

1st AMENDMENT RIGHTS:

SPEECH
PRESS
RELIGION
ASSEMBLY

FIRST


The First Amendment

"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 **FIRST** AMENDMENT protects five important rights — the right to follow the religion of one's choice; the right to speak one's mind freely on any subject; the right to print or publish ideas in any form freely, even if those ideas are unpopular or harshly critical of the government; the right to gather in groups peacefully for any lawful reason; and the right to ask government officials to change decisions or rules thought to be unfair. As with all rights, there are limits on each of these — but only when following them might harm or take away some other important right.

AMENDMENT

FREEDOM OF RELIGION, SPEECH, PRESS, ASSEMBLY, AND THE RIGHT TO PETITION THE GOVERNMENT.



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1st AMENDMENT RIGHTS

A.) FREE SPEECH (EXPRESSION PART 1)

Absolute freedom mocks at justice. Absolute justice denies freedom. To be fruitful, the two ideas must find their limits in each other. -Albert Camus

CASE #1

APPLICATION:

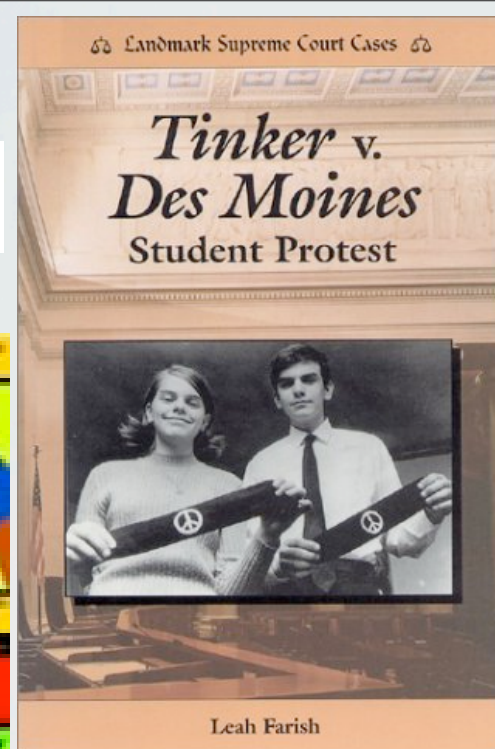
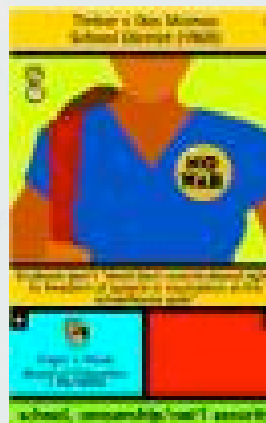
Tinker v. Des Moines 1969

Arguments

For 1st Amendment

Against 1st Amendment

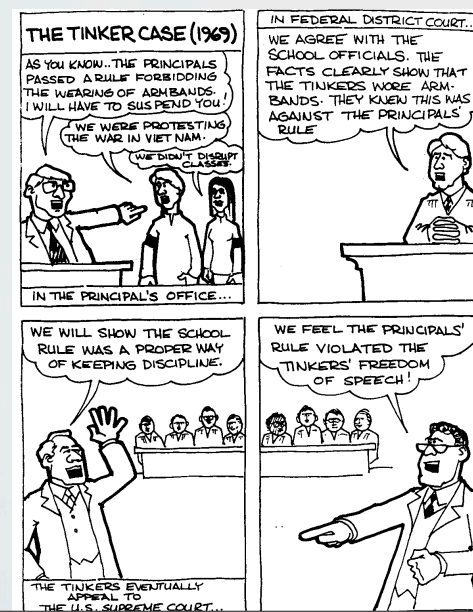
Does it apply to all?



Mary Beth Tinker and Christopher Eckhardt

7-2 Decision: The First Amendment, as applied through the Fourteenth, did not permit a public school to punish a student for wearing a black armband as an anti-war protest, absent any evidence that the rule was necessary to avoid substantial interference with school discipline or the rights of others. "symbolic speech"

Dissent: This case, wholly without constitutional reasons in my judgment, subjects all the public schools in the country to the whims and caprices of their loudest-mouthed, but maybe not their brightest students.



