



Freedom of Expression

A Bill of Rights Lesson

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 redress of grievances."

In other words...

Right to **petition**:
the right to present
requests to the
government
without punishment

Right to **assemble**:
the right to hold public
meetings without
interference by the
government

Freedom of
religion: right to
practice
whatever religion
one chooses

Freedom of the
press: right of media
to report news
without being
controlled by the
government

Freedom of
speech: right to
express opinions
without
censorship or
restraint



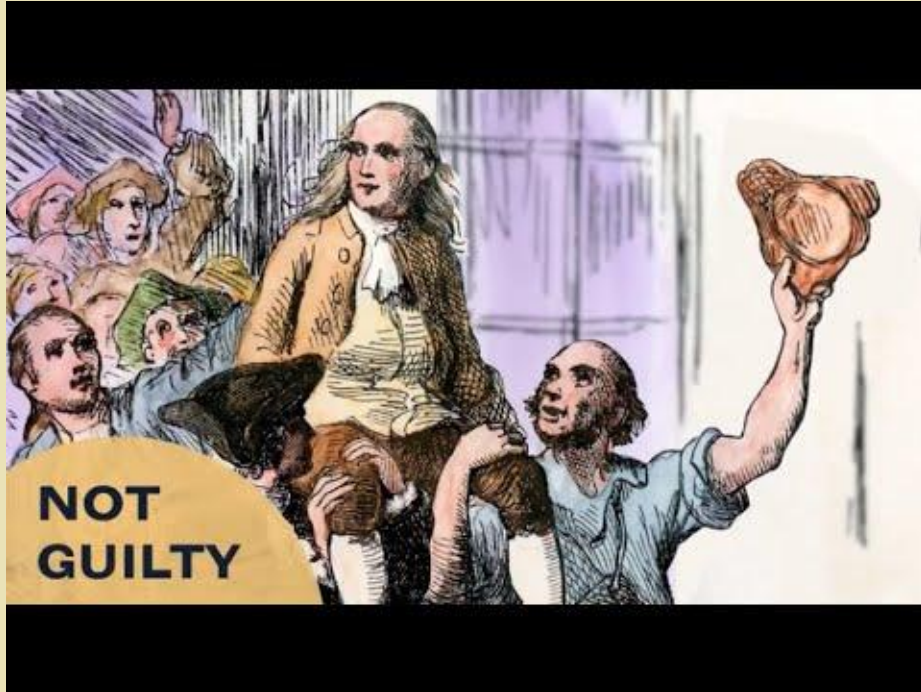


Have our First Amendment rights changed over time?



Can we say anything
we want?

Freedom of Expression



When speech is LIMITED:

- harassment
- true threats
- Intimidation
- slander
- obscenities
- other unlawful conduct

When is speech PROTECTED?

- individuals have the right to express themselves in whatever way they wish so long as is not unlawful





Let's Investigate YOUR Freedom of Expression



As you investigate each Supreme Court case exhibit, be sure to capture your evidence in the Freedom of Expression organizer. As you work, be sure to look for examples of how the First Amendment freedoms were **protected** or **limited**.



Freedom of Speech

Freedom of speech is the right to:

- speak
- write
- share ideas and opinions

without facing punishment from the government.



