores the legal implications of this empirical finding, concluding that the marketplace of ideas theory is an ill-suited theory for determining when misinformation deserves constitutional protection. We argue instead that political misinformation should be evaluated in terms of how it affects citizens' ability to connect their values to their political participation. Only when political misinformation substantially interferes with political participation, thereby threatening individuals' democratic competence, should courts begin to consider whether government regulation is appropriate.

INTRODUCTION

False information and fake news repeatedly dominated news coverage of the 2016 presidential election. One of the most extreme examples, commonly referred to as “PizzaGate,” involved a conspiracy theory linking the Democratic Party's presidential nominee, Hillary Clinton, to a sex-trafficking ring managed from a pizza restaurant in Washington, D.C. The rumor, which first emerged in online communities and soon spread more widely, came to a dramatic head when Edgar Maddison Welch took matters into his own hands. Welch, a resident of North Carolina, made a special trip to Washington, D.C. to investigate the story. But when restaurant employees

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prevented Welch from entering restricted parts of the restaurant, Welch produced a rifle and fired shots inside the pizzeria.¹

Misinformation like this has generated substantial concern among journalists, politicians, and the public more generally. While the PizzaGate rumor circulated mainly in online communities, other misinformation has reached more mainstream audiences. Indeed, some fake news stories generated more social media traffic than prominent mainstream news articles during the 2016 election.² In October 2017, Congress held hearings to better understand the extent to which Russian propaganda, including misinformation, could have interfered with the 2016 election.³ Representative surveys also show a growing public concern about the existence of misinformation in the information news ecosystem. Sixty-four percent of U.S. adults indicated that fake news has caused a “great deal of confusion” about the basic facts of current events.⁴

In the face of this public consternation over misinformation, new questions have emerged about whether and under what circumstances authorities can regulate the spread of misinformation in ways that are consistent with the First Amendment. The potentially negative effects of misinformation seemingly warrant greater regulation when viewed through the lens of the prominent “marketplace of ideas” theory of free speech. In this Article, we examine the utility of the marketplace of ideas theory for deciding when regulation of political misinformation is appropriate. In particular, we focus on “belief echoes” in the marketplace of ideas. Belief echoes are lingering attitudinal effects of misinformation that persist even after misinformation is successfully corrected.⁵ The existence of belief echoes suggests that the effects of false information may have greater negative consequences for the marketplace of ideas than

¹ Eric Lipton, *Man Motivated by ‘Pizzagate’ Conspiracy Theory Arrested in Washington Gunfire*, N.Y. TIMES (Dec. 5, 2016), <https://www.nytimes.com/2016/12/05/us/pizzagate-comet-ping-pong-edgar-maddison-welch.html>.

² Craig Silverman, *This Analysis Shows How Viral Fake Election News Stories Outperformed Real News On Facebook*, BUZZFEED (Nov. 16, 2016, 5:15 PM), <https://www.buzzfeed.com/craigsilverman/viral-fake-election-news-outperformed-real-news-on-facebook>.

³ April Glaser, *Twitter Could Do a Lot More to Curb the Spread of Russian Misinformation*, SLATE (Oct. 2, 2017, 3:02 PM), http://www.slate.com/articles/technology/future_tense/2017/10/twitter_could_do_more_to_stop_its_russian_bot_problem_and_defend_democracy.html.

⁴ Michael Barthel, Amy Mitchell, & Jesse Holcomb, *Many Americans Believe Fake News Is Sowing Confusion*, PEW RESEARCH CTR. 1, 3 (Dec. 2016), http://assets.pewresearch.org/wp-content/uploads/sites/13/2016/12/14154753/PJ_2016.12.15_fake-news_FINAL.pdf.

⁵ Emily A. Thorson, *Belief Echoes: The Persistent Effects of Corrected Misinformation*, 33 POL. COMM. 460 (2016).

previously thought. Exposure to false information, even if it is successfully corrected, can have lingering downstream effects on political attitudes. Simply put, even if a person consciously recognizes that a piece of information is false, the incorrect information can alter her attitudes toward a political candidate or policy. Belief echoes seemingly interfere with the operation of the marketplace of ideas because individuals are unable to wholly divorce themselves of bad ideas in favor of their superior competitors. As such, belief echoes constitute a breakdown of the marketplace of ideas, which courts have traditionally used as a justification supporting government regulation of speech.

