

UNIT

5

CHAPTER 13

FUNDAMENTAL FREEDOMS

CHAPTER 14

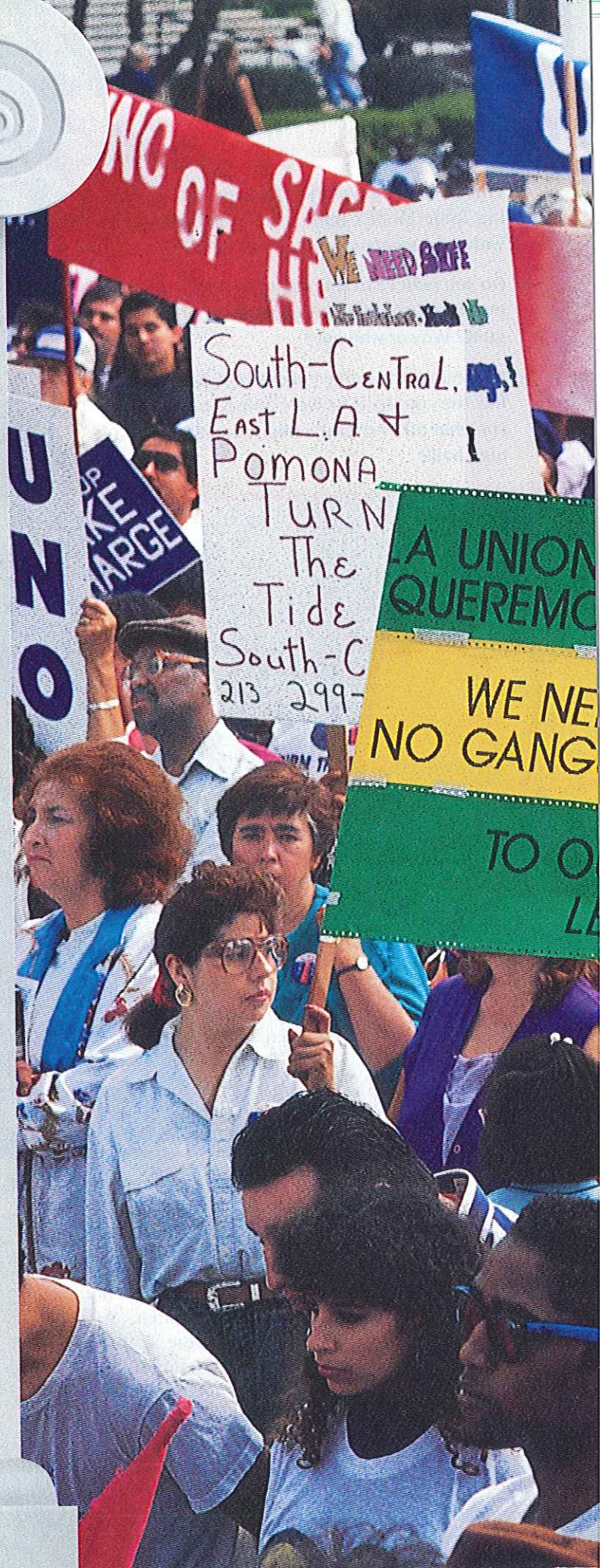
ASSURING INDIVIDUAL RIGHTS

CHAPTER 15

PROTECTING CIVIL RIGHTS

PUBLIC POLICY LAB

Do reporters have to follow certain procedures when writing news stories? Find out by reading this unit and taking the Policy Lab Challenge on pages 360–63.



SE OF LOS ANGELES

RIGHTS AND RESPONSIBILITIES

LA FUERZA QUEREMOS PAZ
EFICACIA PADRES PREOCUPADOS

NEIGHBORHOODS
DRUGS & NO GRAFFITI!

TH - WE LOVE YOU,
RK TOGETHER!

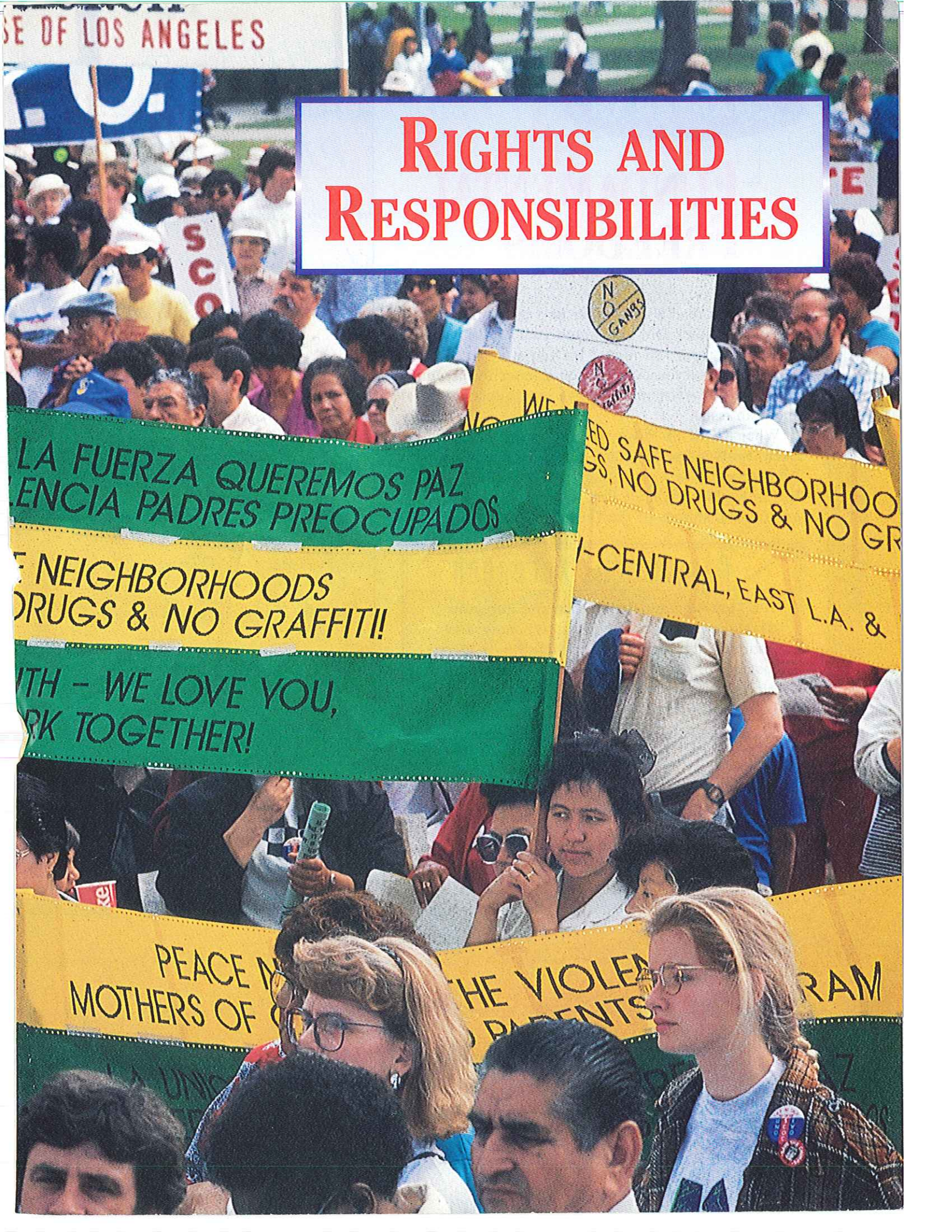
ED SAFE NEIGHBORHOODS,
SS, NO DRUGS & NO GR

-CENTRAL, EAST L.A. &

PEACE M
MOTHERS OF

THE VIOLEN
PARENTS

GRAM



CHAPTER 13

FUNDAMENTAL FREEDOMS

Do you read a newspaper or a magazine in your free time? Did you watch your favorite television show last night? Do you attend a place of worship? Have you ever written a letter to the editor of the local newspaper or to a government official about an issue?

What do all of these activities have in common? Each involves freedoms that are protected by the First Amendment. These and other protections found in the Bill of Rights guarantee fundamental freedoms to you and other residents of the United States.



Government Notebook

The First Amendment protects the freedoms of religion, speech, the press, assembly, and petition. Are these rights without limit? What restrictions do you think the government may place on these rights? Write your answer in your Government Notebook.

