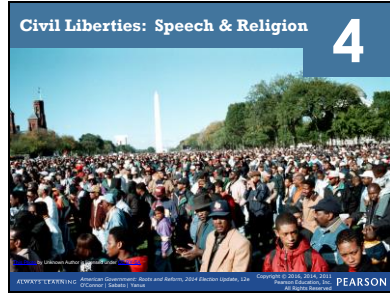




# AP<sup>®</sup> U. S. Government & Politics

Slide 1

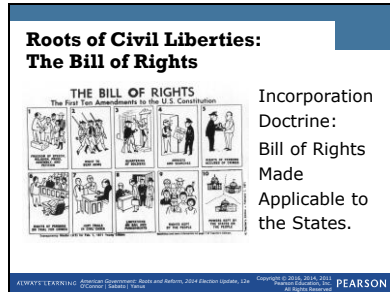


Chapter 4

Civil Liberties:

Speech & Religion

Slide 2



The first ten Amendments make up the Bill of Rights and were added to the U.S. Constitution in response to fears that the Constitution had failed to provide adequate legal protection for individuals.

The Federalists felt a Bill of Rights would be unnecessary as the Constitution guarantees popular sovereignty. The Anti-Federalists, on the other hand, feared that the new national government would become too powerful. Without spelling out the protections offered to citizens, the Anti-Federalists would most likely not have ratified the Constitution.

Later, the Fourteenth Amendment added state governments to the equation and provided individuals the right to 'due process.'




# AP<sup>®</sup> U. S. Government & Politics

## Slide 3

**First Amendment Guarantees:  
Freedom of Religion**

- The Establishment Clause
- The Free Exercise Clause



ALWAYS LEARNING™ AP<sup>®</sup> U.S. Government: Practice and Review, 2014 Edition Update, 11e Copyright © 2014, 2014, 2013 Pearson Education, Inc. All Rights Reserved. PEARSON

The First Amendment states that "Congress shall make no law respecting an establishment of religion, or prohibit the free exercise thereof." It is clear that the government cannot establish a national government, and that individuals to exercise the religion of their choice freely.

However, as with many civil liberties, there are restrictions to freedom of religion. The separation of church and state has long been a topic of debate in the United States.

## Slide 4

**First Amendment Guarantees:  
Freedom of Religion**

- The Establishment Clause
- The Free Exercise Clause



ALWAYS LEARNING™ AP<sup>®</sup> U.S. Government: Practice and Review, 2014 Edition Update, 11e Copyright © 2014, 2014, 2013 Pearson Education, Inc. All Rights Reserved. PEARSON

The First Amendment states that "Congress shall make no law respecting an establishment of religion, or prohibit the free exercise thereof." It is clear that the government cannot establish a national government, and that individuals to exercise the religion of their choice freely.

However, as with many civil liberties, there are restrictions to freedom of religion. The separation of church and state has long been a topic of debate in the United States.



# AP<sup>©</sup> U. S. Government & Politics

## Slide 5

**The Establishment Clause**

**Lemon test**

- Secular purpose
- Cannot advance
- Must not entangle government with religion



[After School Satan web site](#)

ALWAYS LEARNING INC. AP U.S. Government: Rules and Actions, 2014 Edition Update, 11e Copyright © 2015, 2014, 2013 Pearson Education, Inc. PEARSON

Issues involving the separation of church and state are highly controversial.

Prayer in schools went largely undisputed until the 1960s when in *Engel v. Vitale* (1962), the Court ruled that a mandatory prayer in public school classrooms was unconstitutional.

As a result of controversy surrounding the separation of church and state, the Court established a three-part test known as the *Lemon* test. This test is derived from the *Lemon v. Kurtzman* case of 1971. A law or government practice regarding religion is allowed if it:

- has a secular purpose
- does not inhibit or advance religion
- 3) does not create an excessive entanglement of government and religion.

Public spaces like schools can be rented out to for community organizations like religious organizations as long as the rules are the same for any organization wishing to use the space.

