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### The First Amendment:

#### Who It Protects and Why Its Reinterpretation Is Problematic

The First Amendment to the U.S. Constitution guarantees the freedoms of religion, speech, press, petition, and assembly.<sup>1</sup> Most Americans agree that these freedoms are important, but every American should also consider *why* this amendment is important and *whom* this amendment protects. For instance, does freedom of religion protect individuals, religious groups, or non-religious people, and why is it important that people can freely worship? For that matter, does this part of the Constitution prohibit the government from *ever* interacting with religion? The freedoms of religion, press, assembly, petition, and speech established by the First Amendment protect different people, and although these freedoms are vital to the American law system, their reinterpretation throughout the years has resulted in some interesting constitutional dilemmas.

First, freedom of religion keeps the government from forcing beliefs on religious and secular groups alike, but the supposed "wall of separation between church and state" often associated with this freedom is much more complicated than many people think.<sup>2</sup> The First Amendment states that the American government is not allowed to establish an official American church or keep people from following a certain religion. This protects religious groups from governmental oppression and allows people the choice not to observe any religion. However, this freedom is less straightforward than it seems. In religious cases, the Court often rules one way, but makes exceptions to these rulings in other cases. In the 1962 *Engle v. Vitale* case, official school prayers and other religious

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1 U.S. Const. amend. I.

2 Thomas Jefferson, "Jefferson's Letter to the Danbury Baptists," Library of Congress, June, 1998, <https://www.loc.gov/loc/lcib/9806/danpre.html>.

school activities were deemed unconstitutional, but in 1996, the Court ruled in favor of an after-school religious group gathering in a public school. In *Wisconsin v. Yoder* (1972), Amish people were permitted to break the law by skipping high school for religious reasons, but in *Department of Human Resources of Oregon v. Smith* (1990), Native Americans were not permitted to break the law by using drugs in their religious ceremonies.<sup>3</sup> The contradictions in these cases makes it difficult for Americans to know if the government will or will not approve of certain religious activities.

Second, freedom of the press allows the media to publish works opposing injustice without fear of government punishment, but also endangers objectivity and truth in the media. When the Constitution was written, newspapers were a crucial information source, and today, the media are more prevalent in American politics and culture than ever before. The First Amendment ensures that reporters, news sites, and other media sources cannot be punished for stances that oppose government actions and decisions. This allows news companies and other forms of media to freely inform the public, speaking out against any unconstitutional or wrong behavior. Again, though, this freedom is open to some interpretation. Media sources can be sued for harmful, false statements such as slander and libel. However, in the 1964 case *New York Times Company v. Sullivan*, the Court stated that when making statements about public figures and institutions, news sources can make false statements or conjectures if unaware of the statements' falsity.<sup>4</sup> This decision attempts to balance the freedom of the press with the rights of public figures and companies. However, with the increasing amount of subjective, unproved accusations and opinions clouding the modern media, the question should be asked: Does the press's freedom outweigh the importance of the truth?

Third, freedom of assembly protects oppressed groups and protesters who want to stand against injustice, though this freedom could be endangered by a 1941 court ruling. Essentially, this freedom means that as long as a group activity, meeting, or other assembly is not breaking the law,

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<sup>3</sup> Jeanne Zaino, *Core Concepts in American Government* (Boston, Pearson: 2012), 149-155.

<sup>4</sup> "New York Times Company v. Sullivan," *Oyez*, 1 Dec., 2018, <https://www.oyez.org/cases/1963/39>.

the government cannot intervene in the groups' activities. Much like freedom of the press, freedom of assembly keeps those who stand against government injustice from punishment. This freedom is also similar to freedom of religion, because both protect religious people from government interference in their services and meetings. Peaceful congregations with others are critical to spreading religious, political, and cultural ideas and movements, and the First Amendment ensures that the government cannot hinder people from participating in these assemblies. The civil rights movement and the suffrage movement both owe much of their success to the right of assembly; without this freedom, the government could have easily shut down these movements before they gained momentum.<sup>5</sup> Though most government rulings on this freedom have been reasonable, there is one ruling that could be used to justify undue government interference in assemblies. In *Cox v. New Hampshire* (1941), the Supreme Court ruled that the government can institute "time, place, and manner restrictions" on large assemblies.<sup>6</sup> If applied in a certain context, this case could be used to argue that limiting freedom of assembly is permissible.

