First Amendment Essay, Research Paper

The first amendment of the US Constitution states that ?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??. Ever since

the beginning of the Supreme Court, cases have come up time and time again that

challenge this amendment, or require the justices to interpret this amendment.

Looking back at all the cases heard, it is obvious that the US Supreme Court

have changed their interpretations many times. As society has changed, and the

public perception of freedom of speech has changed, so has the way the Supreme

Court looks at the first amendment. It seems that in one case, their granting

freedom of speech and claiming it is absolute, and then the next case their

taking free speech away, saying that all rules have exceptions. The best way to

analyze the inconsistencies or the US Supreme Court?s decisions in free speech

cases is to look into key cases on both the Supreme Court granting, and limiting

free speech. Three main cases of the least century in which they limited free

speech were Schenck v. United States (1919), CBS v. Democratic National

Committee (1973), and City Council of Los Angeles v. Vincent. In Schenck v.

United States, Schenck and Company were convicted of violating the Espionage Act

of 1917, a Federal law which, among other things, made it a crime to obstruct

government draft recruiting and enlistment efforts. Schenck printed 15,000

leaflets, many of which were to be mailed to draftees. On one of the sides of

this leaflet were printed (among others) the following phrases: "Do not

submit to intimidation", "Assert your Rights", and "If you

do not assert and support your rights, you are helping to deny or disparage

rights which it is the solemn duty of all citizens and residents of the United

States to retain." Schenck was arrested for passing along this information.

The judge who wrote the decision, Judge Holmes, wrote 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. It is a question of

proximity and degree. When a nation is at war many things that might be said in

time of peace are such a hindrance to its effort that their utterance will not

be endured so long as men fight and that no Court could regard them as protected

by any constitutional right. It seems that any way you look at this case, it is

violating the free speech. Today, this case is referred to as the "falsely

shouting fire in a [theater" case. But what does doing that have to do with

notifying Americans of their god-given constitutional rights? It seems that in

this case, Schenck was deprived of his free speech rights. In CBS v. Democratic

National Committee, the Business Executives’ Move for Vietnam Peace (BEM)

complained to the that a radio station Washington, DC had refused to sell it

time to broadcast a series of one-minute spot announcements expressing BEM views

on Vietnam. Four months later, the Democratic National Committee (DNC) asked the

FCC for a ruling in this case, since it intended to purchase time from radio and

television stations to present party views, but knew that its prior experience

in this area made it clear that it would "encounter considerable difficulty

- if not total frustration of its efforts" without a ruling. Both parties

lost – the FCC rejected the notion of the right of an individual or organization

to air "editorial advertisements" on the public airwaves. This

decision, however, was reversed by a Court of Appeals, a decision which was

itself reversed by the Supreme Court in this famous case. This is a case which

illuminates all too clearly the nature of First Amendment "rights"

that we are supposed to have as Americans. Looking at this case, it seems that

the free speech rights of a broadcaster is snuffing out the free speech rights

of others. This is another case where people are being deprived of their free

speech rights. In March 1979, Roland Vincent was a candidate for election to the

Los Angeles City Council. A group of his supporters entered into a contract with

a political sign service to fabricate and post signs with Vincent’s name on

them. They produced many colorful cardboard signs and attached them to utility

poles at various locations. The signs’ message was: ‘Roland Vincent – City

Council.’ Acting under the authority of section 28.04 of the Los Angeles

Municipal Code, Municipal employees removed all posters attached to utility

poles and similar objects covered by the ordinance, including Vincent?s signs.

Vincent brought this case all the way to the Supreme Court, there the Supreme

Court held that a municipal ordinance prohibiting the posting of signs on public

property was not unconstitutional (once again reversing a Court of Appeals

decision). Consequently, a hard working political candidate does not have the

right to advertise his candidacy in a particular manner. This case also brushes

up on the Tenth Amendment, that a power not exercised by the State flows to the

"people" (and not a city). Relevant to this case, in Schenck v. United

States, reviewed above, Judge Stevens that ?It has been clear since this

Court’s earliest decisions concerning the freedom of speech that the state may

sometimes curtail speech when necessary to advance a significant and legitimate

state interest?. Oddly enough, the founding fathers never said a word about

?curtailing speech? in the first amendment. Yet another case where the

conservative court deprived a man of his free speech rights. Not every case the

Supreme Court rules takes away free speech. Some extremely controversial free

speech cases have granted free speech. Possibly the most famous one in recent

history is Texas v. Johnson. In this landmark case, Johnson participated in a

political demonstration to protest the policies of the Reagan. After a long

street march, Johnson burned an American flag as a symbol of his contempt for

Reagan. No one was hurt or threatened with injury, although the flag burning

seriously offended several witnesses. Johnson was convicted of desecration of a

venerated object in violation of a Texas statute. The case first went to the

state of appeals, where they affirmed the punishment, but then the Texas Court

of Criminal Appeals reversed, holding that the State, consistent with the First

Amendment, could not punish Johnson for burning the flag in these circumstances.

