



Landmark Supreme Court Cases

The First Amendment

Herein are all the major Supreme Court cases involving the First Amendment, but you only have to KNOW a few select ones. To see the overall trends established by the Court, the comprehensive list is provided.

Annotate each case as follows:

1. Highlight issue & ruling.
2. Determine whether the Court ruled the action in question to be constitutional or unconstitutional.
3. Note whether or not the case established a "test" or "doctrine" that the Court would apply to similar cases, e.g., the Lemon test.
4. Categorize by type of liberty, e.g., establishment clause.
5. Categorize by type of case, e.g., school prayer.
6. Label the incorporation cases.
7. Mark the "must know" cases as announced in class.

RELIGIOUS LIBERTY: ESTABLISHMENT CLAUSE

***Everson v. Board of Education* (1947) -- INCORPORATION OF ESTABLISHMENT CLAUSE**

New Jersey's reimbursement to parents of parochial and private school students for the costs of busing their children to school was upheld because the assistance went to the child, not the church. This case also applied the Establishment Clause to the actions of state governments.

***Torcaso v. Watkins* (1961)**

A Maryland requirement that candidates for public office swear that they believe in God was a religious test and violated Article VI of the Constitution as well as the First and Fourteenth Amendments.

***Engel v. Vitale* (1962) -- MUST KNOW**

New York's requirement of a state-composed prayer to begin the school day was declared an unconstitutional violation of the Establishment Clause.

***Abington School District v. Schempp* (1963) – MUST KNOW**

A Pennsylvania law requiring that each public school day open with Bible reading was struck down as violating the Establishment Clause.

***Murray v. Curlett* (1963)**

A Maryland law requiring prayer at the beginning of each public school day was declared unconstitutional as a violation of the Establishment Clause.

***Epperson v. Arkansas* (1968)**

An Arkansas law prohibiting the teaching of evolution was unconstitutional, because it was based on "fundamentalist sectarian conviction" and violated the Establishment Clause.

***Lemon v. Kurtzman* (1971)**

The Court struck down a Pennsylvania law reimbursing religious schools for textbooks and teacher salaries. The decision held that a program does not violate the Constitution if: (a) it has a primarily secular purpose; (b) its principal effect neither aids nor inhibits religion; and (c) government and religion are not excessively entangled.

***Stone v. Graham* (1980)**

State laws mandating the display of the Ten Commandments in public school classrooms were declared unconstitutional as a violation of the Establishment Clause.

***Marsh v. Chambers* (1983)**

States had the right to hire a chaplain to open legislative sessions with a prayer or invocation. The traditional practice did not violate the Establishment Clause.

***Lynch v. Donnelly* (1984) – MUST KNOW**

The Court upheld a nativity display among other symbols in a public park "to celebrate the Christmas holiday and to depict the origins of that holiday."

***Wallace v. Jaffree* (1985)**

An Alabama law setting aside a moment for "voluntary prayer" and allowing teachers to lead "willing students" in a prayer to "Almighty God . . . the Creator and Supreme Judge of the world" in public schools was struck down. The law had no secular purpose and endorsed religion, violating the Establishment Clause.

***Edwards v. Aguillard* (1987)**

Louisiana could not require public schools that taught evolution to teach creationism as "Creation Science." The law had no secular purpose and endorsed religion, violating the Establishment Clause.

***Allegheny County v. Greater Pittsburgh ACLU* (1989)**

A nativity scene with the words "*Gloria in Excelsis Deo*," meaning "Glory to God in the Highest," placed alone on the grand staircase of a courthouse endorsed religion and violated the Establishment Clause.

RELIGIOUS LIBERTY – ESTABLISHMENT (P. 2)

Board of Education of Westside Community Schools v. Mergens (1990)

The 1990 Equal Access Act, which required that public schools give religious groups the same access to facilities that other extracurricular groups have, was upheld. Allowing religious clubs to meet did not violate the Establishment Clause.

Lee v. Weisman (1992)

Officially approved, clergy-led prayer at public school graduations led to subtle religious coercion, and violated the Establishment Clause.

Zobrest v. Catalina Foothills School District (1993)

A school district had to provide a sign interpreter to a deaf child at a religious school. The aid was constitutional because it went to the student, not the church.

