

# First Amendment Glossary

*hate*

Term

Definition

**Academic freedom**

The general recognition that the academy must be free to research, teach, and debate ideas without censorship or outside interference. View The First Amendment Encyclopedia's article on [academic freedom](#).

**Actual malice**

Actual malice is the legal standard established by the Supreme Court for libel cases to determine when public officials or public figures may recover damages in lawsuits against the news media.

Beginning with the unanimous decision in [New York Times Co. v. Sullivan](#) (1964), the Supreme Court has held that public officials cannot recover damages for libel without proving that a statement was made with actual malice — defined as “with knowledge that it was false or with reckless disregard of whether it was false or not.”

— Stephen Wermiel for [The First Amendment Encyclopedia](#)

**Arbitrary**

To be determined by chance, whim, or impulse, and not by necessity, reason, or principle.

**Anonymous speech**

Speakers and writers seek anonymity as protection against prosecution, harassment, abuse, and invasions of their privacy. The government seeks publicity of speakers' identities to prosecute other crimes, such as fraud and libel, provide information to the public, discourage corruption, and reduce the appearance of corruption.

The Supreme Court has protected anonymity under the First Amendment, but as with other constitutional rights, it has balanced protection for anonymous speech against competing interests, notably in the areas of political activity, campaign finance, and use of the Internet.

— Allison Hayward (Updated June 2017 by John R. Vile) for [The First Amendment Encyclopedia](#)

Term

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**Beyond a reasonable doubt**

The standard of proof used in criminal trials, often summarized as “to a moral certainty”; in other words, in the eyes of the court, there is no logical explanation for the evidence before it other than the guilt of the accused. Also see “clear and convincing evidence” and “preponderance of evidence.”

**Capricious**

To be characterized by or subject to whim; impulsive and unpredictable.

**Captive audience**

A person or group of people forced to hear a message. At a college or university, this may include students who are required to sit and listen to a speech or program designed to convince or compel them to adopt a political and/or social orthodoxy. View [captive audience](#) cases. View The First Amendment Encyclopedia’s article on [captive audiences](#).

**Censorship**

Restrictions on the publication and/or the presentation of expression to the public, including speeches, newspapers, books, plays, films, and other forms of art or communication. View The First Amendment Encyclopedia’s article on [censorship](#).



Chilling effect is the concept of deterring free speech and association rights protected by the First Amendment as a result of government laws or actions that appear to target expression.

**Chilling effect**

It is closely related to the overbreadth doctrine, which prohibits the government from casting too wide a net when regulating activities related to speech and expression.

— Frank Askin for [The First Amendment Encyclopedia](#)

**Clear and convincing evidence**

A standard of proof meaning the fact-finder believes the allegations are substantially more likely than not to be true. This requires more than a mere preponderance of the evidence, but less than proof beyond a reasonable doubt. This standard is frequently employed in equity actions (that is, those seeking something other than money, such as child custody or injunctions against state action). Also see “beyond a reasonable doubt” and “preponderance of evidence.”

**Commercial speech**

Primarily advertising or speech with the purpose of initiating or engaging in a business transaction of some kind. Commercial speech has a unique status in constitutional law. While not entirely unprotected, it explicitly enjoys less protection than other forms of speech. View [commercial speech](#) cases. View The First Amendment Encyclopedia’s article on [commercial speech](#).

**Compelled speech**

When governments require citizens to adopt or to indicate their adherence to an official point of view on particular political, philosophical, social, or other such subjects. While the government can often force citizens to conform their conduct to the requirements of the law, the realm of the mind, the spirit, and the heart is, in the United States, beyond the reach of official power. The obligation to profess a governmental creed—political, religious, or ideological—invades a critical constitutional and human right: freedom of belief and conscience. View [The First Amendment Encyclopedia's article on compelled speech](#).

A compelling state (or governmental) interest is an element of the strict scrutiny test by which courts exercise judicial review of legislative and executive branch enactments that affect constitutional rights, such as those found in the First Amendment. An interest is compelling when it is essential or necessary rather than a matter of choice, preference, or discretion.

