

**Main Idea**

The First Amendment protects five fundamental freedoms that are central to the American notion of liberty: the freedoms of religion, speech, the press, assembly, and petition.

**Reading Focus**

1. How does the First Amendment guarantee religious freedom?
2. What are the guarantees of and limits on the freedoms of speech and of the press?
3. What are the guarantees of and limits on the freedoms of assembly and petition?

**Key Terms**

establishment clause  
 free exercise clause  
 slander  
 libel  
 treason  
 sedition  
 prior restraint  
 symbolic speech  
 freedom of association

**Religious Freedom** (pp. 286–288)

Protecting religious freedom was a major goal for the Framers. The First Amendment forbids the government from establishing an official religion. It also guarantees people’s right to a “free exercise” of their own religion.

**The Establishment Clause** “Congress shall make no law respecting an establishment of religion.” This part of the First Amendment, called the **establishment clause**, declares that government cannot take actions that create an official religion or support one religion over another. Through the incorporation doctrine, state governments are also prohibited from doing so.

The phrase “separation between church and state” comes from a letter written by Thomas Jefferson to a religious group in 1802. The issue of separation between religion and government has been heavily

debated throughout U.S. history. Rather than issuing strict guidelines, the courts have taken a case-by-case approach.

**Public Displays** One issue the courts face under the establishment clause is the legality of government-sponsored religious displays. The following Supreme Court rulings involved religious displays:

- **Lynch v. Donnelly** (1984) A display with both religious and nonreligious Christmas symbols did not intend to benefit a particular religion.
- **McCreary County v. ACLU of Kentucky** (2005) The display of the Ten Commandments in two Kentucky courthouses was an unconstitutional government promotion of a particular religious belief.
- **Van Orden v. Perry** (2005) A stone marker displaying the Ten Commandments that was included with other historical markers did not primarily

promote a religion because it was part of a historical and educational display.

**Religion and Education** Much of the debate around the establishment clause involves education. The following Supreme Court rulings deal with education and the establishment clause.

- ***Everson v. Board of Education (1947)*** New Jersey’s plan to use public funds to bus children to private schools did not violate the establishment clause because the plan applied to students of all private schools.
- ***Engel v. Vitale (1962)*** New York public school officials violated the establishment clause when they asked students to say a prayer every morning.
- ***Lemon v. Kurtzman (1971)*** A law allowing public funding for the teaching of nonreligious subjects at private schools, including religious schools, was unconstitutional. The case created the Lemon Test, which says that a law must meet certain standards in order to be constitutional.
- ***Wallace v. Jaffree (1985)*** An Alabama law requiring that the public school day being with “silent meditation or voluntary prayer” was unconstitutional when the Court applied the Lemon Test.

**Free Exercise of Religion** The First Amendment also protects freedom of religion through what is known as the **free exercise clause**, which guarantees each person the right to hold any religious beliefs he or she chooses.

The Supreme Court has ruled on religious practices in numerous cases, including:

- ***Employment Division of Oregon v. Smith (1990)*** Government can punish illegal drug use even if the drug use is part of a religious practice.
- ***Reynolds v. United States (1878)*** Government could prohibit the religious

practice of polygamy—being married to more than one person at a time—because it has the duty to preserve certain social norms.

- ***Minersville School District v. Gobitis (1940)*** A child could be expelled from school for refusing to salute the American flag or say the Pledge of Allegiance, even though these actions violated the child’s religious beliefs, because government must preserve national unity.
- ***West Virginia State Board of Education v. Barnette (1943)*** A reversal of the Court’s ruling on flag saluting, this case held that the state’s interest in national unity was not strong enough to force people to act against their beliefs.
- ***Wisconsin v. Yoder (1972)*** A state law requiring school attendance until age 17 conflicted with Amish religious beliefs. The Court found that the state interest in forcing school attendance was not strong enough to justify the law at the expense of religious beliefs.

**Reading Check Identifying the Main Idea** What two main guarantees regarding religion are protected by the First Amendment?

### **Freedom of Speech and of the Press** (pp. 289–292)

The First Amendment forbids Congress from making laws that limit freedom of speech and of the press. Courts have placed some limits, however.

**Why Freedom of Speech and the Press?** Americans must have access to and be able to express many ideas and opinions to participate fully in the democratic process. The protection of this freedom has led to open meeting laws, which require government bodies to debate and act in public. The Freedom of

Information Act requires the federal government to release government documents, with the exception of certain private or secret records.

**Limits on Freedoms** The ability to speak and to print ideas can be limited by government for a variety of reasons. Government can prevent the publishing of obscene materials, false advertisements, or material that knowingly harms another person. The Supreme Court has also ruled that the Constitution does not protect defamation, or false statements about a person that cause harm to that person. A spoken defamatory statement is called **slander**. Defamation in print is called **libel**. The Court ruled in *New York Times Co. v. Sullivan* (1964) that public officials have fewer legal protections against libel than do private citizens.

