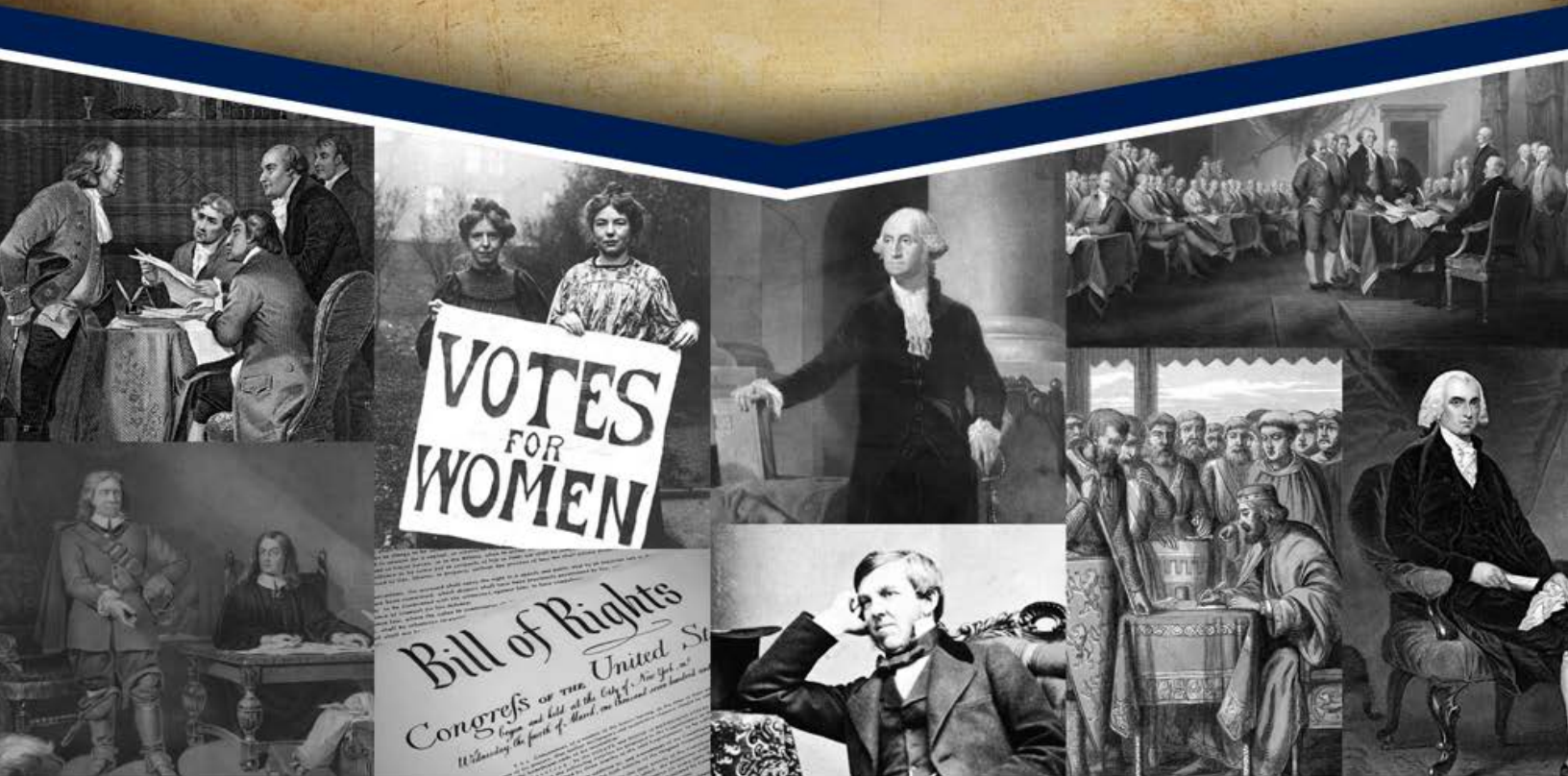




A BRIEF HISTORY OF

FREE SPEECH

in America





Preface

This “History of Free Speech in the United States” booklet provides an informative timeline of the concept’s establishment and development throughout the nation’s history. It highlights seminal events in American history including court decisions that shaped a culture and gave a voice to generations that would have otherwise been silenced in public discourse, or even erased from history.

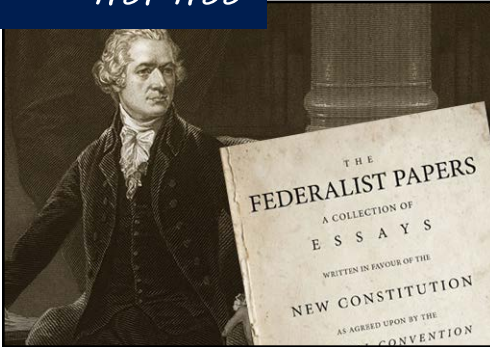
Words are powerful – which is why throughout history, kings, tyrants and governments have imprisoned, tortured, and even killed people to maintain control over ideas. Only through the free “clash of ideas” do societies pursue truth that can enable human flourishing.