We argue that although belief echoes pose serious problems for the marketplace of ideas, they do not necessarily justify regulation. Rather, their existence highlights the inadequacy of the marketplace of ideas theory for assessing the consequences of political misinformation. We argue instead that in the realm of politics, one potential standard for judging whether misinformation requires intervention is whether it affects *democratic competence*, or the ability of citizens to connect their values to their political participation. Using this standard, we find that even misinformation which creates belief echoes does not necessarily threaten democratic competence and, therefore, does not warrant regulation consistent with the First Amendment.

I. MISINFORMATION IN THE MARKETPLACE OF IDEAS

Before we examine belief echoes and the ways that misinformation may have lingering effects on citizens' attitudes, it is useful to review the marketplace of ideas and how the courts have used this theory to warrant regulation and punishment of speech in some cases but not others.

A. *The Marketplace of Ideas*

The marketplace of ideas theory of the First Amendment holds that good ideas will win out over inferior competitors in unconstrained competition.⁶ Governments, the theory suggests, should therefore be reluctant to interfere with speech unless and until the speech itself undermines the desired results of free competition.

This view of the First Amendment is perhaps most closely associated with progressive-era constitutional reformers, like

⁶ The Supreme Court has not elaborated a robust statement of the marketplace of ideas theory. For a more precise version, see C. EDWIN BAKER, *HUMAN LIBERTY AND FREEDOM OF SPEECH* 6-24 (1989). Baker, however, did not advocate the marketplace of ideas theory.

Justices Oliver Wendell Holmes and Louis Brandeis, who had grown uncomfortable with the implications of existing doctrinal positions that readily supported government suppression of unpopular ideas.⁷ Indeed, Justice Holmes himself had contributed to early doctrinal interpretations which readily supported government punishment of speech. In *Schenck v. United States*,⁸ for example, Justice Holmes held that the “question in every case [was] whether the words used [were] used in such circumstances and [were] of such a nature as to create a clear and present danger that they [would] bring about the substantive evils that Congress [had] a right to prevent.”⁹ This original formulation of the clear and present danger test, governing advocacy of illegal action, seemingly relied on a theory that the effects of speech should be punished just like any other actions taken in pursuit of an inchoate crime. If those actions—or in this case speech—tended to contribute to the realization of the crime, then government actions to counter unlawful behavior were in order.

But some of the Court's progressives grew uncomfortable with the implications of this approach.¹⁰ In a series of cases, these justices developed an alternative interpretation.¹¹ Instead of allowing governments to punish speech, which had the tendency to produce lawless action, these justices proposed a clever alternative. Governments could not interfere with such speech unless and until time had run out for would-be criminals to change their minds. Only after this point-of-no-return could proponents of illegal action be punished for their speech. While Justice Brennan did not invoke the conception of the marketplace explicitly in *Brandenburg v. Ohio*,¹² the Court's

⁷ THOMAS HEALY, *THE GREAT DISSENT: HOW OLIVER WENDELL HOLMES CHANGED HIS MIND AND CHANGED THE HISTORY OF FREE SPEECH IN AMERICA 187–97* (2013); G. Edward White, *Justice Holmes and the Modernization of Free Speech Jurisprudence: The Human Dimension*, 80 CALIF. L. REV. 391 (1992).

⁸ 249 U.S. 47 (1919).

⁹ *Id.* at 52.

¹⁰ *Abrams v. United States*, 250 U.S. 616 (1919) (Holmes, J., dissenting) (“To allow opposition by speech seems to indicate that you think the speech impotent, as when a man says that he has squared the circle, or that you do not care whole heartedly for the result, or that you doubt either your power or your premises. But when men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas—that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out. That at any rate is the theory of our Constitution.”); HEALY, *supra* note 7, *passim* (chronicling the evolution of Justice Holmes’ thinking about free expression and how it should be handled by the Court).

¹¹ *See, e.g., Whitney v. California*, 274 U.S. 357 (1927) (Brandeis, J., concurring); *Gitlow v. New York*, 268 U.S. 652 (1925) (Holmes, J., dissenting); *Abrams v. United States*, 250 U.S. 616 (1919) (Holmes, J., dissenting).

