

Good example of first amendment issues research paper

[Philosophy](#), [Freedom](#)



English

Introduction

Most lawyers grapple with First Amendment Issues Daily according to Professor Marvin Amori as they have to deal with laws that govern and concern speech and consequently write rules on them. Laws on speech are a crucial component in the society due to their significant contribution not only to national matters but also in global corporate boards as well as different public and private institutions. These lawyers therefore have to operate globally and are not only concerned with the First Amendment of the United States constitution but with customs, laws, and practices of different foreign nations (Mark 2238).

Tinker's Decison

Cases of the violation of First Amendment Rights have been evidenced over the past couple of years. On the 5th of August, 2014 for instance, there was an appeals court in Philadelphia that ruled in favor of Mary Beth Tinker's decision, a former professional nurse, who had left her job to launch a nationwide campaign on the importance of school children's freedom of speech, highlighting that is was essential for their health. The court ruled that a Pennsylvania school had violated the First Amendment by when it prohibited its students from wearing some " I boobies" wristbands that had been distributed by the Keep a Breast Foundation which was aimed to promote the awareness of cancer (Tony 6). As a result, the school officials had banned them as they feared that the male students would have made immature comments on the matter.

According to Professor Susan Crawford, commercial providers who use internet services to disseminate entertainment and information are also common examples of violators of the first Amendment Act. This she argues is due to the fact that as they operate, they often favor some information over others as she focused on a challenge by Verizon that had proposed regulations that prevent such providers from operating business models favoring some entertainment and information sources over others. She concludes that such modern common carriers violate their First Amendment rights just like the ordinary common-carrier rules, traditional common carriers and of railroads (Mark 2226).

In light of Tinker's nationwide campaign on the importance of school children's freedom of speech, Professor Jack Balkin provides a catalogue highlighting the differences in the regulations on the issue of speech in various schools. He explains that the new school regulations differ from the old ones since they have more emphasis on the digital information platform as their 'streets' whereas the old traditional system only had the physical spaces of parks and literal streets. This for instance is seen in the recent case earlier in the year when a student from West Virginia was suspended after he was caught wearing a National Rifle Association T-shirt (Tony 6). This sparked a proliferated online battle as the students attempted to express themselves concerning the unfair judgment and treatment of their fellow student. Professor Jack similarly explained that in the new school regulations, intermediaries are the ones responsible for delivering speeches of disfavored speakers due to the evident cooperation between the relevant

private and public bodies whereas the old school regulations had to involve prior licensing and restraints from targeted disfavored speakers (Mark 2239).

The Social Media, Schools and the First Amendment

Yet another significant protégé of Tinker Decision that has now become a famous tool for the Supreme Court is the use of the Internet in schools.

Internet use in schools offers a significant paradox that is confronting the educational and legal systems in the country. This is because of the fact that students have to use the internet and at the same time must be effectively protected from any form of inappropriate predatory practices and content (Kathryn, Steven & Evan 11). The role of the First Amendment therefore is to ensure the protection of these students' rights just as it is expected to protect civilians' rights to write, speak and convey their ideas as well convey symbols in the internet. Schools administrators as a result have the complex task of balancing the use of internet tools with learning in order to maintain a safe learning environment and hence online order.

The court observes that students should not be expected to shed. As a result therefore, in order to maintain an effective environment for learning, then the Amendment rights should operate without any limitations and should consequently address the rather special characteristic of the school environment. The First Amendment Rights of all students in Public Schools are as a result not automatically coextensive as the rights of adults in other corporate and social settings (Kathryn, Steven & Evan 11).

Interest Group Perspective of First Amendment Issues

The scholarship of the First Amendment Right varies in perspective depending on the different groups involved. Most of the scholars of the First Amendment for instance seem to "like" the Amendment as those of subsequent Amendments like the second and fourth do not. Although it is common knowledge that one has to like the subject to which he commits most of his devotion, there is a huge difference between "liking" the First, Second and any other amendment. Liking in the case can be illustrated by a First Amendment scholar who supports the decision of any court that that holds legal ordinance to state statutes that violate the first amendment. Rather than arriving at a self-explanatory decision on the assessment with strong reasons of support. The scholar has the objectivity of a blind dedication to his particular field of interest and expertise (Mark 2240). The Second and Fourth Amendments on the other hand are a bit different since their scholars are not necessarily bound to like them and probably believe that the constitution can fairly function and balance well without their presence. This is due to their dichotomized nature whereby a scholar can support many different rights. For instance, a single scholar can be "pro-gun rights", "pro-privacy" "pro-police" or "pro-gun control" all at the same time. The First Amendment on the other hand is pluralist and only has one specific side of the regulation. This therefore makes the First Amendment a crucial tool for different segments of the society as is seen in the following analysis.

The first amendment furthermore has a tendency of explicating the second Amendment as is observed in the issue of the right of citizens to bear fire

arms that is supported by the First Amendment protections for excessive freedom. In this case, the Second Amendment uses the First to support its cause for citizens to legally own firearms (Gregory 50). As a result, the First Amendment consequently diminishes the legal potency of the second.

