



Stony Brook  
University

Center for Civic Justice

COMMUNITY DIALOGUE

APRIL 19TH, 2023

# Origins of Freedom: The First Amendment



## **The Constitution of the United States of America**

The fundamental law of the U.S. federal system of government and a landmark document of the Western world. The oldest written national constitution in use, the Constitution defines the principal organs of government and their jurisdictions and the basic rights of citizens.

Written in 1787, ratified in 1788 and put into effect in 1789.

## **Amendment**

A minor change or addition designed to improve a text, piece of legislation, etc.

An amendment may be proposed by a two-thirds vote of both Houses of Congress, or, if two-thirds of the States request one, by a convention called for that purpose. The amendment must then be ratified (or formally consented to) by three-fourths of the State legislatures, or three-fourths of conventions called in each State for ratification.

## **The First Amendment**

Provides several rights protections: to express ideas through speech and the press, to assemble or gather with a group to protest or for other reasons, and to ask the government to fix problems. It also protects the right to religious beliefs and practices. It prevents the government from creating or favoring a religion.

## **Chilling Effect**

Caused by legal actions such as the passing of a law, the decision of a court, or the threat of a lawsuit; any legal action that would cause people to hesitate to exercise a legitimate right (freedom of speech or otherwise) for fear of legal repercussions.

## **Censorship**

Restrictions on the publication and/or the presentation of expression to the public, including speeches, newspapers, books, plays, films, and other forms of art or communication.

## **Defamation**

A false communication that harms individuals' reputations, causes the general public to hate or disrespect them, or damages their business or employment. To be defamatory, a statement must be an assertion of fact (rather than mere opinion) and capable of being proven false.

## **Establishment Clause of the First Amendment**

Cantwell v. Connecticut (1940) states that the Establishment Clause of the First Amendment "forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship." In other words, freedom of conscience and the freedom to choose and to belong to a religion or religious organization, or to none at all, cannot be restricted by law.

## **Free Exercise Clause**

Protects citizens' right to practice their religion as they please, so long as the practice does not run afoul of a "public morals" or a "compelling" governmental interest.

