



Freedom of Expression at a Glance



Demonstrators on opposite sides of the abortion debate protest in front of the U.S. Supreme Court. In the United States, uninhibited public debate creates an intellectual marketplace where ideas compete with other freely expressed ideas. © AP Photo/Gerald Herbert

The U.S. Constitution protects even the most offensive speech from government suppression, and permits regulation only under certain limited and narrow circumstances. The U.S. system is built on the idea that an open exchange of ideas encourages understanding, advances truth-seeking and allows for the rebuttal of falsehoods.

The Foundation of Free Expression

The U.S. Constitution's protection of free expression is rooted in the belief that an individual's ability to express himself freely — without

fear of government punishment — encourages the autonomy and liberty that promote better governance. Allowing citizens to discuss freely topics of public concern results in a more transparent and representative government, greater tolerance for different ideas and a more stable society.

Narrowly Drawn Exceptions

While the First Amendment provides broad protections for expression in the United States, freedom of speech is not absolute. Generally, the government has more discretion to impose content-neutral restrictions than content-based restrictions.

CONTENT-NEUTRAL RESTRICTIONS

The government can impose time, place and manner restrictions on speech, but it cannot restrict speech based on its content or the ideas and opinions of the speaker. These restrictions must 1) be content neutral, 2) be narrowly tailored to serve a significant government interest, and 3) leave open other channels of communication.¹

CONTENT-BASED RESTRICTIONS

While content-based restrictions are generally impermissible,

¹ Perry Educ. Ass'n v. Perry Educators' Ass'n, 460 U.S. 37, 45 (1983).

there are a few narrow exceptions. Special categories of expression that may be restricted under the First Amendment include incitement to imminent violence, true threats against the individual or group of individuals to whom the speech is directed, defamatory speech and obscenity.

Incitement to Imminent Violence

An individual's speech may be restricted if 1) it is intended to incite or produce lawless action, 2) it is likely to incite such action and 3) such action is likely to occur imminently. This is a very high standard, which courts have rarely found to have been met. General advocacy of violence, such as writing on a website that violent revolution is the only cure to society's problems, does not constitute incitement to imminent violence.

True Threats

Speech may also be restricted based on its content if it falls within the narrow class of "true threats" of violence. A true threat is a statement that a reasonable recipient would take to mean that the speaker, or people working with the speaker, intends to commit physical harm against the recipient(s) of the speech.

Defamation

In the United States, defamatory speech is a false statement of fact

that damages a person's character, fame or reputation. Statements of opinion — however insulting — are not viewed as defamation under U.S. law.

Under U.S. defamation law, there are different standards for public officials and private individuals. Speakers are afforded greater protection when they comment about a public official, as opposed to a private citizen. Public officials and public figures can prove defamation only if they can demonstrate "actual malice," that is, that the speaker acted with knowledge that the defamatory statement was false or "with reckless disregard of whether it was false or not."² Private individuals can establish defamation if the statements were false and damaged the person's reputation without showing actual malice. Only individuals can be defamed.

Where courts find defamation, they may require the speaker to publish a correction to the defamatory statement and/or to financially compensate the victim instead of imposing criminal punishment.

Obscenity

Obscenity may be restricted under the First Amendment, but there has been a long debate over what constitutes obscenity and how it should be regulated. The U.S. Supreme Court defined obscenity as expression that the average person, applying contemporary

community standards, would find 1) appeals to prurient interests; 2) depicts or describes sexual conduct in a patently offensive way; and 3) lacks serious literary, artistic, political or scientific value, when taken as a whole.³

A court evaluates each element independently and will not classify expression as obscene unless the expression is judged to embody all three elements. Given such high standards, it is rare for the courts to find expression obscene.

Hate Speech

Hate speech — speech that maligns a person or group based on race, ethnicity, gender, religion, sexual orientation or disability — receives full First Amendment protection.

While the United States does not restrict hate speech, it understands that the most effective weapon in combating hate speech is not suppression, but tolerant, truthful and intelligent speech.

In the U.S. system, persuasion — not regulation — is seen as the best way to counter hate speech.

GOVERNMENT VERSUS PRIVATE ACTION

The First Amendment protects citizens from government restrictions on free expression. It is inapplicable to situations in which a private party such as a private employer restricts an employee's speech.

² *New York Times Co. v. Sullivan*, 376 U.S. 254, 279-80 (1964).

³ *Miller v. California*, 413 U.S. 15 (1973).

