



The U. S. Constitution Series
In Partnership with the National Constitution Center

AP[®] U.S. Government and Politics

The Development and Application of the First Amendment



The Development and Application of the First Amendment

Workshop Handbook

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The Development and Application of the First Amendment

Essential Questions

- ▶ Why did the Founders choose to protect certain rights?
- ▶ How have Supreme Court interpretations of citizens' rights reflected changes in our political culture?

Introduction

The Occupy Wall Street movement began in September 2011 in New York's Zuccotti Park as a protest against social and economic inequality and the perceived greed, corruption, and undue influence of corporations on government. Over several months, the protesters in Zuccotti Park set up tents and refused to leave the park, while the movement also spread beyond New York City. By November, however, the city and the company that owned Zuccotti Park determined that it was unsanitary and unsafe for protesters to remain in the park. New York City police removed protesters, who then asked the court to intervene to prevent their eviction from the park.

Read the Wall Street Journal article and watch the corresponding video (<http://www.wsj.com/articles/SB10001424052970204190504577039253668863814>). We will discuss the questions that follow.

Questions

1. Were the city police justified in removing Occupy Wall Street protesters from Zuccotti Park? Why or why not?

2. Why did protesters object to being removed from the park? On what did the protesters base their claim?

3. Why did the judge side with the city?

Individual rights and liberties, like the rights to free speech and assembly, are protected by the Constitution and the Bill of Rights. However, there are often tensions between different interpretations of those rights and between different rights and the common good. The courts, including the Supreme Court of the U.S., consider many factors when determining how to resolve tensions like the one in the Occupy Wall Street protests (i.e., free speech/assembly v. public health and safety). One thing that they may consider is the original intent of the legislators who wrote a law or, in this case, an amendment. Determining intent can involve looking at what influenced the founders and their thinking. In this lesson we will look at some of the historical sources that helped shape the First Amendment and then at some Supreme Court cases involving the rights included in the amendment. We will use this information to determine the extent to which the Supreme Court has protected the individual rights contained in the First Amendment.

Our investigation of the sources of the First Amendment will focus on Madison and his proposals. As the architect of the Constitution and the government it created, Madison's ideas are important for understanding the Founders' intent.

Writing Rights: The Bill of Rights

The National Constitution Center developed the Writing Rights: The Bill of Rights interactive website to provide users the opportunity to explore the documents and ideas that shaped the first ten amendments to the U.S. Constitution. Using sources identified by Neil H. Cogan as having similar content to each Amendment in the Bill of Rights, the interactive website allows users to compare the Amendments with the documents in terms of matching language and word similarity. Though all of the sources were influenced by the Enlightenment period philosophies of the time, they were not all being read and written by the same people. As a result, there are many similarities between the documents, but the documents are not necessarily based on one another. Users can also trace the development of the Amendments from Madison's proposals through the House and Senate proposals and ultimately to the final text. For more information about the Writing Rights: The Bill of Rights interactive site, visit <http://webii.net/billofrightsWeb/home/writing>

To conduct our investigation, we will use the National Constitution Center's *Writing Rights: The Bill of Rights* interactive site (<http://webii.net/billofrightsWeb/home/writing>). The Center's site provides the opportunity for us to read and compare historical sources that influenced Madison, as well as the final product that was approved by Congress.

Directions:

Complete the following graphic organizer using information from the texts on the National Constitution Center's *Writing Rights: The Bill of Rights* interactive site (<http://webii.net/billofrightsWeb/home/writing>). Then respond to the questions below.

Remember - when considering similarities and differences between documents, focus on the specific characteristic we have identified for comparison. In this case, the characteristic refers to the rights represented by the proposal or amendment.

First Amendment (1789)	Madison's Proposal 6 (1789)	New Hampshire Constitution (1783)	Declaration of Independence (1776)	Declarations and Resolves of the First Continental Congress (1774)
Summary				
Freedom of Religion				
Freedom of Speech				
Freedom of the Press				
Right to Assembly				

Questions

1. How did Madison incorporate different aspects of the Historical Sources into his proposal? In what ways(s) was Madison's proposal ultimately incorporated into the First Amendment?

2. What is missing from Madison's Proposal 6 and from the Historical Sources that we read? Why is it important to know what is not included?

3. Thinking about the Occupy Wall Street situation, would Madison's Proposal 6 and the Historical Sources we read lead to an interpretation of the First Amendment that would support the protesters or the city? Explain your response.

Directions:

Now it is your turn to investigate the other proposals from Madison that are associated with the First Amendment. Half of you will investigate Madison’s Proposal 4 and the other half will investigate Proposal 5. Complete the following graphic organizer using information from the texts on the *Writing Rights: The Bill of Rights* interactive site (<http://webii.net/billofrightsWeb/home/writing>). Then, answer the questions using the website, what you have learned about the First Amendment, and your knowledge about the debate surrounding the ratification of the Constitution.

Remember - when considering similarities and differences between documents, focus on the specific characteristic we have identified for comparison. In this case, the characteristic refers to the rights represented by the proposal or amendment.