¹² 395 U.S. 444 (1969).

conclusion in that case is entirely consistent with a marketplace theory.¹³ The Court has largely remained committed to this view, with only one recent exception.¹⁴

The marketplace theory was adopted to solve a particular problem, namely how to resist the inclination to punish speech that advocated violence or illegal action. But, perhaps because of its normative appeal, judges and scholars have applied the theory to other legal problems as well. For example, although judicial opponents of campaign finance restrictions have not always signaled their reliance on the marketplace theory explicitly, their decisions again seem consistent with such interpretative understandings. In *First National Bank of Boston v. Bellotti*,¹⁵ Justice Lewis Powell seemed to have something similar in mind when he struck down expenditure limits impacting a Massachusetts referendum.¹⁶ In *Austin v. Michigan Chamber of Commerce*,¹⁷ the Court's justices seemingly pitted competing theories of the First Amendment against one another, with conservatives favoring competition free from government interference while liberals favored a view stressing personal liberty.¹⁸ Dissenters were more explicit in *McConnell v. Federal Election Commission*,¹⁹ referring to the marketplace metaphor directly.²⁰

In each of these cases, the marketplace of ideas was used to support decisions that either did or would have struck down a statute that placed restrictions on political expenditures. The argument, generally speaking, was that governments should not be allowed to interfere with the speech of natural or corporate persons, seeking to influence election outcomes absent market breakdowns, because such interference simply resulted in governments favoring some speech over others. If, as these

¹³ *Id.* at 447 (“[T]he constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.”).

¹⁴ *Holder v. Humanitarian Law Project*, 561 U.S. 1, 8 (2010) (upholding a provision of the USA PATRIOT Act that prohibited material support to foreign terrorist organizations, including support for training to resolve conflicts peacefully).

¹⁵ 435 U.S. 765 (1978).

¹⁶ *Id.* at 777 (“The inherent worth of the speech in terms of its capacity for informing the public does not depend upon the identity of its source, whether corporation, association, union, or individual.”).

¹⁷ 494 U.S. 652, 680 (1990).

¹⁸ *Id.* at 680 (Scalia, J., dissenting) (declaring “the absolutely central truth of the First Amendment: that government cannot be trusted to assure, through censorship, the ‘fairness’ of political debate.”).

¹⁹ 540 U.S. 93 (2003), *overruled by* *Citizens United v. FEC*, 558 U.S. 310 (2010).

²⁰ *Id.* at 248–49 (Scalia, J., dissenting); *id.* at 265 (Thomas, J., concurring in part, dissenting in part) (“The ‘very purpose of the First Amendment [is] to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail.’” (citing *Red Lion Broad. Co. v. FCC*, 395 U.S. 367, 390 (1969))); *see also* *FEC v. Mass. Citizens for Life, Inc.*, 479 U.S. 238, 257 (1986).

opinions presume, the First Amendment protects a true marketplace of ideas, then the marketplace will regulate itself.

This conception of a marketplace of ideas rests on the notion that individuals can liberate themselves of the lingering effects that false information has on attitudes. But, as we discuss subsequently, this may not be true. Rather, misinformation can create residual “belief echoes” that affect attitudes even if participants in the marketplace ultimately accept the corrected information as true.

B. Misinformation and Belief Echoes

Any attempt to understand, study, and regulate fake news and misinformation must wrestle with basic definitional issues about how to identify and differentiate among potentially contested claims about the world. We avoid rehearsing this debate here and instead proceed by adopting a common-sense definition of information in order to address the legal question of when misinformation can be regulated consistent with the First Amendment. We assert that correct information must accurately represent or correspond with phenomena that lie beyond our subjective experiences. Misinformation, on the other hand, misrepresents the real world.

In the world of politics, this seemingly simple definition is complicated by several factors. First, much of the information considered important to political decision making is not entirely subject to independent verification or falsification. For example, few are in a position to adjudicate a claim that the Affordable Care Act will reduce health care costs by fifteen percent in 2020, or a claim that Hillary Clinton’s “true beliefs” about abortion are different from her public statements.

