Teaching the First Amendment

Lessons in Liberty

FREE SPEECH CENTER

TOC

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FREE SPEECH CENTER
AT MIDDLE TENNESSEE STATE UNIVERSITY

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Preface

Forty-five words changed our country.

The First Amendment is the foundation of American democracy and the heartbeat of a free society. It stands as one of the most powerful and elegant statements of freedom ever written. In just 45 words, it defines the very foundation of American democracy – protecting our rights to speak, publish, assemble, worship and petition our government.

It was Thomas Jefferson who said, "Were it left to me to decide whether we should have a government without newspapers, or newspapers without a government, I should not hesitate a moment to prefer the latter."

Teaching the First Amendment is not just a lesson in history or government — it's an act of civic renewal. In every classroom conversation about free speech, every debate about press freedom, and every student newspaper editorial, young people are practicing democracy in real time. They are learning how to question authority responsibly, to listen to opposing viewpoints with empathy and to use their voices to shape a better society.

Today, that mission feels more urgent than ever. We live in a time of deep polarization, when social media can amplify both truth and misinformation at lightning speed. A time when public trust in the news is fragile. Students navigate a digital world that rewards outrage over dialogue and speed over accuracy. Political parties criticize news outlets, and "fake news" has become a battle cry against facts. Against this backdrop, the First Amendment is not an abstract concept; it is a living framework for how we coexist as free people.

High school is the perfect place to begin the civic journey. It's where students can see the First Amendment in action. Being involved in a student media outlet gives them a first-hand experience. However, they must know and understand the First Amendment. They must know their rights and responsibilities as journalists.

This book was written to support that work. It offers resources, case studies, and real-world examples to help educators bring the First Amendment to life in their classrooms. It draws on the experience of journalists, legal experts and, most important, the students who have already tested the boundaries of free expression in their schools and communities. Their stories remind us that the First Amendment is not a relic of the 18th century, but rather it is a living promise renewed every time someone speaks truth to power, publishes an idea or stands up for what they believe.

The First Amendment guarantee of a free press functions as a vital watchdog, holding power accountable, ensuring government transparency and providing citizens with the information necessary to make informed decisions and actively participate in a self-governing society. Without journalists' ability to freely cover and critique government actions, expose corruption or facilitate a robust "marketplace of ideas," the public would remain in the dark and democracy itself would be threatened.

Walter Cronkite, CBS Evening News anchor from 1962 to 1981, was once deemed "the most trusted man in America." He championed press independence and truthfulness, even advocating for an end to FCC authority over broadcast content to protect it from government interference. Cronkite once said, "Freedom of the press is not just important to democracy, it is democracy."

His legacy is honored through awards and proposed legislation like the Walter Cronkite New Voices Act in Missouri, the Student Press Law Center's initiative to reinforce First Amendment principles for student journalists.

Ultimately, teaching the First Amendment and the role of a free press is an investment in an informed and engaged citizenry. It encourages more speech, not enforced silence, is necessary to resolve differences in a diverse society and ensures that the fundamental link between knowledge and freedom endures.

As citizens face new challenges to these freedoms, from AI to digital surveillance to the spread of propaganda, a solid educational foundation is the best safeguard for preserving liberty and the democratic process.

Recent polls show Americans view the First Amendment as vital but have mixed opinions on its application, particularly concerning free speech. While many Americans believe the U.S. has gone too far in restricting free speech, a significant portion also feel the First Amendment goes too far in the rights it guarantees, with support for limiting certain speech varying by political affiliation. Additionally, knowledge of all five First Amendment rights remains low, although awareness of specific rights like the right to assemble and petition has increased.

As Thomas Jefferson said, "Our liberty depends on the freedom of the press, and that cannot be limited without being lost."

A democracy cannot lose its fundamental freedoms. By exploring how these freedoms arose through great contention and continue to evolve today, students learn to appreciate the responsibilities that accompany these rights. They learn to evaluate the credibility of sources, recognize bias and understand the difference between protected speech and its legal limitations.

Teaching those 45 words means helping young people see that democracy depends not on perfection, but on participation. And in the classroom, the next generation of free thinkers and responsible citizens begins to take shape. This book is dedicated to that mission: to ensure that the First Amendment is not just remembered, but celebrated as the soul and existence of our democracy.

Laura Widmer, Executive Director

National Scholastic Press Association

Associated Collegiate Press

Quill and Scroll

OCT. 31, 2025

Foreword

I have had the good fortune to work in First Amendment education for much of my career. As a journalist and former editor-in-chief of USA TODAY, I found myself teaching media law and freedom of the press fundamentals to news media professionals. My partner John Seigenthaler and I taught thousands of media executives the core principles of the First Amendment in the course of a decade at the American Press Institute.

As a lawyer and director of the First Amendment Center at Vanderbilt University, director of the Free Speech Center at Middle Tennessee State University, and as a dean there, I focused on the other four freedoms.

The one commonality among every audience that I have ever spoken to is that they know surprisingly little about the five freedoms of the First Amendment to the U.S. Constitution. In fact, that's typically the icebreaker. I asked members of the audience to collaborate and identify those freedoms. Long silences ensued. It was not done to shame them. They were not alone. According to surveys taken by the Freedom Forum over a quarter-century, less than five percent of Americans can name all of the freedoms.

I will leave it to others to assess why Americans know so little about freedom of expression, but that lack of knowledge offers a great opportunity for those who believe that informed citizens are the most likely to enrich our democracy. There is clearly a need here.

This book is intended for those who would like to teach basic First Amendment principles. That would include college professors, high school educators, and primary grade teachers. It would also include parents of home-schooled children, or any parents who want to ensure that their children will not be among the 95 percent of Americans oblivious to what the First Amendment really means.

Given that so many know so little, educators need not be intimidated by the subject matter. You know more about the First Amendment than your audience right now. I guarantee it. This book is designed to deepen what you know and offer some possible paths to teaching the subject in an accessible and engaging way.

The opening section of the book will walk you through each of the five freedoms and offer suggestions on how they might best be taught to students of different ages and to audiences of all sorts.

For many, that will suffice. It can serve as a jump start to what you already may have had in mind.

Others may want a bit more depth so that they can better anticipate questions and speak with greater authority on the subject. The remainder of the book addresses those goals with an overview of the First Amendment's history, links to the best First Amendment teaching materials, a guide to developing your own curriculum, a user's guide to the Free Speech Center's website, and finally a glossary of leading cases and legal terms.

Thank you for sharing America's most fundamental freedoms with a new generation.

Ken Paulson

SEPT. 17, 2025

Teaching the First Amendment

By Ken Paulson, Free Speech Center Director and Dean Emeritus, Middle Tennessee State University

Teaching young people about the First Amendment is easier than it may sound. Although constitutional law may sound daunting, there's a surprising simplicity to any analysis of a case. The government is prohibited from limiting our right to speak, write, report, worship, gather peacefully and ask for the government to address concerns.

These are fundamental exercises of liberty, but how do we know whether the First Amendment is in play?

1. Is the government taking an action?
2. Does it violate freedom of expression?

Two "yes" answers and you're well on your way to identifying a First Amendment violation.

First Amendment law can also be taught by telling wonderful stories. Yes, there can be arcane decisions, but the leading cases in the field tend to be packed with humanity and drama. A surprising number of those cases also involve the rights of young people. The evolution of the First Amendment is a rich saga and an inspiring one.

The basics

I like to begin any explanation of the First Amendment with a look at the amendment's origins. It took time and diligence, but resulted in a remarkable promise of personal liberty.

I suppose every nation tends to lionize its founders. In the U.S., we have our Founding Fathers, but they were not entirely beneficent. They left slavery intact and women without a vote. And they certainly didn't "give" us our freedoms.

July 4, 1776, is our nation's birthday, but it's important to remember how at loose ends we were at the very beginning.

The Declaration of Independence was essentially a letter to the king of England explaining why we needed to sever ties. Writing and signing it took courage, particularly because there wasn't much of a plan beyond that.

Our nation was a loose-knit alliance of states that took until 1781 to ratify the Articles of Confederation. The Articles provided a weak form of government, but provided needed structure.

Throughout the 1780s, it became apparent that the United States needed to replace the Articles of Confederation with something more substantial. We needed a constitution.

The U.S. Constitution was drafted in Philadelphia from May through the summer of 1787. The final document was signed by the delegates on May 25, 1787.

Then came even heavier lifting. It was agreed that the Constitution would only go into effect after nine of the 13 states approved it.

The Federalists stepped to the fore in making the case to the American people. James Madison, Alexander Hamilton and John Jay wrote the Federalist Papers, a series of 85 essays published from October 1787 until April 1788. The essays appeared in newspapers across the country and proved highly influential.

On Dec. 7, 1787, five states quickly ratified the Constitution, but there was pushback from other states. The problem was that the Constitution created a powerful central government,

but did not spell out specific rights for the people. It became clear that ratification would not occur without the guarantee of specific liberties.

This situation led to a compromise. In exchange for the promise of a Bill of Rights, the hesitant states agreed to ratify the Constitution. New Hampshire was the ninth state to ratify, on June 21, 1788.

Think about those negotiations to secure ratification. The government secured its very existence by guaranteeing amendments to the Constitution. In structure, this was a contract: the power of the government exchanged for the power of the people.

Here's the text of the Bill of Rights, ratified on Dec. 15, 1791:

Amendment I
Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment II
A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Amendment III
No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

Amendment IV
The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no

Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Amendment VII

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Amendment VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Amendment X

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.

The First Amendment guarantees our freedom of expression. The Second Amendment guarantees the right of the people to bear arms; the nation continues to debate exactly what that means.

The Third Amendment is obsolete; troops are not boarding in our homes. The Fourth Amendment guarantees our privacy.

The Sixth through Eighth amendments address our rights in court, whether involving criminal or civil matters. Finally, the Ninth and Tenth amendments spell out that any rights not detailed in the Bill of Rights may still be in the hands of the people and the states.

Most Americans today would not have been familiar with the efforts of the Federalists without the staging of the musical "Hamilton," one of the most successful Broadway musicals of all time. The show, debuting off-Broadway in 2015, uses hip-hop and a multiracial cast to tell the story of America's history in a profoundly contemporary way.

There are recordings and streams of the show; sharing excerpts from "Hamilton" is a great way to engage students.

Discussion

If we were to draft a formal contract between the government and our people today, what might it say?

The 45 words of First Amendment have remained stable since 1791. How is it possible that this brief amendment could address legal issues spanning 234 years?

What are the freedoms in the rest of the Bill of Rights? What do all the amendments share? How are they different?

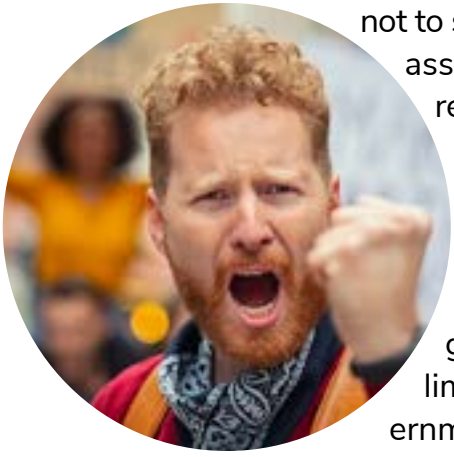
There are some who say that the Bill of Rights and the Constitution should be modernized by holding a new constitutional convention. What would be the benefits of that? What are the potential downsides?

Teaching about freedom of speech

The basics

Freedom of speech is the most readily recognized of the five freedoms in the First Amendment and the only one that's known by a majority of Americans. That's not a surprise; it's also the First Amendment freedom that most of us use every day and all day.

Like the other guarantees in the Bill of Rights, our right to speak freely protects us from limits by the government. It does not, however, prevent rules limiting our speech in other settings. For example, an employer can tell an employee what not to say in the workplace. A condominium association can remove a sign on a resident's front lawn if it's in violation of bylaws. A private business can eject a customer engaged in what it regards as disruptive speech.



Free speech protection against government interference is not limited to the spoken word. The government is barred from limiting communication in many different settings, including the presentation of visual art, performances, songs, poetry and film.

Protected speech can also be embodied in symbols that don't specifically say anything but convey a point of view.

Principles of free speech stretch back centuries, as far as ancient Greece. Early codification of freedom of speech can be found in the English Parliament's Bill of Rights passed in 1689, "An Act Declaring the Rights and Liberties of the Subject and Settling the Succession of the Crown." The bill was highly influential in the drafting of the United States Bill of Rights in 1791, roughly a century later.

Freedom of speech is far and away the best known of the First Amendment's five freedoms. In fact, multiple surveys have shown that it's the only one that a majority of Americans can readily identify.

That noted, the full scope of freedom of speech is rarely understood by the general public. While the freedom certainly protects literal speech, it actually encompasses almost every form of free expression, regardless of medium. The free-speech clause protects art, music, theater, literature and even symbolic expression.

Approaching the topic

That scope makes it easy to engage students at any level. They may be ambivalent about political expression, but most recognize the importance of protecting the music, films and even the video games they love. When I taught the topic at the university level, I devoted at least one full class session to each form of art or expression, reviewing the most accessible and contemporary cases I could. That also means a full menu of music and videos, making the notion of learning constitutional law a lot less intimidating. It's the rare topic that can incorporate both Thomas Jefferson and Lady Gaga.

At the outset of any discussion of freedom of speech, though, I find it helpful to dissuade students from the notion that "you

can't yell fire in a crowded theater." This is one of the most familiar paraphrases to emanate from a Supreme Court decision and perhaps the most misleading.

As I'm sure you know, it is the go-to phrase for those who want to justify censorship. It's shorthand for "there are limits to freedom of speech, particularly this thing that offends me deeply."

"Fire in a crowded theater" came from the majority opinion written by Justice Oliver Wendell Holmes in Schenck v. United States, 249 U.S. 47 (1919), a Supreme Court decision during World War I.

In its decision, the court found that the government could prosecute those who distributed leaflets opposing the draft.

A description of the contents of the leaflets from the court's decision: *In impassioned language, it intimated that conscription was despotism in its worst form, and a monstrous wrong against humanity in the interest of Wall Street's chosen few. It said "Do not submit to intimidation," but in form, at least, confined itself to peaceful measures such as a petition for the repeal of the act. The other and later printed side of the sheet was headed "Assert Your Rights." It stated reasons for alleging that anyone violated the Constitution when he refused to recognize "your right to assert your opposition to the draft."*

This wasn't insurrection; it was simply an exercise of free speech. But in 1919, it was enough for the court to uphold the convictions those who attempted to impede recruitment during wartime.

Holmes acknowledged that the message on the leaflet would normally be protected speech; then the theater example loomed.

"We admit that, in many places and in ordinary times, the defendants, in saying all that was said in the circular, would have been within their constitutional rights," Holmes wrote. "But the character of every act depends upon the circumstances in which it is done.

The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic."

Note the difference from the common misquote. To be punished, someone would have to "falsely" shout fire and cause a panic.

It's an important distinction and worth sharing with your students.

You can yell fire in a crowded theater if there's a fire or you reasonably believe there's a fire. It's the false and the malicious intent that remove the shout from First Amendment protection.

The real lesson here is that when you commit a crime using freedom of speech, there's no loophole for your conduct and you can be punished. Well beyond the theater, people are prosecuted daily for saying things that defraud others or conspiring to engage in theft or assault. It's the criminal actions, not the words, that lead to arrest.

The latter half of the 20th century was a particularly robust era for the expansion and strengthening of free-speech rights, thanks to both shifting judicial attitudes and the emergence of new technologies and platforms.

Cases

Here are some highly teachable cases that illustrate the scope of freedom of speech.

Brandenburg v. Ohio (1969) and political speech

In 1919, the Supreme Court in the Schenck case criminalized speech if it posed "a clear and present danger of bringing about the substantive evils that Congress may prohibit." A half-century after Schenck, the Court embraced a new test.

A man named Clarence Brandenburg spoke to a group of Ohio Ku Klux Klan members, saying that white citizens were being

mistreated by the government, and said "revengance" could be the result. He also made racist and anti-Semitic comments and announced an upcoming march on Washington, D.C.

Brandenburg was arrested and convicted of violating Ohio's Criminal Syndicalism law, which made it a crime to "advocate... the duty, necessity, or propriety of crime, sabotage, or unlawful methods of terrorism as a means of accomplishing industrial or political reform."

On appeal, the U.S. Supreme Court overturned Brandenburg's conviction, setting a new test for conviction. The Brandenburg decision said that you could only be prosecuting for generally advocating criminal activity "where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action."

Brandenburg's conviction was based on his allusion of "revengance," his announcement of an upcoming exercise of the right to assemble. There was no specific threat and no suggestion of any imminent illegal action.

Under the First Amendment, general advocacy of revenge or even revolution is protected as political speech. It's when the proclamation moves from hyperbole to specific imminent threats that prosecution is permissible.

Discussion

Based on the Brandenburg decision, could someone be prosecuted for falsely shouting fire in a crowded theater today?

In this case, did the court offer more – or less – free speech?

Why is it important to give speakers some latitude for angry or outrageous remarks?

Resources

Tinker v. Des Moines Independent Community School District (1969) and the free-speech rights of students

The Tinker case usually resonates with high school students. It addresses the core question of just how free the speech of a high school student can be and foreshadows the 21st century conflicts surrounding young people and social media.

The Supreme Court's decision in this case also makes clear that free speech can sometimes be symbolic instead of vocal. In this case, the speech is black cloth.

The case stemmed from 1965 as the United States stepped up its involvement in the war in Vietnam. There were protests across America and a group of students in Des Moines, Iowa, sought their own way to protest the war. They settled on a plan to wear black armbands to their high school. Mary BethTtinker, her brother John Ttinker and Christopher Eckhart were suspended for their protest, despite the fact that there was no disruption caused by the wearing of the armbands.

In 1969 the Supreme Court came down in support of the students' right to express their opinions. The court concluded that public schools cannot censor the free expression of students without reasonably determining that the speech will disrupt—or has substantially disrupted—school activities. Other students whispering or pointing fingers in the hall would not meet that test. Were teachers able to teach? Did students successfully attend classes?

It was a major victory for young Americans and Justice Abe Fortas's majority opinion said it well: It "can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."

There was some chipping away of public school students' rights over the next 56 years, but the Tinker standard remains the law of the land. Public school students have a right to First Amendment protections.

Discussion

How free is the speech of students in private high schools?

What are the arguments for giving students as much free speech as possible?

Are there any arguments for limiting the speech of students?

Is there any speech that you would regard as too potentially disruptive to be permitted?

Resources

***Burstyn v. Wilson* (1952), free speech and movies**

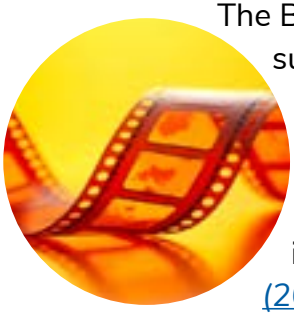
Teaching Burstyn v. Wilson, opens up the classroom to conversation about free speech, popular culture and media of all sorts.

The case involved a controversial Italian film about a young woman who is seduced by a man she believes to be Saint Joseph. She has a son and concludes that he is Jesus Christ.

The subject matter offended the New York Board of Regents, which banned the screening of the movie because it found it sacrilegious. This came at a time when many cities had codes limiting the content of art and entertainment.

The U.S. Supreme Court struck down the New York censorship law as unconstitutional, in large part because movies had evolved over the past half-century and were now important vehicles for conveying substantive messages and content, all of which were protected by the First Amendment.

If government wishes to limit protected speech, it must have an overriding and critically important reason, and describing a film as "sacrilegious" is not enough, the court concluded.



The Burstyn case stands for the overwhelming presumption that any conveyance of ideas—even for entertainment—is protected against government censorship.

As recently as 2011, this principle came into play in *Brown v. Entertainment Merchants Association (2011)*. In this case, the Supreme Court invalidated a California law that criminalized the sale of violent video games to minors, concluding that the depiction of violence is not legally obscene and that First Amendment protections apply.

Discussion

What's one of your favorite films? What messages or ideas in that film are protected by the First Amendment?

A 17-year-old can be barred from buying a magazine with nudity and adult content, but the same minor can freely buy an ultra-violent video game. Why would that be?

We know that movies are protected under the First Amendment. What about videos on TikTok?

Resources

***Reno v. American Civil Liberties Union* (1997) and information technologies**

Freedom of speech, which initially covered the printed and spoken word, has been adapted for emerging technologies over more than two centuries.

In the early 1990s, the world was awakening to the possibilities of the internet. This led to widespread anticipation about what the internet might help us do, as well as concerns about its impact on children.

From *The New York Times* in 1995:

> *In the new medium of computer communications, parents and children often need to be reminded of the dangers as well as the benefits. On computer networks, anonymity is more easily achieved than in the physical world, and so is deception. The person surfing through cyberspace as a 12-year-old girl just might be a 50-year-old man.*
>
> *"Cyberspace can give parents a false sense of security —that your child is in his or her room instead of out on the streets," said Ernie Allen, the president of the National Center for Missing and Exploited Children. "For kids, they sometimes approach computer networks with a sense of unreality, like it's just a computer game."*

Parental and legislative concerns led Congress to pass the Communications Decency Act in 1997. It made illegal the transmission of "obscene or indecent" material to minors. It also barred the posting of obscene, indecent or "patently offensive" content to those under 18.

Those limits on the emerging internet were struck down by the U.S. Supreme Court in *Reno v. American Civil Liberties Union (1997).*

It's a truly historic case, yet few Americans are familiar with it. In its ruling, the Supreme Court concluded that content on the internet in the United States enjoys the same level of First Amendment protection as print media, including newspapers, books and magazines.

It was a landmark decision because it recognized text on screen as being identical to text on paper, and not like broadcast media, which has less protection because the Federal Communications Commission oversees the use of the public airwaves. Unlike the physical limits of broadcasting with a finite number of frequencies, the internet is wide open and accessible to all.

While "obscene" material is not protected by the First Amendment, barring "indecent or "patently offensive" content is too vague to be enforceable and would inevitably block access to constitutionally protected content.

After losing the case, Congress went back to work in 1998 and passed the Child Online Protection Act (COPA). The law criminalized commercial posts that "are harmful to minors" unless the poster took steps to prevent young people from seeing the content.

By this time, it was clear how pervasive and influential the internet would be throughout society and the Supreme Court concluded in *Ashcroft v. American Civil Liberties Union (2002)* that the use of filters and software blocks would be more effective than legislation to protect minors.

Running throughout both the Reno and Ashcroft cases was a concern that efforts to limit the internet access of minors would have an unintended consequence of limiting the First Amendment rights of adults.

Discussion

How was the world different before the internet? How has it affected what we see, hear and read? On balance, has the internet been a good thing for society?

A record number of states have passed legislation requiring pornography sites to prevent access by minors, and those laws

have largely been upheld by courts. Do you think these laws can keep pornography out of the hands of minors?

Pornography is protected under the First Amendment as content for adults. What has happened since 2004 to make legislators more concerned about minors and the internet?

While most Americans support keeping adult content away from teens, there's one significant constitutional question. Adults have a legal right to access pornography online, but what happens when the law requires them to submit their identity before they can visit an adult site? Can our free-speech rights be conditioned on revealing our names?

Teaching about freedom of the press

The First Amendment's bar on government's "abridging" freedom of the press can sound a little archaic in an era of declining newspaper readership and the dominance of digital media. When the First Amendment was ratified in 1791, the only media were newspapers and other printed matter, all of which came off a press.

It's best to view this freedom as the right to gather news and information with the goal of sharing it with others. It's journalism of all sorts, but it also comes into play on virtually any platform that communicates information to an audience.

Approaching the topic

We've all heard people bemoan modern news media, asserting that "there's never been so much biased reporting." Oh, yes there has. In fact, it was much worse 250 years ago.

At the birth of our nation, most newspapers had very clear political leanings and few ethical concerns. Government leaders were savaged in the press; fairness was not a priority.

This state of affairs frustrated President George Washington, and he denounced journalists who criticized his administration as "infamous scribblers."

Still, even those stung by incessant attacks in print recognized the importance of a free and independent press to maintain a check on those in power. In 1788, the U.S. Constitution established a strong central government; the American people demanded tools to prevent powerful officials from trampling on their rights.

Those tools included the Bill of Rights and the First Amendment's set of freedoms of expression.

Though the early days of American journalism tended to be ill-mannered, news media of all sorts have served to keep government corruption in check. Someone was watching.

An interesting dynamic occurs when government officials seek to limit the journalism that monitors their conduct.

Cases

New York Times Co. v. Sullivan **(1964)**

In 1964, the U.S, Supreme Court decided what is almost certainly the most important free-press case of all time.

The Civil Rights Movement made great progress in the 1960s when major newspapers and television networks began covering racial injustice in the South. The entire nation saw images of violent police behavior and virulent racism, which in turn fueled support for federal intervention and legislation.

The news coverage was resented by some in the South who saw it as interfering with long-held beliefs and mores. Then an advertisement in *The New York Times* offered a chance for payback.

The March 29, 1960, ad, purchased and created by the Committee to defend Martin Luther King and the Struggle for Freedom in the South, stated:

Heed Their Rising Voices

As the whole world knows by now, thousands of Southern Negro students are engaged in widespread non-violent demonstrations in positive affirmation of the right to live in human dignity as guaranteed by the U.S. Constitution and the Bill of Rights. In their efforts to uphold these guarantees, they are being met by an unprecedented wave of terror by those who would deny and negate that document which the whole world looks upon as setting the pattern for modern freedom.

In Orangeburg, South Carolina, when 400 students peacefully sought to buy doughnuts and coffee at lunch counters in the business district, they were forcibly ejected, tear-gassed, soaked to the skin in freezing weather with fire hoses, arrested en masse and herded into an open barbed-wire stockade to stand for hours in the bitter cold.

In Montgomery, Alabama, after students sang "My Country, 'Tis of Thee" on the State Capitol steps, their leaders were expelled from school, and truckloads of police armed with shotguns and tear-gas ringed the Alabama State College Campus. When the entire student body protested to state authorities by refusing to re-register, their dining hall was padlocked in an attempt to starve them into submission.

In Tallahassee, Atlanta, Nashville, Savannah, Greensboro, Memphis, Richmond, Charlotte, and a host of other cities in the South, young American teenagers, in the face of the entire weight of official state apparatus and police power, have boldly stepped forth as protagonists of democracy. Their courage and amazing restraint have inspired millions and given a new dignity to the cause of freedom.

Small wonder that the Southern violators of the Constitution fear this new, non-violent brand of freedom fighter...even as

they fear the upswelling right-to-vote movement. Small wonder that they are determined to destroy the one man who, more than any other, symbolizes the new spirit now sweeping the South-the Rev. Dr. Martin Luther King, Jr., world-famous leader of the Montgomery Bus Protest. For it is his doctrine of non-violence which has inspired and guided the students in their widening wave of sit-ins; and it is this same Dr. King who founded and is president of the Southern Christian Leadership Conference, the organization which is spearheading the surging right-to-vote movement. Under Dr. King's direction, the Leadership Conference conducts Student Workshops and Seminars in the philosophy and technique of non-violent resistance.

Again and again, the Southern violators have answered Dr. King's peaceful protests with intimidation and violence. They have bombed his home almost killing his wife and child. They have assaulted his person. They have arrested him seven times for "speeding." "loitering" and similar "offenses." And now they have charged him with "perjury," under which they could imprison him for ten years. Obviously, their real purpose is to remove him physically as the leader to whom the students and millions of others look for guidance and support, and thereby to intimidate all leaders who may rise in the South. Their strategy is to behead this affirmative movement, and thus to demoralize Negro Americans and weaken their will to struggle. The defense of Martin Luther King, spiritual leader of the student sit-in movement, clearly, therefore, is an integral part of the total struggle for freedom in the South.

Decent-minded Americans cannot help but applaud the creative daring of the students and the quiet heroism of Dr. King. But this is one of those moments in the stormy history of Freedom when men and women of good will must do more than applaud

the rising-to-glory of others. The America whose good name hangs in the balance before a watchful world, the America whose heritage of Liberty these Southern Upholders of the Constitution are defending, is our America as well as theirs...

We must heed their rising voices-yes-but we must add our own.

We must extend ourselves above and beyond moral support and render the material help so urgently needed by those who are taking the risks, facing jail, and even death in a glorious reaffirmation of our Constitution and its Bill of Rights.

We urge you to join hands with our fellow Americans in the South by supporting, with your dollars, this Combined Appeal for all three needs: the defense of Martin Luther King, the support of the embattled students, and the struggle for the right to vote.

Your Help is Urgently Needed...NOW!!

Unfortunately, the fundraising ad contained some small errors. It overstated the number of times Dr. King had been arrested by three, misstated that a dining hall had been padlocked and inaccurately described the location of the police near Alabama State College.

Though he was not mentioned by name, Montgomery Public Safety Commissioner L. B. Sullivan sued *The New York Times* for libel. His path to recovering damages was made easier by an Alabama law that required only that a statement contain mistakes that would damage someone's reputation. Sullivan was awarded $100,000, a massive sum for the period.

On review, the U.S. Supreme Court threw out the $100,000 award and reached a historic decision.

The Court cited the importance of free discourse in a free society and said it was important to be able to freely criticize the conduct of public officials, establishing a new test for liability.

Public officials would have to establish that any false and defamatory statement was made with "actual malice" in order to successfully sue for libel. That meant they would have to prove that the statement was made "with knowledge that it was false or with reckless disregard of whether it was false or not."

Similar protections were later established for statements involving public figures.

This important decision would encourage investigative reporting because news organizations knew that if they were operating in good faith and with professionalism, they could not be sued out of existence because of one or two mistakes.

Discussion

How would this decision have affected ongoing coverage of the Civil Rights Movement in the South?

Under the Alabama law, a newspaper could potentially be held liable for any mistake. How difficult a standard is that? How long could you go without making a mistake on schoolwork?

Who benefits from the "actual malice" standard? Anyone other than the news media?

New York Times Co. v. United States (1971)

It's no surprise that *The New York Times*, the most storied newspaper in American history, is also a major player in this second major press-freedom case.

This case arose in the Vietnam War era, a time when the United States struggled to prevail in Vietnam and sought to put as positive a spin on its efforts as possible.

In 1967, Robert McNamara, then the secretary of defense, commissioned an internal study on America's participation in

the war. It was done for historical documentation and was not intended to be released. But the report, which revealed U.S. errors and missteps, was leaked to the *Times* by Daniel Ellsberg, who worked on the project.

The *Times* began publishing sections of the report—commonly referred to as the Pentagon Papers—which embarrassed the U.S. government.

President Nixon's administration secured a restraining order against the newspaper, which was upheld by the 2nd U.S. Circuit Court of Appeals. The Supreme Court quickly agreed to hear the case on appeal.

In a 6-3 ruling, the Supreme Court overturned the restraining order and permitted the Times to continue to publish the articles.

In the end, the Court embraced existing legal principles that said government may not order a news organization not to publish unless there's an extraordinarily rare circumstance involving national security.

In this case, the Pentagon Papers were just history. Nothing was at stake except the pride of government officials who had made mistakes in the conduct of the war.

Constitutional law remains exactly where it stood in 1971. In theory, the government could order a news organization not to post or broadcast a news story, but it would require a burden of proof essentially unseen since 1971.

Discussion

Under what rare circumstances do you believe the government would be justified in ordering a news organization not to report something?

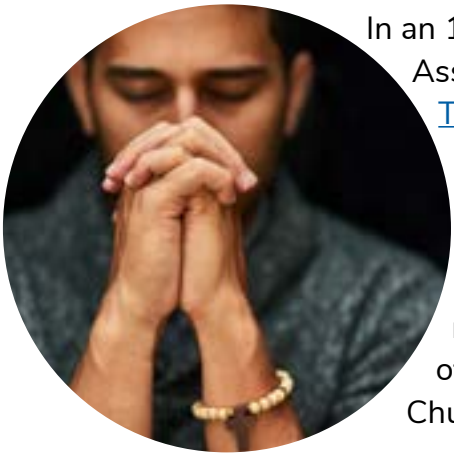
What is the risk of giving the government the right to tell news media not to publish?

What motivates the news media to publish or broadcast information that the government would prefer to keep secret?

Teaching about freedom of religion

There may be some trepidation in teaching about freedom of religion in a public school, in large part because of confusion about the "separation of church and state."

That phrase doesn't appear in the U.S. Constitution, but it succinctly captures the principles that do.



In an 1802 letter to the Danbury Baptist Association in Connecticut, President Thomas Jefferson said he viewed the religion clauses in the First Amendment as "building a wall between church and State." The metaphor originated with Roger Williams in the mid-1600s when he referred to a "wall of separation between the garden of the Church and the wilderness of the world."

Jefferson explained his understanding of the First Amendment's religion clauses as reflecting the view of "the whole American people which declared that their legislature should 'make no law respecting an establishment of religion, or prohibiting the free exercise thereof,' thus building a wall between church and State."

Freedom of religion was of great importance to America's founding generation, and it is positioned at the very beginning of the First Amendment:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . ."

The first portion is called the "establishment clause" and the latter the "free-exercise clause," for self-evident reasons.

The Basics

The First Amendment prohibits government from establishing an official religion or favoring some faiths over others. In a public school setting it means that teachers cannot lead students in prayer or engage in religious activities during the course of their jobs. Teachers can teach about religion as a component of history, but may not treat religious documents as fact-based texts.

The free-exercise clause prevents government from infringing upon our rights of worship. Some laws will have an impact on religious institutions – zoning, for example – and are permissible if they don't single out places of worship or religious practices. In public schools, students are free to form after-school faith clubs, gather for group prayer before they enter the school building, read the Bible in study halls or the library, and wear religious symbols if they're consistent with the school's dress code. Students have tremendous latitude in practicing their faiths as long as their conduct doesn't interfere with the educational process.

Following are key cases concerning freedom of religion, with an emphasis on faith in public schools.

Cases

Minersville School District v. Gobitis **(1940) and** ***West Virginia State Board of Education v. Barnette*** **(1943)**

Like many schools in America in the 1930s, Minersville, Pa., schools required students to recite the Pledge of Allegiance while saluting the American flag.

Students Lillian and William Gobitas (there's a typo in the case name) were expelled because they refused to participate in the ceremony, saying it violated their religious beliefs. As Jehovah's Witnesses, they saw the practice as worshipping an object.

We're so often exposed to the pledge that we sometimes lose sight of what it actually says:

"I pledge allegiance to the flag of the United States of America, and to the republic for which it stands ... ."

The pledge indeed calls for a promise of loyalty and a salute to a piece of cloth.

In 1940, the U.S. Supreme Court upheld the expulsion, concluding that whatever religious concerns the Gobitas children may have had, public schools have to be given leeway in maintaining national values and consistency.

"National unity is the basis of national security," Justice Felix Frankfurter wrote, finding that the government had an overriding interest in promoting shared patriotic values.

Backlash against Jehovah's Witnesses followed nationwide.

"Violence against the Jehovah's Witnesses, including beatings, destruction of Kingdom Halls, and at least one castration, escalated after the Gobitis decision," Professor Jane Rainey wrote in 2009.

"The American Legion, in particular, was linked to more than 100 vigilante episodes. Some newspaper editors and religious and national leaders condemned the violence and criticized the Court's role in inadvertently instigating it," Rainey wrote.

In surprisingly short order, the U.S. Supreme Court agreed to hear a very similar case.

Students and Jehovah's Witnesses Marie and Gathie Barnett (again, name misspelled on the case filing), refused to say the pledge and salute the flag in violation of a directive by the West Virginia Board of Education.

In 1943, the Court overturned its 1941 decision in *Gobitis* and found that the government was prohibited from requiring participation.

Justice Robert Jackson wrote for the majority that "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion, or force citizens to confess by word or act their faith therein. If there are any circumstances which permit an exception, they do not now occur to us."

The takeaways from Barnette are substantial:

1. Students have First Amendment rights.
2. The government cannot force us to say anything we choose not to say, including participating in a compelled salute. Free speech also means the right not to speak.

Since 1943, public school students have had the right not to participate in the pledge and salute, but even today a surprising number of school administrators are not aware of the decision.

Discussion

Can students in a private school refuse to say the pledge despite a school rule saying they must?

Students have constitutional rights, though they grow over

time with age. When were you first conscious of your First Amendment rights?

What are examples of things the government can make you do even though you don't want to? Do any of them involve First Amendment rights?

Engel v. Vitale (1962)

In this case, the U.S. Supreme Court ruled on a non-denominational prayer used in a public school district in New Hyde Park, N.Y. The prayer was brief: "Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessings upon us, our parents, our teachers and our Country."

Teachers led the prayer, which students were allowed to opt out of if their parents submitted a written request.

Steven Engel and other parents objected to the practice, and filed litigation seeking to stop it.

The Supreme Court held that the sanctioned school prayer was a violation of the establishment clause. The school system had used its resources for religious purposes, creating an inappropriate entanglement with matters of faith.

Justice Hugo Black, writing for the majority, noted that "government in this country should stay out of the business of writing or sanctioning official prayers and leave that purely religious function to the people."

It was not a popular decision, but it was a clear one. Over the next half-century, the ruling was seen as a bar to sanctioned prayers and to school employees engaging in prayers or religious activities during their work days at public schools. Teachers and other school employees could, of course, engage in private or silent prayer in personal moments.

Kennedy v. Bremerton School District (2022)

In recent years, some public school employees, particularly high school coaches, have argued for the right to lead their players in prayer before or after a game.

That contention made its way to the Supreme Court in 2022 after the Bremerton (Wash.) School District announced it would not renew the contract of Joseph Kennedy, who had engaged in prayer in the middle of the football field after games.

Kennedy had previously been told by the school administration that he could not give religious inspirational talks to his team and could not lead locker-room prayers. He complied but viewed his own midfield prayers as appropriate.

The Supreme Court found the coach's post-game prayer to be a permissible exercise of freedom of religion.

In his majority opinion in Kennedy v. Bremerton School District, Justice Neil Gorsuch offered this summary: "Joseph Kennedy lost his job as a high school football coach because he knelt at mid-field after games to offer a quiet prayer of thanks. Mr. Kennedy prayed during a period when school employees were free to speak with a friend, call for a reservation at a restaurant, check email, or attend to other personal matters. He offered his prayers quietly while his students were otherwise occupied. Still, the Bremerton School District disciplined him anyway."