THE Conventions of a number and restrictive clauses should be added:

RESOLVED by the Sen to the Legislatures of the several States and purposes, as part of the said Const

ARTICLES in addition to Article of the original Constitution.

ired by the first Article of the Constitution so regulated by Congress, that there ntatives shall amount to two hundred five for every fifty thousand persons.

ation for the services of the Senators and pecting an establishment of religion, or Government for a redress of grievances ing necessary to the security of a free

Article the fifth..... No Soldier shall, in time of peace be quartered in any house, without

Article the sixth..... The right of the people to be secure in their persons, houses, papers probable cause, supported by oath or affirmation, and particularly

Article the seventh... No person shall be held to answer for a capital, or otherwise infamous cri Militia, when in actual service in time of War or public danger; no

Article the eighth.. In all criminal prosecutions, the accused shall enjoy the right to a district shall have been previously ascertained by law, and to be info

by obtaining witnesses in his favor, and to have the assistance of

SECTION 1

FREEDOM AND THE BILL OF RIGHTS

Political Dictionary



civil liberty
alien

Objectives

- ★ How does the Constitution protect civil liberties?
- ★ Whose civil liberties does the First Amendment guarantee?
- ★ What is the role of laws and the courts in balancing individuals' civil liberties with the interests of the community?

As noted in Chapter 2, several states made strong recommendations that a bill of rights be added to the Constitution upon its ratification. President George Washington also supported adding a bill of rights to the Constitution. James Madison, although he had originally thought a bill of rights unnecessary, took the lead in the first session of the initial Congress in developing the amendments. Twelve amendments were originally proposed for ratification by the states. The two amendments that were never ratified dealt with how members of the House of Representatives would be apportioned among the states and how congressmembers would be compensated for their service.

About 18 months passed before the necessary three quarters of the states agreed to ratify the Bill of Rights. Massachusetts, one of the states that originally had called for a bill of rights as a condition for signing the Constitution, was one of three states that did not ratify the Bill of Rights when it was proposed in Congress. Connecticut ratified it only in 1932, Georgia and Massachusetts in 1939. (Of course, because three quarters of the states had ratified the Bill of Rights, it applied to all states in the Union, even though it had not yet been ratified by all.)

Curiously, the adoption of the Bill of Rights was not seen as an earthshaking event at the time, as is indicated by the text of a letter Thomas Jefferson sent to the states on March 1, 1792, in his official capacity as secretary of state. The letter listed the adoption of the Bill of Rights after a law Congress had passed regulating fishing! Today, however, most people in the United States understand the profound impact the Bill of Rights has had on the rules of the U.S. political system and the content of U.S. public policies.

Civil Liberties

The Bill of Rights is designed to protect people's civil liberties. **Civil liberties** are basic individual rights and freedoms that are protected from government violation. When drawing up the Bill of Rights, members of the initial Congress specifically wanted to guarantee freedom of speech, assembly, and religion in order to protect individual rights and prevent a tyranny of the majority. These freedoms are considered to be among the most fundamental civil liberties. In listing these rights in the First Amendment, the framers conferred upon them a special place in the American consciousness. They believed that respecting these freedoms was among the most important duties of government and society.



POLITICAL FOUNDATIONS Shown here is President George Washington arriving for his inauguration in 1793. It was during Washington's presidency that the first 10 amendments were added to the Constitution. Which civil liberties did the drafters of the Bill of Rights particularly wish to guarantee?

Careers in Government



Civil Rights Lawyer

In 1971, civil rights attorneys Morris Dees and Joseph Levin joined civil rights activist Julian Bond to found the Southern Poverty Law Center. The center is a nonprofit organization staffed by lawyers who specialize in providing legal assistance to victims of civil rights violations and racially motivated crimes.

Well-known defenders of the civil rights of poor citizens, the center's lawyers battle to fulfill the promise of the Civil Rights Act of 1964. Their caseload involves everything from challenging segregation in recreational facilities to acquiring better medical care and social services for the poor. In one successful case, civil rights lawyers at the center helped gain financial compensation for a cotton mill worker who had contracted a lung disease as a result of an unsafe job environment. In addition, this case led to the creation of federal laws regulating working conditions in cotton mills.

Civil rights lawyers such as those employed by the Southern Poverty Law Center spend years studying and preparing for a career in law. Lawyers must earn a college degree and graduate from a law school approved by the American Bar Association. In addition, potential lawyers must pass the bar exam of the state in which they plan to practice law. Passing the bar exam generally requires months of preparation. After completing the necessary education and certification, some



Morris Dees, cofounder of the Southern Poverty Law Center, works to provide legal assistance to victims of civil rights violations.

new lawyers work with well-established lawyers and law firms to gain experience.

Many people interested in a career in law turn to the federal government. Its dozens of departments and agencies employ attorneys who work in many fields of law, including civil rights. For example, the Equal Employment Opportunity Commission (EEOC), created by the 1964 Civil Rights Act, hires lawyers to defend people fighting discrimination in the workplace.

To whom do First Amendment freedoms and other constitutional protections belong? In several of its amendments, the Bill of Rights refers to the "right of the people," but nowhere does it define who the people are. In addressing this issue the Supreme Court has ruled that the protections granted by the Constitution are not limited to U.S. citizens. For the most part, these constitutional protections also guarantee the civil liberties of **aliens**, or resident noncitizens. The government may, however, limit some civil liberties of aliens who reside in the United States.

Balancing Rights and Interests to Promote the Public Good

Although the Constitution guarantees civil liberties, it does not guarantee absolute freedom to do as one wishes. The freedom to assemble with others in pursuit of a goal, for example, does not give people the freedom to riot, which would violate other people's right to safety. Recognizing the responsibilities that come with freedom is part of being a good citizen.

How are one person's civil liberties balanced with the rights of others and the interests of the

majority? What happens, for example, when a person's religious beliefs necessitate behavior that is illegal? Who decides if the freedom of the press to report on a criminal investigation threatens the accused's right to a fair trial?

The government tries to answer questions such as these by passing laws that balance individual liberties with the rights and interests of society. The Supreme Court then uses its power of judicial review to determine whether government actions and laws violate constitutional protections.

The Supreme Court's approach to cases involving civil liberties has been influenced by two views. One view holds that the liberties protected by the Bill of Rights, particularly those of the First Amendment, are absolute, or without limit. Those who subscribe to this point of view argue that the First Amendment's statement that "Congress shall make no law" restricting free speech means that *all* federal laws that restrict free speech in any way are unconstitutional.

However, the government often passes laws that set boundaries on an individual's rights so others' rights or interests are not threatened. This reflects a second view—that the Supreme Court's role is to decide whether the government has promoted the public good by properly restricting a civil liberty to protect others' rights, or majority interests.

The Supreme Court has often chosen this latter approach. Throughout this and the next two chapters, you will see how the Court and the rest of the federal government have tried to ensure a proper balance of liberties.



Courtesy of Karl Hubenthal, Los Angeles Herald-Examiner.

CONSTITUTIONAL GOVERNMENT This political cartoon illustrates the liberties protected by the Bill of Rights. Many of these rights are found in the First Amendment. Why do you think that the cartoonist placed these rights on the spikes of the Statue of Liberty's crown?

SECTION 1

REVIEW

1. Define the following terms: civil liberty, alien.
2. What part of the Constitution protects the civil liberties of people in the United States?
3. Does the Constitution guarantee aliens' civil liberties? How has the Supreme Court ruled on government's restricting the civil liberties of aliens?
4. Why is a balance between individual liberties and majority interests that conflict with them important? Who decides whether restrictions on individual liberties promote the public good?

5. Thinking and Writing Critically

What kinds of liberties do your parents or guardians grant you? Do you, for example, have the freedom to borrow the car or to participate in group activities after school? What kinds of responsibilities come with these liberties?

6. Applying **CONSTITUTIONAL GOVERNMENT**

Make a list of the freedoms found in the First Amendment. Why might the framers have determined that these freedoms are among people's most fundamental rights?

SECTION 2

FREEDOM OF RELIGION

Political Dictionary

Establishment Clause
Free Exercise Clause



Objectives

- ★ How has the Supreme Court interpreted the Establishment Clause to define the relationship between religion and public schools?
- ★ How does the Supreme Court decide if government aid to religious groups is constitutional?
- ★ Why has the Supreme Court allowed tax exemptions for religious groups?
- ★ How has the Free Exercise Clause been interpreted?

Religion is a part of many people's lives in the United States. In the early 1990s, for example, surveys showed that nearly 70 percent of people in this country were members of a church, synagogue, temples of various faiths, mosques, and other places of worship. The freedom to choose your religious beliefs, or to hold no religious belief, is a basic civil liberty guaranteed by the First Amendment.