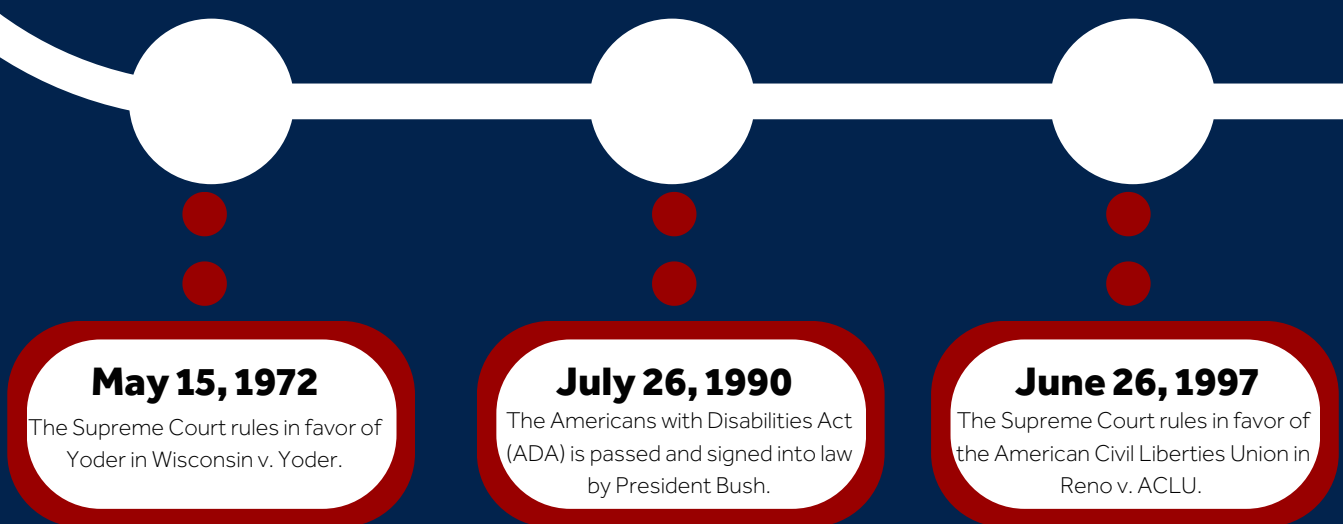
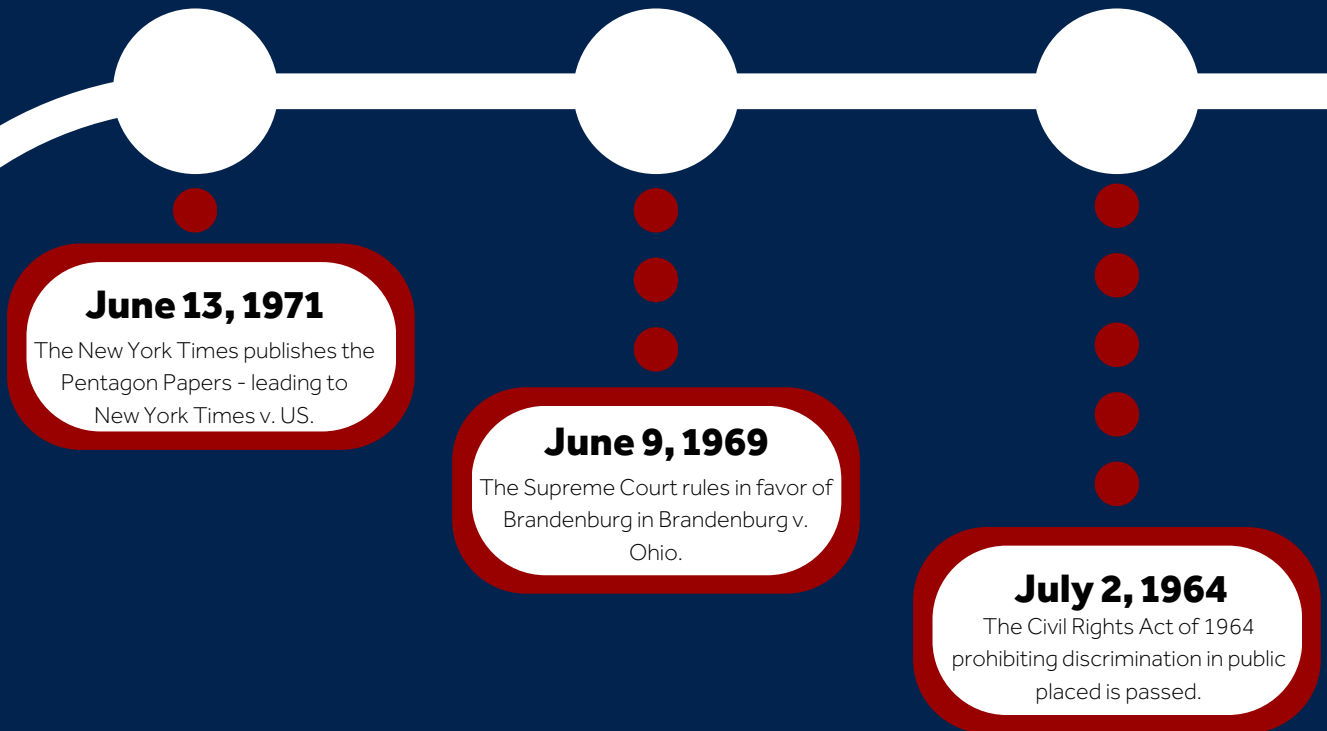
