

FREE SPEECH CLAUSE OF THE FIRST AMENDMENT

Chief U.S. District Judge Terry A. Doughty



The First Amendment

First Amendment to the United States Constitution:

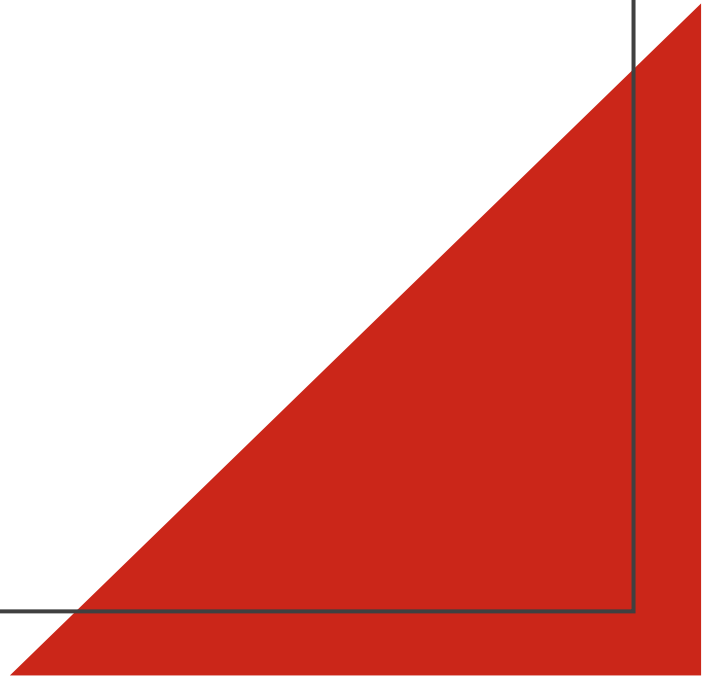
- Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

In the First Amendment:

- (1) Freedom of exercise of religion;
- (2) Establishment Clause (prevents the Government from establishing religion)
- (3) Freedom of the press;
- (4) Freedom of assembly;
- (5) Petition the government to redress grievances
- (6) Freedom of speech

Free Speech Clause

- “... or abridging the freedom of speech.”
- Six very important words that are subject to different interpretations.
- The question is





What did
the
Founders
mean?



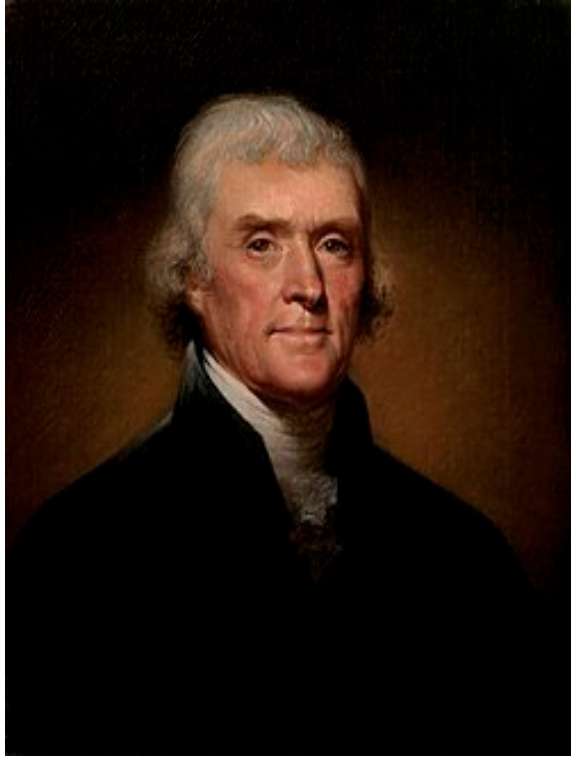
For if Men are to be precluded from offering their Sentiments on a matter, which may involve the most serious and alarming consequences, that can invite the consideration of Mankind, reason is of no use to us; the freedom of Speech may be taken away, and, dumb and silent we may be led, like sheep, to the Slaughter.

George Washington, Address to the Officers of the Army,
Saturday, March 15, 1783



Whoever would overthrow the
liberty of a nation must begin by
subduing the free acts of speech.

Benjamin Franklin



Reason and free inquiry are the
only effectual agents against error.

