

Video Transcript: First Amendment Overview Part II

[NARRATOR]

Every right in the Constitution has a story behind it, and one big theme that emerges from these stories is that although these rights may seem self-evident and unalienable, they haven't always been protected. Instead, we've had to fight for them.

Did you know that our country has jailed abolitionists and religious minorities, it has tried to ban blasphemy and other forms of peaceful protest, and they've even suspended students for refusing to say the Pledge of Allegiance!

For the first story though, we have to rewind to the colonial period, before we were even a country to talk about this interesting guy named John Peter Zenger – this is where the story of free speech begins for the Constitution.

[JEFF]

In the 1730s, Zenger published an article criticizing the Royal Governor of New York for removing the Chief Justice of New York after the judge decided the case against the governor.

This is core political speech – speech criticizing the government, but Zenger was tried for seditious libel. Seditious libel meant criticizing the government and under the British common law of the time, truth was no defense. In fact, the greater the truth, the worse the offense but Zenger's lawyer argued that true statements couldn't be punished, and a jury agreed and engaged in jury nullification. In other words, refusing to convict a guilty defendant because the jurors thought that the underlying law was unjust. And the case was so galvanizing that it came to stand for a core principle of the First Amendment, namely that true statements cannot be punished.

Of course, there are circumstances where speech can be limited. The Supreme Court has said that speech doesn't stop at the schoolhouse gate. A case called *Tinker* held that a student, Mary Beth Tinker, could wear a black armband protesting the Vietnam War because it didn't materially interfere with school discipline. But another case called *Hazelwood* said that speech can be banned if it's inconsistent with the school's educational mission.

When it comes to adults, the standards are even more protective. A case called *Brandenburg* from 1969 said that for

adults, speech can only be banned if it's intended to and likely to cause imminent violence. That's because as justice Louis Brandeis said in his beautiful concurring opinion in the Whitney case, "As long as there's time enough for deliberation, the best response to evil counsels is good ones, the best response to hate speech is counter speech." That makes the U.S. the most speech protective country in the world.

[NARRATOR]

So, Jeff told us about a few cases, but there are so many more...so many cases that the Courts have taken up to help define our five freedoms. Want to know more? Check out the Constitution Center's Interactive Constitution website to dig into the stories behind these freedoms, to explore the evolution of the text, to understand the founder's visions and protecting them, and most importantly, to understand how these rights affect us today.

[KAGAN]

You know, in some respects, it's a funny grab-bag of things that are in the First Amendment. It says it protects speech, it also protects religion and religious exercise. It protects petitioning and assembly.

You know, if you look at all of them together, what it says is that we are committed as a country to freedom of thought and conscience. And why are we committed as country to that? You know it was expressed in some view that reason and thought was supposed to guide our country, as contrasted with passion or violence. That there was a deliberative element at the very core of our being as a nation. A deliberative element that is reflected when one speaks, when one exercises one's own religion – engages in religious belief and expression – when one petitions or assembles. All of these things are suggestive of a nation that values freedom of conscience and that values reason and deliberation in making its decisions.

[NARRATOR]

So, the five freedoms of the First Amendment; religion, speech, press, assembly, and petition are essential to the core of American democracy.

Citizens and Supreme Court justices continue to debate the meaning of these freedoms today. Can a principal punish

you for criticizing her on social media? Can the government regulate your use of violent video games? Or can a public university disinvite a controversial speaker? Let's ask Jeff.

[JEFF]

There are good arguments on all sides of these hard Constitutional questions. But in deciding them, I want you to separate your political from your Constitutional views. In other words, let's ask not what you think the government in each case should do, but what you think the First Amendment allows it to do?

The government cannot force you to attend church. It can't dictate which clergy a religion should choose. And most important of all, the government cannot ban hate speech or any kind of speech unless it's intended to and likely to cause imminent violence.

[NARRATOR]

Every right in the Constitution has a story behind it, and it's a story told by the perspective of "We the People." For the First Amendment there's one big theme: although we may think that these rights are self-evident and unalienable – they haven't always been protected and it's up to us to fight for them. How will you use the First Amendment?