The Flexibility of the First Amendment

The pro-regulatory structures of the First Amendment additionally vary in different areas. For instance, some arguments assert that the doctrines of the First Amendment ought to take into consideration the fact that there are some regulatory proposals that place certain constitutional rights like privacy, equality, abortion or expression. There are also arguments that defend either the general or categorical approach of the First Amendment even in instances when different consumer protection settings do not allow for individuals to claim the capability of the regulation to protect their constitutional rights (Mark 594).

The First Amendment and its implications on Association, Speech and Conscience

As more and more states are starting to permit same-sex unions, the First Amendment is becoming more instrumental particularly due to its support and great protection of religious belief. However, most individuals do not realize that it provides very little protection to conducts that are conscience based which is in violation to the non-discrimination statutes of the constitution. This new trend therefore enables individuals to use the First Amendment as they claim that they are precluded by their conscience from providing their services and goods to such families (Mark 590).

This is just an example of some of numerous other cases that implicate on the issue of conscience from compelling symbiotic conduct, speech and conscious objection together with other rights of association and unemployment benefits. All these cases however fail to provide protection of conscience based refusals that engage in symbiotic activities.

A striking case example is the *Elane Photography v. Willock* that highlights on the role of the court in such conscience based actions which in the situation involved the determination between services and goods that can be considered as either personally or artistically expressive and whether or not they can be viewed as offensive to the conscience. According to the final verdict, there was a general consensus that businesses do not often have the constitutional rights no choosing their own customers and therefore should never be accorded that right due to public policy. If they are for instance to be allowed to refuse to provide their services due to issues of conscience then they ought to be afforded discrimination statute. There are different kinds of organizations that have associational rights that ought to be respected, however, these rights to not include their refusal to provide services and goods to different individuals with varied religious reservations. Courts can therefore not permit conscience based decisions since allowing such discriminatory fails to ensure the effective growth and development of a country due to the excessive stigmatization (Mark 590).

Free Speech, the social media and the First Amendment

The same scenario of a suppressed freedom of speech can also be observed in the employer, employee relationship at the workplace. Although the First

Amendment provides for a basic fundamental right to the freedom of speech, such scenarios are some of the few that fail to offer absolution to different speech rights. This can be experienced mostly by public employees who have employers with different viewpoints, likes and dislikes like theirs particularly towards the social media. This is because when citizens accept employment in the government they experience these limitations on their freedom of speech due to governmental necessity (Tanya & Sandra 6). In the same way, there was a general uproar after the September, 2011 terrorist attacks when telecommunication carriers filed cases against the government on behalf of citizens who complained of a violation of their constitutional rights of expression, press, assembly, religion and petition (Hughes 400). This was after a realization that the government of the U. S had been conducting surveillance without public warranty under the Terrorist Surveillance Program. Citizens complained of being wiretapped as part of the illegal surveillance programs. Although, most of the cases claimed a violation of the privacy rights of the Fourth Amendment, there were several other cases that cited a violation of the First Amendment Rights (Hughes 400).

The Freedom of Speech, meaningless words and the First Amendment

The scope of the First Amendment is synonymous with ‘ meaning’ in every sense as is also evidenced by its scholars and courts. The absence of this sense of meaning is opposite to ‘ nonsense’ which means the absence of meaning. Therefore the concept of meaning works like a boundary surveyor that charts the First Amendment without scholarly or judicial accountability. This can for instance be considered according the Morse v. Frederick case

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whereby the Supreme Court upheld a suspension of a high school student who had used a rather cryptic banner reading to promote an off campus event he had organized that read, “ Bong Hits for Jesus” (Joseph 1427). According the court the message was indeed cryptic and was no doubt offensive to others as was amusing to some. To a large majority however, it probably meant nothing at all. The court concluded that his suspension was consistent with the statutes of the First Amendment this is because it could be reasonably viewed as a text promoting the use of drugs. When questioned, the student said that his words were basically just nonsense and he had meant for them to attract the media. From this and other similar cases involving the intentional or non-intentional use of meaningless words, it is therefore conclusive to state that if meaning is to be a prerequisite for coverage in the constitution then much of what we say which is often meaningless without our own realization, then the boundaries of the First Amendment are consequently narrow and probably unknown (Joseph 1427).

First Amendment Vacuums

The law of Free Speech and its relationship to the First Amendment has led to a “ legal space’ that is generally controlled by the law. This can be explained by the litigation that challenged the federal statute that was recently adopted to regulate the package of tobacco whereby its’ labeling always focuses on the freedom of speech. There have similarly been different cases of tobacco labeling that have raised issues of free speech that have evoked debated and furor on free speech tests that are most often resolved by free speech grounds that are judicially resolved. This calls to

attention the conclusion that the laws of free speech in the First Amendment upon closer look may fail to truly address a genuine law on the freedom of speech (George 614).

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