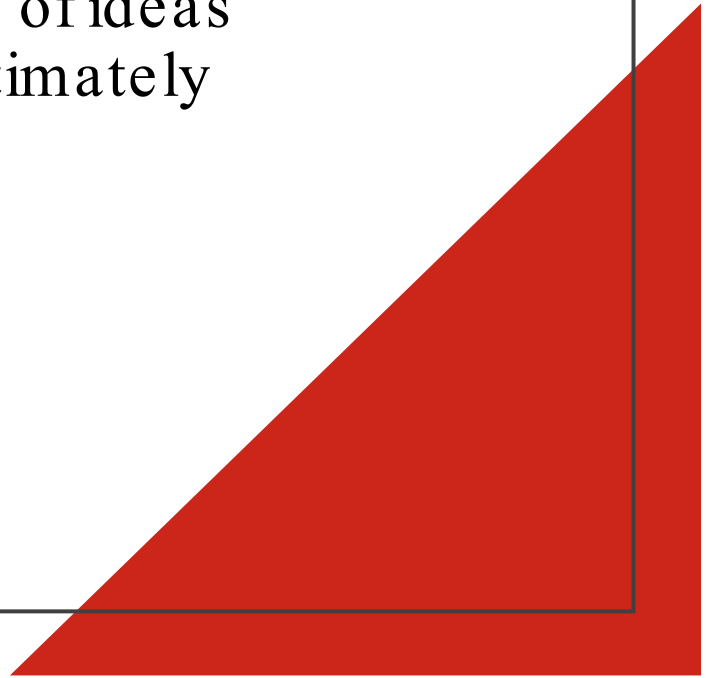
Thomas Jefferson

What does
the Supreme
Court say
about the
Free Speech
Clause?



Red Lion
Broadcasting
Co., Inc. v.
FCC, 395
U.S. 367
(1969).

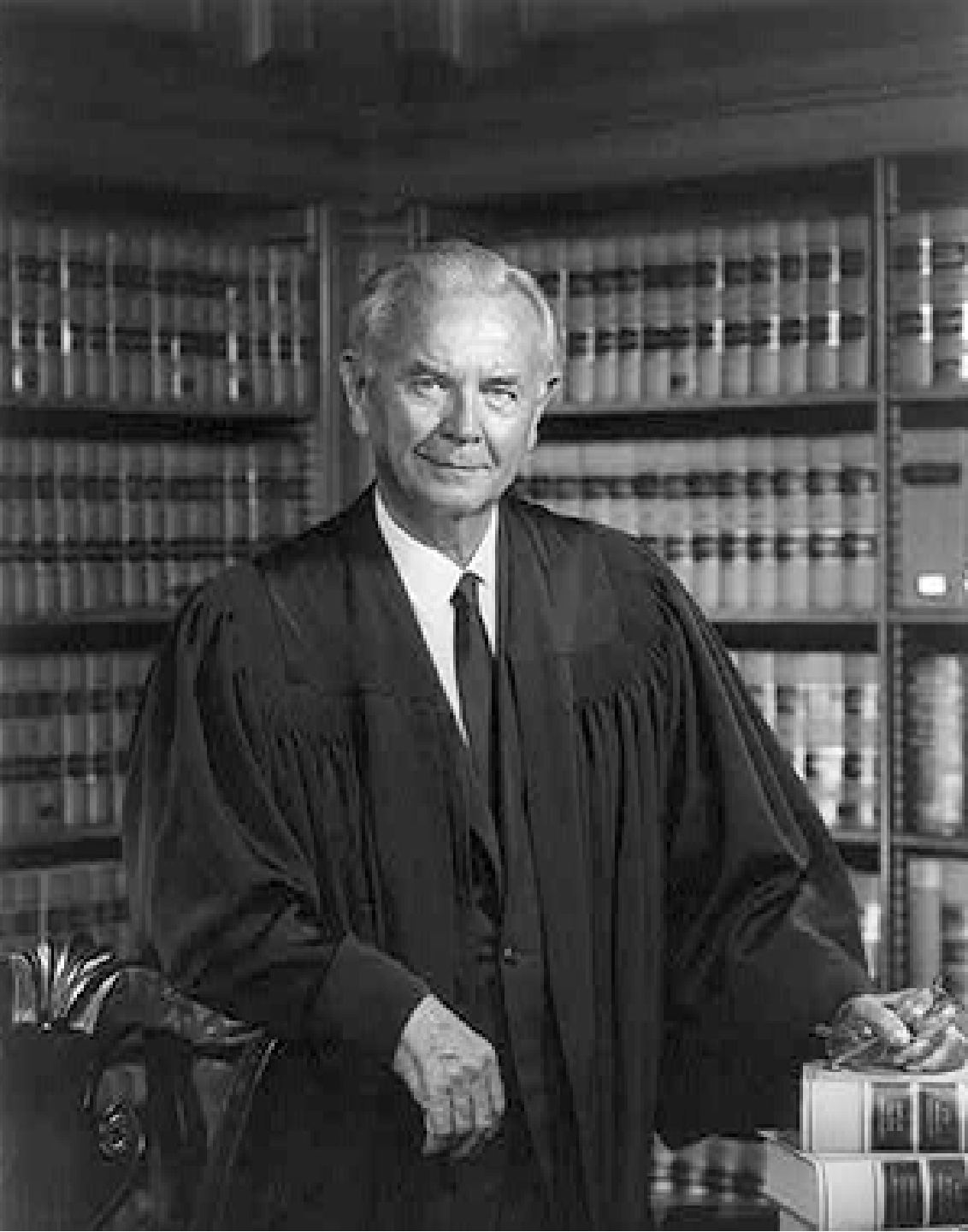
“It is the purpose of the Free Speech Clause of the First Amendment to preserve an uninhibited marketplace of ideas in which the truth will ultimately prevail...”