1st AMENDMENT RIGHTS

A.) FREE SPEECH (EXPRESSION PART 1)

2.) LIMITATIONS:

- a.) obscenity
- b.) inciteful language
- c.) slander



Student to pay professor \$3 million for internet libel

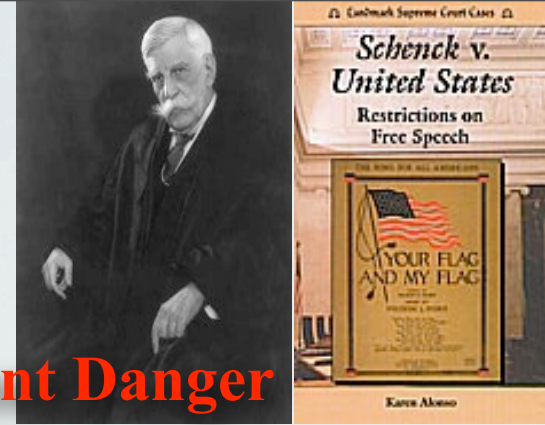
1st AMENDMENT RIGHTS

A.) FREE SPEECH (EXPRESSION PART 1)

CASE #2 CONSIDERATIONS:

During Wartime can government limit free speech?

Schenck v. United States 1919 **Clear and Present Danger**



Arguments

For 1st Amendment

Against 1st Amendment

The choice is not between order and liberty. It is between liberty with order and anarchy without either. There is 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.

--- (in concurrence) Judge Jackson 1949



The FIRST AMENDMENT to the U.S. Constitution

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 the redress of grievances.

[ABOUT THE FIRST AMENDMENT>](#)



"The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent."

What about peacetime?

Dennis v. United States 1951

6-2 Decision on Smith Act

Majority:

In each case [courts] must ask whether the gravity of the "evil," discounted by its improbability, justifies such invasion of free speech as necessary to avoid the danger.

Dissent:

"in calmer times [not during war], when pressures, passions and fears subside, this or some later Court must restore the First Amendment liberties to the high preferred place where they belong in a free society." -Justice Black

No matter how it is worded, this is a virulent form of prior censorship of speech and press, which I believe the First Amendment forbids.

Brandenburg v. Ohio: government cannot punish inflammatory speech unless it is directed to inciting and likely to incite imminent lawless action.

1st AMENDMENT RIGHTS

A.) FREE SPEECH (EXPRESSION PART 1)

CASE #3 Considerations:

Can government limit speech which opposes patriotism and national symbols?

Texas v. Johnson 1984 Arguments

For 1st Amendment
Against 1st Amendment



Robert Justin Goldstein

Flag Burning & Free Speech



The Case of *Texas v. Johnson*



"Is the desecration of an American flag, by burning or otherwise, a form of speech that is protected under the First Amendment?"

"Under the circumstances, Johnson's burning of the flag constituted expressive conduct, permitting him to invoke the First Amendment... Occurring as it did at the end of a demonstration coinciding with the Republican National Convention, the expressive, overtly political nature of the conduct was both intentional and overwhelmingly apparent."

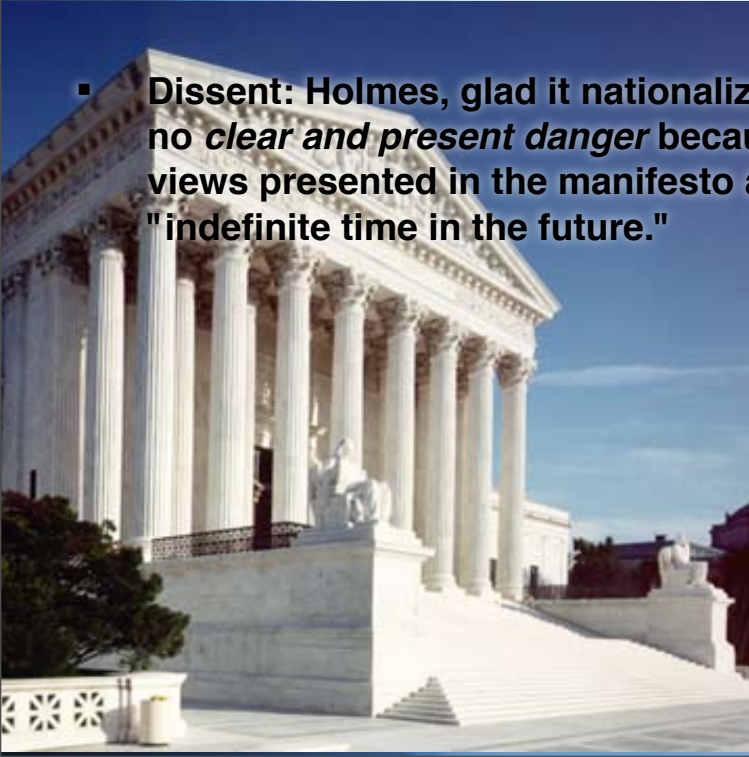
The American flag, then, throughout more than 200 years of our history, has come to be the visible symbol embodying our Nation. Millions and millions of Americans regard it with an almost mystical reverence regardless of what sort of social, political, or philosophical beliefs they may have. I cannot agree that the First Amendment invalidates the Act of Congress, and the laws of 48 of the 50 States, which make criminal the public burning of the flag.