Even before there was an independent “America” to speak of, our nation built a relationship with free speech. The Zenger case (1735) abolished seditious libel, which restricted the British government from infringing on press freedom. Colonists leveraged these newfound rights to utilize words as a check on authority. These principles set the stage for the U.S. Constitution and, later, the First Amendment in the U.S. Bill of Rights (1791) which enshrined freedom of speech in the forefront of the American consciousness and legal foundations.

Of course, the story doesn’t end there; over the next two centuries or so came challenges to define this freedom: sedition acts, questions on when free speech would (and wouldn’t) be protected, protests, flag burnings, and countless court rulings. These challenges to the First Amendment and what form its protections should take, continue to the modern day. And while the notion of free speech isn’t always correctly understood or interpreted, when properly exercised and protected, it has an unparalleled ability to effectuate positive change and elevate the nation.

A BRIEF HISTORY OF FREE SPEECH *in America*

1787-1788



Federalist Papers written and published.

During the Founding Fathers' debates over how best to structure the new nation's government, the Federalist Papers were one outlet where potential policies were articulated and defended. Federalist 84, penned by Alexander Hamilton, opposed what would later become the U.S. Bill of Rights. Hamilton felt the addition of a Bill of Rights was unnecessary, as it would give the people the false impression that the ONLY rights they held were the ones specifically listed in the document. Eventually, the Bill of Rights was created – but as a compromise with Hamilton, the 10th Amendment specifically notes that all rights not listed remain in the hands of the public.

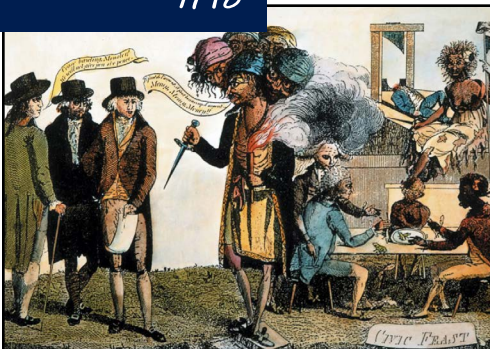
1791



The U.S. Bill of Rights is published, establishing the First Amendment and other freedoms for all Americans.

The Bill of Rights covers the first 10 Amendments to the Constitution. At the very beginning of the document, in 45 simple words, it established five fundamental freedoms for all Americans: freedom of religion; freedom of speech; freedom of the press; the right to assemble; and the right to petition the government for a redress of grievances. Other rights specifically enumerated in the Bill of Rights include the right to due process, the right to a speedy trial, and the right to bear arms.

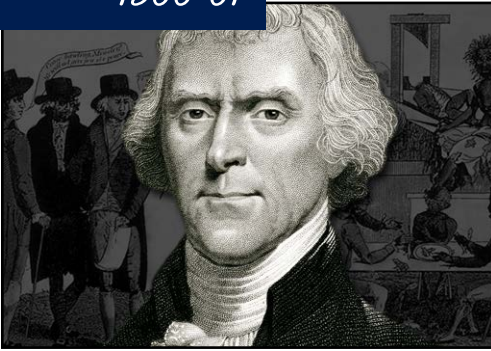
1798



Alien & Sedition Acts passed, limiting freedom of speech and the press.

The Alien and Sedition Acts were a series of four laws passed by the Federalist Congress and signed into law by President John Adams. While many believed war with France imminent, the Federalists accused the Jeffersonians of siding with France against the U.S. government. These laws limited freedom of speech and of the press and included new powers to deport foreigners, restrict their activities, and make it harder for them to vote.

1800-01



President Thomas Jefferson, opposed to the Acts, allows the Sedition Act and the Alien Friends Act to expire.

The Sedition Act restricted any speech deemed critical of the federal government, and Jeffersonian newspaper owners who disagreed with the government were often targeted for criminal prosecution. Thomas Jefferson defeated John Adams in the 1800 Presidential election; at the time, it was widely believed that opposition to the Acts helped propel the Jeffersonians to victory. The Acts were allowed to expire in 1800 (Sedition Act) and 1801 (Alien Friends Act).

1915



Sara Bard Field drove from San Francisco to Washington, DC to deliver a petition signed by 500,000 Americans to President Woodrow Wilson in support of women's suffrage.

