

The Bill of Rights



Amendments 1-10

Bill of Rights

Congress of the United States,
*Began and held at the City of New York, on
Wednesday, the fourth of March, one thousand seven hundred and eighty nine.*

It will be found an unjust and unwise jealousy
to deprive a man of his natural liberty
upon the supposition he may abuse it.

“You have the right
to remain silent.”
“WHEN'S PEAK?”
“HAS THE PAPER
COME YET?”
“Are you going
to the meeting?”
“NO”
“TRESPASSING”
“I SAID THREE
COUNTRY”
“He's never sleeping
in my house.”
“THROW
THE
RASCALS
OUT”
“THAT'S ANTY-RESISTANCE”
“YOU DON'T EVEN
KNOW IT.”
“I've
got
my
rights!”
“NO
COMMENT!”
“SHE'S A PUBLIC
DEFENDER.”
“IT'S UNCONSTITUTIONAL.”
“THAT'S DISCRIMINATION.”
“I'M
ELECTORAL
OFF”
“I'll sue
you
for
defamation.”
“I bought
it for that
article.”
“I
don't
know
any
lawyer.”
“That's against the law.”
“What
did you
do on Election Day?”
“I'm
not
in
a
church.”
“Call on the
National Council.”



Fourteenth Amendment

- Section. 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; **nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.**

Important terms

- Fourteenth Amendment- *The Second Bill of Rights***
 1. Defines citizenship
 2. Reinforces privileges and immunities clause
 3. Due Process Clause
 4. Equal Protection Clause
- Selective incorporation-** applying the Bill of Rights to the states on a case by case basis by using the two clauses of the 14th Amendment.
- Not all of the Bill of Rights have been incorporated.

Important terms

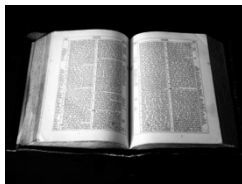
- **Civil Liberties**- Constitutional guarantees that protect people from government actions (Bill of Rights)
- **Civil Rights**- the positive acts that the government does to protect the liberties of its people. Extending rights to people that have been discriminated against (Civil Rights Act of 1964, Voting Rights Acts, 1965).

The First Amendment

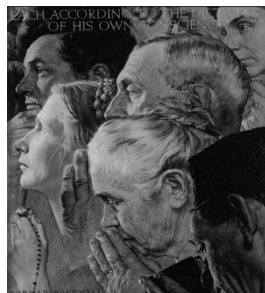
- Freedom of Religion- has two parts the establishment clause and the free exercise clause
- Freedom of Speech (has limits!)
- Freedom of the Press
- Freedom of Peaceful Assembly
- Freedom to Petition the government



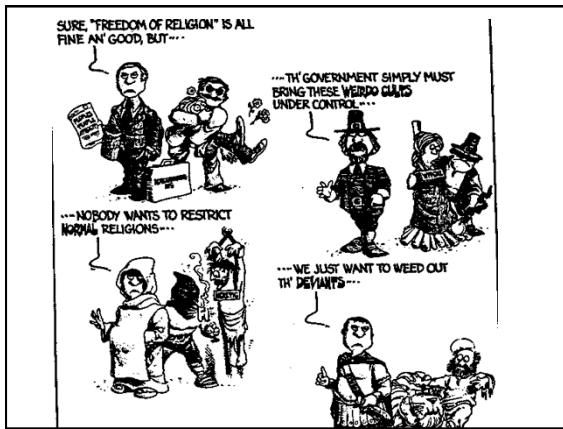
It is impossible to rightly govern a nation without God and the Bible.
George Washington



What is the proper role between government and religion?



Is this what the founding fathers had in mind?



Amendment I – “Congress shall make no law respecting an establishment of religion...”

- The Establishment Clause
- Court's Positions on the establishment clause
 1. Separation of Church and State
 2. Long standing tradition
 3. Child Benefit Theory
 4. Neutrality Doctrine (Lemon Test)



“A Wall of Separation”

- “Believing with you that religion is a matter which lies solely between man & his god, that he owes account to none other for his faith or his worship, that the legitimate powers of government reach actions only, and not opinions, I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should make no law respecting an establishment of religion, or prohibiting the free exercise thereof, thus building a wall of separation between church and state.”

Pres. Thomas Jefferson’s letter to the Danbury Baptist, 1802

Everson v Board of Ed, NJ 1947

“The First Amendment has erected a wall between church and state. That wall must be kept high and impregnable.”

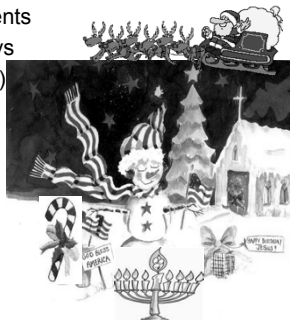


Child Benefit theory

- Incorporates the establishment clause

Religion and Public Property

- Ten Commandments
- Christmas Displays
(The reindeer rule)



Lemon v Kurtzman, 1971 Lemon Test

- The purpose of the aid or law must be secular.
- The primary effect is not to promote or hinder religion.
- It must avoid “excessive entanglement”.

