

Civil Liberties:
First Amendment
Freedom

Civil Rights and Civil Liberties



A Commitment to Freedom

- ❖ The listing of the general rights of the people can be found in the first ten amendments in the Constitution, also known as the **Bill of Rights**.
- ❖ The 13th and 14th amendments have also added to the Constitution's guarantees of personal freedom.
- In general, **civil liberties** are protections *against government*.
- They are guarantees of the safety of persons, opinions, and property from arbitrary acts of government.
- The term **civil rights** is sometimes reserved for those *positive acts of government* that seek to make constitutional guarantees a reality for all people.

1st Amendment Rights – Freedom of Expression

- ❖ Freedom of Religion
- ❖ Freedom of Speech
- ❖ Freedom of the Press
- ❖ Freedom to Peaceably Assemble
- ❖ Freedom to Petition the Government



EPISODE 24

FREEDOM OF RELIGION



Freedom of Religion

Two guarantees of religious freedom:

Establishment Clause

- ❖ Guards against establishing a mandated religion.
- ❖ In effect, freedom from religion

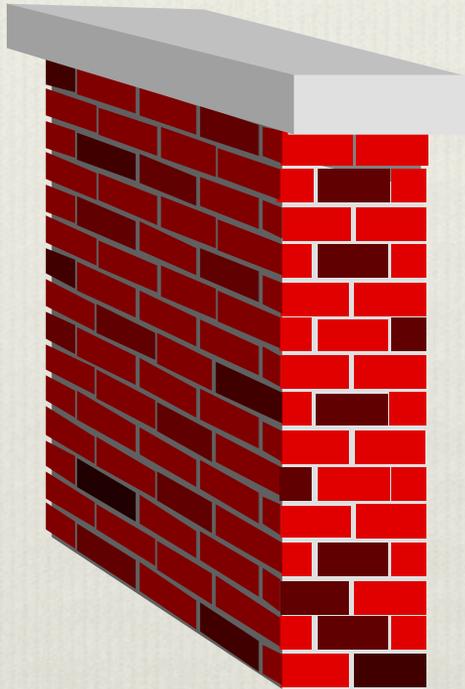
Free Exercise Clause

- ❖ Guards against the government interfering in the exercise of any religion.
- ❖ In effect, freedom for religion.

Separation of Church and State

A wall of separation?

Church and government are constitutionally separated from one another.



However, the government supports churches and religion in a variety of ways, including tax exemption.

Thomas Jefferson alluded to this wall in a letter he wrote to a group of Baptist Church Leaders in Connecticut that were afraid that their home state was attempting to establish an official state church

Religion and Education

The Supreme Court has had to consider many Establishment Clause cases that involve religion and education.

Released Time—students can be released during school hours to attend religious classes, as long as the classes do not take place in a public facility

Prayers and the Bible—the use of prayer and the Bible in a religious way is not allowed in school or at school functions

Student Religious Groups—are allowed to meet in the school on the same basis as other student organizations

Evolution—a doctrine can not be preferred or prohibited according to its relation to a religious theory

Aid to Parochial Schools—the Supreme Court uses the *Lemon* test to determine what public funding of church-related schools is acceptable

EPISODE 25

FREEDOM OF SPEECH



The Free Exchange of Ideas

Freedom of Speech guarantees are meant to:

- ❖ Protect each person's right of free expression, whether spoken, written, or communicated in any other way.
- ❖ Protect all persons' right to a complete discussion of public affairs.

Freedom of Speech do not protect:

- ❖ **Libel**, the false and malicious use of written words
- ❖ **Slander**, the false and malicious use spoken words
- ❖ Obscenity
- ❖ Words that incite others to commit crimes

Seditious Speech

Sedition is the crime of attempting to overthrow the government by force, or to disrupt its lawful activities by violent acts.

Seditious speech is speech that urges such conduct.

Obscenity

Obscenity laws are enforced under the postal power (Article I, Section 8, Clause 7 of the Constitution).

Obscenity Test laid out in *Miller v. California*, 1973

- 1) The average person finds that the work appeals to “prurient interests” judging from contemporary standards.
- 2) The work describes offensive sexual conduct that is specifically outlawed as obscene.
- 3) The work lacks serious value of any variety.

Symbolic Speech

- ❖ **Symbolic speech** is expression by conduct.
- ❖ **Picketing**, the patrolling of a business site by workers on strike, is a prevalent form of symbolic speech.
- ❖ Supreme Court rulings show that the blanket of symbolic speech covers only so much. It does not cover destroying draft cards (*United States v. O'Brien*, 1968) but it does encompass flag burning (*Texas v. Johnson*, 1989, and *United States v. Eichman*, 1990).

Commercial Speech

Commercial Speech is speech for business purposes, usually advertising.

- For many years, it was believed that the 1st and 14th amendment guarantees did not protect advertising.
- In a handful of decisions in the 1970s, the Court held that advertising was protected, but not without exceptions.
- Exceptions include: barring false and misleading advertisement, advertising illegal goods or services, and the promotion of tobacco products on the radio or television.



The Media

The government cannot stop the members of the media from reporting news that the government doesn't agree with. However there are some restrictions:

- **Confidentiality:** Since the Supreme Court found that the Constitution does not allow members of the news media to keep their sources confidential in a court of law, 30 states have passed **shield laws** to give reporters some protection against having to reveal their sources.
- **Motion Pictures:** In *Mutual Film Corporation v. Ohio*, 1915, the Supreme Court held that motion pictures were a business, not a form of expression, and so were not protected under the freedom of expression guarantees. The Court reversed this decision in *Burstyn v. Wilson*, 1952.
- **Both Radio and Television Media** are subject to more government regulation than other forms of expression because they are transmitted by “public airwaves.”

The Constitution's Guarantees

The Constitution guarantees “...the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

- ❖ The right to **assemble**, or gather with one another to express views.
- ❖ The right to bring views to the attention of public officials.

Time-Place-Manner Regulations

The government can make and enforce rules regarding the time, place, and manner of assemblies.

- An example of such a rule is that public areas near schools and courthouses are restricted.
- The government's rules must be **content neutral**. They can place restrictions on the basis of the time, place and manner of the assembly, but not on what the assembly is trying to say.

Public Property

Restrictions on the right to demonstrate:

Cox v. New Hampshire, 1941: the Supreme Court approved a State law requiring a license to hold a parade on a public street.

Gregory v. Chicago, 1969: so long as demonstrators act peacefully, they cannot be held accountable for disturbances that arise because of their demonstration.

Madsen v. Women's Health Services, Inc., 1994, and Hill v. Colorado, 2000: the Supreme Court approved laws creating buffer zones around abortion clinics and people going in and out of them.

Private Property

The rights of assembly and petition do not give people a right to trespass on private property.

States can interpret their constitutions to require owners of private property, such as shopping centers, to allow people to petition on their property.

Freedom of Association

- ❖ The guarantees of freedom of assembly and petition include a **right of association**—the right to associate with others to promote causes.
- ❖ The freedom of association also means that a State cannot force an organization to accept members when that association would contradict what the organization believes in.

Due Process



Equal Protection