After a religious organization offered an after-school program for elementary students in Mt. Vernon and Tacoma, the Satanic Temple of Seattle offered their own program. According to their web site, “Across the nation, parents are concerned about encroachments by proselytizing evangelicals in their public schools, and are eager to establish the presence of a contrasting voice that helps children to understand that one doesn’t need to submit to superstition in order to be a good person.”




# AP<sup>®</sup> U. S. Government & Politics

## Slide 6

**Free Exercise Clause**

- Free exercise clause not absolute
  - Some religious rites considered illegal
  - State must provide compelling reason to limit exercise of religion, like the use of certain drugs, polygamy, or snakes.



ALWAYS LEARNING American Government: Principles and Practices, 2014 Edition Update, 12e Copyright © 2015, 2014, 2013 Pearson Education, Inc. PEARSON


The free exercise clause holds that "Congress shall make no law . . . prohibiting the free exercise [of religion]." Like the establishment clause, the free exercise clause is not absolute.

The free exercise of religion allows individuals to engage in religious activities without government interference, as long as the acts fall within acceptable norms. So snake handling, even if part of a religious observance, might not be allowed, especially if a state could show a compelling reason to prohibit it.

## Slide 7

**Freedoms of Speech and the Press**

- Alien and Sedition Acts
  - Censored criticisms of the government (under President Adams)
  - Jefferson pardoned all imprisoned by the Sedition Acts.



ALWAYS LEARNING American Government: Principles and Practices, 2014 Edition Update, 12e Copyright © 2015, 2014, 2013 Pearson Education, Inc. PEARSON

The First Amendment protects individuals against prior restraint of speech. This means that government cannot prohibit or censor publications or speech. However, in 1798, Congress passed the Alien and Sedition Acts, which banned publications critical of the government. After the election of Thomas Jefferson, those who were convicted under these Acts were pardoned.

Before, during, and after the Civil War, freedom of speech was again restricted. Publications in favor of slavery were not permitted in the North and those opposing slavery were not permitted in the South. President Lincoln suspended free press protections of the First Amendment.

Freedom of speech continued to be curtailed between 1890 and 1900, when people were prosecuted for



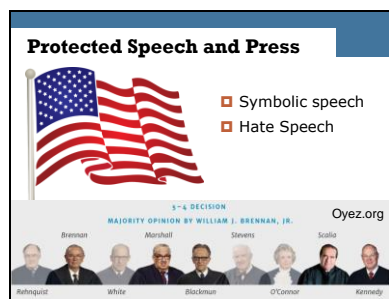
# AP<sup>©</sup> U. S. Government & Politics

sedition speech, and in the early twentieth century as Socialists and Communists who appealed to the growing immigrant populations were targeted for their views on government.

In 1919 the Supreme Court ruled that speech could be punishable by law if it presented a clear and present danger to society. Any speech that would directly incite or advocate illegal action could be prohibited. However, in 1969, the court decided that even speech that advocates for illegal action is constitutional if it is not likely to produce such actions.

The issue of prior restraint arose again in the 1970s in *New York Times Co. v. U.S.* In this case, the Supreme Court ruled that the government could not block the publication of the Pentagon Papers, secret Department of Defense documents obtained by the *New York Times*.

## Slide 8



The Supreme Court has ruled that symbolic speech is also protected under the First Amendment. Symbolic speech implies expression through symbols or signs. Some famous decisions in favor of symbolic speech included the Court's ruling that students had the right to wear black armbands to protest the Vietnam War, and that state laws prohibiting burning are unconstitutional.

In 1984, in front of the Dallas City Hall, Gregory Lee Johnson burned an American flag as a means of protest against Reagan administration policies.