Kiryas Joel School District v. Grumet (1994)

A New York law creating a special school district to benefit disabled Orthodox Jewish children was struck down because it benefited a single religious group and was not neutral to religion.

Capitol Square Review and Advisory Board v. Pinette (1995)

A cross placed by a private group in a traditional public forum adjoining the state house did not violate the Establishment Clause, as the space was open to all on equal terms.

Santa Fe Independent School District v. Doe (2000) – MUST KNOW

A public school district's policy of having students vote on a prayer to be read by a student at football games violated the Establishment Clause. The voting policy resulted in religious coercion of the minority by the majority.

Good News Club v. Milford Central School (2001)

Religious clubs were allowed to meet in public schools after class hours as other clubs were permitted to do. Allowing religious clubs to meet did not violate the Establishment Clause.

Mitchell v. Helms (2000)

The federal government could provide computer equipment to all schools—public, private and parochial—under the Elementary and Secondary Education Act. The aid was religiously neutral and did not violate the Establishment Clause.

Zelman v. Simmons-Harris (2002)

A government program providing tuition vouchers for Cleveland schoolchildren to attend a private school of their parents' choosing was upheld. The vouchers were neutral towards religion and did not violate the Establishment Clause.

Elk Grove Unified School District v. Newdow (2004)

A father challenged the constitutionality of requiring public school teachers to lead the Pledge of Allegiance, which has included the phrase "under God" since 1954. The Court determined that Mr. Newdow, as a non-custodial parent, did not have standing to bring the case to court and therefore did not answer the constitutional question.

Van Orden v. Perry (2005)

A six-foot monument displaying the Ten Commandments donated by a private group and placed with other monuments next to the Texas State Capitol had a secular purpose and would not lead an observer to conclude that the state endorsed the religious message, and therefore did not violate the Establishment Clause.

McCreary County v. ACLU (2005)

Two large, framed copies of the Ten Commandments in Kentucky courthouses lacked a secular purpose and were not religiously neutral, and therefore violated the Establishment Clause.

RELIGIOUS LIBERTY: FREE EXERCISE CLAUSE

Reynolds v. United States (1879)

A federal law banning polygamy was upheld. The Free Exercise Clause forbids government from regulating belief, but does allow government to regulate actions such as marriage.

Minersville v. Gobitas (1940)

The Court upheld a Pennsylvania flag-salute law, because "religious liberty must give way to political authority." This was reversed in *West Virginia v. Barnette* (1943).

Cantwell v. Connecticut (1940)

States could not require special permits for religious solicitation when permits were not required for non-religious solicitation. The Court began applying the Free Exercise Clause to the states and recognized an absolute freedom of belief.

Braunfeld v. Brown (1961)

The Court upheld a Pennsylvania law requiring stores to be closed on Sundays, even though Orthodox Jews claimed the law unduly burdened them since their religion required them to close their stores on Saturdays as well. The Court held that the law did not target Jews specifically as a group.

Sherbert v. Verner (1963)

The Court ruled that states could not deny unemployment benefits to a person for turning down a job because it required him/her to work on the Sabbath. Requiring a person to abandon their religious convictions in order to receive benefits was a violation of the Free Exercise Clause.

Wisconsin v. Yoder (1972)

The Court ruled that Amish adolescents could be exempt from a state law requiring school attendance for all 14- to 16-year-olds, since their religion required living apart from the world and worldly influence. The state's interest in students' attending two more years of school was not enough to outweigh the individual right to free exercise.

McDaniel v. Paty (1978)

A Tennessee law barring members of the clergy from public office was overturned because it directly targeted people because of their religious profession.

Thornton v. Caldor (1985)

Private companies are free to fire people who refuse to work on any day they claim is their Sabbath, because the First Amendment applies only to government, not to private employers.

Goldman v. Weinberger (1986)

Air Force penalties against a Jewish chaplain who wore a yarmulke (skull cap) on duty in defiance of regulations were upheld. The military's interest in uniformity outweighed the individual right to free exercise.

Employment Division v. Smith (1990)

Oregon could deny unemployment benefits to someone fired from a job for illegally smoking peyote during a religious ceremony. The Free Exercise Clause does not excuse people from obeying the law.

