

# What the First Amendment protects — and what it doesn't

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Image 1. U.S. Capitol Police arrest hundreds of protesters after they occupied the center steps of the East Front of the U.S. Capitol to demonstrate against the confirmation of Supreme Court nominee Judge Brett Kavanaugh October 6, 2018 in Washington, D.C. Photo by Chip Somodevilla/Getty Images

The First Amendment is just 45 words. What it means still puzzles lawmakers and judges 227 years later.

The government can't choose an official religion. Yet federal, state and local officials can open meetings with a prayer.

The government also can't block people from practicing their religion.

It can't restrict free speech, not even hate speech or flag-burning or protests of military funerals. But don't try shouting "Fire!" in a theater or threatening folks on Facebook.

It can't censor the media, unless the media is publishing lies with the intent to do harm.

If it sounds confusing, here's your guide to the First Amendment.

## Public Protests

White nationalists and neo-Nazis can march through the college town of Charlottesville, Virginia. The First Amendment protects their right to do so.

It's not clear, though, whether the protesters can openly carry weapons even if local laws permit it. That raises the possibility of violence, which public officials have the authority to prevent.

The Supreme Court has struck down restrictions on so-called "hate speech." The exception is if it specifically incites violence or is intended to do so.

In 1977, the First Amendment protected neo-Nazis seeking to march through Skokie, Illinois, a heavily Jewish suburb of Chicago. It protected a U.S. flag burner from Texas in 1989 and three cross burners from Virginia in 2003.

## Public Speakers

If right-wing demonstrators are protected by the First Amendment, so too are right-wing speakers. In 1969, it protected a Ku Klux Klan member making racist statements about Jews and blacks. The court said he did not pose an immediate threat.

Richard Spencer, a white nationalist, is a recent example. The First Amendment gives him the right to speak, but he's been banned from parts of Europe and Great Britain. Government officials there said his speeches foster hatred. Under the First Amendment, those bans would not stand.

## Censorship

The First Amendment protects movies, art, music, yard signs and video games, and clothing.

The Supreme Court has ruled in favor of video games that show the killing of animals. A Pennsylvania school district tried to stop students from wearing breast cancer awareness bracelets reading "I (Heart) Boobies." The Court refused to even hear the case.

But when the speaker is the government, speech can be censored. Texas refused to permit license plates displaying the Confederate flag. The justices said that the government, not the driver, was doing the talking.

## Compelled Speech

The First Amendment also gives you the right to stay silent. That was a win for a New Hampshire couple. They covered up part of their state's motto, "Live Free or Die," on license plates.

Must a deeply religious Colorado baker use his creative skills to bake a cake for a same-sex couple's wedding?

The Supreme Court ruled 7-2 in favor of the baker. However, the decision was specific to the baker's case. It did not resolve whether other opponents of same-sex marriage — including bakers, florists, photographers and videographers — can refuse wedding services to gay couples.

# The First Amendment

## *noun*

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.

## **Social Media**

Facebook, Twitter and other social media sites can police their own websites to control what's posted. Under the First Amendment, the government has no such right.

The Supreme Court ruled that North Carolina cannot prevent sex offenders from using social media.

## **Campaign Spending**

The Supreme Court equates campaign spending with speech.

Say you're a wealthy individual. As long as you do not coordinate your spending with a candidate or political committee, you're home free.

Anti-corruption laws limit how much you can donate directly, but you can give to as many campaigns as you like.

## **Religious Exercise**

You have a First Amendment right to follow your religion. However, it depends on what other rights it bumps up against.

Obamacare requires that employers offer free coverage of contraceptives. The arts and crafts chain Hobby Lobby wanted out, and the Court ruled narrowly in its favor.

But some justices say religious rights have limits. There are laws that say merchants must serve all customers. Two justices said the Colorado baker's speech and religious rights should take a back seat to customers' rights to be served.

## **Religious Establishment**

Public schools cannot lead children in prayer. However, Congress, state legislatures and local governments can open sessions with a prayer, as long as people aren't forced to participate.

However, the Supreme Court ruled against displaying the Ten Commandments inside a county courthouse. The court said, though, it could be shown outdoors on statehouse grounds.

## **Press Freedom**

President Donald Trump took aim at the press soon after coming into office. "Our current libel laws are a sham and a disgrace," he said.

The Supreme Court has made clear that the First Amendment protects statements made about public officials. The only exception is if they are false and intended to defame.

Furthermore, the media can publish information from classified documents. The government could claim it would threaten national security, but the First Amendment protects the media.