Considerations



What is included in *clear and present danger*?

- **Gitlow v. New York 7-2 Decision:** Gitlow, a Socialist, had been convicted of criminal anarchy after publishing a "Left Wing Manifesto." The Court upheld his conviction on the basis that the government may suppress or punish speech when it directly advocates the unlawful overthrow of the government.
- **Majority Opinion:** Though the Fourteenth Amendment prohibits states from infringing free speech, the defendant was properly convicted under New York's criminal anarchy law for advocating the violent overthrow of the government, through the dissemination of Communist pamphlets.
- **Dissent:** Holmes, glad it nationalized the Bill of Rights, but thought that Gitlow posed no *clear and present danger* because only a small minority of people shared the views presented in the manifesto and because it directed an uprising at some "indefinite time in the future."



Recent Case Before the Court



■ Arguments

For 1st Amendment
Against 1st Amendment
Your Verdict?

Morse v. Frederick, 2007



4-4-1 Thomas (students have no 1st Amendment rights at all)

"To promote drugs is utterly inconsistent with the educational mission of the school. The "school speech" doctrine should apply because Frederick's speech occurred "at a school event"; The speech was "reasonably viewed as promoting illegal drug use."

The school's interest in protecting its students from exposure to speech "reasonably regarded as promoting illegal drug use" ... cannot justify disciplining Frederick for his attempt to make an ambiguous statement to a television audience simply because it contained an oblique reference to drugs. The First Amendment demands more, indeed, much more. Admittedly, some high school students (including those who use drugs) are dumb. Most students, however, do not shed their brains at the schoolhouse gate, and most students know dumb advocacy when they see it. The notion that the message on this banner would actually persuade either the average student or even the dumbest one to change his or her behavior is most implausible



B.) FREE PRESS (EXPRESSION PART 2)

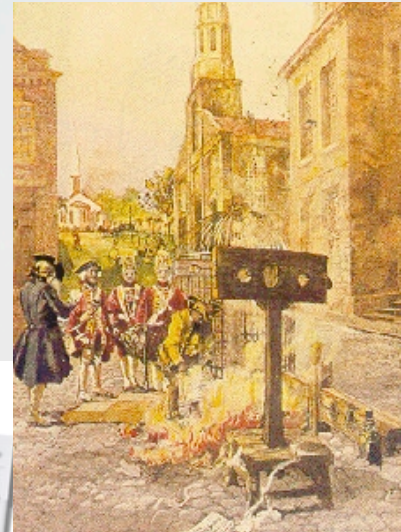
A free press can, of course, be good or bad, but, most certainly without freedom, the press will never be anything but bad.
-Albert Camus

1.) APPLICATION:

2.) LIMITATIONS: *Memoirs v. Mass*

a.) pornography- *Roth Miller Test*

- 1.) cont. community standards
- 2.) appeals to the prurient interest in sex
- 3.) portrays offensive sexual conduct
- 4.) the work lacks redeeming literary, scientific, political or artistic merit



- b.)
- c.)
- d.)
- e.)
- f.)



3.) NO PRIOR RESTRAINT!

- a.)

4.) CONSIDERATIONS:

- a.)

- b.)



