

*First
Amendment*



(1791)

WHAT IT SAYS

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.

BY COMPARISON: THE PREAMBLE TO THE DECLARATION OF INDEPENDENCE

The First Amendment’s guarantee of freedom of the press stands as an essential right if the people are to learn anything beyond the “official” information that the government distributes. Yet government leaders have complained that some information that the media has released (or was about to release) could have jeopardized national security. This was the case in 1971 when first the New York Times, and then the Washington Post and the Boston Globe, published excerpts from the still-classified Pentagon Papers. The documents were part of a highly secret study conducted by the Defense Department into why and how the United States had gotten involved in the Vietnam War. One of the people who had worked on the project, Daniel Ellsberg, became disillusioned with the war and believed that the public needed to know what the Pentagon Papers contained, despite their classified status. He secretly provided copies to journalists from several major newspapers. Although the documents dealt with events that occurred before he came to office, Richard Nixon believed that their publication hindered his ability to conduct the war and negotiate the peace. The Nixon administration called on the federal district court to issue an injunction against the newspapers to prevent them from publishing any installments of the Pentagon Papers. The government was seeking “prior restraint”—attempting to stop the newspapers before they published what they had, rather than punishing them afterward. The federal judge who heard the case asked the government’s attorneys to select the “ten worst cases” in which classified material would endanger the nation if published. When the government produced its list, the newspapers were able to demonstrate that the information was already public knowledge. When the judge refused to halt publication, the government appealed to the Supreme Court, which in *New York Times Co. v. United States* (1971), decided by a 6-to-3 margin that the government had failed to justify prior restraint. “The press was to serve the governed, not the governors,” asserted Justice Hugo Black for the majority.

WHAT IT MEANS

The First Amendment may well be the best known of our constitutional protections, and possibly the least understood. The First Amendment’s free speech, assembly, and press guarantees allow citizens to express and be exposed to a wide range of opinions. It was intended to ensure a free marketplace of ideas—even if the ideas are unpopular. Freedom of speech encompasses not only the spoken word, but also all kinds of expression (including nonverbal communications, such as sit-ins). Under its provision, the media—newspapers, television, radio, books, art, advertisements, and the Internet—are fit to distribute news, information, ideas, and opinions. The amendment protects not only the speaker but also the person who receives the information. The ability to read, hear, see, and obtain different points of view is a First Amendment right, too.

The right to free speech is not absolute, however. The government may limit or ban libel (the communication of false statements about people that injures their reputations). The government can further restrict obscenity, “fighting words”—insults intended to provoke a fight—and words that present a “clear and present danger” of causing violence, to use the phrase of Justice Oliver Wendell Holmes Jr. The government can also regulate speech through specific rules limiting the time, place, or manner in which it is made.

The First Amendment also protects the freedom of assembly, which can mean everything from gathering with a group of people to picket or protest to giving people the right to associate with one another in groups for economic, political, or religious purposes without unnecessary government regulation. Related to this is the right to petition the government, which includes everything from signing an actual petition to filing a lawsuit. The First Amendment protects individuals’ freedom of religion in two ways. It allows people to hold whatever religious beliefs they want and to “exercise” these beliefs, as by attending religious services or wearing religiously mandated items of clothing. The free exercise of religion also includes the right not to believe in any religion and not to participate in any religious “exercise.” The amendment further prohibits the government from endorsing religion in general or one set of religious beliefs in particular. The free exercise clause and establishment clause sometimes clash, and courts have to help keep the balance between accommodating people’s religious freedom and maintaining a neutral approach to religious believers and nonbelievers alike.

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“If there is a bedrock principle underlying the First Amendment it is that the Government may not prohibit the expression of an idea simply because society finds the idea itself offensive and disagreeable.”

—William J. Brennan Jr.,
Texas v. Johnson (1989)



First Amendment TIMELINE

Editors imprisoned under Alien and Sedition Acts

1798

A U.S. peace treaty with Great Britain angers France, which strikes back by seizing U.S. ships. On the verge of war, the Federalist majorities in Congress enact four bills collectively known as the Alien and Sedition Acts to silence pro-French sentiment in the United States. These acts make it a crime to criticize the federal government and its policies. Under this law, critical newspaper publishers are convicted and imprisoned. In 1800, the Democratic-Republicans win the Presidency and majorities in Congress. The new majority lets the Sedition Act expire, and President Thomas Jefferson pardons all those who had been convicted under it.

Efforts to stifle debate about slavery

1836

As abolitionists develop the tactic of submitting many antislavery petitions to Congress, proslavery members of the U.S. House of Representatives adopt “gag” rules that bar such petitions from being introduced and debated. In 1844, former President John Quincy Adams, then a representative from Massachusetts, leads the effort to repeal these rules.