In addition, unlike facts about easily observable phenomena, many key pieces of political information are mediated.²¹ Economic data are collected through the Congressional Budget Office; hour-long speeches are summarized in brief articles; policies are reduced to talking points. The decisions made by institutions, journalists, and politicians about how to communicate political information to the public are not made at random but are themselves shaped by the political environment. James Kuklinski and his colleagues emphasize this point when they argue that “the criteria for and

²¹ WALTER LIPPMANN, PUBLIC OPINION 25 (1946) (“We shall assume that what each man does is based not on direct and certain knowledge, but on pictures made by himself or given to him.”).

relevance of political facts are determined within, not outside, politics.”²²

These difficulties should not be ignored, but rather built into our understanding of how misinformation can affect attitudes. Political facts are often both contested and contestable. However, an acknowledgment of relativity should not be taken as an abandonment of the goal of objectivity. Any given piece of information resides somewhere on the spectrum from falsifiable to unfalsifiable. Here we restrict our focus to factual assertions that fall on the more objective side of this spectrum and are still relevant to political decision-making. For example, we can determine with relative, though not complete, certainty whether a candidate accepted campaign donations from a criminal; whether Barack Obama was born in the United States; or whether infant mortality rates rose in a particular state during a particular time frame. While these claims might not be as clear-cut as an assertion about what type of cheese John Kerry ordered on his cheese steak, they are more verifiable than a claim about how John Kerry's economic plan will benefit the middle class.

Efforts to correct misinformation are driven by concerns over the consequences of a misinformed citizenry. Insofar as attitudes are based on factual knowledge, citizens who possess inaccurate information may form opinions that differ substantially from the opinions they would have formed were they correctly informed. The emphasis on fact-checking in today's media environment is aimed at preventing these problems, thereby moving us closer to the idealized marketplace of ideas.²³ Social media, the proliferation of independent and decentralized blogs, and the 24-hour news cycle all increase citizens' access to a greater quantity of information. Some of this information may indeed be misleading, but it is also the case that factual claims often encounter widespread and decentralized scrutiny in ways that resemble the idealized and stylized marketplace of ideas.

But the marketplace of ideas makes a critical assumption that has largely gone unexamined. After individuals discard information that is shown to be false, the theory assumes, false information will cease to affect attitudes. In other words, reading a correction should cause attitudes initially affected by false claims to revert back to their pre-exposure state. This assumption must be true according to the marketplace of ideas because

²² James H. Kuklinski et al., “*Just the Facts, Ma'am:*” *Political Facts and Public Opinion*, 560 ANNALS AM. ACAD. POL. & SOC. SCI. 143, 147 (1998).

²³ LUCAS GRAVES, DECIDING WHAT'S TRUE: THE RISE OF POLITICAL FACT-CHECKING IN AMERICAN JOURNALISM 10 (2016) (Fact-checkers “try to balance the daily realities of highly partisan, often vicious discourse online with their formal commitment to inform a reasoning democratic public”).

otherwise individuals might be left worse-off—or at least change their minds about political matters in ways that are not supported by factual information—by participating in the marketplace of ideas. Such results would run counter to the promised end state of greater awareness, if not truth.

There are reasons to be skeptical, however, that corrections—even if they succeed at correcting false beliefs—can also be entirely successful at erasing any attitudinal change caused by the initial exposure to misinformation. Rather, exposure to misinformation can create “belief echoes:” lingering attitudinal effects that persist even after a piece of misinformation is successfully corrected.²⁴ In a series of experiments employing realistic political scenarios, individuals' attitudes were affected by exposure to misinformation despite recognizing that the misinformation was false.²⁵ In one of these experiments, individuals were randomly assigned into one of three different groups and asked to read a news article containing a piece of misinformation about a candidate, which was subsequently corrected. A second group read the same article without the correction. A third saw neither the misinformation nor the correction. The correction was fully successful at eliminating participants' belief in the misinformation. In other words, the marketplace of ideas “worked” in that the correction erased belief in the misinformation. However, when it came to attitudes, the correction was less successful. People who saw the misinformation evaluated the candidate more negatively than those who did not, despite consciously knowing that the information was not true. Thus, exposure to political misinformation has the potential to create belief echoes: attitudinal shifts that persist even after individuals abandon their commitment to incorrect information.