States may not pay the salaries or buy teaching materials for private schools.

Exceptions to the Lemon Test

- **Bowen v Kendrick, 1981**
Religious organization can obtain federal grants to help solve societal problems
- **Marsh v Chambers, 1983**
Paying legislative chaplains and opening a legislative body with a prayer does not violate the establishment clause. (**Long standing tradition, they’re adults**)
- **Mueller v Allen, 1983**
States may provide school vouchers to parents that may use the money to attend religious school.



Establishment Clause and Schools

- Engle v Vitale, 1962
- Abington ISD v Schempp, 1963
- Wallace v Jaffree, 1985
- Lee v Weisman, 1992
- Santa Fe ISD v Doe, 2000
- Good News Club v Milford, 2001
- Equal Access Act, 1984



Evolution vs Book of Genesis Science in the Classroom

- Epperson v Arkansas, 1965



Edwards v Aguillard, 1987



Congress shall make no law... prohibiting the free exercise thereof;

The Free Exercise Clause

You may believe whatever you wish, but you may not be able to exercise that belief.

Does your religious action violate a legitimate government function or purpose?

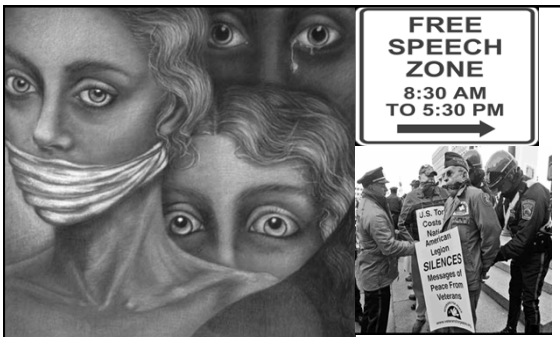


Free Exercise Clause Cases

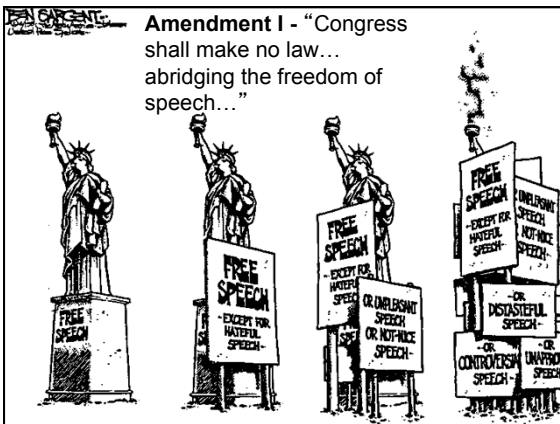
- Reynolds v US, 1879
- Cantwell v Connecticut, 1940- incorporated
- Minersville ISD v Gobitis, 1940
- WVA Board of Ed. v Barnette, 1943
- Sherbert v Verner, 1963
- Welsh v US, 1970
- Wisconsin v Yoder, 1972

Free Exercise Clause Cases

- Goldman v Weinberger, 1986
- Oregon v Smith, 1990
- Religious Freedom Restoration Act, 1993
Law aimed at preventing laws which substantially burden a person's free exercise of their religion. Also, attempted to reign in the Courts' decisions against religious practices.
- Lukumi Babalu Aye v City of Hialeah, 1993



If the freedom of speech is taken away then dumb and silent we may be led, like sheep to the slaughter.



Freedom of Speech

- Government Actions
 - Alien Sedition Acts, 1798
 - Espionage Act, 1917
 - Sedition Act, 1918
 - Smith Act, 1940
 - McCarthy Hearings, 1950s
- Schenck v US, 1919 (clear and present danger)
- Abrams v US, 1919 (Bad tendency test)
- Gitlow v NY, 1925
- Incorporation of free speech
 - Dennis v US, 1951 (Is overt action required)
 - Yates v US, 1957 (overt action required)
 - Brandenburg v Ohio, 1969 (speech was produce likelihood of Imminent lawless action)

Symbolic Speech

- Communication of ideas through words plus some conduct performed in a public area.
- State must show a compelling state interest to prohibit the message.
- States can impose “reasonable time, manner and place”.
- Freedom of association, petition, and assembly is included in this forum.



Examples of Symbolic Speech

Symbolic Speech Cases

- Tinker v Des Moines ISD, 1969 (arm band)
- US v O' Brien, 1969 (no burning draft card)
- National Socialist Party of America v Skokie, 1977 (Nazi parade)
- Texas v Johnson, 1989 (burning the flag is protected speech)

Congress shall make no law...abridging the freedom of the press

- Near v Minnesota, 1931- prior restraint, incorporation of freedom of the press
- New York Times v Sullivan, 1964 – “malicious libel”
- New York Times v US, 1971- “Pentagon Papers”
- Richmond Newspapers v Virginia, 1978

Other Types of Speech

- Disorderly speech or “fighting words”
- Libel/Slander
- Political speech- most protected
- Commercial speech- least protected
- Commercial speech includes movies, radio, media, “the public airwaves”, advertising, publishing, obscenity

Obscenity Rule

- Miller v California, 1973
 1. Average person, applying community standards find the works to incite lust.
 2. Depicts or describes in offensive way sexual conduct specifically dealt with in anti-obscenity laws
 3. Works lack serious artistic, literary, political, or scientific value.
- FCC v Pacifica, 1978
- Reno v ACLU, 1997

Amendment I - "Congress shall make no law respecting... the right of the people to assemble and to petition the Government for a redress of grievances ..."