Church of the Lukumi Babalu Aye v. City of Hialeah (1993)

Laws passed by four Florida cities banning animal sacrifice were targeted at the Santeria religion, which employs animal sacrifice in prayer, and therefore the laws were unconstitutional.

Locke v. Davey (2004)

States could refuse to award scholarship funds to college students pursuing divinity degrees in preparation for the ministry. The denial of government funding for religious instruction was not a violation of free exercise.

FREEDOM OF SPEECH: GENERAL

Schenck v. United States (1919)

Freedom of speech can be limited during wartime. The government can restrict expressions that “would create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent.”

Abrams v. United States (1919)

The First Amendment did not protect printing leaflets urging to resist the war effort, calling for a general strike and advocating violent revolution

Debs v. United States (1919)

The First Amendment did not protect an anti-war speech designed to obstruct recruiting.

Gitlow v. New York (1925)

The Supreme Court applied protection of free speech to the states through the due process clause of the Fourteenth Amendment.

Chaplinsky v. New Hampshire (1942)

The First Amendment did not protect “fighting words” which, by being said, cause injury or cause an immediate breach of the peace.

West Virginia v. Barnette (1943)

The West Virginia Board’s policy requiring students and teachers to recite the Pledge of Allegiance was unconstitutional. Reversing *Minersville v. Gobitas* (1940), the Court held government cannot “force citizens to confess by word or act their faith” in matters of opinion.

United States v. O’Brien (1968)

The First Amendment did not protect burning draft cards in protest of the Vietnam War as a form of symbolic speech.

Tinker v. Des Moines (1969)

The Court ruled that students wearing black armbands to protest the Vietnam War was “pure speech,” or symbolic speech protected by the First Amendment.

Brandenburg v. Ohio (1969)

The Supreme Court held that the First and Fourteenth Amendments protected speech advocating violence at a Ku Klux Klan rally because the speech did not call for “imminent lawless action.”

Cohen v. California (1971)

A California statute prohibiting the display of offensive messages violated freedom of expression.

Miller v. California (1973)

This case set forth rules for obscenity prosecutions, but it also gave states and localities flexibility in determining what is obscene.

Island Trees School District v. Pico (1982)

The Supreme Court ruled that officials could not remove books from school libraries because they disagreed with the content of the books’ messages.

Bethel School District v. Fraser (1986)

A school could suspend a pupil for giving a student government nomination speech full of “elaborate, graphic, and explicit sexual metaphor.”

Texas v. Johnson (1989)

Flag burning as political protest is a form of symbolic speech protected by the First Amendment.

FREEDOM OF SPEECH: GENERAL

***R.A.V. v. St. Paul* (1992)**

A criminal ordinance prohibiting the display of symbols that “arouse anger, alarm or resentment in others on the basis of race, color, creed, religion or gender” was unconstitutional. The law violated the First Amendment because it punished speech based on the ideas expressed.

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

The 1996 Communications Decency Act was ruled unconstitutional since it was overly broad and vague in its regulation of speech on the Internet, and since it attempted to regulate indecent speech, which the First Amendment protects.

***Watchtower Bible and Tract Society v. Stratton* (2002)**

City laws requiring permits for political advocates going door to door were unconstitutional because such a mandate would have a “chilling effect” on political communication.

***United States v. American Library Association* (2003)**

The federal government could require public libraries to use Internet-filtering software to prevent viewing of pornography by minors. The burden placed on adult patrons who had to request the filters be disabled was minimal.

***Virginia v. Hicks* (2003)**

Richmond could ban non-residents from public housing complexes if the non-residents did not have “a legitimate business or social purpose” for being there. The trespass policy was not overbroad and did not infringe upon First Amendment rights.

***Virginia v. Black* (2003)**

A blanket ban on cross-burning was an unconstitutional content-based restriction on free speech. States could ban cross burning with intent to intimidate, but the cross burning act alone was not enough evidence to infer intent.

***Ashcroft v. ACLU* (2004)**

The Child On-Line Protection Act violated the First Amendment because it was overbroad, it resulted in content-based restrictions on speech, and there were less-restrictive options available to protect children from harmful materials.

FREEDOM OF SPEECH: CAMPAIGN FINANCE

***Buckley v. Valeo* (1976)**

“Reasonable restrictions” on individual, corporate and group contributions to candidates were allowed; limits on campaign expenditures were unconstitutional since these placed “substantial and direct restrictions” on protected political expression.

