

EQ #33

- **What are the key civil liberties of the First Amendment? How has the SCOTUS interpreted these?**
- Read the First A. Underline EACH freedom within it.

1st Amendment- Freedom of speech, religion, press, right to assemble, right to petition government

FREEDOM OF RELIGION

**DISCUSSION: DO WE HAVE
SEPARATION OF CHURCH AND
STATE IN THE UNITED STATES?**

First Amendment- Freedom of Religion

- Congress shall make no law respecting an *establishment* of religion or prohibiting the *free exercise* there of...
- Free exercise v. Establishment?

1st A- Freedom of Religion

- Has TWO clauses / protections regarding religion

1. The Establishment Clause

- Prohibits government from requiring citizens to follow a specific religion or any religion at all.

2. The Free Exercise Clause

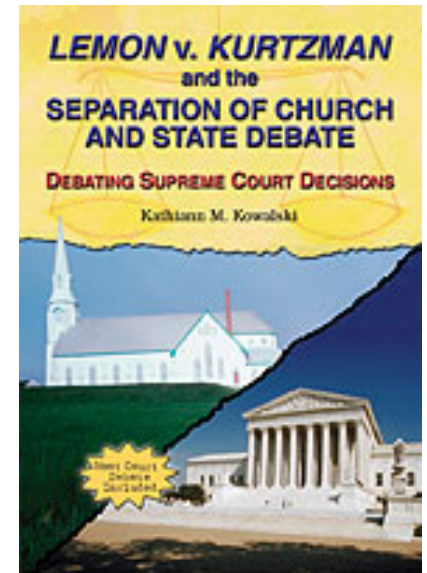
- Prohibits government from unnecessarily interfering with Citizens' **practice** of religion
- Some religious practices may conflict with other rights, and then can be denied or forbidden.

What has SCOTUS said about how to enforce the Establishment Clause?

- The courts use the following general rules-
- Religion must be kept out of public schools and other places where citizens are required to be.
- Religious groups (churches and schools) can access public tax money so long as all religions have similar access and there is not excessive entanglement between religious and secular (public/non-religious) spheres.

Freedom of Religion

- The Establishment Clause Landmark Case
 - *Lemon v. Kurtzman* (1971)
 - FACTS- Local government law reimbursed nonpublic schools (most Catholic) for the teachers salaries who taught secular material and for secular textbooks.
 - Did this violate the First Amendment Establishment Clause?



Lemon v. Kurtzman, 1971

- SCOTUS allows aid to religious schools if...
- The decision created the LEMON TEST which is used by SCOTUS when considering separation of church and state disputes.

Lemon v. Kurtzman, 1971 –What is the Lemon Test?

- **A government law or action violates the Establishment Clause unless it:**

1. Has a significant secular (non-religious) purpose.
2. Does not advance or inhibit religion.
3. Does not foster excessive entanglement between government and religion.

ACTIVITY- Using the LEMON Test, evaluate the state actions...



Establishment Clause

- *Engel v. Vitale* (1962)
 - **FACTS**- State officials wrote a prayer to be recited in NY schools.
 - **Q- Does mandatory prayer in public schools violate Establishment Clause?**
 - **SCOTUS- YES!**



SD Abington Township v. Schempp

- **FACTS**- A Pennsylvania law required Bible reading in public schools.
- **Q**- Does required Bible reading violate the establishment clause?
- SCOTUS- **YES!**

Wallace v. Jaffree, 1985

- **FACTS-** Alabama law requires daily silent meditation for an opportunity to pray in public schools.
- **Q-** Is a required silent meditation time a violation of the Establishment Clause?
- **SCOTUS-** YES!

First Amendment- Free Exercise Clause

- **The Free Exercise Clause**

- Prohibits government from interfering with the practice of religion
- Religious practices that conflict with other rights and laws may be denied or even punished.
- What if your religious beliefs keep you from treating your sick child?
- What if your religious beliefs require sacrificing an animal?
- What if your religious beliefs allow you to marry more than one spouse?

Religion-Free Exercise

- **SCOTUS general rules about Free Ex-**
 - Citizens can believe whatever they like
 - Courts can limited the practice of those beliefs
 - Laws that do not single out a specific religion or its practice are generally constitutional when there is legitimate state interest

Warm Up

1. What are the TWO religious protections listed in the 1st Amendment?
2. List THREE general trends in the way SCOTUS rules on cases for EACH provision.