The Court essentially concluded that the post-game time was a free personal time for the coach, and he couldn't be punished for exercising his faith.

What was unusual about this case is that justices often differ in their opinions, but rarely on the facts.

In her dissent, Justice Sonia Sotomayor shared a different account of what had happened.

"... since his hiring in 2008, Kennedy had been kneeling on the 50-yard line to pray immediately after shaking hands with the opposing team," Sotomayor wrote. "Kennedy recounted that he initially prayed alone and that he never asked any student to join him. Over time, however, a majority of the team came to join him, with the numbers varying from game to game. Kennedy's practice evolved into postgame talks in which Kennedy would hold aloft student helmets and deliver speeches with 'overtly religious references,' which Kennedy described as prayers, while the players kneeled around him. The District also learned that students had prayed in the past in the locker room prior to games, before Kennedy was hired, but that Kennedy subsequently began leading those prayers too."

In an unusual move, Sotomayor included photographs in her dissent, including an image of Kennedy standing midfield with his arm upraised and football helmet in hand over a very large huddle of young men.

Based on this ruling, the current state of First Amendment law is still that football coaches can't lead prayers, but if they find a truly private moment after their official duties are over, they can exercise their faith even if they're still on school grounds in a visible location. The question remains what "private" really means.

Discussion

What would America's Founders find appealing about the separation of church and state?

The Pledge of Allegiance is still used in America's schools, but students cannot be forced to participate or stand. Do you think this situation has an impact on students who don't participate?

If all of the students are of the same faith as the football coach, what's the problem with a locker-room prayer?

How does the Supreme Court ruling on the football coach affect the ability of students to engage in prayer on their own?

Teaching the right of assembly

We know the right of assembly today as including the freedom to march in protest. In tandem with modern media, a single march can raise awareness over a wide geographic.

Long before modern communications, though, assembly was seen as politically potent. In a society in which most information was passed by word of mouth, a large gathering of people expressing their views in a town square was the very best way to attract the attention of the local population.

The best-known assembly in American history, of course, was the so-called “Boston Massacre” in 1770. A mob of townspeople had gathered around a British sentry and heaped abuse on him. When seven more soldiers arrived, the mob hit them with stones and snowballs. The soldiers retaliated by shooting into the crowd, leading to the deaths of five and the wounding of six.

Colonial leaders characterized the clash as a massacre and parlayed it for maximum propaganda benefits. The imagery of citizens being struck down for raising their voices in protest against an unjust government was powerful.

The basics

The First Amendment establishes “the right of the people peaceably to assemble.” The word “peaceably” is critical here. It promises the right to gather to engage in public discourse, but provides no protection for violent activities or mob action.

Where does the right of assembly leave a community that doesn’t want a march paralyzing traffic at rush hour on the busiest street in town?

Courts have interpreted the right to assemble to be subject to reasonable restrictions on the “time, place and manner” of protests, but not on the message itself.

That means a local government can refuse to permit a march that will snarl traffic, but it has to offer a reasonable alternative that will allow the marchers’ message to be heard. The government can say, “You can’t march down Main Street at 5 p.m., but you can gather at the park two blocks over at 6 p.m.” It cannot banish the demonstration to a location where the protest will go unseen.

Key cases concerning the right of assembly have generally focused on whether government limits violate the Constitution.

Cases

Bates v. Little Rock **(1960)**

In the wake of tensions over efforts to integrate the local high school, the Little Rock, Ark., City Council passed a requirement that the local NAACP and other organizations reveal a list of members.

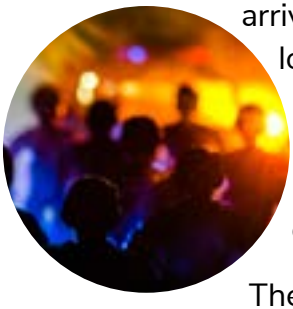
Daisy Bates, president of the Little Rock chapter, refused to provide the list because of community antagonism toward her organization. Members would rather leave the organization

rather than be identified with what was an unpopular cause at the time.

The U.S. Supreme Court ruled that the law was unconstitutional because it violated the rights of assembly and free speech, and the implied right of association. You need members to assemble; if people are afraid to join, there's no assembly.

Gregory v. City of Chicago **(1969)**

To protest the slow pace of integration in Chicago public schools, a group of protesters marched to the mayor's house, accompanied by dozens of police officers. When the group arrived outside the mayor's home, tensions built with local onlookers who began engaging in disruptive and aggressive behavior toward the protesters. The police ordered the still-peaceful protesters to disband, but they refused. They were convicted of disorderly conduct.



The Supreme Court overturned the convictions, noting that the protesters did not engage in misconduct and could not be shut down due to the disruptive actions of others. When a rowdy crowd is allowed to shut down a protest or shut up a speaker, that's called a "heckler's veto." The government cannot reward the hecklers by limiting the speech.

Discussion

How does social media change the impact of assembly?

Are there any risks in taking part in assembly today?

Do you believe that protest marches can make a difference?

Teaching the right to petition

The right to petition government for redress of grievances is truly the forgotten freedom. There was a time in America's history when it was essential, but it has eroded considerably.

The basics

The U.S. Constitution and the Bill of Rights set out a plan for a new kind of government. As citizens, we are guaranteed a wide range of free expression and religious rights, but it was also essential that this new and powerful central government listen as we sought change and progress.

Approaching the topic

In teaching petition, you'll want to convey that Americans have the right to expect governments to address concerns and solve problems. The term "public servant" should actually mean something.

At one time, petition was a formal and effective process. Petitioners would present their needs and requests to Congress, where they would be duly recorded and considered, often ending with a resolution or response.

As the nation and government grew, petitions were directed instead to government agencies. Allegations of government misconduct or malfeasance would end up in federal courts.

Law professor and petition scholar Maggie Blackhawk explained this evolution to *Penn Today* in 2020:

"There's a huge mismatch between what we see as petitioning today and what petitioning was historically. The petitions that you sign today are usually ways to sign up for a mailing list where your email address goes off to some nonprofit and then they send you emails after that. However, those petitions may not make it to Congress at all. They may be presented as some form of political theater, but they're not formally filed with the Congress, they are not read into the Congressional Record, they are not reviewed by members of Congress in committees. You are generally not afforded a hearing or any sort of investigating, and it's unlikely that the petition will receive a response. Because the Congress no longer affords the process that it afforded at the founding and for about 150 years following to all those petitions, they end up being a lot more empty letters these days than they are meaningful legal documents. They were much more meaningful legal documents historically. And so 'petitioning,' as we practice it today, is essentially a toothless democratic practice."

The grind of trying to shape public policy and secure benefits from Congress now largely falls to professional lobbyists whose access can be eased when they represent potential campaign donors. In fairness, many public officials do make time on their calendars for groups representing their states or communities, though the public's role is not what it once was.

That said, there's a reason that those campaigning for change urge the public to "call your representatives." Hearing from constituents can still be effective, though lawmakers in deep red or blue states are largely insulated from public pressure from the other side.

Organizations like *Change.org* host online petitions, which can build awareness and attract news media coverage. They're less likely to bring direct pressure on lawmakers.

It's important to note that government is not required to act on a petition.

There are very few U.S. Supreme Court decisions concerning petition, but there is one relatively modern decision:

McDonald v. Smith **(1985)**

Judge David Smith was slated to be appointed United States attorney for the Middle District of North Carolina, but two letters from Virginia businessman Robert McDonald to President Ronald Reagan apparently derailed his opportunity. In his two letters McDonald accused Judge Smith of significant misconduct, including violating the civil rights of some who had appeared in his courtroom.

After losing his appointment, Smith sued McDonald for libel and slander. McDonald's defense argued that he could not be held liable for what he had written while exercising his constitutional right to petition government. The Supreme Court rejected this argument, finding that the act of petitioning doesn't confer immunity from a defamation suit.

Discussion

The right of petition can apply at every level of government. What would you petition to have changed in this community? In the school?

How would you word your petition?

Interest groups have lobbyists that roam the halls of Congress and state legislatures. Who is there to represent the interests of the people?

Resources

Everything you need is here in **Lessons in Liberty**, from court cases to lesson plans. Active links will lead you directly to the content. It is organized by the Five Freedoms.

Freedom of speech

resources

Free Speech Curriculum

TAFT INSTITUTE

For middle schoolers this 10-lesson unit takes 7th- and 8th-graders through 5 Supreme Court cases, giving them a chance to step into the history of young defenders of free speech. The lessons reference New York State education standards and are applicable in most other states. From the Taft Institute at Queens College, New York.

Academic Freedom and Free Speech

FIRE

Beyond use in digital or in-person orientation, this lesson can be used for onboarding teaching assistants to give them an overview of their rights in the classroom. The framework for a faculty-led panel on academic freedom can also be used as a Constitution Day activity on campus. From the Foundation for Individual Rights in Education.

Bethel School District v. Fraser (1986)

ICIVICS

This lesson is about the 1986 Supreme Court case Bethel School District v. Fraser, which established a school's ability to prohibit inappropriate student language on campus. From iCivics.

Black History Month Lesson

FIRE

This lesson centers on Frederick Douglass' acclaimed defense of free expression, "A plea for free speech in Boston." The material, oriented toward Black History Month, "is also appropriate for lessons on the First Amendment, minority rights, the perils of censorship, and the power of the spoken word."

Bullying or First Amendment?

MEDIA ETHICS INITIATIVE

This Media Ethics Initiative case study tackles the question of

whether it's protected by the First Amendment to encourage another person to commit suicide.

Campus Speakers and Counter Protests

FIRE

Beyond use during digital or in-person orientations, this lesson can be a tool to teach student-government members and student-organization leaders about how the university can and cannot respond to controversial speakers. From the Foundation for Individual Rights in Education.

Can First Amendment Defenses Save Provocateur Alex Jones from the Sandy Hook Libel Suits?

FIRST AMENDMENT WATCH

This guide will help educators teach students about the First Amendment and whether or not it protects Alex Jones from libel suits against him from the families of Sandy Hook victims after he claimed the killings of schoolchildren was a hoax. From First Amendment Watch.

Citizens United v. Federal Election Commission (2010)

ICIVICS

Students will learn about Citizens United v. Federal Election Commission, a 2010 Supreme Court ruling about limiting government restrictions on campaign contributions. From iCivics.org.

Constitution Day Lesson

FIRE

This special lesson geared to the annual Constitution Day helps teachers present the rationale, history and importance of the First Amendment freedom of speech. Includes a PowerPoint slide deck, summarized readings, and critical-thinking questions.

Coronavirus and Free Speech

FIRE

In a pandemic, how can scientific inquiry, including disagreements, be openly discussed, without opposing viewpoints being labeled as “misinformation”? This lesson explores the value of freedom of speech in a time of uncertainty and fear.

COVID On Campus: The Pandemic’s Impact on Student and Faculty Speech Rights

FIRE

On campuses across the country, speech and due-process rights have been challenged as administrators struggle to respond to the Covid-19 pandemic. See how these trends have affected vital student and faculty rights in higher education. From the Foundation for Individual Rights in Education.

Current Free Speech Issues

FIRE

This lesson "explores some of the current controversies around free speech in education through various activities, videos, DBQs, and discussion-focused questions. Students will learn about some of the most popular arguments against free speech and how to respond to them, as well as why it can be important to voice your opinion, even if it's an unpopular one."

Debate Activity Kit

FIRE

"Students who wish to be effective, persuasive communicators must develop argumentation skills. This unit includes sample debate topics, instruction on how to form a powerful argument, and activities designed to help students build comfort with taking, defending, and challenging competing positions on controversial topics."

Defending Freedom of Tweets?

MEDIA ETHICS INITIATIVE

When professional football player Rashard Mendenhall tweeted about celebrations surrounding the assassination of Osama Bin Laden, he gained the ire of many Americans. This case study explores the story of Mendenhall's tweets and the freedom of speech. From the Media Ethics Initiative.

Do I Have a Right?

ICIVICS

This iCivics lesson, formatted as a game quest, will teach students about their First Amendment rights as they protect their "law clients."

Free Speech on Social Media

FREEDOM FORUM

Social media platforms are private companies, which means they can censor material posted on them according to their own rules and regulations. This primer shows major social media platforms' policies on hate speech, obscenity, misinformation and harassment. A primer from the Freedom Forum.

Free Speech and the First Amendment

FIRST AMENDMENT MUSEUM

This lesson teaches elementary schoolers about the First Amendment, focusing on Tinker v. Des Moines Independent Community School District (1969). From the First Amendment Museum.

Free Speech Essentials: 2021 Snapping Back at Snapchat

FREEDOM FORUM

This exercise from the Freedom Forum asks: Do schools have the

right to punish students for online speech when they are off campus?

Free Speech Essentials: Critical Debates

FREEDOM FORUM

This lesson plan can be used with any of the case studies in the Freedom Forum's Free Speech Essentials collection.

Free Speech in America vs. Other Countries

FIRE

"Drawing from the life and journey of NBA star Enes Kanter Freedom, this mini-lesson highlights the unique protections of the First Amendment in the United States in comparison with restrictions abroad."

The New York Times

Freedom of Expression, Online: Outlining the First Amendment for Teenagers

NEW YORK TIMES

This lesson, provided by The New York Times, teaches tudents about how the First Amendment applies online, especially to bloggers.

Freedom of Speech and Automatic Language: Examining the Pledge of Allegiance

READ WRITE THINK

Provided by Read Write Think, this instructional plan helps students to think about the meaning behind the Pledge of Allegiance and how they use their freedom of speech.

Freedom of Speech...Always Protected?

USCHS

The United States Capitol Historical Society provides this lesson plan on the history of the First Amendment and freedom of speech.

Gaming Platforms and Shocking Speech

MEDIA ETHICS INITIATIVE

This Media Ethics Initiative case study discusses the ethics of Twitch's hate-speech policies.

Handling Offensive Speech

FIRE

This lesson looks at how people cope socially and emotionally with unwelcome but protected speech, and covers ways that students can develop skills of resilience, refutation, and self-advocacy. Bonus section: Teaching Healthy Discourse.

FIRST AMENDMENT WATCH AT NEW YORK UNIVERSITY

How are NFL Protests Related to Symbolic Speech and the First Amendment?

FIRST AMENDMENT WATCH

This First Amendment Watch teacher guide discusses NFL "take a knee" protests and their relation to the First Amendment.

What Speech Is Protected by the First Amendment?

FREEDOM FORUM

This interactive guide helps determine whether certain speech is protected by the First Amendment with four simple questions. A primer from the Freedom Forum.

Learning from the headlines: Video games and the Supreme Court

STUDENT PRESS LAW CENTER

Students will use this lesson to learn about video games and why the First Amendment keeps the government from restricting access to them. From the Student Press Law Center.

Limits to Free Speech

FIRE

This video can serve as a resource on campus web pages explaining student-speech rights, teaching incoming students

about when speech crosses the line and loses First Amendment protection. This module focuses primarily on defining and providing examples of freedom of speech limitations, such as harassment, true threats, intimidation, and other unlawful conduct. From the Foundation for Individual Rights in Education.

Lookin' for Evidence

ICIVICS

Students will examine a case about band-themed T-shirts in high school and use evidence to build arguments about whether or not the T-shirts are disruptive. From iCivics.org.

Norman Rockwell, Freedom of Speech: Know It When You See It

LESSON PLANET

This lesson will have students examine the works of Norman Rockwell and analyze the First Amendment.

Offensive Speech on Campus

FIRE

The video adaptation of this lesson and the script can be used in digital or in-person program orientations to teach students tactics for responding to offensive speech and when offensive speech loses First Amendment protection. From the Foundation for Individual Rights in Education.

Postal Censorship in the World War I Era

FIRST AMENDMENT MUSEUM

Targeted for 8th-grade students, this lesson focuses on propaganda and censorship during World War I. From the First Amendment Museum.

Sacking Social Media in College Sports

MEDIA ETHICS INITIATIVE

This Media Ethics Initiative case study discusses the trend of coaches' banning their athletes from social media and whether or not this practice is ethical.

Social Media and Online Speech Rights

FIRE

This lesson in programming explains IT policies or codes of conduct. The video can also be placed on university web pages explaining student rights or IT policies. From the Foundation for Individual Rights in Education.

Social Media Censorship

FIRE

Video lesson on "legal considerations and competing interests involved in social media censorship of 'misinformation' about the coronavirus, and steps tech companies are taking to elevate information from authoritative sources."

Social Media, the Classroom and the First Amendment

KNIGHT FOUNDATION

The First Amendment Center and the John S. and James L. Knight Foundation present this guide on social media and the First Amendment for middle and high school teachers, including lesson plans, resources and more.

Speech, Power, and Censorship in American History

FIRE

"Free-speech rights have proven themselves essential in securing a fair hearing for demands for justice and equal Constitutional protection for marginalized groups and isolated, targeted individuals throughout U.S. history. This module examines the crucial role of free speech in the Abolitionist, Women's Suffrage, and Civil Rights movements."

Spotlight on Speech Codes 2022

FIRE

This annual report condenses the considerable research in FIRE's Spotlight database into an accessible picture of the state of free expression on our nation's campuses. The report surveys speech codes at America's largest and most prestigious colleges and universities, providing readers with key data on individual schools and national trends.

Stipulating Speech

ICIVICS

Students will learn about the restrictions of the First Amendment in this iCivics lesson, from Supreme Court rulings to speech codes on college campuses.

Stopping the Spread of Anti-Vax Memes

MEDIA ETHICS INITIATIVE

This case study examines anti-vax memes on Facebook and other social media platforms and whether or not the best solution is to ban them. From the Media Ethics Initiative.

Student Clothing and the First Amendment

EDUCATION WORLD

Education World offers this lesson plan on how freedom of speech and freedom of religion affect what students can wear at school.

Student Rights and the Freedom of Expression

BILL OF RIGHTS INSTITUTE

A lesson plan from the Bill of Rights Institute delving into students' free-speech rights on school grounds.

Studying Abroad, Speaking Out: How U.S. Universities Approach Expression in

Study-Abroad Programs

FIRE

Study-abroad programs have experienced extensive changes recently due to COVID-19, but while the logistics of travel are different and may remain changed in coming years, the underlying freedom of expression issues remain constant. From the Foundation for Individual Rights in Education.

Talking Across Differences

FIRE

Beyond use in digital or in-person orientations, this video adaptation can be placed on university web pages explaining student rights, or on diversity and inclusion pages, to give a fuller picture of how to embrace difficult conversations. From the Foundation for Individual Rights in Education.

Teaching Healthy Discourse

FIRE

An important way to develop student respect for freedom of speech is to teach them how to have “meaningful conversations with their peers.”

Texas v. Johnson (1989)

ICIVICS

Students will use this iCivics lesson to learn about Texas v. Johnson, the 1989 case in which the Supreme Court ruled that burning the American flag is protected by the First Amendment.

BILL of RIGHTS INSTITUTE

The Bill of Rights and Free Speech

BILL OF RIGHTS INSTITUTE

Two lessons examining why free speech is vital for self-government and how freedom of speech has been both limited and expanded. From the Bill of Rights Institute.

The Emperor's New Clothes

FIRE

What do you do when you see something absurd. Do you speak up? Working from Hans Christian Andersen's fable "The Emperor's New Clothes," "this lesson examines the importance of thinking for oneself, even if everyone else disagrees."

The First Amendment: Freedom of Expression

LESSON PLANET

Students will use this lesson to explore free expression under the First Amendment and the Constitution. From Lesson Planet.

The First Amendment: What's Fair in a Free Country

LESSON PLANET

Students will discuss examples of speech and whether or not they're protected under the First Amendment, as well as apply the First Amendment to their own lives. From Lesson Planet.

The Law and Free Speech

FIRE

This lesson "explores the landmark cases and legal reasoning behind the strong speech protections that Americans uniquely enjoy, while correcting some common misconceptions."

Scholars Under Fire Database

FIRE

This research documents the ways and reasons that scholars have faced calls for sanction; how scholars and institutional administrators have responded to different forms of targeting; and what (if any) sanctions scholars have ultimately faced. From the Foundation for Individual Rights in Education.

Three Arguments in Support of Free Speech

FIRE

From the Foundation for Individual Rights in Education, this video can serve as a resource on university web pages explaining student-speech rights.

Tinker v. Des Moines

BILL OF RIGHTS INSTITUTE

This video from the Bill of Rights Institute's Homework Help series analyzes how a student protest against the Vietnam War went all the way to the Supreme Court.

Tinker v. Des Moines (1969)

ICIVICS

This iCivics lesson teaches students about the Supreme Court decision that extended First Amendment free-speech rights to students at school, Tinker v. Des Moines.

West Virginia State Board of Education v. Barnette (1943)

ICIVICS

Students will learn about West Virginia State Board of Education v. Barnette, the 1943 Supreme Court case that determined that it was unconstitutional for schools to force students to salute the flag and recite the Pledge of Allegiance. From iCivics.org.

What (Not?) to Wear: Liberties and Limits of Clothing at School

FIRST AMENDMENT MUSEUM

High school students will explore the liberties and limits of speech and expression in schools in this First Amendment Museum lesson.

When government employees are not allowed to speak to the media

UNIVERSITY OF GEORGIA SCHOOL OF LAW

This primer covers which government employees are not allowed to speak to the news media and the First Amendment

implications of these restrictions. From the University of Georgia School of Law.

You Can't Say That in School? Allowed or Not Allowed

FREEDOM FORUM

Using laws and writings that influenced the development of the First Amendment, students "vote off" proposed amendments from the time period. From the Freedom Forum.

You Can't Say That: In My Opinion

FREEDOM FORUM

Students use their First Amendment knowledge to weigh in on a current First Amendment issue or controversy via multimedia response pieces in this Freedom Forum lesson plan.

You Can't Say That: Right to Know vs. Security Risk

FREEDOM FORUM

Students in this Freedom Forum exercise engage in a simulated high-stakes debate over a national security situation that highlights the causes and effects of tensions between journalists and government officials.

Freedom of the press

resources

‘The Press and the Civil Rights Movement’ Video Lesson

FREEDOM FORUM

This video from the Freedom Forum explores the interplay between a free press and the civil rights movement’s fight for equality.

What Is Libel? A First Amendment Analysis

FREEDOM FORUM

The Freedom Forum presents a crash course on everything you need to know about libel law.

‘Know Your Rights’ for journalists reporting on protests

UNIVERSITY OF GEORGIA SCHOOL OF LAW

This resource provides access to an information sheet for what a journalist should do while reporting on a protest. From the University of Georgia School of Law.

Ben Franklin and the First Amendment

FIRE

A major influential champion of freedom of the press during the founding and formation of the United States was Benjamin Franklin. “This lesson takes a look at two of Franklin’s works—Silence Dogood No. 8 and “On the Freedom of the Press”—in order to gain insight into his thinking” about both press freedom and freedom of speech.

FIRST AMENDMENT WATCH AT NEW YORK UNIVERSITY

Can Public Officials Block Critics from Their Social Media Accounts Consistent with the First Amendment?

FIRST AMENDMENT WATCH

Teachers can use this First Amendment Watch guide to teach about the impact on the First Amendment when public officials block critics on social media.

Do celebs have a right to a private life?

LESSON PLANET

Students will examine the First Amendment and the right to privacy in this Lesson Planet activity.

Media › Ethics › Initiative ›

Doxing and Digital Journalism

MEDIA ETHICS INITIATIVE

In this case study, readers will examine the ethics of doxing – publishing someone's private identifying information – in relation to digital journalism, focusing on HuffPost's covering of Amy Mekelburg and her far-right Twitter account. From the Media Ethics Initiative.

First Things First: Using the Newspaper to Teach the Freedoms of the First Amendment

MEDIA ETHICS INITIATIVE

Presented by Newspaper Association of America Foundation, this guide is full of activities to teach elementary, middle and high school students about the First Amendment.

Free Expression & Censorship: Banned Books

FREEDOM FORUM

This Freedom Forum lesson plan helps young students understand what it means to have the freedom to express ideas through books and drawings.

Free Press Challenges Through History: Analyzing Historical Sources

FREEDOM FORUM

Freedom of the press is much simpler in theory than in practice. In this Freedom Forum activity, students use the E.S.C.A.P.E. strategy to closely analyze a historical source, shedding light on

how freedom of the press has ignited controversy and drawing comparisons to today's debates over the role of the news media.

Freedom of Information Law (Public Records) Presentation

STUDENT PRESS LAW CENTER

This Student Press Law Center presentation teaches about freedom of information laws and their importance in journalism. It's available as a PDF, with and without notes, and as a prerecorded video.

Freedom of the Press

BILL OF RIGHTS INSTITUTE

A video overview from the Bill of Rights Institute, including landmark press-freedom Supreme Court cases.

You Can't Have Democracy Without a Free Press

NLA

This overview of press freedoms explains why government accountability is critical to a functioning democracy. From the News Leaders Association.

Freedom of the Press and Newspaper Theft on Campus

FIRE

Explores the importance of a free press and "why newspaper theft—an unfortunate incident that sometimes takes place on American college campuses—is wrong.

Freedom of the Press Clause: Hazelwood School District v. Kuhlmeier

BILL OF RIGHTS INSTITUTE

Video discussion examining this Supreme Court case in exploring how free-press protections apply to student journalism. From the Bill of Rights Institute.

Hazelwood School District v. Kuhlmeier (1988)

ICIVICS

This iCivics lesson teaches students about the Supreme Court decision that established a school principal's right to censor students' school newspaper, Hazelwood School District v. Kuhlmeier.

Journalism Tips and Lesson Plans

SCHOOLJOURNALISM.ORG

SchoolJournalism.org offers a variety of resources on the First Amendment, journalism and news literacy for teachers and students.

Know Your Rights: First Amendment and Censorship

STUDENT PRESS LAW CENTER

Students can use this Student Press Law Center primer to learn about their own First Amendment rights at school and how they're limited.

Know Your Rights: Freedom of Information

STUDENT PRESS LAW CENTER

This primer tells students what they need to know about freedom of information at both public and private colleges. From the Student Press Law Center.

Law & Ethics for Photojournalists

LESSON PLANET

Students will learn about the First Amendment's relationship to photojournalism and the ethics involved in it.

Leaks and the Media

FREEDOM FORUM

What is a leak? Is leaking illegal? Are journalists protected for publishing classified information? This interactive guide from the Freedom Forum answers a variety of questions about leaks and whistleblowing.

Learning from the headlines: World Press Freedom Day 2011

STUDENT PRESS LAW CENTER

This Student Press Law Center lesson plan, based around World Press Freedom Day, teaches about the important of the First Amendment and freedom of the press.

Resources for Students

NATIONAL COALITION AGAINST CENSORSHIP

NCAC provides many books about censorship at school and how to fight it for students.

Resources for Teachers, Parents and School Officials

NATIONAL COALITION AGAINST CENSORSHIP

NCAC provides many books about censorship at school and how to fight it for parents, teachers and school officials.

BILL of RIGHTS INSTITUTE

New York Times v. Sullivan

BILL OF RIGHTS INSTITUTE

Bill of Rights Institute lesson plan examining how this landmark 1964 Supreme Court case protected press freedom even when errors are published, as long as there is no “actual malice” in publishing them.

FREE SPEECH CENTER

Privacy

FREE SPEECH CENTER

Did you know the First Amendment protects the right of news reporters and citizen journalists to report on matters of public concern? This Free Speech Center lesson further explores news gathering, reporting and privacy and how it is protected.

Media › Ethics › Initiative ›

No Comment

MEDIA ETHICS INITIATIVE

More and more online news sites are disallowing comments. Is this an unethical decision, or is it just a necessary measure to eliminate irrelevant and uncivil comments? This Media Ethics Initiative case study tackles these questions.

Online censorship: public officials blocking citizens on social media

UNIVERSITY OF GEORGIA SCHOOL OF LAW

This resource discusses the First Amendment impacts of public officials blocking users on social media. From the University of Georgia School of Law.

Press-Freedom Presentation

STUDENT PRESS LAW CENTER

This presentation teaches about the free press rights of student journalists. Available in PDF and video formats. From the Student Press Law Center.

Press-Related Espionage Act Prosecutions

KNIGHT FOUNDATION

This interactive chart, created by the Knight First Amendment Institute at Columbia University, provides information about prosecution against whistleblowers under the Espionage Act.

Prior restraint and prior review 101

UNIVERSITY OF GEORGIA SCHOOL OF LAW

This University of Georgia School of Law primer teaches about prior restraint and what student journalists should do if censored by their school administration.

The First Amendment and student media

NEWS LEADERS ASSOCIATION

The Principal's Guide to Scholastic Journalism presents a breakdown of the First Amendment rights of student journalists. Sponsored by the News Leaders Association.

The Price of a Free Press: Is Journalism Worth Dying For?

PBS POV

This lesson plan, provided by PBS's POV, teaches students about the value of journalism and a free press using clips from the documentary film "Reportero."

How to Spot Fake News

FREEDOM FORUM

This primer from the Freedom Forum offers a few quick ways to determine whether an article is fake news.

The Role of Student Publications on Campus

FIRE

The video adaptation of this lesson and the script can be used during digital or in-person journalism-program orientations or class lectures, or as part of remarks while onboarding new student newspaper staff. From the Foundation for Individual Rights in Education.

Under Pressure: The Warning Signs of Student Press Censorship

FIRE

Too often, student journalists are expected to act as publicists rather than journalists. And when they stray from the misplaced expectations of administrators — and sometimes even their fellow students — student journalists may face consequences. From the Foundation for Individual Rights in Education.

Using the Newspaper to Teach the Five Freedoms of the First Amendment

LESSON PLANET

This unit plan features lessons that use newspaper articles and historical texts to discuss and explore the First Amendment. From Lesson Planet.

Why Burn Books?

LESSON PLANET

Students will discuss the role of books in freedom of the press and speech, as well as the reasons for and effects of censorship. From Lesson Planet.

World Press Freedom Map

FREEDOM FORUM

Use this Freedom Forum activity to explore the state of press freedoms around the world.

Media Ethics Case Studies

CENTER FOR MEDIA ENGAGEMENT, MOODY COLLEGE OF COMMUNICATION, UNIVERSITY OF TEXAS AT AUSTIN

More than 150 free case studies examine ethical issues in journalism and a variety of other media.

How to use Media Ethics Case Studies in class

CENTER FOR MEDIA ENGAGEMENT, MOODY COLLEGE OF COMMUNICATION, UNIVERSITY OF TEXAS AT AUSTIN

An overview and suggestions on using the case studies in the classroom.

Media Ethics Videos

CENTER FOR MEDIA ENGAGEMENT, MOODY COLLEGE OF COMMUNICATION, UNIVERSITY OF TEXAS AT AUSTIN

Videos from guest-speaker events at the Center for Media Engagement.

Freedom of religion

resources

3Rs & First Amendment Framework

FREEDOM FORUM

This foundational Freedom Forum module examines the three models of religious liberty in public schools: the “sacred public school, “naked public school,” and “civic public school.” It also introduces the 3Rs of religious freedom.

America's First Freedom Curriculum

FREEDOM FORUM

America's First Freedom is a supplementary unit of study created by Religious Freedom Institute to teach American high schoolers about religious freedom.

First Amendment Principles and Jefferson's 'Wall'

BILL OF RIGHTS INSTITUTE

Essay discussing Thomas Jefferson's views on a "wall of separation" between church and state. From the Bill of Rights Institute.

Freedom of Religion

FIRE

"The first right listed in the First Amendment is the freedom of religion." This unit explores what it means to have freedom from and freedom of religion through discussion of key issues such as the Lemon test and the Establishment and Free Exercise clauses.

History of Religion & Public Schools

FREEDOM FORUM

This Freedom Forum module serves as a brief historical overview of the relationship between religion and public schools. Participants will also examine how that relationship has changed over time and the impact of these issues on public schools today.

Living with Our Deepest Differences

FREEDOM FORUM

People from all different religions live and thrive in America thanks to the religious liberty protected by the First Amendment. This Freedom Forum First Amendment Center guide posted by the Religious Freedom Center provides lesson plans and resources for educators to use to teach students about religious liberty.

Religion in the Curriculum

FREEDOM FORUM

This Freedom Forum module sets out guidelines for teaching about religion in public schools. It explores how religion can be naturally incorporated into a curriculum; examines why it is important to address religion in academics; and considers the risks of ignoring or not teaching about religious traditions.

Religious Expression & Practice in Public Schools

FREEDOM FORUM

Students do not leave their religious identities behind when they go to school, and the free-exercise clause protects their rights to religious expression and practice. This Freedom Forum module examines the protections, and limitations, of the free-exercise clause for students in public schools.

Religious Liberty and the Supreme Court

BILL OF RIGHTS INSTITUTE

Lesson plan explaining "how the doctrine of incorporation broadened the application of the First Amendment," particularly in regard to religious freedom. From the Bill of Rights Institute.

Religious Liberty: Landmark Supreme Court Cases

BILL OF RIGHTS INSTITUTE

A thorough list of cases, many with lessons associated, from the Bill of Rights Institute.

Religious Liberty: The American Experiment

BILL OF RIGHTS INSTITUTE

Resources and lessons including landmark Supreme Court cases on religious liberty, from the Bill of Rights Institute.

The Constitution, the First Amendment, and Religious Liberty

BILL OF RIGHTS INSTITUTE

Essay from the Bill of Rights Institute reviewing the development of religious liberty in the U.S.

The Establishment Clause

BILL OF RIGHTS INSTITUTE

From the Bill of Rights Institute's Homework Help series, this video looks into "the proper relationship between church and state" from historical and legal perspectives.

The Establishment Clause & Public Schools

FREEDOM FORUM

The First Amendment's establishment clause prevents the government from creating any law "respecting an establishment of religion" or that privileges one religion over another. This Freedom Forum module examines the purpose and scope of the

clause, what constitutes a violation of the provision, and common issues in public schools where the establishment clause might apply.

The Establishment Clause – How Separate Are Church and State?

BILL OF RIGHTS INSTITUTE

Lesson plan from the Bill of Rights Institute teaches how the First Amendment protects religious belief.

The Great Awakening

GILDER LEHRMAN INSTITUTE OF AMERICAN HISTORY

This lesson from the Gilder Lehrman Institute of American History teaches about the Great Awakening, a series of important religious revivals in Colonial America. These revivals connect to the Colonists' desire to declare independence and the eventual writing of the First Amendment.

Towards Separation of Church and State in Gloucester

LESSON PLANET

This Lesson Planet exercise explores New England government in the 1700s, discussing the significance of various documents and their connection to freedom of religion in America.

What Is the Significance of the Free-Exercise Clause?

BILL OF RIGHTS INSTITUTE

Lesson plan explaining why this religious-freedom clause is important. From the Bill of Rights Institute.

You Can't Say That in School? The Case of Lee v. Weisman

FREEDOM FORUM

Students analyze a 1992 Supreme Court case about religion in public schools, drawing on their First Amendment knowledge to support their own conclusions about how the court should have ruled. From the Freedom Forum.

Teaching About Religion

FREEDOM FORUM

Guidelines and suggestions "to help classroom teachers meet the challenges of teaching about religion in ways that are constitutionally permissible, educationally sound and sensitive to the beliefs of students and parents."

Right of assembly

resources

Media › Ethics › Initiative ›

Free Speech and the Ethics of Protest

MEDIA ETHICS INITIATIVE

From the Media Ethics Initiative. Readers will learn about free speech and protest on college campus in this case study, focusing on Young Conservatives of Texas's 2016 protest against University of Texas's affirmative-action program.

Freedom of Assembly: National Socialist Party v. Skokie

ANNENBERG

This video examines a Supreme Court case involving a Nazi march through a mostly Jewish neighborhood in Illinois, placing the case in the context of the First Amendment freedom of peaceable assembly. From Annenberg Classroom.

Freedom of Assembly: The Right to Protest

ANNENBERG

This Annenberg Classroom lesson will focus on freedom of assembly as established in the First Amendment. Students will consider the importance of the right to assemble and protest by analyzing cases where First Amendment rights were in question.

Right to Protest

FIRE

Among the questions explored in this lesson are what constitutes a legally protected protest and what the limits are. The lesson also looks at “controversial forms of protest.”

Student Protest Then and Now

FIRE

Beyond use during digital or in-person orientations, this lesson can be used in first-year experience seminars so students can participate in discussions about the history presented and its relationship to current events on campus. This lesson can be particularly useful for teaching international students about the history of free speech on American campuses. From the Foundation for Individual Rights in Education.

The Right to Peacefully Assemble

FIRST AMENDMENT WATCH

This teacher guide covers the First Amendment right to assemble peaceably. From First Amendment Watch.

Truckers, Protests, Emergency Acts, and an American Convoy

FIRE

Exploring the meaning of protest, and its boundaries, the lesson focuses on Canadian and then American truck drivers who flooded national capitals to object to COVID restrictions and requirements. “Were they within their rights?” the lesson asks. “Did they go too far?”

Right to petition

resources

C-SPAN CLASSROOM
CREATED BY CABLE

Constitution Clips: ‘petition the government’

C-SPAN CLASSROOM

A brief video tour of the National Archives’ “Amending America” exhibit serves as a learning tool on the right of petition. Includes a video about lobbying.

Declaration of Complaints

LESSON PLANET

This Lesson Planet lesson will help students learn about the right to petition and assembly by writing their own declaration of complaints.

Freedom of Assembly & Petition lesson plan

NATIONAL CONSTITUTION CENTER

From the National Constitution Center. Students will look into two of the founding freedoms of the First Amendment and how citizens can use these rights in our democratic republic.

Let's Start a Petition lesson plan

AMERICAN BAR ASSOCIATION

This American Bar Association teaching resource "discusses the constitutional right to petition, and how petitions have been used in American history." Includes a handout.

Perseverance and the First Amendment

LESSON PLANET

Students will use this lesson to learn about the rights to petition and assembly and research some of the groups that have used them. From Lesson Planet.

Write a Petition

NATIONAL CONSTITUTION CENTER

Students will learn how to write a petition for change in this activity from the National Constitution Center.