	First Amendment (1789)	Madison’s Proposal 4 (1789)	New York Ratification Convention (1788)	Laws of West New Jersey (1681)
Summary				
Freedom of Religion				
Freedom of Speech				
Freedom of the Press				
Right to Assembly				
Right to Petition				

	First Amendment (1789)	Madison's Proposal 5 (1789)	North Carolina Declaration of Rights (1776)	Massachusetts Body of Liberties (1641)
Summary				
Freedom of Religion				
Freedom of Speech				
Freedom of the Press				
Right to Assembly				
Right to Petition				

Questions

1. How did Madison incorporate different aspects of the Historical Sources into his proposals? In what way(s) were Madison's proposals incorporated into the First Amendment?

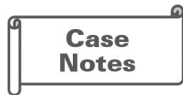
2. Thinking about the Occupy Wall Street situation, would Madison's Proposal 4 or 5 and the Historical Sources we read lead to an interpretation of the First Amendment that would support the protesters or the city? Explain your response.

3. What rationale might the Founders have had for merging Madison's three proposals into one amendment?

***U.S. v. Eichman* (1990)**

Directions:

One of the roles of the courts, particularly the Supreme Court, is to interpret and determine the constitutionality of laws. There have been numerous cases brought before the Court involving the First Amendment and the tensions that are created by different interpretations of the amendment and/or when the government's need to protect the common good may infringe on an individual's rights. Together, we will use what you have learned about the First Amendment and its origins to review the case of *U.S. v. Eichman* and evaluate the Court's reasoning. Then, you will answer the questions which follow.



Case:

Year:

CASE BACKGROUND (include relevant events, legislation, or rulings):

LAW, AMENDMENT, or CONSTITUTIONAL TEXT in question:

MAJORITY OPINION

AUTHOR:

Key Claim(s):

Reasoning used to justify the opinion:

DISSENTING OPINION

AUTHOR:

Key Claim(s):

Reasoning used to justify the opinion:

Case:

Year:

Implications:

[Source: adapted from, *Casing History* by Rhonda Webb, Lassiter High School, Cobb County, Georgia.
Used with permission.]

Questions

1. Given what you know about the development of the First Amendment, why might expression be protected? Why might it not be protected?

2. The Supreme Court ruled the Flag Protection Act violated the right of freedom of expression protected by the First Amendment. Should all freedom of expression be protected by the First Amendment? Why or why not?

3. Does it matter what Eichman was protesting or whether anyone agreed with him? Under what circumstances could the type of protest or the message itself justify arrest?

4. Evaluate the Supreme Court's ruling and judicial reasoning in this case? Support your response with evidence from the First Amendment and the case.

Directions:

Using resources available to you, including your textbook and the websites below, investigate your assigned cases from the list below. Complete the graphic organizer and answer the questions which follow.

Supreme Court Cases Involving the First Amendment

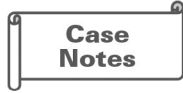
- ▶ *Reynolds v. U.S.* (1878)
- ▶ *Schenck v. U.S.* (1919)
- ▶ *Engel v. Vitale* (1962)
- ▶ *Tinker v. Des Moines Independent Community School District* (1969)
- ▶ *New York Times Company v. U.S.* (1971)
- ▶ *Lemon v. Kurtzman* (1971)
- ▶ *Wisconsin v. Yoder* (1972)
- ▶ *Employment Division (Oregon) v. Smith* (1989)
- ▶ *Citizens United v. Federal Election Commission* (2008)

Helpful Websites:

The Oyez Project: <http://www.oyez.org/>

Legal Information Institute: <https://www.law.cornell.edu/>

First Amendment Center: <http://www.firstamendmentcenter.org/>



Case:

Year:

CASE BACKGROUND (include relevant events, legislation, or rulings):

LAW, AMENDMENT, or CONSTITUTIONAL TEXT in question:

MAJORITY OPINION**AUTHOR:****Key Claim(s):****Reasoning used to justify the opinion:****DISSENTING OPINION****AUTHOR:****Key Claim(s):****Reasoning used to justify the opinion:****Implications:**

[Source: adapted from, *Casing History* by Rhonda Webb, Lassiter High School, Cobb County, Georgia.
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Questions

1. Which conflict of democratic or social values exists in each of your assigned cases?

2. How did the Supreme Court justify its protection or control of certain political behaviors? Support your response with evidence.

3. Evaluate the Supreme Court's ruling and its reasoning in each case. Support your response with evidence.

Directions:

Using what you have learned about the origins of the First Amendment and the Supreme Court cases involving the amendment, develop an argument that addresses the prompt below. Remember, a strong argument includes relevant and specific evidence. Use the graphic organizer below before your write to indicate the case or cases related to the right and the Court's reasoning regarding the right.

Prompt: To what extent has the Supreme Court protected the individual rights of freedom of speech, of religion, and of the press contained in the First Amendment?

	Case(s) Related to the Right	Judicial Reasoning
Freedom of Religion		
Freedom of Speech		
Freedom of the Press		