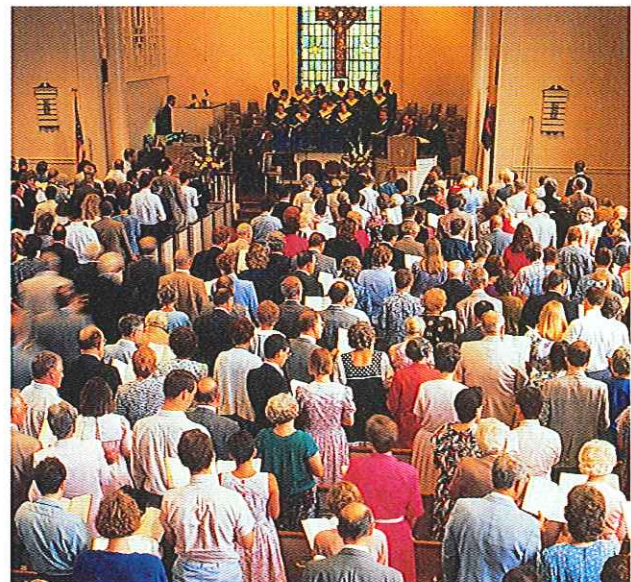
The Establishment Clause

One way the Constitution guarantees freedom of religion is through the First Amendment's **Establishment Clause**. This clause states that "Congress shall make no law respecting an establishment of religion." Under the Establishment Clause the government may not act in ways that establish an official religion, that favor one religion over another, or that favor religion generally.

At the time the Bill of Rights was written, most countries supported one official religion. Even most of the North American colonies had official religions. After U.S. independence, support grew in the states to put an end to official religions. Many U.S. citizens thought that their young country was too diverse to allow religious beliefs to be imposed on people. As a result, religious freedom was included in the First Amendment. Later, Thomas Jefferson wrote in a personal letter that the First Amendment established "a wall of separation between church and State."

Whether the Establishment Clause does indeed build such a wall has been controversial. As cases about this subject have arisen, the Supreme Court has worked to define the line separating government and religion. Many such establishment cases have involved prayer in public schools, government aid for religious organizations, and government tax policies toward religious bodies.

Religion in Public Schools Religion in public schools has been a source of heated debate, and the Supreme Court's rulings have varied according to the case and the time period in which it was heard. Some states, for example, once allowed programs in which students could attend voluntary religion classes during school hours. However, in 1948 in *McCullum v. Board of Education*, the Court ruled



CONSTITUTIONAL GOVERNMENT All citizens of the United States have the freedom to worship as they choose. Why is the U.S. government prohibited from establishing an official religion?

that an Illinois religious instruction program unconstitutionally established religion because it received official support. In a later case, the Court ruled in favor of a school that permitted students to leave campus to receive religious instruction outside the school grounds.

Some of the most controversial decisions about the Establishment Clause involve prayer in schools. Officially sponsored prayers once were common in U.S. public schools. In the 1962 case *Engel v. Vitale*, however, the Supreme Court ruled that this practice violated the Establishment Clause. The Court said that all officially sponsored prayer in public schools, even when participation was voluntary, represented unconstitutional official support for religion. Other Court decisions since 1962 have kept public schools from sponsoring religious activities, such as Bible readings and moments of silence for meditation or prayer.

The Court has not ruled, however, against students praying on their own in school. In fact, students are free to pray on their own at any time and in any place—in or out of school. Religious works also may be used in public schools as part of literature courses and other nonreligious studies.

Nevertheless, criticism of the Supreme Court's decisions on school prayer has been strong. Critics have argued that prayer and religious study are vital to teaching morals and values. Some have tried to pass constitutional amendments that would allow public schools to set aside time for

voluntary prayer. In addition, Congress acted in 1984 to allow student religious groups to meet in public schools. Under the 1984 Equal Access Act, student religious groups have the same right as other student groups to use public school buildings for meetings. The Supreme Court ruled that the Equal Access Act was constitutional as long as the clubs are created and led by students.

Government Aid for Religion The Supreme Court also has heard establishment cases about government aid for religious organizations, such as parochial (puh-ROH-kee-uhl) schools. Parochial schools are elementary and high schools run by churches and other religious groups.

People who believe in giving government aid to parochial schools argue that the families of students in these schools are required to pay taxes to support the public education system and that these taxes should go to the schools that their children attend, parochial or public. By lowering tuition costs, government aid to parochial schools also would make it easier, they argue, for families to exercise their right to choose their children's schools. Currently, government aid does help parochial schools provide some services, such as buses.

Opponents of government aid argue that sending children to parochial schools is a financial burden that families freely choose and should handle on their own. They also argue that government aid would violate the Establishment Clause because it would support religious education.

SHOE



SHOE © Tribune Media Services, Inc. All rights reserved. Reprinted with permission.

POLITICAL PROCESSES Although the Constitution protects citizens' right to practice their religion by attending parochial school, the government does not provide financial assistance to families who send their children to private schools. Some people have proposed a school voucher program that would provide a certain amount of government assistance to these families. *Would you support legislation establishing this program?*

Drawing upon principles of past rulings, the Supreme Court in 1971 established in *Lemon v. Kurtzman* a three-part test for deciding if a government law aiding a religious body violates the Establishment Clause. Under the *Lemon* test a law must

- ★ have a secular, or nonreligious, purpose;
- ★ neither advance nor limit religion; and
- ★ not result in excessive government involvement with religion.

Instances of government aid that have passed the *Lemon* test include providing special education teachers and transportation to and from school. The Supreme Court has ruled that such aid, although perhaps indirectly supporting religion, promotes important nonreligious goals, including securing the welfare and safety of children.

Taxes and Religion The Establishment Clause has also affected the way tax laws are written. Federal, state, and local governments do not tax property owned by churches and other religious organizations if it is used for religious purposes. Supporters of this policy have argued that taxing churches and other religious properties would in effect allow the government to limit the freedom of religion.

Other people have argued, however, that tax exemptions for religious property violate the Establishment Clause. These people believe that tax exemptions provide official support for religion by giving it a privilege not enjoyed by other organizations. Some people also argue that such tax exemptions unfairly increase property tax rates by placing the entire tax burden on the nonexempt.

The Supreme Court consistently has sided with those who support tax exemptions for religious property. In 1970 the Court ruled in *Walz v. Tax Commission* that tax exemptions help the government take a neutral approach toward religion, neither supporting it nor restricting it. In other decisions, however, the Court has said that the government may refuse to grant a tax exemption to a religious organization practicing racial discrimination. In such cases the Supreme Court has tried to balance the need to prevent discrimination with the protection of religious freedom.



POLITICAL FOUNDATIONS Many towns and cities in the United States decorate public buildings with religious and nonreligious displays during holidays. What has the Supreme Court said about this practice?

Custom and Religion In spite of the separation of church and state, many official U.S. symbols and customs involve religion. The money you use, for example, bears the phrase *In God We Trust*. During certain holidays your local government may sponsor a religious display on publicly owned property. How does the Supreme Court apply the Establishment Clause to these situations?

The Supreme Court has ruled that these references to God and to religious beliefs do not support religion as much as they recognize many Americans' deeply held beliefs. The Court has used this reasoning to rule, for example, that chaplains may open sessions of Congress and of state legislatures with a prayer. In addition, holiday displays in which nonreligious figures such as Santa Claus share space with religious symbols like nativity scenes are constitutional. In general, the Court has held that these long-practiced customs do not violate the Establishment Clause.

The Free Exercise Clause

In addition to the Establishment Clause, the First Amendment guarantees freedom of religion through its Free Exercise Clause. The **Free Exercise Clause** states that "Congress shall make no law . . . prohibiting the free exercise" of religion. This clause protects the right of a person to hold any religious beliefs he or she chooses. The right to *believe* as one wishes, however, is not the same as the right to *behave* as one wishes.

The Supreme Court has ruled that religious practices may be restricted if they threaten the health and safety of others or if they violate social standards and constitutional laws. For example,

in 1879 the Court ruled in *Reynolds v. United States* that Mormons could not engage in bigamy—the act of marrying one person while legally married to another. The Court said that even though bigamy was (at the time) allowed by the Mormon faith, federal law prohibited the practice. The Court also has allowed the government to require vaccinations for children whose parents’ religious beliefs forbid such medical practices. In this case, the Court valued protecting citizens’ health over preserving the absolute free exercise of religion.

The Court has, however, supported some religious practices that violate the law but do not threaten the public interest. In a 1972 case, Wisconsin officials argued that requiring all children to attend school is a vital public interest. Amish families, who reject many modern practices for religious reasons, argued that schooling after the eighth grade threatens their beliefs. The Court, considering that few Amish children lived in the community, ruled that the state’s requirement threatened Amish religious freedom more than an exemption for the Amish threatened the state’s interest in educating its citizens.

C A S E S T U D Y

Religion and Saluting the Flag

CONSTITUTIONAL GOVERNMENT Another issue concerning free exercise of religion involved pledging allegiance to the U.S. flag. In 1943 the Supreme Court ruled that people could not be forced to salute the flag if doing so would violate

their religious beliefs. In *West Virginia State Board of Education v. Barnette*, Jehovah’s Witnesses objected to their children’s saluting the flag. The Witnesses argued that their religion did not allow them to pay homage to the U.S. flag, which they saw as an object of worship.