***Colorado Republican Federal Campaign Committee v. FEC* (1996)**

The Court ruled that campaign spending by political parties on behalf of congressional candidates could not be limited as long as the parties work independently of the candidates.

***McConnell v. Federal Election Commission* (2003)**

Limitations on “soft-money” contributions and political advertisements were acceptable infringements of free speech because of the government’s interest in preventing corruption or the appearance of corruption in elections.

FREEDOM OF SPEECH: COMMERCIAL

***Virginia Board of Pharmacy v. Virginia Citizens Consumer Council* (1976)**

A pharmacy had the First Amendment right to advertise prices.

***Linmark v. Willingboro* (1977)**

A town prohibition on “For Sale” and “Sold” signs was unconstitutional. The ban was unreasonable restriction on the flow of commercial information.

FREEDOM OF THE PRESS

Rex v. Zenger (1735)

The colony of New York tried publisher John Peter Zenger for seditious libel against the governor. At that time, truth was not a defense in a libel case. Zenger's attorney told the jury of their power and duty to judge the law as well as the facts, and the jury acquitted Zenger. Though not a Supreme Court case, this is a landmark freedom of the press case.

People v. Croswell (1804)

Harry Croswell was convicted of libel for printing a story critical of President Thomas Jefferson in his newspaper. Alexander Hamilton represented Croswell on appeal and argued that truth should be a defense for libel. Croswell's conviction was upheld, but the case led New York to change its law to permit truth as a defense. Though not a Supreme Court case, this is a landmark freedom of the press case.

Near v. Minnesota (1931)

A state law allowing prior restraint was unconstitutional. This decision also extended protection of press freedom to the states through the Fourteenth Amendment.

New York Times v. Sullivan (1964)

The First Amendment protected all statements about public officials unless the speaker lied with the intent to defame.

Garrison v. Louisiana (1964)

A Louisiana law that punished true statements made with "actual malice" was overturned. The Court ruled that unless a newspaper shows "reckless disregard for the truth," it is protected under the First Amendment.

Curtis Publishing Co. v. Butts and AP v. Walker (1967)

A "public figure" who is not a public official may recover damages for a defamatory falsehood that harms his or her reputation, if the newspaper's actions were an "extreme departure" of the standards of reporting.

New York Times v. United States (1971)

A claimed threat to national security was not justification for prior restraint on publication of classified documents (the Pentagon Papers) about the Vietnam War.

Nebraska Press Association v. Stuart (1976)

A judge's order that the media not publish or broadcast statements by police in a murder trial was an unconstitutional prior restraint. The gag order violated the First Amendment rights of the press and the community.

Zacchini v. Scripps-Howard Broadcasting (1977)

The Court ruled that the First Amendment does not give a television station the right to air the entire act of a performance without the performer's permission.

Hustler v. Falwell (1988)

The First Amendment prohibits public figures from recovering damages for intentional infliction of emotional harm unless the publication contained a false statement made with actual malice.

Hazelwood School District v. Kuhlmeier (1988)

Public school officials can censor school-sponsored newspapers, because the newspapers are part of the school curriculum rather than a forum for public expression.

FREEDOM OF ASSEMBLY/ASSOCIATION

Dejonge v. Oregon (1937)

Federal protection of the right of peaceful assembly for lawful discussion was extended to the states.

NAACP v. Alabama (1958)

An Alabama law requiring associations to disclose their membership lists was struck down. This requirement would suppress legal association among the group's members.

Edwards v. South Carolina (1963)

The convictions of students arrested for peaceful demonstrations against segregation were overturned because the state could not "make criminal the peaceful expression of unpopular views."

Lloyd Corporation v. Tanner (1972)

Shopping mall owners may prohibit demonstrators from assembling in their private malls since the First Amendment applies to public, not private property.

Village of Skokie vs. National Socialist Party (1978)

The National Socialist (Nazi) Party could not be prohibited from marching peacefully because of the content of their message.

Rotary International v. Rotary Club of Duarte (1987)

California state law requiring Rotary Clubs to admit women was constitutional. Because women members would not prevent the group from accomplishing its goals, the Court held that the state's compelling interest in ending sexual discrimination outweighed the infringement on the group's right of association.