Freedom of Speech (press) example

- *Hustler Magazine v. Falwell*
 - In some areas of the law, the specific intent to inflict emotional harm enjoys no protection. But with respect to speech concerning public figures, penalizing the intent to inflict emotional harm, without also requiring that the speech that inflicts that harm to be false, would subject political cartoonists and other satirists to large damage awards. “The appeal of the political cartoon or caricature is often based on exploitation of unfortunate physical traits or politically embarrassing events – an exploitation often calculated to injure the feelings of the subject of the portrayal”. This was certainly true of the cartoons of Thomas Nast, who skewered Boss Tweed in the pages of *Harper’s Weekly*. From a historical perspective, political discourse would have been considerably poorer without such cartoons.
 - <http://articles.latimes.com/2007/may/20/opinion/op-flynt20>

Jerry Falwell talks about his first time.*



INTERVIEWER: But your mom? Isn't that a bit odd?

FALWELL: I don't think so. Licks don't mean that much to me in a woman.

INTERVIEWER: Go on.

FALWELL: Well, we were drunk off our God-fearing asses on Campari, ginger ale and soda—that's called a Fire and Brimstone—at the time. And Mom looked better than a Baptist whore with a \$100 donation.

INTERVIEWER: Campari in the crapper with Mom... how interesting. Well, how was it?

FALWELL: The Campari was great, but Mom passed out before I could come.

INTERVIEWER: I see. You must tell me all about it.

FALWELL: I never really expected to make it with Mom, but then after she showed all the other guys in town such a good time, I figured, "What the hell?"

Campari, like all liquor, was made to mix you up. It's a light, 48 proof, refreshing spirit, just mild enough to make you drink too much before you know you're intoxicated. For your first time, mix it with orange juice. Or maybe some white wine. Then you'll remember as long as the rest of your life. Campari. The irrefutable that starts.



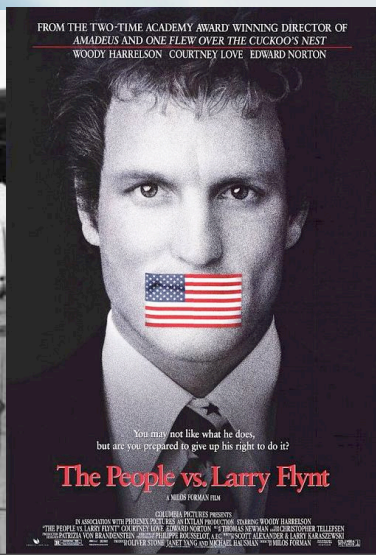
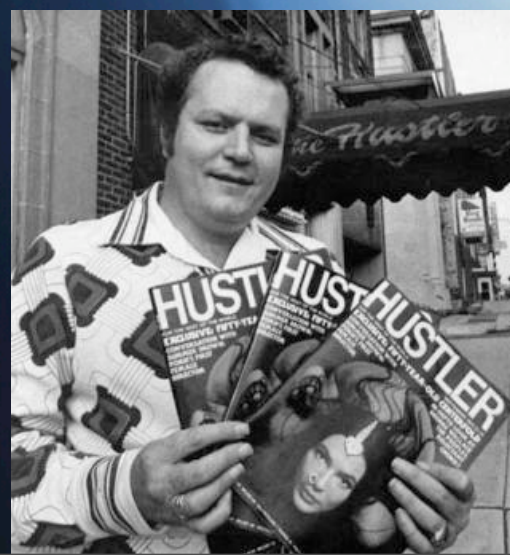
lots of times. But not in the outhouse. Between Mom and the shit, the flies were too much to bear.

INTERVIEWER: We meant the Campari.

FALWELL: Oh, yeah. I always get sloshed before I go out to the pulpit. You don't think I could lay down all that bullshit sober, do you?

© 1983 - Imported by Campari U.S.A. 35% Alc. Vol. 70 PROOF. 4.5 FL. OZ. (150 ML.)

CAMPARI You'll never forget your first time.



1st AMENDMENT RIGHTS

C.) FREEDOM OF RELIGION

1.) APPLICATION:

Establishment Clause

Free Exercise Clause

2.) LIMITATIONS:

a.) People must follow valid laws

Reynolds v. U.S. (1879) religious belief vs. religious conduct or actions



Freedom of Religion *Considerations*



3.) CONSIDERATIONS

- Establishment:
- Engel v. Vitale, 6-1 (1962):** unconstitutional for state officials to compose an official school prayer and require its recitation in public schools.