The Supreme Court had ruled against the Witnesses in a similar case just three years earlier. In *Minersville School District v. Gobitis*, the Court ruled that a community’s interest in using the flag to encourage patriotism and national unity was more important than a person’s religious beliefs.

In 1943, however, the Supreme Court decided that refusing to salute the flag posed no danger to patriotism and public order. What had changed? In part, the Court was reacting to the persecution of Jehovah’s Witness children that had occurred as a result of the *Minersville* decision. In addition, forcing people to believe and act according to government rules had become a sensitive issue. At the time, the United States was at war with countries ruled by totalitarian dictatorships that controlled every aspect of their citizens’ lives. The Court did not base its decision against forced saluting on the Free Exercise Clause, however. Rather, it determined that requiring people to say the Pledge of Allegiance violated their First Amendment guarantee of free speech.

SECTION 2

REVIEW

1. Define the following terms: Establishment Clause, Free Exercise Clause.
2. Under what circumstances does the Supreme Court allow government aid to religious groups?
3. Describe the debate over tax exemptions for religious organizations.
4. Does the Free Exercise Clause allow all religious practices?

5. Thinking and Writing Critically

How would you describe the “wall of separation between church and state”? How high is it? What is it made of—solid granite or chain links? Explain your answers.

6. Applying **CONSTITUTIONAL GOVERNMENT**

Why might changing times influence the Supreme Court’s decisions concerning religion in schools?

SECTION 3

FREEDOM OF SPEECH AND OF THE PRESS

Political Dictionary



treason
sedition
prior restraint
shield law
libel
slander
obscenity
symbolic speech
draft
hate speech

Objectives

- ★ What challenges exist in balancing individuals' freedom of speech with the need to protect national security?
- ★ What boundaries exist on the media's freedom of expression?
- ★ How does the First Amendment affect symbolic speech and hate speech?

In 1579 John Stubbs published a book in England criticizing a proposed marriage of Queen Elizabeth. Because criticizing the country's leaders was not allowed at the time, the government ordered that Stubbs's right hand be cut off at the wrist so that he could never write again.

Today such a book might be a tame addition to the shelves of your local bookstore. This is because the First Amendment guarantees freedom of speech and freedom of the press in the United States. These freedoms are among the most cherished liberties assured by the Bill of Rights. The freedom to express your opinions, popular or not, in speech or in print, is vital to a democracy.

As with freedom of religion, the Supreme Court has applied the First Amendment guarantees of

free speech to government laws and actions. At times the Court has interpreted the First Amendment to strike down *any* laws that limit free expression. At other times the Court has tried to promote the public good by balancing free speech with other liberties. Although finding this balance sometimes means setting boundaries on expression, people in the United States still enjoy great freedom to speak out and express their ideas.

Freedom of Speech and National Security

National security is one area in which the Supreme Court has allowed the government to establish boundaries on free speech. As you know, the Constitution gives the government the authority to protect the nation against foreign powers and domestic threats. It is largely this latter responsibility that has sparked questions about balancing free speech with national security.

Treason and Sedition One form of domestic threat is treason. **Treason** is the act of aiding and comforting an enemy of the United States in a time of war—for example, spying on one's government for a foreign power. Article III, Section 3, of the



CONSTITUTIONAL GOVERNMENT A group of young people protests the U.S. government's involvement in the Vietnam War. In what kinds of cases has the Supreme Court allowed government to limit free speech?

Constitution gives Congress the authority to punish people found guilty of treason. What about acts committed during peacetime?

The government has answered this question differently over time. For example, Congress has passed laws restricting speech that criticizes government. Many of these laws specifically address **sedition**—the use of language that encourages people to rebel against lawful government. Several people in U.S. history have in fact been accused of endangering the nation’s security through seditious language.

Whether a statement is seditious is debatable, of course. Some people might think that a particular criticism of the government encourages others to work against unfair government policies, but others might consider it seditious. In cases of sedition, then, the Supreme Court has had to decide how to balance the security interests of the nation with individuals’ right to free speech.

Alien and Sedition Acts The first laws against sedition were passed by Congress in 1798, just seven years after the adoption of the Bill of Rights. Among other things, the Alien and Sedition Acts made it illegal to say anything “false, scandalous [disgraceful] and malicious [spiteful]” against the government or its officials. The acts were aimed at opponents of President John Adams and his Federalist supporters, and in fact, only opponents of the Federalists were ever convicted under the laws. One such opponent, a congressman, was jailed for four months and fined \$1,000. Newspaper editors also were jailed or fined for their critical words.

Opposition to the Alien and Sedition Acts was strong from those who believed that the acts violated the First Amendment’s freedoms of speech and the press. The Alien and Sedition Acts were never tested in the courts, however, and Congress allowed them to expire in 1801. In that same year President Thomas Jefferson pardoned all those who had been convicted under the acts, and Congress voted to refund the fines that had been paid.

Clear and Present Danger After the assassination of President William McKinley by an anarchist in 1901, public opinion began to favor legislation punishing seditious acts. Then in 1917 and 1918, after the United States had entered World War I, Congress again passed sedition laws forbidding verbal attacks on the government. By the end of World War I, 32 states had laws against

Comparing



Governments

Freedom of Speech in Singapore

As you know, the First Amendment of the Constitution guarantees that “Congress shall make no law . . . abridging the freedom of speech, or of the press.” Although laws in the United States restrict certain types of speech, people can legally express unfavorable comments about the U.S. government.

Not all nations share this freedom. In Singapore, criticism of the government in the press is forbidden. A federal statute in Singapore protects freedom of speech but restricts people from saying anything that the courts identify as disrespectful of judicial authority, harmful to someone’s reputation, or an “incitement to any offense.” In 1994, for example, the nation’s Supreme Court found the *International Herald Tribune* and its distributors guilty of having criticized three of Singapore’s high-ranking government officials in a newspaper article. Although the newspaper published letters of apology for the article, it was fined \$678,000 for breaking the law.

sedition-related offenses. More than 1,900 people were prosecuted for such offenses, and more than 100 newspapers and periodicals were censored for publishing items considered seditious. Congress also passed laws against using language that might encourage someone to disobey military orders or to avoid required military service. In 1919 the Supreme Court upheld the conviction of a man who had been prosecuted under these laws. The man had been arrested for handing out documents urging others to avoid required military service. In this case, *Schenck v. United States*, the Court established a key rule for drawing the boundaries of constitutional protections for free expression: the clear-and-present-danger test.

Under the Court’s clear-and-present-danger test, the First Amendment did not cover expressions that were closely connected to the committing of an illegal action. “The most stringent [strict] protection

of free speech," wrote Justice Oliver Wendell Holmes in the Court's majority opinion, "would not protect a man in falsely shouting fire in a theatre and causing a panic." The danger posed in the *Schenck* case was that encouraging men to disobey orders or to refuse military service might harm the nation's ability to defend itself in war.

In the 1969 case *Brandenburg v. Ohio* the Supreme Court made the clear-and-present-danger test less restrictive by ruling that simply expressing a belief that the government should be overthrown or that violence might be necessary to achieve certain goals is protected by the First Amendment. To convict a person of sedition, the government must prove that a person's words are meant to encourage *actively* the violent overthrow of the government or are likely to *succeed* in encouraging others to commit violence.

Freedom of Speech and the Media

The government and the courts also have tried to find a balance between the media's freedom of expression and other rights and interests. Media, as you know, include newspapers, magazines, books, television, radio, motion pictures, and computer networks. How has the media's right to freedom of expression been defined?

Prior Restraint With few exceptions, the First Amendment has been interpreted to forbid the government from using **prior restraint**, or stopping someone from expressing an idea or providing information. The case that established this rule against prior restraint involved a Minnesota law designed to keep newspapers from publishing sensational articles about government corruption. In 1931 the Supreme Court ruled in *Near v. Minnesota* that the law was a form of censorship. As such, it violated the

Fourteenth Amendment's Due Process Clause, which—according to the Supreme Court—extends the First Amendment's free-press protections to the states.

In other prior-restraint cases the courts have allowed the media to publish material that public officials considered secret. In 1971, for example, the Supreme Court ruled that the government could not prevent the *New York Times* and other newspapers from publishing the Pentagon Papers. These classified, top-secret government documents, secretly copied and given to the newspapers, discussed controversial and previously secret accounts of the Vietnam War. The Court did not accept the government's argument that publishing the papers would harm national security. In the Pentagon Papers case the justices did, however, state that the government could use prior restraint when it could give compelling reasons for doing so.

