

How First Amendment rights have evolved

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The right to assemble in peaceful protest is one right granted by the First Amendment. In this photo, Occupy Wall Street demonstrators stand and cheer in front of the George Washington statue on Wall Street in New York City as they celebrate the protest's sixth month, March 17, 2012. AP Photo/John Minchillo

"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." — First Amendment to the Constitution

A careful reading of the First Amendment reveals that it protects several basic liberties — freedom of religion, speech, press, petition and assembly. Interpretation of the amendment is far from easy, as court case after court case has tried to define the limits of these freedoms. The definitions have evolved throughout American history, and the process continues today.

Freedom Of Religion

The First Amendment guarantees freedom of religion in two clauses — the "establishment" clause, which prohibits the government from establishing an official church, and the "free exercise" clause that allows people to worship as they please. Notice that the phrase "separation of church and

state" does not appear in the First Amendment, nor is it found anywhere else in the Constitution. Most people do not realize that the phrase was actually coined later by Thomas Jefferson. In 1802, when he was President, he wrote the opinion that the First Amendment's freedom of religion clause was designed to build "a wall of separation between Church and State."

Court cases that address freedom of religion have dealt with the rejection of prayer in public schools, the denial of aid to parochial schools, the banning of polygamy (the practice of having more than one wife), the restriction of poisonous snakes and drugs in religious rites and limiting the right to decline medical care for religious purposes.

Freedoms Of Speech And Of The Press

Free speech is one of the most cherished liberties, but free speech often conflicts with other rights and liberties. The courts have had to consider the question, "What are the limits of free speech?"

The "clear and present danger" test is a basic principle for deciding the limits of free speech. It was set by the famous *Schenck v. the United States* case from World War I. Antiwar activist Charles Schenck was arrested for sending leaflets to prospective army draftees encouraging them to ignore their draft notices. The United States claimed that Schenck threatened national security, and the justices agreed. The principle was established that free speech would not be protected if an individual were a "clear and present danger" to United States security.

What is free speech? The definition is not easy, and the courts have identified three types of free speech, each protected at a different level:

Pure speech is the verbal expression of thoughts and opinions before a voluntary audience. The courts have generally provided strong protection of pure speech from government regulation. Speech-plus involves actions, such as demonstrating or protesting, as well as words. Speech-plus is not generally protected as strictly as is pure speech, because actions can be physically dangerous. The courts have ruled that demonstrators may not obstruct traffic, endanger public safety or trespass illegally. Symbolic speech technically involves no speech at all, but it involves symbols that the courts have judged to be forms of free expression. Symbolic actions such as wearing black armbands in school and draft-card burning fit this category. Symbolic speech is highly controversial, and as a rule, the courts have sometimes considered it to be beyond the limits of free speech. However, the Supreme Court did uphold the right of an individual to burn an American flag in the 1989 *Texas vs. Johnson* decision. Many of the same principles that apply to freedom of speech apply to the press, but one with special meaning for the press is prior restraint. The courts have ruled that the government may not censor information before it is written and published, except in the most extreme cases of national security.

Freedom Of Assembly And Petition

Freedom of assembly and petition are closely related to freedom of speech, and have been protected in similar ways. Former Chief Justice Charles Evans Hughes wrote, "Peaceable assembly for lawful discussion cannot be made a crime." Generally, that point of view has prevailed. Freedom of assembly has to be balanced with other people's rights if it disrupts public order, traffic flow, freedom to go about normal business or peace and quiet. Usually, a group must apply for a permit, but a government must grant a permit provided that officials have the means to prevent major disruptions.

For over 100 years after the ratification of the Constitution, the First Amendment protected these freedoms only in theory. As individuals in the 20th century have challenged the government in the courts when they believed their rights were assaulted, the First Amendment has taken on a stronger meaning. It remains the single most powerful instrument for protecting the sacred freedoms of religion, speech, press, assembly and petition for modern Americans.

Quiz

- 1 According to the article, each of the following has contributed to the difficulty of interpreting the First Amendment EXCEPT:
- (A) the careful reading required to reveal the meaning of its language
 - (B) the confusion about when certain well-known phrases were coined
 - (C) the conflicts between individual freedoms and other liberties
 - (D) the controversy surrounding some forms of free expression
- 2 Which of the following BEST summarizes how court decisions have affected the First Amendment?
- (A) They have allowed each of the specified freedoms to be debated by the people rather than taking the decisions to higher courts.
 - (B) They have created specific categories within each of the specified freedoms in order to avoid any future ambiguity.
 - (C) They have developed limits and protections to the freedoms provided by trying to balance individual rights and public concerns.
 - (D) They have eliminated many of the protections to the freedoms provided by allowing personal opinion to play a role.
- 3 Which of the following BEST describes the structure of the article?
- (A) The article describes the reasons the First Amendment has been challenged and predicts future challenges.
 - (B) The article explains the reasons the First Amendment was created and describes the thinking of its creators.
 - (C) The article lists the freedoms protected by the First Amendment and explains how they have been interpreted.
 - (D) The article compares the freedoms protected by the First Amendment and contrasts their effectiveness.
- 4 What purpose is served by including examples of three different types of speech?
- (A) They demonstrate the complexity of defining permissible levels of freedoms.
 - (B) They give insight into the ideology of the courts that oversee individual rights and freedoms.
 - (C) They describe the perspective of protesters and the media regarding freedom of speech.
 - (D) They illustrate the effects of providing strong protection for some freedoms and not others.