Review information on Symbolic Speech for freedom to assemble-Time, Manner and Place.

"Do students leave there Constitutional rights outside the school doors?"

Well, duh???

Tinker v Des Moines ISD

Bethel ISD v Fraser

Goss v Lopez

Hazelwood ISD v Kuhlmeier



NJ v TLO

Vernonia ISD v Acton



2nd Amendment


A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

Is this a right to keep arms to defend the State or is it a right to keep a gun for hunting and defending your property?

Amendment 2 - "... the right of the people to keep and bear arms, shall not be infringed."


Heller vs. DC, 2008 (overturns US v Miller, 1939)
 The Supreme Court said that the Second Amendment protects a pre-existing, private, individually-held right, to keep arms and to bear arms, without regard to a person's relationship to a militia.



This does not incorporate the 2nd Amendment.

3rd Amendment- The Forgotten Amendment

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.



Rights of the Accused Amendments 4, 5, 6,
7, and 8



Amendment IV - “The right of the people to be secure in their persons, house, papers, and effects, against unreasonable searches and seizures, shall not be violated.

Big Brother is watching you!



Amendment IV – “... and no warrants shall issue, but upon **probable cause**, supported by oath or affirmation, and particularly describing the place to be searched, and the person or thing to be seized.”



Fourth Amendment Cases

- Weeks v US, 1914- **Exclusionary Rule**
- Wolf v Colorado, 1948
- Mapp v Ohio, 1961- Incorporation/exclusionary

Exceptions to the 4th

Garbage can case

Honest mistake exception

Inevitable discovery rule

Good faith exception

Schools- "reasonable suspicion"

Mobility of cars

Emerging Problems with the Fourth

- Profiling (drug courier and terrorists)
- Drug testing
- Workplace privacy
- Advances in technology

Remember in most cases the police do not
a warrant because of exigent circumstances.

Fifth Amendment

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation

Important Parts of Fifth

- No trial unless indicted by a Grand Jury
- No double jeopardy
- Do not have to testify against yourself
- Be denied due process (life, liberty or property) substantive and procedural due process
- Eminent domain

Miranda v Arizona, 1966

MIRANDA WARNING

1. YOU HAVE THE RIGHT TO REMAIN SILENT.
2. ANYTHING YOU SAY CAN AND WILL BE USED AGAINST YOU IN A COURT OF LAW.
3. YOU HAVE THE RIGHT TO TALK TO A LAWYER AND HAVE HIM PRESENT WITH YOU WHILE YOU ARE BEING QUESTIONED.
4. IF YOU CANNOT AFFORD TO HIRE A LAWYER, ONE WILL BE APPOINTED TO REPRESENT YOU BEFORE ANY QUESTIONING IF YOU WISH.
5. YOU CAN DECIDE AT ANY TIME TO EXERCISE THESE RIGHTS AND NOT ANSWER ANY QUESTIONS OR MAKE ANY STATEMENTS.

WAIVER

DO YOU UNDERSTAND EACH OF THESE RIGHTS I HAVE EXPLAINED TO YOU? HAVING THESE RIGHTS IN MIND, DO YOU WISH TO TALK TO US NOW?

... the prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination."

—Chief Justice Earl Warren, speaking for the majority

Sixth Amendment

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense."

Important Parts of Sixth

- Speedy and public trial
 - Impartial jury
 - Informed of the charges
 - Confront witnesses
 - Subpoena witnesses
 - Right to attorney
- Gideon v Wainwright, 1963



7th Amendment

Trial by Jury in Civil Cases (Lawsuits)

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.



Eighth Amendment

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.



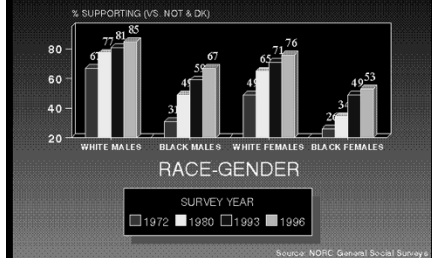
No Cruel and Unusual Punishment

- Furman v Georgia, 1972 “freakish and random”
- Gregg v Georgia, 1976 “2 step process” and only for crimes involving murder
- May not execute people under 18 or mentally retarded

Why do we kill people who kill people to show killing people is wrong?



RACE AND GENDER BY ATTITUDES TOWARD CAPITAL PUNISHMENT



9th Amendment

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

People's rights that may not be spelled out in the Constitution are still protected, unless a law prohibits such behavior



Griswold v Connecticut, 1965

10th Amendment Reserved Powers to the State

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.