The New York Times

VOL. CXX... No. 1411 NEW YORK, THURSDAY, JULY 1, 1971 15 CENTS

SUPREME COURT, 6-3, UPHOLDS NEWSPAPERS ON PUBLICATION OF THE PENTAGON REPORT; TIMES RESUMES ITS SERIES, HALTED 15 DAYS

Nixon Says Turks Agree To Ban the Opium Poppy

WASHINGTON, June 30—The world's largest President Nixon announced today that Turkey has agreed to ban the opium poppy, a year he has been in office. The ban, which would take effect in 1972, is the first of a series of similar agreements that the President has announced in the last few months. The President said that the ban would be a major step in the fight against drug traffic. He said that the ban would be a major step in the fight against drug traffic. He said that the ban would be a major step in the fight against drug traffic.

President Calls for Steel and Labor to White House

WASHINGTON, June 30—President Nixon today called for a meeting of the steel and labor industries in the White House. The President said that the meeting would be a major step in the fight against inflation. He said that the meeting would be a major step in the fight against inflation. He said that the meeting would be a major step in the fight against inflation.

Pentagon Papers: Study Reports Kennedy Made 'Gamble' Into a Broad Commitment

WASHINGTON, June 30—A study of the Pentagon Papers today reported that President Kennedy made a "gamble" into a broad commitment. The study said that the President had made a "gamble" into a broad commitment. The study said that the President had made a "gamble" into a broad commitment. The study said that the President had made a "gamble" into a broad commitment.

Soviet Starts an Inquiry Into 3 Astronauts' Deaths

WASHINGTON, June 30—The Soviet Union today started an inquiry into the deaths of three American astronauts. The inquiry would be a major step in the fight against space exploration. The inquiry would be a major step in the fight against space exploration. The inquiry would be a major step in the fight against space exploration.

U.S. and Diem's Overthrow: Step by Step

WASHINGTON, June 30—A study of the overthrow of Diem in Vietnam today reported that the United States had taken a "step by step" approach. The study said that the United States had taken a "step by step" approach. The study said that the United States had taken a "step by step" approach.

Burger Dissents

WASHINGTON, June 30—Justice William J. Brennan today dissented from the Supreme Court's decision in the Pentagon Papers case. Justice Brennan said that the Court's decision was a major step in the fight against free speech. Justice Brennan said that the Court's decision was a major step in the fight against free speech.

CHOUTIUS UNSEAT Jim Garrison Is Arrested; TO TAIPERS OUSTER U.S. Says He Took Bribes

WASHINGTON, June 30—The U.S. government today arrested Jim Garrison, a member of the House of Representatives. The government said that Garrison had taken bribes. The government said that Garrison had taken bribes. The government said that Garrison had taken bribes.

U.S. Says He Took Bribes

WASHINGTON, June 30—The U.S. government today arrested Jim Garrison, a member of the House of Representatives. The government said that Garrison had taken bribes. The government said that Garrison had taken bribes. The government said that Garrison had taken bribes.

U.S. Says He Took Bribes

WASHINGTON, June 30—The U.S. government today arrested Jim Garrison, a member of the House of Representatives. The government said that Garrison had taken bribes. The government said that Garrison had taken bribes. The government said that Garrison had taken bribes.

LATE CITY EDITION
Published by The New York Times Company
1101 Avenue of the Americas, New York, N.Y. 10036
© 1971 The New York Times Company

CONSTITUTIONAL GOVERNMENT In 1971 the Supreme Court upheld the New York Times's right to publish the Pentagon Papers. Under what conditions can the government restrict a newspaper's right to publish top-secret documents?

Trials There are also some boundaries on the rights of the press during court trials. News reporters often have used the First Amendment guarantee of a free press to avoid giving testimony about the identities of their news sources or about information they have discovered in their work. Reporters fear that sources would be less likely to give information if they might be publicly named in court.

Federal courts, however, have refused to accept the argument that the First Amendment protects reporters from naming their sources. In 1972 the Supreme Court ruled in *Branzburg v. Hayes* that the First Amendment did not excuse reporters from the responsibilities that all citizens have to testify about information applicable in a court proceeding.

Some states have passed **shield laws** that allow reporters to protect the identity of their sources from state courts. In addition, many reporters who have been summoned to federal courts or to state courts without shield laws have gone to jail rather than reveal information about their sources.

Libel The Supreme Court also has ruled that abusing the freedom of speech to harm the character and reputation of others unjustly is not protected by the First Amendment. **Libel** is a written statement or visual presentation that is defamatory, or unjustly harms another person's character and reputation. **Slander** is verbal defamation.

Libel cases most often involve the news media. The 1964 Supreme Court case *New York Times v. Sullivan* established guidelines for determining when a public figure has been libeled. In that case, the *New York Times* and a group of African American clergymen had published a newspaper advertisement that harshly criticized some Alabama state officials' reactions to protests against racial discrimination. Some of the statements in the advertisement were false, and the state officials sued for libel.

The Supreme Court, however, decided that the officials had not been libeled. In a landmark ruling, the Court established a standard for libel involving public officials. The Court ruled that to be libelous, a false statement about a public official must reflect "actual malice" on the part of the author. That is, such a statement cannot be found libelous unless someone proves that it was made "with knowledge that it was false or with reckless disregard of whether it was false or not." The Court later extended this standard to public figures who are not officials—for example, celebrities.



CONSTITUTIONAL GOVERNMENT Many states have shield laws that allow reporters to protect the anonymity of their sources. Do reporters have a responsibility to avoid libel?

The argument for the *Sullivan* standard stems from the view that free expression in the media helps monitor possible government abuses. Making it easy to sue successfully for libel might make the media more hesitant to publish hard-hitting stories involving government officials. Nevertheless, courts have allowed the government to establish some boundaries on free expression through libel laws.

Obscenity The First Amendment does not protect obscenity. In general, an **obscenity** is something sexually indecent and highly offensive. In legal terms, however, defining obscenity is a difficult task for the courts because different people find different things offensive. Nevertheless, in the 1957 case *Roth v. United States* the Court ruled that obscenity was something "utterly without redeeming social value." In the 1973 case *Miller v. California* the Supreme Court redefined obscenity as material

- ★ in which the major theme would be judged to appeal to indecent sexual desires by the average person applying "contemporary [current] community standards";
- ★ that shows in a clearly offensive way sexual behavior not allowed by state laws; and

★ that is “lacking serious literary, artistic, political, or scientific value.”

Even with these factors, determining what is obscene is difficult because personal and community standards vary. In another case that same year the Supreme Court ruled that a Georgia community could not use its local standards to ban the motion picture *Carnal Knowledge*—which starred several well-known and respected actors—for obscenity. The ruling seemed to limit the extent to which a local community’s standards could differ from what the Court thought of as “national” standards. In doing so, the ruling further complicated the question of whether something is obscene or protected speech.

The Supreme Court has ruled, however, that sexually explicit material involving children is not protected expression regardless of whether it meets the three-part test for obscenity. Congress and the states have passed laws against such material. In 1996 Congress also passed a law restricting obscenity on the Internet, the first such major law affecting communication via computers. Critics went to trial to challenge the law, and the Supreme Court ruled in 1997 that it was unconstitutional.

Licensing Radio and television stations generally have fewer First Amendment protections against government actions than do newspapers, magazines, and other print media. This is true in part because radio and television broadcast over airwaves owned by the public. To operate, radio and television stations must receive a license from the Federal Communications Commission (FCC).

In fact, in 1934 the FCC developed a set of rules that radio and television stations must follow in order to receive an FCC license. Even though the FCC could not censor broadcasters or restrict the First Amendment protections of broadcast news reporters, the FCC could subject the renewal of a station’s license to the various rules that it or Congress set. For example, stations had to restrict the broadcast of violent or sexually explicit material during certain times of the day, particularly during “family hour,” the first hour of prime-time programming. In addition, broadcasters had to operate under what was known as the equal-time doctrine. This policy required that opposing political candidates be given equal time on a station to state their views.

These restrictions were gradually cut back in the 1970s and 1980s, however, partially in response to the development of cable and satellite broadcasting and greater public access to the media. Interestingly, the courts have ruled that cable television stations have broader First Amendment protections than do other broadcasters. This is because cable programming is not broadcast over public airwaves. Many people, including some members of Congress, have petitioned broadcasters to reinstate family hour programming and to return to the original FCC standards.