Abington School Dist. v. Schempp, 8-1(1963) declared sanctioned organized Bible reading in public schools in the United States to be unconstitutional

a.) School Prayer/Football/ Intercom



"God thank you for this evening. Thank you for all the prayers that were lifted up this week for me. I pray that you'll bless each and every person here tonight... In Jesus' name, I pray. Amen." --*public prayer said by Texas student before game* (Santa Fe Independent School District v. Doe)

The Supreme Court has ruled (6 judges to 3 judges) that students can't lead prayers over the public-address system before public school football games.

- b.) Pledge
- c.) Evolution
 1. "intelligent design"
- d.) Ten Commandments
- e.) *Lemon Test*
 - 1.
 - 2.
 - 3.



Students in this country should not have to choose between attending a high school football game, which is a large and significant event in the life of many high school students, and being subjected to a religious practice and ritual that they may not share.

STEVEN SHAPIRO,
American Civil Liberties Union

Freedom of Religion

Considerations II



Free Exercise:

- **Reynolds v. U.S. (1879)** religious belief vs. religious conduct or action
 - 5 Cases:
 - **Flag as a graven image**, Jehovah Witnesses, *WV v. Barnette* (Right **not** to do something against religion?)

6-3 The Free Speech clause of the First Amendment prohibits public schools from forcing students to salute the American flag and say the Pledge of Allegiance.

- **Conscientious Objector**, *Welsh v. U.S.*

In a **5-3** decision, the Court allowed Welsh to be declared a conscientious objector even though he declared that his opposition to war was not based on religious convictions.

- **School?** *Wisconsin v. Yoder*

7-0 The Wisconsin Compulsory School Attendance Law violated the Free Exercise Clause of the First Amendment because required attendance past the eighth grade interfered with the right of Amish parents to direct the religious upbringing of their children.

- **Drugs?** *Peyote Oregon Employment Division v. Smith (1990)*

But Oregon's ban on the possession of peyote is not a law specifically aimed at a physical act engaged in for a religious reason. Rather, it is a law that applies to everyone who might possess peyote, for whatever reason -- a "neutral law of general applicability,"

- **Animal Cruelty?** *Lukumi Babalu v. Hialeah* santeria (believe in spiritual forces called Orishas, whose survival depends on blood sacrifices.)
- **Massachusetts v. David and Ginger Twitchell** (1990, Mass.)
 - Does this apply? **Prince v. Massachusetts (1944)**, Parents are free to become martyrs themselves. But it does not follow that they are free, in identical circumstances, to make martyrs of their children before they have reached the age of full and legal discretion when they can make that choice for themselves.

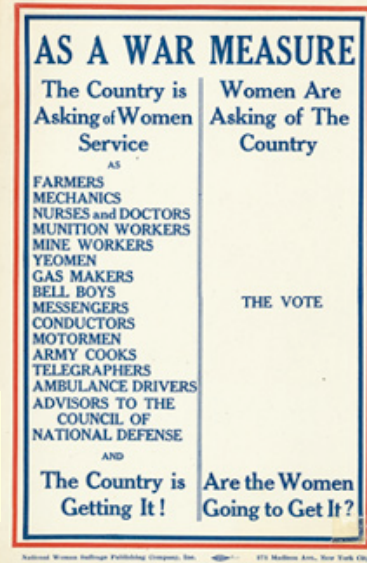
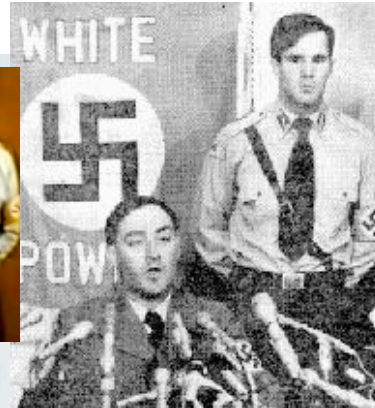
- **Work?**

D.) FREEDOM OF ASSEMBLY

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.

1.) APPLICATION:

“petition,” “redress” and “grievances.”



2.) LIMITATIONS:

Cox v. New Hampshire “The authority of a municipality to impose regulations in order to assure the safety and convenience of the people in the use of public highways has never been regarded as inconsistent with civil liberties” protected in the first amendment.

- a.) Time
- b.) Place
- c.) Manner



3.) CONSIDERATIONS:

- a.) Hate groups rights?
- b.) Protest during wartime?
- c.) Curfews