Activity- Read Cases

1. *Oregon Employment Division v. Smith*, 1988

2. *Reynolds v. U. S.*, 1831

- Read ONE case; mark it up; write its significance. **Pair share your cases.**
- **Facts**
- **Ruling/Holding**
- **Significance**

Free Exercise- *Employment Division v. Smith,*

Employment Division v. Smith (1988)

-FACTS- Oregon drug law prohibited the consumption of illegal drugs for sacramental religious uses. Two drug counselors took peyote on their time off and were fired. When they seek unemployment benefits, Oregon denies them

- **ISSUE-** Does a law prohibiting drug use for spiritual purposes violate the free exercise clause?
- **Significance-** SCOUTS decides state laws interfering with religious practices but NOT aimed at one specific religion are constitutional

Reynolds v. U.S., 1879

- **FACTS**- Mormon religion encouraged marriage to more than one spouse. State laws forbid this.
- Q- Is a religious belief (polygamy) a legal defense to criminal activity?
- **SCOTUS**- NO! If the state/government has compelling reasons for a law, the law is constitutional.

Wisconsin v. Yoder, 1972

- **FACTS-** Wisconsin law requires all parents send their kids to school until age 16. Amish religion says school after 8th grade is against their religious beliefs.
- **Q-** Does state law that criminalizes parents who refuse to send their child to school for religious reasons violate their free exercise?
- **SCOTUS-** YES! Parents' religious beliefs outweighed the state interest in this instance

Wednesday

- Freedom of Speech and Expression
- Commercial Speech
- Right to Assemble

First Amendment- Freedom of SPEECH

- Speech is truly EXPRESSION...
 - Can be nonverbal
 - Can be symbolic
- **General SCOTUS Trends-**
 - SCOTUS has been highly wary of government acts to limit speech that isn't dangerous to others.
 - School environment is different than other public environments—speech can be limited/ more restrictive.

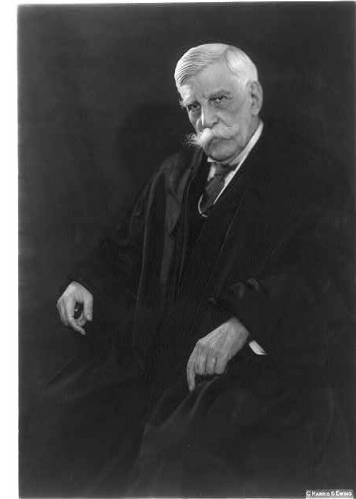
When is Speech NOT protected?

Speech is limited / NOT protected-

1. If speech poses a danger to public

2. If it is defamation=malicious and untrue

3. If it is **obscene / inappropriate**



Freedom of Speech-

What is NOT protected?

1. Threats to Public Order

-Speech that threatens public order and safety is NOT protected!

- ***Schenck v. U.S.***, 1919- Schenck criticized draft and encouraged protest against it.
- **SCOTUS-** Speech can be limited if it presents a “clear and present danger,” i.e. if it causes a risk to public order...especially during war time

Freedom of Speech- What is NOT protected?

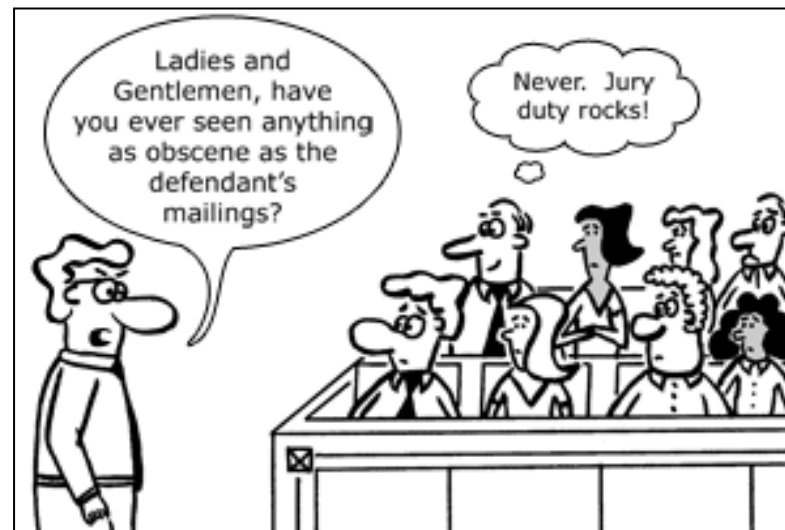
2. **Defamation-** Libel & Slander NOT protected!

- **Libel:** the publication of written false or malicious statements that damage someone's reputation
- **Slander-**spoken false statements to a third party that damage reputation
 - *New York Times v. Sullivan* (1964): statements about public figures are libelous only if made with reckless disregard for truth.
- Private individuals have lower standard to meet to win libel lawsuits.