False Advertising The courts take a more definite stand on limiting freedom of speech when it relates to commercial advertising. In particular, courts have ruled that the government may

Television Ratings System

TV-Y

Suitable for all children

TV-Y7

Suitable for children age 7 and above, may include mild physical or comedic violence

TV-G

Suitable for all viewers, but not designed specifically for children

TV-PG

Parental guidance suggested; programs may contain coarse language, limited violence, suggestive sexual dialogue or situations, or other material parents may find objectionable

TV-14

May contain material unsuitable for children under 14, including adult themes, sexual content, strong language, and more intense violence

TV-M

Mature audiences only, no children under 17

Television broadcasters agreed to a ratings system that went into effect in 1997. Political officials and consumers pressed for the system as a way to shield children from inappropriate programming. Why might some people criticize this rating system?

Citizenship in

Action

The Tinker's Silent Protest

In 1965 three students—13-year-old Mary Beth Tinker, 15-year-old John Tinker, and 16-year-old Christopher Eckhardt—made a choice that would bring them to the attention of the Supreme Court. These young people were part of a group that decided to silently protest the U.S. government's involvement in the Vietnam War by wearing black armbands during the holiday season. They took this action to mourn the deaths of soldiers killed in the war.

When Des Moines school district officials learned of the group's plan, they feared that the controversial nature of the protest would cause a disturbance in the schools. The school board adopted a policy banning the wearing of the armbands. Students who arrived at school wearing one of the symbols of protest would be asked to remove it. Any student who refused would be suspended from school until he or she agreed to return to school without the armband.



Mary Beth and John Tinker display the armbands they wore to protest the U.S. government's involvement in the Vietnam War.

In mid-December, Mary Beth, John, and Christopher came to school wearing black armbands. The students were sent home and suspended. They then refused to return to school without the armbands until after New Year's Day, the end of the group's planned period of protest.

Shortly after this incident the students' fathers filed a complaint in district court, asking that the school officials and school board be prohibited from disciplining the students for their actions. The court dismissed the complaint and supported the board's policy on the grounds that it was adopted to prevent disturbances in the classroom. The Tinkers appealed the case, but the court of appeals upheld the district court's ruling.

The Supreme Court agreed the following year to hear the case. In *Tinker v. Des Moines Independent Community School District*, the Court ruled that wearing an armband is symbolic speech and as an expression of opinion is protected by the First Amendment. The Court found no evidence to support the school board's claim that it had acted to prevent disturbance in the schools. The board did not prove that the wearing of the armbands had interfered with school discipline.

Furthermore, the Court ruled that in order for school officials to ban an expression of opinion, they must show evidence that their actions were not based merely on fear of the expression of controversial or unpopular opinions. In the Court's majority opinion, Justice Abe Fortas stated, "Students in school as well as out of school are 'persons' under our Constitution. They are possessed of fundamental rights which the State must respect, just as they themselves must respect their obligations to the State." The Court, however, did not prohibit schools from limiting students' rights to express themselves, but merely required them to provide a constitutionally valid reason for restricting students' speech.

What Do You Think?



1. What limits should be placed on students' rights to express themselves in their schools?
2. Have you ever expressed your opinions in your school? What forms of expression did you use?

pass laws against false advertising. The courts have agreed that false or misleading advertising works against the public interest. For example, the First Amendment does not protect an ad that exaggerates the health benefits of a product or that makes claims about a product that may do nothing beneficial or may actually harm someone.

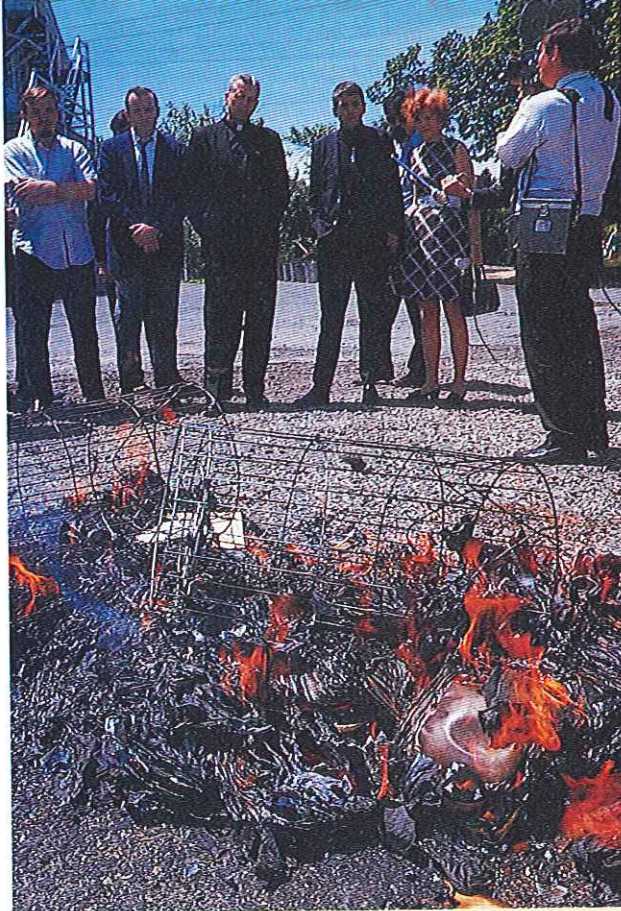
For many years federal courts ruled that the right to free expression did not apply to business advertising. The Supreme Court ruled in 1942, for example, that business advertising was commercial, as opposed to “pure,” speech. As such, it was not protected by the First Amendment. In later years, however, the Court extended some protections to business advertising, such as ads for professional services. The government may still restrict false advertising and advertising that is not in the public interest—for example, cigarette ads on television.

Freedom of Speech and Individual Behavior

Debate over free speech is not limited to national security issues and the media. The Supreme Court also has applied First Amendment protections to cases that involve personal conduct and those that involve speech that expresses hatred.

Personal Conduct Some of the most difficult questions about what forms of expression are protected by the First Amendment involve personal conduct. The Supreme Court has ruled that some conduct is a form of symbolic speech that is protected by the First Amendment. **Symbolic speech** is an action meant to deliver a message.

Deciding which actions are examples of protected symbolic speech, however, has been difficult for the Supreme Court. In fact, the Court has ruled that not all conduct designed to communicate a message is protected by the First Amendment. In the 1968 case *United States v. O'Brien*, for example, the Court ruled that burning a draft card was not protected symbolic speech. The **draft** was a policy requiring men to serve in the military. Destroying a draft card was against the law. In the 1960s and early 1970s, a number of men around the country burned their draft cards to protest U.S. involvement in the Vietnam War. In the *O'Brien* decision the Court ruled that it could not accept “the view that an apparently limitless variety of conduct can be labeled ‘speech.’”



CONSTITUTIONAL GOVERNMENT Demonstrators in Baltimore, Maryland, burn draft files in protest of the Vietnam War. Why did the Court rule that burning draft cards is not protected by the Constitution?

One year later, however, the Court ruled that students in an Iowa high school could wear black armbands to protest the Vietnam War. In the 1969 case *Tinker v. Des Moines Independent Community School District*, school officials argued that the issue was one of conduct, not the right to free expression. (See Citizenship in Action, page 309.) School officials claimed that the armbands would cause discipline problems. The Supreme Court ruled, however, that wearing the armbands sent a political message and was thus a form of symbolic speech protected by the First Amendment. The Court also determined that no disruption had actually occurred.

In addition to the *Tinker* case, the Supreme Court has also ruled that laws may not restrict other forms of symbolic speech. For example, in 1989 and 1990 the Court ruled that state and federal laws against burning the U.S. flag as a form of protest violated the right to free speech. The Court said that the First Amendment protected freedom of expression even when a vast majority of people disagreed with the particular form of expression—in this instance, flag burning.

Hate Speech In addition to symbolic speech issues, the Supreme Court in recent years has addressed cases involving rules to curb hate speech. Supporters of such rules define **hate speech** as the expression of hatred or bias against a person, based on characteristics such as race, sex, religion, or sexual orientation. During the late 1980s many colleges passed rules that prohibited hate speech.

Various federal courts have ruled that many hate speech rules are unconstitutional because they are so vague that a reasonable person could not know what speech the rules actually limit. Some students and teachers, for example, were reluctant to express their opinions for fear of punishment. The courts also have declared as unconstitutional some hate speech rules that banned certain language, such as racist opinions, simply because it offended some people.

Supporters of hate speech rules point to the 1942 case of *Chaplinsky v. New Hampshire*, in which the Supreme Court said that using “insulting or ‘fighting’ words” that are likely to cause a fight or other physical disturbance are not protected by the First Amendment. Some of these supporters propose that future hate speech rules should be limited to restricting these types of “fighting words.” Colleges continue to struggle to uphold the sometimes conflicting values of the First Amendment and respect for the dignity of all groups of people.