[...]

**Compelling state interest**

Strict scrutiny, however, requires the government to demonstrate that it is using the most narrowly tailored, or least restrictive, means to achieve an interest that is compelling. Although not explicitly defined, "compelling" is obviously intended to be a higher interest than "legitimate" or "important"; some have described it as "necessary" or "crucial," meaning more than an exercise of discretion or preference. Regulation vital to the protection of public health and safety, including the regulation of violent crime, the requirements of national security and military necessity, and respect for fundamental rights are examples of compelling governmental interests.

— Ronald Steiner for [The First Amendment Encyclopedia](#)

**Conscientious objector**

A person seeking exemption from required military service due to opposition on religious or other philosophical grounds to participation in war. View [conscientious objector](#) cases.

**Constitutional**

To be consistent with the restrictions placed on government action by the federal (or, depending on context, a state) Constitution. The [First Amendment](#) is part of the United States Constitution and is of equal force with all of its other provisions, so if a government action would be prohibited by the First Amendment, it is not constitutional.

**Contempt**

[A] willful disregard or disobedience of public authority. Courts may punish one who disobeys the rules, orders, or process, or willfully offends against the dignity and good order of the court, by fine or imprisonment. Similar authority is exercised by each house of the Congress of the United States, by state legislatures and in some instances by administrative agencies. The contempt power is usually subject to judicial review.

— The Law Dictionary  
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View The First Amendment Encyclopedia's article on [contempt of court](#).

**Content discrimination**

Discrimination based on the subject matter of the speech, whatever the point of view it takes on.

**Content neutrality**

The absence of discrimination based on the subject matter of the speech or the point of view expressed. View [content neutrality](#) cases. View The First Amendment Encyclopedia's article on [content neutrality](#).

**Counterspeech doctrine**

The counterspeech doctrine posits that the proper response to negative speech is to counter it with positive expression. It derives from the theory that audiences, or recipients of the expression, can weigh for themselves the values of competing ideas and, hopefully, follow the better approach.

The counterspeech doctrine is one of the most important free-expression principles in First Amendment jurisprudence. Justice Louis D. Brandeis established it in his classic concurring opinion in [Whitney v. California](#) (1927), when he wrote, "If there be time to expose through discussion, the falsehoods and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence."

— David L. Hudson Jr. for [The First Amendment Encyclopedia](#)

## Term

## Definition

### Defamation

A false communication that harms individuals' reputations, causes the general public to hate or disrespect them, or damages their business or employment. "The Law Dictionary" definition of defamation is communication that "tends so to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him." To be defamatory, a statement must be an assertion of fact (rather than mere opinion) and capable of being proven false. In addition to being false, the statement, to be defamatory, must identify its victim by naming or reasonably implicating the person allegedly defamed. View [defamatory expression](#) cases and [defamation and the press](#) cases. View The First Amendment Encyclopedia's article on [criminal defamation](#).

### Discrimination

Denying an individual's civil rights based on his or her membership in a protected class. At the federal level the Civil Rights Act of 1964 defines protected classes as including race, national origin, sex, and religion; the Americans with Disabilities Act of 1990 prohibits discrimination on the basis of disability.

### Establishment Clause of the First Amendment

[Cantwell v. Connecticut](#) (1940) states that the Establishment Clause of the First Amendment "forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship." In other words, freedom of conscience and the freedom to choose and to belong to a religion or religious organization, or to none at all, cannot be restricted by law. View [Establishment Clause](#) cases.

### Expressive association

Expressive association is exemplified by groups organized around a shared set of beliefs—like religious groups, volunteer societies, political organizations, and so forth. Courts have recognized that the First Amendment protects citizens who wish to join voices with those of like mind to amplify and espouse a common belief or message, so the right to expressive association has been afforded significant protection. In [Roberts v. United States Jaycees](#) (1984), the Court observed that "[a]ccording protection to collective effort on behalf of shared goals is especially important in preserving political and cultural diversity and in shielding dissident expression from suppression by the majority." Also see intimate association and social association. View [freedom of association](#) cases.