The case went all the way to the Supreme Court. The court found that Johnson’s

burning of the flag was expressive conduct protected by the First Amendment.

They also concluded that the State could not criminally sanction flag

desecration in order to preserve the flag as a symbol of national unity. The

court closed their decision in this case with the following words: The ideas of

liberty and equality have been an irresistible force in motivating leaders like

Patrick Henry, Susan B. Anthony, and Abraham Lincoln, schoolteachers like Nathan

Hale and Booker T. Washington, the Philippine Scouts who fought at Bataan, and

the soldiers who scaled the bluff at Omaha Beach. If those ideas are worth

fighting for – and our history demonstrates that they are – it cannot be true

that the flag that uniquely symbolizes their power is not itself worthy of

protection from unnecessary desecration. In this case, free speech was fully

granted, and it was a great win for Americans everywhere. Benjamin Gitlow had

been a prominent member of the Socialist party during the 1920s. He was arrested

and convicted for violating the New York Criminal Anarchy Law, which made it

illegal to attempt to advocate the overthrow of government. Gitlow’s publication

and circulation of his left-wing Manifesto violated this act. The pamphlet went

on to support the creation of a socialist system through the use of massive

strikes and class action. Gitlow was tried and convicted. He appealed the

decision to the Supreme Court, arguing that his First Amendment right to freedom

of speech was violated. The Supreme Court ruled in favor of Gitlow. It stated in

its decision that "for present purposes, we may assume that freedom of

speech and of press…are among the fundamental personal rights and liberties

protected by the due process clause of the Fourteenth Amendment from impairment

by the State." This case was officially called Gitlow v. New York, and it

was heard in 1925, many years before the Business Executives’ Move for Vietnam

Peace was deprived of air time by the FCC. What makes these forms of freedom of

speech different? Nothing. However in one case, free speech was granted, and in

another case, it was taken away. Feiner v. New York was another case where free

speech resulted in an arrest and an appeal to the Supreme Court. Irving Feiner

was arrested on March 8th, 1949, for disorderly conduct. Feiner had been

speaking out against President Truman, and local officials atop a podium on a

street corner. A crowd of nearly 100 people gathered to watch as he urged blacks

to violently oppose the injustices of society. The crowd was of a mixed opinion,

and they became more and more unruly as the night went on. It wasn?t long

before the police arrested Feiner and broke up the gathering. The police, prior

to the arrest, had asked him three times to get off the podium, and he had

refused each time, claiming his First Amendment right to free speech. Feiner was

convicted and appealed the decision to the Supreme Court. The Court ruled that

the arrest did not hamper Feiner’s right to free speech, stating "it is one

thing to say that the police cannot be used as an instrument of suppression of

unpopular views, and another to say that…they are powerless to prevent a

breach of the peace." This was another win for free speech, but it was only

1948. There was a lot more injustice to come. The six cases just cited were six

well known Supreme Court cases. Three of them displayed how the Supreme Court

has the power to grant free speech, and three of them displayed how they have

the power to take it away. The main question at hand is why some people are

punished for free speech, when some aren?t. Johnson has the right to free

speech because free speech is ?worth fighting for?, but Schenck doesn?t

have the right to free speech just because his propaganda is more controversial?

. As society has changed, and the public perception of freedom of speech has

changed, so has the way the Supreme Court looks at the first amendment. It seems

that the only way fair judgment can be made in every case is to either set a

strict set of guidelines for free speech, or to make it absolute. Although

neither of these things will happen in the near future, it?s a great thought

to have. After all, we live in a FREE country. The only question remaining is

how free we really are.

Schenck v. United States, 249 U.S. 47 p. 49 Schenck v. United States, 249

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94 p. 98-9 City Council of Los Angeles v. Vincent, 466 U.S. 789 p. 791 Schenck

v. United States, 249 U.S. 47 Guide to the U.S. Supreme Court, Elder Witt, 2nd

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U.S. 315 p. 44 Web Sites aiding in searching for Supreme Court transcripts:

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