FREE SPEECH CENTER
HOME ABOUT ENCYCLOPEDIA SPECIAL COLLECTIONS NEWS IN THE CLASSROOM DONATE
THE FIRST AMENDMENT
ENCYCLOPEDIA
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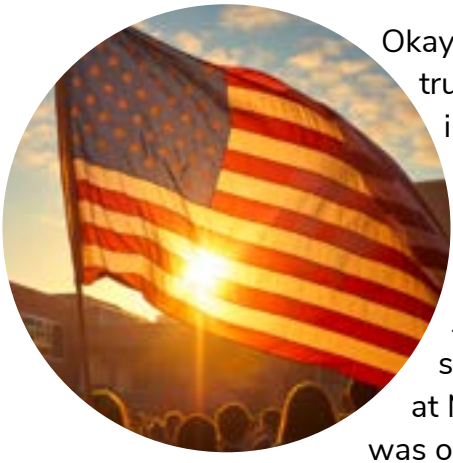
FREEDOM OF ASSEMBLY
FREEDOM OF PETITION
FREEDOM OF THE PRESS
FREEDOM OF RELIGION
Recently added Encyclopedia Articles

A user's guide to the First Amendment Encyclopedia

By Deborah Fisher, director of the Seigenthaler Chair for Excellence in First Amendment Studies

When those of us who work on the First Amendment Encyclopedia share our enthusiasm for this project, we often describe it as the most comprehensive, accessible, and timely resource on First Amendment freedoms in the world.



Okay, that sounds like bragging, but we are truly tipping our hat to CQ Press, which in 2009 published The Encyclopedia of the First Amendment, a two-volume collection that absolutely earned those accolades.

John Vile, a professor of political science and dean of the Honors College at Middle Tennessee State University, was one of the three editors of the original volumes and continues to write updates to articles and add new ones. The other two were David Hudson Jr., now a law professor at Belmont University, who has contributed to our online edition, and David Schultz, a professor of political science at Hamline University.

The original encyclopedia became a go-to reference for academics, First Amendment scholars, lawyers and educators. In time, however, the encyclopedia went out of print.

In 2016, the Seigenthaler Chair for Excellence in First Amendment Studies at Middle Tennessee State University negotiated for the rights to the original publication and then began the multi-year updating of the content while preparing it to be posted online, all at no cost to users.

In partnership with the Free Speech Center at MTSU, we have spent the past two years refining our content and presentation so we can best serve students and teachers. This guide to Teaching the First Amendment is one of those efforts.

Today the First Amendment Encyclopedia is a continuously updated website with more than 1,800 articles about the First Amendment. It includes summaries of court cases, including the most recent ones, as well as topical entries that examine issues as broad as "free speech during wartime" and as specific as the "regulation of billboards."

When a controversy arises related to a First Amendment freedom — whether it's free speech, freedom of the press, freedom of religion, freedom of assembly or freedom of petition — you can use the encyclopedia to locate easy-to-read articles such as those on landmark court rulings, major historical moments and the people involved. This can help students place the news in deeper context and within a larger historical framework.

The encyclopedia has overviews on each of the five freedoms. It also has special collections that include a timeline, essays on each of the U.S. presidents and their involvement with First Amendment issues, and book excerpts, such as one collection on censorship in the 20th Century, "From the Palmer Raids to the Patriot Act."

In addition to providing accurate and historical information related to the development of First Amendment freedoms,

the encyclopedia explores contemporary issues, such as a new crop of disputes related to social media, which the Supreme Court has likened to "the modern public square."

Reading the First Amendment Encyclopedia is like reading a history of the United States. The freedom to think and write and believe without government interference is fundamental to Americans' conception of themselves. Controversies testing those rights have arisen in every major period of American history, a study of which can provoke thought and classroom discussion about the importance of these fundamental freedoms.

How the encyclopedia is organized

Encyclopedia articles for use in your classroom can be found through a simple search on its main web page. Each article includes links to other related articles in the encyclopedia as well as external reading material, allowing you to find and compile additional material about your subject of interest.

But you also might find it useful to explore our categories of content. For example, you can explore Supreme Court cases by category.

Case categories

To give you a flavor of the way cases are grouped, following is a partial list of our case categories.

Anonymous Speech
Anti-Discrimination Laws
Anti-Trust Laws
Attorney Advertising
Billboards and Newsracks
Blasphemy and Profane Speech
Blue Laws
Book Banning
Broadcasting Regulations
Campaign Finance
Charitable Solicitation
Church Property and Governance
Civil Rights Movement
Clear and Present Danger Test
Commercial Speech
Communist Organizations and Freedom of Association
Compelled Speech
Confederate Flag
Conscientious Objection
Copyright
Corporation
Counterspeech Doctrine
Creationism
Cross Burning
Dress and Hair Regulations
Fighting Words
Flag Salute/Compelled Speech
Freedom of the Press
Gag Orders
Hate Speech
Internet and Social Media
Loyalty Oath
Movies, Video Games and Comics
Native American Religion
Picketing
Prisoners' Rights
Public Employees
Right to Receive Information
Ten Commandments
Whistleblowers
Zoning

Topic categories

You can also search by topic. Our topic categories include: Controversial Works, Documents, Events, Freedom of the Press issues, Governmental Entities and Activities, Groups and Organizations, Issues Related to Religion, Issues Related to Speech, Press, Assembly or Petition, Laws and Proposed Laws,

Categories of Laws and Proposed Laws, Legal Terms and Concepts, Media, People, and Religious Perspectives and Churches.

Inside each of these topics are articles that delve into particular issues, drawing upon history and court rulings to help a person understand the constitutional issues in play.

The largest topic category is Issues Related to Speech, Press, Assembly or Petition. It contains some of our most popular articles. To give you a flavor of the breadth of articles in this single category, I'm including a partial list here.

Abortion Protests
Academic Freedom
Access to Courtrooms
Actual Malice
Ad Hoc Balancing
Advocacy of Illegal Conduct
Affirmative Action
Alcohol Advertising
Anonymous Speech
Art Censorship
Attorney Advertising
Attorney Speech
Ballot Access
Ballot Selfies
Bar Admissions
Billboards
Birth Control
Black Lives Matter
Blacklists
Book Banning
Boycotts
Bumper Stickers
Cameras in the Courtroom
Campus Speech Codes
Captive Audience
Censorship
Central Hudson Test
Charitable Solicitation
Child Pornography
Chilling Effect
Classified Documents
Clear and Present Danger Test
Commercial Speech
Community Standards
Confederate Flag
Confederate Monuments
Confidential Sources
Congress

Loyalty Oaths

Mail

Marketplace of Ideas

Media Concentration

Membership Lists

Middle Finger Gesture

Miller Test

Misappropriation

Motion Picture Ratings

Music Censorship

Narrowly Tailored Laws

National Identification Cards

National Security

Neutral Reportage Privilege

Neutrality

Nude Dancing

Obscenity and Pornography

Online Harassment

Overbreadth

Pandering

Parades

Perjury

Pickering-Connick Test

Picketing

Pledge of Allegiance

Political Correctness

Political Deepfakes

Political Parties

Political Patronage

Preferred Pronouns

Press Access

Prior Restraint

Privacy

Profanity

Professional Speech Doctrine

Protests in Neighborhoods

Public Employees

Rainbow Crosswalks and Other Asphalt Art

Rap Music

Regulation of Political Campaigns

Reporter's Privilege

Retaliatory Arrests

Retraction

Rhetorical Hyperbole

Right to Receive Information and Ideas

Rights of Prisoners

Rights of Students

Rights of Teachers

Robo Calls

Safety Valve Theory

Satire and Parody

Secondary Effects Doctrine

SLAPP Suits

Spam

Specialty License Plates

Sports Logos and Mascots

Student Activity Fees

Substantial Disruption Test

Swatting

Symbolic Speech

Tattoos

The Woke Movement and Backlash

Time, Place and Manner Restrictions

Times Square

Tobacco Advertising

True Threats

Use of Military to Quell Protests, Civil Disturbances

Vagueness

Video Games

Voting Rights

Watts Factors

Whistleblowers

Yard Signs

Newer areas of interest

Each year, we add dozens of new articles, and we welcome new ideas from our users. In 2024, for example, we added or updated 144 articles, with new articles often touching on emerging topics such as political deepfakes created by artificial intelligence. In 2025, scholars wrote new articles on antisemitism and Zionism, executive orders and the First Amendment, DEI and Voice of America, among others.

Background

I leave you with the words of John Seigenthaler (1927–2014), an eloquent defender of civil rights, former publisher of *The Tennessean* in Nashville and founder of the Freedom Forum's First Amendment Center.

In an essay entitled "The First 45 Words" introducing the two-volume encyclopedia in 2009, he wrote:

"The words are plain, blunt and unequivocal — without literary frill or poetic flourish — a directive intended to put the natural

rights of citizens above and beyond the punitive power of the new federal government:

"Congress shall make no law . . ."

Read aloud, this opening phrase of what would become the First Amendment to the newly ratified Constitution of the United States has almost a ring of harshness in the admonition to officials of the new government. Hands off, the amendment says. Hands off religion! Hands off dissent! Let the people speak out. Let them publish critically about their elected officials, and petition to right whatever wrongs they perceive done them. Let them assemble peaceably to protest injustice. That was the message the members of the First Congress sent in 1789 as they drafted that amendment and the others that would make up the Bill of Rights. If the people of the states decided to ratify the amendments, there indeed could be a "more perfect Union."

Deborah Fisher is director of the John Seigenthaler Chair of Excellence in First Amendment Studies and editor of the online First Amendment Encyclopedia.

45 Crucial Words that Shaped, Inspired, and Continue to Define America

By John Vile, Dean of the Honors College, Middle Tennessee State University

An Historical Overview

Perhaps the most remarkable aspect of the First Amendment is that the 45 words ratified in 1791 have served us well through two and a third centuries of social change, world wars, and technological revolutions. The extraordinary path of the First Amendment:

British and Colonial Origins

The U.S. Constitution was drafted by a convention of 55 men who met in Philadelphia in the summer of 1787. After being ratified by conventions held in each of the states, it went into effect in 1789, when the new bicameral Congress began meeting and George Washington was inaugurated as the first president. The Founders had wisely provided for a constitutional amending process, and by 1791, the necessary two-thirds majorities of both houses of Congress had proposed 12 amendments, 10 of which were ratified that year by three-fourths of the state legislatures.

The first of these amendments, which are collectively known as the Bill of Rights, contains a mere 45 words, but they have been as consequential as any in the Constitution. They provide that:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The best way to understand this amendment is to realize the historical soil from which it grew. Today's United States originated from 13 colonies planted on the eastern seaboard of North America. Over time, Great Britain came to govern all 13 of these entities. Because of the distance between Britain and the Colonies, most of the Colonies had exercised substantial self-government. For example, in 1619, Virginia had an established legislature known as the House of Burgesses. A year later, settlers in Plymouth, Mass., adopted an agreement of self-government known as the Mayflower Compact even before they disembarked from their ship. British monarchs had issued charters to many of those who had founded the Colonies, and these documents operated something like the way modern constitutions work today.

Although Great Britain does not have a single written document that is known as a constitution, the English had long prided themselves on their mixed form of government combining the rule of the one, the few, and the many and on a series of documents that outlined their rights. Over time, power had largely shifted from a hereditary monarch (a king or queen), who remained an important unifying symbol for the nation, to an elected legislature known as Parliament, with a House of Commons and a House of Lords. As the power of the

Parliament and its prime minister had increased, British subjects and legal scholars had increasingly recognized its authority, or sovereignty, especially with regard to matters involving taxing and spending.

As the contest between Parliament and the monarch had progressed, the British had become especially jealous of their rights, which they relied on Parliament, where they were represented, to protect. Beginning with the Magna Carta of 1215, noblemen had insisted that the king not tax them without receiving their consent in Parliament. And if members of this body were to be elected, people needed to be informed about public affairs — which required that they be able to speak their minds, share information through print media, assemble to discuss political matters, and petition the government about their wishes. Some of these important rights were later reiterated in the English Bill of Rights of 1699.

American colonists also claimed such rights, and admired individuals who had advocated for such freedoms. They included individuals such as: the poet John Milton, who authored the Areopagitica (1644) to oppose licensing of the press; the former parliamentarian Algernon Sidney, who was executed for speaking out against the king; the philosopher John Locke, who advocated for rights in his Two Treatises on Government and his Letter Concerning Toleration; journalists John Trenchard and Thomas Gordon, who championed rights in their widely read Cato's Letters; and the one-time parliamentarian John Wilkes, who won a suit against royal abuses. Each of these men had spoken out against abuses of authority and argued for broad freedom of expression against restrictive British laws that made it illegal to criticize the monarch.

During this same period, there was increasing division in England and other parts of Europe over religious freedom. Ever since Martin Luther had initiated the Protestant Reformation in 1517,

the European nations had been split first between Roman Catholics and Protestants and then among various Protestant denominations. King Henry VIII had split the English (Anglican) Church from that of Rome, but successive monarchs had attempted to impose their own religious views and identities on the people. Although the Anglican Church remained state-supported, a series of laws extended fairly broad religious toleration toward most Protestants.

Many individuals who thought the Anglican Church retained too many characteristics of the Catholic Church sought to further purify the former, and these included the Puritans who came to America. Many of these settlers considered that they had fled England much as Moses and his people had once fled Egypt. John Winthrop, who would become an early governor of the Massachusetts Bay Colony, explained that Puritans had crossed the ocean, which some likened to the Red Sea, to establish a "city upon a hill" that would serve as a beacon of freedom to other nations. Although initially this establishment primarily involved freedom for the Puritan way, over time the concept was broadened to include others. Roger Williams, a Baptist who left Massachusetts to establish the colony of Rhode Island, was an influential proponent of the idea of separation of church and state and of "soul liberty," or freedom of conscience.

The Widening Gap that Led to Independence

In 1754, war broke out in America between Canada (colonized and ruled by France) and its Native American allies against Great Britain and her American Colonies. At the conclusion of this war in 1763, during which Britain acquired Canada, the British, who had previously imposed various trading and manufacturing restrictions on its 13 American Colonies, began to

seek other ways to force the Colonies to pay for their own defenses. The British Parliament began enacting a series of taxes including the Stamp Act of 1765, which included taxes on newspapers and on legal documents, and taxes on tea and other commodities in the Colonies. Evoking the Magna Carta, the colonists argued that because they had no representatives in Parliament, that body had no right to tax them.

Colonists, who believed that they had brought their rights as Englishmen with them to America, had established their own legal precedents that provided even greater rights than those enjoyed in Britain, with some Colonies being more progressive than others. William Penn largely founded Pennsylvania and Delaware as a haven for Quakers, who were still persecuted in England, but he extended tolerance to other religious minorities as well. Lord Baltimore founded Maryland, which adopted the Maryland Toleration Act of 1649, in large part as a haven for Roman Catholics. Roger Williams had long proclaimed that it was necessary to separate church and state. In 1735, John Peter Zenger of New York won a case brought against him for seditious libel of the governor by persuading a jury that what he had said was true at a time when truth was not in Britain a defense for libel.

American colonists prized literacy, and they were served by an increasing number of publishers of newspapers and pamphlets that reported Colonial opposition to British taxes and other perceived abuses with relative impunity. They served as a primary medium of expressing Colonial frustrations with British rule. Colonists often gathered around liberty poles and trees to discuss their grievances. Sometimes they engaged in extralegal activities, such as the harassment of British troops, which resulted in the Boston Massacre, in which British troops fired on protesters who were unhappy about an armed British presence in the city. Later, the Boston Tea Party goaded Britain

into imposing a number of restrictions on the Colonies, including closing the Port of Boston and permitting British officials to break into private homes and businesses as a way of tracking down tax evaders.

As suspicions between the two sides increased and the colonists feared that the British were seeking to disarm them, war broke out between them at Lexington and Concord, Mass., in April 1774. Colonial representatives who had assembled in their own continental Congress to seek redress of grievances and who has issued a Declaration and Resolves, in which they announced their desire to assure that "their religion, laws, and liberties may not be subverted," commissioned George Washington to lead American troops in continuing resistance to British abuses. Even so, most colonists retained their loyalty to the English King, George III, whom they petitioned to alleviate their grievances. In January 1776, Thomas Paine, a recent immigrant from England, published Common Sense, in which he argued that George's kingship had led to war and oppression and that the time for American independence from the mother country had arrived.

As the king remained unsympathetic to Colonial demands such as those in the Olive Branch Petition of July 5, 1775, and British authority began breaking down in the Colonies, the Second Continental Congress urged Colonies to adopt their own constitutions to replace British rule. These were often accompanied by bills or declarations of rights. One of the most famous and influential of these was the Virginia Declaration of Rights, which was largely authored by George Mason. Section 12 of this document declared that "freedom of the press is one of the great bulwarks of liberty, and can never be restrained but by despotic governments."

In a similar manner, it proclaimed that "religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or

violence; and therefore all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practice Christian forbearance, love, and charity toward each other."

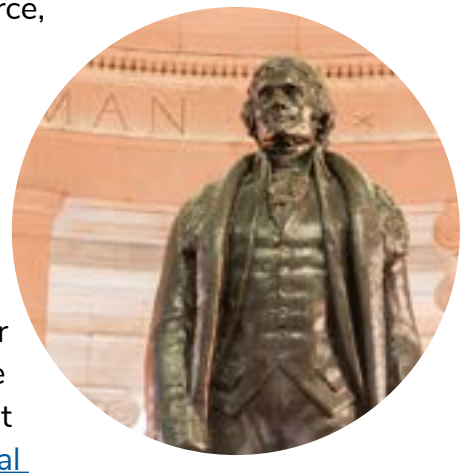
On July 2, 1776, Colonial representatives meeting in the Continental Congress in Philadelphia finally declared that they considered themselves to be free from Great Britain. Two days later, the Congress approved an amended version of the Declaration of Independence, which had largely been authored by Thomas Jefferson of Virginia. In lofty language, the document proclaimed that "all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness." The document further proclaimed that governments rested upon "the consent of the governed," and that when government failed to preserve their rights, the people had the right to establish a new government that did so. The declaration included a long list of accusations of abuse by King George III to justify independence and ended with a mutual pledge by the signatories of their lives, their fortunes, and their sacred honor to the cause of independence. War continued until the British surrendered at Yorktown, Va., in 1781, and the British acknowledged the Colonists' right to govern themselves in the Treaty of Paris in 1783.

The New Constitution

The Second Continental Congress had proposed Articles of Confederation in 1776. Although these articles were not ratified by the last state until 1781, they basically outlined how the Colonies operated in the interim and in the years immediately following.

The Second Continental Congress, which constituted the only independent branch of the government, continued to be a

one-chambered body in which states were equally represented. Although the Articles of Confederation adopted some important legislation, including the Northwest Ordinance of 1787, which commended the construction of schools as a means of encouraging "religion, morality, and knowledge," this Congress became better known for its weaknesses. Because states jealously guarded their own independence not only against Britain but also against one another, primary sovereignty remained with the states. It took the approval of two-thirds or more of the states on most important legislative matters, and amendments required unanimous state consent. Like other confederal governments, Congress could not act directly upon citizens, but could only do so, as, for example, in requesting taxes and raising troops, through requests to the states, which sometimes did not have the means or the will to comply. Congress did not have the power to control interstate commerce, which states began to tax, and the national government could not pay its debts.



These and other concerns, including state failures to secure themselves against domestic insurrections, eventually led to calls for a stronger national government. Twelve of the 13 states (all but Rhode Island) sent representatives to the Constitutional Convention of 1787, which met in Philadelphia that summer to revise and enlarge the Articles of Confederation. But, taking the lead of the Virginia delegates, who introduced a completely new plan, the representatives ended up instead adopting a much different government.

Cognizant of the dangers of a government that might, as Britain had treated the Colonies, act oppressively and undermine

individual rights, the delegates who drafted the Constitution sought to provide checks and balances through a system of separated powers. The national government was thus divided into three parts. These consisted of a bicameral (two-house) Congress, where states were represented in the House of Representatives according to population and in the Senate equally. Collectively, this body made the laws and exercised the power of the purse to appropriate and spend money and to declare war. The executive branch, which is tasked with enforcing the laws, consisted of a single president, with power to exercise a conditional veto over congressional legislation, nominate Cabinet members and judges, issue pardons, and serve as commander-in-chief of the armed forces. The judicial branch, headed by a Supreme Court, interprets the laws (known as statutory interpretation) and ascertains whether they are compliant with the Constitution (known as judicial review), and is ultimately involved in the resolution of most issues involving the First Amendment and other provisions within the Bill of Rights. States continued to exercise significant powers within a new federal system.

The new Constitution embodied numerous compromises, including those between the most populous and least populous states, between those from the North and the South, and between those who favored direct election and those who sought to temper such democracy with other considerations. Thus, the convention agreed to count a slave as three-fifths of a person for purposes of representation in the House of Representatives, settled on a complex Electoral College system to select presidents, and compromised on many other matters.

Although the entire document was designed to preserve and enhance liberty through its elaborate system of checks and balances, a number of provisions within the original Constitution were specifically designed to protect freedom of conscience and

expression. Article I, Section 6 of the Constitution thus provided in the Speech and Debate Clause that members of Congress could not be questioned outside that body for speeches they delivered there. With a sensitivity to those like Quakers who might have religious concerns about swearing, Article II, Section 1 allowed presidents either to swear or affirm their oaths of office, and in an acknowledgment of the predominant day of rest, did not count Sundays toward the 10 days allotted to presidents to decide whether to sign or veto congressional bills. Whereas British monarchs had often brought charges of treason against those who criticized them, Article III further limited prosecutions of treason only to those engaged "in levying War against them [the United States] giving them Aid and Comfort." The text of the Constitution did not mention God, and Article VI prohibited any "religious Test" as a condition for national office.

Toward the end of the convention, Virginia's George Mason was among those delegates who thought the men assembled should add a bill or declaration of rights to the document. However, most delegates were anxious to go home and said that the system of checks and balances and federalism, along with protections of various state constitutions, would be sufficient to protect individual rights, and they voted to send the document to state conventions for ratification without such an addition.

Federalist/Anti-Federalist Debates and Adoption of the Bill of Rights

Consistent with the freedoms they had come to enjoy, Federalist proponents and Anti-Federalist proponents of the new document engaged in wide-ranging debates both in print and in the state ratifying conventions. One of the greatest fears of those who questioned the new document was that it was impossible to have a free government over an area the size of the 13 states.

This argument was based in part on arguments made by the French philosopher the Baron de Montesquieu, a defender of separation of powers who had, however, argued that large nations fostered despotic rule.

One of the key publications in favor of the new Constitution was a series of essays known as The Federalist Papers, which were first published in a New York newspaper before being subsequently released in book form. Written by Alexander Hamilton, James Madison, and John Jay under the pen name of Publius, these essays explained what they perceived to be the benefits of the new system.

In Federalist No. 10, James Madison argued that the biggest problem government faced was that of factions, or interest groups that would seek their own interests rather than those of the public as a whole. He argued that larger nations would have more factions, thus making it unlikely that any single faction would dominate and oppress others. He also argued that the system of representative government, rather than a pure democracy, would temper factionalism as the elected representatives would have to compromise on behalf of the common good.

An arguably more formidable issue was the public's concern that the absence of a bill of rights signaled inadequate concern for protecting cherished personal rights, including freedom of religion, speech, press, and related rights. Initially, Federalists argued that such a bill was unnecessary both because the entire Constitution was expected to establish government structures that would protect rights and because the Constitution had not entrusted the national government with enumerated power to

suppress individual rights. Moreover, such "parchment barriers" had often proven ineffective at the state level.

Although Jefferson, who was serving as a diplomat in France and had not attended the convention, favored adoption of a new constitution, he shared Anti-Federalist concerns about the absence of a bill of rights. As the author of the Virginia Statute for Religious Freedom, he was particularly concerned about maintaining separation of church and state. In a series of letters to his friend and fellow Virginian James Madison, who had been so influential at the Constitutional Convention of 1787 that he is often called the Father of the Constitution, Jefferson argued that even if the provisions of such a bill of rights were not always obeyed, they would provide additional security. Moreover, he correctly anticipated that individuals whose rights were violated could bring cases to courts to seek vindication. In time, Madison and other Federalists agreed to work for the adoption of such a bill of rights once the Constitution was ratified, and President George Washington endorsed this addition in his First Inaugural Address.

Elected as a member of the first House of Representatives, Madison successfully led the fight for the Bill of Rights in the first Congress. He drew from existing declarations of rights as well as from suggestions that had been offered in various state ratifying conventions. He had actually been responsible for introducing the phrase "free exercise" into the Virginia Declaration of Rights, and he had both authored the Memorial and Remonstrance opposing state funding of religious education and helped get Jefferson's Virginia Statute for Religious Freedom adopted.

The First Amendment is arguably one of the most important amendments to the Constitution both because it protects the right of the people to worship as they please without state sponsorship of a particular religion and because the other

freedoms it guarantees are essential to democratic-republican (representative) government. Without the ability to discuss, to print, to assemble peaceably, and to petition their governments, citizens would be unable to vote intelligently and call governments into account. Such rights of free expression also allow for individual personal development and facilitate academic, scientific, and other forms of progress.

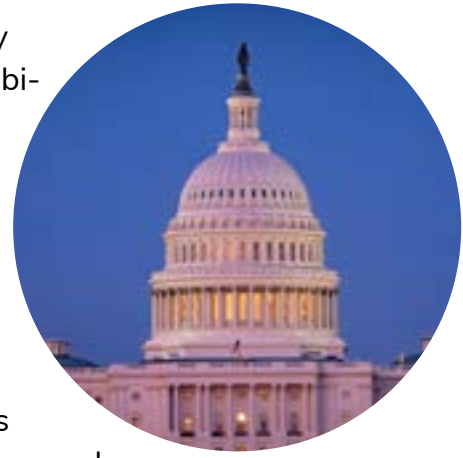
Other provisions in the first 10 amendments that constitute the Bill of Rights dealt primarily with the rights of the people to be secure in their houses against unlawful government intrusion, as well as the rights of individuals accused of crimes and even the rights of those convicted of crimes against cruel and unusual punishment. The Ninth Amendment indicated that the people retained the rights not delegated to the new government, and the Tenth Amendment affirmed that the powers "not delegated to the United States by the Constitution nor prohibited by it to the States" were reserved to the states and the people.

Early Years of the First Amendment

It is important to recall that most states had their own bills or declarations of rights. The First Amendment accordingly was aimed at limiting the powers of the national government in general and of Congress in particular. Its opening words — "Congress shall make no law" — thus specifically mention that body. In *Barron v. Baltimore* (1833), the Supreme Court headed by Chief Justice John Marshall indicated that the takings clause of the Fifth Amendment, as well as those in other parts of the Bill of Rights, applied only to the national government. Individuals would have to look to their state constitutions to protect themselves from repressive actions by their state governments.

Whereas many state declarations of rights had been phrased primarily in terms of aspirations, the more emphatic statements

in the First Amendment and other amendments were phrased, much like the Ten Commandments, as prohibitions. As Jefferson had hoped, these became enforceable in Court. The U.S. Supreme Court alone, in its role as an appeals Court overseeing lower court decisions, has issued hundreds of decisions fleshing out the meaning of these provisions over time.



Such decisions have been necessary because although many of the prohibitions in the First Amendment are phrased as absolutes (as in "Congress shall make no law," such language requires interpretation. It is clear that the First Amendment establishment clause prohibits a national church and that the free-exercise clause provides for religious freedom, but what qualifies as religion, and to what degree can, or should, the government support or acknowledge religion in general? What exactly are "freedom of speech" and "freedom of the press"? Are these rights absolute? How, if at all, do they apply during special circumstances such as times of war or other crises?

An early test of such issues occurred in during the presidency of John Adams. Adams, a member of the Federalist Party, was attempting to avert war with France. That nation had many friends and supporters among the Democratic-Republican Party who admired its support during the Revolutionary War and the ideals of the French Revolution and thought the U.S. should accordingly adopt a more friendly posture toward France. Federalists feared that this support would endanger the U.S. if it went to war with France.

Noting that many immigrants were joining the Democratic-Republican Party, the Federalist Congress adopted the Alien and

Sedition Acts of 1798, which were designed to make it harder for immigrants to become citizens and to punish individuals who spoke out against the government and its Federalist leaders. The Sedition Act thus made it illegal to "write, print, utter or publish … 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 the intent to bring them, or either of them, into contempt or disrepute." The law was based on the assumption that the government had the right to suppress seditious speech in times of national peril, and it resulted in prosecutions against and the imprisonment of prominent journalists and other government critics throughout the nation.

Jefferson (then the vice president) and Madison believed that these laws violated the First Amendment and anonymously authored the Virginia and Kentucky Resolutions adopted respectively by those two state legislatures, arguing that the sedition laws were unconstitutional and should be resisted. Most federal judges, however, remained loyal to the Federalist Party and ruled against them, and a case testing the laws' constitutionality did not reach the Supreme Court.

Jefferson won the presidential election of 1800 against Adams, the Sedition Act expired, and Jefferson pardoned those who had been prosecuted under it. Still, its passage revealed that freedoms of speech and press could sometimes be imperiled during national crises. Because early congresses adopted relatively few laws, and states regulated most individual behaviors, the history of Supreme Court decisions regarding the First Amendment was relatively silent for its first 100 years.

Although the First Amendment had prohibited the establishment of a national religion, some states continued to collect tax money and to extend certain benefits to established churches, up to 1833 when Massachusetts became the last state to disestablish

its Congregational Church. Courts generally upheld state laws limiting or preventing commerce on the Sabbath (Americans engaged in an extended debate from 1810 to 1830 as to whether federal post offices should deliver Sunday mail), punishing blasphemy, or sacrilege (which was considered as a breach of the peace, but is today protected by the First Amendment), and regulating materials considered to be lewd or profane. Although neither the United States nor any individual states adopted licensing laws that would have permitted prior restraint of speech or publication, they did continue to allow prosecutions for libel, albeit with the understanding that truth was an appropriate defense (as it had not been in Britain) against such charges.

Moreover, as public schools developed, they tended to reflect the dominant Protestant culture of the larger nation. It was common for public schools to have Bible readings in the schools. Most Protestants of the day read from the King James Version of the Bible, which Roman Catholics, many of whom were immigrants, did not accept. Catholics believed that Bibles should contain notes explaining how the Church interpreted the text. In a number of cities conflicts over the reading of the Bible in public schools, often fueled by anti-Catholic and anti-immigrant sentiments, led to riots that sometimes resulted in the loss of life and property.

Roman Catholics, in their opposition to the King James Version, in turn created parochial schools for their children, leading to further conflicts, which Protestants generally won, against public funding of such schools. Toward the end of the 19th century, many states adopted so-called Blaine amendments (named after a congressional sponsor), which specifically forbade such aid.

In the meantime, regarding the issue of slavery, rising anti-abolitionist sentiments led to increased turmoil. In a number of cases, mobs destroyed the printing presses of prominent abolitionists.

Such a mob attacked the press of James G. Birney in Ohio, and another killed the abolitionist editor Elijah Lovejoy in Illinois in 1837. Still another riot in 1838 resulted in the destruction of Pennsylvania Hall, which had been built as a forum for free speech on such topics as abolitionism and women's rights.

From 1836 to 1844, Congress tabled all anti-slavery petitions, in apparent violation of the First Amendment right to petition, and in the face of opposition from former President John Quincy Adams, who had been elected to Congress. President Andrew Jackson allowed the Post Office to censor anti-slavery literature that was directed at slaves, most of whom were forbidden by state law from being taught to read.

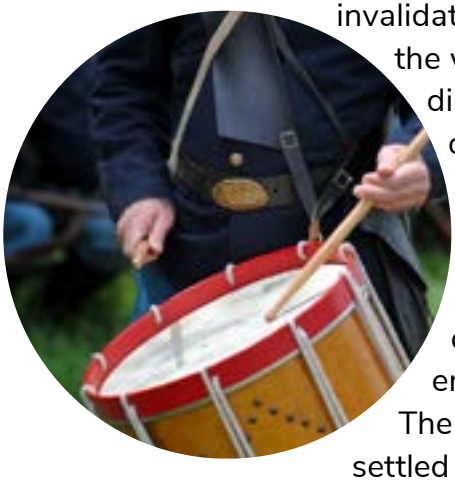
Civil War, Slavery, Polygamy, and the 14th Amendment

Just as the quasi-war with France had helped spark the Alien and Sedition Acts, the Civil War (1861-1865) brought new challenges to those seeking to exercise their freedoms of speech and press to criticize President Abraham Lincoln's conduct of the war.

Over protests by Chief Justice Roger B. Taney, President Lincoln suspended the writ of habeas corpus, which enabled the government to jail individuals who supported the Rebel cause without formal charges. The government further imprisoned individuals who had employed "treasonable language," had demonstrated "disloyalty" that threatened the Union, or had encouraged desertion.

Although the government was primarily concerned about the publication of information that might affect battles by revealing the location of troops or other strategic information, it occasionally prosecuted individuals who it thought were encouraging sedition.

In Ex parte Vallandigham (1863), the Supreme Court upheld the conviction of a former Ohio congressman who had opposed the war, although Lincoln subsequently commuted his sentence. *In Ex Parte Milligan* (1866), however, the Court invalidated a sentence handed down during the war by a military court that it decided did not have the power to try civilians outside war zones.



On occasions prompted by denominational divisions due to slavery, courts were sometimes called to decide which church or group was entitled to denominational property. The Supreme Court fairly consistently settled such disputes by adhering to the rules of the denomination in question (the rules often varied depending on whether power rested with individual congregations or within a denominational hierarchy), without inquiring into the validity of church doctrines. One such case was Watson v. Jones (1871).

In Church of the Holy Trinity v. United States (1892), Justice David J. Brewer ruled that a law designed to prohibit the hiring of foreign laborers in the United States did not apply to a member of the clergy from England whom an American church had hired to preach. Largely relying on the free-exercise clause, Brewer declared that the United States is a "Christian nation." Although this phrase is often quoted by advocates of Christian nationalism, Brewer appeared to intend to emphasize the unlikelihood that a nation with so many individuals who identified as Christians would have intended for the law to apply to this case rather than overturning traditional understandings that the First Amendment forbade a national established church.

The Constitution of the Confederate States of America, which had recognized slavery, had also referenced "the favor and guidance of Almighty God." This phrase lent some support for the movement, most prominent in the 1860s and 1870s, for a Christian Amendment recognizing God in the U.S. Constitution, but it was never adopted.

The division between Northern states, which had outlawed slavery and hoped for its eventual demise, and Southern states that wanted to preserve and expand slavery, was a major cause of the Civil War. In the *Dred Scott v. Sandford* decision of 1857, before the war had begun, the Supreme Court, in a decision authored by Chief Justice Roger B. Taney, had decided that black people were not, and could not become, U.S. citizens. To settle this issue, the nation adopted three consequential amendments after the Union victory that ended the war.

The 13th Amendment (1865) abolished involuntary servitude. The 14th Amendment (1868) reversed *Dred Scott* and declared that "all persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside." It further sought to prevent states from abridging "the privileges or immunities" of such citizens, from depriving any person "of life, liberty, or property, without due process of law" or from denying "to any person within its jurisdiction the equal protections of the laws." Although the 15th Amendment (1870) was not effectively enforced until almost 100 years later, it further attempted to prevent discrimination in voting on the basis of "race, color, or previous condition of servitude." The 19th Amendment, which prohibited discrimination on the basis of sex, was not adopted until 1920, more than 70 years after participants in the Seneca Falls Convention of 1848 in New York had called for women's suffrage.

Whereas the First Amendment had limited Congress and the national government, the 14th Amendment sought to limit the

power of the states. Congressional debates over the 14th Amendment were particularly intense. Some of the primary sponsors of the amendment, most notably Congressman John Bingham of Ohio, knew about the 1833 Supreme Court decision in *Barron v. Baltimore* limiting the application of Bill of Rights to actions of the national government, and hoped and believed that the adoption of this amendment would overturn this understanding and extend similar protections against actions of the states.

There was some question as to whether the Court should use the privileges-and-immunities clause, the equal-protection, or the due-process clause to do so, but early Supreme Court decisions limited the application of the equal-protection clause to cases of state (as opposed to private) action in the Civil Rights Cases of 1883 and limited the privileges and immunities clause in the Slaughterhouse Cases (1873). During this same time period, courts were increasingly applying the due-process clause to limit government interferences with laissez faire economics. In time, this due-process clause became the vehicle through which the Courts would gradually incorporate all the provisions all of the First Amendment, and most of the provisions in the Bill of Rights, to the states.

The end of the Civil War brought an end to slavery in the United States but renewed concern about polygamy, which was being practiced by members of the Church of Jesus Christ of Latter-Day Saints, better known as the Mormons, who had migrated to Utah where they had established their headquarters. In Reynolds v. United States (1879), the Supreme Court ruled that although the First Amendment upheld the right of individuals to believe (and typically to advocate) as they wished, it did not protect religious practices that the government considered to be detrimental to family life. This distinction between near-absolute protection for belief but more limited protection for variant religious practices remains a part of U.S. law. Mormons

renounced the practice of polygamy, and, in 1896, the U.S. admitted Utah as a state.

World Wars I and II and the Cold War

Just as the quasi-war with France and the Civil War had sometimes led to laws suppressing First Amendment freedoms, so did the two world wars and the subsequent Cold War in the 20th century.

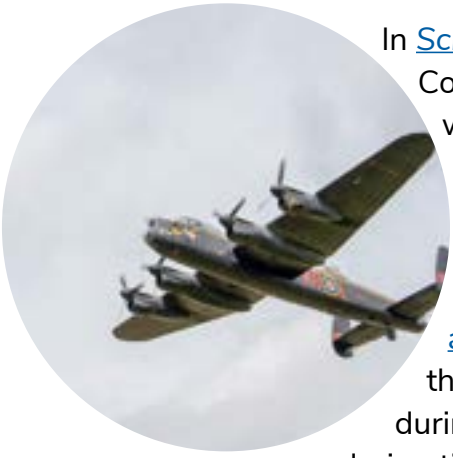
When the U.S. entered World War I in 1917 in reaction to German U-Boat (submarine) attacks on American shipping, Woodrow Wilson, who had through his first administration avoided war, actively worked to squelch dissent against the war. Despite his reputation for progressivism, he racially resegregated most government offices and had largely opposed contemporary efforts to secure women's suffrage.