### Facial challenges

A facial challenge contends that a government law, rule, regulation, or policy is unconstitutional as written — that is, on its face. This challenge differs from an as-applied challenge in that it invalidates a law for everyone — not just as that law is applied to the particular litigant challenging it.

— David L. Hudson Jr. for [The First Amendment Encyclopedia](#)

### Fairness Doctrine

From 1949 to 1987, the Fairness Doctrine was a regulation from the Federal Communications Commission that required over-the-air television stations covering one side of a matter of public importance to provide equal time to opposing views, for free if necessary, and even (if necessary) to create the content expressing the opposing viewpoint. The Fairness Doctrine is not currently in force and never applied to anyone except broadcast television FCC license holders. View [Fairness Doctrine](#) cases. View The First Amendment Encyclopedia's article on the [fairness doctrine](#).



**Fair use**

Fair use is a copyright concept that allows works to be used in ways that otherwise would infringe on the copyright, but are allowed because the uses are particularly beneficial to society and not particularly harmful to the copyright owner. Fair use thus limits the rights of copyright. The Supreme Court has portrayed the concept of fair use as a way of preventing copyright protection from running afoul of the First Amendment's guarantees of freedom of speech and press.

Congress wrote the "well established" principles of fair use into law in the Copyright Act of 1976. The act articulates a four-factor balancing test to determine whether a use is a fair one: (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes; (2) the nature of the copyrighted work; (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and (4) the effect of the use on the potential market for or value of the copyrighted work.

— Geoffrey P. Hull for [The First Amendment Encyclopedia](#)

**Family Educational Records Privacy Act of 1974 (FERPA)**

A statute that generally requires schools receiving federal funds to protect the privacy of students' "education records." It also gives students and their parents the right to inspect such records and request alterations.

**Fighting words**

Words that by the very act of being spoken tend to incite the individual to whom they are addressed to fight—that is, to respond violently and to do so immediately, without any time to think things over. This doctrine is old, and for many observers, it has been so deeply contradicted by a number of later Supreme Court cases that it is considered essentially dead. View [fighting words](#) cases. View The First Amendment Encyclopedia's article on [fighting words](#).

**Foundation for Individual Rights and Expression (FIRE)**

The [Foundation for Individual Rights and Expression](#)'s mission is to defend and sustain the individual rights of students and faculty members at America's colleges and universities. These rights include freedom of speech, freedom of association, due process, legal equality, religious liberty, and sanctity of conscience—the essential qualities of liberty. FIRE educates students, faculty, alumni, trustees, and the public about the threats to these rights on our campuses, and provides the means to preserve them. FIRE was founded in 1999 by University of Pennsylvania professor Alan Charles Kors and Boston civil liberties attorney Harvey Silverglate after the overwhelming response to their 1998 book [The Shadow University: The Betrayal Of Liberty On America's Campuses](#).

**Free Exercise Clause of the First Amendment**

The Free Exercise Clause of the First Amendment protects individuals and groups from many kinds of government interference with the practice of their religion. View [Free Exercise Clause](#) cases.

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**Free speech zone**

A small area of campus where administrators quarantine student expression, often requiring students to register for its use far ahead of time. Such zones are in contravention of clear legal precedent at public institutions. View The First Amendment Encyclopedia's article on [free speech zones](#).

**Freedom of assembly**

The right of individuals to gather peacefully in public places in order to share, discuss, or otherwise express their opinions, including through protest and other forms of dissent. View [freedom of assembly and petition](#) cases.

**Freedom of association**

The right to form organizations, to associate with others who are so inclined, and to advance particular viewpoints through those associations. The three types of freedom of association courts have recognized are intimate association, expressive association, and social association—all of which are defined in this glossary. View [freedom of association](#) cases.

**Freedom of Information Act (FOIA)**

A federal law that requires the government to generally disclose records in its possession except when otherwise exempt for some reason (e.g., the disclosure would invade personal privacy or harm national security or the records are being held in anticipation of litigation, etc.). Every state has its own information disclosure law, and these are generally known as "FOIA laws," either formally or informally. View The First Amendment Encyclopedia's article on the [Freedom of Information Act of 1966](#).

