

American legal and constitutional history

[History](#), [American History](#)



As residents or citizens of the United States of America, we enjoy certain rights that many people across the world do not have. One of those rights is freedom of speech, which is guaranteed to all of us through the United States Constitution. However, in some instances, our freedom of speech rights can be limited. One of those circumstances involves freedom of political expression. At this point, one would have to ask; how can a democratic country, which, like all other democratic countries, is based on freedom of speech, limit the same under certain conditions?

In order to understand why and how this can happen, we will first examine the concept of citizenship and the Constitution of the United States as it relates to freedom of political speech. In addition to that, we will analyze how freedom of speech as it relates to politics can affect security and what affects current legislation has on freedom of speech. Based on the above-mentioned research, I intend to prove that compromising freedom of political expression is a violation of the United States Constitution and as such cannot be allowed.

Furthermore, I will argue that passing legislature such as the US Patriot Act can be very dangerous as it provides government with the power to violate our freedom of speech rights. Citizenship In the first part of the paper, we will examine and summarize the concept of citizenship. This is a very extensive process that is defined as “ the process by which some people are included and others are excluded as members of the community” (Walker, 2002). In our country, everybody living here, regardless if citizen or not, enjoys the same protections from the law.

The concept of citizenship is important because it associates us with our nation and with the law of the land. “ Essentially, rights granted to citizens are typically represented by a continuum; however, the mere existence of citizenship does not necessarily equate to equivalent representation across the board, often with glaring inconsistencies across similar geographic locations or historic periods, of which history is rife with examples. ” (Gans 2005). So why is citizenship so important? Citizenship is important because it gives everybody the constitutional rights.

Nobody can take them away from a United States citizen, regardless of his political views or statements. As United States citizens, we are entitled to a set of rights, which is unique in the world. The United States Constitution entitles us to those rights and guarantees that we can enjoy them. The United States Constitution is the set of documents that embody the principles on which the United States is governed. The Constitution is the supreme law of the land and no other law, at any level of government, can be established without considering the rules and rights as set forth in that document.

The part that is especially important to American as it relates directly to their rights is the part of the Constitution that is known as the Bill of Rights. The first ten amendments of the United States constitution are more commonly referred to as the “ Bill of Rights,” because they define specific rights that are granted to all United States citizens by the Constitution of the United States. “ The Bill of Rights is modeled on many other similar documents, all of which owe their inception to the Magna Carta, the bill of rights written in England in 1215 CE.

The Bill of Rights is considered to be an important part of the Constitution, and is also an integral part of popular culture; most Americans, for example, know what someone means when he or she “pleads the fifth,” a reference to the Fifth Amendment, which protects people from self recrimination.” (Smith 2003) The part of the Bill of Rights that is of concern to this paper is its First Amendment. According to the First Amendment there are actually several rights guaranteed to all citizens equally. Many people remember two of them, the right to free speech, and the right to a free press.

There are very few exceptions to free speech and free press. Writing or speaking words that could be constituted as a threat to the American people or seriously threatening the life of someone can definitely lead to a civil law suit or even criminal prosecution. The right to free speech and free press fully includes any political expressions, regardless of what nature. So, if these rights are guaranteed to us, why do some people have concerns about political expression? Political Expression and limitations In wake of the 9/11 attack on United States a very controversial piece of legislation called “The USA Patriot Act” has been passed.

The problem with this legislation lies in its definition of terrorism or terrorist activities. “The USA PATRIOT Act section 802 defines domestic terrorism so broadly that it could apply to an individual exercising his or her freedom of speech, expression, and assembly through acts of civil disobedience. The Department of Justice has not revealed how it is using section 802... Moreover, Section 215 of the USA PATRIOT Act permits the FBI to seek records from bookstores and libraries of books that a person has purchased or read, or of his or her activities on a library's computer.

This change puts people at risk for exercising their free speech rights to read, recommend, or discuss a book, to write an email, or to participate in a chat room, and thus could have the effect of chilling constitutionally protected speech. It also denies booksellers and library personnel the free speech right to inform anyone, including an attorney that the FBI has asked for someone's reading list. " (BORDC, 2008) Since then the BORDC has documented several cases where individual rights to free speech have been violated as a direct result of this legislature.

Many of these violations have been triggered by political activity. For example " In June 2004, Buffalo, New York, artist Steve Kurtz was detained by law enforcement and had his home searched by FBI agents. Despite finding only harmless substances, which Kurtz uses in his politically motivated art projects, the FBI proceeded with a Grand Jury hearing to decide whether to indict Kurtz under the USA PATRIOT Act's biological agents provision. On June 29th, Kurtz's bio-terrorism related charges (USA PATRIOT Act section 817) were dropped. " (BORDC, 2003)

The above mentioned instance, along with similar mistakes have led many people to believe that our rights to free speech, including and especially the right to political expression, have been limited by legislature such as and similar to the Patriot Act. Many however argue that such laws are necessary in order to protect the greater good and help decrease the chances for renewed attacks on the United States. Another example of limitation of political expression involves a very recent incident at the University of Berkeley in California.

The City Council sent a letter to the United States Marines recruiting office stating that their recruiters were not welcome in the city or on campus. This was just a letter of statement and it contained no threats or any other suggestions of violence, protests, or demonstrations. In return for this action, which was seen as very anti-patriotic by many politicians and citizens, various pressures were placed upon the city. " Some lawmakers were threatening to withhold millions of dollars of federal and state funding to the school as retaliation.

They claimed that since U. S. Marines are not good enough for Berkeley, then neither were taxpayers' dollars... After receiving significant heat, the officials decided to recognize the officials' right to be in Berkeley and clarified their position saying they support US troops — just not the war and the recruitment of young people. (Hill, 2008) The problem that we face here is that a political view of a cities population, as reflected in the council letter, was oppressed through threats of funding elimination.