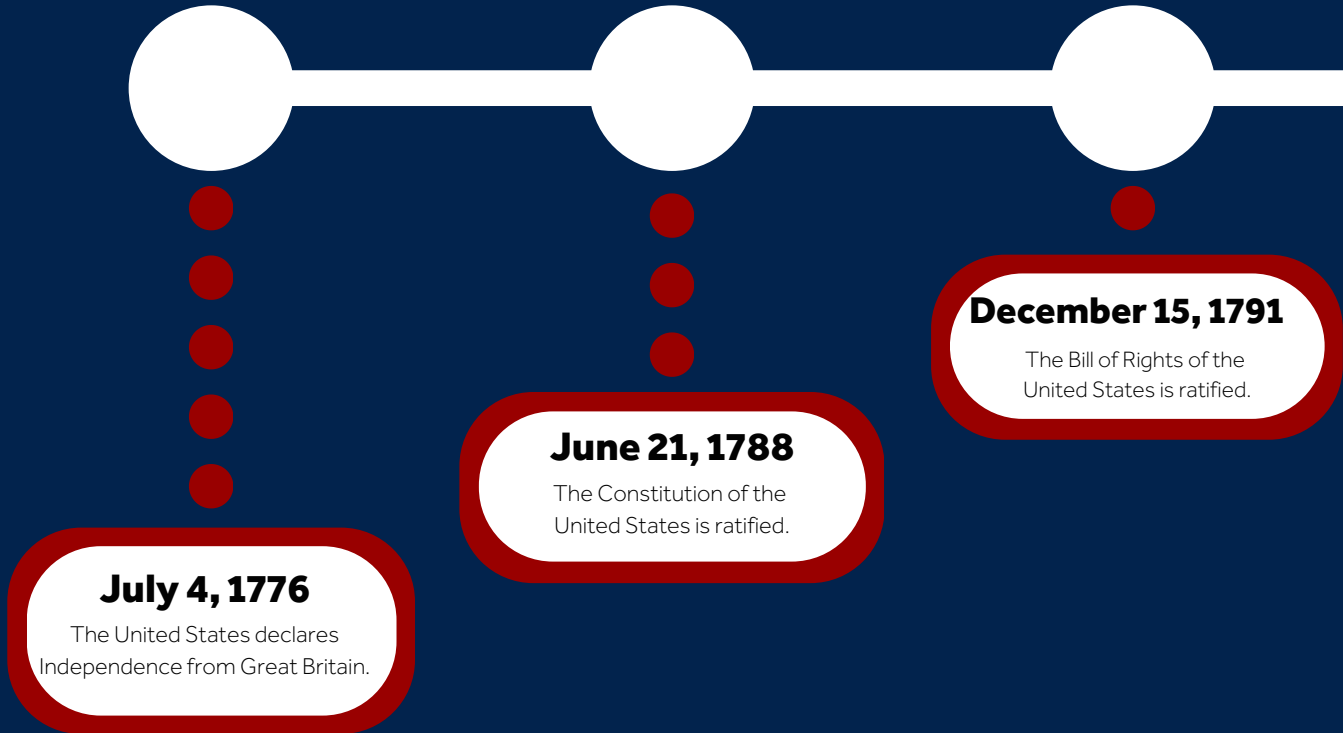
## **Libel**