Freedom of Expression- What is NOT protected? **Obscenity**

3. Obscenity is NOT protected speech

- **What is obscenity?** This is subjective and hard to regulate for SCOTUS
- No clear definition on what is obscene



What is Obscenity?

Miller v. California (1973) established a test.

– Expression is considered obscene if it:

- Appeals “to a prurient interest in sex”
- Shows “patently offensive” sexual conduct
- Lacks “serious literary, artistic, political or scientific value”

– Decisions as to what is obscene are based on **local community standards** (NY vs. Iowa may be different)

1st A- Freedom of Press

- What is **Prior Restraint**?
 - **Definition:** when government prevents material from being published; a.k.a. *censorship*;
 - **SCOTUS says prior restraint is nearly always unconstitutional**
 - Est. in *Near v. Minnesota* (1931)



Near v. Minnesota, 1931

FACTS- Newspaper wanted to print editorials implicating members of the City Council with mob activity. City councilors said the stories were untrue and malicious; state had a gag law that allowed for censorship.

- **Issue-** Did Minnesota’s “gag law” violate the 1st Amendment?
- **SCOTUS** – YES! Court rejects censorship /cannot prohibit a publication in advance, even though the communication may be punishable after publication if found to be malicious & untrue

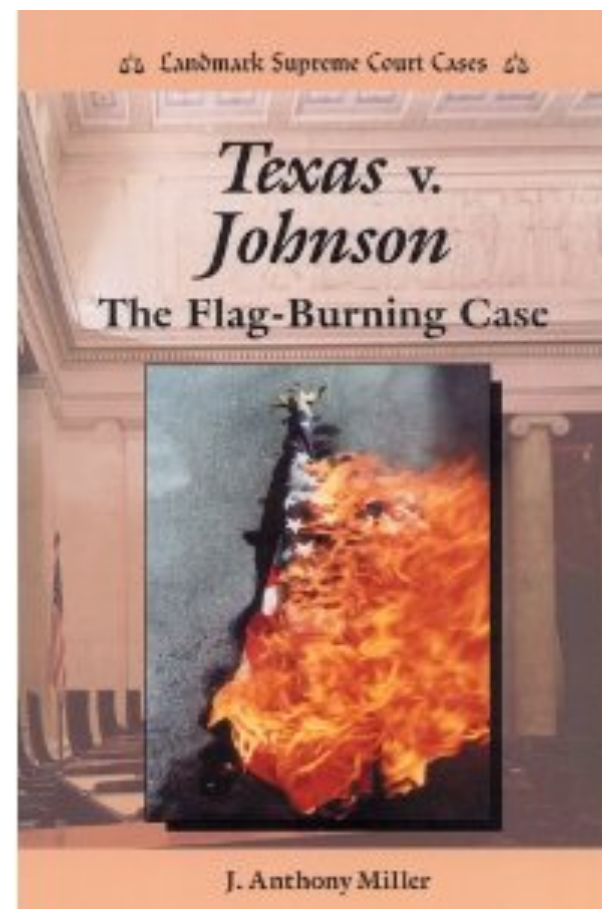
Any exceptions to *Near*?

- **EXCEPTIONS**

- Publications that risk national security may be censored during wartime.
- One may be punished *after* something is published if it was malicious (knowingly false and hurtful).

Freedom of Expression

- What is **Symbolic Speech**?
- Definition: nonverbal communication, such as burning a flag or wearing an armband
- Generally protected along with verbal speech
 - *Texas v. Johnson* (1989): Burning the American flag is symbolic speech protected by the First Amendment.



Freedom of Expression-

Tinker v. Des Moines, 1969

- **FACTS-** Mary Beth Tinker wears a black armband to school to protest the Vietnam War. She is sent home from school.
- **ISSUE-** Does prohibiting students from wearing armbands to school, as form of protest, violate the student's 1st A rights to free expression?
- **RULING/HOLDING- YES!** This is basic expression and not harmful to others or the school.

What is Commercial Speech?

- **Definition:** communication in the form of advertising
 - Generally the most restricted and regulated form of speech (Federal Trade Commission)
- Regulation of the Public Airwaves
 - Broadcast stations must follow Federal Communication Commission rules.
 - Rules are more lax on cable/ pay per view than broadcast; hours of day matter, too.



