

## TEMPLE AMERICAN INN OF COURT – APRIL 2016

### First Amendment Cases & Materials

#### **Freedom of Speech:**

*Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942): fighting words (words that by their very utterance inflict injury or tend to incite an immediate breach of the peace) are not protected by the First Amendment

*Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495 (1952): motion pictures are protected by the First Amendment

*Roth v. United States*, 354 U.S. 476 (1957): obscene material is not protected by the First Amendment

*United States v. O'Brien*, 391 U.S. 367 (1968): a criminal prohibition against draft-card burning does not violate the First Amendment because its effect on speech is only incidental, and it is justified by the significant governmental interest in maintaining as efficient and effective military draft system

*Brandenburg v. Ohio*, 395 U.S. 444 (1969): the mere advocacy of the use of force or violating the law is protected by the First Amendment, but inciting others to take direct and immediate unlawful action is not

*Buckley v. Valeo*, 424 U.S. 1 (1976): spending money to influence elections is a form of constitutionally protected free speech

*Hustler Magazine v. Falwell*, 485 U.S. 46 (1988): parodies of public figures are protected by the First Amendment, even when they are intended to cause emotional distress

*Texas v. Johnson*, 491 U.S. 397 (1989): laws criminalizing the desecration of the American flag are unconstitutional in violation of the First Amendment's protection of symbolic speech

*Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991): public indecency laws regulation nude dancing are constitutional because they further substantial governmental interests in maintaining order and protecting morality

*Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010): limits on corporate and union political expenditures during election cycles violate the First Amendment

## **Freedom of Religion:**

*West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943): public schools cannot override the religious beliefs of their students by forcing them to salute the American flag and recite the pledge of allegiance

*Church of Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520 (1993): the government must show a compelling interest to pass a law targeting a religion's ritual, and failing to show such an interest, the prohibition of animal sacrifice is a violation of the Free Exercise Clause

*Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. \_\_\_ (2014): closely held, for-profit corporations have free exercise rights under the Religious Freedom Restoration Act of 1993, and the requirement of the Affordable Care Act that employers provide their female employees with access to contraception violates that right

## **Freedom of Association:**

*NAACP v. Alabama*, 357 U.S. 449 (1958): the freedom to associate with organizations dedicated to the "advancement of beliefs and ideas" is an inseparable part of the Due Process Clause

*Hurley v. Irish-American Gay, Lesbian, and Bisexual Group of Boston*, 515 U.S. 557 (1995): private citizens organizing a public demonstration have the right to exclude groups whose message they disagree with from participating

*Boy Scouts of America v. Dale*, 530 U.S. 640 (2000): private organizations are allowed to choose their own membership and expel members based on their sexual orientation even if such discrimination would otherwise be prohibited by anti-discrimination legislation designed to protect minorities in public accommodations

## **Law Review Articles:**

*Algorithms and Speech* - UPenn – 2013

*Associational Speech* - Yale – 2011

*Constitutional Law in an Age of Proportionality* - Yale – 2015

*Hate Speech and Political Correctness* - Illinois – 1992

*Low Value Speech* - Harvard – 2015

*Origins of Freedom of Religion* - Harvard – 1990

*Punishment for Prejudice* - South Dakota – 1994

*Restraining the Heartless* - Indiana – 2009

*State Restrictions on Violent Expression* - Vanderbilt – 1993

*The Forgotten Freedom of Assembly* - Tulane – 2010

*The Hobby Lobby Moment* - Harvard – 2014

*The Unsettling Well Settled Law of Freedom of Association* - Connecticut – 2010

*When to Regulate Hate Speech* - Penn State – 2006

**Other Commentary:**

*What Does "Freedom of Assembly" Mean for Occupy Wall Street?*, HARVARD CIVIL RIGHTS - CIVIL LIBERTIES LAW REVIEW, Blog Post, November 5, 2011

*ACLU-TN Victory in Protecting Free Speech of Occupy Nashville Protesters Federal Judge Rules State Violated Demonstrators' FirstAmendment Rights*, ACLU, June 13, 2013

*The Right to Peaceably Assemble: U.S. Constitutional Law and Occupy Wall Street*, Constitutional Litigation Clinic at Rutgers School of Law-Newark