



FIRST AMENDMENT CENTER

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Your FIRST FREEDOMS

**A Basic Guide
to the
FIRST Amendment**

Q: What is the First Amendment and where does it come from?

A: The First Amendment consists of 45 words added to the Constitution of the United States by the Founding Fathers:

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

It was primarily crafted by James Madison as one of 10 amendments known as the Bill of Rights. This document set the tone for the relationship between the U.S. government and the American people, a relationship in which the people’s civil rights would be as paramount as the rights of the governing body. By adding the Bill of Rights to the Constitution, the Founders basically restrained the government’s ability to interfere in the lives of citizens.

Q: What do the words of the First Amendment mean?

A: The First Amendment’s establishment clause prevents government from establishing an official religion. You have the freedom to worship — or not worship — as you choose. The free-exercise clause

guarantees you the freedom of conscience to believe or not believe as you wish.

The free-speech clause protects all forms of speech, including artistic, literary, musical, political, religious and commercial speech.

The free-press clause enables you to obtain information from many independent sources — newspapers, books, TV, radio, the Internet — without government intervention or control.

The right-to-assemble clause allows you to protest in the streets and to join any group you please, whether for political, religious, social or recreational purposes. By organizing groups, you can spread ideas more effectively. Your right to petition the government for “redress of grievances” means you have the right to ask the government to fix problems or correct errors. Lobbying is included in the right to petition.

Q: **What does the First Amendment effectively do?**

A: Basically, the First Amendment allows us to judge the difference between good ideas and bad ones by providing a protected, public space in which competing ideas can prove their worth — and within which all ideas can coexist.

The First Amendment gives us the right to hear all sides of every issue and to make our own judgments without government interference or control.

The First Amendment creates a climate that allows us as individuals to speak and write our minds, worship as we choose, gather for peaceful purposes and ask the government to right the wrongs we see in society.

The First Amendment gives us a chance to debate, to disagree, to learn and to grow. While those who created the First Amendment could never have envisioned the appeal of Eminem, 50 Cent or Marilyn Manson, they clearly envisioned what freedom means.

They recognized that if you create a society in which all are free to challenge authority, to ask questions, to say — or sing — what they want, you provide an escape valve for the kinds of pressures that have damaged, even destroyed, other nations.

Q: Are there limits to these freedoms?

A: At times, we must balance rights and responsibilities. No one has the right to give away military secrets to an enemy, scream in the library or shout

over a bullhorn in the middle of the night. You cannot lie under oath or traffic in obscenity or child pornography. You cannot print untruths that damage someone's reputation. You cannot protest in a manner that violates another's freedom or life. To reduce the possible negative consequences related to the exercise of First Amendment rights, courts have placed some time, place and manner restrictions on these freedoms.

Q: Do students have First Amendment rights in school?

A: The courts have held that school is a special setting. Students do have substantial First Amendment rights, but those rights can be limited if doing so is deemed necessary to maintain a safe environment in which all can learn.

Three landmark rulings by the U.S. Supreme Court are most often cited on the subject of student rights in school.

In *Tinker v. Des Moines Independent Community School Dist.*, the Court declared in 1969 that students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gates." The Court established the *Tinker* standard, which says that

school officials may not censor student expression unless such expression creates a substantial disruption or material interference with school activities.

The Court also made several broad statements about student rights in *Tinker*, among them:

- Under the Constitution, free speech is not a right that is given only to be so circumscribed that it exists in principle but not in fact.
- State-operated schools may not be enclaves of totalitarianism.
- School officials do not possess absolute authority over their students.

In *Bethel School Dist. No. 403 v. Fraser* (1986) and *Hazelwood School Dist. v. Kuhlmeier* (1988), the Court subsequently reined in student expression. In *Fraser*, the Court ruled that school officials had not violated the First Amendment rights of a student by suspending him for three days after he delivered

ered a nominating speech laced with sexual metaphors before a student assembly.

Similarly in *Hazelwood*, the Court ruled that school officials can censor school-sponsored student expression, in this case a student newspaper, if they have a legitimate educational reason for doing so.




School

Beyond those three cases, the Court didn't rule on a pure student free-expression claim again until its 2007 ruling *Morse v. Frederick*. In that case, the Court sided with school officials over an Alaska high school student who was suspended for displaying a banner with the words "Bong Hits 4 Jesus" at a public event. The Court ruled that public school officials could punish students for expression that they reasonably believe promotes illegal drug use.

Q: Is it legal for students to pray in public schools?

A: Yes. Contrary to popular myth, the Supreme Court has never outlawed "prayer in schools." Students are free to pray alone or in groups, as long as such prayers are not disruptive and do not infringe upon the rights of others. But this right "to engage in voluntary prayer does not include the right to have a captive audience listen or to compel other students to participate." (This is the language supported by a broad range of civil liberties and religious groups in a joint statement of current law.)



What the Supreme Court has repeatedly struck down are state-sponsored or state-organized prayers in public schools.

The Supreme Court has made clear that prayers organized or sponsored by a public school — even when delivered by a student — violate the First Amendment, whether in a classroom, over the public address system, at a graduation exercise or even at a high school football game. (*Engel v. Vitale*, 1962; *School Dist. of Abington Township v. Schempp*, 1963; *Lee v. Weisman*, 1992; *Santa Fe Independent School Dist. v. Doe*, 2000)

Q: What is censorship?