Some Forms of Protected Symbolic Speech

 Music Lyrics	 Armbands
 Flag Desecration [spoiling]	 T-Shirt Slogans
 Works of Art	 Public Demonstrations
 Theatrical Performances	 Sit In/Stand In
 Political Buttons	

The forms of symbolic speech illustrated in this chart are protected by law. Under what conditions might the Supreme Court restrict these forms of symbolic speech?

SECTION 3

REVIEW

1. Define the following terms: treason, sedition, prior restraint, shield law, libel, slander, obscenity, symbolic speech, draft, hate speech.
2. What is the clear-and-present-danger test? How does it affect the relationship between free speech and national security?
3. What guidelines did the Supreme Court establish for deciding whether a public figure has been libeled? In what other ways are the media's First Amendment rights limited?
4. What kinds of actions qualify as symbolic speech? Why has the Supreme Court ruled against many hate speech rules?

5. Thinking and Writing Critically

Suppose that a group wants to place a newspaper advertisement that insults various racial groups and calls for policies that discriminate against people in those groups. How would you determine whether or not the First Amendment protects the language used in the ad? If you were the newspaper's editor, would you publish the ad? Why or why not?

6. Applying CONSTITUTIONAL GOVERNMENT

Why might a reporter choose jail over revealing a source? How do state shield laws protect journalists' sources? Why do you think that many states do not have shield laws?

FREEDOM OF ASSEMBLY AND PETITION

Political Dictionary

picketing



Objectives

- ★ How does the First Amendment protect the rights of assembly and petition on public property?
- ★ How is the freedom to demonstrate restricted on private property?
- ★ How does freedom of assembly support freedom of association?

Perhaps you have seen people demonstrating in your community for laws to protect the environment or seen them passing out flyers calling for lower taxes. Or maybe you have seen news reports of people addressing a meeting of your local government about traffic laws or zoning issues. You might know someone who has joined with others to march in front of a business to demand higher wages or better working conditions.

What gave these people the right to demonstrate and to address government officials about their concerns? The people in each of these examples exercised their rights of assembly and petition. Along with freedoms of religion and speech, the rights of assembly and petition are protected by the First Amendment. As with other First

Amendment liberties, however, the government may act to promote the public good by balancing these freedoms with conflicting considerations.

Demonstrations and Protests

Demonstrations and protests are among the most common examples of the rights of assembly and petition. Such gatherings include abortion protests, marches in support of equal rights, and parades honoring certain groups or causes. The purpose of many of these demonstrations is to persuade government officials and others to pursue certain goals.

As with other civil liberties guaranteed by the Bill of Rights, the freedom to demonstrate peacefully is protected from the actions of the federal government, as well as from state and local governments. In some cases, however, the courts have allowed governments to set boundaries on the freedom to assemble, in order to protect the rights of others.

Assembly and Public Property It has long been recognized that the freedom to demonstrate on public property may be regulated in the interest of keeping order and shielding people from loud noise, blocked streets, and other intrusions. Such restrictions are called time, place, and manner



POLITICAL PROCESSES Picketing on public property such as a public sidewalk in front of a business is permitted. Do businesses have the right to prohibit picketing on their private property?

regulations. The courts have said that these rules must be applied fairly and that they may not be used as a means to restrict a specific group's freedom to demonstrate.

One example of a time, place, and manner regulation is a parade permit that local governments may require people to obtain before holding demonstrations on public streets. Such a permit identifies the location and route of the parade or demonstration, as well as the time it will occur. The permit process allows local authorities to develop procedures for managing traffic flow and to prepare for problems that might occur during the demonstration.

In some cases the courts also have allowed governments to regulate demonstrations for reasons of public safety. Police may halt demonstrations that turn violent, for example, and arrest those responsible for the violence. In doing so, the police are protecting the safety of others.

The Supreme Court also has allowed laws prohibiting demonstrations in jails and restricting demonstrations that would disrupt school activities. These laws are allowed because such demonstrations would interfere with critical activities, such as maintaining control of jails and educating children.

The courts have ruled against other restrictions on public assembly, however, even ones that attempted to prevent highly unpopular activities in a community. In 1978, for example, the Illinois Supreme Court ruled that officials in Skokie, Illinois—a largely Jewish suburb of Chicago—could not stop members of a neo-Nazi party—a U.S. version of the Nazi Party—from parading through the city. In the 1930s and 1940s the Nazi government in Germany was responsible for the murder of millions of Jews as well as others. Among Skokie's residents were Jews who had survived Nazi persecution, as well as relatives of the Nazis' victims. Before the ruling, local officials had attempted to stop the neo-Nazi parade for fear that it

might lead to violence and to enforce several Skokie ordinances imposing criminal penalties on certain kinds of speech and assembly. The U.S. Supreme Court refused to review the state court's ruling, however, which had stated that the First Amendment protected the neo-Nazis' right to assemble. Therefore, the neo-Nazis were allowed to march.

Assembly and Private Property Among the strongest boundaries on freedom of assembly are those involving demonstrations on private property. The First Amendment right of assembly does not give people the right to use others' private property, such as a business or residence. In 1972, for example, the Supreme Court ruled in *Lloyd Corporation v. Tanner* that a shopping mall could prevent people who were on its private property from passing out literature opposing U.S. involvement in the Vietnam War. Such activities, however, could take place on the public sidewalks and streets outside the mall.

In some circumstances, private businesses also may prevent picketing on their property. **Picketing**



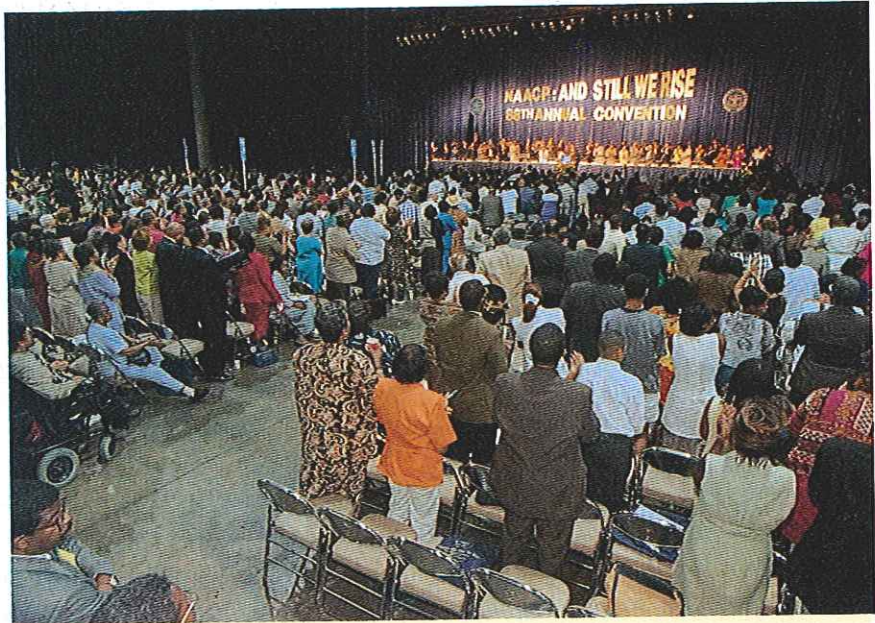
PRINCIPLES OF DEMOCRACY Any group of individuals that wants to demonstrate on public property must first obtain a permit. Government officials have occasionally attempted to prevent controversial groups from demonstrating, as was the case in Skokie, Illinois, during the 1970s. What are the restrictions that regulate public demonstrations called?

is walking or standing in front of a place of business or other property, often holding signs urging others not to buy the company's products or asking others not to cross the picket line to work for the company. Although picketing may be prohibited on the company's property, it is allowed on the surrounding public property.

Peaceful Association

The First Amendment's guarantee of free assembly has been used for more than protecting the right to demonstrate. The courts also have interpreted the freedom of assembly to mean that people have a right to associate with various groups without interference from the government.

A key Supreme Court ruling involving the right of free association was the 1958 decision in *National Association for the Advancement of Colored People (NAACP) v. Alabama*. The NAACP is an organization that was founded in 1909 to work for equal rights for African Americans. The 1958 case reached the Supreme Court after the state of Alabama fined the



PRINCIPLES OF DEMOCRACY *The First Amendment's guarantee of free assembly has also been interpreted to mean that people have the right to associate with various groups without government interference. The above photograph shows a meeting of the NAACP. What did the Supreme Court rule in the NAACP v. Alabama case?*

NAACP for not providing government officials a list of its state members. The Court ruled that Alabama officials could not force the NAACP to provide the names of its members. Such a rule, the Court said, violated the right of people to associate and organize in pursuit of a lawful goal without interference from the government.