At the Women's Voter Convention, the women's suffrage petition was unveiled, and Field was selected to drive the petition across the country to deliver it to President Wilson. Along the way, Field gave speeches and recited poetry to rally the public in support of the suffragists' position.

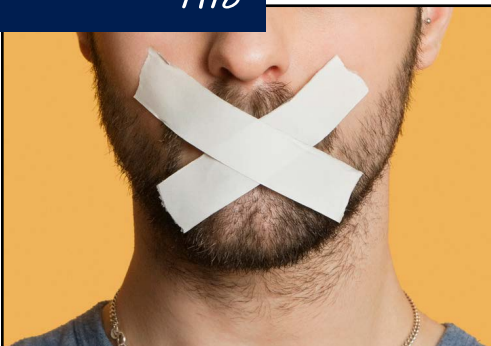
1917



The Espionage Act passed, imposing a twenty-year maximum sentence for anyone causing or trying to cause "insubordination, disloyalty, mutiny, or refusal of duty in the United States military or naval forces."

Shortly after the United States entered into World War I, the Espionage Act was passed. Applicable in wartime only, it was designed to protect military operations and recruitment by preventing insubordination in the military and by restricting all forms of enemy support. It limited free speech and imposed stiff jail sentences to anyone found in violation. It has been heavily contested in court ever since.

1918



The Sedition Act of 1918 targeted anarchists, socialists, and other left-wing activists who opposed U.S. participation in World War I.

The Sedition Act of 1918 was a set of amendments to the Espionage Act, extending the 1917 act to cover a broader range of wartime offenses. The Sedition Act severely curtailed negative speech about the U.S. government, its flag, and the armed forces – including any speech that cast the government or the war in a negative light.

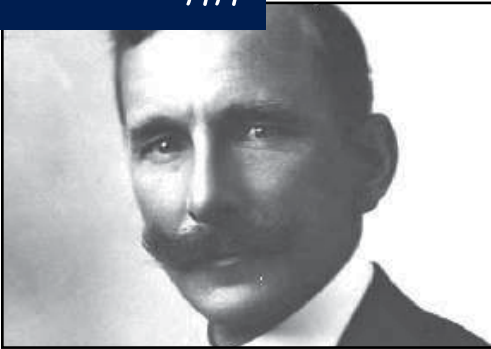
1919



Debs v. United States unsuccessfully challenged the 1917 Espionage Act.

Socialist Eugene Debs was a public figure who received 1 million votes in the 1912 Presidential election. During a public speech, Debs, a pacifist, encouraged others not to join the military. Debs argued he was constitutionally protected under his free speech rights, but the U.S. Supreme Court upheld the conviction, noting that dissent was limited during wartime. This decision was considered a low point for free speech protection.

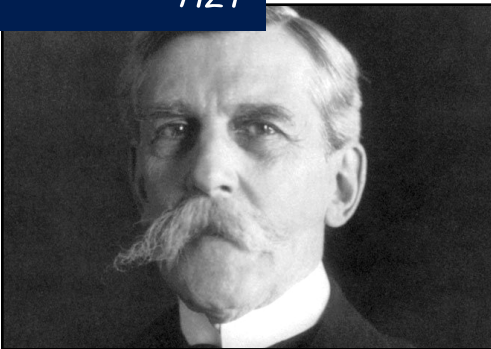
1919



In *Schenck v. United States*, the Supreme Court announced the famous “clear and present danger” test to determine when a state could constitutionally limit an individual’s free speech rights under the First Amendment.

Charles Schenck and Elizabeth Baer were indicted under the Espionage Act for obstructing recruitment and enlistment services during World War I. The U.S. Supreme Court decision in this case, written by Justice Oliver Wendell Holmes Jr., established the limitations of free speech in times of war and established the “clear and present danger” test.

1929



U.S. Supreme Court Justice Oliver Wendell Holmes Jr. further defined free speech: “The principle of free thought is not free thought for those who agree with us but freedom for the thought we hate.”

In *United States v. Schwimmer*, the U.S. Supreme Court ruled that pacifist Rosika Schwimmer could be denied U.S. citizenship because she refused to personally bear arms to defend the United States. In a historic dissent, Justice Oliver Wendell Holmes Jr. established many of the fundamental free speech freedoms alive today. He emphasized tolerance for political speech and especially for those whose free thought and speech we hate the most.

1942



Landmark *Chaplinsky v. New Hampshire* case established the "fighting words" standard.

Walter Chaplinsky was a Jehovah's Witness who was arrested for using the public sidewalk as a pulpit to criticize organized religion. His actions violated a New Hampshire law prohibiting the use of "offensive, derisive or annoying" words towards others. The U.S. Supreme Court unanimously upheld the arrest, ruling that "fighting" words, or those which inherently cause harm, are likely to create an immediate disturbance and are not protected under the First Amendment. Subsequent Supreme Court cases continue to debate what constitutes fighting words.