The Sedition Act punishes critics of World War I

1918

After the United States enters World War I, the federal government imposes criminal penalties on all forms of expression that are critical of the war mobilization. Some nine hundred people are convicted under the law, and hundreds of noncitizens are deported without a trial. Congress repeals the Sedition Act in 1921.

Prayer not allowed in public schools

1962

New York State’s Board of Regents rafted a nondenominational prayer for students to recite voluntarily at the beginning of each school day: “Almighty God, we acknowledge our dependence upon Thee, and beg Thy blessings upon us, our teachers, and our country.” Ruling in *Engel v. Vitale* (1962), the Supreme Court rejected the notion that the prayer’s lack of reference to any specific religion exempted it from the First Amendment’s prohibition against establishing a religion. Any statesanctioned prayer, the court argued, was an unconstitutional recognition of religion.

Supreme Court places limits on libel

1964

L. B. Sullivan a Montgomery, Alabama, city commissioner, sues the *New York Times* for libel after it publishes a fullpage advertisement criticizing anti-civil rights activities in Montgomery. Although the Alabama Supreme Court rules against the newspaper, the Supreme Court reverses that judgment in *New York Times v. Sullivan*. The Supreme Court rules that public officials cannot sue for libel unless they prove that a statement was known to be false and made with “actual malice,” meaning that it was made “with knowledge that it was false or with reckless disregard of whether it was false or not.”

Freedom of Information Act passes

1966

President Lyndon B. Johnson signs the Freedom of Information Act (FOIA), requiring that government records be made available to the public and press upon request. Exceptions are made for documents relating to national security, confidential financial data, and law enforcement. President Johnson notes “a democracy works best when the people have all the information that the security of the nation permits. No one should be able to pull curtains of secrecy around decisions which can be revealed without injury to the public interest.”

**Limits to First Amendment
recognized in cases of
“clear and present danger”**

→ 1919 →

Supreme Court justice Oliver Wendell Holmes, in his opinion in *Schenck v. United States*, upholds the conviction of Socialist Charles Schenck for distributing antiwar leaflets in violation of the Espionage Act. Although under normal circumstances the First Amendment would have protected such activities, the Court holds that, in wartime, speech that poses a “clear and present danger of inciting imminent, lawless action” can be restricted, comparing it to “falsely shouting fire in a theater and causing a panic.”

**No religious instruction
in public schools**

→ 1948 →

In Illinois, the Champaign Council on Religious Education, composed of Jewish, Catholic, and Protestant groups, offered voluntary religious instruction to students in local public schools. The Supreme Court ruled in *McCullum v. Board of Education Dist.* (1948) that such use of school buildings was unconstitutional because it was “a utilization of the tax established and tax-supported public school system to aid religious groups and to spread the faith,” and therefore violated the establishment of religion clause of the First Amendment.

“Symbolic speech” is protected

→ 1961 →

In *Garner v. Louisiana*, the U.S. Supreme Court overturns the convictions for disturbing the peace of five African Americans who protested segregation by staging a “sit-in” at an all-white restaurant. Justice John Harlan explains that a sit-in demonstration is “as much a part of the free trade of ideas as is verbal expression.” Similarly, in the case of *Tinker v. Des Moines Independent Community School District* (1969), the Supreme Court rules that the Des Moines, Iowa, School Board had been wrong to suspend three students who wore black armbands to school to protest the Vietnam War. The Court bases its decision on the grounds that the students’ passive protest posed no risk of disrupting school activities.

**Money spent in political campaigns
is considered “speech”**

→ 1976 →

When Congress tries to limit expenditures in political campaigns, the U.S. Supreme Court, in *Buckley v. Valeo*, invalidates those provisions that restrict candidates ability to spend their own money on a campaign, limit campaign expenditures by an outside group, and limit total campaign spending. The Court compares restrictions on spending with restrictions on “political speech.” The majority reasons that discussion of public issues and political candidates are integral to the American political system under the Constitution. In the Court’s opinion, government-imposed limits on the amount of money a person or group can spend on political communication reduces “the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached.”

**Restrictions on religious
items displayed around
government buildings**

→ 1989 →

The American Civil Liberties Union challenged a Christmas crèche and a Hanukkah menorah displayed at the Allegheny County Courthouse in Pittsburgh, Pennsylvania. In *Allegheny County v. ACLU* (1989) the Supreme Court ruled that while not all religious celebrations on government property violated the First Amendment, anything that clearly expressed official endorsement was unconstitutional. The nativity scene inside the courthouse, with a banner reading “Gloria in Excelsis Deo” (“Glory to God in the Highest”) failed the constitutional test, but the menorah erected outside the building to “celebrate the season” was allowed to remain.