Freedom of Assembly

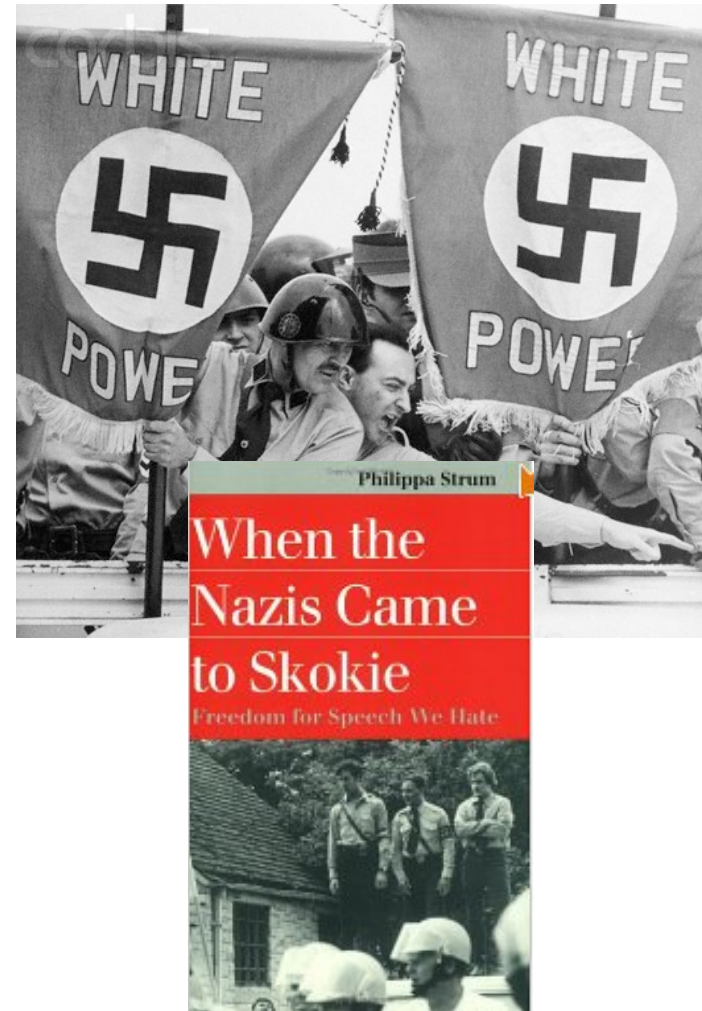
- Right to Assemble
 - Generally permissible to gather in a public place, but must meet reasonable local standards, such as fire codes and apply for permits
 - Balance between freedom and order

- Right to Associate
 - Freedom to join groups or associations without government interference
 - *NAACP v. Alabama* (1958)



Freedom of Assembly

- Nazis march in Skokie
 - Skokie Illinois was heavily Jewish neighborhood with many Holocaust survivors
 - American Nazis wanted to run a parade through this particular neighborhood.
 - The American Civil Liberties Union defends the Nazis' right
 - *Collins v. Smith*
 - The Nazis win
 - The ACLU loses 30,000 members



Thursday

- What is the **Second Amendment**? How has SCOTUS ruled on 2nd A cases?
- What are the **key rights of the accused**?
4th A- Search and Seizure; 5th A – Right to remain silent.

Debrief

- Name EACH of the Five protections from the 1st A
- Cite 1-2 cases for EACH protection you noted.

What is the 2nd Amendment?

- Read the text of the 2nd Amendment in your BOR handout in INB.
- **What do you think it means?** What do you think the Founders intended in 1787 when they wrote this?
- *“A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.”*

2nd A- Right to Bear Arms

- **Key Question:**
 - **Does the 2nd A ...**
 - Apply only to the right of states to create militias?
(**Gun Control Advocates**)
 - Or does it imply the right of citizens to own guns? (**Gun rights advocates**)



Right to Bear Arms- 2nd A.

- Common National, State, and Local Gun Laws
 - Restrictions on owning and carrying handguns.
 - Background checks
 - Limited the sale of certain types of weapons.
 - Requirements that guns be stored in a fashion to prevent their theft or children from accessing and firing them.
- ***Courts usually uphold***



District of Columbia v. Heller, 2008

- **FACTS**-D.C. passes a law that restricts the licensing of handguns and requires licensed firearms to be kept at home and nonfunctional.
 - **ISSUE**- Is a law that restricts licensure of handguns and forbids them to be functional when kept in homes legal?
 - **RULING / HOLDING**- SCOTUS upheld the idea that individuals have the right to bear arms.
 - Incorporation of the 2nd Amendment (in D.C.)- but another case was needed (in connection with this one) to incorporate to the states
- *McDonald v. Chicago, 2010

McDonald v. Chicago, 2010

- **FACTS-** Chicago passes a law banning handguns in the city due to increased gun violence.
- **ISSUE-** Does the 2nd A apply to the states via the 14th Amendment? Are laws that ban handguns unconstitutional?
- **RULING / HOLDING-** Laws banning gun ownership are unconstitutional.
- Incorporates (applies to states) the right of an individual to "keep and bear arms" from the 2nd A.