

# How First Amendment rights have evolved

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The right to assemble in peaceful protest is one right granted by the First Amendment. In this photo, Occupy Wall Street demonstrators stand and cheer in front of the George Washington statue on Wall Street in New York City as they celebrate the protest's sixth month, March 17, 2012. Photo: John Minchillo/AP Photo

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances." — First Amendment to the Constitution

The First Amendment protects several basic liberties. They are freedom of religion, speech, press, petition and assembly. It is not always easy to understand what this amendment means. Judge after judge has tried to define the limits of these freedoms. The definitions have changed throughout American history, and the process continues today.

## Freedom Of Religion

The First Amendment guarantees freedom of religion in two sections. The first is the "establishment" clause. It prevents the government from having an official religion. The second is the "free exercise" clause, which says that people can worship as they please. The phrase

"separation of church and state" does not appear in the First Amendment, and it is not found anywhere else in the Constitution. Most people do not realize that it actually came from Thomas Jefferson. In 1802, when he was president, he wrote that freedom of religion was designed to build "a wall of separation between Church and State."

Many court cases deal with freedom of religion. Judges have rejected prayer in public schools and said that governments cannot give financial help to religious schools. They have also banned polygamy, which means having more than one spouse.

### **Freedoms of Speech and of the Press**

Free speech is one of the most of our most important liberties. Free speech often conflicts with other rights and liberties. The courts have had to think about the question, "What are the limits of free speech?"

Courts use a basic principle to decide the limits of free speech. The test is called "clear and present danger." It was set in a famous case called *Schenck v. the United States* and dates from World War I. Charles Schenck was an antiwar activist, and was arrested for sending flyers that told men to ignore the draft. At the time, men were drafted and forced to serve in the military. The government claimed that Schenck threatened national security, and the Supreme Court agreed. From then on, free speech would not be protected if a person was a clear danger to U.S. security.

What is free speech? The definition is not easy, and the courts have identified three types of free speech.

1. Pure speech is written and verbal expression of thoughts and opinions. The courts have generally protected pure speech, and have said that the government cannot limit it.
2. Speech-plus involves words and actions, such as protesting. Judges do not protect speech-plus as strictly as pure speech. This is because actions can be physically dangerous. The courts have ruled that demonstrators may not block traffic, put people in danger or illegally enter a private property.
3. Symbolic speech does not even involve speech at all. Instead, it involves symbols that express a person's point of view. This type of speech includes symbolic actions such as wearing black armbands in school and burning a draft card. Both of these symbolic actions protested the Vietnam War. In 1989, the Supreme Court upheld the right to burn an American flag. The media also has freedom of speech. However, the courts have ruled that the government may not censor information before it is written and published. The only exception in the most extreme cases of national security.

### **Freedom Of Assembly And Petition**

Freedom of assembly, or gathering, and petition are closely related to freedom of speech. They have been protected in similar ways. Former Chief Justice Charles Evans Hughes wrote, "Peaceable assembly for lawful discussion cannot be made a crime." Freedom of assembly has to be balanced with other people's rights if it disrupts safety, traffic, freedom to go about normal life or peace and quiet. Usually, a group must ask the government for permission to hold a demonstration. However, a government must grant the permit in most cases.

For over 100 years after the Constitution, the First Amendment protected these freedoms. But, no one questioned what they meant. In the 1900s, people began taking the government to court when they believed their rights were in danger. Then, the First Amendment began really meaning something. It remains the single most powerful tool for protecting the sacred freedoms of religion, speech, press, assembly and petition for modern Americans.