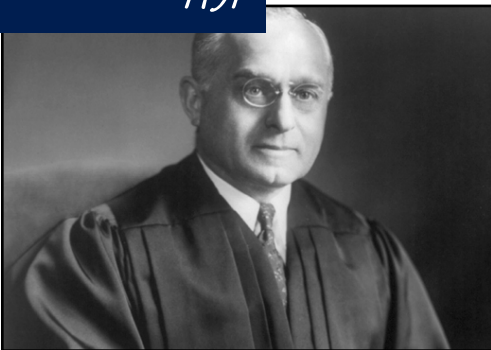
1943



***WV State Board of Education v. Barnette* established that students could not be punished for refusing to say the Pledge of Allegiance or to salute the American flag.**

The West Virginia Board of Education required public schools to mandate salutes to the American flag by teachers and students during regular school activities. The U.S. Supreme Court held that this was a violation of individuals' Constitutional rights and that such rights should be placed "beyond the reach of majorities and officials."

1951



Justice Felix Frankfurter: "The demands of free speech in a democratic society as well as the interest in national security are better served by candid and informed weighing of the competing interests, within the confines of the judicial process."

In *Dennis v. United States*, the U.S. Supreme Court upheld a conviction of eleven communist leaders for conspiring to overthrow the U.S. government under the Smith Act. Justice Felix Frankfurter toiled over speech rights, arguing that justices are not legislators, and proposed a "balancing test" to weigh the gravity of "evil" against the justification of infringing upon free speech in order to avoid said danger.

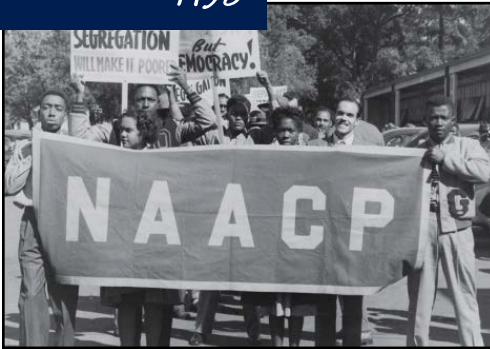
1957



***Sweezy v. New Hampshire* defended the principle of academic freedom.**

Professor Paul W. Sweezy was jailed for refusing to answer questions about past university lectures he had given. In this landmark case on academic freedom, the U.S. Supreme Court ruled in favor of Sweezy, recognizing that his due process rights were violated and that it is necessary for academics to teach, research and study without government or administrative interference.

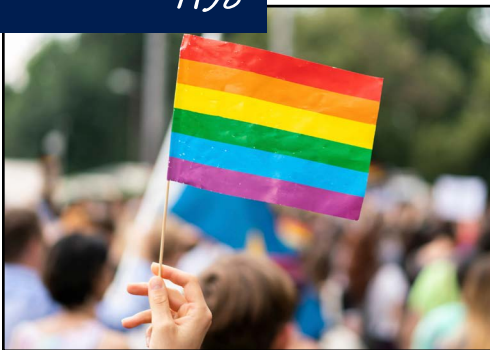
1958



NAACP v. Alabama used the First and Fourteenth Amendments to preserve the privacy of membership lists.

The state of Alabama sought to prevent the NAACP from conducting business in the state – and as part of these efforts, the state demanded the NAACP’s records (including membership lists) which could be used to intimidate the organization’s members and donors. The U.S. Supreme Court ruled unanimously that the First and Fourteenth Amendment protected the free association rights of the NAACP and its members to do business in the state and that keeping those lists private would guard against threats and retaliation; this critical decision helped to keep the civil rights movement alive.

1958



Constitutional protections are found to cover pro-LGBT speech and expression.

Historically, the American government had routinely harassed the LGBT community by labeling their conduct “obscene” and their gatherings “riots.” ONE Magazine, which catered to this community, faced pushback from both the FBI and the U.S. Post Office; in 1954, the Postmaster General declared one of the magazine’s issues “obscene, lewd, lascivious, and filthy,” and refused to mail copies, citing the Comstock Act. Although the lower courts sided with the government, in 1958 the U.S. Supreme Court overturned those rulings in *One, Inc. v. Olesen* – becoming the first case acknowledging that First Amendment protections extended to the LGBT community.

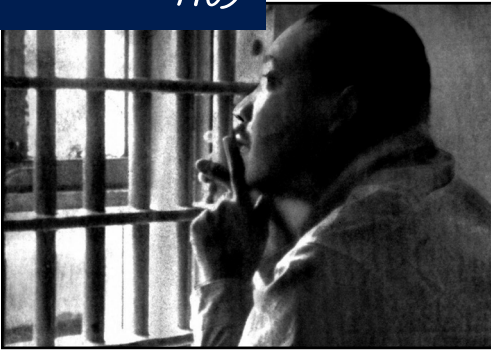
1960



The First Amendment was used to protect the anonymity of writers and publishers.