Written defamation. Libel charges generally involve a civil lawsuit brought by the alleged victim against the speaker.

## **The Supreme Court of the United States (SCOTUS)**

As the final arbiter of the law, the Court is charged with ensuring the American people the promise of equal justice under law and, thereby, also functions as guardian and interpreter of the Constitution. The best-known power of the Supreme Court is judicial review, or the ability of the Court to declare a Legislative or Executive act in violation of the Constitution, which was established in the 1803 SCOTUS case Marbury v. Madison.

# First Amendm



# ent Timeline

**July 6, 1798**

The United States passes the Alien and Sedition Acts.

**July 9, 1868**

The Fourteenth Amendment is ratified.

**May 16, 1918**

The Sedition Act of 1918 is passed as a result of ongoing World War I.

**August 18, 1920**

The Nineteenth Amendment is ratified.

**June 28, 1940**

The Alien Registration Act (Smith Act) is passed by Congress.

**June 17, 1957**

The ruling from *Yates v. United States* results in the overturning of the Smith Act.

**January 21, 2010**

The Supreme Court rules in favor of *Citizens United in Citizens United v. Federal Elections Commission*.

**June 26, 2015**

The Supreme Court rules that gay marriage is legal in all states as a result of *Obergefell v. Hodges*.

**June 4, 2018**

The Supreme Court rules in favor of *Masterpiece Cakeshop in Masterpiece Cakeshop v. CCRC*.

## Definition

The right for individuals or a community to express any opinions without fear of censorship, restraint or legal sanction.

## Limitations

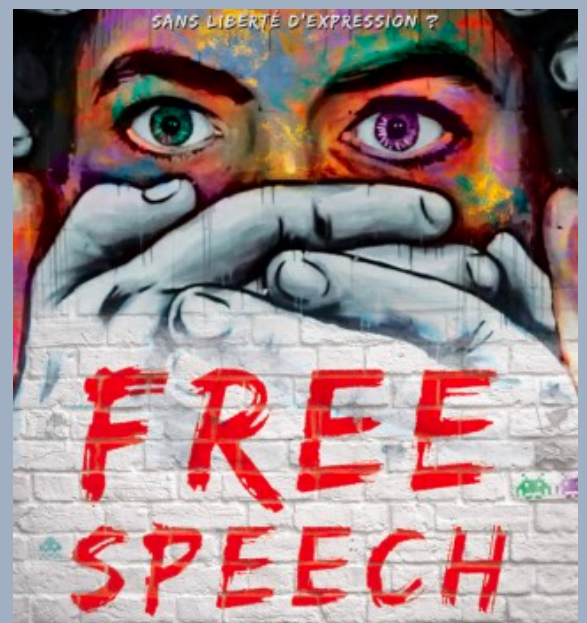
The Supreme Court has said that public entities, have discretion to regulate the "time, place, and manner" of speech. They are generally restrictions that are intended to balance other rights or a legitimate government interest.



The Supreme Court may use a two-pronged test to evaluate speech acts: (1) speech can be prohibited if it is "directed at inciting or producing imminent lawless action" and (2) it is "likely to incite or produce such action."

## Stony Brook University's Policy on Free Speech

Stony Brook University maintains that the right to speak on campus is not a right to speak at any time, at any place, and in any manner that a person wishes. The University can regulate where, when, and how speech occurs to ensure the functioning of the campus and the achievement of important goals – such as protecting public safety.



## Landmark Court Cases

### **Brandenburg v. Ohio (1969)**

Clarence Brandenburg, a leader of the Ku Klux Klan was charged with making a speech during a Klan rally that violated the Ohio criminal syndicalism law. The law made it illegal to advocate "crime, sabotage, violence, or unlawful methods of terrorism as a means of accomplishing industrial or political reform." As well as, assembling "with any society, group, or assemblage of persons formed to teach or advocate the doctrines of criminal syndicalism." Ultimately in an unanimous decision, the courts sided with Brandenburg in claims that it could not be proven that the advocacy and teaching during Brandenburg's speech would incite imminent lawless action. Since, the court was unable to make that distinction, the law was effectively rendered too broad and in violation of the Constitution. Brandenburg v. Ohio set a precedent of how far we can go with free speech under the first amendment which led to the creation of the Brandenburg test, which puts free speech through a test to determine whether it is lawful and protected by the first amendment or not. The Brandenburg test is still used today to protect various types of free speech.

### **Reno v. ACLU (1997)**

When the Communications Decency Act (CDA) was passed in 1996, several challenges were made regarding the constitutionality of two of its provisions. Intended to protect minors from unsuitable internet material, the Act criminalized the intentional transmission of "obscene or indecent" messages as well as the transmission of information which depicts or describes "sexual or excretory activities or organs" in a manner deemed "offensive" by community standards. A coalition of about fifty organizations and businesses, led by the American Civil Liberties Union (ACLU), filed a suit asserting that it violated the First Amendment. The lawsuit challenged two provisions of the Act, known as the indecent transmission provision and the patently offensive display provision. The court decided that the government could regulate obscene content on the internet, but that it could not regulate indecent content to the same extent. The court ruled that the internet was a unique medium of communication that deserved strong First Amendment protections and that the government's attempts to regulate indecent content would likely have a chilling effect on free speech.

