Amendments and Precendents
Smith v. Goguen (1974)

FIRST AMENDMENT

"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 to peaceably assemble, and to petition the Government for a redress of grievances."

What Does This Mean?
Your rights to petition, religion, speech, press, and assembly are protected under the First Amendment.

LIMITATIONS AND EXCEPTIONS:

Limitations:
- Only applies to the government
- The government can only suppress speech in very rare circumstances

Exceptions:
- Threatening words
- Obscenity
- Defamation
- Fraud
- Provoking someone to commit unlawful actions

FOURTEENTH AMENDMENT

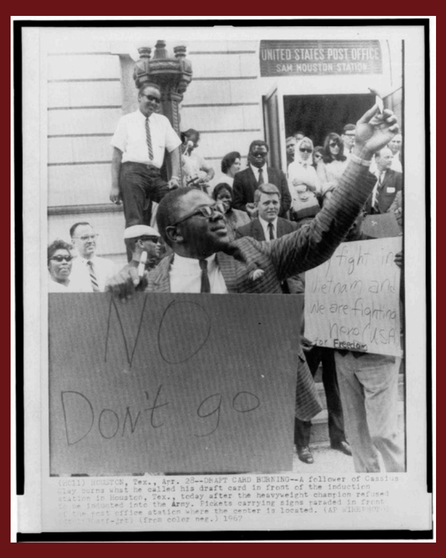
"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; **nor shall any State deprive any person of life, liberty, or property, without due process of law**; nor deny to any person within its jurisdiction the equal protection of the laws."

The bolded words are known as the Due Process Clause of the Fourteenth Amendment, which prohibits states from restricting individual rights without due process of law. Many of the precedent cases discussed below also involve this clause.

PRECEDENTS

Precedent: A past decision made by the courts that serves as an example for future cases.
- **Binding precedent**: A decision made by an appellate court, such as a state supreme court or the U.S. Supreme Court, that lower courts must follow.
- **Persuasive precedent:** A decision from another court that is not binding but may be considered for guidance.

United States v. O'Brien (1968)



Supporters of Muhammad Ali, formerly Cassius Clay, observe man burning draft card in Houston, Texas. Houston Texas, 1967. Photograph. https://www.loc.gov/item/96501554/.

Facts: David O'Brien burned his draft cards on the steps of the Boston courthouse to protest the Vietnam War. At the time, it was a federal crime to mutilate draft cards because they were used to track military service.

Issue: Was the federal law an unconstitutional infringement on O'Brien's freedom of speech?

Decision: No, in a 7-1 decision, Chief Justice Warren upheld the law and established the O'Brien Test, which outlines when government regulation of symbolic speech is justified.

The O'Brien Test

The government can restrict symbolic speech if:
1. It is within the constitutional power of the government
2. It serves an important or substantial purpose
3. The purpose is related to suppressing speech
4. The restriction is no greater than necessary

Gooding v. Wilson (1971)

Facts: Johnny Wilson was convicted under a state statute that made it a misdemeanor to use abusive or scornful language intended to provoke a breach of the peace.

Issue: Does the Georgia statute prohibiting the use of "opprobrious words or abusive language, tending to cause a breach of the peace" violate the First Amendment as applied to the states by the Fourteenth Amendment?

Decision: Yes. The Supreme Court held that the Georgia law was unconstitutional.

Rationale: The statute was unconstitutionally vague and overly broad, restricting rights protected by the First and Fourteenth Amendments. Its standard for determining responsibility was left so open-ended that it risked arbitrary and unjust application.

The Court noted:

"The separation of legitimate from illegitimate speech calls for more sensitive tools than (Georgia) has supplied... [t]he fault of the statute is that it leaves wide open the standard of responsibility, so that it is easily susceptible to improper application."

Tinker v. Des Moines Independent Community School District (1969)

Facts: Students planned to wear black armbands at school as a silent protest against the Vietnam War. The principal learned of the plan and announced that any student who wore an armband would be suspended.

Issue: Does a public school's prohibition on wearing black armbands as a form of symbolic protest violate students' First Amendment right to free speech?

Decision: The Supreme Court ruled 7-2 in favor of students.

Rationale: The Court held that students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." School officials may restrict student expression only when it would cause a *substantial disruption* to the educational process. This standard, known as the Tinker Test, protects students' First Amendment rights in public schools unless their speech meaningfully interferes with school operations.



Mary Beth and John Tinker with armbands they created after the Eighth Circuit Court of Appeals ruling. March 4, 1968. Bettmann via Getty Images.

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