Freedom of Speech: Exhibit A

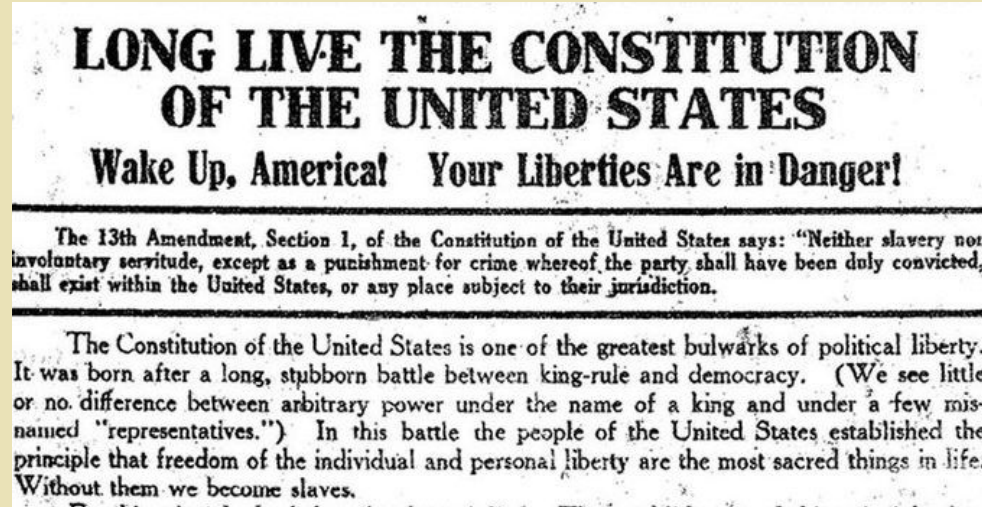


Can our words cause danger to others?

Background Information:

By 1919, the United States had been involved in World War I for nearly two years. In order to staff the military, the United States Government held a draft (recruitment for military service). Many men were patriotic and willing to fight for America. Others were against the war, including Charles Schenck. Schenck argued that forced enlistment through the draft was a form of slavery. He distributed over 20,000 pamphlets to U.S. citizens as a form of protest against the draft process.

Schenck was arrested and charged with trying to incite (encourage or stir up violent or unlawful behavior) a violent movement against the U.S. Government. Schenck said the government was **censoring** his free speech. This case made its way to the Supreme Court of the United States.



Excerpt of the pamphlet written by Charles Schenck, 1941.

Freedom of Speech: Exhibit A



An anti-war rally against World War I in Union Square, New York City, 1914.

Can our words cause danger to others?

Supreme Court Case: *Schenck v. United States* (1919)

Outcome of the case:

The Supreme Court ruled in favor of the United States Government. The Court said that Schenck's writings were considered to be an immediate threat to the country's safety and the wellbeing of its people. This is known as a "clear and present danger." The Court ruled that Freedom of Speech could be limited during times of war or national emergencies.

Did this case protect or limit freedom of speech?

Freedom of Speech: **Exhibit B**



Can students be required to say the Pledge of Allegiance or salute the American flag?

Background Information:

In the 1940s West Virginia had a law that required students to salute the American flag. The family of student Walter Barnette sued his school arguing that saluting the flag or saying the pledge went against his freedoms of speech and religion. Barnette was a Jehovah's Witness. People who practice the religion of Jehovah's Witnesses are not to salute the flag or sing nationalistic songs, which they believe are forms of worship. This state case made its way to the Supreme Court of the United States.



Children saluting the American flag and reciting the Pledge of Allegiance in Norfolk, VA public school, 1941.

Freedom of Speech: **Exhibit B**



Japanese-American children saluting the American flag and reciting the Pledge of Allegiance in a World War II internment camp, San Francisco, CA 1942.

Can students be required to say the Pledge of Allegiance or salute the American flag?

Supreme Court Case: *West Virginia State Board of Education v. Barnette* (1943)

Outcome of the case:

The Supreme Court ruled in favor of the student, Walter Barnette. This case overturned a previous decision in 1940 that said the government could force individuals to salute the American flag.

The Court held that the government could not make citizens express beliefs without violating Freedom of Speech. The Court ruled that the students could not be forced to say the Pledge of Allegiance or salute the flag.

Did this case protect or limit freedom of speech?

Freedom of Speech: Exhibit C

Do students enjoy freedom of expression rights when at school?

Background Information:

At the height of the Vietnam War in 1965, three students were suspended from school for wearing black armbands to protest the war. At the time, wearing a black armband was a symbol to show you were against the Vietnam War. The students (John Tinker, Mary Beth Tinker, and Christopher Eckhart) said they felt they were entitled to express themselves as American citizens. The lower courts ruled that black armbands were inappropriate attire for school. The students believed the black armbands were protected under the First Amendment. This case made its way to the Supreme Court of the United States.



John Tinker speaking to We the People: The Citizen and the Constitution students at the Indiana state championships in 2020. Photo Courtesy of Tim Kalgreen, Indiana We the People State Coordinator.



Freedom of Speech: **Exhibit C**



Mary Beth Tinker (making the peace sign) with civics teachers in 2020. Photo Courtesy of Jackie Johnson, Colorado State We the People Programs Coordinator

Do students enjoy freedom of expression rights when at school?