Manuel Tally was arrested for distributing anonymous pamphlets that urged the boycott of certain businesses which refused to hire minorities. In *Talley v. California*, the U.S. Supreme Court ruled that a Los Angeles law requiring that the person who published or distributed such pamphlets be named was overbroad and unconstitutional, and violated the First Amendment’s protections of press and speech freedom. (After all, even the Federalist Papers were written using pseudonyms!)

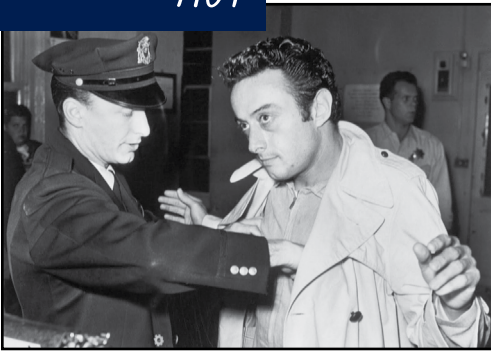
1963



Martin Luther King Jr. wrote "Letter from a Birmingham Jail."

In the summer of 1963, the civil rights movement was heating up – and an Alabama-based judge issued an injunction against "parading, demonstrating, boycotting, trespassing and picketing." MLK chose to disobey this ruling and march anyway, knowing that he would be arrested. While in jail, he wrote his famous essay, "Letter from a Birmingham Jail," defending the civil rights movement's tactics and motivations.

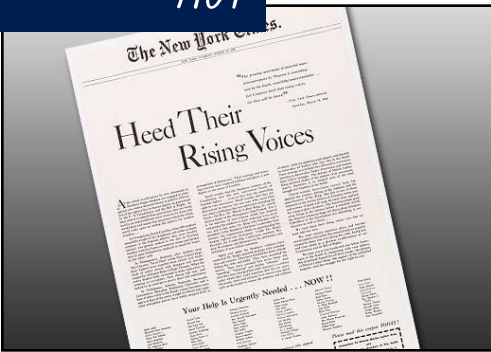
1964



The Illinois Supreme Court defined comedian Lenny Bruce's controversial act as social commentary and not obscenity.

Stand-up comedian Lenny Bruce, the original shock jock, was arrested numerous times in the 1960s for the use of sexually explicit language during his shows. In 1964, the Illinois Supreme Court ruled that Bruce's comedy routine was social commentary and not obscenity. His legal issues helped to elevate First Amendment rights for all Americans and inspired future comedians to challenge similar social mores and boundaries.

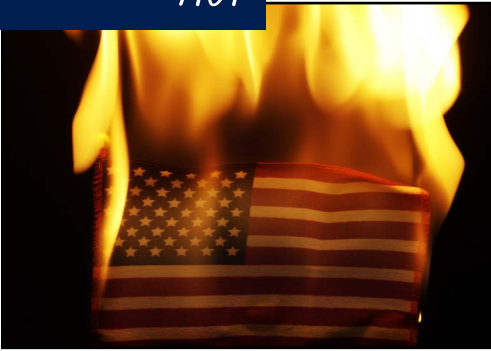
1964



The U.S. Supreme Court established "actual malice" standard in libel law – requiring a higher standard to prove libel, and further strengthening free speech rights.

In the midst of the civil rights era, the New York Times ran an ad citing police actions in Montgomery, Alabama against civil rights protesters in the South, in order to convey the difficulties that protesters often faced. The city of Montgomery sued the *New York Times* for libel, and a jury awarded \$500,000 in damages. But in *New York Times v. Sullivan*, the U.S. Supreme Court unanimously reversed and dismissed the damage award, establishing a higher legal standard of "actual malice" – which meant that a defendant must either have prior knowledge that a statement was false or have recklessly disregarded the truth.

1969



First Amendment protections were expanded to cover “symbolic speech.”

After civil rights leader James Meredith was shot during his “March Against Fear,” Sidney Street, a Bronze Star World War II veteran, burned an American flag in protest. Street told a small crowd, “We don’t need no damn flag,” and was quickly arrested for desecrating and speaking contemptuously about the flag. In *Street v. New York*, the U.S. Supreme Court found part of the law unconstitutional because Street’s words were protected – but the “action” of flag burning was left to a future bench for consideration.