**Freedom of speech**

The right to engage in expression without censorship or interference from government or its agencies. This includes, but is not limited to, what people say, write, read, sing, paint, perform, draw, and even wear. While not unlimited, this right is broader in the United States than in any other country. View [freedom of speech and expression](#) cases.

**Gag order**

Directives colleges and universities impose on individuals requiring them to stay silent about a particular issue or event. Gag orders barring students from disclosing the names of their co-defendants or accusers have been imposed on students involved in the campus disciplinary process. View [gag order](#) cases. View The First Amendment Encyclopedia's article on [gag orders](#).

**Government speech doctrine**

Under the government speech doctrine, the government has its own rights as speaker, immune from free speech challenges. It can assert its own ideas and messages without being subject to First Amendment claims of viewpoint discrimination.

The Supreme Court has employed the doctrine to reject First Amendment based challenges to government programs. For example, the high court ruled in *Rust v. Sullivan* (1991) that the government could prohibit doctors who receive federal funds for federal health family planning services from discussing abortion with their patients. Chief Justice William H. Rehnquist concluded that “The Government can . . . selectively fund a program to encourage certain activities it believes to be in the public interest, without at the same time funding an alternate program which seeks to deal with the problem in another way.”

— David L. Hudson Jr. for [The First Amendment Encyclopedia](#)

**Harassment**

As defined by the Supreme Court in [Davis v. Monroe County Board of Education](#) (1999), peer harassment in the education setting refers to conduct that is (1) unwelcome; (2) discriminatory (3) on the basis of a protected status, like gender, race, disability, or age; (4) directed at an individual; and (5) “so severe, pervasive, and objectively offensive, and ... [that] so undermines and detracts from the victims’ educational experience, that the victim-students are effectively denied equal access to an institution’s resources and opportunities.”

**Hate speech**

The term “hate speech” is frequently applied as a synonym for speech that is racist, sexist, homophobic, or similarly pejorative. This type of speech is not unprotected by virtue of being offensive. In the United States, there is no legal definition for “hate speech.” View [hate speech cases](#). View The First Amendment Encyclopedia’s [article on hate speech](#).

**Heckler’s veto**

Substantially disrupting an event via violence or other means to prevent a speaker from speaking.

**Hostile audiences**

Hostile and disruptive audiences are sometimes used as a justification for canceling controversial speeches, but the Supreme Court has noted that “the ordinary murmurings and objections of a hostile audience cannot be allowed to silence a speaker[.]” ([Feiner v. New York](#), 1951.) See Heckler’s Veto. View [hostile audience](#) cases.

**Incitement**

Speech that is both intended and likely to provoke imminent unlawful action. In [Brandenburg v. Ohio](#) (1969), the Supreme Court held that, in order to qualify as punishable incitement, speech must be “directed to inciting or producing imminent lawless action and is likely to incite or produce such action.” View The First Amendment Encyclopedia’s article on [incitement to imminent lawless action](#).



**Indecent speech**

Indecent speech may include material that is sexually explicit, tasteless, or offensive, but not so hard-core as to meet the test for obscenity under [Miller v. California](#) (1973). The government must give indecent speech all of the traditional protections granted to other expressive activities, except in certain situations involving the possible exposure of children to indecent speech. For example, the government may regulate indecent speech in the context of broadcasting on public airwaves, promulgating zoning regulations for “adult businesses” and restrictions on the sale of indecent material to minors, and in the K-12 educational context.

**Intimate association**

The strongest form of freedom of association is intimate association, best understood as familial in nature and most protected from governmental interference. As the Supreme Court noted in [Roberts v. United States Jaycees](#) (1984), “the constitutional shelter afforded such relationships reflects the realization that individuals draw much of their emotional enrichment from close ties with others.” Also see expressive association and social association.

**Intimidation**

Speech loses First Amendment protection and becomes intimidation when it is “a type of true threat, where a speaker directs a threat to a person or group of persons with the intent of placing the victim in fear of bodily harm or death.” ([Virginia v. Black](#), 2003.)

