

First Amendment Freedom

As you read, think about the answers to these questions:

- How does the First Amendment protect freedom of religion?
- What has the Court said about freedom of speech?
- How have Supreme Court decisions affected freedom of the press?

The First Amendment to the Constitution states 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 of the people peaceably to assemble, and to petition the government for a redress of grievances.” Like much of the Constitution, the First Amendment says much in few words. But those words created a complex debate that still goes on—how to balance the rights of the individual with the needs of society.

Many Americans believe that the First Amendment gives them the right to think, say, or write whatever they choose. Others believe that an individual’s actions should never endanger the rights of the majority of citizens. The Supreme Court has had the challenge of interpreting the First Amendment through cases that come before it. The cases described below are a few examples of the specific and complicated situations that the Court considered. Sometimes the Court has upheld First Amendment rights, but at other times it has placed limits on those freedoms. The cases described below are examples of some of the First Amendment cases that the Supreme Court has considered.

Clauses to Protect Freedom of Religion

The First Amendment reflects the belief of the Framers that religious and political matters should be separate. In practice, however, the separation of church and state is not always obvious. For example, the government supports religion by allowing religious groups not to pay property taxes, and both the currency of the United States and the Pledge of Allegiance make reference to God. The First Amendment protects religious freedom in two clauses: the establishment clause and the free exercise clause.

The Establishment Clause. The **establishment clause** states that “Congress shall make no law respecting an establishment of religion . . . ,” thus prohibiting the government from establishing a national religion.

establishment clause *part of the First Amendment that prohibits the government from setting up a national religion*

PRIMARY SOURCES

“There can be no doubt that New York’s prayer program officially establishes the religious beliefs embodied in the Regents’ prayer.”
—Justice Hugo L. Black

nonsectarian *not associated with a particular religious group*

free exercise clause *part of the First Amendment that prohibits the government from interfering in Americans’ free exercise of their religious beliefs*

polygamy *marriage in which a spouse may have more than one mate at the same time*

Angered that the National Rifle Association held its annual convention in Denver after the high school shooting in nearby Littleton, protesters exercise their First Amendment right to protest.



Most of the Court’s rulings on this clause have been issued during the last 60 years.

- *Everson v. Board of Education* (1947) involved a New Jersey law that provided public government funding to transport children to private religious schools. Opponents of the law argued that it violated the establishment clause, but the Supreme Court disagreed. The Court ruled that aid to children did not constitute governmental support of religion.
- *Engel v. Vitale* (1962) was one of the most controversial Supreme Court decisions concerning the issue of prayer in public schools. The New York State Board of Regents had written a **nonsectarian** prayer and allowed students to recite it on a voluntary basis. The Court ruled that the government should not be writing prayers, nor should religious exercises be conducted in public schools.

The Free Exercise Clause. The **free exercise clause** states that “Congress shall make no law . . . prohibiting the free exercise [of religion] . . .” This clause prohibits government from interfering in Americans’ free exercise of their religious beliefs. The earliest Supreme Court decisions about church-state relations involved the Court’s interpretation of the free exercise clause.

- *Reynolds v. United States* (1879) involved the prosecution of George Reynolds, a Mormon who had two wives. Although federal law prohibited **polygamy**, Reynolds’s religion permitted the practice. The Supreme Court ruled that while he was free to believe what he wanted, his actions had to conform to federal laws. The Court’s message was clear: The government could not regulate a person’s beliefs, but it could regulate his or her actions.
- *Wisconsin v. Yoder* (1972) involved an Amish community that objected to sending their children to public schools after eighth grade, claiming that such exposure of their children to another culture would endanger the group’s lifestyle, which was essential to their faith. The Court decided that requiring attendance of the Amish children in public school past the eighth grade would conflict with their ability to practice their religion, and would, therefore, be unconstitutional.

Freedom of Speech and Its Limitations

A democratic system of government works effectively only if citizens can openly express different points of view. Some of those opinions are likely to be unpopular. By guaranteeing freedom of speech, the First Amendment makes it possible for people to deal with the complicated issues of the day and make informed choices.

Like freedom of religion, however, freedom of speech is not absolute in the United States. The Supreme Court has placed restrictions on speech that seems to threaten the rights of others or the social order.

- *Schenck v. United States* (1919) involved Charles Schenck, an officer in an antiwar political group. He was arrested for alleged violations of the Espionage Act of 1917, which made active opposition to World War I a crime. Schenck had urged thousands of young men to resist the draft. The Court upheld limiting free speech in time of war, stating that Schenck's words presented a "clear and present danger" to society.
- *Gitlow v. New York* (1925) concerned the case of Benjamin Gitlow, who was convicted of publishing a pamphlet that called for the overthrow of all government and the establishment of socialism. Under New York law, such an act was illegal because it could possibly lead to social chaos. Gitlow's defense argued that the pamphlet was only a philosophical statement and did not create a "clear and present danger" of disrupting society. But the Court upheld the New York law and Gitlow's conviction, ruling that speech that had even a tendency to lead to harm could be found to be illegal.

Free Press Issues

Closely related to the issue of free speech is that of free press. As with other areas of the First Amendment, the Court has had to balance individual rights with those of society.

- *New York Times Co. v. Sullivan* (1964) set constitutional limits on **libel** law and expanded the protections for the press to criticize public officials. In this case, L. B. Sullivan claimed that an advertisement in the *New York Times* contained passages that falsely libeled him. The ad contained several inaccuracies, and Sullivan brought suit against the newspaper for not checking the facts before publishing the ad. The Court ruled that Sullivan could not collect damages unless it could be proved that the libelous statements had been made with "actual malice"—with the knowledge that the statements were false, or with reckless disregard of whether they were false.
- *New York Times Co. v. United States* (1971) pitted freedom of the press against national security. During the Vietnam War, the U.S. government obtained a temporary restraining order to prevent the *New York Times* and the *Washington Post* from publishing classified documents. The documents revealed that the United States was more heavily involved in the Vietnamese civil war than public officials had admitted. The government claimed that the publication of the so-called Pentagon Papers would harm the security of the nation. By a vote of 6–3, the Court ruled in favor of the newspapers, finding that the government had failed to meet "the heavy burden of showing justification" for prohibiting the newspapers from publishing the Pentagon Papers.

The cases described here represent only a fraction of the total number of First Amendment cases the Supreme Court has considered. They are, however, sufficient to show how the high court has confronted the issue of balancing the rights of the individual with the needs of society.

PRIMARY SOURCES

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

—Justice Oliver
Wendell Holmes

libel intentional injury to a person's reputation