Wilson's actions, and the fear of anarchists (some of whose members had committed acts of domestic terrorism), of German authoritarianism, and of communism, which had replaced the Tsarist government in Russia, led to increased fears and ultimately to the first Red Scare (1917-1920), which resulted in increased repression. A second Red Scare, associated with McCarthyism, occurred during the 1950s as Sen. Joseph McCarthy of Wisconsin and others conducted congressional investigations that stirred fears that communists had infiltrated key agencies of the U.S. government.

Congress adopted the Espionage Act of 1917 and the Sedition Act of 1918 to squelch dissent, some of which had previously been understood to be protected by the First Amendment, even as Attorney General A. Mitchell Palmer raided the headquarters of radical organizations and engaged in mass arrests. For the first time in its history, the Supreme Court began hearing a

substantial number of cases involving the First Amendment. Those under the Espionage and Sedition Acts fell directly under that amendment, whereas those involving similar state laws, beginning in 1925, were subsumed under the due-process clause of the 14th Amendment.

In *Debs v. United States* (1919), the Supreme Court upheld the conviction of socialist Eugene Debs under the Sedition Act of 1918 for a speech he had given in support of fellow socialists convicted under the same act. Justice Oliver Wendell Holmes Jr. wrote the decision for a unanimous Court.



In *Schenck v. United States* (1919) the Court upheld a conviction of socialists who had distributed literature opposing the draft as a violation of the Espionage Act. In rejecting the idea that freedom of speech was absolute, Justice Holmes formulated the clear and present danger test, which held that speech that would be permissible during times of peace could be regulated during times of war when such speech posed a clear and present danger that governments had the right to prevent. He cited the example of somebody causing a panic by falsely shouting fire in a crowded theater.

In *Abrams v. United States* (1919), however, Holmes dissented when the Court used the Espionage Act of 1917 to uphold the conviction of Russian immigrants who opposed U.S. intervention in the Russian civil war by distributing leaflets. Believing that the leaflets had little impact, Holmes argued that the First Amendment protected what he called the "free trade in ideas" (sometimes also called the marketplace of ideas), which, in turn, reflected the views of the English philosopher John Stuart Mill that exposure to even mistaken ideas could lead to greater truths.

In *Gitlow v. New York* (1925), the Supreme Court upheld the conviction of socialist Benjamin Gitlow under the New York Criminal Anarchy Law for the publication of the Left-Wing Manifesto, which advocated eventual overthrow of governments through a proletariat revolution. The Court majority applied the bad-tendency test rather than the clear and present danger test. Even though the publication seemed to pose little immediate danger, its tendency was deemed to undermine government. Justices Holmes and Louis Brandeis both dissented in this case.

Despite its immediate outcome, however, Gitlow is best known for stating that it considered that the First Amendment protections for freedom of speech and press apply to the states through the due-process clause of the 14th Amendment. This view initiated the previously mentioned process that would eventually apply all the provisions of the First Amendment, and most other provisions of the Bill of Rights, not only to federal but also to state legislation.

Although in *Whitney v. California* (1927) the Supreme Court upheld the conviction of Charlotte Whitney under a similar California Criminal Syndicalism Act of 1919 for assisting the establishing of the Communist Labor Party, the more enduring concurring opinion by Justice Brandeis has been quoted long after the Court later repudiated the majority decision. Brandeis observed that: "Fear of serious injury cannot alone justify suppression of free speech and assembly. Men feared witches and burnt women. It is the function of speech to free men from the bondage of irrational fears. To justify suppression of free speech, there must be reasonable ground to fear that serious evil will result if free speech is practiced." Noting that even to advocate violating laws "is not a justification for denying free speech where the advocacy falls short of incitement and there is nothing to indicate the advocacy would be immediately acted on," Brandeis observed: "Those who won our independence by

revolution were not cowards. They did not fear political change. They did not exalt order at the cost of liberty."

The Court largely ignored this injunction when in *Dennis v. United States* (1951) it upheld the Smith Act, which Congress had enacted to criminalize the organizers of the U.S. Communist Party by evoking the "gravity of the evil" that the law had been designed to prevent. The Court later modified this decision in *Yates v. United States* (1957), which limited the application of the Smith Act to those who had originally organized the U.S. Communist Party. Although the Court permitted Congress to continue investigations of communists and others, it also extended First Amendment rights of freedom of association in subsequent cases.

In *Brandenburg v. Ohio* (1969), the Court significantly modified free-speech decisions along the lines suggested by Brandeis. In striking down the conviction of a member of the Ku Klux Klan for incendiary remarks he had made to his followers at an isolated rally, it decided that it would accept speech that was not directed to the commission of "imminent [violent] lawless action."

The primary transgression of the United States against minorities during World War II went far beyond the suppression of freedom of speech. After the Japanese attack on Pearl Harbor led to U.S. entry into the war, there were fears that Japanese-Americans, who were concentrated in Hawaii and on the West Coast and who sometimes had dual citizenship, might ally with America's enemies. President Franklin D. Roosevelt, who sought to contrast U.S. freedom with fascism, and had listed freedom of speech and expression and freedom to worship among the Four Freedoms Americans most treasured (the others were freedom from want and freedom from fear), issued an executive order that herded Japanese-Americans into detention camps throughout most of the war, in a decision that the Supreme Court upheld in *Korematsu v. United States* (1944), but which is now regarded as contrary to constitutional ideals.

Modern Subsidiary Principles

As the Supreme Court has, with the incorporation of the First Amendment into the due-process clause of the 14th Amendment, rendered many more decisions, it has generally recognized the rights in the First Amendment to be fundamental rights that are especially important to the functioning of democratic-republican government. It has accordingly developed a number of overlapping principles and standards that it routinely applies to cases involving freedom of expression.

The Court formulated the overbreadth doctrine to strike down laws that sweep so broadly that they prohibit protected as well as unprotected speech. In similar fashion, the Court is wary of laws that are phrased in such a fashion as to have a "chilling" effect on free expression. It is particularly wary of the related "vice of vagueness." It routinely insists that the government employ the "least-restrictive means" necessary to accomplish its objectives. In similar fashion, it insists that laws that affect freedoms of expression be "narrowly tailored" to achieve such objectives. As discussed later in this essay, it allows for reasonable "time, place, and manner" restrictions on speech while attempting to assure that the restrictions are "content neutral" and avoid "viewpoint discrimination."

Religion in Public Schools

One response to the Cold War against the Soviet Union, which was led by communist atheists, was for the United States to emphasize its own religious heritage. In 1954, Congress designated the words "In God We Trust," which had previously been displayed on American currency, as the national motto. In 1956, Congress further voted to add the words "under God" to the Pledge of Allegiance to the American flag. The newly

established National Prayer Breakfast brought politicians in contact with members of the clergy.

At the same time, America was becoming more religiously diverse. Although James Madison had praised diversity as a way to keep any religion from dominating, such diversity could lead to increasing conflicts in public settings. One example originated during World War II, when children who were Jehovah's Witnesses were expelled from public school for refusing to salute the U.S. flag, a practice they considered to be a form of idolatry. The Supreme Court had upheld this action in the case of *Minersville School District v. Gobitis* (1940), which resulted in widespread acts of violence against the Witnesses, who were also despised because they refused to participate in combat on behalf of worldly governments. The Court reversed course in *West Virginia State Board of Education v. Barnette* (1943), creating a strong precedent against compelled speech. In one of his most notable opinions, Justice Robert H. Jackson inspiringly observed that "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in matters of politics, nationalism, religion or other matters of opinion or force citizens to confess by word their faith therein."

The flag-salute cases involved the First Amendment freedoms of speech and free exercise of religion. Soon thereafter, the Supreme Court was faced with the degree to which states could permissibly provide aid to parochial schools without violating the establishment clause of the First Amendment. Although Justice Hugo Black's decision in *Everson v. Board of*

Education (1947) allowed for a locality to provide bus transportation for students who attended such schools, he wrote an opinion that stressed strict separation of church and state and precluded most forms of direct state aid to parochial schools. Drawing from Madison's and Jefferson's efforts to disestablish the official church in Virginia, and from a letter that Jefferson sent in 1802 to the Danbury Baptist Association in which he referred to a "wall of separation of church and state," Black's rhetoric was emphatic:

> *The 'establishment of religion' clause of the First Amendment means at least this: neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance. No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called or whatever form they may adopt to teach or practice religion. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organization or groups, and vice versa. In the words of Thomas Jefferson, the clause against the establishment of religion by law was intended to erect "a wall of separation between church and state."*

Over time, the modern Court has given more emphasis to Black's view that states must be "neutral" with respect to religion, and has permitted state funding of secular textbooks and other supplies. In some cases, for example Carson v. Makin (2022), it has also permitted laws that extend tax credits, vouchers, or tuition payments to parents who choose to send

their children to parochial schools, a right that the Court had affirmed in *Pierce v. Society of Sisters* (1925).

Consistent with educational practices that had provoked controversy in the 19th century, many 20th century public schools allowed for nondenominational prayer and Bible reading. In *Engel v. Vitale* (1962), the Supreme Court struck down the practice of a state-approved public prayer to be said each day in public schools. A year later, in *Abington v. Schempp,* the Court further invalidated the practice of daily Bible reading or other devotional exercises in public schools in a ruling similar to a decision in 1872 by the Ohio Supreme Court in *Board of Education of the City of Cincinnati v. Minor.* Despite numerous attempts to overturn *Engel* and *Abington*, they remain law. *Lee v. Weisman* (1992) extended these decisions to cover prayer at public school graduations, and *Sante Fe Independent School District v. Doe* (2000) extended this decision to cover public prayer at football games. However, in *Kennedy v. Bremerton School District* (2022), the Court upheld the right of a high school coach to offer a prayer on the football field after a game, as long as no students were forced to participate.

For many years, the Supreme Court applied a test for establishment-clause violations known as the Lemon Test, because it was first fully articulated in the case of *Lemon v. Kurtzman* (1971). The test required that, to be constitutional, a law must have a clear secular (nonreligious) purpose, have a "primary (major) effect" that neither advanced nor penalized religion and did not promote an "excessive entanglement" between church and state. In recent years, however, a majority of the Court has abandoned this test to put greater emphasis on historical practice. It has, for example, in *Marsh v. Chambers* (1983) and *Town of Greece v. Galloway* (2014), upheld the long-standing practice of starting legislative and other public meetings with prayer, decided that the words "In God We Trust" can continue on U.S. coins, and the like.

In other cases, courts have allowed public schools to rent space to religious groups during non-school hours if it is also open to secular groups. Similarly, the courts have allowed voluntary religious groups to meet on school campuses that allow similar privileges for non-religious organizations. Indeed, in the Equal Access Act of 1984, Congress provided that public schools that did not allow students to hold meetings because of the "religious, political philosophical, or other content of the speech at such meetings" could lose federal funding. The Supreme Court upheld this law in *Board of Education of the Westside Community Schools v. Mergens* (1990). In *Widmar v. Vincent* (1981), the Court struck down a regulation at the University of Missouri at Kansas City that would have excluded religious groups from the use of its buildings.

Religion and Generally Applicable Laws

As the 19th century cases dealing with polygamy indicated, laws sometimes used the belief-action dichotomy to distinguish one's right to believe certain doctrines from the right to practice them. Similar issues have arisen in the 20th and 21st centuries. In many cases, courts have applied "strict scrutiny" to laws that impinge on religious practices. In such cases, it requires a government to show a "compelling state interest" when laws of general applicability fall with particular force on individuals with certain religious beliefs. Thus, in *Sherbert v. Verner* (1963), the Court ruled that a state could not deny unemployment benefits to a Seventh-day Adventist who had lost her job because it required her to work on Saturdays, which her church held as sinful.

The Supreme Court reversed course, however, in the case of *Employment Division, Department of Human Resources of Oregon v. Smith* (1990). In that case, it upheld a state law that resulted in the denial of unemployment benefits to two drug-rehabilitation counselors who had ingested peyote as part of the

practices of their Native American Church. Writing for the Court, Justice Antonin Scalia decided to apply the valid secular-policy test, which would uphold penalties for the violation of general criminal laws as long as they were neutrally applied to believers and nonbelievers. In similar fashion, in *Lyng v. Northwest Indian Cemetery Protective Association* (1988), the Court ruled that the free-exercise clause did not prevent the federal government from constructing a road through a portion of a national forest that Native Americans considered to be sacred.

These decisions stirred considerable controversy, after which Congress adopted the Religious Freedom Restoration Act (RFRA) of 1993, in an attempt to get the Court to return to its earlier strict-scrutiny standard in dealing with laws that had a disparate impact on religious practices. Although the Supreme Court ruled in *City of Boerne v. Flores* (1997) that the RFRA law exceeded congressional powers over the states, it has applied this and the subsequent Religious Land-Use and Institutionalized Persons Act (RLUIPA) of 2000 to individuals in federal custody. In as related vein, in *Burwell v. Hobby Lobby Stores, Inc.* (2004), it exempted closely held for-profit corporations from having to provide birth-control coverage under the Patient Protection and Affordable Care Act of 2010, when the owners objected to such coverage because of their religious convictions.

Religious Displays

In recent years, the constitutionality of religious displays on government property or in public schools has proven to be contentious. In *Lynch v. Donnelly* (1984), the Court upheld the presence of a religious creche in a Christmas display on public property, but it did so largely on the basis that this creche was in the midst of a number of other holiday symbols that were nonreligious — a distinction sometimes called the “reindeer rule.”

By contrast, the Court has sometimes struck down a solitary creche, a cross, or other symbols that appear to endorse Christianity over other religions. The Court has a mixed record on crosses on public property that are designed to commemorate those who have died in defense of the nation, with its decision in *American Legion v. American Humanist Association* (2019) upholding a cross in Bladensburg, Md., that was constructed to honor World War I dead, against charges that it violated the establishment clause.

In *Stone v. Graham* (1980), the Supreme Court invalidated a Kentucky law that required the posting of the Ten Commandments in every public school classroom. In 2001, the Alabama Supreme Court ordered the removal of a 5,280-pound monument that Alabama State Supreme Court Justice Roy Moore had installed in the lobby of the Judicial Building where he had presided.

Louisiana recently adopted a law similar to Kentucky's that required the posting of the Ten Commandments in school classrooms that will likely test whether the U.S. Supreme Court continues to adhere to its earlier position. In similar fashion, the Court will probably also have to decide on the constitutionality of Oklahoma's recent attempt to reintroduce biblical teachings in public school classrooms and another that would extend state aid to religious charter schools that teach religious doctrines.

Other Issues of Symbolic Speech

On the surface, the idea of freedom of speech is relatively straightforward, but individuals often communicate other than through spoken or written words. Waving or burning a flag, getting a tattoo, wearing a T-shirt or jacket with a distinctive message, or even making an obscene hand gesture are but a few of the ways in which individuals may convey their thoughts and emotions through symbolic speech.

In recent years, courts have frequently expanded the idea of freedom of speech to include such nonverbal expressions. The roots of such decisions go at least as far back as *Stromberg v. California* (1931), in which Chief Justice Charles Evans Hughes upheld the right to display a red flag that symbolized communism. More recently a case emerged from the classroom, after some middle school students who decided to wear black armbands in protest against American involvement in the Vietnam War were suspended from their school in Des Moines, Iowa, by administrators who feared that such protests would have a disruptive effect.

When the case got to the Supreme Court, it decided by a 7-2 majority in *Tinker v. Des Moines Independent Community School District* (1969) that such expressions were protected by the First Amendment. In an important decision for student rights, Justice Abe Fortas announced that it "can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." Fortas pointed out that there was no evidence that the armband protests had substantially disrupted school activities. By contrast, Justice Hugo Black, who had long been an absolutist upholding most exercises of freedom of speech, dissented on the basis that the word "speech" did not technically include such nonverbal communication, and perhaps that school students had more-limited rights than adults.

Moreover, a year earlier, the Court in *United States v. O'Brien* upheld the Draft Card Mutilation Act of 1965, which prohibited knowingly burning or destroying draft cards. In this case, the Court found that the cards were actually government property and were essential to maintaining the Selective Service System, which was in turn tied to national defense. By contrast, in *Cohen v. California* (1971), the Supreme Court dismissed a conviction of a man who wore a jacket with a profane message

disparaging the draft to a courthouse. However offensive some observers might find the words to be, the Court observed that they could always avert their eyes.

Few symbols resonate more emotionally with many Americans than the U.S. flag. The intensity of the issue was reflected in the 5-4 decision in *Texas v. Johnson* (1989), in which the Supreme Court struck down a state law and upheld the right of an individual to burn an American flag outside the 1984 Republican National Convention in protest of President Ronald Reagan's policies. After Congress adopted a new federal law penalizing flag-burning, the Court reaffirmed the Texas decision that flag-burning was a form of protected speech in a similar case in *United States v. Eichman* the following year.

The act of burning a cross has often been used by the Ku Klux Klan and other groups as a way of intimidating African-Americans. In *Virginia v. Black* (2003), the Court ruled that individuals who burned a cross (as, for example, in someone's yard) with the specific purpose of intimating someone could be prosecuted, but one could not assume that burning a cross alone was done with such an intention.

Commercial Speech and Campaign Contributions and Spending

Although the freedoms of speech and press are vital to many businesses, it is probably more common to associate free speech and press with political and religious speech. Because of this, courts initially offered less support to such commercial speech than it did to political speech. Indeed, in *Valentine v. Chrestensen* (1942), the Court upheld the conviction of a man distributing flyers advertising his business on the basis that "the Constitution imposes no ... restraint as respects purely commercial advertising," and said state legislatures should be the ones to balance the competing interests of businesses and the public.

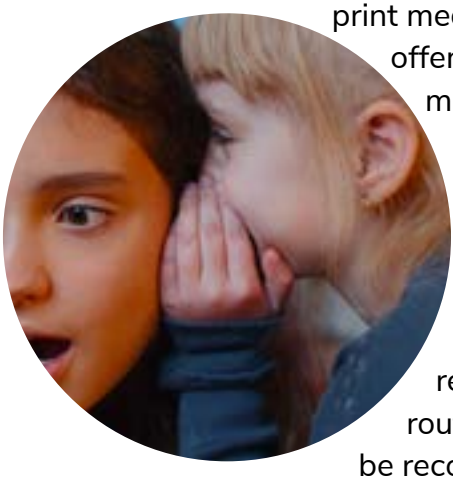
In recent years, however, the Supreme Court has expanded protections in this area. In *Central Hudson Gas and Electric Corp. v. Public Service Commission* (1980), the Court ruled that unless the government could show that speech is either fraudulent or illegal, it must show a "substantial government interest" in regulating such speech, demonstrate how a regulation advances such interest, and establish that it could not accomplish the same goal through more-limited restrictions.

It has been said that money is the mother's milk of politics, and advertising and other political campaign costs have continually risen. Wealthy candidates have the capacity to outspend their opponents, leading some to perceive that they have an unfair advantage, which, however, sometimes evens the playing field against incumbent candidates who have better name recognition. In *Buckley v. Valeo* (1976), the Court invalidated portions of the Federal Election Campaign Act of 1971, which sought to limit the amount of money candidates could contribute to their own campaigns, reasoning that they did not have the same capacity for corruption as would contributions from others.

Although courts have generally upheld laws that require the disclosure of campaign donations, it has increasingly equated money for campaigns with speech and struck down most laws designed to limit campaign contributions, especially those from political action committees, or PACs. In one of its more controversial decisions, *Citizens United v. Federal Election Commission* (2010), the Court invalidated a part of the Bipartisan Campaign Reform Act of 2002 that prohibited corporations and unions from using general funds for advocacy or campaigning. Some public-interest groups have expressed particular concern over so-called "dark money," contributions that are unknown to the public, who may thus not realize which groups are seeking to advance which messages.

Libel and Slander

Although it is said that "sticks and stones may break my bones, but words can never hurt me," some words can be quite emotionally hurtful and damaging to individuals' reputations, which can in turn affect their livelihoods, to say nothing of the quality of their lives. As mentioned earlier in this essay, the English legal tradition permitted individuals to sue if they had been slandered or defamed through speech or libeled through the print media, and it often considered such offenses to be worse if the hurtful information was actually true.



Determination of facts can often be elusive, and even those seeking to be truthful sometimes inadvertently convey false information. Moreover, many statements, especially those regarding politicians and others routinely in the public eye, can clearly be recognized as statements of opinion rather than fact. One is entitled to communicate one's view that a president and/or his policies are the bees' knees or a danger to the nation without therefore being libelous.

What about those, especially those knowledgeable, however, who intentionally lie in word or in print about individuals and damage their reputations? From Colonial times, laws have permitted libel and defamation suits over written and spoken speech in which those sued for slander or libel were responsible for establishing the truth of their allegations. This burden shifted, however, in the case of *New York Times Co. v. Sullivan* (1964), especially with respect to public figures and officials, particularly those who had sought public office.

In this case, Sullivan, the city commissioner of Montgomery, Ala., sued *The New York Times* for an advertisement that civil rights leaders had placed in the newspaper containing a number of factual inaccuracies and overstatements. In an attempt to widen the scope of free-press protections, the Court ruled that individuals were protected from making minor mistakes of fact unless plaintiffs could establish "actual malice." That means they had to establish that the damaging statements were made with knowledge that they were false or with "reckless disregard" as to whether they were true. This standard has proven to be a relatively high, but not impossible, burden. Thus, in 2023, the journalist E. Jean Carroll won two substantial defamation suits against Donald Trump for false statements he made about her. In similar fashion, courts awarded hefty financial damages to two Georgia election workers, Wandrea "Shaye" Moss and her mother, Ruby Freeman, against attorney and Trump ally Rudy Giuliani after he falsely claimed that they had engaged in election fraud.

Time, Place, and Manner Restrictions

As much as Americans value freedom of speech, few teachers would be willing to turn their math or science classes over to students who sought to protest social ills, nor would public school students react positively to teachers who sought to preach religious doctrine in class rather than teach history. Although the First Amendment was designed to prevent governments from restricting all but a few limited forms of speech, courts have recognized the need for reasonable time, place, and manner restrictions.

These might apply to the time of day, placement of signs on government property, restrictions on noise levels or demonstrations on busy thoroughfares, licensing requirements for

public demonstrations, and the like. In a case involving the regulation of noise from outdoor protests, the Court outlined a three-part test in *Ward v. Rock against Racism* (1989). It provided that any regulations must be content neutral and narrowly tailored to significant governmental interests and must leave open other opportunities for conveying speakers' messages. In *TikTok v. Garland* (2025), the Supreme Court decided that the government had national-security reasons for requiring that TikTok, a popular social media company open to data mining and possible manipulation by the Chinese government, either be sold to a non-enemy nation or denied access to users within the United States. As of this writing, President Trump has issued a temporary hold on divestiture of a platform that is particularly popular among young people.

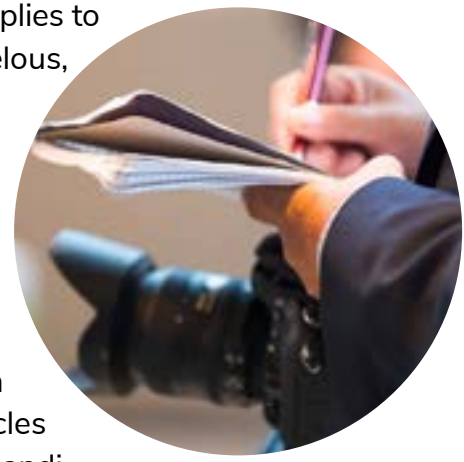
Individuals have greater freedom to assemble and protest on government property and in parks, on sidewalks, and in front of public buildings traditionally open to the public than they do in front of private homes. The Court has developed the public-forum doctrine, which dates to a decision in *Hague v. Committee for Industrial Organization* (1939) wherein Justice Owen J. Roberts observed that "Wherever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions. Such use of streets and public places has, from ancient times, been a part of the privileges, immunities, rights, and liberties of citizens."

Schools provide classic venues where speech can be limited during class hours, as long as such restrictions apply across the board and not simply to speech that school administrators dislike.

Freedom of the Press

Freedom of speech and freedom of the press are inextricably linked together, both being essential to democratic-republican government. The United States has never had a system of national licensing such as existed in Great Britain, and in *Grosjean v. American Press Co.* (1936), the Court invalidated a state license tax that applied with greater force on some newspapers than others.

The idea that freedom of the press forbids any form of prior restraint of publications remains a bedrock principle dating to *Near v. Minnesota* (1931), which also incorporated this protection within the due-process clause of the 14th Amendment. This principle of no prior restraint even applies to materials that might prove to be libelous, obscene, or dangerous to national security, though such material may be subject to subsequent prosecution.



In *Miami Herald Publishing Co. v. Tornillo* (1974), the Supreme Court ruled that a state could not require a newspaper to publish replies to articles it had published criticizing political candidates, and the Court has consistently used the free-press provision of the First Amendment to uphold editorial discretion with regard to such matters. It has dealt somewhat differently with electronic media. The Court has upheld a rule requiring broadcasters that sell air time to political candidates to provide equal time to all. At a time when technology resulted in a scarcity of broadcasters, the Federal Communications Commission enforced a fairness doctrine requiring broadcasters to give equal time to competing political views, but it was abolished in 1987.

One of the most important cases relative to freedom of the press is *New York Times Co. v. United States* (1971), also known as the Pentagon Papers case. The *Times* and other newspapers had obtained copies of a government report on the Vietnam War that was fairly unflattering and began to publish it. Although the government argued that the report would damage America's reputation and hence its national security, the Court decided that was untrue (unlikw reports of troop locations or sailing dates). The Court further left open the possibility that the government might prosecute Daniel Ellsberg for leaking the documents, although his case was later thrown out because of government misconduct.

In *Richmond Newspapers, Inc. v. Virginia* (1980), the Supreme Court affirmed that members of the public and of the press have the right to attend criminal trials. After the Court failed in *Branzburg v. Hayes* (1972) to exempt reporters from being called to testify before grand juries about confidential sources, 49 states and the District of Columbia have enacted shield laws that protect them in most such circumstances.

In a number of cases, most notably *Federal Communications Commission v. Pacifica Foundation* (1978), which involved the broadcast by comedian George Carlin of seven "filthy words," the Supreme Court has imposed limits on indecent speech broadcast through electronic media during times of the day when children are likely to be listening, In *Federal Communications Commission v. Fox Television Stations* (2012), however, it decided that standards designed to prohibit fleeting expletives and fleeting nudity were unconstitutionally vague.

Student Rights

The First Amendment free-speech and free-press rights of students in schools are not necessarily coequal to that of adults in other circumstances, because students are generally younger

and subject to greater supervision. This essay has already mentioned the Court's decision in the *Tinker* black-armbands case that asserted that neither students nor teachers forfeited their rights within schools, as well as cases invalidating compulsory flag salutes and a number of other cases, deriving from interpretations of the establishment clause, that limit prayer, Bible reading, and devotional activities in public school contexts.

In *Bethel School District No. 403 v. Fraser* (1986), the Court permitted the disciplining of a public school student for a sexually suggestive speech to a student assembly that included underclassmen on the basis that it was lewd and vulgar. In *Hazelwood School District v. Kuhlmeier* (1988), the Court permitted a school principal to censor an article about abortion in a school newspaper even though it would almost surely have been permitted had it been printed in a regular newspaper. In *Morse v. Frederick* (2007), the Court ruled that school officials could censor a banner that a student displayed saying "Bong Hits 4 Jesus" on the basis that it might encourage drug use among students.

A number of cases have, however, further limited the ability of school officials to restrict student expression when they are not on school property. In *Mahanoy Area School District v. B.L.* (2021), for example, the Court ruled that school officials could not discipline a student for a vulgar Snapchat post she had made after being rejected for the varsity cheerleading squad. Especially with concerns raised by school shootings, the situation would be much different if a student posted true threats or purported to speak for the school as a whole.

Academic Freedom

The rights to speak and publish are essential to academic freedom, which while crucial to education in general is probably more frequently associated with colleges and universities than

with elementary and high school education. America is known for the quality of its institutions of higher learning, and academic freedoms expanded with the movement away from denominationally dominated to public educational institutions and have been championed by the American Association of University Professors and similar organizations, and articulated in an Academic Bill of Rights devised by David Horowitz.

In *Sweezy v. New Hampshire* (1957), the Supreme Court cited academic freedom in limiting a state investigation into the political associations of a college professor. Chief Justice Earl Warren specifically cited the connection between "academic freedom and political expression." Justice Felix Frankfurter further pointed to "the grave harm resulting from governmental intrusion into the intellectual life of a university," and "the inviolability of privacy belonging to a citizen's political loyalties."

In invalidating a loyalty certificate in *Keyishian v. Board of Regents* (1967), the Supreme Court further observed: "Our Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us, and not merely to the teachers concerned. That freedom is therefore a special concern of the First Amendment."

In 1964, the Berkeley Free Speech Movement resulted in the liberalization of restrictions of college and university students. In recent years, although they have accepted reasonable time, place and manner restrictions, courts have given special scrutiny to campus speech codes, and requirements to provide "trigger warnings" and "safe-space zones." Because they are not state actors covered by the First and 14th Amendments, private colleges and universities have greater leeway than public

institutions in regulating student speech, but many have adopted policies designed to affirm their support of both student and faculty expression.

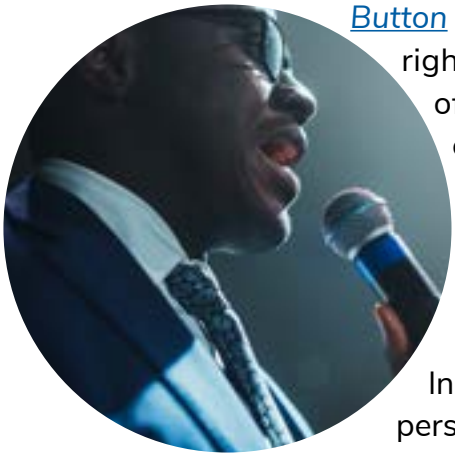
Freedom of Assembly and Association

Even in nations with a written constitution, the understanding of certain constitutional provisions expands or contracts over time. This fact has been particularly true of the First Amendment freedom of peaceable assembly. In addition to protecting groups of people who gather to worship or to exercise their right to speak, discuss, and proclaim their political viewpoints, this right of freedom of assembly has served as the basis for a more general freedom of association, and the necessary privacy to foster it.

In *De Jonge v. Oregon* (1937), in assessing the conviction of Dirk De Jonge, who was convicted under Oregon's criminal syndicalism law for assisting in a peaceful meeting of the Communist Party, the U.S. Supreme Court observed that the "right of peaceable assembly is a right cognate to those of free speech and free press and is equally fundamental." The Court further observed that the right to peaceable assembly "cannot be denied without violating those fundamental principles of liberty and justice which lie at the base of all civil and political institutions – principles which the Fourteenth Amendment embodies in the general terms of its due process clause."

In 1954, the United States Supreme Court ruled in *Brown v. Board* of Education that racial segregation was unconstitutional. This decision strengthened the civil rights movement in which the Rev. Dr. Martin Luther King Jr. and others staged numerous boycotts and nonviolent protests that depended, like the earlier movements for abolitionism and women's rights, on vigorous exercises of First Amendment rights that were sometimes met with violence.

Amid such intimidation and violence, the Supreme Court ruled in *NAACP v. Alabama* (1958) that the National Association for the Advancement of Colored People was not required to disclose its membership list to the state of Alabama, which was hostile to its aims. In this case, the Court said protecting the privacy of this list was essential to the NAACP's advocacy. In *NAACP v. Button* (1963), the Court further upheld the rights of civil rights organizations to offer legal assistance to individuals challenging discriminatory legislation, against a Virginia law banning champerty, in which third parties shared litigation costs in hopes of sharing in the profits.



In other cases dealing with intimate personal association such as *Griswold v. Connecticut* (1965), the Court ruled that individuals have a right of *privacy* that is based in part on First Amendment rights including the rights of assembly and association. No such right is absolute, however, as in the case of *Roberts v. United States Jaycees* (1984) in which the Supreme Court ruled that a large organization like the Jaycees did not have the right to exclude women from the opportunities than accompanied membership in that organization.

In public, it should be noted, there is little or no privacy protection under the First Amendment. The high court in *Cohen v. California* (1971) found that the privacy concerns of people in a public place were outweighed by First Amendment protections of speech, even profane speech.

Right to Petition for Redress of Grievances

As noted earlier in this essay, American Colonists highly valued their right to petition the king and revolted in part because they thought he had failed to heed their requests. During the controversy over slavery, Congress rescinded its practice of tabling all the anti-slavery petitions it received. Americans continue to value the right to write to members of Congress and other officials expressing their opinions.

Chief Justice Warren E. Burger reiterated the importance of the right to petition when in *McDonald v. Smith* (1985) he observed that this right "is cut from the same cloth as the other guarantees of that Amendment, and is an assurance of a particular freedom of expression." So-called SLAPP suits, in which individuals allege that petitioners have libeled them or attempted to destroy their businesses, can have a substantial chilling effect on such rights, even when they do not win. The Court has formulated what is known as the Noerr-Pennington doctrine, based on two cases on which the immunity is based, that provides a means for groups whose right to petition has been threatened to seek their own redress.

Special Exceptions

The First Amendment makes it clear that rights of expression are the rule, but there are some very limited exceptions that sometimes come into play. In *Chaplinsky v. New Hampshire* (1942), for example, the Supreme Court recognized a "fighting words" exception to freedom of speech under which individuals might be punished for speaking words that have the effect of force in face-to-face settings with law enforcement officials.

In similar fashion, courts have ruled that freedom of speech does not protect what are known as true threats, which consist

of intimidating threats to specific persons that lead them to fear physical harm. Similarly, individuals who attempt to bribe, blackmail, engage in jury tampering, engage in conspiracy to interfere with government proceedings, or commit other illegal actions are not immunized from prosecution simply because they used speech to do so.

To affirm the right to equal protection, Courts have upheld sexual harassment laws against individuals who through words or actions create a hostile work environment or demand sexual favors.

Laws also allow for punishment for individuals who sell obscene materials. Most such regulations have been adopted at the state or local level. In 1873, however, Congress adopted the Comstock Act of 1873 (named after moral crusader Anthony Comstock) that made it illegal to send "obscene, lewd or lascivious," "immoral" or "indecent" publications through the mail, or to possess or sell such materials. The part of this law outlawing the sharing of information about birth control has since been overturned, and the law has largely been in abeyance, although states and localities continue to attempt to restrict the distribution of pornographic materials.

The primary difficulty in this area has been formulating objective standards for distinguishing obscene from non-obscene materials, epitomized by Justice Potter Stewart's statement that "I know it when I see it." In addition to laws restricting the sale of salacious materials to minors or the portrayals of minors in sexual situations, the Supreme Court in *Miller v. California* (1973) formulated a three-part test allowing for prosecution of obscenity. This test, which remains in effect, asks: "Whether the average person, applying contemporary community standards, would find that the work, taken as a whole, appeals to the prurient [lustful] interest; whether the work depicts or describes, in a patently offensive way, sexual conduct

specifically defined by the applicable state law; and whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value." This test allows for some state and local variation but attempts to prevent materials from being banned simply on the basis of isolated passages.

Book Bans

As the prominence of LGBTQ issues and issues of sexual identity has increased in recent years, there have been increased attempts to ban or remove books from school libraries and public libraries, especially those to which children have access. To date, legal precedents remain somewhat ambiguous regarding book banning.

In *Board of Education, Island Trees Union Free School District v. Pico* (1982), the Supreme Court, in a highly splintered decision, ruled that because students had "the right to receive information and ideas," schools could not remove books owing to their political ideas or social perspectives. Librarians, who live within their own communities, are generally trained in assessing the quality and appropriateness of books for their collections. In an increasing number of cases, however, citizens and some public officials have sought to remove library books sometimes simply because they object to a single word or passage that they consider to be inappropriate or obscene. In more defensible actions, some have sought to restrict access to certain books on the basis of age and maturity levels.

At a time when conservatives often complain that political correctness has led officials to treat students as wilting flowers, some would-be censors, perhaps fearful that mere sympathetic

depictions of members of the LGBTQ community will lead others to adopt such orientations, evince a similar lack of faith in student resiliency and a similar fear of the power of isolated words and phrases or descriptions of individuals with different lifestyles. There is irony in the fact that students often have access to far more salacious materials on social media (which school libraries do have a right to regulate) or even on school playgrounds and in school locker rooms than in classrooms or libraries. Many recent attempts at censorship have not yet been subject to judicial review, which will hopefully provide better guidance in this area.

If freedom of speech and press means anything, governments should respect the right to receive information and ideas. It should further guarantee that laws be narrowly tailored so that adults are not restricted to accessing information that would be appropriate only for children and that works not be censored simply on the basis of an isolated word or passage but on their merits as a whole. The American Library Association sponsors an annual Banned Books Week in the last week of September to highlight literary classics that been banned in recent years.

Conclusion and Recommendations for Further Research

The United States prides itself in being a land of freedom under law, and few parts of the Constitution better epitomize these freedoms than the 45 words of the First Amendment. The freedoms these words guarantee have fueled movements to abolish slavery, secure voting rights for women, pressure the United States to get out of foreign wars, and secure civil rights for African-Americans, disabled Americans, and members of the LGBTQ community.

These freedoms have experienced trials during the adoption of various sedition acts, during times of war and conflict, and

during times when fears predominated over hope. Writing to John Taylor on June 4, 1798, shortly before the adoption of the Alien and Sedition Acts, Thomas Jefferson wrote that "a little patience and we shall see the reign of witches pass over, their spells dissolve, and the people recovering their true sight, restore their government to its true principles."

America is founded on confidence in the judgment of "We the People." One of the purposes announced in the Preamble to the Constitution was that of securing "the Blessings of Liberty to ourselves and our Posterity." The liberties announced in the First Amendment are among the most prized, but, like other liberties, they require constant vigilance for their preservation. Teachers have a special privilege and obligation to promote understanding and appreciation of such liberties so that they continue to define the American way.

In 2026, the U.S. will commemorate the 250th anniversary of the Declaration of Independence in which our forebears proclaimed the rights to "life, liberty, and the pursuit of happiness." From 1791 to the present, through thick and thin, the freedoms protected by the First Amendment have enabled Americans to worship freely, to follow their consciences, to inform themselves about public affairs, to associate with one another, and to criticize those in authority through oral, written, and symbolic speech. The words of the First Amendment have continued to serve as a touchstone that inspires us even in times when the words have been ignored or misinterpreted. If Americans continue to honor and practice these freedoms, 2026 should prove to be a time of great celebration.

