

## First Amendment Memorandum

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This memorandum is for the purpose of informing college students about the First Amendment of the United States constitution. It is hoped that students will understand the importance of this fundamental right to the maintenance of freedom and democracy in our country.

The First Amendment to the U.S. Constitution provides: 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 Government for a redress of grievances.

The First Amendment to the U.S. Constitution addresses several areas but the focus of this memorandum is how the "freedom of speech" has been interpreted judicially. The importance of the first amendment is found in its protection of speech which is not propounded by the majority and which swims against the tide of popular opinion. Arguably, if everyone thought the same and believed the same there would be no need for the protection of the freedom of speech afforded by the first amendment. The Supreme Court is the highest court of the land and has had many occasions to consider and rule on freedom of speech cases. Its rulings are considered binding as the law of the land.

The Court stated in *Texas v. Johnson* 491 U.S. 397 "If there is a bedrock principle underlying the First Amendment, it is that the Government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable." In that case, the Court considered whether the conviction of Gregory Lee Johnson for desecrating a flag in violation of Texas law was consistent with the First Amendment. The Court held that it was not and voted against the state's claim stating that "a principal function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger." *Id.* at 397. It would be hardly surprising if some people who witnessed this act were greatly offended by Johnson's action and considered it to fly in the face of patriotism. Yet the Court protected his right to express himself in symbolic speech.

In order for government to proscribe speech, the regulation must be content-neutral and viewpoint neutral. In *Police Department of Chicago v. Mosley* 48 U.S. 92, 93 (1972), the Court stated, "But above all else, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content. To permit the continued building of our politics and culture, and to assure self-fulfillment for each individual, our people are guaranteed the right to express any thought, free from government censorship." In that case, the Court addressed whether a Chicago ordinance allowing some picketing on a public

way within 150 feet of a secondary or primary school but not other types picketing complied with the First and Fourteenth Amendments. The Court held the ordinance to be unconstitutional because it made an impermissible distinction between labor picketing and other peaceful picketing. Id at 94.

The Court in its' analysis of the First Amendment violation of the Chicago ordinance explained, "government may not grant the use of a forum to people whose views it finds acceptable, but deny use to those wishing to express less favored or more controversial views. And it may not select which issues are worth discussing or debating in public facilities." Id.at 96. If government does impose restrictions on speech, it must be either (1) a reasonable time, place or manner restriction, (2) a permissible subject-matter regulation, or (3) a narrowly tailored means of serving a compelling state interest. *Consolidated Edison Co. v. Public Service Commission Of New York*, 447 U.S. 530, 535. When the government acting as censor undertakes selectively to shield the public from some kinds of speech on the ground that they are more offensive than others the First Amendment strictly limits its power. *Erznoznik v. City of Jacksonville*, 422 U.S. 205, 209. Such selective restrictions have been upheld only when the speaker intrudes on the privacy of the home or the degree of captivity makes it impractical for the unwilling viewer or auditor to avoid exposure. Id. The Court in *Erznoznik* considered the constitutionality of a Jacksonville, Fla. ordinance which prohibited the showing of films containing nudity by a drive-in movie theater when its screen is visible from a public street or place. The Court held that the ordinance was unconstitutional in that it discriminated among movies solely on the basis of content. In taking into consideration the city's interest in the privacy rights of those who may be unwilling viewers or auditors of a speaker, the Court noted, "Much that we encounter offends our esthetic, if not our political and moral, sensibilities. Nevertheless, the Constitution does not permit government to decide which types of otherwise protected speech are sufficiently offensive to require protection for the unwilling listener or viewer. Rather, the burden normally falls upon the viewer to avoid further bombardment of his sensibilities simply by averting his eyes. Id.at 210, 211.

The Center for Bio-Ethical Reform (CBR) recognizes that its' Genocide Awareness Project (GAP) exhibited on public college and universities will offend many. But as the U.S. Supreme Court has articulated numerous times speech cannot be regulated and prohibited solely because it is unfavorable and offensive to others with a different viewpoint. For those who wonder why we exhibit our genocide photos on college campuses, as the Court stated in *Hague v. Committee for Ind. Organization*, 307 U.S. 496, 515 (1939), "A college or university is "peculiarly the 'marketplace of ideas'."