**Jurisprudence**

A body of law; that is, the collective wisdom of precedent, statute, common law, and legal philosophy. From the Latin roots juris (law) and prudentia (knowledge).

**Least restrictive means**

The least restrictive means test provides extensive protection for freedom of expression. This test is part of the “strict scrutiny” applied by the courts to a law that restricts First Amendment or other constitutionally guaranteed rights, when government interest must be weighed against constitutional rights. To pass the test, a law must use the least speech-restrictive means possible to achieve a compelling state interest.

— Scott Johnson (Updated June 2017 by David L. Hudson Jr.) for [The First Amendment Encyclopedia](#)



The Supreme Court often uses the three-pronged Lemon test when it evaluates whether a law or governmental activity violates the establishment clause of the First Amendment. Establishment of religion cases tend to involve government aid to religion, such as aid to parochial schools, or the introduction of religious observances into the public sector, such as school prayer. The Court measures the aid or program against the prongs of the test.

[...]

### Lemon test

In [Lemon v. Kurtzman](#) [1971] Burger, again writing for the unanimous Court, attempted to clarify some of the confusion regarding the meaning of the excessive governmental entanglement prong of the test. To determine whether the program created an impermissible entanglement between religion and government, there were three factors the Court had to weigh. The Court would look at the character and purpose of the institution that benefited, the nature of the aid the state was providing, and the resulting relationship between the government and the religious institution. If the program failed any single part of the test, it would render the aid an unconstitutional violation of the establishment clause.

— Richard L. Pacelle Jr. for [The First Amendment Encyclopedia](#)

### Libel

Written defamation. Libel charges generally involve a civil lawsuit brought by the alleged victim against the speaker. View The First Amendment Encyclopedia's article on [libel and slander](#), as well as [seditious libel](#).

### Limited or designated public forum

Those governmental properties that have been opened to the public for expressive activity. (The differences between designated and limited public forums are substantial, but confusion still exists amongst courts about the classifications.) These forums include places such as municipal theaters or public university meeting facilities. The government is not required to create these "limited public forums," but once it has designated a place as a public forum, that space must be treated as such for all comers. Also see "public forum" and "nonpublic forum."

### Limited purpose public figures

People who are so involved in certain topics or issues that they are considered public figures on that limited topic. On other issues, however, they are treated as private citizens. Also see "private persons" and "public officials."

### Loyalty oath

An oath imposed on a public employee or officer requiring that individual to pledge (or disclaim) loyalty to an idea, philosophy, or party. The Supreme Court has generally struck down loyalty oaths as being vague and overbroad; see, e.g., [Cramp v. Board of Public Instruction](#) (1961). View [loyalty and security](#) cases. View The First Amendment Encyclopedia's article on [loyalty oaths](#).

### Marketplace of ideas

Term to describe where good and bad ideas, true and false ideas, and everything in between, compete for public acceptance.

## Term

## Definition

### Newspaper theft

Taking large quantities of newspapers to deprive the publication of an audience, usually for ideological reasons. Newspaper thefts are far too common on university campuses and represent a vigilante form of censorship as dangerous to free expression as any act by the campus administration.

### Nonpublic forum

The government may establish events or designate places where speech is limited to particular, narrow subjects, or where only a select group of citizens is permitted to speak. Also see “public forum” and “limited or designated public forum.”

### Obscene material

The Supreme Court in [Miller v. California](#) (1973) outlined three questions that must be asked and answered to determine if a particular material is obscene:

1. Whether the average person, applying contemporary community standards, would find that the work, taken as a whole, appeals to the “prurient interest” (an inordinate interest in sex)
2. Whether the work depicts or describes, in a patently offensive way, sexual conduct
3. Whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value

If the answer to each of these questions is yes, the material enjoys virtually no First Amendment protection, and a university may choose to regulate its transmission, communication, or sale. However, it is important to remember that obscenity is a much-abused and misused term, and may be incorrectly invoked to restrict particular viewpoints on campus. Keep in mind that viewpoint-based restrictions on speech are not permissible, even within the limited exceptions to the First Amendment. View [obscenity](#) cases.

