

## The First Amendment – What It Means and Why it Matters

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### Outline

1. Meaning of the First Amendment
2. Value of the First Amendment
3. Two Conceptual Confusions in its Application

### First Amendment of the US Constitution:

“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.”

Why safeguard intellectual freedom?

- A. Intellectual activities’ inability to infringe on others’ rights
- B. Value of the mind and value of freedom of the mind

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### Passages from Others

#### Thomas Jefferson

“It does me no injury for my neighbor to say there are twenty gods or no God. It neither picks my pocket nor breaks my leg.” (*Notes on Virginia*, 1782)

Men’s “opinions in matters of Religion ... shall in no wise diminish, enlarge or affect their civil capacities.” (*Virginia Statute for Religious Freedom*)

#### James Madison

“A just Government ... will be best supported by protecting every Citizen in the enjoyment of his Religion with the same equal hand which protects his person and his property; by neither invading the equal rights of any Sect, nor suffering any Sect to invade those of another.” (*Remonstrance*, Reason # 8)

“the equal right of every citizen to the free exercise of his Religion’ ... is held by the same tenure with all our other rights.” (*Remonstrance*, Reason # 15)

#### Chief Justice Morrison Waite (opinion in case concerning Mormon marriage):

to permit laws’ violation because of religious belief “would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself. Government could exist only in name under such circumstances.”

(*Reynolds v. U.S.* [98 U.S. 145](#), 1878)

**Justice Robert Jackson**

“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.”

Majority Opinion, *West Virginia State Board of Education v. Barnette*, 1943  
(Jehovah’s Witnesses objected to compulsory Pledge of Allegiance)

**Justice Anthony Kennedy**

“The First Amendment confirms the freedom to think for ourselves”

*Citizens United* majority opinion, 2010

**Justice William Douglas,**

“When man was first in the jungle he took care of himself. When he entered a societal group, controls were necessarily imposed. But our society - unlike most in the world - presupposes that freedom and liberty are in a frame of reference that makes the individual, not government, the keeper of his tastes, beliefs, and ideas. *That* is the philosophy of the First Amendment . . .”

Dissent in *Paris Adult Theater v. Slayton District Attorney*

**Religious exemptions**

The range of exemptions claimed – and in many cases granted – includes (but is by no means limited to) exemptions:

- From military service
- From mandatory measles vaccinations
- From standardized testing in public schools
- From motorcycle helmet requirements (e.g., to accommodate Sikh turbans)
- From dress codes and grooming codes (e.g., beards worn by police officers or prison inmates)
- From day-care facility safety regulations
- For pharmacists, from filling certain prescriptions
- For medical professionals, from performing certain procedures (doctors, nurses, ambulance drivers, etc.)
- For parents, in refusing medical treatment for children or subjecting them to harsh forms of discipline or other physical harm (e.g., genital mutilation)
- From restrictions on drugs and alcohol (peyote or wine used in religious rituals)
- From zoning restrictions on property use
- From anti-discrimination employment laws, encompassing work schedules, hiring, firing, promotion (e.g., a male-only Catholic priesthood), and mandates to provide employee benefits (medical insurance coverage of abortion and contraception)
- From anti-discrimination mandates to provide goods or services to customers (e.g., catering at gay weddings)
- From labor laws governing unions
- For government officials, from fulfilling job responsibilities (e.g., issuing marriage licenses to same-sex couples or approving gay parents’ adoptions)

*Essays of mine concerned with the First Amendment:*

Tara Smith, "Just Sayin' – How the False Equivalence of Speech with Action Undermines the Freedom of Speech," *Drexel Law Review*, Vol. 11, 2019

Tara Smith, "The Free Speech Vernacular: Conceptual Confusions in the Way We Speak About Speech," *Texas Review of Law & Politics*, 2017

Tara Smith, "What Good Is Religious Freedom? Locke, Rand, and the Non-Religious Case for Respecting It," *Arkansas Law Review*, 2017

Tara Smith, "Religious Liberty or Religious License? Legal Schizophrenia and the Case against Exemptions," *Journal of Law and Politics*, Fall 2016