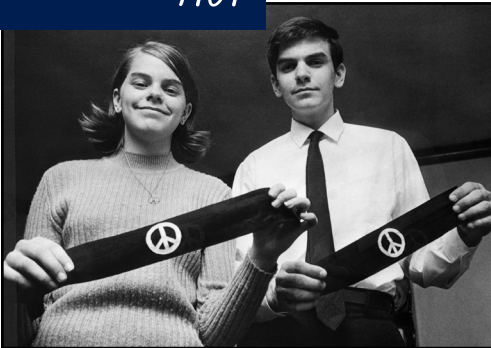
1969



In *Brandenburg v. Ohio*, the court decided that speech cannot be restricted unless the speaker strives to provoke an “imminent” and “likely” violation of law.

Clarence Brandenburg was an officer in the Ku Klux Klan (KKK) who was arrested under Ohio’s “Criminal Syndicalism Law” for making anti-Semitic and anti-black statements to KKK members in front of select media members. The U.S. Supreme Court threw out his conviction and established that speech merely advocating violence is protected unless the speech is likely to incite “imminent lawless action.”

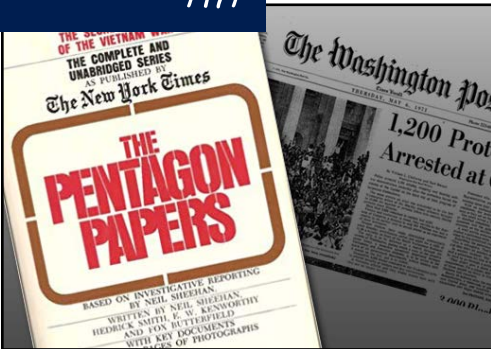
1969



The Supreme Court affirmed that public school students retain their free speech rights during school hours.

In 1965, several students in Iowa planned to wear black armbands to silently protest the war in Vietnam. The school board banned this action and suspended the students when they arrived wearing the bands, claiming the armbands distracted others and could lead to violence. In *Tinker v. Des Moines*, the U.S. Supreme Court ruled this was a violation of public school students’ First Amendment rights, noting that students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”

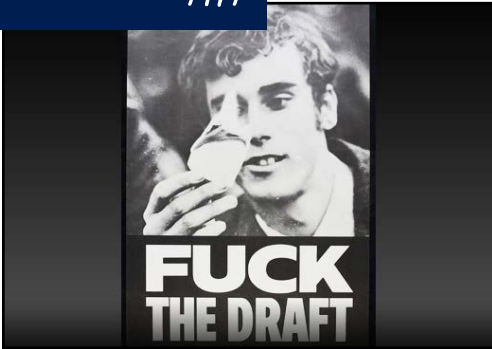
1971



The *Washington Post* began publishing the Pentagon Papers – an embarrassing leaked history of the Vietnam War – and all attempts to restrain it fail in court.

The Nixon administration hoped to restrain the *New York Times* and the *Washington Post* from publishing the Pentagon Papers, leaked documents that exposed an embarrassing history of the Vietnam War. The Pentagon Papers revealed bombings in Laos and Cambodia and how the Johnson Administration had “systematically lied to the public and Congress.” The U.S. Supreme Court asserted that there is a heavy burden for restraining First Amendment rights, and that the government had not met that burden.

1971



Thanks to an off-color statement on a jacket, “one man’s vulgarity is another man’s lyric.”

Paul Robert Cohen was arrested for the crime of disturbing the peace for wearing a jacket displaying “F*ck the Draft” in the public corridors of a California courthouse. In *Cohen v. California*, the U.S. Supreme Court overturned Cohen’s conviction, stating that merely displaying a four-letter word was not sufficient cause for allowing states to restrict free speech. It also noted that free speech may only be restricted in severe circumstances beyond offensiveness.

1972



The U.S. Supreme Court: “the vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.”

At Central Connecticut State College, school president Dr. James denied formal university recognition of a liberal student group, Students for a Democratic Society, which had been associated with violence on other campuses. In *Healy v. James*, the U.S. Supreme Court ruled that campuses are not exempt from the First Amendment, and that those protections apply with the same level of protections as in the community at large.

1973



The three-prong test to determine what is “too obscene” to be protected by the First Amendment was established.

Marvin Miller, who operated a California mail-order business specializing in pornographic films and books, sent out a promotional brochure graphically depicting sexual activity. In *Miller v. California*, the U.S. Supreme Court asserted that Miller’s expression was “utterly without socially redeeming value,” in turn establishing a three-prong test to determine obscenity going forward – including the criteria that the speech in question lack “serious literary, artistic, political, or scientific value.”

1990



The U.S. Supreme Court reversed flag desecration laws in 48 states by ruling that flag burning constitutes “symbolic speech” and is protected by the First Amendment.