### Overbreadth

Laws are said to be overbroad if, in addition to whatever else they might appropriately prohibit, they significantly restrict protected First Amendment freedoms. Overbreadth takes what might be a legitimate use of law or regulation and extends it into areas where it threatens freedom itself. View [overbreadth](#) cases. View The First Amendment Encyclopedia’s article on [overbreadth](#).

### Parody

An artistic or expressive work designed to incorporate elements from, or the style of, an existing work for comic effect; frequently intended to criticize the underlying work. In the context of Copyright law, a parody uses elements from an existing work to criticize the work itself, and is entitled to greater Fair Use protection than works incorporating underlying works to criticize an unrelated person or thing. See satire. View [parody and satire](#) cases.

## Perjury

Under federal law, perjury is committed when a person “knowingly” attests to or subscribes to statements he or she does not believe are true. Perjured testimony is not protected by the First Amendment, because it undermines the ability of courts to obtain truthful testimony and to effectively administer justice.

— Ruth Ann Strickland for [The First Amendment Encyclopedia](#)

## Preponderance of evidence

A standard of proof in civil trials often summarized as “more likely than not;” meaning that the evidence available to the fact-finder (usually a jury, judge, or their equivalent) indicates at least a 50.01% probability that the allegation is true. For comparison, see “beyond a reasonable doubt” and “clear and convincing evidence.”

## Press freedoms, freedom of the press

In the United States, the government may not prevent the publication of an article (print or electronic) even when there is reason to believe that such a publication would reveal information that will endanger our national security. By the same token, the government cannot:

- Pass a law that requires the media to publish information against its will.
- Impose criminal penalties, or civil damages, on the publication of truthful information about a matter of public concern or even on the dissemination of false and damaging information about a public person except in rare instances.
- Impose taxes on the press that it does not levy on other businesses.
- Compel journalists to reveal, in many circumstances, the identities of their sources.  
Prohibit the press from attending judicial proceedings and thereafter informing the public about them.

Collectively, this bundle of rights, largely developed by U.S. Supreme Court decisions, defines the “freedom of the press” guaranteed by the First Amendment.

View [freedom of the press](#) cases.

## Prior restraint

The practice of prohibiting publications or speech before they are published or communicated (restraining individuals prior to their speaking). This is distinct from the more common type of censorship: punishing speech after it has been uttered. View freedom of expression [prior restraint](#) cases. View freedom of press [prior restraint and review](#) cases. View The First Amendment Encyclopedia’s article on [prior restraint](#).

## Term

## Definition

### Private persons

Anyone who is not a public figure or official is considered a “private person” in defamation law. This category includes the great majority of citizens, and it almost certainly includes most students, faculty, staff, and ordinary administrators at a public or private university. Also see “public persons” and “limited purpose public figures.”

### Probable cause

A reasonable suspicion based on articulable supporting facts. Probable cause is typically required for arrest warrants and many searches and seizures.

### Professional speech doctrine

The professional speech doctrine is a concept used more frequently by lower courts in recent years to define and often limit the free-speech rights of professionals when rendering advice or counsel. The doctrine has been applied by several federal appeals courts to limit the free-speech rights of doctors or therapists.

— David L. Hudson Jr. for [The First Amendment Encyclopedia](#)

### Protest

Protests are public demonstrations expressing disapproval of people, beliefs, or other matters of public concern. Demonstrations in favor of people, institutions, or issues are protected in the same way. View [protest](#) cases.

### Public forum

Those government or public properties that “by long tradition or by government fiat have been devoted to assembly and debate.” [Perry Education Association v. Perry Local Educators’ Association](#) (1983). Since the Supreme Court’s decision in [Hague v. Committee for Industrial Organization](#) (1939), it has been settled in the law that public parks—since they are held in trust for the public and have traditionally been used for assembly, communication, and public discussion—are “traditional” public forums. Other examples include public streets and sidewalks. On the modern public campus, many of the open spaces between buildings and many public squares scattered throughout the campus should be considered public forums.