# FREEDOM OF RELIGION

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## Definition

The right for individuals or a community to practice any religion without fear of censorship, restraint or legal sanction.

## Limitations

- Harmful to others
- Infringe on others' rights
- Compelling interest



Freedom of religion in the First Amendment is comprised of two clauses: The Free Exercise Clause and The Establishment Clause.

### **Free Exercise Clause:**

Protects anyone's right practice any religion that they please with a few limitations.

### **Establishment Clause:**

Prohibits the government from "establishing" a religion or giving importance to any religion over another.



## Landmark Court Cases

### Wisconsin v. Yoder (1972)

Wisconsin v. Yoder was one of the primary examples of the limits the law has when it comes to the First Amendment and the Constitution in general. The First Amendment has two clauses, the Establishment Clause, which forbids the government from declaring an established religion across the United States, and the Free Exercise Clause, which allows people to practice any religion freely as long as it does not run afoul of a "public morals" or a "compelling" governmental interest. Colorado had a public school attendance requirement— meaning that it required all parents to send their children to public schools until they were at least 16. When the Amish parents of the children refused to send their children to school after 8th (eighth) grade, citing religious beliefs as the cause, they essentially violated the requirement. This raised the question whether or not Wisconsin's requirement that all parents send their children to school at least until age 16 violates the First Amendment by criminalizing the conduct of parents who refused to send their children to school for religious reasons.

### Masterpiece Cakeshop v. Colorado Civil Rights Commission (2018)

Masterpiece Cakeshop v. Colorado Civil Rights Commission was another example that raises debate about the rights of the government when it comes to regulating the Free Exercise Clause. At the time, the dilemma seemed understandable—where do the rights of the government and enacted policies cross the line into infringing on freedom of speech—however, this case was brought to the Supreme Court before the ruling in Obergefell v. Hodges. Obergefell v. Hodges was a case that was decided in 2015, ruling that declared state bans on same-sex marriage unconstitutional based on the due process and equal protection clauses of the 14th Amendment. The important thing to note about this particular case is that the ruling and the logic/reasoning used to arrive at the said ruling, is only specific to this case and no other— meaning it will not and should not be used to set a precedent for any similar cases in the future. More importantly, the Supreme Court affirmed the absolute importance of anti-discrimination laws and made it clear to the states that LGBTQIA+ people should be protected in the marketplace.

## Definition

The right to publish and disseminate information, thoughts, and opinions without restraint or censorship.

## Limitations

- Obscenities
- Fighting Words
- Defamation
- True Threats
- Fraud
- Incitement

## In times of war, this freedom has been limited...



In 1798, the US feared a war with France. The Federalists controlled Congress, and in an attempt to limit criticism from the rival Democratic-Republicans, passed the Sedition Act.

"Under the act, it was illegal to incite disloyalty within the military, use in speech or written form any language that was disloyal to the government, the Constitution, the military, or the flag, advocate strikes on labor production, promote principles that violated the act, or support countries at war with the United States."

In 1918, the US population grew to disapprove of the involvement in World War One and Congress passed the Sedition Act to quell this reaction to protect national security.

"The Sedition Act made it a crime for American citizens to 'print, utter, or publish...any false, scandalous, and malicious writing' about the government."

In 1940, due to the growing conflict in Europe, and the rise of communist and socialist movements in the US, congress passed the Smith Act to slow these movements.

The Smith Act banned "any attempts to "advocate, abet, advise, or teach" the violent destruction of the U.S. government.