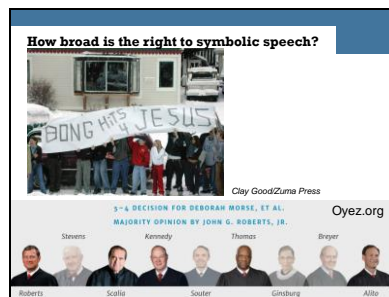


# AP<sup>©</sup> U. S. Government & Politics

Johnson was tried and convicted under a Texas law outlawing flag desecration. He was sentenced to one year in jail and assessed a \$2,000 fine. After the Texas Court of Criminal Appeals reversed the conviction, the case went to the Supreme Court. In a 5-to-4 decision, the Court held that Johnson's burning of a flag was protected expression under the First Amendment. The Court found that Johnson's actions fell into the category of expressive conduct and had a distinctively political nature. The fact that an audience takes offense to certain ideas or expression, the Court found, does not justify prohibitions of speech.

Hate speech, which belittles a person or group, is another difficult issue. It is not protected when it is conducted to intimidate groups or to disrupt activities.

## Slide 9



In a 2007 case, the Supreme Court ruled that a school district was within its rights to suspend a student for displaying this banner, because it was intended to promote illegal drug use, even though it occurred off school property.

At a school-supervised event, Joseph Frederick held up a banner with the message "Bong Hits 4 Jesus," a slang reference to marijuana smoking. Principal Deborah Morse took away the banner and suspended Frederick for ten days.

The Court decided by a 5-4 vote, ruling that school officials can prohibit students from displaying messages that promote illegal drug use. Chief Justice John Roberts's majority opinion held that although students do have some right to political speech even while in school, this right does not extend to pro-drug messages that may undermine the school's important mission to discourage drug use.



## Slide 10

**Unprotected Speech and Press**

- Unprotected speech
  - Libel and slander
  - Fighting words
  - Obscenity

6-3 DECISION  
MAJORITY OPINION BY WILLIAM J. BRENNAN, JR.  
Oyez.org

Warren Black Douglas Clark Brennan  
Frankfurter Burton Harlan Whiteaker

While most speech is protected under the First Amendment, libel, slander, fighting words and obscenity are not. Statements that defame an individual's character with malice and a clear intent to provide false information are not protected. When these words are written, they are called libel. When they are spoken, they are called slander.

Fighting words are words that "by their very utterance inflict injury or tend to incite an immediate breach of peace." Fighting words are not subject to the restrictions of the First Amendment.

The Supreme Court ruled in *Roth v. United States* that obscenity is not constitutionally protected but defining what is obscene has proven elusive. Standards vary both from place to place and from time to time. In a 6-to-3 decision written by Justice William J. Brennan, Jr., the Court held that obscenity was not "within the area of constitutionally protected speech or press." The Court noted that the First Amendment was not intended to protect every utterance or form of expression, such as materials that were "utterly without redeeming social importance."

In *Miller v. California*, the Court attempted to clarify its obscenity doctrine.



# AP<sup>©</sup> U. S. Government & Politics

Materials were obscene if they appealed to a 'prurient interest', showed 'patently offensive' sexual conduct, or lacked 'serious literary artistic, political, or scientific value.' The judges of these three criteria were to be average people applying local, not national, standards.

The Court ruled that the PROTECT Act, which outlaws the sale of pornography to minors, is constitutional, although the Internet has made it difficult to restrict access to pornography to minors.

## Slide 11

**Freedoms of Assembly and Petition**

- Freedom to assemble hinges on peaceful conduct.
  - Subject to rules regarding free speech
- Right to petition government about issues

ALWAYS LEARN!™ © Pearson Education, Inc. All Rights Reserved. PEARSON

Freedom to assemble hinges on peaceful conduct. Without this, leaders and attendees may be subject to governmental regulation and even arrest, incarceration, or civil fines. The freedom to assemble has often been controversial, especially in times of war.

The Supreme Court has rarely addressed the right to petition government. But, in 2010, the Court found that the disclosure of petitioners does not violate First Amendment rights. If individuals choose to sign a ballot initiative, then those names must be disclosed.





# AP<sup>®</sup> U. S. Government & Politics

## Slide 12



The First Amendment rights to assembly and petition are often seen in the form of protests, marches, and rallies. Here, protestors in California march in support of gay marriage rights following a federal appellate court's ruling on that issue.

## Slide 13

