

CONSTITUTION 101

Module 10: First Amendment: Speech, Press, Religion, Assembly, and Petition

10.4 Primary Source

FIRST AMENDMENT QUOTES

[Schenck v. United States \(1919\)](#)

Excerpt from Justice Oliver Wendell Holmes's Majority Opinion:

- “[T]he character of every act depends upon the circumstances in which it is done. . . . The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic.”

[Abrams v. United States \(1919\)](#)

Excerpt from Justice Oliver Wendell Holmes's Dissenting Opinion:

- “Persecution for the expression of opinions seems to me perfectly logical. If you have no doubt of your premises or your power, and want a certain result with all your heart, you naturally express your wishes in law, and sweep away all opposition. To allow opposition by speech seems to indicate that you think the speech impotent, as when a man says that he has squared the circle, or that you do not care wholeheartedly for the result, or that you doubt either your power or your premises. But when men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas – that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out. That, at any rate, is the theory of our Constitution. It is an experiment, as all life is an experiment. Every year, if not every day, we have to wager our salvation upon some prophecy based upon imperfect knowledge. While that experiment is part of our system, I think that we should be eternally vigilant against attempts to check the expression of opinions that we loathe and believe to be fraught with death, unless they so imminently threaten immediate interference with the lawful and pressing purposes of the law that an immediate check is required to save the country.”
- “It is only the present danger of immediate evil or an intent to bring it about that warrants Congress in setting a limit to the expression of opinion where private rights are not concerned. Congress certainly cannot forbid all effort to change the mind of the country.”

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[West Virginia Board of Education v. Barnette \(1943\)](#)

Excerpt from Justice Robert H. Jackson's Majority Opinion:

- “If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.”
- “Any spark of love for country which may be generated in a child or his associates by forcing him to make what is to him an empty gesture and recite words wrung from him contrary to his religious beliefs is overshadowed by the desirability of preserving freedom of conscience to the full. It is in that freedom and the example of persuasion, not in force and compulsion, that the real unity of America lies.”

[New York Times Co. v. Sullivan \(1964\)](#)

Excerpts from Justice William Brennan's Majority Opinion:

- “[W]e consider this case against the background of a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.”
- “‘For a representative democracy ceases to exist the moment that the public functionaries are by any means absolved from their responsibility to their constituents; and this happens whenever the constituent can be restrained in any manner from speaking, writing, or publishing his opinions upon any public measure, or upon the conduct of those who may advise or execute it.’ An unconditional right to say what one pleases about public affairs is what I consider to be the minimum guarantee of the First Amendment.”

[Tinker v. Des Moines Independent Community School District \(1969\)](#)

Excerpts from Justice Abe Fortas's Majority Opinion:

- “It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”
- “The classroom is peculiarly the ‘marketplace of ideas.’ The Nation's future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth ‘out of a multitude of tongues, (rather) than through any kind of authoritative selection.’”

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[Brandenburg v. Ohio \(1969\)](#)

Excerpt from the Per Curiam Opinion:

- “[T]he constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.”

Excerpt from Justice Hugo Black’s Concurring Opinion:

- “Every idea is an incitement. It offers itself for belief and if believed it is acted on unless some other belief outweighs it or some failure of energy stifles the movement at its birth. The only difference between the expression of an opinion and an incitement in the narrower sense is the speaker’s enthusiasm for the result. Eloquence may set fire to reason. But whatever may be thought of the redundant discourse before us it had no chance of starting a present conflagration. If in the long run the beliefs expressed in proletarian dictatorship are destined to be accepted by the dominant forces of the community, the only meaning of free speech is that they should be given their chance and have their way.”

[New York Times Co. v. United States \(1971\) \(The Pentagon Papers Case\)](#)

Excerpts from Justice Hugo Black’s Concurring Opinion:

- “[P]aramount among the responsibilities of a free press is the duty to prevent any part of the government from deceiving the people and sending them off to distant lands to die of foreign fevers and foreign shot and shell.”

Excerpt from Justice William O. Douglas’s Concurring Opinion:

- “Secrecy in government is fundamentally anti-democratic, perpetuating bureaucratic errors. Open debate and discussion of public issues are vital to our national health. On public questions there should be ‘uninhibited, robust, and wide-open’ debate.”

[Hazelwood School District v. Kuhlmeier \(1988\)](#)

Excerpt from Justice Byron White’s Majority Opinion:

- “A school need not tolerate student speech that is inconsistent with its basic educational mission, even though the government could not censor similar speech outside the school.”

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Excerpt from Justice William Brennan’s Dissenting Opinion

- “If mere incompatibility with the school’s pedagogical message were a constitutionally sufficient justification for the suppression of student speech, school officials could censor each of the students or student organizations in the foregoing hypotheticals, converting our public schools into ‘enclaves of totalitarianism,’ *id.*, at 511, 89 S.Ct., at 739, that ‘strangle the free mind at its source,’ *West Virginia Board of Education v. Barnette*, *supra*, 319 U.S., at 637, 63 S.Ct., at 1185. The First Amendment permits no such blanket censorship authority. While the ‘constitutional rights of students in public school are not automatically coextensive with the rights of adults in other settings,’ *Fraser*, *supra*, 478 U.S., at 682, 106 S.Ct., at 3164, students in the public schools do not ‘shed their constitutional rights to freedom of speech or expression at the schoolhouse gate,’ *Tinker*, *supra*, 393 U.S., at 506, 89 S.Ct., at 736. Just as the public on the street corner must, in the interest of fostering ‘enlightened opinion,’ *Cantwell v. Connecticut*, 310 U.S. 296, 310, 60 S.Ct. 900, 906, 84 L.Ed. 1213 (1940), tolerate speech that ‘tempt[s] [the listener] to throw [the speaker] off the street,’ *id.*, at 309, 60 S.Ct., at 906, public educators must accommodate some student expression even if it offends them or offers views or values that contradict those the school wishes to inculcate.”

[Texas v. Johnson \(1989\)](#)

Excerpt from Justice William Brennan’s Majority Opinion:

- “If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.”

Excerpt from Justice Anthony M. Kennedy’s Concurring Opinion:

- “Allowing the broadest scope to the language and purpose of the Fourteenth Amendment, it is well understood that the right of free speech is not absolute at all times and under all circumstances. There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem. These include the lewd and obscene, the profane, the libelous, and the insulting or ‘fighting’ words—those which by their very utterance inflict injury or tend to incite an immediate breach of the peace. It has been well observed that such utterances are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality.’