Fourth, though the freedom to petition allows people to ask the government to address an injustice, a lack of anonymity makes these petitioners feel unsafe. Unlike most other First Amendment freedoms, freedom to petition protects people who take their complaints, perspectives, and issues directly to the government. This freedom makes it difficult for the government to ignore the people's pleas; it forces the government to listen to the people it represents and consider the problems they see in society. However, in the recent 2010 case *Doe #1 v. Reed*, the Court decided that releasing the names of petition signers to the public is constitutional, even when the petition signers are uncomfortable with this release. Many, including dissenting Justice Clarence Thomas, believe that releasing such information violates the First Amendment and could lead to harm or

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<sup>5</sup> David L. Hudson Jr., "Civil Rights Movement," *The First Amendment Encyclopedia*, 2018, <https://mtsu.edu/first-amendment/article/1463/civil-rights-movement>.

<sup>6</sup> "Facts and Case Summary: Cox v. New Hampshire," United States Courts, 2018, <http://www.uscourts.gov/educational-resources/educational-activities/facts-and-case-summary-cox-v-new-hampshire>.

harassment for petition signers.<sup>7</sup>

Finally, freedom of speech is perhaps the most important of these freedoms, because it protects all people in America—even people that perhaps should not be allowed to speak. The other First Amendment freedoms protect certain groups, but freedom of speech protects all Americans, no matter which groups they are or are not part of. Especially today, as communication via the internet and technology becomes increasingly common, Americans need the assurance that the government will not prevent people from sending messages, making posts, or otherwise making statements on political or religious opinions. Freedom of speech is vital to the other freedoms granted in the First Amendment: It allows people to speak about religion, for the press, in rallies and gatherings, or to the government. This freedom also goes beyond the other freedoms, allowing everyone in America to speak. Like all other First Amendment freedoms, this freedom has caused some debate. Perhaps the most shocking freedom of speech case is *Brandenburg v. Ohio* (1969), in which the Supreme Court ruled in favor of a Ku Klux Klan member's right to speak about his racist ideas.<sup>8</sup> This decision, especially when seen from a modern viewpoint, should cause serious consideration about whether *everyone* should be allowed free speech.

In conclusion, the First Amendment freedoms of religion, press, assembly, petition, and speech protect American people and various groups, but are at the center of many debates and questionable court rulings. Freedom of religion protects religious and non-religious people alike from government discrimination, but unpredictable exceptions given to certain religious groups by the government are problematic. Freedom of the press allows members of the media to write and speak freely, but this can come at the cost of objectivity in journalism. Freedom of assembly allows groups to peacefully gather without government interference, but the *Cox v. New Hampshire* ruling could threaten this freedom. While the freedom to petition allows people to address government

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<sup>7</sup> “Doe #1 v. Reed,” *Oyez*, 1 Dec., 2018, <https://www.oyez.org/cases/2009/09-559>.

<sup>8</sup> “Brandenburg v. Ohio,” Legal Information Institute, 2018, <https://www.law.cornell.edu/supremecourt/text/395/444>.

officials directly, the release of petition signers' names makes many uncomfortable. Finally, freedom of speech allows all Americans to speak their opinions and beliefs, even though this is not always a good thing. All in all, the freedoms granted by the First Amendment are some of the most important freedoms granted to the people of the United States, which is why it is so important that the government address the problems with these rights, clarify the laws regarding them, and take care when interpreting this amendment in the future.

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