## Landmark Court Cases

### **New York Times Company v. United States (1971)**

In 1967, the defense department ran a study on America's involvement in the Vietnam War. The study produced a multitude of documents dubbed the "Pentagon Papers".

These documents were labeled as classified. A RAND Corporation employee, who worked on the study, made copies of the documents and sent them to The New York Times. The Times started to publish the documents before the Nixon Administration barred the release of the documents due to national security concerns. The Times went to the Supreme Court with an emergency appeal. The court ruled 6-3 in the Time's favor stating that the government had failed to show how the release of these documents would jeopardize national security. In this case, the government exercised prior restraint, which is when the government can prevent the publication of printed materials. The court felt that this form of censorship infringed on the first amendment rights of the New York Times. This case took only 15 days to be decided, which the dissenters criticized as not enough time to consider the full issue.

### **Citizens United v. Federal Elections Commission (2010)**

In 2008, Citizens United wanted to release a film called Hillary: The Movie, which was a documentary that was very critical of Hillary Clinton. At the time, she was running for president, so the release of this film violated the Bipartisan Campaign Reform Act. This did not allow corporations to use their funds for "electioneering communications," which is defined as any form of speech that advocates for or against a candidate within 30 days of primary or 60 days within a general election. Citizens United did not agree with this and went to the Supreme Court. The court ruled in a 5-4 decision that the Bipartisan Campaign Reform Act violated the first amendment rights of the corporation, and that these rights should not be taken away because of the proximity of time before an election. Dissenters felt that this decision gave corporations too much power in general elections since there now is no limit on corporate spending in general elections.

# FREEDOM OF ASSEMBLY

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The First Amendment prohibits the government from abridging “the right of the people peaceably to assemble.” This basic freedom ensures that individuals can gather together to advocate for causes, beliefs, movements, or protests.



## How do we assemble?

The right of peaceful assembly includes the right to hold meetings, sit-ins, strikes, rallies, events, or protests, both offline and online. The right to freedom of association involves the right of individuals to interact and organize among themselves to collectively express, promote, pursue, and defend common interests. This includes the right to form trade unions. In American history, groups as diverse as union workers, civil rights advocates, anti-war demonstrators, and Ku Klux Klan members have assembled, taken to the streets, and broadcast their messages to the public.

## Notable Protest Movements

**The Civil Rights Movement:** a nonviolent social movement from 1954 - 1968 to abolish legalized racial segregation, discrimination, and disenfranchisement in the United States.

**The Berkeley Free Speech Movement:** which began in 1964, is a pristine example of students exercising their free speech and free assembly rights to urge their administration to change its policies.

**March For Our Lives:** a student-led demonstration in support of gun control legislation held in the wake of the Stoneman Douglas High School shooting in 2018.



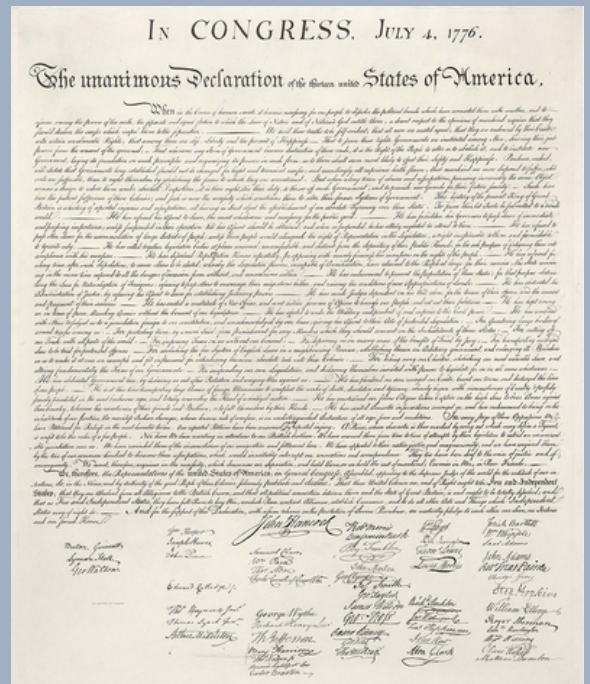
# FREEDOM TO PETITION

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Although the act of petitioning the government does not guarantee results, it is the basis of democracy in action. The right to petition is seen in voting, asking members of Congress to support or oppose the legislation, and lobbying. There is no "required form" for a petition. A petition can take many forms and can be presented at the national, state, and local levels to garner attention or support for an issue.