FURTHER READING

"A Companion to the United States and Its Amendments: America's Continuing Revolution," by John Vile. 8th Ed. New York: Bloomsbury Academic, 2025.

"The First Freedom: The Tumultuous History of Free Speech in America," by Nat Hentoff. New York: Delacorte Press, 1988.

"First Freedoms: A Documentary History of First Amendment Rights in America," by Charles C. Haynes, Sam Chaltain, and Susan M. Glisson. New York: Oxford University Press, 2006.

"Freedom for the Thought That We Hate: A Biography of the First Amendment" by Anthony Lewis. New York: Basic Books, 2010.

"Freedom of Speech: Documents Decoded" by David L. Hudson Jr. Santa Barbara, CA: ABC-CLIO, 2017.

"From Parchment to Power: How James Madison Used the Bill of Rights to Save the Constitution," by Robert A. Goodwin. Washington, D.C.: AEI Press, 1997.

"The Indispensable Right: Free Speech in an Age of Rage" by Jonathan Turley. New York: Simon and Schuster, 2024.

"James Madison and the Struggle for a Bill of Rights," by Richard Labunski. New York: Oxford University Press, 2006.

"Law and Religion in Colonial America: The Dissenting Colonies." New York: Cambridge University Press, 2024.

"Let the Students Speak! A History of the Fight for Free Expression in American Schools," by David L. Hudson Jr. Boston: Beacon Press, 2011.

"Madison's Music: On Reading the First Amendment" by Burt Neubourne. New York: The New Press, 2015.

"Religion and Republic: Christian America from the Founding to the Civil War." Landrum, SC: Davenant Press, 2024.

"Separation of Church and State," by Philip Hamburger, Cambridge, MA: Harvard University Press, 2002.

"The Soul of the First Amendment" by Floyd Abrams. New Haven, CT: Yale University Press, 2018.

"Student's Guide to Landmark Congressional Laws on the First Amendment," by Clyde E. Willis. Westport, CT: Greenwood Press, 2002.

First Amendment Court Cases

Freedom of speech
court cases

Freedom of speech is the most readily recognized of the five freedoms in the First Amendment and the only one that's known by a majority of Americans. That's not a surprise; it's also the First Amendment freedom that most of us use every day and all day. Like the other guarantees in the Bill of Rights, our right to speak freely protects us from limits by the government. It does not, however, prevent rules limiting our speech in other settings. For example, an employer can tell an employee what not to say in the workplace. A condominium association can remove a sign on a resident's front lawn if it's in violation of bylaws. A private business can eject a customer engaged in what it regards as disruptive speech.

Free-speech protection against government interference is not limited to the spoken word. The government is barred from limiting communication in many different settings, including the presentation of visual art, performances, songs, poetry and film. Protected speech can also be embodied in symbols that don't specifically say anything but convey a point of view.

Principles of free-speech stretch back centuries, as far as

ancient Greece. Early codification of freedom of speech can be found in the English Parliament's Bill of Rights passed in 1689, "An Act Declaring the Rights and Liberties of the Subject and Settling the Succession of the Crown." The bill was highly influential in the drafting of the United States Bill of Rights in 1791, roughly a century later. The latter half of the 20th century was a particularly robust era for the expansion and strengthening of free-speech rights, thanks to both shifting judicial attitudes and the emergence of new technologies and platforms. Following are key free-speech decisions. – *Ken Paulson*

Moody v. Netchoice LLC (2024) Identified "the relevant constitutional principles" involving governmental regulation of social media platforms and returned the cases for further review.

Murthy v. Missouri (2024) Dismissed claims that the federal government likely violated the First Amendment by pressuring social media companies to censor content.

Counterman v. Colorado (2023) Established that the First Amendment requires that criminal threats to be prosecuted must involve some level of awareness of the crime to avoid chilling other speech that is protected.

303 Creative LLC v. Elenis (2023) Ruled that a website designer had a free-speech right to refuse to create wedding websites for same-sex couples.

United States v. Hansen (2023) Rejected arguments that a law against encouraging and inducing illegal immigration was unconstitutional under the First Amendment's free-speech clause.

Jack Daniel's Properties, Inc. v. VIP Products LLC (2023) Ruled that a chewable dog toy resembling a bottle of Jack *Daniel's* violated trademark law and was not protected as parody or "fair use" under the First Amendment.

Gonzalez v. Google (2023) Declined to rule on whether targeted

recommendations by the algorithms of a social-media company would fall outside the liability of Section 230 of the Communications Decency Act.

Twitter v. Taamneh (2023) Ruled that social-media companies did not "aid and abet" an ISIS terrorist attack because their algorithms did not remove their content.

City of Austin v. Reagan National Advertising of Austin, LLC (2022) Ruled that the city of Austin's regulations that prohibited new digital billboards (or conversion of existing billboards to digital) are not a violation of the free-speech clause of the First Amendment.

Houston Community College System v. Wilson (2022) Ruled that a board member who was censured by the board did not have a First Amendment claim regarding retaliation for his criticisms of the board.

Federal Election Commission v. Cruz (2022) Overturned a regulation that limited how a campaign could repay a candidate's personal loan saying that the law violated the First Amendment by overburdening free-speech.

Hoggard v. Rhodes (2021) Justice Clarence Thomas argued against granting qualified immunity to university officials in a free-speech case, but the U.S. Supreme Court refused to take it up.

Mahanoy Area School District v. B.L.

Public school students often can engage in speech on social media outside the reach of school officials. That is a key lesson from the U.S. Supreme Court's decision in *Mahanoy Area School District v. B.L. (2021)*. The case involved a high school student known in court papers by her initials B.L. (later identified as Bridget Levy) who was upset that she did not make the school's varsity cheerleading squad.

Upset at this, Levy posted a profanity-laden tirade on Snapchat using the F-word multiple times. She posted this on a Saturday afternoon outside a convenience store. School officials learned about it and suspended her from the cheerleading squad for a year.

She and her parents sued, contending that her off-campus social media post was a matter of parental discipline, not school discipline. The Supreme Court agreed, finding that much student social media speech is beyond the reach of school officials. The Court explained that school officials could regulate or punish some social media expression, such as severe harassment or bullying. But B.L.'s speech did not fall into that category and was beyond the reach of school officials.

Dunn v. Smith (2021) Ruled that Alabama could not prohibit clergy in the execution chamber, noting religious rights of death-row inmates.

Biden v. Knight First Amendment Institute at Columbia University (2021) Vacated an appellate decision that ruled that President Donald Trump had violated the First Amendment by blocking some Twitter users from responding to his tweets.

Federal Communications Commission v. Prometheus Radio Project (2021) Upheld an easing of broadcast ownership rules, rejecting that the change could reduce minority ownership.

Barr v. American Association of Political Consultants (2020) Struck down a provision in a robocall law that allowed the government to use robocalls to collect debt, saying it was an impermissible speech discrimination under the First Amendment.

Agency for International Development v. Alliance for Open Society International, Inc. II (2020) Ruled that First Amendment speech protections did not apply to foreign organizations in

affirming a law barring AIDS funding to organizations that refused to affirm certain beliefs.

Jarchow v. State Bar of Wisconsin (2020) Declined to hear a First Amendment challenge to a requirement that attorneys pay dues to a state bar association in Wisconsin to support programs with which they disagreed.

Kansas v. Boettger and Kansas v. Johnson (2020) Declined to hear an appeal of a Kansas State Supreme Court ruling that invalidated a statute criminalizing threats made with reckless disregard for the fear they cause.

Thompson v. Hebdon (2019) Vacated a 9th U.S. Circuit Court of Appeals ruling that had upheld campaign-contribution limits in Alaska.

Iancu v. Brunetti (2019) Invalidated a provision of federal trademark law that prohibited "immoral or scandalous" marks. The Court viewed the provision as sanctioning viewpoint discrimination and also as substantially overbroad.

Manhattan Community Access Corporation v. Halleck (2019) Determined that "operation of public access channels on a cable system is not a traditional exclusive public forum." A private corporation that oversees public-access channels in Manhattan is not a state or governmental actor subject to First Amendment constraints.

Nieves v. Bartlett (2019) Ruled that most claims of arrest in retaliation for speech protected by the First Amendment would fail if there was probable cause for the arrest. However, the Court held that there could be an exception if someone similarly situated who did not engage in protected speech was not arrested.

Dahne v. Richey (2019) Declined review of an appellate holding that a prisoner had a First Amendment-based right to use disrespectful language in a grievance.

National Institute of Family and Life Advocates v. Becerra (2018) Ruled that forcing pregnancy centers to tell patients about abortion services violated the First Amendment.

Lozman v. City of Riviera Beach, Florida (2018) Ruled that a man, who was arrested for comments he made at a public city council meeting about a recently arrested former county official, could proceed with a retaliatory-arrest lawsuit.

Minnesota Voters Alliance v. Mansky (2018) A Minnesota law that prohibited wearing political apparel at polling places was struck down by the U.S. Supreme Court as violating the First Amendment.

Janus v. American Federation of State, County, and Municipal Employees, Council 31 (2018) Ruled that an Illinois law allowing government employee unions to collect fees from non-members violates the First Amendment.

Digital Realty Trust, Inc. v. Somers (2018) Set the precedent that the Court will interpret whistleblower statutes strictly in accord with the definitions that individual whistleblower laws provide.

Packingham v. North Carolina (2017) Invalidated a state law prohibiting sex offenders from accessing social media. The Court said the law barred First Amendment rights.

Matal v. Tam (2017) Ruled that a federal law prohibiting disparaging trademark names was unconstitutional under the First Amendment.

Perez v. Florida (2017) Declined to review the conviction of a man who apparently stated, while drunk, that he could blow up a liquor store and the whole world.

Heffernan v. City of Paterson (2016) Overturned a federal district and federal appeals court decision to rule that an employer could be sued in a First Amendment retaliation action for violating an employee's free-speech rights even though

the employer was mistaken in thinking that the employee had exercised those rights.

American Freedom Defense Initiative v. King County (2016) A case which involved First Amendment implications of advertising on public transit systems was denied certiorari.

Department of Homeland Security v. MacLean (2015) Upheld a decision by an appellate court which decided that the Transportation Security Agency (TSA) had erred when it fired an air marshal because he had blown the whistle on its decision not to put marshals on flights that were under threat of hijacking.

Williams-Yulee v. Florida Bar (2015) Upheld a provision of the Florida Code of Judicial Conduct banning judicial candidates from personally soliciting funds.

Walker v. Texas Division, Sons of Confederate Veterans (2015) Ruled that the state of Texas could deny a specialty license plate to the Sons of the Confederate Veterans without violating the First Amendment.

Elonis v. United States (2015) Reversed a trial-court conviction of a man found guilty under a federal stalking statute on the grounds that the man was convicted under instructions that required only that the jury find that he communicated what a reasonable person would regard as a threat.

Susan B. Anthony List v. Driehaus (2014) Ruled that those who challenged the constitutionality of an Ohio law that criminalized the making of false statements during a campaign had standing to pursue their legal claims.

McCutcheon v. FEC (2014) Invalidated provisions of the Federal Election Campaign Act (FECA) and the Bipartisan Campaign Reform Act (BCRA) that imposed aggregate, or total, limits on contributions to political candidates and other contributions to party committees.

United States v. Apel (2014) Upheld a military base commander's authority to exclude a protester from publicly accessible areas of the base after the protester engaged in trespassing and vandalism.

Harris v. Quinn (2014) Refused to extend the precedent in Abood v. Detroit Board of Education (1977) and required personal-care workers in Illinois to join a union against their will.

Wood v. Moss (2014) Decided that Secret Service agents were entitled to qualified immunity for moving protesters away from President George W. Bush.

Lane v. Franks (2014) Ruled that the First Amendment protected a public employee who was terminated by his employer after he provided truthful court testimony pursuant to a subpoena.

Air Wisconsin Airlines Corp. v. Hoeper (2014) The Court sought to clarify cases in which individuals might have immunity for reporting information that might otherwise be considered defamatory. In this case, a manager reported a pilot over concerns for his mental stability.

Clapper v. Amnesty International (2013) Rejected a First and 14th Amendment challenge to the Foreign Intelligence Surveillance Act, saying the petitioners lacked standing.

Agency for International Development v. Alliance for Open Society (2013) Ruled that barring funding for HIV/AIDS NGOs not explicitly opposed to certain sexual policies violated the First Amendment.

Federal Communications Commission v. Fox Television Stations (2012) Ruled that an FCC decision to modify its indecency enforcement regime to include fleeting expletives was neither arbitrary or capricious and remanded the case to the 2nd U.S. Circuit Court of Appeals.

United States v. Alvarez (2012) Ruled that the Stolen Valor Act, a federal law that prohibited lying about receiving military medals, violated the First Amendment.

Reichle v. Howards (2012) The Court held that two Secret Service agents were entitled to immunity for actions that they had taken in arresting Steven Howards, whom they had probable cause to detain under the Fourth Amendment even though there were allegations that they had made the arrest in retaliation for statements that might be protected by the First Amendment.

Knox v. Service Employees International Union (2012) Struck down a union's imposition of special dues to oppose two referenda, which it applied to nonunion members under an agency-shop agreement. One of the referenda was designed to protect nonunion members' First Amendment rights by exempting them from providing money for political advocacy.

Golan v. Holder (2012) Upheld U.S. Attorney General Eric Holder's defense of a U.S. copyright law against challenges brought by orchestra conductors, musicians, publishers and others.

John Doe #1 v. Reed (2011) Decided not to issue an injunction to prevent disclosure of the names of individuals who had petitioned for an unsuccessful referendum to overturn a law that had provided benefits to gay partners.

Nevada Commission on Ethics v. Carrigan (2011) Determined that Nevada's recusal provision did not violate a city council's First Amendment free-speech rights because a legislator does not have a personal First Amendment right to vote.

Sorrell v. IMS Health (2011) Struck down Vermont's Prescription Confidentiality Law, which restricted the disclosure, sale and use of pharmacy records that revealed the prescribing practices of individual doctors.

Brown v. Entertainment Merchants Association (2011) Ruled that a California law prohibiting the sale or rental of violent video games to minors violated the First Amendment.

Arizona Free Enterprise Club's Freedom Club PAC v. Bennett (2011) Invalidated a provision in the Arizona Citizens Clean Elections Act of 1998 that sought to reduce corruption in Arizona elections.

Citizens United v. Federal Election Commission (2010) In this controversial First Amendment case, the Court invalidated a provision of the Bipartisan Campaign Reform Act (BCRA) that prohibited corporations and unions from using their general treasury funds for express advocacy or electioneering communications.

Milavetz, Gallop & Milavetz, P.A. v. United States (2010) Upheld provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act that regulated what debt-relief agencies could advise bankruptcy clients.

United States v. Stevens (2010) Invalidated a federal law criminalizing the creation, distribution, or possession of images of animal cruelty as substantially overbroad.

Nurre v. Whitehead (2010) The Court declined to review an appeal filed by an Everett, Wash., high school student, who alleged her free-speech rights were violated when school officials refused to allow band students to perform an instrumental version of "Ave Marie" at high school graduation.

Holder v. Humanitarian Law Project (2010) Upheld a federal law that prohibited the providing of service, training, and "expert advice or assistance" to groups designated as foreign terrorist organizations.

Federal Communications Commission v. Fox (2009) Determined that the FCC did not act arbitrarily and capriciously under the Administrative Procedure Act (APA) by changing its policy with regard to fleeting expletives.

Pleasant Grove v. Summum (2009) Determined that the city of Pleasant Grove, Utah, could refuse to place a permanent monument in a public park, because permanent monuments are a form of government speech immune from First Amendment review.

Pearson v. Callahan (2009) Decided that a court reviewing a qualified immunity defense can rule on the issue by deciding that a right is not clearly established without first determining a constitutional violation.

Locke v. Karass (2009) Ruled that a local union could charge nonmembers for national litigation expenses as long as the subject matter of the litigation is related to collective bargaining and the arrangement is reciprocal.

Davis v. Federal Election Commission (2008) Struck down Section 319(A) of the Bipartisan Campaign Reform Act of 2002, which said "when a candidate running for the U.S. House of Representatives spends $350,000 or more of the candidate's own money, the opposing candidate would then be able to accept treble the amount from contributors."

United States v. Williams (2008) Upheld part of a federal child-pornography law known as the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003, better known as the PROTECT Act, finding it was not in violation of the First Amendment right to free-speech or expression.

Davenport v. Washington Education Association (2007) Upheld a 1992 Washington campaign-finance law requiring public sector unions representing nonunion employees in collective bargaining to obtain nonmembers' affirmative consent before spending their service fees, known as "agency-shop" funds, for political purposes.

Morse v. Frederick (2007) Ruled that it is not a denial of the First Amendment right to free-speech for public school officials to censor student speech that they reasonably believe encourages illegal drug use.

Federal Election Commission v. Wisconsin Right to Life, Inc. (2007) Ruled that section 203 of the Bipartisan Campaign Reform Act of 2002 (BCRA) was a violation of the First Amendment as applied to certain forms of political speech.

Carey, Warden v. Musladin (2006) Rejected an appeal by Mathew Musladin, who argued that his Sixth Amendment right to a fair trial for the alleged murder of Tom Studer had been violated by a trial court's decision to allow Studer's family members to wear to court buttons bearing the victim's picture.

Hartman v. Moore (2006) Ruled that plaintiffs alleging federal civil claims—in this case, violation of First Amendment expressive rights— for retaliatory prosecution must prove the absence of probable cause for the retaliation as an essential element of their claims.

Beard v. Banks

Prison officials have a lot of leeway in regulating inmates —even when it comes to restricting reading materials. That is a key lesson from the U.S. Supreme Court's decision in *Beard v. Banks (2006)*.

Pennsylvania inmate Ronald Banks challenged a policy by the Pennsylvania Department of Corrections that prohibited inmates in the long-term segregation unit from reading newspapers and magazines or even possessing photographs. Beard contended that these restrictions violated the First Amendment. Prison officials, on the other hand, contended that the policy was rationally related to the prison's interest in motivating better behavior on the part of these prisoners.

The Court ruled 7-2 in favor of prison officials and upheld the regulations. The Court pointed out that these restrictions were imposed on inmates in the long-term

segregation unit, meaning that these inmates had disciplinary problems.

Doe v. Gonzales (2005) Upheld the part of the Patriot Act that barred librarians from disclosing that the FBI had requested patron information.

City of San Diego v. Roe (2005) Using the "public concern" test for free-expression jurisprudence involving public employees, the Court determined that a police department had not violated a policeman's First Amendment rights in firing him for selling videos of himself committing sexual acts while in police uniform.

Tory v. Cochran (2005) Vacated and remanded a decision by California courts that had issued a permanent injunction against Ulysses Tory and others who were picketing against famous lawyer Johnnie L. Cochran Jr. Tory claimed that the injunction infringed on his free-speech rights under the First Amendment.

Johanns v. Livestock Marketing Association (2005) Rejected a First Amendment challenge to an advertising program that imposed mandatory contributions from beef producers to fund generic advertisements for beef; the Court based its decision on the government-speech doctrine.

City of Littleton v. Z.J. Gifts D-4, L.L.C. (2004) Upheld a Littleton, Colo., adult business licensing ordinance against an adult bookstore that claimed the ordinance was facially overbroad.

Elk Grove Unified School District v. Newdow (2004) The Court said a father in Elk Grove, Calif., could not sue to ban the Pledge of Allegiance from his daughter's school and others because he did not have legal authority to speak for her.

Virginia v. Hicks (2003) Ruled that the policy of the Richmond Redevelopment and Housing Authority (RRHA) barring nonresidents from a public housing community unless they could "demonstrate a legitimate business or social purpose for being

on the premises" was not facially invalid under the First Amendment's overbreadth doctrine.

Overton v. Bazzetta (2003) Upheld certain prison non-contact visitation bans, reaffirming the principle that prison officials have broad discretion in disciplinary policies that may affect inmates' First Amendment rights.

United States v. American Library Association (2003) Ruled that the federal Children's Internet Protection Act's requirement that libraries install filtering software on computers does not violate a library patron's First Amendment rights.

Virginia v. Black (2003) Upheld a Virginia statute making it illegal to burn a cross in public with the intent to intimidate others and invalidated a provision of the same law that allowed a jury to infer intent to intimidate from the act of burning a cross in public.

Nike v. Kasky (2003) The Court had agreed to hear Nike's appeal that an ad campaign it released after backlash for allegations it used unfair labor practices was noncommercial speech. However, the case was abruptly dismissed and later settled out of court.

Eldred v. Ashcroft (2003) Denied a First Amendment challenge to the Copyright Term Extension Act, ruling that Congress did not exceed its authority in passing the CTEA.

Illinois ex rel. Madigan v. Telemarketing Associates, Inc. (2003) Ruled that state efforts to pursue fraud charges against fundraisers and telemarketers for misrepresenting monies collected in fundraising campaigns did not violate the free-speech clause of the First Amendment.

McConnell v. Federal Election Commission (2003) Upheld the major provisions of the Bipartisan Campaign Reform Act (BCRA) of 2002 and rejected claims that the act stifled First Amendment rights of free-speech and association.

Ashcroft v. American Civil Liberties Union (2002, 2004) The Court declined to hear an ACLU challenge to the 1998 Child Online Protection Act, which made it a crime for commercial websites to knowingly place material that is "harmful to minors" within their unrestricted reach.

Stewart v. McCoy (2002) The Court granted an appeal of an Arizona man who provided operational advice to gang members, citing First Amendment protection of free speech.

Republican Party of Minnesota v. White (2002) Held that rules of judicial conduct limiting what judicial candidates could say during electoral campaigns violated the First Amendment.

Watchtower Bible and Tract Society v. Village of Stratton (2002) Struck down a Stratton, Ohio, ordinance making it a misdemeanor to canvass or solicit door-to-door without a permit.

BE and K Construction Co. v. National Labor Relations Board (2002) Held that the National Labor Relations Board (NLRB) could not impose liability on an employer for filing a losing retaliatory lawsuit that was not objectively baseless.

Thompson v. Western States Medical Center (2002) Ruled that a federal statutory prohibition on the advertisement or promotion of compounded drugs was an unconstitutional restriction of commercial speech.

Borgner v. Florida Board of Dentistry (2002) Declined to review a federal appeals court decision that upheld a Florida law requiring dentists to include disclaimers when advertising specialties that are not recognized by the American Dental Association (ADA) or the Florida Board of Dentistry.

Ashcroft v. Free-speech Coalition (2002) Struck down portions of the federal Child Pornography Prevention Act of 1996 that banned "virtual child pornography," which the justices said was

neither obscene nor actual child pornography as defined by previous decisions.

City of Los Angeles v. Alameda Books

A city can ban multiple-use adult businesses. That is the lesson of the U.S. Supreme Court's decision in *City of Los Angeles v. Alameda Books (2002)*.

The City of Los Angeles had passed an ordinance (a city law) that prohibited having two different types of adult bookstores in the same location. For example, there could not be a business that operated both as an adult bookstore and an adult arcade. City officials reasoned that such multiple-use adult businesses would cause more harmful, secondary effects than single-use adult businesses.

The U.S. Supreme Court accepted the reasoning of the city and ruled against the two adult businesses that had challenged the regulation. Justice Sandra Day O'Connor explained that "it is rational for the city to infer that reducing the concentration of adult businesses in a neighborhood, whether within separate establishments or in one large establishment, will reduce crimes."

Good News Club v. Milford Central School (2001) Ruled that a school district cannot prohibit the First Amendment free-speech rights of groups seeking access to a school district's limited public forum.

Shaw v. Murphy (2001) Ruled that a prison inmate did not have a First Amendment right to assist another prisoner in legal matters.

Bartnicki v. Vopper (2001) Ruled that the First Amendment protects speech that discloses the contents of an illegally intercepted communication.

Legal Services Corp. v. Velazquez (2001) Ruled that the Omnibus Consolidated Rescissions and Appropriations Act of 1996 violated the First Amendment's free-speech clause because it was a viewpoint-based regulation of private speech, it interfered with the traditional role of lawyers, and it restricted the access of indigent persons to the resources of the legal system.

United States v. United Foods, Inc. (2001) Ruled that mushroom producers could not be forced to subsidize generic advertising for mushrooms.

Lorillard Tobacco Co. v. Reilly (2001) Decided the degree to which state restrictions on tobacco advertising had been preempted by the Federal Cigarette Labeling and Advertising Act (FCLAA) and the degree to which those that had not been preempted survived First Amendment scrutiny.

Federal Election Commission v. Colorado Republican Federal Campaign Committee (2001) Upheld provisions of the Federal Election Campaign Act of 1971 limiting direct contributions to candidates by political parties.

California Democratic Party v. Jones (2000) Struck down a state law that changed California political primaries into open primaries.

Board of Regents of the University of Wisconsin System v. Southworth (2000) Upheld that a public university can charge students an activity fee to fund extracurricular student speech, provided the program is administered in a viewpoint-neutral manner.

Nixon v. Shrink Missouri Government PAC (2000) Ruled that Missouri's political-contribution limits did not infringe on the First Amendment guarantees of free-speech and association and the 14th Amendment's equal-protection clause.

United States v. Playboy Entertainment Group (2000) Ruled that section 505 of the Telecommunications Act of 1996 violated the First Amendment because it restricted speech based on

content and there was a less speech-restrictive alternative available to protect minors from harmful material on cable television.

Boy Scouts of America v. Dale (2000) Ruled that the Boy Scouts of America had the expressive association right to revoke the membership of an assistant scoutmaster after he publicly announced his sexual orientation by leading a gay group at Rutgers University.

Avis Rent-a-Car System v. Aguilar (2000) Declined to review a ruling by the California Supreme Court allowing an injunction prohibiting an employee of Avis Rent-a-Car from uttering derogatory remarks about Latino co-employees.

City of Erie v. Pap's A.M. (2000) Ruled that Erie, Pa., did not violate the First Amendment free-speech rights of nude dancers when the City Council enacted an ordinance banning public nudity.

Hill v. Colorado (2000) Upheld a 1993 state statute regulating protesters outside health facilities because it did not regulate speech, but rather only regulated where some speech may occur.

Buckley v. American Constitutional Law Foundation (1999) Struck down Colorado's requirements that people circulating petitions to place items on the general ballot must be registered voters, wear identification tags with their names and addresses, and file monthly disclosures.

City of Chicago v. Morales (1999) Ruled that a Chicago "gang loitering" ordinance that prohibited individuals whom police reasonably believed to be members of a "criminal street gang" from loitering in public with one or more persons was unconstitutionally vague.

Greater New Orleans Broadcasting Association v. United States (1999) Struck down 18 U.S.C. 1304, a federal law prohibiting broadcasting advertisements for gambling casinos, as a violation of the First Amendment.

National Endowment for the Arts v. Finley (1998) Ruled that an amendment that required standards of decency and respect to be taken into consideration in funding decisions by the National Endowment of the Arts did not interfere with artists' First Amendment rights to free speech.

Arkansas Educational Television Commission v. Forbes (1998) Upheld a decision by the Arkansas Educational Television Commission to exclude Ralph P. Forbes, an independent candidate for Congress, from a televised debate.

Timmons v. Twin Cities Area New Party (1997) Upheld a Minnesota law barring a candidate from one political party from appearing on the ballot as an endorsed candidate for another party.

City of Boerne v. Flores (1997) Ruled that Congress did not have unlimited power to enact legislation to expand First Amendment free-exercise rights through its enforcement powers in Section 5 of the 14th Amendment, the amendment through which the First Amendment is applied to the states.

Reno v. American Civil Liberties Union (1997) Upheld that provisions of the 1996 Communications Decency Act were an unconstitutional, content-based restriction of First Amendment free-speech rights.

Glickman v. Wileman Brothers and Elliott, Inc. (1997) Ruled that payment required by the secretary of agriculture from California tree-fruit producers and handlers for the cost of the generic advertising of nectarines, plums, and peaches did not abridge their First Amendment freedom of speech.

O'Hare Truck Service v. City of Northlake (1996) Ruled that government officials violate the First Amendment rights of free association and expression when they retaliate against an independent contractor for its political association.

Board of County Commissioners v. Umbehr (1996) Ruled that ending a trash hauler's county contract because of his criticism of the board violated his First Amendment freedoms.

44 Liquormart, Inc. v. Rhode Island (1996) Struck down a Rhode Island state law prohibiting the advertising of alcohol prices.

Colorado Republican Federal Campaign Committee v. Federal Election Commission (1996) Declared that uncoordinated and independent campaign spending limits, enacted by the Federal Election Campaign Act of 1971, were unconstitutional

Denver Area Educational Telecommunications Consortium v. Federal Communications Commission (1996) Ruled on key elements of the Cable Television Consumer Protection and Competition Act of 1992, regulating indecency on "leased access" and "public access" cable television channels.

Rubin v. Coors Brewing Co. (1995) Held that a federal ban on stating the alcoholic content on beer labels violated Coors' First Amendment commercial-speech rights.

United States v. National Treasury Employees Union (1995) Ruled in favor of a government employees union that contended that a government act imposing on all government employees a prohibition on honoraria was a violation of First Amendment rights.

Florida Bar v. Went for It, Inc. (1995) Established that states may impose time-limit bans on direct-mail attorney solicitation letters to protect the privacy rights of victims and the reputation of the bar.

Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston (1995) Established that the First Amendment free-speech rights of private groups to define the parameters of their expressive conduct during a parade trumped the provisions of a state anti-discrimination law.

McIntyre v. Ohio Elections Commission (1995) Ruled that an Ohio statute requiring identification of authors on all election- and issue-related publications violated the First Amendment by

unduly restricting the ability of individuals to disseminate their views anonymously.

Turner Broadcasting System, Inc. v. Federal Communications Commission (1994, 1997) Determined that Sections 4 and 5 of the Cable Television Consumer Protection and Competition Act of 1992 did not regulate the content of speech.

City of Ladue v. Gilleo

You have the right to display a political sign in your yard. That is the lesson of the U.S. Supreme Court's decision in *City of Ladue v. Gilleo (1994)*. The case involved an Ohio town's attempt to ban virtually all residential yard signs.

Margaret Gilleo challenged the law in court after her anti-war signs were taken down. Her first sign read, "No to the Persian Gulf War. Call Congress Now." Her second sign read, "Peace in the Gulf." She was opposed to the Persian Gulf War and wanted to express her anti-war viewpoint.

The Court agreed with Gilleo, ruling that the city law banned "a venerable means of communication." The Court focused on the fact that the law banned an entire medium or type of speech.

Waters v. Churchill (1994) Ruled that a public employer may fire an employee for speech that the employer reasonably believed was unprotected.

Campbell v. Acuff-Rose Music, Inc. (1994) Ruled that the rap group 2 Live Crew did not violate copyright law with the song "Pretty Woman," a parody of the previously released "Oh, Pretty Woman."

Ibanez v. Florida Department of Business and Professional Regulation Board (1994) Held that in cases involving commercial speech by professionals, the First Amendment takes precedence over deference to state regulatory agencies.

Madsen v. Women's Health Center, Inc. (1994) Reversed an injunction in part and affirmed it in part, finding that the buffer zone on a public street excluding abortion protesters was constitutional, but several other provisions were not.

El Vocero de Puerto Rico v. Puerto Rico (1993) Affirmed that the ruling in Press-Enterprise Co. v. Superior Court of California (1986) forbidding mandatory closings of preliminary criminal hearings also applied in Puerto Rico.

Wisconsin v. Mitchell (1993) Ruled that there is a meaningful distinction between punishing the content of speech and using speech as evidence of motive in a crime.

Alexander v. United States (1993) Rejected the claims of a petitioner convicted under obscenity and racketeering laws that his First Amendment free-expression rights had been violated.

Edenfield v. Fane (1993) Held that direct, personal, uninvited solicitation to obtain clients was within the First Amendment rights of certified public accountants (CPAs).

United States v. Edge Broadcasting Co. (1993) Upheld a federal law prohibiting the broadcasting of advertisements for state-run lotteries by broadcasters in nonlottery states.

Burson v. Freeman

The government can limit speech near polling places. That is the lesson from the U.S. Supreme Court's decision in *Burson v. Freeman (1992)*. The case involved a challenge to a Tennessee law that prohibiting campaign signs and other forms of campaign speech within 100 feet of polling places.

The state of Tennessee asserted that the law was necessary to protect voters from intimidation. The state also contended that the law led to election integrity and

reliability. After all, the right to vote – just like freedom of speech – is a fundamental right.

The Supreme Court upheld the law even though it treated campaign speech worse than other types of speech. It was a rare case in which the Court upheld a law that treated speech differently on the basis of content. A key reason was that the law supported and advanced the right to vote – another important constitutional right.

Burdick v. Takushi (1992) Upheld Hawaii's ban on write-in voting, deciding that the state possessed important regulatory interests for the ban; the Court also ruled that such bans do not violate voters' First Amendment rights of free expression and political association.

Forsyth County, Georgia v. Nationalist Movement (1992) Established limits for city permitting schemes by ruling that a county's ordinance violated the First Amendment.

R.A.V. v. St. Paul (1992) Struck down a city ordinance that made it a crime to place a burning cross or swastika anywhere "in an attempt to arouse anger or alarm on the basis of race, color, creed, or religion." The Court's decision, citing violation of the First Amendment, overturned a cross-burning conviction.

Lee v. International Society for Krishna Consciousness (1992) Ruled that banning the distribution of literature in airport terminals violates the First Amendment.

International Society for Krishna Consciousness v. Lee (1992) Held that a regulation prohibiting solicitation of funds in an airport was constitutional.

Dawson v. Delaware (1992) Ruled that the First Amendment limits the introduction of evidence of a criminal defendant's beliefs during sentencing when those beliefs have no bearing on the issue being tried.

Hunter v. Bryant (1991) Ruled that the Secret Service officers were entitled to qualified immunity in their actions because they had acted on sufficient probable cause when they arrested a man they believed was a threat to President Ronald Reagan.

Lehnert v. Ferris Faculty Association (1991) Created and developed a three-part test to determine which activities a union could charge to nonunion members.

Gentile v. State Bar of Nevada (1991) Struck down Nevada's judicially imposed limits on attorney speech as too vague while also upholding the constitutionality of some restrictions on attorney speech.

Barnes v. Glen Theatre, Inc.

A city can prohibit totally nude dancing without violating the First Amendment. That is the lesson from the U.S. Supreme Court's decision in *Barnes v. Glen Theatre, Inc. (1991)*. The case involved the application of an Indiana public-nudity law to an adult business that featured nude performance dancing.

The Kitty Kat Lounge and a couple of dancers challenged the ban, arguing that totally nude performance dancing was a form of expressive conduct protected by the First Amendment. They contended that the nude dancing conveyed messages of eroticism.

However, the U.S. Supreme Court ruled that the government could regulate totally nude dancing. The Court reasoned that the dancers could still convey messages of eroticism while wearing a scant amount of clothing – such as G-strings and pasties.

University of Pennsylvania v. EEOC (1990) Held that the First Amendment does not allow the right of colleges and universities to keep tenure-review documents confidential.

FW/PBS, Inc. v. City of Dallas (1990) Ruled that a Dallas licensing scheme regulating sexually oriented businesses imposed a prior restraint that lacked adequate procedural safeguards as required by the decision in Freedman v. Maryland (1965).

Rutan v. Republican Party of Illinois (1990) Extended the First Amendment rights of public employees to protect them from patronage practices that adversely affected their employment.

Butterworth v. Smith (1990) Ruled that states may not prohibit grand jury witnesses from disclosing their testimony after the grand jury term has expired.

United States v. Eichman

A federal law banning the burning of the flag violates the First Amendment. That is the ruling from the U.S. Supreme Court's decision in *United States v. Eichman (1990)*.

The case is a follow-up of sorts to Texas v. Johnson (1989), a decision in which the Court struck down a Texas flag-desecration law. In response, the U.S. Congress pass the federal Flag Protection Act of 1989.
The U.S. government argued that this law applied to virtually all flag burnings and thus did not violate the First Amendment.

However, the Supreme Court disagreed by the same 5-4 vote as in Texas v. Johnson. The Court majority reasoned that the law discriminated against speech on the basis of its content (what is called a content-based law). The Court also ruled that the law was designed to prohibit unpopular speech.

Osborne v. Ohio (1990) Reversed and remanded the conviction of Clarence Osborne for the private possession of "child pornography," but established that the First Amendment right to free

speech did not forbid states from enforcing laws against private possession of such material.

Austin v. Michigan Chamber of Commerce (1990) Upheld a Michigan law prohibiting nonprofit corporations from using general treasury fund revenues for independent candidate expenditures in state elections.

Metro Broadcasting, Inc. v. Federal Communications Commission (1990) Upheld the power of Congress to pass affirmative-action policies favoring African-Americans and other minorities in broadcast licensing in order to promote programming diversity.

Keller v. State Bar of California (1990) Ruled that California's state bar program could use members' compulsory fees to support political causes with which members disagreed.

Peel v. Attorney Disciplinary Commission of Illinois (1990) Determined that Illinois could not censure an attorney for truthfully stating that he was certified as a trial specialist by the National Board of Trial Advocacy.

Federal Trade Commission v. Superior Court Trial Lawyers Association (1990) Ruled that the First Amendment freedom of speech clause does not extend to private lawyers boycotting an established practice of supplying the government with *reduced-price legal services in order to increase their profits.*

Webster v. Reproductive Health Services (1989) Upheld several provisions of a Missouri law that regulated the performance of abortion but refused to invalidate the law's preamble stating that life begins at conception.

Eu v. San Francisco County Democratic Central Committee (1989) Held that California's extensive regulation of the internal operations of political parties violated their members' First Amendment rights of free speech and association.

Sable Communications of California v. Federal Communications Commission (1989) Established the principle that indecent speech for adults is entitled to First Amendment protection.

Thornburgh v. Abbott (1989) Ruled that federal prison restrictions relative to incoming publications or letters did not violate the First Amendment right to free speech.

Massachusetts v. Oakes (1989) Vacated and remanded a decision by the Supreme Judicial Court of Massachusetts overturning a conviction under a state law that criminalized photographing a child younger than age 18 years in a state of nudity.

Ward v. Rock against Racism 1989) Ruled that New York City officials could control the volume of amplified music at rock concerts in Central Park without violating the First Amendment.