During the 1984 Republican National Convention, Gregory Lee Johnson was arrested for burning an American flag in protest of both administration policies and Ronald Reagan’s second term. In *Texas v. Johnson*, the U.S. Supreme Court found the Texas flag desecration law [and those of 47 other states] to be unconstitutional, exempting from future prosecution actions that were respectful of venerated objects, ruling that flag burning constitutes “symbolic speech” and is therefore protected by the First Amendment.

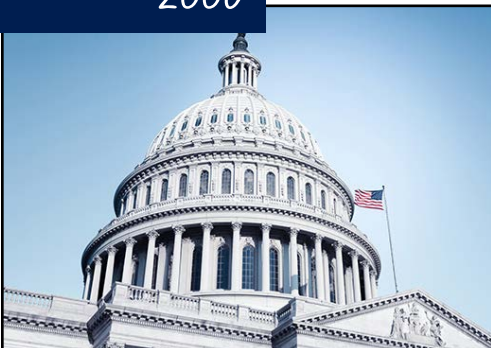
2003



Judith Miller (NYT) was jailed for 85 days for refusing to give up a confidential source.

During a grand jury investigation into a leak about a covert CIA agent, Pulitzer Prize-winning *New York Times* investigative journalist Judith Miller was jailed for refusing to reveal a confidential source. Although Miller never wrote about the agent, she had evidence relevant to the investigation. Miller argued that she had a First Amendment privilege to not reveal her confidential sources.

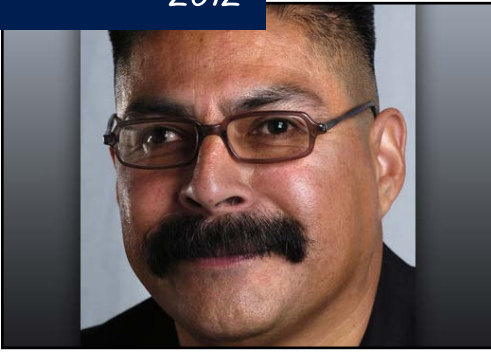
2006



The U.S. Supreme Court ruled that whistleblower speech made by government employees is not afforded the same levels of protection as everyday citizens.

California prosecutor Richard Ceballos alleged employer retaliation over the handling of a search warrant. In *Garcetti v. Ceballos*, the U.S. Supreme Court decided that First Amendment speech protections do not always apply to government employees’ whistleblower speech. The ruling found that these rights are protected when they speak as citizens on public matters but not when they do so in the course of their official duties.

2012



The First Amendment was used to strike down a federal law that criminalized false statements over having military medals.

Xavier Alvarez was a California man prosecuted under the Stolen Valor Act, a federal law that criminalized false statements about having a military medal. In *U.S. v. Alvarez*, the U.S. Supreme Court struck down a portion of the Act, ruling that it was unconstitutional under the First Amendment's protection of free speech and that it could have achieved the same objectives using less restrictive means.

2017



A landmark trademark protection case centering on a racial slur further defined the parameters of "offensive" speech.