Supreme Court Case: ***Tinker v. Des Moines*** (1969)

Outcome of the case:

The Supreme Court ruled in favor of the students. The Court said that the protest was peaceful in nature and did not intend to incite violence. Famously, the Court said, “[Students do not] shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.” The Court ruled that the students’ freedom of speech and expression had been violated by the school.

Did this case protect or limit freedom of speech?



Freedom of the Press

Freedom of the press is the right to publish:

- newspapers
- magazines
- books
- electronic media

without government interference or censorship



Freedom of Press: Exhibit D

Can elected officials control what a newspaper prints?

Background Information:

A local, weekly newspaper in Minnesota published a number of stories attacking the local elected officials. The newspaper's editor, Jay Near, falsely claimed politicians were involved in dealings with gangsters and organized crime members. Near was accused of publishing hateful stories that were untrue and based on gossip. The elected officials were able to stop future news stories from being published based on a Minnesota state law. This law said that stories that intended to do harm could be stopped. This case made its way to the Supreme Court of the United States



Digital image of the Minnesota Saturday Press, 1927.



Freedom of Press: Exhibit D



Scandal and Defamation!

The Right of Newspapers to Defame

Unique Minnesota law empowers judges
to suppress papers by injunction

First such use of judicial power in American history

Chicago Tribune takes the case to the
U.S. Supreme Court, where it awaits decision

Published by the
AMERICAN CIVIL LIBERTIES UNION
100 FIFTH AVENUE,
New York City
March, 1931

The American Civil Liberties Union's pamphlet about the case, 1931.

Can elected officials control what a newspaper prints?

Supreme Court Case: *Near v. Minnesota* (1931)

Outcome of the case:

The Supreme Court ruled that the Minnesota state law violated the First Amendment. The ruling said that (in most cases) the government cannot **cancel** or stop a publication. Similar laws across the United States were also overturned and discarded. It is up to the individual to sue the publisher for **defamation**. This decision allowed for greater Freedom of Speech and Press.

Did this case protect or limit freedom of the press?

Freedom of Press: Exhibit E



Can the U.S. government determine what a newspaper can print?

Background Information:

In 1971 the nation was in heated debate over its involvement in the Vietnam War. The *New York Times* obtained a copy of a detailed government report that included discussions about the war. These confidential documents would become famously known as the Pentagon Papers. The United States Government claimed that the publication of the documents would be a danger to national security. The newspaper appealed, arguing that this discussion violated the First Amendment. This case made its way to the Supreme Court of the United States.



New York Times cover page, June 14, 1971.

Freedom of Press: Exhibit E



Can the U.S. government determine what a newspaper can print?

Supreme Court Case: *New York Times Co. v. United States* (1971)

Outcome of the case:

The Supreme Court ruled 6-3 in favor of the *New York Times*. The Court said the newspaper had not intended to put the country in danger. The newspaper's goal was to educate the citizens about the Vietnam War. Prohibiting the publication of the Pentagon Papers did violate the reporters' First Amendment Rights.

Did this case protect or limit freedom of the press?



New York Times headline, July 1, 1971

Freedom of Press: Exhibit F



Should journalists be able to keep their sources secret without fear of punishment?

Background Information:

Two articles about drug dealers appeared in a Kentucky newspaper. Paul Branzburg was the journalist who had interviewed several accused drug dealers for the articles. Branzburg was called twice to testify before a state grand jury. The state wanted to question him about his sources in his articles. On both occasions, Branzburg refused to reveal his sources saying it violated his First Amendment protections. This case made its way to the Supreme Court of the United States.



The Courier-Journal,, March 1969

Freedom of Press: **Exhibit F**



Should journalists be able to keep their sources secret without fear of punishment?

Supreme Court Case: ***Branzburg v. Hayes* (1971)**

Outcome of the case:

The Supreme Court ruled that a reporter's privilege does not apply if a reporter's confidential information was of a compelling state interest, couldn't be obtained any other way, and contained specific information about specific crimes.

The Court held forcing a reporter to testify before a grand jury did not violate that reporter's First Amendment rights.

Did this case protect or limit freedom of the press?





Thanks!

Center for Civic Education
www.civiced.org

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