Texas v. Johnson

One of the more controversial decisions in Supreme Court history is *Texas v. Johnson (1989)*, a case involving the burning of the American flag as a form of political protest. Gregory Lee Johnson burned an American flag in Dallas, outside the Republican National Convention, while other protesters chanted "America, red, white, and blue – we spit on you."

Officials charged Johnson with violating a Texas flag-desecration law. But the U.S. Supreme Court narrowly ruled (5-4) in favor of Johnson. The Court emphasized that his act of burning the flag was a form of political expression, however distasteful.

In his majority opinion, Justice William Brennan identified what he called a "bedrock principle" of the First Amendment – that the government may not prohibit or ban expression simply because it is "offensive or disagreeable."

Congress responded to the decision by passing a federal flag-protection law, which was also invalidated by the Supreme Court. Congress then proposed several times a constitutional amendment to prohibit desecration of the flag. The measure passed the U.S. House but did not obtain the necessary two-thirds majority in the Senate.

Board of Trustees of State University of New York v. Fox (1989) Determined that a state regulation prohibiting private commercial activity in the state university's facilities was "'narrowly tailored' to serve a significant governmental interest" and thus valid under the First Amendment.

City of Dallas v. Stanglin (1989) Determined that social dancing is not a form of association or expression protected by the First Amendment.

Boos v. Barry (1988) Ruled that a District of Columbia law violated the First Amendment by banning the display of signs criticizing a foreign government outside that government's embassy.

Riley v. National Federation of the Blind (1988) Held that the government must meet a high standard before enacting regulations that affect the speech of professional fund-raisers and charities.

Shapero v. Kentucky Bar Association (1988) Struck down a rule prohibiting lawyers from sending truthful, nondeceptive solicitation letters to potential clients, as a violation of the First Amendment.

Lyng v. International Union, UAW (1988) Ruled that a provision of the Omnibus Budget Reconciliation Act of 1981 limiting food stamps for individuals with family members who were on strike did not violate either the First Amendment rights of association or expression or the equal protection component of the due-process clause of the Fifth Amendment.

New York State Club Association, Inc. v. City of New York (1988) Upheld a New York City ordinance prohibiting discrimination against persons on the basis of race, color, national origin, or sex in places of public accommodation as constitutional.

Hobbie v. Unemployment Appeals Commission of Florida (1987) Invalidated a lower court ruling that denied unemployment benefits to an individual on the grounds that it violated the First Amendment's free-exercise clause.

Rankin v. McPherson (1987) Ruled that a Texas constable violated the First Amendment rights of a clerical employee when he dismissed her for an intemperate remark she made about President Ronald Reagan during a personal conversation in the workplace.

Turner v. Safley (1987) Determined that restrictions on inmates' constitutional rights, including those of the First Amendment, were subject to a rational-basis standard of review, stressing that courts should show deference to prison officials in the management of their facilities.

Pope v. Illinois (1987) Ruled that in applying the third or value-question prong of the three-part obscenity test articulated in Miller v. California (1973) to a prosecution for the sale of allegedly obscene materials, the proper standard of review is whether a reasonable person would consider that the work "taken as a whole, lacks serious literary, artistic, political, or scientific value."

Meese v. Keene (1987) Affirmed the federal government's authority to classify, and to regulate the dissemination of, foreign political films.

City of Houston v. Hill (1987) Found a Houston city ordinance prohibiting verbal abuse of police officers to be unconstitutionally overbroad and a criminalization of protected speech.

San Francisco Arts and Athletics v. U.S. Olympic Committee (1987) Ruled that San Francisco Arts and Athletics (SFAA) did not have a First Amendment right to use the word Olympics to promote the Gay Olympics Games.

City of Los Angeles v. Preferred Communications (1986) Dismissed Los Angeles's refusal to consider a First Amendment claim that the city was obligated to grant Preferred Communications a cable franchise and access to poles and lines used by the Department of Water and Power.

City of Newport v. Iacobucci (1986) Affirmed the power of local government to ban nudity in establishments serving alcohol.

Munro v. Socialist Workers Party (1986) Reversed a lower court ruling that overturned a statute that required a minor party candidate receive at least 1 percent of votes cast in the state primary, holding that the statute did not violate First Amendment freedoms.

Bethel School District v. Fraser

Public school students can't utter vulgarities or profanities at school and claim First Amendment protection. That is the chief lesson of the U.S. Supreme Court's decision in *Bethel School District v. Fraser (1986).*

The case involved a high school student named Matthew Fraser, who used sexually laced language when nominating a classmate for student vice president. Fraser delivered his speech before the 600-member student body. Some in the audience laughed but there was no significant disruption. However, school officials suspended Fraser.

Fraser sued in federal court, contending that his speech was not substantially disruptive under Tinker v. Des Moines Independent Community School District (1969). Two lower courts agreed with Fraser. However, the Supreme Court disagreed, voting 7-2.

Writing for the majority, Chief Justice Warren Burger said that public school officials have a responsibility to teach students "the boundaries of socially appropriate behavior." He also said there was a "marked" difference between Fraser's sexual speech and the political speech in Tinker. Burger ruled that public school officials can prohibit student speech that is vulgar or lewd.

Bender v. Williamsport Area School District (1986) Highlighted the importance of the doctrine of standing for anyone wishing to challenge perceived violations of the First Amendment. The Court ruled that the respondent in the appeal, a member of the local school board, had "no standing to appeal in his individual capacity."

Arcara v. Cloud Books, Inc. (1986) Upheld the application of a New York public health law to close an adult bookstore on the premises of which illegal sexual activity was taking place.

Posadas de Puerto Rico Associates v. Tourism Company of Puerto Rico (1986) Upheld a Puerto Rican law that prohibited advertisements for newly legalized casinos, but has been repudiated in decisions since.

Federal Election Commission v. Massachusetts Citizens for Life (1986) Found that while a publication by an anti-abortion rights group encouraging people to vote "pro-life" violated the Federal Election Campaign Act (FECA), application of that federal statute to the MCFL violated the First Amendment.

City of Renton v. Playtime Theatres, Inc.

A city can regulate adult businesses because of harmful secondary effects associated with those businesses, such as more crime and decrease in property values. Also, a city can rely on another city's study showing that adult businesses cause such secondary effects. Those are the two

key lessons from the U.S. Supreme Court's decision in *City of Renton v. Playtime Theatres, Inc. (1986)*.

The city of Renton, Wash., passed a zoning law prohibiting adult businesses from locating within 1,000 feet of any residential area, school, park, or church. Renton city leaders relied on a study by nearby Seattle showing the harm caused by adult businesses.

The Supreme Court ruled the zoning law did not violate the First Amendment, but instead was a reasonable way to address secondary effects. The Court also determined that "Renton was entitled to rely on the experiences of, and studies produced by, the nearby city of Seattle and other cities."

Board of Education of Oklahoma City v. National Gay Task Force (1985) Upheld a 10th Circuit court's decision to strike down an Oklahoma law designed to punish state teachers who participated in "public homosexual conduct," defined to include advocacy of homosexual activity.

Wayte v. United States (1985) Affirmed a decision by the 9th Circuit upholding the government's passive enforcement policy, whereby it initially only prosecuted individuals who either reported themselves or were reported by others for not registering for selective service.

Cornelius v. NAACP Legal Defense and Educational Fund (1985) Ruled that a policy excluding advocacy organizations from participating in a program that solicited contributions from federal employees did not violate the First Amendment.

Dun and Bradstreet, Inc. v. Greenmoss Builders, Inc. (1985) Ruled that nonmedia distributors of information, such as credit agencies, do not enjoy First Amendment protections as defendants in libel lawsuits.

Brockett v. Spokane Arcades, Inc. (1985) Gave communities broad authority to use zoning to limit adult movie theaters to isolated areas or scatter them around the city.

United States v. Albertini (1985) Ruled that a man could be convicted under federal law for entering a military base during an open-house event because he had been barred from reentering the base years earlier.

Federal Election Commission v. National Conservative PAC (1985) Ruled that a part of the Presidential Election Campaign Fund Act was unconstitutional for prohibiting independent political action committee expenditures over $1,000 on behalf of candidates who had accepted public financing for their campaign.

Zauderer v. Office of Disciplinary Counsel of the Supreme Court of Ohio (1985) Struck down most, but not all, of Ohio's restrictions on advertising by attorneys.

Hishon v. King & Spalding (1984) Upheld a decision by the 11th Circuit and held that a law firm was subject to Title VII of the Civil Rights Act of 1964 in deciding whether to promote an associate to partner.

City Council of Los Angeles v. Taxpayers for Vincent (1984) Upheld a city ordinance prohibiting the posting of signs, including for political candidates, on utility poles, cross wires, and other structures on public property.

Clark v. Community for Creative Non-Violence (1984) Ruled that a National Park Service regulation prohibiting camping in national parks in places other than designated campgrounds did not violate the First Amendment even when camping was a form of symbolic speech.

Minnesota Board for Community Colleges v. Knight (1984) Upheld a provision of the Minnesota Public Employment Labor

Relations Act that restricted colleges from listening to any but designated faculty representatives at its bargaining sessions.

Ellis v. Brotherhood of Railway, Airline and Steamship Clerks (1984) Held that a rebate scheme for nonunion members who objected to a union's collection of dues was constitutionally inadequate in protecting the First Amendment rights of those nonunion members to refrain from supporting views and activities with which they disagreed.

Regan v. Time, Inc. (1984) Struck down a provision of a federal counterfeiting law limiting illustrations to certain specified purposes on the ground that it failed part of the reasonable time, place, and manner restriction requirements for regulating speech.

Secretary of State of Maryland v. Joseph H. Munson Co., Inc. (1984) Ruled that a Maryland statute regulating charitable fundraising violated solicitation activity protected by the First Amendment's right to free speech.

Federal Communications Commission v. League of Women Voters of California (1984) Ruled that a section of the Public Broadcasting Act of 1967 that barred noncommercial educational broadcasting stations receiving grants from the Corporation for Public Broadcasting (a private nonprofit created by Congress in 1967) from editorializing, was unconstitutional.

Anderson v. Celebrezze (1983) Struck down state laws that imposed early filing requirements for independent presidential candidates who wished to appear on the general election ballot.

Bolger v. Youngs Drug Products Corp. (1983) Declared a federal regulation prohibiting the mailing of unsolicited advertisements for contraceptives as unconstitutional.

Bill Johnson's Restaurants, Inc. v. National Labor Relations Board (1983) Vacated and remanded a decision by the National Labor Relation Board that had halted the prosecution of a state court libel suit.

Perry Education Association v. Perry Local Educators' Association (1983) Ruled that a teacher's union could negotiate an agreement for exclusive rights to the interschool's mail system.

Connick v. Myers

Public employees often do not have a free-speech right to engage in speech that disrupts the workplace. That is the lesson from the U.S. Supreme Court's decision in *Connick v. Myers (1983)*. The case involved expression by Assistant District Attorney Sheila Myers, who worked under legendary New Orleans District Attorney Harry Connick Sr. (father of the famous jazz musician).

Myers was upset that she was being transferred to a different division. She circulated a questionnaire to many of her fellow employees that criticized policies in the district attorney's office. One supervising attorney claimed that her questionnaire created a "mini-insurrection" in the office.

Ultimately, that is why she lost her case before the Supreme Court. The majority found that a public employer like Connick could discipline a public employee who engages in speech that causes disharmony and disruption in the workplace.

NAACP v. Claiborne Hardware Co. (1982) Ruled that an economic boycott constitutes a form of constitutionally protected expression akin to traditional means of communication, such as speaking and writing, even if violence is threatened as a means of achieving group goals.

Brown v. Hartlage (1982) Struck down a Kentucky court's decision invalidating the election of a county commissioner under a provision of Kentucky's Corrupt Practices Act, which prohibited candidates from offering benefits in exchange for votes.

United Steelworkers of America v. Sadlowski (1982) Found that a rule that precluded candidates for a union office from accepting outside contributions imposed "reasonable" restrictions, although acknowledging that it interfered with some First Amendment rights.

New York v. Ferber (1982) Ruled that the First Amendment does not protect child pornography.

Village of Hoffman Estates v. Flipside (1982) Upheld a village ordinance regulating the sale of drug paraphernalia against charges by a business (Flipside) that it was unconstitutionally vague and overbroad.

Federal Election Commission v. National Right to Work Committee (1982) Approved limits on the ability of corporations or labor organizations to solicit political action committee (PAC) contributions.

In re R.M.J. (1982) Ruled that a Missouri ethics rule restricting advertising by lawyers was unconstitutional under the First Amendment.

Board of Education, Island Trees Union Free School District v. Pico (1982) Ruled that public school officials did not have unfettered discretion to remove books from a school library.

United States Postal Service v. Greenburgh Civic Associations (1981) Upheld the constitutionality of a statute that prohibited the deposit of unstamped "mailable matter" in a mailbox approved by the United States Postal Service.

Metromedia, Inc. v. City of San Diego (1981) Invalidated a San Diego ordinance that generally prohibited "outdoor advertising display signs." The Court's reasoning was that the city law regulating billboards reached "too far into the realm of protected speech."

Haig v. Agee (1981) Ruled that the executive branch's power to revoke passports in matters of national security is a matter of discretionary authority to which the courts should defer, even in cases where individuals might be claiming that their right to travel was tied to their exercise of First Amendment freedoms.

New York State Liquor Authority v. Bellanca (1981) Upheld the power of states to ban nude dancing in businesses where alcohol is sold, finding that it was not a violation of the First Amendment's right to free speech.

Schad v. Borough of Mount Ephraim

A city cannot ban all live entertainment – even if it involves adult entertainment. That is the chief lesson of the U.S. Supreme Court's decision in *Schad v. Borough of Mount Ephraim (1981)*. The case involved an adult bookstore in the town of Mount Ephraim, N.J., that added nude dancing to its business.

The problem for Joseph Schad, the owner of the adult business, was that Mount Ephraim had a law prohibiting "live entertainment" within the city. Schad challenged this ban, arguing that it violated freedom of speech.

The Supreme Court agreed with Schad, ruling that a total ban on live entertainment was too broad. It would prohibit plays, musicals, concerts, and many other forms of protected speech. The Court also said nude dancing was not unlawful as long it did not cross the line into unprotected obscenity.

Snepp v. United States (1980) Established that government employment agreements requiring employees to submit their publications for prior review do not violate public employees' free-expression rights.

Branti v. Finkel (1980) Ruled that the First and 14th Amendments protect government workers from dismissal based solely on their political beliefs.

PruneYard Shopping Center v. Robins (1980) Ruled that California could interpret its state constitution to protect political protesters from being evicted from private property, held open to the public, without running afoul of the First Amendment.

Vance v. Universal Amusement Co., Inc. (1980) Found that an injunction issued by Texas under its public-nuisance statute against the King Arts Theatre, Inc., an adult entertainment establishment, was unconstitutional prior restraint in violation of the First Amendment.

Consolidated Edison Co. v. Public Service Commission (1980) Ruled that the First Amendment protects a government-regulated utility's expression of opinion on issues of public policy through inserts in customer billing statements.

Central Hudson Gas and Electric Corp. v. Public Service Commission (1980) Established a four-part test for determining when commercial speech can be regulated without violating the Constitution.

Schaumburg v. Citizens for a Better Environment (1980) Held that an ordinance barring organizations from soliciting within city limits unless they used 75 percent of their receipts for charitable purposes violated the First Amendment.

Smith v. Arkansas State Highway Employees (1979) Reversed two lower courts in declaring that the Arkansas State Highway Commission had the right to require employees to submit grievances directly to it rather than through a union representative.

Givhan v. Western Line Consolidated School District

A public employee has a First Amendment right to complain about racial discrimination – even if only to her supervisor in private. That is a key lesson from the U.S. Supreme Court's decision in *Givhan v. Western Line Consolidated School District (1979).*

The case involved a Mississippi public middle school teacher named Bessie Burnham Givhan, who complained to her principal about the lack of student resources at her school and the reality of racial discrimination. She said that the school with more black students was not receiving adequate school supplies in comparison with the schools with more white students.

She sued, alleging a violation of her First Amendment free-speech rights after she was terminated. The Supreme Court reinstated her lawsuit, emphasizing that a public employee does not forfeit her free-speech rights when she speaks on a matter of public concern – even if those concerns are made in private.

Hutchinson v. Proxmire (1979) Ruled that neither the speech-or-debate clause nor the First Amendment's guarantee of free speech protects members of Congress against libel for statements that they make outside Congress.

Bell v. Wolfish (1979) Ruled that a New York prison's restriction against pretrial detainees, receiving hardcover books did not violate the First Amendment as it was neutrally applied.

Lo-Ji Sales, Inc. v. New York (1979) Reversed the obscenity convictions of a New York business, finding that the search and seizure of the adult business violated the First Amendment freedoms of speech and press and the Fourth Amendment protections for search warrants and resembled the infamous general warrant/writs of assistance of the eighteenth century.

Friedman v. Rogers (1979) Upheld a Texas law that prohibited optometrists from advertising under a trade name.

In re Primus (1978) Ruled that the First Amendment limits the ability of state authorities to sanction attorneys for political activities associated with garnering potential clients if these attorneys are with nonprofit groups.

Pinkus v. United States (1978) Reversed a lower court's decision on rules for jury selection regarding children in an obscenity case.

First National Bank of Boston v. Bellotti (1978) Ruled that a Massachusetts restriction on political contributions by corporations violated the First Amendment and was thus unconstitutional.

Federal Communications Commission v. National Citizens Committee for Broadcasting (1978) The Supreme Court upheld Federal Communications Commission regulations that prohibited the ownership of a television or radio station and newspaper in the same community.

Ohralik v. Ohio State Bar Association (1978) Ruled that states can prohibit direct, face-to-face solicitation by attorneys.

National Society of Professional Engineers v. United States (1978) Upheld a lower court decision that nullified a provision in the canons of ethics adopted by the National Society of Professional Engineers as a violation of the Sherman Antitrust Act.

Mount Healthy City School District Board of Education v. Doyle

A public employer can defend itself from a First Amendment challenge by claiming it would have made the same decision anyway – in spite of the protected speech. That is a key lesson from the U.S. Supreme Court's decision in *Mount Healthy City School District Board of Education v. Doyle (1977)*.

The case involved an Ohio high school teacher named Fred Doyle who alleged he was terminated after giving a radio interview during which he criticized a teacher dress code. However, the school defendants introduced evidence that Doyle was terminated for other reasons, including his history of disruptive behavior.

The Supreme Court agreed that the lower court had applied the wrong standard and sent the case back down to allow the school to assert that it would have fired Doyle, or not re-hired him, anyway.

The Mount Healthy decision remains significant in First Amendment jurisprudence because it offers defendants the so-called "same-decision defense" — that they would have made the same decision even in the absence of the First Amendment-protected expressive conduct.

Jones v. North Carolina Prisoners' Union (1977) Upheld state prison restrictions on union activities, such as soliciting new members, stopping meetings, or bulk mailing.

Smith v. United States (1977) Ruled that a legislature's definition of community standards in regard to obscenity does not govern a juror's interpretation of such community standards.

Marks v. United States (1977) The Court found that it violated due process to apply the stricter standards for obscenity articulated in Miller v. California (1973) rather than the looser standards of Memoirs v. Massachusetts (1966), which were the only ones in force at the time of the alleged offense.

Wooley v. Maynard

The government cannot force you to support certain messages. That is the lesson of the U.S. Supreme Court's decision in *Wooley v. Maynard (1977)*.

The case involved Jehovah Witness George Maynard's opposition to New Hampshire's motto displayed on license plates— "Live Free or Die." Maynard affixed a piece of red tape over the motto on his license plate. He received several citations for this. He challenged these in court, as a violation of his First Amendment free-speech rights. Maynard argued that the government was unconstitutionally compelling him to engage in certain speech.

The U.S. Supreme Court agreed, writing that "[t]he First Amendment protects the right of individuals to hold a point of view different from the majority and to refuse to foster, in the way New Hampshire commands, an idea they find morally objectionable." In other words, the state of New Hampshire could not compel George Maynard to support the message "Live Free or Die."

Abood v. Detroit Board of Education (1977) Ruled that no violation of the First and 14th Amendments existed in an arrangement under which nonunion government employees represented by a union had to pay a service fee equal in amount to union fees as a condition of their employment.

Linmark Associates, Inc. v. Township of Willingboro (1977) Ruled that a law limiting certain signage violated the fundamental First Amendment principle that people have a right to receive information and ideas and to decide for themselves the best course of action.

Carey v. Population Services International (1977) Invalidated a New York law prohibiting the advertisement and display of contraceptives to consumers.

Bates v. State Bar of Arizona (1977) Ruled that attorney advertising was a form of commercial speech protected by the First Amendment.

Roemer v. Board of Public Works of Maryland (1976) Upheld a University's right to give public aid to sectarian institutions of higher education.

City of Madison v. Wisconsin Employment Relations Commission (1976) Invalidated an order forbidding nonunion teachers from speaking at a school board meeting.

Liles v. Oregon (1976) Denied a petition for writ of certiorari to hear an obscenity case that raised First Amendment issues already addressed in 1973.

Elrod v. Burns (1976) Ruled that a sheriff violated the First Amendment when he conditioned the retention of a government job upon membership in a specific political party.

Hudgens v. National Labor Relations Board (1976) Ruled that there was no right to exercise free speech in privately owned malls under the First Amendment.

McKinney v. Alabama (1976) Ruled that a bookstall operator's First Amendment right to freedom of expression had been violated because he was not allowed to contest the obscenity of certain materials he was charged with distributing.

Greer v. Spock (1976) Ruled that, despite First Amendment protections, areas on military bases generally open to the public were not necessarily open to civilians seeking to distribute political literature or engage in political forums.

Kelley v. Johnson (1976) Ruled that a county regulation limiting the length of county policemen's hair did not violate the First or 14th Amendment.

Hynes v. Mayor of Oradell (1976) Struck down ordinances requiring advanced notices to police departments of door-to-door canvassing and solicitations because of vagueness, ruling that they violated First Amendment rights of speech and assembly.

Buckley v. Valeo (1976) Ruled that statutory limits on campaign contributions were not violations of the First Amendment freedom of expression but that statutory limits on campaign spending were unconstitutional.

Young v. American Mini Theatres

A city can regulate the location of adult businesses through zoning laws. That is the essence of the U.S. Supreme Court's decision in *Young v. American Mini Theatres (1976).* The city of Detroit amended its Anti-Skid Row ordinance to restrict adult businesses from being located too close to another adult business or within 500 feet of any residence.

Two adult businesses challenged the zoning law, contending that the city targeted them because of the adult content the businesses sell. However, the Supreme Court upheld the zoning law by a 5-4 vote. Justice John Paul Stevens emphasized that sexual speech was not entitled to as much free-speech protection as political speech.

He also said that city officials did not target adult businesses because of offensive content, but rather because the city was targeting "secondary effects" associated with adult businesses, such as increased crime and decreased property values.

Southeastern Promotions, Ltd. v. Conrad (1975) Ruled that Chattanooga, Tenn., officials violated the First Amendment when they denied use of their facilities to a group seeking to perform the rock musical Hair.

Meek v. Pittenger (1975) Upheld part of a Pennsylvania textbook-loan provision that allowed nonpublic school students to borrow public school textbooks on secular subjects.

Erznoznik v. City of Jacksonville (1975) Held that the government may not censor expression simply because it offends some people.

Bigelow v. Virginia (1975) Established that at least some commercial advertising should receive First Amendment protection, thereby laying the groundwork for its ruling the next year in Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc. (1976), which established the modern commercial-speech doctrine.

Doran v. Salem Inn (1975) Ruled that barroom dancing "might be entitled to First and 14th Amendment protection under some circumstances" after a local ordinance banned topless dancing in nightclubs.

Lewis v. City of New Orleans

The police cannot arrest people for violating overly broad laws. That is the chief lesson of the U.S. Supreme Court's decision in *Lewis v. City of New Orleans (1974).*

The case involved Mallie Lewis, who was arrested for cursing at New Orleans police officers who were arresting her son. The police turned around and arrested Lewis. She defended herself against the charges of disorderly conduct, contending that her criticism of the police, even if profane, was protected speech. The prosecution argued that Lewis uttered "fighting words."

The Supreme Court agreed with Lewis that the disorderly conduct law under which she was charged and convicted was simply too broad.

In a concurring opinion, Justice Lewis Powell emphasized that police officers are expected to exercise more restraint when faced with profanity and cursing.

Storer v. Brown (1974) Upheld California's "sore loser" statute, which banned ballot access in the general election for independent candidates who either voted in the preceding primary election or were registered with a political party within the year preceding the primary election.

Lehman v. City of Shaker Heights (1974) Affirmed that city-owned public transportation is not a public forum and that a rule prohibiting political advertisements in these spaces does not violate a candidate's free-speech or equal-protection rights.

Wolff v. McDonnell (1974) Ruled that prisoners have a right to receive confidential correspondence from their attorneys, but prison authorities still have the right to open such mail to ensure that such letters contained no contraband.

Procunier v. Martinez (1974) Formulated a standard for reviewing the constitutionality of inmate-mail censorship procedures.

American Radio Association, AFL-CIO v. Mobile Steamship Association (1974) Held that an Alabama court's injunction against picketing of foreign ships for alleged substandard treatment of their crew members did not violate the free-expression rights guaranteed by the First and 14th Amendments.

Jenkins v. Georgia

Just because a movie contains nudity does not mean it is legally obscene. That is a key lesson from the U.S. Supreme Court's decision in *Jenkins v. Georgia (1974)*.

The case involved the prosecution of Billy Jenkins, a theater manager in Albany, Ga. Jenkins was convicted of distributing obscene material by showing "Carnal Knowledge," a movie that contained nudity and discussed sexual themes. The movie starred Ann-Margaret, Candice Bergen, Art Garfunkel, and Jack Nicholson.

The Supreme Court unanimously reversed Jenkins' conviction, writing that "nudity alone is not enough to make material legally obscene under the Miller standards." Chief Justice William Rehnquist was referring to the obscenity test the Court had developed in Miller v. California (1973).

Hamling v. United States (1974) Upheld the conviction of several individuals for their role in distributing advertisements of the book "The Illustrated Presidential Report of the Commission on Obscenity and Pornography."

Secretary of the Navy v. Avrech (1974) Reinstated the conviction of a former serviceman for distribution of statements designed to promote disloyalty among fellow soldiers.

Parker v. Levy

Members of the military have a reduced level of free-speech rights while serving in the armed forces. That is a key lesson from the U.S. Supreme Court's decision in *Parker v. Levy (1974).* Dr. Howard Levy, an Army captain stationed at a U.S. Army hospital in South Carolina, urged black enlisted men to refuse to serve in Vietnam because of discrimination. The Army then court-martialed Dr. Levy, who challenged his court-martial in federal court. A lower court reversed his conviction.

However, the U.S. Supreme Court reinstated his conviction. The Court majority reasoned that in the military discipline is important and oftentimes can trump individual rights to protest and speak. Justice William Douglas dissented in memorable language: "Uttering one's belief is sacrosanct under the First Amendment."

Spence v. Washington (1974) Established for the first time the limits of free political expression for those serving in the armed forces of the United States.

Smith v. Goguen (1974) Ruled that a Massachusetts law criminalizing contemptuous treatment of the U.S. flag was unconstitutionally vague because it failed to provide sufficient standards to guide law enforcement.

Lucas v. Arkansas (1974) Vacated the conviction of individuals who were arrested for making derogatory comments to an on-duty police officer.

Karlan v. City of Cincinnati (1974) Remanded the decision of the constitutionality of a city ordinance that prohibited words uttered in an abusive, vulgar, insulting, profane, indecent or boisterous manner to the Ohio Supreme Court.

Communist Party of Indiana v. Whitcomb (1974) Invalidated a state loyalty-oath requirement on First Amendment grounds because it prohibited protected political advocacy.

New Rider v. Board of Education, Pawnee County, Oklahoma (1973) Denied writ of certiorari to two Pawnee Indian students who claimed their freedom of expression was violated when they were suspended from school for long hair.

Hess v. Indiana

Incitement to imminent lawless action is an unprotected category of speech. But for expression truly to constitute incitement, it must lead immediately to lawless action. That is a key lesson from the U.S. Supreme Court's decision in *Hess v. Indiana (1973).*

The case involved a protest at Indiana University in Bloomington. Hundreds of people were marching in the street. A police officer told many of the people to get off the street and onto the sidewalks. Gregory Hess yelled at the police officer, "We'll take the f---ing street later." The officer then arrested Hess for disorderly conduct.

Hess contended that his speech was protected by the First Amendment, but the Indiana state courts ruled that his speech incited imminent lawless action.

The Supreme Court reversed Hess' conviction, saying that his comment did not constitute incitement because at worst he advocated illegal conduct at some indefinite point in time in the future.

United States Civil Service Commission v. National Association of Letter Carriers (1973) Upheld the constitutionality of the Hatch Act of 1939 and its amendments, ruling that the act did not violate the First Amendment rights of federal workers.

Broadrick v. Oklahoma (1973) Ruled that states can limit their employees' partisan political activities without violating employees' First Amendment rights.

Papish v. Board of Curators of the University of Missouri (1973) Reaffirmed that public universities cannot punish students for indecent or offensive speech that does not disrupt campus order or interfere with the rights of others.

Norwood v. Harrison (1973) Ruled that a Mississippi program that provided textbooks to private schools, even if the school engaged in discriminatory practices, was unconstitutional.

United States v. Twelve 200-Ft. Reels of Film (1973) Upheld a federal statute banning the importation of obscene materials, even for personal use, finding such action was not protected by the First Amendment.

United States v. Orito (1973) Upheld a statute banning the transportation of obscene material by common carrier in interstate commerce.

Roaden v. Kentucky (1973) Invalidated the constitutionality of police seizure of obscene materials from the manager of a drive-

in movie theater and use of the evidence to prosecute the manager on state obscenity charges.

Paris Adult Theatre I v. Slaton

Obscene films are not protected by the First Amendment. That is the key lesson from the U.S. Supreme Court's decision in *Paris Adult Theatre I v. Slaton (1973)*.

Lewis Slaton, the Fulton County, Ga., district attorney, sought a court order to prevent the proprietors of two adult theaters from showing Magic Mirror and It All Comes Out in the End, two pornographic movies that he deemed obscene. The U.S. Supreme Court ruled 5-4 against the theaters and in favor of the government. Chief Justice Warren Burger reasoned that there is no First Amendment right to show obscene materials to the public.

The case is also known for the unusual dissent of Justice William Brennan, who had initially supported the obscenity exception to the First Amendment. In this dissent, Brennan rejected the obscenity exception, warning that there was no effective way to separate obscenity from protected speech.

Miller v. California

Obscenity is a category of speech not protected by the First Amendment. The U.S. Supreme Court explained the obscenity exception in *Miller v. California (1973*). The case involved a man named Marvin Miller who was selling sexually oriented materials – what we call pornography.

The Court developed what became known as the Miller test. This test determines whether material is unprotected obscenity or protected speech. The Miller test has three parts. First, the material must appeal to a shameful or morbid interest in sex. Second, the material must describe

or depict sexual activity in a very offensive way. Third, the material must not have serious literary, artistic, political, or scientific value.

The Court determined that Miller's conviction could stand, as his materials did not have serious value and otherwise qualified as obscenity.

Kaplan v. California (1973) Affirmed that a book, even without illustrations, can be obscene and thus unprotected by the First Amendment.

Heller v. New York (1973) Vacated and remanded the conviction of a man who was charged for possessing a copy of a sexually oriented film.

Pittsburgh Press Co. v. Pittsburgh Commission on Human Relations (1973) Ruled that sex-segregated advertisements, ads which asks for only male or female applicants, were commercial speech and gave leeway to the states on this matter.

Olff v. East Side Union High School District (1972) Refused to hear a case about grooming codes, particularly hair length, for public school students.

Cole v. Richardson (1972) Upheld a Massachusetts loyalty oath for public employees against a First Amendment free-speech challenge.

Perry v. Sindermann (1972) Ruled that public university officials violated the First Amendment when they terminated a junior college professor for publicly criticizing the Board of Regents.

Rosenfeld v. New Jersey (1972) Vacated the conviction of a man for his profane language at a New Jersey school board meeting and remanded the case for reconsideration.

Lloyd Corporation, Ltd. v. Tanner (1972) Ruled that a private shopping mall did not have to provide a forum for Vietnam War protesters who were there handing out leaflets.

Police Department of Chicago v. Mosley

Content matters in First Amendment free-speech cases. That is the chief lesson from the U.S. Supreme Court's decision in *Police Department of Chicago v. Mosley (1972)*. The case involved the picketing efforts of Earl Mosley, an African-American postal worker who said a local high school was engaging in racially discriminatory hiring practices.

Mosley went near Jones Comprehensive High School in Chicago, carrying signs accusing school leaders of discrimination. However, Chicago had a law prohibiting picketing within 150 feet of schools. The law allowed only one type of picketing – peaceful labor picketing.

Under this law, a labor picketer was allowed to protest, but a person like Mosley protesting about racial discrimination could not. The Supreme Court found this distinction to be content discrimination. In famous language, Justice Thurgood Marshall wrote: "But, above all else, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content."

This is a very important principle in First Amendment law. Remember the acronym MISC – message, ideas, subject matter, content.

Kleindienst v. Mandel (1972) Held that the attorney general of the United States did not violate a foreign journalist's freedom of speech by denying him entry into the country to attend academic meetings.

Grayned v. City of Rockford (1972) Ruled that a city's anti-picketing ordinance was overbroad and violated the 14th Amendment's equal-protection clause.

Rabe v. Washington (1972) Reversed the obscenity conviction of the manager of a drive-in movie theater in Richland, Wash., who was arrested after an officer viewed a film with "sexually frank" scenes.

Flower v. United States (1972) Overturned the conviction of John Thomas Flower of the American Friends Service Committee on First Amendment grounds for distributing leaflets at Fort Sam Houston after officials had barred him from the base.

Gooding v. Wilson

A state cannot enforce laws that criminalize speech when the laws are written far too broadly. That is the main lesson from the U.S. Supreme Court's decision in *Gooding v. Wilson (1972)*.

Johnny C. Wilson was picketing against the Vietnam War outside an Army building. A police officer approached him. Wilson allegedly responded with threatening language to the police officer. The officer arrested him under a Georgia law that prohibited abusive and offensive language. The actual language of the law read:

"Any person who shall, without provocation, use to or of another, and in his presence... opprobrious words or abusive language, tending to cause a breach of the peace... shall be guilty of a misdemeanor."

Wilson was convicted in the Georgia state courts. He later filed a challenge to his conviction in federal court. The case eventually reached the Supreme Court, which reversed the conviction. The Court found that the law was too broad and would criminalize a substantial amount of

protected speech. For example, the justices pointed out that much opprobrious or offensive speech is protected by the First Amendment.

California v. LaRue (1972) Ruled that given the states' broad authority to regulate alcoholic beverages under the 21st Amendment, California provisions regulating explicitly sexual live entertainment and films presented in establishments licensed to sell liquor did not, on their face, violate the First Amendment.

Samuels v. Mackell (1971) Upheld a district court decision denying injunctive relief and a declaratory judgment to individuals who had been indicted under New York's criminal-anarchy law.

Perez v. Ledesma (1971) Upheld a Louisiana statute and parish ordinance which was used to charge August Ledesma and others for displaying allegedly obscene material for sale.

United States v. Thirty-seven Photographs (1971) Ruled that a federal law, which allowed customs officials to seize obscene materials, failed to provide adequate procedural safeguards.

United States v. Reidel (1971) Affirmed that laws forbidding the distribution of obscene materials were constitutional despite the Court's ruling in Stanley v. Georgia (1969), which held that persons had a right to possess obscene materials in the privacy of their own homes.

Grove Press v. Maryland State Board of Censors (1971) Upheld an appeals court decision banning the film "I Am Curious (Yellow)" on the grounds of obscenity.

Cohen v. California

One of the more celebrated First Amendment decisions from the U.S. Supreme Court is *Cohen v. California (1971)*. It involved a man named Paul Robert Cohen, who wore a jacket to a courthouse in Los Angeles bearing the phrase,

"F--- the Draft." A police officer arrested Cohen because of the profanity on the jacket.

However, the Supreme Court reversed his conviction, finding that the state of California could not criminalize the mere use of profanity. The state of California had argued that Cohen's jacket with the F-word was a form of fighting words, or words designed to cause an immediate breach of the peace. The Court disagreed and pointed out that Cohen did not personally insult anyone. He peacefully wore the jacket and removed it when he went into court.

Perhaps most famously, Justice John Marshall Harlan II, who wrote the Court's majority opinion, wrote that "one man's vulgarity is another's lyric." This phrase means that what may be offensive to one person may not be offensive to another. It is in the eye of the beholder and a matter of individual taste.

Gillette v. United States (1971) Upheld a lower court ruling denying a draft exemption to a man who on the basis of humanist principles had refused to participate in the Vietnam War but who would have fought in a war of self-defense.

Law Students Civil Rights Research Council v. Wadmond (1971) Upheld New York Bar rule requiring an applicant to provide proof that he or she "believes in the form of the government of the United States and is loyal to such a government."

Baird v. State Bar of Arizona (1971) Extended greater First Amendment protection to admission to the bar than the Court had demonstrated in its earlier decisions in In re Anastaplo (1961) and Konigsberg v. State Bar (1961).

Rowan v. U.S. Post Office Department (1970) Sustained a federal law permitting addressees to prohibit all future mailings from a specified sender.

Norton v. Discipline Committee of East Tennessee State University (1970) Declined to review a federal appeals court ruling that college students' First Amendment rights were not violated when they were suspended from the university for distributing two "inflammatory" pamphlets.

Cain v. Kentucky (1970) Reversed the Kentucky appeals court decision in Cain v. Kentucky (S.W. 1969), which had found the movie "I, A Woman" obscene.

Schacht v. United States (1970) Struck down a conviction for the unauthorized wearing of a military uniform at an outdoor performance, stating that the performance was within the definition of "theatrical production."

Byrne v. Karalexis (1969, 1971) Stayed a temporary injunction that a federal district court had issued against further prosecutions of theater owners.

Watts v. United States

True threats are not protected by the First Amendment. The U.S. Supreme Court established the true-threat doctrine in *Watts v. United States (1969)*. The case involved Robert Watts, a young African-American war protester who attended a rally in Washington, D.C.

