

Everyone's familiar with the First Amendment right to freedom of speech: the right to speak freely on any subject without government restriction or penalties. But what does it actually mean? Can you really say or write anything you want?

The First Amendment right to freedom of speech can be complicated. Find out what you can and can't say with answers to some of the most frequently asked questions about free speech.

### **What is considered "speech?"**

The broad term "speech" can include verbal, nonverbal, visual, and symbolic expressions. For example, in 1969, the Supreme Court found that high school students could wear symbolic black arm bands in protest of the Vietnam War as part of their freedom of speech rights.

### **Why do we have the freedom of speech?**

The freedom of speech or freedom of expression is one of the basic constitutional rights guaranteed to Americans in the First Amendment of the Bill of Rights. The Founding Fathers believed that a free society must allow its citizens to freely express themselves without government interference.

### **Why is some speech restricted?**

Exceptions to free speech have arisen over the years when the government has decided the speech could cause substantial harm to the public, is not speech originally intended to be protected by the Bill of Rights, or other case-specific reasons. In any event, when deciding whether an instance of suppression of free speech is constitutional, the courts must weigh the importance of the freedom of speech against potential dangers if the speech is allowed.

Although many controversies arise around speech that may be considered offensive or unpopular, these are not reasons alone to suppress speech; indeed, most would argue these are the very types of speech the First Amendment intends and needs to protect.

### **When is suppressing free speech illegal?**

Only government attempts to limit or suppress speech are actionable; suppression of speech by a private individual or organization is not a constitutional violation.

### **What are you NOT allowed to say?**

Although the vast majority of speech is protected under the First Amendment, there are some important exceptions, which means that certain types of speech may be restricted by the government and civil actions may be based upon them.

The main exceptions to free speech protection include:

1. *Defamation* (includes libel and slander): discussed in greater depth below.
2. *Obscenity*: The Supreme Court test for obscenity is as follows: (a) whether the average person, applying contemporary community standards, would find that the work, taken as a whole, appeals to the prurient interest; (b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and (c) whether the work, taken as a whole, lacks serious literary, artistic, political or scientific value.
3. *Fighting words*: As defined by the Supreme Court, fighting words are "those which by their very utterance inflict injury or tend to incite an immediate breach of the peace."
4. *Causing panic*: The classic example of speech causing panic is someone yelling "Fire!" in a crowded movie theater. Speech may be suppressed where a reasonable person would know that his speech is likely to cause panic and/or harm to others.

5. *Incitement to crime*: Speech that spurs another to commit a crime.

6. *Sedition*: Speech that advocates unlawful conduct against the government or the violent overthrow of the government.

The government also has the right to restrict speech in order to promote a "compelling government interest," such as national security. This standard is extraordinarily strict and hard to prove, making it a rather narrow exception to free speech.

## **What are defamation, libel, and slander?**

The umbrella term "defamation" includes both libel and slander. Defamation is a statement that may harm someone's reputation. If it is written down, it's called "libel" whereas if it's spoken, it's called "slander."

Defamation law attempts to balance the freedom of speech and open exchange of ideas without giving someone permission to run around spreading lies about another that may harm his or her reputation, ability to earn a living, etc. Note that the expression of an opinion can never be actionable as defamation; statements must be presented as fact to be considered defamation.

Although defamation laws vary by state, generally a plaintiff must show that the statement was unprivileged and published (either spoken to someone else or printed), false, and injurious (harmful in some way to the plaintiff, usually to the reputation, but also may be mental anguish depending on jurisdiction).

Public officials and figures have less protection under defamation laws, though, which means that in order for them to prove a defamation claim, they must also show that the speaker acted with "actual malice."

For example, spreading false rumors that someone has a sexually transmitted disease could be considered defamation, although the defamation would be much harder to prove if that person was a celebrity because it would have to be shown that the speaker was acting maliciously. This is why there are so few celebrity lawsuits against tabloids.

### **What about hate speech?**

Hate speech is speech that targets a person or group of people based on race, ethnicity, gender, age, religion, sexual orientation, disability, or other distinction.

Hate speech is protected by the First Amendment right to free speech. Unless a particular instance of hate speech falls under one of the exceptions to free speech listed above, it cannot be constitutionally suppressed by the government.