The existence of belief echoes suggests that even when the marketplace of ideas operates efficiently to correct false claims, misinformation can still shape citizens' attitudes, challenging the basic mechanism through which the marketplace of ideas purportedly operates. Individuals, according to the theory, should be able to participate in the marketplace and discard inferior arguments without collateral consequences on their political attitudes. But, if misinformation has lingering effects on those attitudes, then individuals who participate in the metaphorical marketplace may change their minds not because they are persuaded by superior arguments, but because of their declining support for candidates or policies. This is not a market failure so much as a violation of the basic assumptions of the

²⁴ Thorson, *supra* note 5.

²⁵ *Id.*

theory. This distinction is important because metaphorical market failures have been held to support restriction of speech.²⁶ When the market fails because the theory rests on false assumptions, however, then speech restrictions may not be warranted. Rather, the failure indicates a larger problem, raising concerns that the theory might be misapplied in ways that restrict otherwise constitutionally protected speech.

The Supreme Court has exhibited two approaches to false speech. While it has repeatedly demonstrated some reluctance to offer outright protection for false speech because of its low value, the Court has nonetheless recognized that false statements are inevitable in free debate.²⁷ Indeed, the Court has often tolerated false statements because it has feared that any prohibitions on false speech could have a so-called “chilling effect” on otherwise permissible speech that might discourage a free exchange of ideas.²⁸ But misinformation that has the capacity to create belief echoes seems to fall outside of the scope of this limited approach. Belief echoes describe how misinformation shapes citizens' evaluations of political objects (including candidates, policies, and groups). While under some circumstances, these evaluations may also alter individuals' political behavior (for example, voting), this is only rarely the case. Indeed, substantial empirical research shows that in the realm of politics, it is remarkably difficult for any single piece of information (or misinformation) to alter behavior, because individuals' pre-existing attitudes (in particular, partisanship) exert a strong effect on what they attend to, recall, and use to inform their political decision making.²⁹ Put another way, even if misinformation affects a person's attitudes, such consequences are not necessarily sufficient to shape her behavior. However, the marketplace of ideas theory of free speech simply does not have the nuance to recognize this important distinction between attitudes and behavior. This failure points to the benefits of employing a different approach for deciding when misinformation should be regulated consistent with the First Amendment.

²⁶ See *Abrams v. United States*, 250 U.S. 616, 630 (“[U]nless they so imminently threaten immediate interference with the lawful and pressing purposes of the law that an immediate check is required to save the country.”).

²⁷ *New York Times Co. v. Sullivan*, 376 U.S. 254, 271 (1964).

²⁸ *Id.* at 300.

²⁹ See generally MILTON LODGE & CHARLES S. TABER, *THE RATIONALIZING VOTER* (2013).

II. DEMOCRATIC COMPETENCE AS AN ALTERNATIVE APPROACH

Most scholars agree that citizens' knowledge is a cornerstone of a functioning democracy, but disagreement persists about *what* exactly citizens need to know for democracy to function properly.³⁰ The prevalence of misinformation in electoral politics has only made this debate more urgent. One potentially fruitful approach, with important implications for legal debates over speech regulation, focuses on the relationship between citizens' knowledge and democratic competence.³¹ Arthur Lupia argues that any given piece of information matters for democratic functioning insofar as it allows citizens to transform their values into concrete political action. For example, a person who is deeply concerned about rising health insurance costs might require information about the candidates' health plans to address this issue in order to connect her values (health care) to her actions (vote choice). This particular piece of information would increase her competence in a way that information about the candidates' stance on abortion might not.

We argue that this standard of competence is also relevant for assessing the effects of *misinformation* and can also establish a baseline for determining whether and under what circumstances misinformation can be regulated. According to this standard of competence, not all misinformation is necessarily problematic. Rather, only misinformation that directly threatens citizens' ability to connect their values to political action should be excluded from First Amendment protection.