At the rally, Watts criticized the draft and how it was used to select many African-Americans to go fight in the Vietnam War. Watts said that if were drafted, "the first person" he would put in the scope of his rifle was "L.B.J." – meaning President Lyndon Baines Johnson. Watts did not actually intend to go and kill President Johnson. Rather, he was engaged in a form of exaggerated speech called hyperbole.

However, a federal agent overheard Watts' remarks and he was prosecuted under a federal law prohibiting threats against the president. The Supreme Court reversed Watts'

conviction, finding that his comments were "political hyperbole" rather than an actual threat. The Court focused on the fact that when Watts made his comments, others in earshot laughed and did not interpret his comments as a true threat.

True threats remain an unprotected category of speech in First Amendment law.

Tinker v. Des Moines

Public school students don't lose their First Amendment rights simply because they go to school. That was the leading message from the U.S. Supreme Court in *Tinker v. Des Moines Independent Community School District (1969).*

The case arose after middle-schooler Mary Beth Tinker, her high school-aged brother John, and high-schooler Christopher Eckhardt wore black armbands as a way to protest U.S. involvement in the Vietnam War. Learning of the protest, school officials quickly banned black armbands. When Mary, John, and Chris wore their armbands to school anyway, school officials suspended them.

They challenged their suspensions in court, losing in the lower courts. However, the Supreme Court ruled in their favor, emphasizing that the students acted peacefully and did not infringe on the rights of others. Even more important, they did not substantially disrupt school activities.

The Tinker decision remains the leading case involving K-12 student rights.

Johnson v. Avery (1969) Invalidated a Tennessee prison rule that prohibited inmates from assisting others with legal matters, including preparing writs of habeas corpus, finding it denied many inmates access to the courts to file claims.

Stanley v. Georgia (1969) Held that the mere private possession of obscene materials could not be criminalized, consistent with the First Amendment, although it acknowledged that ownership of such materials is not protected speech.

Street v. New York (1969) Overturned the appellant's conviction under a New York statute that made it illegal to desecrate the American flag.

Brandenburg v. Ohio

Speech is not protected if it incites imminent lawless action. Imagine a speaker who gives a fiery address urging members of the crowd to immediately riot and act unlawfully. The U.S. Supreme Court addressed this subject in *Brandenburg v. Ohio (1969)*.

The case involved a Ku Klux Klan leader named Clarence Brandenburg who spoke in front of about a dozen other Klan members and a television reporter. He said that if the government didn't start taking him and others seriously, there might have to be "some revengeance (sic) taken."

Officials charged Brandenburg with violating an old Ohio law enacted around 1920 that outlawed the advocacy of illegal conduct and the overthrow of the government. But the Supreme Court voided Brandenburg's conviction, finding that even the advocacy of illegal conduct can be protected as long as the speaker does not incite imminent lawless action.

The idea is that people should be able to hold all sorts of different, even revolutionary or challenging, viewpoints. But we do not protect speech that immediately leads to violence.

Shuttlesworth v. Birmingham (1969) Ruled that the conviction of the Rev. Fred Shuttlesworth, for leading a protest march

without a permit, was improper because the ordinance under which he was convicted was an unconstitutional prior restraint on speech.

United States v. O'Brien

The U.S. government can prohibit individuals from burning their draft cards even if they are protesting against a war or the draft itself. That is the lesson of the U.S. Supreme Court's decision in *United States v. O'Brien (1968).*

The case involved an anti-war protester named David Paul O'Brien, who burned his draft card on the steps of a courthouse in South Boston. Prosecutors charged him with violating a federal law prohibiting the destroying of draft cards. O'Brien argued that the law was unconstitutional as applied to him, because he was advocating his anti-war viewpoint.

But the Supreme Court ruled that the law was constitutional, because it furthered the government's interest in a smoothly functioning draft system. The Court acknowledged that burning the draft card involved both speech and conduct – so-called expressive conduct. However, the Court focused on the fact that the law was not designed to suppress speech but rather to serve an important government function.

Pickering v. Board of Education

Public employees have a free-speech right to speak on matters of public importance. That is the chief lesson from the U.S. Supreme Court's decision in *Pickering v. Board of Education (1968)*. The case involved a high school science teacher from Illinois named Marvin Pickering.

Pickering felt that the local school board was spending too much money on athletics and not enough on academics.

He expressed his displeasure in a letter published by his local newspaper.

School officials fired Pickering from his job for the letter. He challenged his termination, alleging that the school board had violated his First Amendment free-speech rights. The Supreme Court agreed with Pickering, saying he did not forfeit all his free-speech rights simply because he was a public employee.

Furthermore, the Court noted that Pickering's criticisms were not directed at students, fellow teachers, or others with whom he worked day to day. In other words, his speech was not disruptive to his high school. The case is still considered the Court's leading free-speech case for public employees.

St. Amant v. Thompson (1968) Ruled that a plaintiff must demonstrate that the defendant actually doubted the truth of a statement in order to prove "reckless disregard."

Rabeck v. New York (1968) Reversed the obscenity conviction of a man charged with selling "girlie" magazines to minors because the Court found part of the law unconstitutionally vague.

Ginsberg v. New York (1968) Upheld a harmful-to-minors, or "obscene as to minors," law, affirming the illegality of giving persons under 17 years of age access to expressions or depictions of nudity and sexual content for "monetary consideration."

Teitel Film Corp. v. Cusack (1968) Upheld the constitutionality of requiring the submission of films to censors prior to exhibition, but the majority only addressed the narrow question of "whether prior restraint was necessarily unconstitutional under all circumstances."

Interstate Circuit, Inc. v. Dallas (1968) Rejected a city's film-censorship ordinance that failed to provide sufficient guidance to those in the motion-picture industry and to members of the city board who had to decide whether the films were suitable for minors.

Epperson v. Arkansas (1968) Struck down an Arkansas law that criminalized the teaching of evolution in public schools.

Redrup v. New York (1967) Outlined three guideposts against which constitutionality of obscenity laws could be measured, including a specific concern for protection of juveniles.

Walker v. City of Birmingham (1967) Held that protesters who deliberately violate an injunction without first seeking to have it modified cannot attack its constitutionality during a trial for violating the order.

Zwickler v. Koota (1967) Overturned a federal district court ruling that had turned down an appeal under the Declaratory Judgment Act (1934) that sought injunctive relief against a New York law criminalizing distribution of anonymous handbills related to an ongoing political campaign.

Keyishian v. Board of Regents (1967) Declared a New York State law intended to prevent the employment of "subversives" in teaching and other public employee jobs was unconstitutional.

Memoirs v. Massachusetts (1966) Held that the book "John Cleland's Memoirs of a Woman of Pleasure" was not obscene.

Ginzburg v. United States (1966) Upheld the conviction of a publisher who had violated a federal obscenity statute.

Mishkin v. New York (1966) Ruled that adult materials pandering to a deviant sexual group rather than the community at large are not protected by the First Amendment.

Bond v. Floyd (1966) Ruled that legislators do not forfeit their constitutional rights to speak out on public issues once elected.

Griswold v. Connecticut (1965) Invalidated a Connecticut law that made it a crime to use birth-control devices or to advise anyone about their use.

Dombrowski v. Pfister (1965) Ruled that a court may enjoin enforcement of a statute that is so overbroad in its prohibition of unprotected speech that it substantially prohibits protected speech — especially if the statute is being enforced in bad faith.

Freedman v. Maryland (1965) Ruled that the prior restraint carried out under Maryland's motion-picture censorship statute since 1916 unduly restricted the First Amendment rights of film distributors and exhibitors.

Stanford v. Texas (1965) Ruled that the Fourth Amendment regulations regarding using "general warrants" for search and seizure also applied to state governments, especially when items of expression, which are protected by the First Amendment, are among items to be searched or seized.

Brotherhood of Railroad Trainmen v. Virginia ex rel. Virginia State Bar (1964) Lifted an injunction against a railroad union on the basis that preventing union members from recommending legal counsel to one another violated their First and 14th Amendment freedoms of speech, petition, and assembly.

Garrison v. Louisiana (1964) Overturned the criminal-defamation conviction of a Louisiana district attorney and continued the refinement of libel laws begun in New York Times Co. v. Sullivan (1964).

National Labor Relations Board v. Fruit and Vegetable Packers (1964) Upheld the rights of picketers to protest buying apples at a grocery store.

Jacobellis v. Ohio

Motion pictures are not obscene simply because they deal with sex or adult themes. That is a key lesson from the U.S. Supreme Court's decision in *Jacobellis v. Ohio (1964)*. The case concerned the prosecution of Nino Jacobellis, who managed a theater in Cleveland Heights, Ohio.

Jacobellis' theater showed the French movie "Les Amants" (The Lovers). The movie featured one explicit love scene toward the end of the film. The Supreme Court ruled that this movie did not rise to the level of obscenity.

The decision is best known for the concurring opinion of Justice Potter Stewart who famously wrote that he was not sure how to define obscenity, "[b]ut I know it when I see it, and the motion picture involved in this case is not that."

Grove Press v. Gerstein (1964) Rejected a Dade County, Fla., ban of Henry Miller's "Tropic of Cancer," one of the most censored books in history.

A Quantity of Books v. Kansas (1964) Ruled that a procedure used to seize and impound 1,715 books prior to an obscenity hearing was constitutionally insufficient because it did not safeguard against the suppression of non-obscene books.

Sherbert v. Verner (1963) Ruled that government can restrict the free-exercise rights of individuals only if the regulations survive strict scrutiny.

Bantam Books, Inc. v. Sullivan (1963) Ruled that states must provide adequate procedural safeguards when establishing a mechanism to declare books obscene.

NAACP v. Button (1963) Protected the First Amendment rights of a civil rights group to engage in public-interest litigation.

Wood v. Georgia (1962) Ruled, under the clear and present danger test, that individuals and public officials concerned with ongoing grand jury proceedings may speak freely about the proceedings and can only be charged with contempt of court when their speech immediately creates a serious threat to the administration of justice.

Marcus v. Search Warrant (1961) Reversed lower court decisions, finding that the seizure of material considered obscene violated the First Amendment and the 14th Amendment's due-process clause.

Times Film Corp. v. City of Chicago (1961) Ruled that Chicago's ordinance that required film exhibitors to apply for a license before showing a motion picture did not violate the First Amendment's freedom of expression clause.

Wilkinson v. United States (1961) Found that the House Un-American Activities Committee's (HUAC) questioning was not in violation of the plaintiff's First Amendment rights of free speech and association.

Noto v. United States (1961) Ruled that the First Amendment's right to free speech prohibits convicting individuals for the mere abstract teaching of the moral propriety of violence.

McGowan v. Maryland (1961) Found that Sunday blue laws did not violate the establishment clause, setting the precedent that laws with religious origins are constitutional if they have a secular purpose.

In re Anastaplo (1961) Held that a plaintiff's exclusion from the bar of the state of Illinois based on his refusal to respond to questions about his membership in the Communist Party did not violate his First Amendment protections of freedom of speech and association.

Bates v. Little Rock (1960) Reinforced the principle that freedom of association for the purpose of advocating ideas and airing grievances finds protection within the First Amendment's free-speech clause.

Talley v. California (1960) Ruled that a Los Angeles ordinance requiring that all handbills identify the person who published or distributed them was unconstitutionally overbroad and in violation of the First Amendment freedoms of speech and press.

Smith v. California (1959) Held that the First Amendment rights of a Los Angeles bookstore owner had been violated when he was held criminally liable and sentenced to 30 days in jail in 1956 for selling the pulp novel "Sweeter Than Life," by Mark Tryon.

Kingsley International Pictures v. Board of Regents (1959) Held that New York's statute controlling film licensing regulated ideas no matter how they were expressed or their consequent effects, thereby contravening the guarantees of the First Amendment.

Cammarano v. United States (1959) Affirmed federal appeals court decisions arising in the states of Washington and Arkansas that had disallowed tax deductions for expenditures that businesses made to defeat legislation.

In re Sawyer (1959) Reversed a 9th Circuit's Court of Appeal's suspension of an attorney who had criticized the court handling her case as well as the court proceedings.

Speiser v. Randall (1958) Ruled that a state cannot condition the receipt of a government benefit — in this case, a tax exemption for veterans — on the requirement that an individual demonstrate eligibility by swearing an oath not to advocate the overthrow of the government by unlawful means.

Beilan v. Board of Education (1958) Ruled that Harold Beilan, a teacher, did not have his due-process rights violated when he was fired for refusing to answer questions about his possible membership in the Communist Political Association.

Roth v. United States

Obscenity is a narrow category of speech not protected by the First Amendment. That is the chief lesson of the U.S. Supreme Court's decision in *Roth v. United States (1957)*. The case involved the prosecution of Samuel Roth, who was convicted of mailing obscene books and materials.

The Court determined that obscenity is not protected by the First Amendment, defining it as material without any redeeming value that focuses on a prurient (or shameful) interest in sex. The Court cautioned that "sex and obscenity are not synonymous."

What the Court was saying is that not all expression related to sex will cross the line into the unprotected category of obscenity. The Court later changed the definition of obscenity in its decision in Miller v. California (1973).

Butler v. Michigan (1957) Held that a Michigan law ,which outlawed selling printed material thought to be obscene, violated the due-process clause of the 14th Amendment.

Alberts v. California (1957) Ruled, for the first time, that the Constitution does not protect obscene materials.

Yates v. United States (1957) Upheld the convictions of leading American communists under the Smith Act of 1940 for organizing a party to overthrow the government.

United States v. Auto Workers (1957) Held that the use of general union treasury funds to sponsor commercial television broadcasts touting 1954 congressional candidates was an indictable offense under 18 U.S.C. 610, which banned corporate or labor contributions or expenditures in federal campaigns.

Kingsley Books, Inc. v. Brown (1957) Upheld a New York statute that permitted a legal officer to bring a case to enjoin the distribution of obscene materials, which the state could destroy after an expedited hearing.

Sweezy v. New Hampshire (1957) Ruled that the New Hampshire attorney general had gone too far in conducting an investigation on behalf of the state legislature into the beliefs and associations of University of New Hampshire professor Paul M. Sweezy, who was suspected of being engaged in subversive behavior.

United States v. Rumely (1953) Affirmed a federal appeals court decision invalidating a contempt conviction of a witness who had appeared before the House Select Committee on Lobbying Activities.

Wieman v. Updegraff (1952) Struck down an Oklahoma loyalty oath, finding it was in violation of the First Amendment's rights of free speech and free association and in violation of the 14th Amendment's right to due process.

Adler v. Board of Education (1952) Upheld the so-called Feinberg Law, a New York statute designed to enforce existing civil service regulations to prevent members of "subversive groups," particularly of the Communist Party, from teaching in public schools.

Public Utilities Commission v. Pollak (1952) Ruled that the individual liberty interests of passengers who used public transportation, including freedoms of speech and *privacy* guaranteed by the First and Fifth Amendments, were not unreasonably inhibited by the broadcast of radio programs and commercials on government-regulated vehicles used for mass transit in the District of Columbia.

Gelling v. Texas (1952) Reversed a Texas court decision upholding the conviction of W. L. Gelling, who showed an unnamed motion picture after the Board of Censors of Marshall, Texas, prohibited it.

Burstyn v. Wilson (1952) Ruled that a New York education law allowing a film to be banned on the basis of its being sacrilegious violated the First Amendment.

Feiner v. New York (1951) Upheld the conviction of Irving Feiner, a college student who was arrested while giving a speech encouraging black people to "rise up in arms and fight for equal rights," which caused a large crowd to gather in opposition of Feiner.

Breard v. Alexandria (1951) Upheld a local ordinance prohibiting unsolicited door-to-door sales, ruling that it did not violate the First Amendment, the 14th Amendment, or the commerce clause.

Dennis v. United States (1951) Applied the clear-and-present danger test to uphold the convictions of 11 U.S.-based communists for their political teachings.

American Communications Association v. Douds (1950) Upheld the constitutionality of section 9(h) of the Labor Management Relations Act of 1947, which required labor officers to swear they were not communists.

Hughes v. Superior Court of California (1950) Ruled that a California court injunction against employees picketing to pressure stores to hire on a racial basis did not violate the freedom of speech protected by the First and 14th Amendments.

Lincoln Federal Labor Union v. Northwestern Iron and Metal Co. (1949) Rejected labor-union challenges and affirmed that anti-closed-shop laws were not in violation of First Amendment rights of speech, assembly, or petition.

American Federation of Labor v. American Sash and Door Co. (1949) Upheld a right-to-work amendment to the Arizona constitution, which had prohibited discrimination against nonunion members (including their exclusion from employment), against constitutional challenges, including First Amendment claims.

Terminiello v. City of Chicago

The First Amendment protects speech that stirs people to anger or invites dispute. That is the chief lesson of the U.S. Supreme Court's decision in *Terminiello v. City of Chicago (1949)*.

The case involved an inflammatory speech by former Catholic priest Arthur Terminiello, who gave a public

address insulting Jews, communists, President Franklin Roosevelt, First Lady Eleanor Roosevelt and others.

A crowd outside became hostile and upset. In response, the police arrested Terminiello for breach of the peace. The U.S. Supreme Court reversed his conviction. In his majority opinion, Justice William Douglas explained that speech "may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger." In other words, the First Amendment protects a great deal of offensive and challenging speech.

The decision is also well known for Justice Robert Jackson's biting dissent. He warned that "[t]here is a danger that, if the Court does not temper its doctrinaire logic with a little practical wisdom, it will convert the constitutional Bill of Rights into a suicide pact."

Kovacs v. Cooper (1949) Upheld the conviction of a man under a Trenton, N.J., ordinance that prohibited the use of sound trucks that emitted "loud and raucous" noises on city streets.

Donaldson v. Read Magazine (1948) Ruled that the First Amendment does not protect ordinary crime and that the postmaster general may deny the use of the mails to persons in order to prevent fraud.

Saia v. New York (1948) Limited the discretion that a public official could exercise in regulating sound trucks on public property.

United Public Workers of America v. Mitchell (1947) Upheld provisions of the Hatch Act of 1939, which prevented federal employees from taking "any active part in political management or in political campaigns."

Hartzel v. United States (1944) Overturned the conviction of an individual for violating the Espionage Act of 1917 by selling literature that attacked America's allies.

Schneiderman v. United States (1943) Overturned a decision to strip an immigrant of naturalized citizenship because of his membership in the Communist Party.

Cafeteria Employees Union v. Angelos (1943) Ruled that a New York state court had violated the free-speech rights of peaceful picketers protesting a cafeteria's unfair labor practices in issuing two broad injunctions against them.

West Virginia State Board of Education v. Barnette (1943) Invalidated a compulsory flag-salute law in public schools and established that students possess some level of First Amendment rights.

Taylor v. Mississippi (1943) Struck down a 1942 Mississippi statute that provided for the imprisonment of individuals who helped "create an attitude of stubborn refusal to salute, honor or respect the flag or government of the United States, or of the state of Mississippi," finding it in violation of the rights of free-speech and press guaranteed by the First Amendment.

Murdock v. Pennsylvania (1943) Invalidated a city ordinance that required solicitors to obtain a license, finding that it infringed on the First Amendment rights of free press, free-speech, and free exercise of religion.

Martin v. City of Struthers (1943) Overturned an Ohio Supreme Court ruling that upheld the conviction of a door-to-door religious solicitor in a case focusing on freedom of speech and the press.

National Broadcasting Co. v. United States (1943) Upheld Federal Communications Commission content-based regulations on broadcast media, finding they did not violate First Amendment free-speech rights.

Hotel and Restaurant Employees International Alliance v. Wisconsin Employment Relations Board (1942) Upheld an injunction under Wisconsin's Employment Peace Act of 1939 against picketing that had been issued and upheld by state courts.

Chaplinsky v. New Hampshire (1942)

The First Amendment doesn't protect all forms of speech even though its language says, "Congress shall make no law … abridging the freedom of speech." There are certain narrow unprotected categories of speech. One of these is "fighting words," which the Court defined as words that cause an immediate breach of the peace.

The Court created the fighting-words exception in *Chaplinsky v. New Hampshire (1942)*. The case involved a Jehovah's Witness named Walter Chaplinsky, who was promoting his religion and criticizing others. Someone called the police and a marshal arrived. The marshal arrested Chaplinsky for breach of the peace after Chaplinsky allegedly called the marshal a "damned fascist and racketeer."

Chaplinsky argued his words were protected by the First Amendment, but the Supreme Court unanimously disagreed. To the Court, Chaplinsky's direct, personal insults to the officer did not contribute to the advancement of ideas and could have led someone to respond with violence.

Fighting words remain an unprotected category of speech.

Valentine v. Chrestensen (1942) Ruled that commercial speech is not protected by the First Amendment.

American Federation of Labor v. Swing (1941) Held that an Illinois common-law policy forbidding peaceful persuasion through picketing when there was "no immediate employer-employee dispute" violated freedom of discussion.

National Labor Relations Board v. Virginia Electric and Power (1941) Examined the degree to which the government can ascertain illegal activity on the basis of words, issued in a company bulletin and in speeches, which would otherwise be protected by the First Amendment.

Herndon v. Lowry

A state law criminalizing sedition must be narrowly drawn and not be used to silence political opponents. That is the essence of the U.S. Supreme Court's historic decision in *Herndon v. Lowry (1937)*. The case marked the first time that the Court used the "clear and present danger" principle to reverse a defendant's conviction.

The case involved an African-American union organizer named Angelo Herndon, who was arrested and convicted of sedition in Georgia, essentially because he possessed communist literature and papers.

The U.S. Supreme Court reversed his conviction, writing: "The power of a state to abridge freedom of speech and of assembly is the exception rather than the rule and the penalizing even of utterances of a defined character must find its justification in a reasonable apprehension of danger to organized government."

United States v. Abrams

A case is often known more for its dissenting opinion than its majority opinion. That is the case with the U.S. Supreme Court's decision in *Abrams v. United States (1919)*. In fact, Justice Oliver Wendell Holmes' dissent in Abrams is often called "the Great Dissent."

The case involved the prosecution of five Russian immigrants – including Jacob Abrams – who distributed leaflets in New York City critical of U.S. foreign policy toward Russia. One of the leaflets advocated a general work strike and a call to arms if the United States intervened militarily in Russia.

The federal government prosecuted the defendants under the Sedition Act of 1918, a federal law that was used to silence supposedly dangerous political dissidents.

Convicted in trial court, the defendants appealed all the way to the Supreme Court.

The Court ruled 7-2 to affirm the convictions. But Justice Holmes – joined by Louis Brandeis – dissented. Holmes famously wrote that the "ultimate good desired is best reached through free trade in ideas." This is considered the beginning of the marketplace-of-ideas metaphor for freedom of speech.

United States v. Schenck

The government can limit speech more during times of war than peace. That is an enduring lesson of the U.S. Supreme Court's decision in *United States v. Schenck (1919)*. The case involved the prosecution of two political dissidents, Charles Schenck and Elizabeth Baer, both socialists.

Freedom of the press
court cases

Freedom of the press is a Constitutional guarantee contained in the First Amendment, which in turn is part of the Bill of Rights. This freedom protects the right to gather information and report it to others.

While at the time of ratification in 1791, the free-press clause addressed newspapers, it now applies to all forms of news-gathering and reporting, independent of medium. Television, radio and online journalists are protected even though they don't use printing presses. The nation's founders believed a free press to be one of the basic freedoms necessary for a new, democratic society. They acknowledged that belief in state charters and constitutions, and ultimately in a set of amendments, the Bill of Rights, to the U.S. Constitution that guaranteed certain rights of citizens and states.

Freedom of the press remains a precious and vital liberty, ensuring that people can criticize public officials, expose government corruption, and distribute material on virtually any subject imaginable, free from most prior restraints and other forms of censorship. It is notable that though 18th century

newspapers were often highly biased and often irresponsible in their claims, the nation's leaders saw protection of the press as a valuable check on potential corruption and official misdeeds.

— *Gene Policinski and Ken Paulson*

Berisha v. Lawson (2021) Refused to review a defamation case against "War Dogs" author Guy Lawson.

McKee v. Cosby (2019) Refused to review a defamation case against Bill Cosby by a woman who accused him of rape but was ruled a limited-purpose public figure who had to show actual malice.

Rosenberger v. Rectors and Visitors of the University of Virginia (1995) Ruled that a public university that funds student-run publications cannot engage in viewpoint discrimination by denying funding to select publications based on the particular views expressed in those publications.

City of Cincinnati v. Discovery Network (1993) Held that Cincinnati's restrictions on the distribution of commercial flyers in news racks violated the First Amendment.

Masson v. New Yorker Magazine (1991) Ruled that deliberately altering an interviewee's words yet placing them in quotation marks did not constitute libel under the standards articulated in New York Times Co. v. Sullivan (1964) and Gertz v. Robert Welch, Inc. (1974), unless the alterations resulted in a material change in the meaning conveyed by the statement.

Leathers v. Medlock (1991) Ruled that exempting newspaper and magazine sales from an Arkansas tax on sales of services did not violate the First Amendment.

Cohen v. Cowles Media Co. (1991) Ruled that the media could be sued for breach of contract for divulging the identity of a confidential source.

Milkovich v. Lorain Journal Co. (1990) Ruled that opinions can be defamatory and that no broad constitutional shield for the expression of defamatory opinions is appropriate.

Florida Star v. B.J.F. (1989) Ruled that the First Amendment precluded a newspaper from being held civilly liable under state tort law for publishing the name of a rape victim.

Harte-Hanks Communications v. Connaughton (1989) Ruled that public figures can establish a claim for libel by showing that a publisher acted with "reckless disregard" as to the truth or falsity of a statement.

Department of Justice v. Reporters Committee For Freedom of the Press (1989) Ruled that the press does not have special access to crime records that are not available to the general public.

City of Lakewood v. Plain Dealer Publishing Co. (1988) Ruled that a Ohio city licensing ordinance violated the First Amendment in giving city officials total discretion over the placement of news racks on public property.

Hazelwood School District v. Kuhlmeier (1988) Held that schools may restrict what is published in student newspapers if the papers have not been established as public forums as well as deciding that schools could limit students' First Amendment rights.

Hustler Magazine v. Falwell (1988) Reversed a lower court's judgment for intentional infliction of emotional distress against a publisher, noting that the First Amendment protects publishers' free-speech and -press rights from such claims made by public figures regarding materials that are clearly labeled as parodies.

Pacific Gas and Electric Co. v. Public Utilities Commission (1987) Established the right of a corporation as a publisher to refuse to print messages with which it does not agree.

Arkansas Writers' Project, Inc. v. Ragland (1987) Declared an Arkansas law exempting newspapers as well as religious, pro-

fessional, trade and sports journals and/or publications printed and published within the state, but not general interest magazines, from the state's 4 percent sales tax as unconstitutional.

Philadelphia Newspapers, Inc. v. Hepps (1986) Expanded the constitutional protections enunciated in New York Times Co. v. Sullivan (1964) to require even private-figure defamation plaintiffs to bear the burden of proving falsity in cases involving speech on matters of public concern and media defendants.

Anderson v. Liberty Lobby (1986) In this largely procedural decision, the Supreme Court found that applying the "clear and convincing" evidence standard is appropriate in a motion for summary judgment in a libel case involving limited-purpose public figures.

Lowe v. Securities and Exchange Commission (1985) Reversed a decision by the 2nd Circuit and held that the Securities and Exchange Commission (SEC) could not, under the Investment Advisers Act of 1940, restrain the publication of a periodical containing investment advice simply because its authors were not registered as investment advisors under the 1940 law.

Harper and Row v. Nation Enterprises (1985) Ruled that a prepublication of approximately 300 words of an excerpt from President Gerald Ford's memoir, *A Time to Heal*, was not an example of "fair use" but a copyright infringement.

Seattle Times Co. v. Rhinehart (1984) Ruled that a protective order prohibiting the publication of information gained by a newspaper through discovery in a civil lawsuit did not violate the First Amendment.

Press-Enterprise Co. v. Superior Court of California (1984, 1986) Further established a presumptive public right under the First Amendment to attend criminal trial and pretrial proceedings.

Bose Corp. v. Consumers Union of United States, Inc. (1984) Ruled that federal appeals courts hearing defamation or libel cases must conduct "independent appellate review" to determine whether the evidence proves actual malice under New York Times Co. v. Sullivan (1964), regardless of the deference appellate judges usually accord trial courts in evaluating testimony and witness credibility.

Minneapolis Star and Tribune Co. v. Minnesota Commissioner of Revenue (1983) Ruled that a "use tax" on the cost of paper and ink products used by periodic publications in excess of $100,000 a year violated the freedom of the press as protected by the First and 14th Amendments by singling out the press and targeting a small group of newspapers.

Globe Newspaper Co. v. Superior Court (1982) Established that the First Amendment guarantees the "presumptive" right of the public and press to attend criminal trial proceedings.

Chandler v. Florida (1981) Ruled that the Constitution does not prevent states from allowing broadcast coverage of criminal trials.

Richmond Newspapers, Inc. v. Virginia (1980) Ruled that the First Amendment generally prohibits closing criminal trial proceedings to the public.

Wolston v. Reader's Digest Association (1979) Ruled that Ilya Wolston, who was accused of being a Soviet agent in the book *The Secret Work of Soviet Secret Agents*, did not have to prove "actual malice" to win a libel claim.

Gannett Co. v. DePasquale (1979) Ruled that the Sixth Amendment right to a "public trial" belongs to the defendant in a criminal case and does not guarantee the public or the press access to pretrial hearings or even to trials.

United States v. Progressive Inc. (W.D. Wis.) (1979) Invoked the *Atomic Energy Act of 1954* to prevent the publication in *The Progressive magazine* of an article by freelance writer

Howard Morland titled "The H-Bomb Secret: To Know How Is to Ask Why."

Herbert v. Lando (1979) Held that there is no protection under the free-speech and -press provisions of the First Amendment shielding the editorial process used for news stories when the stories provoke libel charges.

Smith v. Daily Mail Publishing Co. (1979) Struck down a West Virginia statute making it a crime for a newspaper to publish the name of a juvenile offender without a written order from the court.

Federal Communications Commission v. Midwest Video Corp. (1979) Ruled that prohibiting cable television operators from being required to act as "common carriers" was itself designed to promote the journalistic freedom of cable station owners.

Houchins v. KQED (1978) Ruled that the First Amendment guarantee of a free press does not include an unlimited right to government information or sources of that information under the government's control and that the media does not have an unlimited constitutional right to access jails or similar facilities.

Zurcher v. Stanford Daily (1978) Held that it is reasonable under the Fourth Amendment for a court to issue a search warrant for the premises of an innocent third party when the police have probable cause to believe there is evidence of criminal activity on the premises and that the First Amendment's freedom of the press does not bar the execution of such a search warrant if the innocent third party is the press.

Landmark Communications, Inc. v. Virginia (1978) Found that the conviction of a newspaper owner for publishing information regarding the Virginia Judicial Inquiry and Review Commission violated the First Amendment's freedom of the press clause.

Federal Communications Commission v. Pacifica Foundation (1978) Allowed the government to regulate indecent speech on broadcast media.

Zacchini v. Scripps-Howard Broadcasting Co. (1977) Ruled that the First Amendment did not immunize the news media from liability for violating Ohio's right of publicity.

Oklahoma Publishing Co. v. Oklahoma County District Court (1977) Struck down an order prohibiting the press from publishing information obtained in a preliminary hearing open to the public and press.

Time, Inc. v. Firestone (1976) Clarified the public-figure test for libel suits developed in Gertz v. Robert Welch, Inc. *(1974)*.

Nebraska Press Association v. Stuart (1976) Ruled that a trial-court judge did not have the authority to place gag orders on reporting about a specific crime prior to jury empanelment, finding it a form of prior restraint and in violation of the First Amendment right of freedom of the press.

Department of the Air Force v. Rose (1976) Interpreted the Freedom of Information Act (FOIA) to require the disclosure of summaries of honor and ethics hearings at the U.S. Air Force Academy to Michael Rose, an academy graduate who was an editor of the New York University Law Review.

Cox Broadcasting Corp. v. Cohn (1975) Absolved a reporter from criminal and civil charges for revealing the identity of a rape victim found in a search of public documents.

Letter Carriers v. Austin (1974) Reversed three state-court libel judgments arising out of statements in a monthly newsletter referring to non-union workers as "scabs."

Miami Herald Publishing Co. v. Tornillo (1974) Struck down a Florida law granting the right to reply to political candidates whose personal character or official record had been attacked by newspapers.

Gertz v. Robert Welch, Inc. (1974) Ruled that the First Amendment does not require a private individual who is publicly libeled

to meet the burden of proof articulated in New York Times Co. v. Sullivan (1964) to prevail in a defamation suit.

Cantrell v. Forest City Publishing Co. (1974) Upheld a verdict against a Forest City Publishing-owned newspaper, for an article casting the plaintiff, a recent widow, in false light by implying she was neglecting her children.

Saxbe v. Washington Post Co. (1974) Established that the press has no general First Amendment right to interview specific prison inmates.

Pell v. Procunier (1974) Upheld California prison restrictions on face-to-face interviews with inmates.

Columbia Broadcasting System v. Democratic National Committee (1973) Held that a radio station did not violate the fairness doctrine or the First Amendment's guarantee of a free press by selectively refusing to accept paid advertising on public-policy issues.

Rosenbloom v. Metromedia, Inc. (1971) Held that the actual-malice standard of New York Times Co. v. Sullivan (1964) applies in libel cases involving reports about public issues even when the plaintiff is not a public official or public figure.

Time, Inc. v. Pape (1971) Dismissed a conviction against Time magazine, finding that the magazine did not engage in "falsification" sufficient to find "actual malice."

Dietemann v. Time (1971) The 9th U.S. Circuit Court of Appeals ruled that the First Amendment freedom of the press does not give reporters special license to violate individuals' privacy.

Ocala Star-Banner Co. v. Damron (1971) Clarified the Court's landmark libel decision in New York Times Co. v. Sullivan (1964) by showing how the "actual malice" test of that case extended to individuals running for public office.

Monitor Patriot Co. v. Roy (1971) Affirmed that the standard for judging whether a newspaper article constitutes defamation is the actual-malice standard set forth by the Court in its landmark decision in New York Times Co. v. Sullivan (1964).

Greenbelt Cooperative Publishing Association v. Bresler (1970) Held that rhetorical hyperbole is not actionable as defamation where a reasonable reader, in light of a statement's full context, would not understand the intended meaning of a phrase to be a literal accusation.

Red Lion Broadcasting Co. v. Federal Communications Commission (1969) Upheld a Federal Communications Commission decision to adopt the "fairness doctrine," which required broadcast licensees devote some time to discussing public issues and give each side of these issues fair coverage.

Time, Inc. v. Hill (1967) Provided guidance on how courts should handle the species of invasion of privacy claims — called false light — most similar to defamation claims.

Curtis Publishing Co. v. Butts (1967) Upheld a libel judgment on behalf of the athletic director at the University of Georgia and gave the Court the opportunity to clarify the First Amendment standard of libel for public figures.

Associated Press v. Walker (1967) Ruled that public figures should be treated differently from public officials when they sue for libel.

Ashton v. Kentucky (1966) Held that most criminal-libel laws violated the First Amendment.

Linn v. United Plant Guard Workers of America (1966) Overturned lower federal court rulings to decide that the National Labor Relations Act (NLRA) does not bar civil libel actions in cases where plaintiffs can show that statements were made with malice and resulted in injury.

Sheppard v. Maxwell (1966) Overturned a ruling that said a man had been denied a fair trial because of the overwhelming media presence in the courtroom during his murder trial.

Mills v. Alabama (1966) Rebuffed the Alabama Supreme Court to conclude that a state law placing criminal liability on an election-day newspaper editorial violated the First Amendment.

Estes v. Texas (1965) Overturned a conviction based on the presence of cameras in the courtroom and explored the relation between First Amendment press freedoms and the Sixth Amendment right to a fair trial.

New York Times Co. v. Sullivan (1964) Reversed a libel damages judgment against The New York Times and established the principle that the First Amendment's guarantees of freedom of speech and press may protect libelous words about a public official in order to foster vigorous debate about government and public affairs.

Manual Enterprises v. Day (1962) Held that three homoerotic physique magazines — MANual, Trim, and Grecian Guild Pictorial — were not obscene and could not be barred from the mails.

Winters v. New York (1948) Overruled a New York obscenity law under which Murray Winters had been convicted for possessing magazines that he intended to sell.

United States v. Congress of Industrial Organizations (1948) The Supreme Court found that the Corrupt Practices Act of 1925 was not violated by publication of a union newsletter because the statute was not intended to apply to the periodical.

Craig v. Harney (1947) Overturned a criminal contempt of court conviction against a publisher, editorial writer and newspaper reporter in Texas for stories they ran which were critical of a judge, citing freedom of speech and of the press.

Mabee v. White Plains Publishing Co. (1946) Emphasized that First Amendment protections for freedom of the press, although they shield newspapers against special taxes or regulations designed to impede their mission, do not exempt them from general governmental regulations that apply to them as businesses.

Hannegan v. Esquire (1946) Overturned a decision by the postmaster general revoking the second-class-mail permit that his department had issued to *Esquire* magazine.

Pennekamp v. Florida (1946) Overturned a contempt citation that a Florida court had issued to an editor of the Miami Herald, which had published two editorials and a cartoon criticizing the court's handling of criminal cases.

Barber v. Time (1942) Established that the balance between an individual's right to privacy and freedom of the press does not depend solely on the truth of or the absence of malice in what is published, but on the judicial determination of "proper public interest."

Bridges v. California (1941) Overturned contempt convictions against a newspaper and an individual who had criticized judicial proceedings in pending cases.

Freedom of religion
court cases

The first 16 words of the First Amendment to the U.S. Constitution, “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof,” protect the right of every person to practice religion in accordance with conscience and guard against creation of a sectarian state. But the precise meaning of these words has been a matter of dispute from the beginning; they have produced more uncertainty, internal contradiction and changes of course than perhaps any other provision of the Constitution.

There is even disagreement over whether there is one religion clause or two. On the one hand, the 16 words form a single sentence, with the key word religion appearing only once. The same political forces — an alliance of evangelical dissenters (especially Baptists) and enlightenment thinkers (such as Thomas Jefferson) — demanded both provisions, and the two provisions may be seen as a single harmonious concept: protecting the freedom and independence of religion both

from government restrictions and from government sponsorship and attendant control.