SECTION 4

REVIEW

1. Define the following term: picketing.
2. What are time, place, and manner regulations? What is the purpose of such restrictions on the right to demonstrate on public property?
3. What role did the 1972 Supreme Court case of *Lloyd Corporation v. Tanner* play in applying the First Amendment's guarantee of freedom of assembly to demonstrations on people's private property?
4. How is freedom of association protected by the First Amendment?

5. Thinking and Writing Critically

How do officials at your school regulate student assemblies? In what ways are the regulations similar to time, place, and manner regulations that government officials set for public demonstrations?

6. Applying CONSTITUTIONAL GOVERNMENT

Why do courts uphold the right to stage a public demonstration or to march even for groups whose views might be offensive to others in the community? Do you agree or disagree with their decisions?

SECTION 1

The Bill of Rights guarantees civil liberties for residents of the United States. Civil liberties are basic individual rights and freedoms that are protected from government violation.

Among these liberties are the First Amendment freedoms of religion, speech, the press, assembly, and petition. The government and the courts balance these individual liberties with conflicting rights, and with the interests of the community. In finding this balance, the government promotes the public good.

SECTION 2

Freedom of religion is guaranteed by two clauses of the First Amendment. The Establishment Clause prohibits government from acting in ways that establish an official religion, that favor one religion over another, or that favor all religions. The Establishment Clause affects such issues as religion in public schools, government aid for religion, and tax laws regarding religious property. It does not, however, prevent some customs in the United States that reflect religious beliefs.

The Free Exercise Clause prohibits the government from passing laws that restrict people's right to choose their own religious beliefs. In establishment cases the courts have helped define the relationship between government and religion. In free exercise cases, the courts have restricted the government's ability to force people to obey laws that conflict with their religious beliefs. The courts have, however, upheld such laws when public health concerns are involved.

SECTION 3

The First Amendment also guarantees free speech. The Supreme Court, however, has ruled that not all forms of expression are protected by the First Amendment. For example, the government has established boundaries on freedom of speech when it comes to national security. The Court

has restricted free expression that represents a "clear and present danger" to national security or to the safety of individuals. The courts have ruled that some forms of symbolic speech are protected by the First Amendment. In recent years, the courts also have addressed cases involving rules to curb hate speech—the expression of hatred or bias against a person, based on characteristics such as race, religion, gender, and sexual orientation.

The First Amendment does not protect libel, slander, obscenity, or false advertising. Furthermore, the government may regulate radio and television broadcasting.

SECTION 4

Individuals' freedom of assembly and freedom of petition are protected under the First Amendment. Demonstrations and protests are among the most common examples of the rights of assembly and petition. In general, these rights allow people to demonstrate peaceably on public property. Property owners may prohibit demonstrations on their private property, however.

The courts also have interpreted the freedom of assembly to protect the freedom of association. By extension, therefore, people have the right to associate with various groups without government interference.


Government Notebook

Review what you wrote in your Government Notebook at the beginning of this chapter about the ways that government may restrict First Amendment rights. Now that you have studied this chapter, how would you revise your answer? Why is it important that these rights are not without limit? Record your answers in your Notebook.

REVIEW

REVIEWING CONCEPTS

1. How does the Supreme Court apply the clear-and-present-danger test to free-expression cases? In what ways may government set boundaries on free speech in the media?
2. How are civil liberties guaranteed in the U.S. Bill of Rights? Do aliens have the same rights as citizens in the United States?
3. How is the freedom of assembly applied on public property and on private property? How does the freedom of assembly protect the right of association?
4. How is symbolic speech protected by the First Amendment? What is the difference between the free expression that is restricted by many hate speech rules and that which the courts have called fighting words?
5. What is the importance of the Establishment and Free Exercise Clauses of the First Amendment? Under what conditions do the courts allow the government to aid religious organizations?
6. What is the role of the courts in finding a proper balance between individuals' civil liberties and some wider public interest? Why is this balance difficult to achieve?

THINKING AND WRITING CRITICALLY



1. **CONSTITUTIONAL GOVERNMENT** Imagine that you are visiting a country where freedom of religion is not a right. The country does protect a free press, however, and a newspaper has asked you to write an editorial favoring religious freedom. Write a short editorial explaining why religious freedom is valued in the United States.

2. **CONSTITUTIONAL GOVERNMENT** Although some states have shield laws that allow reporters to protect their sources, many state courts and all federal courts do not excuse reporters from the responsibility of testifying about information important in a court proceeding. Do you think that news reporters should always be required to testify in criminal cases about the identities of their news sources? Explain your answer.
3. **PRINCIPLES OF DEMOCRACY** Why are freedom of speech and freedom of the press important in a democracy? Do you think that the government places too many limits on these freedoms? Why or why not?
4. **PUBLIC GOOD** Recall what you learned about the debate between people who believe First Amendment rights are absolute and people who believe those rights should be balanced with other considerations. What do you think? Should First Amendment rights ever be restricted? In what kinds of situations should this occur? Explain your answer.

CITIZENSHIP IN YOUR COMMUNITY



Working with others in your group, create a Media Guide that lists and describes the various kinds of media that exist in your community. Include addresses and other identifying information for television and radio stations, newspapers, and magazines. In addition, list the addresses of any libraries that offer their patrons access to the Internet. You might want to include information on classes that teach patrons how to use the Internet. Illustrate the guide with various images and other art, and consider giving it to a visitor's center to distribute to tourists and to new residents.

INDIVIDUAL PORTFOLIO PROJECT



Create a Free Press Handbook that student reporters might use as part of their training to become broadcast or print journalists. The handbook should describe how the First Amendment affects various parts of the media, including information about the kinds of restrictions that the courts allow to be placed on free expression.

PRACTICING SKILLS: CONDUCTING RESEARCH



To understand the importance of federal laws and Supreme Court decisions you must be able to identify cause-and-effect relationships. To identify cause and effect, look at why an event took place and what happened as a result of the event. Often more than one cause can trigger an effect, and one cause can result in multiple effects.

Create a chart showing the cause-and-effect relationship among the Supreme Court cases listed below. If there are multiple causes or effects, list them all in the chart. The chart should be clear and easy to follow.

1. *Engel v. Vitale*
2. *West Virginia State Board of Education v. Barnette*
3. *Schenck v. United States*

THE INTERNET: LEARNING ONLINE



In 1997 the Supreme Court ruled as unconstitutional the Communications Decency Act, a law restricting obscene material on the Internet. Conduct an Internet search for information about this ruling. You might start with search words such as *Reno v. American Civil Liberties Union*, *Supreme Court and Communications Decency Act*, and *obscenity law*. Then design your own Web site entitled *The Internet and the Law*. Write a short editorial for your Web site explaining whether you agree with the Court's opinion that the law unjustly limits free expression. Include links to applicable Web sites about law that you found in your search.

ANALYZING PRIMARY SOURCES



LETTER TO THE DANBURY BAPTISTS

Thomas Jefferson believed that the First Amendment created a wall separating church and state. In a letter written to the Committee of the Danbury Baptist Association in Connecticut on January 1, 1802, Jefferson offers his opinion on the necessity of a law that specifically forbids government from favoring one religion over another. Read the excerpt from the letter and answer the questions that follow.

“Believing with you that religion is a matter which lies solely between man and his God, that he owes account to none other for his faith or his worship, that the legislative powers of government reach actions only, and not opinions, I contemplate [think] with sovereign [greatest] reverence that act of the whole American people which declared that their legislature should ‘make no law respecting an establishment of religion, or prohibiting the free exercise thereof,’ thus building a wall of separation between church and State. Adhering to [obeying] this expression of the supreme will of the nation on behalf of the rights of conscience, I shall see with sincere satisfaction the progress of those sentiments [beliefs] which tend to restore to man all his natural rights, convinced he has no natural right in opposition to his social duties.”

1. How do government powers reach religious actions, but not religious opinions? Why do you think that it is important for people to be allowed to form religious opinions without government intervention?
2. To which “act” is Jefferson referring when he states that “that act of the whole American people which declared that their legislature should “‘make no law respecting an establishment of religion . . .’”? ”
3. How does a law that prevents government from establishing a religion and guarantees all people freedom of religion protect people’s rights?

CHAPTER 14

ASSURING INDIVIDUAL RIGHTS

If you like to watch police shows on television, you probably know what it means when one officer says to another, “Read them their rights.” At that point, the officer explains to the criminal suspects a list of constitutional rights that protect people accused of crimes. These include, for example, the right to remain silent and the right to be represented by a lawyer.

The Constitution requires government to follow certain procedures—such as reading rights to a suspect—and to pass fair laws in order to assure the protection of many civil liberties. These liberties include freedom from unreasonable police action, the right to privacy, and fair treatment when accused of crimes.



Government Notebook

When do you think police may search people, their cars, or their homes? When may school officials search students or their lockers? Write your answers in your Government Notebook.