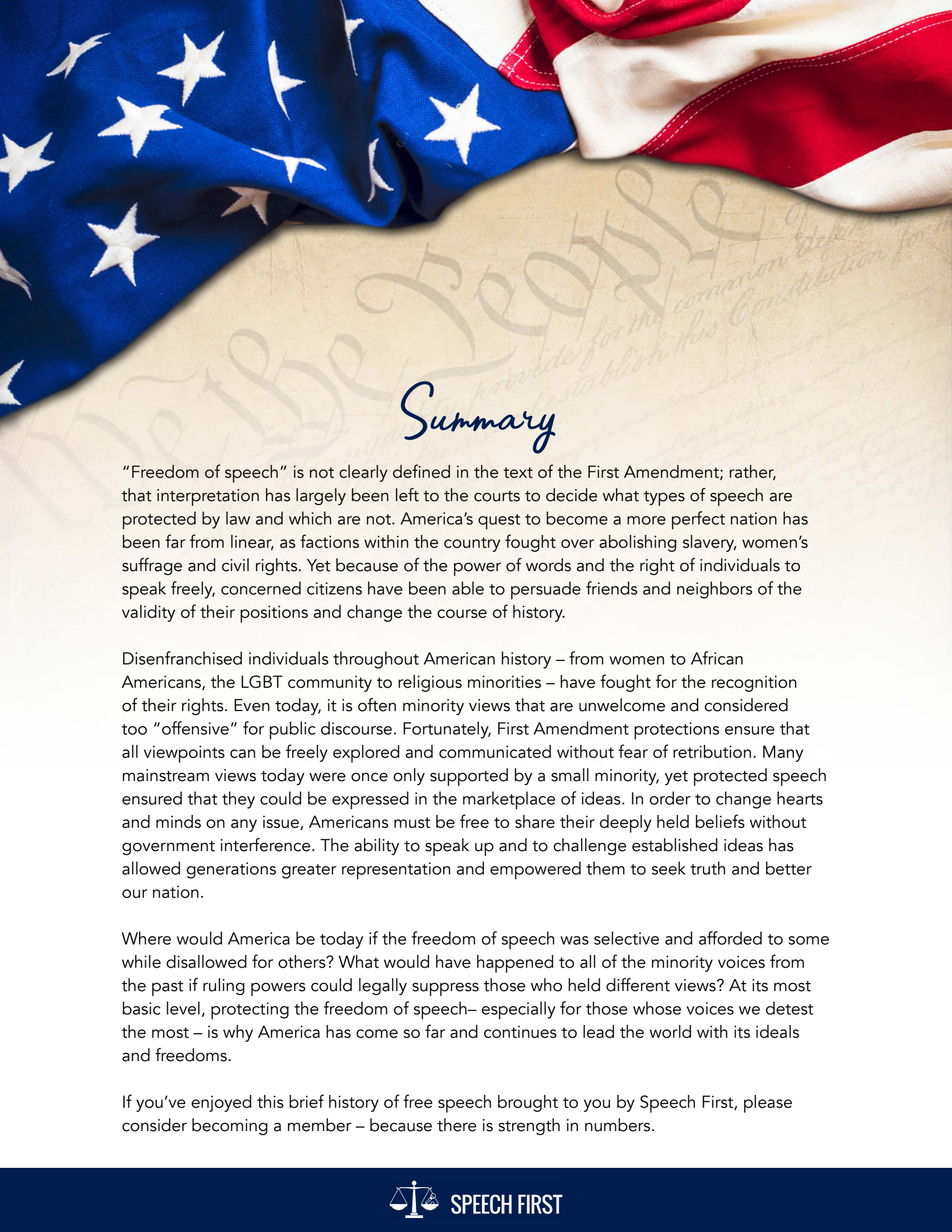
Simon Tam sought to trademark the name of his band, "The Slants," but the U.S. Patent and Trademark Office denied the group's application, claiming the name was offensive and disparaging to others. In *Matal v. Tam*, the U.S. Supreme Court ruled that prohibiting the trademark on these grounds was unconstitutional because "speech may not be banned on the grounds that it expresses ideas that offend."

2019



The trademark rejection of a clothing brand was ruled unconstitutional because it amounted to viewpoint discrimination.

Erik Brunetti founded a clothing line called FUCT ("Friends U Can't Trust"), which was originally rejected as a trademark. The U.S. Supreme Court said the Patent and Trademark Office's refusal to grant "scandalous" or "immoral" trademarks under the Lanham Act was unconstitutional under the freedom of speech clause in the First Amendment of the U.S. Constitution, noting that such an assessment amounted to viewpoint discrimination.

The background of the page features a close-up of the American flag's stars and stripes in the upper left corner, transitioning into a parchment-like texture with faint, cursive handwriting of the words "Speech First" and "for the common good" in the center and right. The word "Summary" is written in a large, elegant, blue cursive font in the center of the page.

Summary

"Freedom of speech" is not clearly defined in the text of the First Amendment; rather, that interpretation has largely been left to the courts to decide what types of speech are protected by law and which are not. America's quest to become a more perfect nation has been far from linear, as factions within the country fought over abolishing slavery, women's suffrage and civil rights. Yet because of the power of words and the right of individuals to speak freely, concerned citizens have been able to persuade friends and neighbors of the validity of their positions and change the course of history.

Disenfranchised individuals throughout American history – from women to African Americans, the LGBT community to religious minorities – have fought for the recognition of their rights. Even today, it is often minority views that are unwelcome and considered too "offensive" for public discourse. Fortunately, First Amendment protections ensure that all viewpoints can be freely explored and communicated without fear of retribution. Many mainstream views today were once only supported by a small minority, yet protected speech ensured that they could be expressed in the marketplace of ideas. In order to change hearts and minds on any issue, Americans must be free to share their deeply held beliefs without government interference. The ability to speak up and to challenge established ideas has allowed generations greater representation and empowered them to seek truth and better our nation.

Where would America be today if the freedom of speech was selective and afforded to some while disallowed for others? What would have happened to all of the minority voices from the past if ruling powers could legally suppress those who held different views? At its most basic level, protecting the freedom of speech—especially for those whose voices we detest the most – is why America has come so far and continues to lead the world with its ideals and freedoms.

If you've enjoyed this brief history of free speech brought to you by Speech First, please consider becoming a member – because there is strength in numbers.



“Without freedom of thought, there can be no such thing as wisdom – and no such thing as public liberty without freedom of speech.”

Benjamin Franklin



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