Even though the political view reflected in the letter is not popular and inappropriate, that was barely an exercise of free political speech that was suppressed by threats. The fact that this happened on a college campus, which should facilitate learning through open debate, makes it especially bad as it sends a statement that everybody should be politically in line with the main stream. "...in dealing with college campuses (as the cultivating grounds for those of the future) we should be more understanding when sentiments show up and give them room to thrive if they wish.

Suppression, such as financial deprivation, is no way to deal with a situation and absolutely no way to stifle a conflict. " (Hill, 2008). This opens the <https://assignbuster.com/american-legal-and-constitutional-history/>

question about why political expression matters and what is so special about it? Political Expression and Democracy In order to understand the impact of free speech on a democratic society we have to analyze the basics of democracy. " Freedom of speech and expression, especially about political and other public issues, is the lifeblood of any democracy.

Democratic governments do not control the content of most written and verbal speech. Thus democracies are usually filled with many voices expressing different or even contrary ideas and opinions. " (U. S. Department of State, 2008) This statement is a very effective summary in reference to importance of free speech. As a democratic government, our leadership is supposed to lead in direction that we chose. This choosing of direction is most often done through political debates as we see them on TV.

" Democracy depends upon a literate, knowledgeable citizenry whose access to information enables it to participate as fully as possible in the public life of their society and to criticize unwise or tyrannical government officials or policies. Citizens and their elected representatives recognize that democracy depends upon the widest possible access to uncensored ideas, data, and opinions... For a free people to govern themselves, they must be free to express themselves -- openly, publicly, and repeatedly; in speech and in writing. " (U. S. Department of State, 2008)

What we have to understand is the fact that free flow of ideas through speech and other forms of communication is essential for the survival of a democratic government and as such, it cannot be compromised in any way. Free speech creates a pool of ideas that allow us to come to the bottom of every issue at hand by finding the truth. At the same time, we cannot afford <https://assignbuster.com/american-legal-and-constitutional-history/>

to misunderstand this concept. Many people in history have favored freedom of speech, but only the kind of speech that they agreed with. This is why we had to deal with people like Hitler, Stalin, and Saddam.

Their view of freedom of speech, especially when it came to politics, was definitely a one-way street. By using them as an example, we need to make sure that we focus on allowing all views to be expressed, regardless whether we agree with them. In my opinion, in this country, we cannot afford to place any limitations on freedom of political speech. Another issue that is directly related to the freedom of speech is freedom of belief. If the government or any other institution attempts to limit our freedom of political expression, then at the same time, they are prohibiting us from having the freedom to believe what we want.

The concept is very simple. If we cannot freely express our ideas, then we should not have them in a first place. Many countries across the world had such a system in place. Saddam's Iraq, Stalin's Soviet Union and others. The reason these governments were called totalitarian was the fact that their citizens could not freely express their ideas and political views. This proves the fact that freedom of political expression is what makes us a strong democracy and that it should not be compromised. Many supporters of limited free speech cite various examples where it was necessary to limit political expression in order to achieve a greater good.

One such example is Germany and many argue that by prohibiting political parties and any association with them (Nazi Party) was the right thing after World War II. I fully agree with that. However, when we cannot compare Germany and the United States (at least not back at that time). German

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people back then did not know the concept of democracy. Once it was introduced they accepted it and Nazis never resurfaced again. In any case, my point is that in order to help nations such as post world war II Germany reach the right conclusion and adopt democracy some drastic measures may be necessary.

However, these measures should never be undertaken on our soil. We have a healthy democracy and any limitations would disturb the balance. Even though it should never be compromised, freedom of speech has some limitations. One of the limitations that is relevant to political expression is the use of fighting words. The fact is that the inflammatory nature of some speeches can cause the listener to direct violence at the speaker or other target groups as defined by the speaker. Additionally, "fighting words" have become limited to speech directed to one person and not to speech directed generally at a crowd.

The idea is that if a speech is going to cause harm to somebody or limit him or her in enjoyment of his or her constitutional rights in any way, then it is prohibited. Another major issue that has come out of this is the fact that many state universities prohibit speeches that are offensive to minorities. Universities have adopted those policies in order to respond to complaints of those who are subjects of hateful speeches. "That's the wrong response, well-meaning or not. The First Amendment to the United States Constitution protects speech no matter how offensive its content.

Speech codes adopted by government-financed state colleges and universities amount to government censorship, in violation of the Constitution. And the ACLU believes that all campuses should adhere to First

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Amendment principles because academic freedom is bedrock of education in a free society. " (ACLU, 2008) This is a very important issue that demonstrates how political views, questionable as they are, can be legally expressed everywhere, without government interference. Conclusion Free speech and expression of political ideas are the very basis of a democratic system.

As a fundamental feature of a democratic society, freedom of speech as it relates to politics is subject to only few, clearly defined restrictions. I believe that democracy demands that also those who have undemocratic views must be allowed to propagate for their ideas. A democratic state may only interfere with the right to express a political opinion if it can prove that the direct result of their speech would be violence and harm to somebody. Freedom of expression is a prerequisite for democracy and therefore without freedom of expression, there can be no democracy.

This is why it continues to be important to facilitate healthy debates on this issue and help people understand why it is important to respect opinion of others, even if it is not in accordance with the mainstream. That is the best way to continue our rich democratic tradition and ensure that future generations can enjoy the same rights as we do. List of References Walker, Melissa. (2002) Unequal Freedom: How Race and Gender Shaped American Citizenship and Labor rev by Evelyn Nakano Glenn. Information retrieved on April 28th, 2008 from Website <http://www.h-net.org/reviews/showrev.cgi?path=112431032792905>

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