An illustration may be useful here. Misinformation often appears in the context of elections. But misinformation is particularly problematic when it relates to deceptive election practices. A classic, if not common, example of such deceptive practices, Richard Hasen recalls, "is a flyer distributed in African-American neighborhoods claiming that Democrats are allowed to vote on Wednesday, not Election Day Tuesday."³² Elections rarely occur on Wednesdays in the United States. By missing election day, those who would rely on this information

³⁰ See, e.g., Cheryl Boudreau and Arthur Lupia, *Political Knowledge*, in CAMBRIDGE HANDBOOK OF EXPERIMENTAL POLITICAL SCIENCE 171 (James N. Druckman et al. eds., 2011) ("Some scholars raised questions about the practice of basing broad generalizations of citizen competence or knowledge on a relatively small set of idiosyncratic, fact-based survey questions.")

³¹ For elaboration on this approach, see ARTHUR LUPIA, UNINFORMED: WHY PEOPLE KNOW SO LITTLE ABOUT POLITICS AND WHAT WE CAN DO ABOUT IT (2016).

³² RICHARD L. HASEN, VOTING WARS: FROM FLORIDA 2000 TO THE NEXT ELECTION MELTDOWN 78 (2012).

would necessarily be deprived of translating their political attitudes into meaningful political action and thereby falling short of the competence standard. Such misinformation would rightly be subject to regulation consistent with the First Amendment.

But, as indicated, not all misinformation runs afoul of this democratic competence standard. In another example, Hasen considers an advertisement paid for by Latinos for Reform encouraging Spanish-speaking voters abstain from voting in an upcoming election essentially to punish Democratic leaders for not acting sufficiently on immigration reform.³³ The primary funders of the sponsoring organization, however, did not appear to be Latino. Instead, they were closely associated conservative causes and therefore would have benefited from low Hispanic turnout because Hispanic voters have recently tended to vote against conservative candidates. But, unlike the classic example of deceptive election practices, the information in this advertisement did not interfere with the capacity of the targeted citizens to cast a ballot. It simply provided them with an alternative strategy to pursue their preferred outcomes. Accordingly, they could still translate their political attitudes into political action in meaningful ways.

Similarly, when evaluated by the standard of competence, the effect that misinformation like PizzaGate and other examples had on the outcome of the *presidential* election may be minimal because most of the people who consumed fake news used it to reinforce their pre-existing beliefs.³⁴ Just as opponents of Hillary Clinton were far more likely to encounter and believe news stories about PizzaGate, those who disliked Donald Trump were more likely to encounter and accept misinformation about him. It seems unlikely, therefore, that this misinformation interfered with the capacity of voters to connect their values with appropriate political participation.

III. CONCLUSION

The marketplace of ideas theory of the First Amendment identified government action as a primary threat to the free

³³ *Id.* at 75–79.

³⁴ Andrew Guess, Brendan Nyhan, & Jason Reifler, *Selective Exposure to Misinformation: Evidence From the Consumption of Fake News During the 2016 U.S. Presidential Campaign*, EUROPEAN RESEARCH COUNCIL (Jan. 9, 2018), <http://www.dartmouth.edu/~nyhan/fake-news-2016.pdf>; Amanda Taub, *The Real Story About Fake News Is Partisanship*, N.Y. TIMES: THE UPSHOT (Jan. 11, 2017), <https://www.nytimes.com/2017/01/11/upshot/the-real-story-about-fake-news-is-partisanship.html?mcubz=3>.

exchange of ideas.³⁵ But, as we have argued here, this classical approach rests on a set of psychological assumptions about how individuals process and store factual political information. New empirical research, discussed here, indicates that even factual information has an affective component that colors our understanding of the political world. While we may be able to part ways with the content of political misinformation, the affective dimension of such misinformation may often linger in ways that work against the promises of the marketplace of ideas.

But the existence of belief echoes should not support broad efforts to regulate political misinformation. Rather, as we outline in this Article, government efforts to regulate misinformation should only be allowed under the First Amendment when such regulation enables democratic competence and facilitates citizens' capacity to translate their values into political action. While this recommendation departs from the classical First Amendment model, which has been skeptical of any government interference, regulator efforts that enhance democratic competence do not pose the same risks as other types of intervention.

³⁵ SAM LEBOVIC, *FREE SPEECH AND UNFREE NEWS: THE PARADOX OF PRESS FREEDOM IN AMERICA* 18 (2016).