Also see “limited or designated public forum” and “nonpublic forum.” View [public forum and private property](#) cases. View The First Amendment Encyclopedia’s article on the [public forum doctrine](#).

### Public officials and public figures

Public figures include governmental officials, celebrities, and others who have achieved a high degree of public notoriety. To preserve a society in which citizens are free to criticize those who hold and have held power, the law makes it quite difficult for public officials and public figures to sue someone successfully for defamation. Public officials include not only the President of the United States, congressmen, and governors, but also, almost certainly, presidents of universities and colleges. Also see “private persons” and “limited purpose public figures.” View The First Amendment Encyclopedia’s article on [public figures and officials](#).



**Qualified immunity**

Qualified immunity is a doctrine that shields government officials from liability unless they violated clearly established statutory or constitutional law. Under this doctrine, a government [official] could violate a person's First Amendment rights, but not face liability because the law was not settled or known at the time the official engaged in such conduct.

— David L. Hudson Jr. for [The First Amendment Encyclopedia](#)

**Quid pro quo sexual harassment**

As the Department of Education regulations define it, [quid pro quo sexual harassment](#) takes place when "a school employee [faculty, staff, or administrator] explicitly or implicitly conditions a student's participation in an education program or activity or bases an educational decision on the student's submission to unwelcome sexual advances, requests for sexual favors, or other verbal, nonverbal, or physical conduct of a sexual nature." View The First Amendment Encyclopedia's article on [sexual harassment laws](#).

**Religion in public schools**

Case law concerning religious exercise in the public school context. Many such cases involve the issue of to what extent schools can reasonably be expected to accommodate religious viewpoints. View [religion in public schools](#) cases.

**Racketeer Influenced and Corrupt Organizations Act (RICO)**

A statute that targets organized crime by permitting the leaders of a criminal enterprise to be tried for the crimes committed by others in the conspiracy when they ordered, enabled, or assisted in the commission of those acts. RICO also permits the government to freeze assets during trials, seize assets after convictions, and authorizes civil actions for those harmed by a criminal enterprise. View [Racketeer Influenced and Corrupt Organizations Act](#) cases. View The First Amendment Encyclopedia's article on [RICO laws](#).

**Right of publicity**

The right of publicity is a right to legal action, designed to protect the names and likenesses of celebrities against unauthorized exploitation for commercial purposes. Federal appeals court judge Jerome N. Frank coined the term in the case of Haelean Laboratories, Inc. v. Topps Chewing Gum, Inc. (1953), which recognized a baseball player's interest in his photograph on a baseball card.

— John R. Vile for [The First Amendment Encyclopedia](#)

**Right to petition**

The right afforded by the First Amendment to contact one's government without fear of retaliation for the sole reason of contacting them. Common issues addressed by these cases include contacting one's government in order to express an opinion or to complain. View [right to petition](#) cases.

**Safety valve theory**

The safety valve theory is a philosophical justification of the utility of protest.

Under the safety valve rationale, citizens are free to make statements concerning controversial societal issues to express their displeasure against government and its policies. In assuming this right, citizens will be deterred from undertaking violent means to draw attention to their causes.

— John O. Omachonu for [The First Amendment Encyclopedia](#)

**Satire**

An artistic or expressive work designed to criticize someone or something through exaggeration, humor, and/or irony. In the context of Copyright law, a satire may incorporate elements of an existing work, but without the intent to criticize the original work. See parody. View [parody and satire](#) cases. View The First Amendment Encyclopedia's article on [satire](#).

**Savings clause**

In order to work around issues concerning overbreadth and vagueness, universities or other agencies may include so-called "savings clauses" in their speech codes, stating that the codes do not apply to speech protected by the First Amendment. Such clauses nevertheless create a [chilling effect](#) on speech by confusing individuals who would speak on any subject that might draw a complaint, or by sending the message that a person speaks at his or her own peril.

**Search and seizure**

A process by which law enforcement agencies search people and places to look for property related to a crime (such as stolen goods or lock picks) or other evidence related to a crime (such as e-mails or bullet holes). In the United States, most search and seizure activities require probable cause, although there are numerous exceptions.