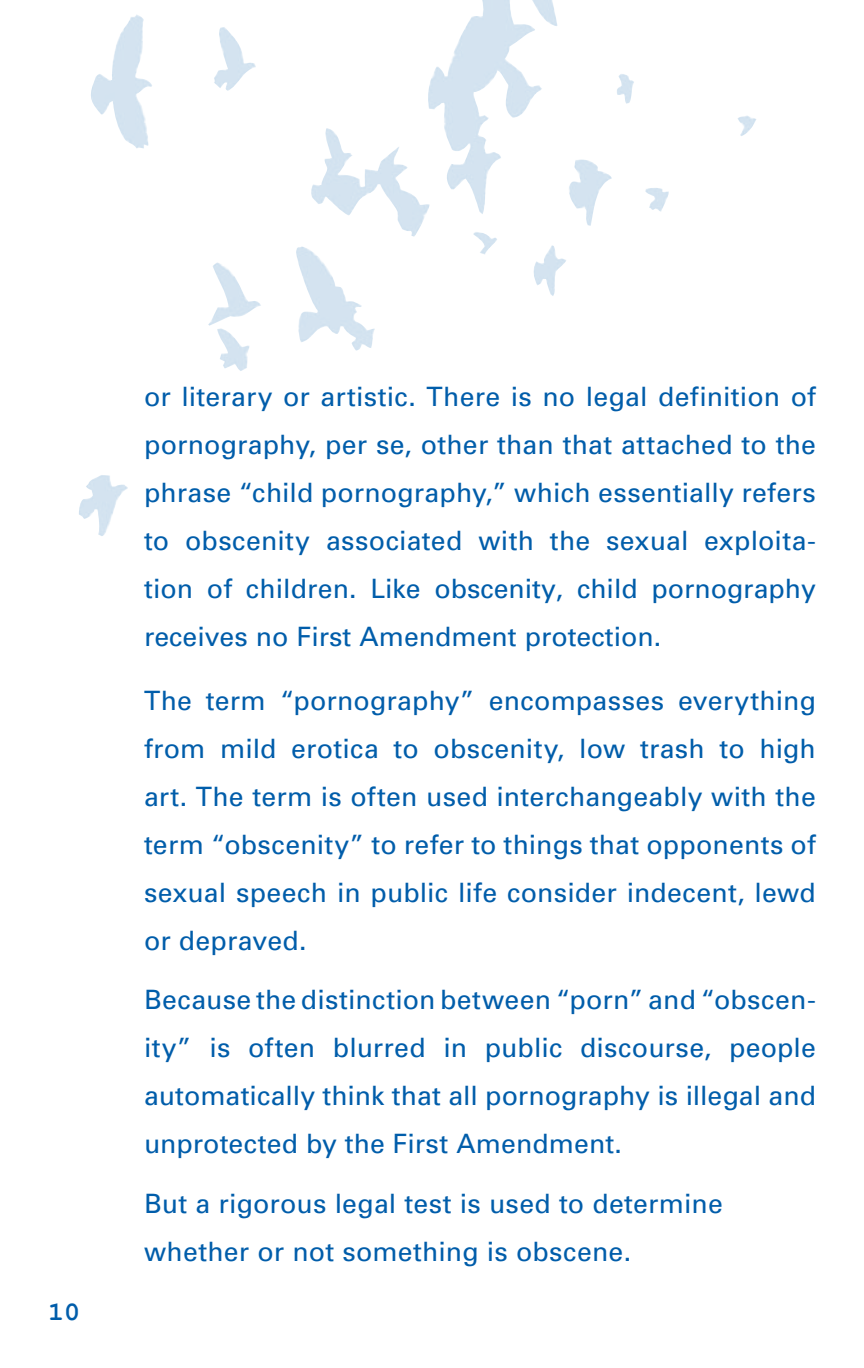
A: Censorship is the suppression of ideas, information and expression that individuals, groups or government officials find objectionable or dangerous.

Censors use the power of the state or government to impose on everyone their view of what is truthful and appropriate, or offensive and objectionable. The effect of censorship is to prevent others from reading, viewing or hearing “objectionable” material and making up their own minds about it.

Q: What is obscenity, what is pornography and what is protected “adult” material under the First Amendment?

A: In legal terms, obscenity is speech that appeals to prurient interests as judged by contemporary standards; that depicts or describes sexual conduct in a patently offensive way; and that, taken as a whole, lacks serious literary, artistic, political or scientific value. Any speech deemed legally obscene is not protected by the First Amendment.

Pornography is a much broader term, usually applying to depictions of sexual behavior that are often for the purposes of sexual arousal — but not always, such as when the purpose is medical or scientific



or literary or artistic. There is no legal definition of pornography, per se, other than that attached to the phrase “child pornography,” which essentially refers to obscenity associated with the sexual exploitation of children. Like obscenity, child pornography receives no First Amendment protection.

The term “pornography” encompasses everything from mild erotica to obscenity, low trash to high art. The term is often used interchangeably with the term “obscenity” to refer to things that opponents of sexual speech in public life consider indecent, lewd or depraved.

Because the distinction between “porn” and “obscenity” is often blurred in public discourse, people automatically think that all pornography is illegal and unprotected by the First Amendment.

But a rigorous legal test is used to determine whether or not something is obscene.

Q: If a private entity or company censors material, does that violate the First Amendment?

A: No. The First Amendment provides that government cannot limit our rights of free expression. But the First Amendment also allows individuals and companies to set their own standards about content. In other words, while the government cannot censor a CD that officials find objectionable, Wal-Mart can refuse to carry the CD because its content is inconsistent with Wal-Mart's business philosophy. Individuals who find such corporate policies objectionable can exercise their own right to free speech by sharing their views with company executives.



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– The First Amendment of the U.S. Constitution

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