

美国宪法第一修正案

内容

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

国会不得制定关于下列事项的法律：确立国教或禁止信教自由；剥夺言论自由或出版自由；或剥夺人民和平集会和向政府请愿伸冤的权利

言论自由 VS. 个人名誉

《批评官员的尺度》

作者：安东尼·路易斯（Anthony Lewis）

背景：1960年，因为一则批评性广告，警察局长沙利文以诽谤为由，将《纽约时报》告上法庭，并申请巨额赔偿。两审失利后，几乎被各地官员相继提起的索赔逼至绝境的《纽约时报》，奋起上诉至联邦最高法院。九位大法官在“《纽约时报》诉沙利文案”中力挽狂澜，宣布“对公共事务的讨论应当不受抑制、充满活力并广泛公开”，维护了媒体、公民批评官员的自由

《言论的边界》

作者：安东尼·路易斯（Anthony Lewis）

简介：作者以理性客观的视角和深入浅出的文笔，向读者介绍了美国宪法第一修正案产生的历史背景，及其对美国社会的过去、现在和可预计的将来所产生的深刻影响，并借此向我们揭示长久存在于美国却又为我们所长久忽视的——关于媒体、政客、大众和法官的思想战场，以及在此过程中所形成的关于言论界限的一般观念

一言盖之，本书不仅是关于美国宪法第一修正案的制度变迁史，更是关于言论自由及其边界的生活史与观念史

New York Times VS. Sullivan

报道中有争议的段落

In Montgomery, Alabama, after students sang 'My Country, 'Tis of Thee' on the State Capitol steps, their leaders were expelled from school, and truck-loads of police armed with shotguns and tear-gas ringed the Alabama State College Campus. When the entire student body protested to state authorities by refusing to re-register, their dining hall was padlocked in an attempt to starve them into submission.

Again and again the Southern violators have answered Dr. King's peaceful protests with intimidation and violence. They have bombed his home almost killing his wife and child. They have assaulted his person. They have arrested him seven times.....

“我国曾对一项原则作出过深远承诺，那就是：对公共事务的辩论应当不受抑制、充满活力和广泛公开，它很可能包含了对政府或官员的激烈、刻薄甚至尖锐的攻击。在此背景下，我们考虑了本案涉及的问题。本案中的那则广告，抗议的是我们所处时代的主要公共议题，它显然有权得到宪法保护。”——布伦南的判决意见书

“宪法保障要求具备这么一项联邦规则：禁止政府官员因针对他的职务行为提出的非诋谤性虚假陈述获得损害赔偿，除非他能证明：被告在制造虚假陈述时确有恶意，即被告明知陈述虚假，故意为之；或玩忽故任，罔顾真相。”——沙利文案原则

言论自由 VS. 国家安全

《间谍法》  
(Espionage Act, 1917)

凡诱使官兵抗命、不忠、叛变或拒从以及蓄意妨碍征兵的行为，将被视为犯罪

Eugene V. Debs 案

尤金·V·德布斯（1855—1926年），美国工会领袖，国际工人联合会与世界产业工人联盟（IWW）的创建者之一。曾于1900年、1904年、1908年、1912年与1920年代表美国社会主义党竞选总统。被认为是美国最知名的社会主义者之一

因公开演讲反对美国参与第一次世界大战被判违反《间谍法》而入狱

Schenck VS. the US 案

“清晰可见的危险”原则  
(霍尔姆斯)

"The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic. The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent."

Whitney VS. California 案

Time to Answer test

“除非邪恶的发生是如此之迫在眉睫，以至于没有机会进行充分讨论了，否则没有什么从言论中产生的危险是清晰可见的。如果我们有时间通过讨论来暴露言论中的错误和谬见，那么（清除危险的）药方就是更多的言论，而不是强加的沉默。”

Abrams VS. the US 案

“...when men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas... The best test of truth is the power of the thought to get itself accepted in the competition of the market.”——Oliver Wendell Holmes, Jr.

Daniel Ellsberg VS. the US 案

丹尼尔·艾尔伯格（1931—），前美国军方分析师，受雇于兰德公司。曾在美海军陆战队担任两年的连长，后来在哈佛大学完成了经济学博士学位。1964年受聘于五角大楼，为国防部长罗伯特·麦克纳马拉服务。在越南为国务院工作两年后，回到兰德公司。1971年，他因公开五角大楼文件而成为全球瞩目的对象。从那以后，他不断吹起对不义之政和暴行的哨声，由于反对核武器，抗议美国政府发动的海湾战争、伊拉克战争，抗议美国政府对其他国家的野蛮干涉，他已经被拘留70多次

布莱克大法官的判词

"In the First Amendment the Founding Fathers gave the free press the protection it must have to fulfill its essential role in our democracy. The press was to serve the governed, not the governors."

The Government's power to censor the press was abolished so that the press would remain forever free to censure the Government... And paramount among the responsibilities of a free press is the duty to prevent any part of the government from deceiving the people and sending them off to distant lands to die."