**Secondary effects doctrine**

The secondary effects doctrine allows government officials to treat patently content-based laws as content-neutral. The animating logic is that government officials are not suppressing speech because of its content but because of adverse side effects associated with the speech, such as increased crime or decreased property values.

— David L. Hudson Jr. for the [First Amendment Library](#)

**Sedition**

Speech or action designed to incite rebellion against the government. View [sedition](#) cases. View The First Amendment Encyclopedia's article on the [Sedition Act of 1798](#) and [1918](#).

Term

Definition

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**Slander**

Spoken defamation. View The First Amendment Encyclopedia's article on [libel and slander](#).

**Social association**

Social association generally refers to groups of people brought together in common social activities, but which lack a unifying commitment to advocacy of a message or belief and are more or less unselective and open to the public. The government has considerable power to regulate the activities of social associations. Also see intimate association and expressive association.

**Speech**

Broadly defined as expression that includes, but is not limited to, what you wear, read, say, paint, perform, believe, protest, or even silently resist. View [freedom of speech and expression](#) cases.

**Speech code**

Any campus regulation that punishes, forbids, heavily regulates, or restricts a substantial amount of protected speech. View The First Amendment Encyclopedia's article on [campus speech codes](#).

**Standing**

The fitness of a potential plaintiff to bring a claim before a court as measured by the stake or interest they have in the outcome. In general, a party has standing to seek adjudication of a claim when that party has suffered a specific injury that a court can correct, or will suffer a specific injury a court can prevent, beyond what a member of the general public would otherwise experience. View [standing](#) cases.

**State action doctrine**

State action doctrine is the legal principle which holds that the constitutional amendments only apply to state and local governments, while private actors, such as corporations, can exercise discretion with regulating internal rules and regulations. In the First Amendment, this is established with the phrasing "[c]ongress shall make no law" infringing upon the freedoms of speech, religion, press, assembly, and petition.

**Statements on matters of public concern**

As a general rule, a statement on a topic that affects the public's welfare is a statement that has a substantial impact on a substantial number of individuals. Much like statements regarding public figures, statements on topics that concern public welfare enjoy a high level of constitutional protection.

**Statement on purely personal matter**

As common sense implies, purely personal matters are those that are not "matters of public concern." Discussions of another person's romantic relationships, divorce, pregnancies, illnesses, personal finances, and so on, all would be matters of purely personal concern. False and injurious comments about such personal matters (but only the personal concerns of private rather than public figures) enjoy the least constitutional protection in defamation law.

Term

Definition

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**Time, place, and manner restrictions**

Generally, these restrictions define when, where, and how a speaker may present a message. For example, while it may be permissible to shout “Stop the war!” or “Support our troops!” at noon in the open space in front of a campus administration building, the campus administration has the right to prevent the same speech from being delivered at the same decibel level in the hall of a dormitory at 3:00 AM. View [time, place, and manner restrictions](#) cases. View The First Amendment Encyclopedia’s article on [time, place, and manner restrictions](#).

**True threats**

In [Virginia v. Black](#) (2003), the Supreme Court defined true threats as “statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals.” Further, the Court held that speech loses [First Amendment](#) protection and becomes intimidation when it is “a type of true threat, where a speaker directs a threat to a person or group of persons with the intent of placing the victim in fear of bodily harm or death.”

**Vagueness**

In [Grayned v. City of Rockford](#) (1972), the Supreme Court held that a statute or regulation is unconstitutionally vague when it does not “give a person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly.” View [void for vagueness doctrine](#) cases. View The First Amendment Encyclopedia’s article on [vagueness](#).

**Viewpoint discrimination**

Regulating speech on the basis of the point of view it conveys. Viewpoint discrimination is prohibited, not only by the First Amendment, but also by the Fourteenth Amendment’s guarantee of “equal protection of the laws,” which requires that the government apply the same rules equally to people in similar circumstances. View The First Amendment Encyclopedia’s article on [viewpoint discrimination](#).