

SEC. 2. . . . That if any person shall write, print, utter or publish, or shall cause or procure to be written, printed, uttered or publishing, or shall knowingly and willingly assist or aid in writing, printing, uttering or publishing any false, scandalous and malicious writing or writings against the government of the United States, or either house of the Congress of the United States, or the President of the United States, with intent to defame the said government, or either house of the said Congress, or the said President, or to bring them, or either of them, into contempt or disrepute; or to excite against them, or either or any of them, the hatred of the good people of the United States, or to excite any unlawful combinations therein, for opposing or resisting any law of the United States, or any act of the President of the United States, done in pursuance of any such law, or of the powers in him vested by the constitution of the United States, or to resist, oppose, or defeat any such law or act, or to aid, encourage or abet any hostile designs of any foreign nation against the United States, their people or government, then such person, being thereof convicted before any court of the United States having jurisdiction thereof, shall be punished by a fine not exceeding two thousand dollars, and by imprisonment not exceeding two years.

SEC. 3. . . . That if any person shall be prosecuted under this act, for the writing or publishing any libel aforesaid, it shall be lawful for the defendant, upon the trial of the cause, to give in evidence in his defence, the truth of the matter contained in the publication charged as a libel. And the jury who shall try the cause, shall have a right to determine the law and the fact, under the direction of the court, as in other cases.

SEC. 4. . . . That this act shall continue and be in force until the third day of March, one thousand eight hundred and one, and no longer: Provided That the expiration of the act shall not prevent or defeat a prosecution and punishment of any offence against the law, during the time it shall be in force

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The Kentucky and Virginia Resolutions (1798)

In the face of rising provocations from France, especially following the publication of the XYZ correspondence in the spring of 1798, the Federalists in Congress seized upon the patriotic mood of the nation to push through the Alien and Sedition Laws in 1798. The most prominent Federalist leader, Alexander Hamilton, opposed the Sedition Act, but he was not in government at the time, and no one in his party heeded his advice. The three alien laws certainly fell within Congress's power to regulate immigration and naturalization. The Sedition Law, however, made criticism of the president or the government a crime and was designed to silence the vociferous pamphleteers and newspaper editors critical of the Adams administration and its allegedly pro-British policies.

In many ways the Sedition Act evoked the old British law of seditious libel, which made the mere impugning of the reputation of public officials an offense.

Scholars have pointed out that following Zenger's case (Document 10), the law of seditious libel fell into disuse. The Sedition Act of 1798 implemented most of the arguments of Zenger's lawyer, including allowing truth as a defense and allowing a jury to determine whether the offensive statements were libelous. However, in political cases truth had little relevance. Luther Baldwin of New Jersey had to pay a \$100 fine for wishing out loud that the wad of a salute gun would hit President Adams in the rear, while Congressman Matthew Lyons spent four months in jail and paid a \$1,000 fine for ridiculing Adams's "unbounded thirst for ridiculous pomp, foolish adulation and selfish avarice." How could one determine if it was true or false to call Adams pompous?

Although critics charged that the law violated the First Amendment, the courts never adjudicated the constitutional issue, and no case under the law ever went to the Supreme Court. Moreover, it is not likely that the courts, given the views of free speech at the time, would have found it unconstitutional. It is worth noting that in the twentieth century, with presumably an enlightened view of freedom of speech, the national government would enact similar laws and similarly punish harmless critics of the government and its policies.

The 1798 law evoked impassioned outcries from the Jeffersonians that they were the real targets of the Sedition Act, a claim justified by highly partisan prosecutions. In November 1798, the Kentucky legislature adopted a resolution secretly drafted by Thomas Jefferson, and the following month, Virginia followed suit with one written by James Madison. Both complained about the substantive nature of the laws, but mostly focused on the issue of states' rights. They are remembered today for their defense of free speech, but in reality, the thrust of the resolutions, especially the Kentucky Resolutions penned by Jefferson, was towards states' rights and opposition to a strong national government. It is worth noting that the Kentucky Resolutions do not attack the idea of libel laws, but only argue that the definition of such crimes must remain in the hands of the states.

See James Morton Smith, *Freedom's Fetters* (1956); Adrienne Koch, *Jefferson and Madison* (1950); Leonard W. Levy, *Emergence of a Free Press* (19); and Walter Berns, "Freedom of the Press and the Alien and Sedition Laws: A Reappraisal," 1970 *Supreme Court Review* 109 (1971).

~~—The Kentucky Resolutions~~

November 16, 1798

~~Resolved, That the several states, composing the United States of America are not united on the principle of unlimited submission to their general government; but that, by~~

Source: Jonathan Elliot, ed., *4 The Debates in the Several State Conventions on the Adoption of the Federal Constitution* 528 (1888; reprint, 1987)