## Origins in American History

Before the US Constitution even existed, British colonialists exercised their right to petition their government. When their demands were not met, they wrote the Declaration of Independence in 1776. An announcement of separation from Great Britain, the famous document noted after listing many tyrannical cases of abuse that "In every stage of these Oppressions We have Petitioned for Redress in the most humble terms: Our repeated Petitions have been answered only by repeated injury."



support our cause – sign our petition

Please consider signing the petition to help the fight!

Full name \*

Signature \*

## Petitioning in the Modern Day

Public Purpose Petition: ask officials to take or not take a specific action. They might be addressed to policymakers, government bodies, or administrative agencies. These are shared publicly to acquire signers. Requirements are minimal or absent. Internet Petitions: are conducted entirely online. They are not always specific as to what actions to take and do not follow established civic or political processes. They are effective at raising public awareness about an issue.

# Advocates Assemble!

You are a very concerned citizen about the issue presented. Design a plan of action to petition and assemble for your cause!



## Ways to Petition:

- written petitions
- voting in elections
- writing to representatives
- lobbying for or against legislation



## Ways to Assemble:

- protest marches
- sit-ins
- rallies
- picketing
- strikes
- walkouts
- strategic meetings
- online organizing



# Plan of Action

# DISCUSSION QUESTIONS

## SPEECH

1. Do you believe that the government should be able to restrict ideas or speech considered harmful or hateful; even before they are expressed? Would this be viewed as censorship? Should there be limits on what people who live in the United States of America can say or post online? What are the consequences of hate speech and the implications of restricting it?

## RELIGION

2a. Given examples of government policies focused on religion (i.e. Establishment Clause, Patriot Act, etc.), do you think that the government abides by the separation of church and state - explain why or why not? What are some ways that religion and government are interdependent and connected in the United States? What are the implications of having a political party affiliate itself with a specific set of religious values?

2b. In a scenario where someone's religious beliefs are perceived as hateful or harmful to another population, do you believe that their words/actions should be protected under freedom of religion and/or freedom of speech?



# DISCUSSION QUESTIONS

## PRESS

3a. Do you think protecting freedom of the press leads to factual errors, misinformation, or even fake news? Are these unavoidable consequences of this freedom? Explain.

3b. Does freedom of press cause more or less trust in the government? Do you feel this freedom is too broad and can it lead to civil unrest or is there too much censorship of the press?

3c. In the age of social media, many people get their news from online news sources. Should there be regulations in place to ensure these news sources release factual information? Should it be up to the consumer to fact check their news themselves? How could false or misleading information impact society?

## ASSEMBLY & PETITION

4a. Consider what you know about protest movements in history like the Civil Rights Movement, as well as movements today like the Black Lives Matter protests or the Women's March. Do you think social media and the digital information revolution have improved or harmed the effectiveness of protests and activism?

4b. Do you feel that you are informed enough to effectively petition on issues on various levels (local, state, federal)? Why or why not?

# Accessibility to Civil Liberties

**Discrimination entails denying an individual's civil rights based on his or her membership in a protected class. At the federal level, the Civil Rights Act of 1964 defines protected classes as including race, national origin, sex, and religion; the Americans with Disabilities Act of 1990 prohibits discrimination on the basis of disability.**

**What should I do if my First Amendment right has been violated?**

**The First Amendment has been at the heart of numerous legal disputes. If you believe your First Amendment rights have been infringed upon, contact a civil rights lawyer right away. You can get assistance from your lawyer as you assess the violation and deal with the remediation procedure.**



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## First Amendment Glossary



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