The government may limit First Amendment freedoms in the name of national security, such as to prevent treason or sedition. **Treason** is the crime of making war against the United States or giving “aid and comfort” to its enemies. **Sedition** is a legal term for speech or actions that inspire revolt against the government.

**The Alien and Sedition Acts** The Alien and Sedition Acts were passed in 1798 when the United States was on the verge of war with France. The acts outlawed negative statements about the government, among other things. Public anger about the acts led to the defeat of President John Adams in the 1800 election. Three of the four acts were later repealed. The Alien Enemies Act, which allows the president to deport resident aliens if their home countries are at war with the United States, remains in effect today.

**A “Clear and Present Danger”** During World War I, the federal government passed the Espionage Act and the Sedition Act to prevent criticism of the government and

interference with the war effort. In *Schenck v. United States* (1919) the Supreme Court upheld the conviction of a man who printed a flyer urging men to refuse to serve in the military. The ruling established that speech can be limited if it creates a “clear and present danger” of an outcome that government has a right to prevent.

The Court later struggled in applying the clear and present danger rule to other cases. In *Whitney v. California* (1927), it said that the state could punish those whose words *might* encourage crime, disturb the peace, or otherwise harm the public welfare.

Right before the U.S. entry into World War II, Congress passed the Smith Act, which outlawed calling for the forceful overthrow of the United States. The act still stands today, though some Supreme Court cases have limited it.

In *Brandenburg v. Ohio* (1969) the Court overturned its *Whitney* decision. It said that speech must be allowed unless it is *likely* to lead to immediate lawless action.

### **The First Amendment and the Media**

The First Amendment also protects freedom of the press. A free media is important to a democratic society because it allows the spread of information and ideas. Government has tried to balance the need for media freedom with the rights of others and the need for national security.

Radio and television broadcasters have fewer First Amendment protections than print media, because government regulates the public airwaves. Cable systems do not use public airwaves, so they have greater freedom. The Internet is also less regulated, though government has tried to place some limits on Internet content.

**Prior Restraint** Another issue related to the freedom of the press is **prior restraint**, or government action that seeks to prevent materials from being published. In *Near v. Minnesota* (1931), the Court ruled that prior

restraint is almost always unconstitutional. In *New York Times Co. v. United States* (1971) the Court ruled against President Richard Nixon's administration when it tried to stop the *New York Times* from publishing the Pentagon Papers, classified documents about U.S. involvement in Vietnam. The Court ruled that the government had failed to prove a need for prior restraint, and the papers were published.

**Symbolic Speech** In general, the Supreme Court has granted some First Amendment protections to **symbolic speech**, or the communication of ideas through symbols and actions. It held that some symbolic speech deserves protection as long as it does not pose a major threat to property or public order. Important cases regarding symbolic speech include *Stromberg v. California* (1931), *Tinker v. Des Moines Independent Community School District* (1969), and *Texas v. Johnson* (1989).

**Reading Check Identifying Supporting Details** What is symbolic speech?

### **Freedoms of Assembly and Petition** (pp. 293–294)

The First Amendment also prohibits government from denying people the right to meet together and express their views peacefully. There are limits to the right of assembly and petition, however.

**Landmark Cases** The Supreme Court has protected the freedoms of assembly and petition in several major decisions.

- ***DeJonge v. Oregon* (1937)** The Court ruled in favor of a man who argued that the First Amendment protected his attendance of a peaceful meeting of the American Communist Party.
- ***Edwards v. South Carolina* (1963)** The Court ruled in favor of some students in South Carolina who were arrested during a peaceful protest.

### **Limits on Assembly and Petition**

Government cannot limit rights to assembly and petition based on point of view. Only if people are encouraging violent acts can the government reasonably limit their actions. What government can do, however, is reasonably restrict the time, manner, and place of gatherings. Such restrictions must serve a clear and valid purpose and be applied to everyone in the same way.

**Freedom of Association** The Supreme Court has determined that the First Amendment guarantees **freedom of association**—the right to join with others, share ideas, and work toward a common purpose. A major case involving freedom of association was the *National Association for the Advancement of Colored People v. Alabama ex rel. Patterson* (1958). The Court ruled that the NAACP did not have to provide a list of names of its members to the state of Alabama because doing so might harm the NAACP members' freedom to associate.

**Reading Check Drawing Conclusions** What are the purposes of the freedoms of assembly and petition?

## **SECTION 2 ASSESSMENT**

1. **Define** What are the **establishment clause** and the **free exercise clause**?
2. **Describe** Under what conditions can the freedoms of speech and of the press be limited?

3. **Describe** What are time, place, and manner restrictions?