

## **FREEDOM OF SPEECH AND PRESS DEFINITION**

As we know, nobody actually knows what FOS and FOP mean exactly. Thus, it has been up to judiciary bodies to figure it out.

However, there are a few things that remain absolute:

- Freedom of expression cannot violate other rights such as decency, safety, or other people's freedom of expression.
- Freedom of expression has its limits, especially when the government can prove there is some **compelling governmental interest** to justify the diminishing of some civil liberty.

## **HISTORY OF FOEX**

Draft cards are cards that you are issued that document you as someone who got drafted into the military. When there was widespread opposition to Vietnam, people started burning these cards, which Congress soon made illegal. In *US v. O'Brien*, O'B argued that burning the draft cards was an act of expression that the government could not restrict. The SC ended up ruling against O'B because it "restricted Congress' authority to obtain an army". This would establish that this action was not protected under AM1.

After this happened, a person named Cohen wore a jacket with the words "Fuck The Draft" on it and walked into a courthouse, and was subsequently arrested for disturbing the peace through offensive conduct. In the case *Cohen v. CA*, Cohen's conviction for disturbing the peace was overruled, with the SC saying that the words "Fuck the Draft" on a jacket in no way constituted or incited illegal action, and thus the action was 100% protected.

## **TIME PLACE AND MANNER**

It is possible to regulate the time, place and manner of acts of expression. Doing something may be protected in one set of circumstances but may be illegal under another. Therefore, there is a test to show that the suppression of FOEX is justifiable.

1. The suppression must not be selective about content nor can it suppress the content itself.
2. The suppression must serve some government purpose, i.e., Congress' authority to raise an army.
3. The suppression must be narrowly tailored (top-tier scrutiny?). The suppression must be designed to target only the applicable manner of expression and not intrude upon other areas. Using the draft card example again, the law banning draft card burning was specifically targeting draft cards.
4. There has to be some other way for people to express themselves on that same idea.

## **SYMBOLIC SPEECH**

Symbolic speech is speech protected under AM1 that is also not speech or written text specifically. This can range to things such as actions, mannerisms, etc. By this definition, flipping someone off is an act of expression and thus cannot be made illegal under most circumstances.

However, it is usually agreed upon that you cannot use this to justify actions that would otherwise be illegal. Instead of making an original example here, the book provides a good example of this:

“A nude citizen cannot walk through the town square and claim a right to symbolically protest textile sweatshops after his arrest for indecent exposure. Symbolic speech per se is not an absolute defense in a free speech conflict. However, the Court has protected a number of symbolic acts or expressions.”

Flag burning is another example: in *TX vs. Johnson* and *VS v. Eichman*, the SC ruled that laws designed to protect the flag of vandalism or destruction only serve to promote respect of the flag, a political idea, meaning that the laws served no real interest and were thus unacceptable.

### **TINKER [In favor of action]**

Another instance of this is *TINKER V. DE MONIES* in 1969. It started when Tinker and friends organized a protest of Vietnam involving armbands. The school they went to found it a distraction and potentially disrespectful to some people, so, they were suspended. Tinker and friends sued on grounds of free speech.

In the end, the court found that:

- A. no disruption took place
- B. the students were using symbolic speech
- C. the action may have been intended to suppress anti-war messages.

and thus, their actions were protected by AM1 and the administrators had no place to be suppressing that right.

### **BETHEL SCHOOL DISTRICT [against action]**

1. Fraser gave a speech introducing candidates for student government.
2. The speech contained a number of sexual innuendos.
3. He gets suspended and subsequently the case ends up at the SC.
4. It is ruled that since this speech served no political purpose and could be considered indecent, it was not protected. The book specifically mentions “when you enter a school you are not entitled to lewd speech however you do not lose your AM1 rights either.”

### **MORSE [against action]**

1. A student holds up a sign that reads “BONG HITS 4 JESUS”
2. He is subsequently suspended.
3. The case ends up at the SC, who eventually rules that:
  - a. Since the event was school sponsored,
  - b. It could violate rules against promoting illegal drug use
  - c. It was not protected under free speech, possibly because just like Bethel, there was no legitimate purpose for the expression.

**OBSCENE SPEECH**

is when some piece of media or expression is so offensive to the general public that it is suppressed. The government is given the power to suppress it, because it is not in AM1, however, there is no national standard to define it.

This has been used a number of times to ban things such as birth control media.