Madsen v. Women's Health Clinic (1994)

Some restrictions on protesters at a Florida abortion clinic, including limits on noise amplification and a required buffer zone, did not violate the First Amendment. The restrictions that "burden[ed] no more speech than necessary" to protect access to the clinic and ensure orderly traffic flow on the street were upheld. The restrictions that burdened "more speech than necessary" and were struck down.

Hurley v. Irish American GLIB Association (1995)

Forcing a privately-organized parade to include homosexual and bisexual groups would be a form of coerced speech and violated the organizers' First Amendment rights.

Schenck v. Pro-Choice Network of Western New York (1997)

"Fixed buffers" around abortion clinics were constitutional since they protected the government's interest in protecting private property and preventing illegal activity. A fifteen-foot "floating buffer" around patients leaving or entering an abortion clinic was struck down as an infringement of the protestors' First Amendment rights.

Boy Scouts of America v. Dale (2000)

Forcing the Boy Scouts to admit a gay scout leader would violate the private organization's rights to freedom of association and expressive association.

FREEDOM OF PETITION

NAACP v. Button (1963)

States could not stop the NAACP from soliciting people to serve as litigants in federal court cases challenging segregation.

Meyer v. Grant (1988)

States could not bar groups from hiring individuals who circulate petitions in support of a ballot measure.

Buckley v. American Constitutional Law Foundation (1999)

The Court ruled that states could not require petition circulators to be registered voters, wear name badges, or disclose information about themselves and their salaries.

RIGHT TO BEAR ARMS

United States v. Cruikshank (1876)

The right of the people to keep and bear arms predated the Constitution and the Bill of Rights. They ruled that the right to bear arms was not dependent on the Constitution for its existence; consequently, the Second Amendment only forbade Congress, not the states, from infringing on it.

Presser v. Illinois (1886)

In a case dealing with public military drilling by private organizations, the Supreme Court suggested that the Second Amendment applies to the states through the Fourteenth Amendment.

Miller v. Texas (1894)

The Court confirmed that it had not incorporated the Second Amendment and applied it to the states through the Fourteenth Amendment. Since Miller had not made his objections in a timely fashion, the Court refused to address his arguments regarding incorporation.

United States v. Miller (1939)

A shotgun with a barrel less than 18 inches long had no reasonable relation to the a well regulated militia and the Second Amendment did not protect the citizen's right to keep and bear such a weapon. This is the only case in the Supreme Court has actually applied the Second Amendment to a federal firearms statute.

Lewis v. United States (1980)

Congress could prohibit convicted felons from owning firearms.

RIGHT OF PRIVATE PROPERTY

United States v. Causby (1946)

The Court found a taking when low-flying jets at an airbase made farming impossible on nearby land even though the government never actually claimed the land itself.

United States v. Cors (1949)

The owner of a taken tugboat was not entitled to the market value at the time of the taking (during World War II) since the government's need for the boat in the war inflated its price.

Loretto v. Teleprompter Manhattan (1982)

A New York law granted a cable company permanent access to parts of private apartment buildings. The Court found that partial takings had to be compensated for since the access was a physical invasion of the property.

Nolan v. California Coastal Commission (1987)

California could not require beachfront property owners seeking building permits to maintain a public walkway on their property as a condition of being granted a building permit.

Lucas v. South Carolina Coastal Commission (1992)

The owner of a beachfront property had to be compensated after a state law stopped all new construction on his property, because the law totally eliminated the land's economic value.

Dolan v. City of Tigard (1994)

Cities could not require property owners to give up parts of their land for public use in order to receive permits to develop that land (in cases where the city's demands had no connection with the development intended by the owner).

Tahoe-Sierra Preservation Council v. Tahoe Regional Planning Agency (2002)

A temporary moratorium on new development did not constitute a partial taking of landowners' property, and property owners were not entitled to compensation.

New London v. Kelo (2005)

Cities could take private property in order to turn it over to private developers, if the new development would result in greater revenue and benefits to the city. The Court held that if the transfer of property was for "public benefit," it satisfied the Fifth Amendment's "public use" requirement.

MGM Studios v. Grokster (2005)

Companies that produce file-sharing software could be held liable for copyright infringements resulting from the use of that software