On the other hand, it is logically possible to have free-exercise rights even when there is an established church; indeed, several states at the time of the founding had just that, as do some modern democratic nations such as Great Britain and Germany. The modern U.S. Supreme Court has generally interpreted each of the halves of the religion clause without reference to the other, even holding that the two parts are in "tension" with each other — the free-exercise clause giving special protection to religion and the establishment clause prohibiting government action that benefits religion — with the Court required to draw the appropriate "balance" between these two countervailing principles. – *Michael McConnell and John R. Vile*

Groff v. Dejoy (2023) Ruled that an employer must accommodate an employee's religious beliefs — in this case for Sundays off — if it did not cause "undue hardship," dismissing an earlier interpretation that a minimal level of hardship was required.

Carson v. Makin (June 21, 2022) Ruled that Maine's tuition-reimbursement program could not exclude parents who sent their children to private schools.

Kennedy v. Bremerton School District (2022) Ruled that coach-led post-game prayer on the 50-yard line of a high school football field did not violate the establishment clause of the First amendment.

Shurtleff v. Boston (2022) Ruled that flying a Christian flag on a city flagpole at the request of a resident was a private expression and not government speech.

Ramirez v. Collier (2022) Ruled that a death-row inmate's religious-rights claim likely would prevail after Texas rejected his

request for a pastor to pray over him and lay hands on him at his execution.

Trustees of the New Life in Christ Church v. City of Fredericksburg (2022) The U.S. Supreme Court decided not to hear an appeal in which a Virginia church argued that the government could not determine who was or was not a minister in denying the church a tax exemption for a minister residence.

Fulton v. City of Philadelphia (2021) Upheld the religious rights of Catholic Social Services, allowing the agency's refusal to certify same-sex couples as foster parents.

Tandon v. Newsom (2021) Granted an injunction against enforcing a California COVID-19 law restricting home gatherings because of its effect on religious meetings.

Uzuegbunam v. Preczewski (2021) Ruled in favor of a Georgia Gwinnett College student who had been prohibited from distributing religious literature on campus.

Roman Catholic Diocese of Brooklyn v. Cuomo (2020) Blocked New York›s COVID-19 restrictions on the size of religious gatherings.

Our Lady of Guadalupe School v. Vorrissey-Berru (2020) Upheld the termination of two teachers in Catholic elementary schools citing the First Amendment's religious-freedom clause.

Espinoza v. Montana Department of Revenue (2020) Ruled that states cannot create programs that exclude religious schools from programs that subsidize private schools with public money.

South Bay United Pentecostal Church v. Newsom (2020) Ruled that attendance limits on houses of worship during the COVID-19 pandemic did not violate First Amendment freedoms.

Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania (2020) Ruled that the First Amendment allowed employers to opt out of providing contraceptive coverage on moral grounds.

Archdiocese of Washington. v. Wash. Metro. Area Transit Authority (2020) Refused to hear an appeal of a case in which the Washington Metro Transit Authority refused to allow an ad from the Catholic Archdiocese on its bus because it contained religious content.

American Legion v. American Humanist Association (2019) Ruled that a longstanding cross erected to honor slain servicemen does not violate the First Amendment.

Murphy v. Collier (2019) Granted a stay of execution to a Texas prisoner who claimed prison rules denying him access to his Buddhist spiritual advisor violated the establishment clause of the First Amendment.

Masterpiece Cakeshop v. Colorado Civil Rights Commission (2018) The Court used the principle of religious neutrality to overturn a decision penalizing a shop owner for refusing to design a cake for a same-sex wedding.

Trinity Lutheran Church of Columbia, Inc. v. Comer (2017) Ruled that Missouri had improperly excluded a church from a grant, citing the free-exercise clause.

Advocate Health Care Network v. Stapleton (2017) Church-related nonprofits argued they were exempt from ERISA pension rules under First Amendment church-state separation; the court said that the law exempted church-affiliated organizations.

Zubik v. Burwell (2016) Vacated judgments from four federal courts of appeals that found federal regulations requiring employers to provide contraception coverage to their employees did not violate nonprofit religious organization-employers'

religious liberty rights under the Religious Freedom Restoration Act of 1993 (RFRA).

Stormans, Inc. v. Wiesman (2016) Refused to hear an appeal by pharmacy owners who argued their First Amendment freedom was being violated through a state law that prohibited them from refusing to dispense the contraceptive pill Plan B.

Reed v. Town of Gilbert

Cities must be careful in how they regulate different types of signs. Otherwise a court might find them to have engaged in what is known as content discrimination. That is a chief lesson of the U.S. Supreme Court's decision in *Reed v. Town of Gilbert (2015)*.

The case involved a sign ordinance in Gilbert, Ariz., that imposed very different requirements on different types of signs. It imposed few restrictions on so-called "ideological signs," a few more restrictions on political signs, and many more restrictions on what it called "temporary directional signs."

This situation posed a problem for Clyde Reed, the pastor of a local church that held its services at different locations. Reed needed to be able to post signs around town so his parishioners could find their church home. The town told him some of his signs had to go. The town claimed that it needed to heavily regulate signs like Reed's because they caused visual clutter and posed a traffic-safety hazard.

Reed sued, alleging a First Amendment violation, and the Supreme Court agreed with him. The Court found no valid basis to treat directional signs in a way so much tougher than other signs. After all, all types of signs can cause clutter.

Holt v. Hobbs (2015) Ruled that Arkansas prison officials violated the religious-liberty rights of a Muslim inmate under the

Religious Land Use and Institutionalized Persons Act (RLUIPA) by refusing to allow him to grow a short beard.

Equal Employment Opportunity Commission v. Abercrombie & Fitch Stores, Inc. (2015) Ruled that an employer could be liable under civil rights law for refusing to hire an applicant to avoid accommodating a religious practice even though the potential employee had not informed the employer that she wore a headscarf because of her Muslim faith.

Town of Greece v. Galloway (2014) Ruled that a New York town's practice of having prayer before town meetings did not violate the establishment clause.

Elmbrook School District v. Doe (2014) Denied certiorari in a case in which the 7th U.S. Circuit Court of Appeals had found that a suburban Milwaukee school decision had violated the First Amendment's establishment clause by holding a high school graduation in a nondenominational church.

Burwell v. Hobby Lobby Stores, Inc. (2014) Ruled that the government could not require corporations to provide coverage for contraceptives that violated the owners' religious beliefs.

Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC (2012) For the first time, the U.S. Supreme Court used "ministerial exception" as the basis for rejecting a Lutheran teacher's suit alleging discrimination after the teacher was fired after returning from disability leave, saying that under the First Amendment the government could not award Perich without punishing the church.

Hobby Lobby Stores, Inc. v. Sebelius (2012) Denied an injunction against the federal government for implementing provisions in the Affordable Care Act, specifically in regards to contraceptives, saying the Court could only issue such injunctions sparingly and when the rights were "indisputably clear."

Arizona Christian School Tuition Organization v. Winn (2011) Ruled that state residents did not have standing as taxpayers to challenge a program that provided tax credits for contributions to school-tuition organizations.

Utah Highway Patrol Association v. American Atheists, Inc. (2011) The court refused to hear an appeal from the Utah Highway Patrol Association, which had sponsored efforts to post white roadside crosses on the side of highways to memorialize slain police officers.

Salazar v. Buono (2010) Ruled that the government could transfer land upon which a cross sat since 1934 to a private party without violating the establishment clause.

Christian Legal Society v. Martinez (2010) Upheld lower court decisions that allowed the law school at the University of California at Hastings to deny recognizing a chapter of the Christian Legal Society (CLS) as a "Registered Student Organization" (RSO).

Hein v. Freedom from Religion Foundation (2007) Ruled that taxpayers do not have the right to challenge executive branch expenditures on conferences designed to further faith-based initiatives. It thus cut off a potential means of challenging the constitutionality of such expenditures, which some believe violate the establishment clause of the First Amendment.

Gonzales v. O Centro Espirita Beneficente Uniao Do Vegetal (2006) upheld the sacramental use of a hallucinogenic substance under the First Amendment free-exercise clause.

Cutter v. Wilkinson (2005) Ruled that the provisions of the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) did not violate the establishment clause of the First Amendment in allowing members of minority religions to challenge unequal accommodation of their religious practices.

Van Orden v. Perry (2005) Ruled that a monument depicting the Ten Commandments in an Austin, Texas, public park did not violate the establishment clause of the First Amendment.

McCreary County v. American Civil Liberties Union (2005) Ruled that public displays of the Ten Commandments in two Kentucky county courthouses violated the establishment clause of the First Amendment.

Locke v. Davey (2004) Ruled that a scholarship program in Washington state that did not allow a student to use his publicly funded scholarship to major in theology did not violate his First Amendment rights of free exercise of religion or free speech.

Zelman v. Simmons-Harris (2002) Ruled that publicly funded vouchers could be used to send children to religious schools, provided certain constitutional prerequisites were met.

Santa Fe Independent School District v. Doe (2000) Ruled that a school policy of beginning football games with a prayer led by a nominated student body representative violated the establishment clause of the First Amendment.

Mitchell v. Helms (2000) Rejected a longstanding establishment clause challenge to public funding of instructional resources for religious schools.

Agostini v. Felton (1997) Ruled that New York did not violate the First Amendment's establishment clause by administering a federally funded program in which public school teachers provided remedial instruction in private religious schools.

City of Edmond v. Robinson (1996) Refused certiorari and upheld a lower court ruling that the city seal of Edmond, Okla., violated the establishment clause of the First Amendment because one quadrant of it contained a Latin, or Christian, cross.

Capitol Square Review and Advisory Board v. Pinette (1995) Ruled that the Ku Klux Klan had the right to erect a cross next to a Christmas tree and a menorah on public property.

Board of Education of Kiryas Joel Village School District v. Grumet (1994) Ruled that a public school district created to accommodate the disabled children of a particular religious sect violated the establishment clause because the government cannot favor one religion over another.

Lamb's Chapel v. Center Moriches Union Free School District (1993) Held that religious meetings where religious films are shown can take place on public school property during non

Church of the Lukumi Babalu Aye v. City of Hialeah (1993) Determined that the Hialeah city government unconstitutionally targeted the Church of the Lukumi Babalu Aye because of its use of animal sacrifice in religious ceremonies. school hours.

Zobrest v. Catalina Foothills School District (1993) Ruled that the establishment clause of the First Amendment did not prohibit a school district from furnishing a sign-language interpreter to a deaf student enrolled in a Catholic high school under provisions of the Individuals with Disabilities Education Act (IDEA) and its Arizona counterpart.

Lee v. Weisman (1992) Prohibited prayer at public school-sponsored events.

Jimmy Swaggart Ministries v. Board of Equalization of California (1990) Ruled that California could impose the same taxes on the sales of a minister as it could for other retailers without violating the free-exercise or establishment clauses of the First Amendment.

Board of Education of the Westside Community Schools v. Mergens (1990) Upheld the constitutionality of the Equal Access Act of 1984, a federal law prohibiting school officials from discriminating against student clubs because of their religious or philosophical views.

Employment Division, Department of Human Resources of Oregon v. Smith (1990) Changed religious free-exercise law dramatically by ruling that generally applicable laws not targeting specific religious practices do not violate the free-exercise clause of the First Amendment.

Texas Monthly, Inc. v. Bullock (1989) Found that a Texas state law constituted a state endorsement of religion in violation of the establishment clause of the First Amendment.

Frazee v. Illinois Department of Employment Security (1989) Established that a worker could not be denied unemployment for refusing to work on Sunday for religious reasons.

County of Allegheny v. American Civil Liberties Union (1989) Ruled that a creche display inside a county courthouse in Pittsburgh violated the establishment clause, but another display containing a menorah, a Christmas tree, and other decorations outside the City-County Building a block from the courthouse did not.

Lyng v. Northwest Indian Cemetery Protective Association (1988) Ruled that the free-exercise clause of the First Amendment does not prohibit the federal government from timber harvesting or constructing a road through a portion of a national forest that is considered a sacred religious site by three Native American tribes.

Edwards v. Aguillard (1987) Ruled that a Louisiana law mandating instruction in "creation science" whenever evolution was taught in public schools violated the establishment clause of the First Amendment.

O'Lone v. Estate of Shabazz (1987) Ruled that inmate religious rights may be restricted for security concerns; the policies were not in violation of the free-exercise clause of the First Amendment.

Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-day Saints v. Amos (1987) Upheld an exemption from anti-discrimination provisions of the Civil Rights Act of 1964 for the nonprofit activities of religious organizations, not just their religious ones.

Witters v. Washington Department of Services for the Blind (1986) Upheld the constitutionality of a state vocational rehabilitation program in which the money provided was used to finance education at a sectarian school.

Ansonia Board of Education v. Philbrook (1986) Ruled that Title VII of the Civil Rights Act of 1964 did not require an employer to accept an employee's proposal concerning religious observance when the employer and the employee both proposed reasonable accommodation of the employee's religious needs.

Bowen v. Roy (1986) Ruled that the federal government did not violate the free-exercise clause of the First Amendment by assigning a Social Security number for welfare benefits.

Tony and Susan Alamo Foundation v. Secretary of Labor (1985) Ruled that "minimum wage, overtime, and recordkeeping requirements of the Fair Labor Standards Act" (FLSA) applied to workers "engaged in the commercial activities of a religious foundation" even if they did not consider themselves to be employees.

Thornton v. Caldor (1985) Ruled that the government could not single out religious observers for special treatment when it found a Connecticut law that gave employees an absolute right not to work on their chosen Sabbath in violation of the establishment clause of the First Amendment.

Grand Rapids School District v. Ball (1985) Struck down two government education programs that employed parochial school teachers and facilities.

Board of Trustees of Scarsdale v. McCreary (1985) Affirmed a decision by the 2nd U.S. Circuit Court of Appeals holding that a

Christmas display on public property did not violate the establishment clause.

Wallace v. Jaffree (1985) Struck down a "one minute period of silence" that the Alabama legislature prescribed for the state's public schools at the start of each day.

Aguilar v. Felton (1985) Ruled that the City of New York had violated the establishment clause of the First Amendment by paying public school teachers to teach reading, reading skills, and remedial mathematics to educationally disadvantaged, low-income students in the city's parochial schools with funds allotted under Title I of the Elementary and Secondary School Act of 1965.

Lynch v. Donnelly (1984) Upheld the constitutionality of a seasonal holiday display that included a manger scene, or creche, on government property, finding that it was not in violation of the establishment clause of the First Amendment.

Marsh v. Chambers (1983) Ruled that the longstanding practice by which Nebraska hired a chaplain to open each legislative day with prayer did not violate the establishment clause of the First Amendment.

Mueller v. Allen (1983) Upheld the validity of a law allowing tax deductions for tuition and other school expenses disproportionately benefiting parents whose children attend parochial schools.

Bob Jones University v. United States (1983) Ruled that the Internal Revenue Service (IRS) may deny tax-exempt status to institutions whose policies are "contrary to established public policy," even if those policies are based on religious beliefs.

United States v. Grace (1983) Ruled that the First Amendment protects protests on sidewalks outside the Supreme Court building.

United States v. Lee (1982) Ruled that religious beliefs do not preclude employers from the duty of contributing Social Security benefits on behalf of their employees.

Larkin v. Grendel's Den, Inc. (1982) Struck down a Massachusetts law permitting churches to veto applications for liquor licenses, finding that the establishment clause of the First Amendment forbids a state from delegating its power to a religious organization.

Valley Forge Christian College v. Americans United for Separation of Church and State (1982) Ruled that Americans United did not have standing to challenge the government's transfer of property to a religious educational institution.

United States v. Lee (1982) Ruled that religious beliefs do not preclude employers from the duty of contributing Social Security benefits on behalf of their employees.

Larson v. Valente (1982) Ruled that a Minnesota statute treating religious organizations differently based upon the percentage of contributions the organizations received from their members violated the establishment clause of the First Amendment.

Thomas v. Review Board of Indiana Employment Security Division (1981) Ruled that Indiana could not deny unemployment benefits to an individual who quit his job due to a religious objection.

Heffron v. International Society for Krishna Consciousness (1981) Upheld a content-neutral time, place, and manner regulation that placed restrictions on the religious practices of the Krishna sect against allegations that it restricted the First Amendment exercise of religion.

Widmar v. Vincent (1981) Struck down a regulation that the University of Missouri at Kansas City adopted in 1977 prohibiting the use of its buildings and grounds for religious purposes.

Stone v. Graham (1980) Ruled that a Kentucky law that required the posting of the Ten Commandments on the wall of every public school classroom in the state violated the establishment clause of the First Amendment because the purpose of the display was essentially religious.

Committee for Public Education and Religious Liberty v. Regan (1980) Ruled that a New York statute allocating funds to reimburse religious as well as secular private schools for testing and other services mandated by state law did not violate the establishment clause of the First Amendment.

Jones v. Wolf (1979) Decided that, under the religion clauses of the First Amendment, a state could resolve disputes over church property between two groups by applying neutral principles of law rather than relying on compulsory deference to religious authority but remanded it to the lower courts.

McDaniel v. Paty (1978) Ruled that a Tennessee law prohibiting clergy members from serving as political delegates violated the free-exercise clause of the First Amendment.

Trans World Airlines v. Hardison (1977) Ruled that an airline did not undermine an employee's First Amendment rights by firing him for not working on his Sabbath, because a reasonable effort was made to accommodate the employee.

Wolman v. Walter (1977) Held that the state of Ohio could provide nonpublic schools with secular textbooks, standardized testing and scoring, diagnostic services, and therapeutic and remedial services, while rejecting aid in the form of instructional materials and equipment and field-trip services as violations of the First Amendment's establishment clause.

New York v. Cathedral Academy (1977) Invalidated a New York law adopted to reimburse parochial schools for state-mandated recordkeeping and testing services, finding it in violation of the First and 14th Amendments because it required excessive state involvement in religious affairs.

Serbian Eastern Orthodox Diocese v. Milivojevich (1976) Ruled that the First Amendment prevents civil courts from interfering with decisions reached by the highest authorities of hierarchical churches.

Johnson v. Robison (1974) Remanded a federal law that made veterans' education benefits available for individuals who had served in the military, but not for conscientious objectors who had performed alternate service, did not violate either the equal-protection or free-exercise clauses.

Levitt v. Committee for Public Education and Religious Liberty (1973) Held that lump-sum payments by a state government to religious schools for administrative costs violate the establishment clause of the First Amendment.

Lemon v. Kurtzman II (1973) Upheld a 1971 ruling that government payments to parochial schools were unconstitutional.

Committee for Public Education and Religious Liberty v. Nyquist (1973) Invalidated an attempt by New York state to provide money grants to parochial schools for maintenance and repair of school facilities.

Sloan v. Lemon (1973) Struck down a state law that reimbursed parents for tuition to parochial schools.

Wisconsin v. Yoder (1972) Ruled that Old Order Amish families who wished to pull their children out of school before a state compulsory-education statute allowed could do so because of the establishment clause.

Cruz v. Beto (1972) Established that claims of religious freedom by prison inmates should not be dismissed outright without, at the least, factual findings by trial courts.

Tilton v. Richardson (1971) Upheld provisions of the Higher Education Facilities Act of 1963, permitting federal aid for construction of secular buildings at church-sponsored colleges and universities.

Lemon v. Kurtzman I (1971) Established a tripartite test to determine violations of the First Amendment and found that two states violated the establishment clause of the First Amendment by making state financial aid available to "church-related educational institutions."

Clay v. United States (1971) Issued a per curiam rejection of a Kentucky appeals board's denial of conscientious-objector status to Cassius Clay, the world champion boxer who changed his name to Muhammad Ali.

Walz v. Tax Commission of the City of New York (1970) Held that there was "no genuine nexus between tax exemption and establishment of religion."

Welsh v. United States (1970) Determined that traditional religious beliefs were not necessary to claim conscientious-objector status.

Maryland and Virginia Eldership of the Churches of God v. Church of God at Sharpsburg (1970) Affirmed that in settling church disputes, courts do not raise First Amendment concerns as long as they do not inquire about church doctrine.

Board of Education v. Allen (1968) Upheld a New York law allowing the loan of secular textbooks to all schoolchildren, including those in parochial schools.

United States v. Seeger (1965) Overturned the conviction of a man who claimed conscientious-objector status by virtue of his religious belief, but was convicted because he would not confirm that he believed in a "Supreme Being."

Chamberlin v. Dade County Board of Public Instruction (1964) Reversed a Florida Supreme Court decision that had upheld devotional Bible readings and prayers in public schools.

Cooper v. Pate

Inmates have the right to religious materials while incarcerated. That is the lesson of the U.S. Supreme Court's decision in *Cooper v. Pate (1964)*.

Illinois inmate Thomas Cooper alleged that prison officials had denied him access to Black Muslim religious materials. The lower courts dismissed his claims. However, the Supreme Court reinstated his lawsuit in a per curiam (Latin for "for the court") opinion.

The Court reasoned that Cooper had stated a viable First Amendment claim that should not have been dismissed. The case is important because it is one of the first decisions in which the Supreme Court took seriously the constitutional claims of a prison inmate.

Abington School District v. Schempp (1963) Invalidated the reading of verses, without comment, from the Bible and the Lord's Prayer in public school settings.

Engel v. Vitale (1962) Ruled that school-sponsored prayer in public schools violated the establishment clause of the First Amendment.

Torcaso v. Watkins (1961) Ruled that requiring an oath to affirm belief in "the existence of God" to hold public office violated the First and 14th Amendments.

Braunfeld v. Brown (1961) Ruled that a Pennsylvania state law that required certain types of retail businesses to close on Sunday did not violate the First Amendment's free-exercise clause.

Two Guys from Harrison-Allentown, Inc. v. McGinley (1961) Ruled that Sunday blue laws did not violate the equal protection clause of the Fourteenth Amendment or the establishment clause of the First Amendment.

Gallagher v. Crown Kosher Super Market of Massachusetts (1961) Ruled that a Sunday blue law, which regulated the sale of alcohol on Sundays, did not violate the First Amendment free-exercise clause.

Sicurella v. United States (1955) Overturned the conviction of a Jehovah's Witness who had refused to enlist in the armed forces because of his religious beliefs.

Superior Films v. Department of Education (1954) Struck down an Ohio law that restricted "blasphemous" films.

Poulos v. New Hampshire (1953) Upheld the conviction of Jehovah's Witnesses who had been prosecuted under an ordinance of Portsmouth, N.H., for holding a religious service in a public park without a license, finding it was not in violation of the Witnesses' First Amendment right to free exercise of religion.

Fowler v. Rhode Island (1953) Found that a municipal ordinance that prevented a minister affiliated with Jehovah's Witnesses from conducting a religious service in a public park, but allowed other religious services to be held, violated the First and 14th Amendments.

Doremus v. Board of Education (1952) Denied a declaratory judgment sought by residents of New Jersey who were challenging the daily reading, without comment, of five Bible verses from the Old Testament at the beginning of each public school day.

Zorach v. Clauson (1952) Upheld New York City's "released time" policy that permitted public school children to leave campus during school hours to attend religious instruction and services.

Kedroff v. Saint Nicholas Cathedral (1952) Ruled that Article 5-C of the Religious Corporations Law of New York exercised unconstitutional legislative interference in the freedom of religion.

Kunz v. New York (1951) Overturned a New York City ordinance under which officials had refused to renew a permit for street preaching to Carl Jacob Kunz, a Baptist minister whose earlier sermons had ridiculed and denounced other religious beliefs.

Niemotko v. Maryland (1951) Struck down the disorderly conduct conviction of members of a religious group who had held a Bible study in a public park without a permit.

Illinois ex rel. McCollum v. Board of Education (1948) Overturned a "released time" arrangement whereby public schools in Illinois provide religious training during regular school hours, holding that the practice violated the establishment clause of the First Amendment.

Everson v. Board of Education (1947) Upheld a New Jersey statute allocating taxpayer funds to bus children to religious schools because it did not breach the "wall of separation" between church and state.

Marsh v. Alabama (1946) Ruled that a person distributing religious literature on the sidewalk of a "company town" was protected by the First Amendment rights of freedom of the press and religion and could not be arrested for trespass.

Cleveland v. United States (1946) Upheld the conviction of a fundamentalist group of polygamous Mormons, responding to the argument that the Mormons had been "motivated by religious belief" to practice polygamy.

Girouard v. United States (1946) Held that applicants for citizenship may not be required to swear under oath that they will bear arms in defense of the United States if they have religious objections to bearing arms in the military.

United States v. Ballard (1944) Ruled that courts cannot examine the truth or falsity of religious beliefs.

Follett v. Town of McCormick (1944) Invalidated a tax of $1 a day or $15 a year imposed by the town of McCormick, S.C., on a resident Jehovah's Witness selling religious publications door-to-door.

Largent v. Texas (1943) Held that a Texas ordinance requiring a permit to solicit orders for religious books was unconstitutional.

Jamison v. Texas (1943) Overturned the conviction of a Jehovah's Witness who had violated a Dallas, Texas, ordinance prohibiting the distribution of handbills on the streets.

Jones v. City of Opelika (1942, 1943) Upheld a nondiscriminatory licensing fee to sellers of religious books and pamphlets but, one year later in the second case (Jones II), the Court reversed itself and struck down such fees.

Freedom of assembly
court cases

The First Amendment guarantees "the right of the people peaceably to assemble." The notion that the act of gathering is pivotal to a functioning democracy relates to the belief that individuals espousing ideas will tend to coalesce around their commonalities. As a result, a correlative right of association — though not enumerated in the First Amendment — evolved from the right of assembly and continues to be recognized in a growing body of case law. It also can be viewed more broadly as a corollary to the right of speech because people often bond together in speech-related activities. – *Robert D. Richards*

Americans for Prosperity Foundation v. Bonta (2021) Ordered California to stop collecting the names and addresses of top donors to charities, saying the requirement infringed upon rights of association protected under the First Amendment.

McCullen v. Coakley (2014) Ruled that a Massachusetts law prohibiting individuals from standing on a public sidewalk within 35 feet of an abortion facility was unconstitutional.

Snyder v. Phelps (2011) Ruled that the First Amendment prohibited the imposition of civil liability upon a church and its members who picketed the funeral of a slain Marine.

Thomas v. Chicago Park District (2002) Upheld a Chicago ordinance requiring individuals holding events in a public park involving more than 50 persons to obtain a permit, finding that the ordinance contained sufficient procedural safeguards to satisfy First Amendment scrutiny.

Schenck v. Pro-Choice Network of Western New York (1997) Held that fixed buffer zones around abortion clinics are constitutional, but floating buffer zones are not because they are overbroad in affecting political speech.

Bray v. Alexandria Women's Health Clinic (1993) Ruled that abortion protesters' actions did not constitute a conspiracy against a protected class and therefore did not violate the Civil Rights Act of 1871.

Norman v. Reed (1992) Struck down an Illinois law that required a minor political party to obtain 25,000 signatures to appear on the ballot for the first time, finding it in violation of the First Amendment right of association.

Hirsh v. City of Atlanta (1990) Denied an application by the anti-abortion group Operation Rescue to stay an injunction issued by a Georgia court prohibiting its members from demonstrating within 50 feet of an abortion clinic and imposing further restrictions upon them.

Frisby v. Schultz (1988) Upheld a Wisconsin city ordinance that banned picketing in residential neighborhoods.

Board of Airport Commissioners of the City of Los Angeles v. Jews for Jesus, Inc. (1987) Struck down a resolution adopted by the Los Angeles Board of Airport Commissioners that proclaimed that "the Central Terminal Area at Los Angeles International

Airport is not open for First Amendment activities by any individual and/or entity."

Board of Directors of Rotary International v. Rotary Club of Duarte (1987) Upheld a lower court judgment that Rotary International did not have the First Amendment right to exclude women from joining its ranks.

Chicago Teachers Union v. Hudson (1986) Ruled that a set of union procedures created for nonmembers to object to due collection were insufficient in protecting the freedom of association clause.

Tashjian v. Republican Party of Connecticut (1986) Addressed the freedom of political parties to associate with independent voters by deciding that states cannot impose a closed primary system because it denies the political party its right under the First and 14th Amendments to enter into political association with individuals of its own choosing.

Roberts v. United States Jaycees (1984) Held that Jaycees chapters, an organization for young business leaders, lacked "distinctive characteristics that might afford constitutional protection to the decision of its members to exclude women."

Regan v. Taxation With Representation of Washington (1983) Rejected a First Amendment challenge to the provision in the federal tax code that denied tax-exempt status for substantial lobbying activities.

United States v. Grace (1983) Ruled that the First Amendment protects protests on sidewalks outside the Supreme Court building.

Brown v. Socialist Workers Campaign Committee (1982) Ruled that the First Amendment right of association prohibits states from compelling minor political parties to disclose the names of contributors and recipients of disbursements when there is

a reasonable probability that those persons will be subject to threats, harassment, or reprisals.

Democratic Party of United States v. Wisconsin ex rel. LaFollette (1981) Ruled that state laws attempting to dictate how delegates vote at national party conventions violate the associational rights of political parties.

Citizens Against Rent Control v. Berkeley (1981) Rejected a Berkeley, Calif., statute limiting individuals' contributions to groups opposing or supporting ballot initiatives to no more than $250 on the grounds that it violated the right of expression and association.

Carey v. Brown (1980) Struck down an Illinois statute barring picketing of residences, except for labor disputes.

Village of Skokie v. National Socialist Party of America (Ill) (1978) Remanded a case involving a Nazi hate group's right to demonstrate in a Jewish neighborhood. The Illinois Supreme Court eventually ruled that the National Socialist Party of America's demonstration was protected under the First Amendment.

United Transportation Union v. State Bar of Michigan (1971) Reversed an injunction prohibiting a union from engaging in group legal activity, finding that the injunction denied the union workers and members their freedom of association and speech rights guaranteed in the First Amendment.

In re Stolar (1971) Ruled that the First Amendment prohibits a state from penalizing an attorney solely on the basis of membership in a particular organization.

Coates v. City of Cincinnati (1971) Invalidated a city law against loitering that negatively affected freedom of assembly.

Gregory v. City of Chicago (1969) Upheld the First Amendment rights of peaceful civil rights protesters over the overzealous actions of police attempting to quell anticipated civil disorder.

Williams v. Rhodes (1968) Held that the "heavy burden" placed on third parties by the law was discriminatory and violated the First Amendment's right to free association.

Amalgamated Food Employees Union Local 590 v. Logan Valley Plaza (1968) Held that the state courts of Pennsylvania could not enjoin peaceful union picketing by nonemployees directly in front of a nonunion grocery store in a private shopping mall.

Carroll v. President and Commissioners of Princess Anne (1968) Struck down a 10-day injunction that a Maryland court issued against rallies by the National States Rights Party, a white supremacist group.

Brown v. Louisiana

Civil rights protesters are speaking when they protest through a sit-in demonstration. This is a key lesson from the U.S. Supreme Court's decision in *Brown v. Louisiana (1966)*.

Henry Brown and several other African-American men entered a public library in Clinton, Louisiana and conducted a sit-in. The public library enforced a policy of segregating patrons by race. Brown, who was a member of the civil rights group Congress of Racial Equality (CORE), then refused to leave the library and was arrested for breach of the peace.

The U.S. Supreme Court reversed his conviction, reasoning that the right of peaceful protest is not confined to verbal expression, but also includes such expression as silent protest.

Cameron v. Johnson (1965, 1968) Upheld Mississippi's anti-picketing law as long as it was understood to apply only to picketers blocking the entrances of public buildings.

Elfbrandt v. Russell (1966) Held that a 1961 Arizona statute requiring that present and potential state employees sign a loyalty oath was an infringement of the freedom of political association guaranteed by the First Amendment.

Cox v. Louisiana (1965) Affirmed that an otherwise constitutionally valid law regulating public demonstrations can be unconstitutional if the statute grants undue discretion to public officials charged with administering and enforcing the statute.

Baggett v. Bullitt (1964) Struck down the 1931 and 1955 provisions of a Washington state law that mandated loyalty oaths for state employees, thereby interfering with their First Amendment rights of association.

Gibson v. Florida Legislative Investigation Committee (1963) Held that the First Amendment rights of free-speech and association protected organizations from having to divulge their membership to a legislative investigative committee when there was an insufficient record to demonstrate an association with communist activity.

Edwards v. South Carolina

You have the right to peacefully protest on public streets. That is the chief lesson of the U.S. Supreme Court's decision in *Edwards v. South Carolina (1963)*. The case involved nearly 200 young African-Americans, mainly students, who marched from a local church to the statehouse in Columbia, S.C.

Along the way they sang religious hymns and held up signs that read "Down With Segregation." However, when they got to the state capital the police arrested them for breach of the peace.

The Supreme Court reversed their convictions, emphasizing that the students were exercising their First Amendment rights of speech, assembly, and petition. Justice Potter Stewart wrote that the First and 14th Amendments do not "permit a State to make criminal the peaceful expression of unpopular views."

Garner v. Louisiana (1961) Voided the application of a Louisiana breach of the peace statute that was used to stop peaceful sit-in demonstrations, such as those at department store lunch counters.

Louisiana ex rel. Gremillion v. NAACP (1961) Ruled that requiring an organization to submit its membership lists to the state violates First Amendment free-association rights if this disclosure can reasonably be expected to result in discrimination against the members.

Shelton v. Tucker (1960) Overturned an Arkansas law requiring as a condition of employment that schoolteachers submit an annual accounting of any organizations that they had belonged to or contributed to in the preceding five years.

NAACP v. Alabama (1958) Ruled that the First Amendment protected the free association rights of the National Association for the Advancement of Colored People (NAACP) and its rank-and-file members.

Building Service Employees International Union v. Gazzam (1950) Upheld an injunction issued by the Supreme Court of Washington against picketers who had sought to force the owner of a small inn into compelling his employees to join a union.

Carpenters and Joiners Union of America, Local No. 213 v. Ritter's Cafe (1942) Upheld Texas' state-imposed limitations on picketing.

Bakery and Pastry Drivers and Helpers Local v. Wohl (1942) Struck down an injunction against picketers who were protesting peddlers buying from bakeries and selling to small retailers seven days a week, in conflict with union policies.

Cox v. New Hampshire

You often need a permit to conduct a parade. That is a key lesson from the U.S. Supreme Court's decision in *Cox v. New Hampshire (1941)*.

Willis Cox and more than 60 other Jehovah's Witnesses had peacefully paraded single file on a sidewalk in Manchester, N.H., carrying signs and handing out leaflets announcing a meeting. However, they had not secured the necessary permit. They were cited for violating a law requiring a permit.

The group argued that the First Amendment protected their right to parade without a permit. But the Supreme Court unanimously disagreed, holding that government officials can impose reasonable time, place, and manner restrictions on the use of public streets for parades.

The Court explained that cities long have had the ability to regulate the public streets "to ensure the safety and convenience of the people in the use of public highways."

Thornhill v. Alabama (1940) Ruled that an Alabama law which made it illegal for a person to "loiter" or "picket" around a business with the intention of interfering with it was facially invalid and unconstitutionally denied the First Amendment right of freedom of expression.

Carlson v. California (1940) Struck down a Shasta County, Calif., ordinance that prohibited loitering or picketing "for the purpose of inducing, influencing or attempting to induce or influence" ...

"any person to refrain from doing or performing any service or labor in any works, factory, place of business or employment."

Hague v. Committee for Industrial Organization

People have a right to express themselves and gather on public property open for general use. That is a key lesson from the U.S. Supreme Court's decision in *Hague v. Committee for Industrial Organization (1939)*.

The case involved Jersey City, N.J., Mayor Frank Hague's banning of a group of people from meeting in a public park to discuss labor laws. Hague referred to the group as communists and dangerous. The Committee for Industrial Organization, with assistance from the American Civil Liberties Union, sought an injunction prohibiting Hague from banning them.

The Supreme Court ruled against Hague, reasoning that his actions deprived the labor union and its members from exercising their free-assembly and free-speech rights. Justice Owen Roberts famously wrote, "Wherever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions."

This language is often viewed as the beginnings of what became known in First Amendment law as the public-forum doctrine. Under this doctrine, certain types of public property called public forums are traditionally open for use by the public.

Freedom of petition
court cases

The right to petition permits us to ask government to take action to address a need or concern. While it doesn't guarantee a desired result, it does ensure a level of participation in the democratic process. At its most basic, "petitioning government for redress of grievances" involves a simple communication to government asking for change. At its most comprehensive, petition is done by professional lobbyists, representing industries with extensive resources and political influence.

— *Deborah Fisher*

Borough of Duryea v. Guarnieri (2011) Addressed the issue of speech and petition by public employees under the First Amendment, saying petitions should involve a public concern.

Meyer v. Grant (1988) Invalidated a provision of a Colorado statute that made it a felony to pay persons to circulate petitions calling for the inclusion of initiatives on state ballots.

McDonald v. Smith (1985) Ruled that the petition clause of the First Amendment, which guarantees Americans the right to petition the government for redress of grievances, does not endow individuals with absolute immunity from charges of slander and libel.

Secretary of the Navy v. Huff (1980) Upheld a regulation requiring members of the armed services to obtain a commander's approval before circulating petitions or leaflets.

Brown v. Glines (1980) Ruled that persons serving in the military have the right to petition Congress via single-signature letters but may not circulate petitions to Congress without prior approval from a base commander.

Illinois State Board of Elections v. Socialist Workers Party (1979) Struck down an Illinois law requiring independent candidates and new political parties to obtain more petition signatures to qualify for the Chicago ballot than for a statewide office.

California Motor Transport Co. v. Trucking Unlimited (1972) Ruled that the First Amendment right of petition did not necessarily shield companies from antitrust laws when they engaged in concert to deter others from "free and unlimited access" to courts and agencies.

United States v. Harriss (1954) Found constitutional the Federal Lobbying Act of 1946, the purpose of which was to enable Congress to know "who is being hired, who is putting up the money, and how much."

Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc. (1961) Held that use of the Sherman Antitrust Act to penalize railroad operators for restraint of trade for a publicity campaign against truckers violated the First Amendment right to petition.

"First Amendment law can be taught by telling wonderful stories. Yes, there can be arcane decisions, but the leading cases in the field tend to be packed with humanity and drama. The evolution of the First Amendment is a rich saga and an inspiring one."

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