Terminiello
v. Chicago,
337 U.S. 1
(1949)

“A principal function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger.”





Texas v. Johnson, 491 U.S. 397 (1989)

“If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.” – Justice William Brennan



Ratification of the U.S. Constitution



Ratification of the United States Constitution

May 25-September 17, 1787, Constitutional
Convention in Philadelphia

September 28, 1787– Proposed Constitution
presented to the public

Had to be ratified by 9 of 13 states.

Federalists Papers- James Madison, Alexander
Hamilton, and John Jay

Anti Federalist Papers- N.Y Governor George
Clinton, Justice Robert Yates and Melancton
Smith

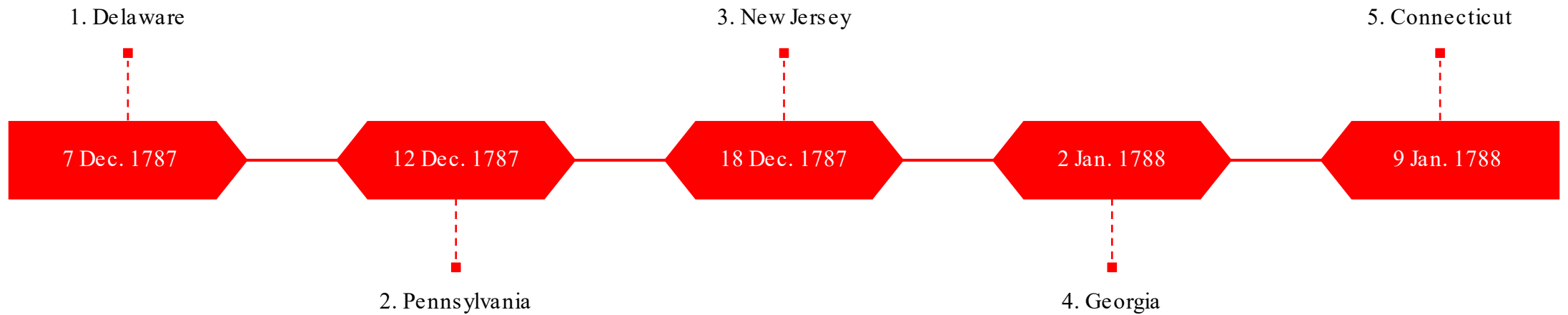
Concerns over Proposed Constitution

States would
have to give up
power.

Federalist
Government
would abuse its
power.

Did not provide
protection of
individual rights.

Order of Ratification



Massachusetts Compromise- Feb, 1788 (agreement to propose amendments setting individual rights after ratification)

6. Massachusetts February 6, 1788

7. Maryland April 28, 1788

8. South Carolina May 23, 1788

9. New Hampshire June 21, 1788

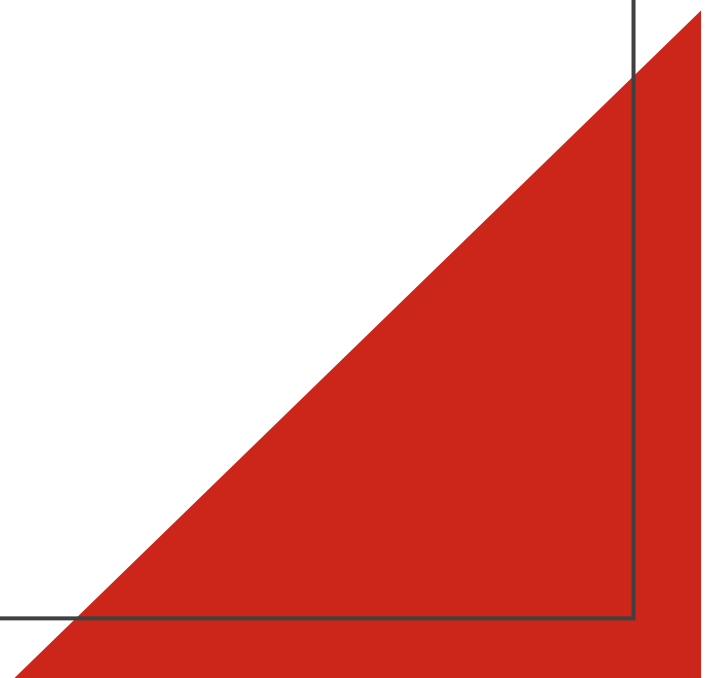
Officially ratified

10. Virginia June 25, 1788

11. New York July 26, 1788

12. North Carolina November 21, 1789

13. Rhode Island May 29, 1790



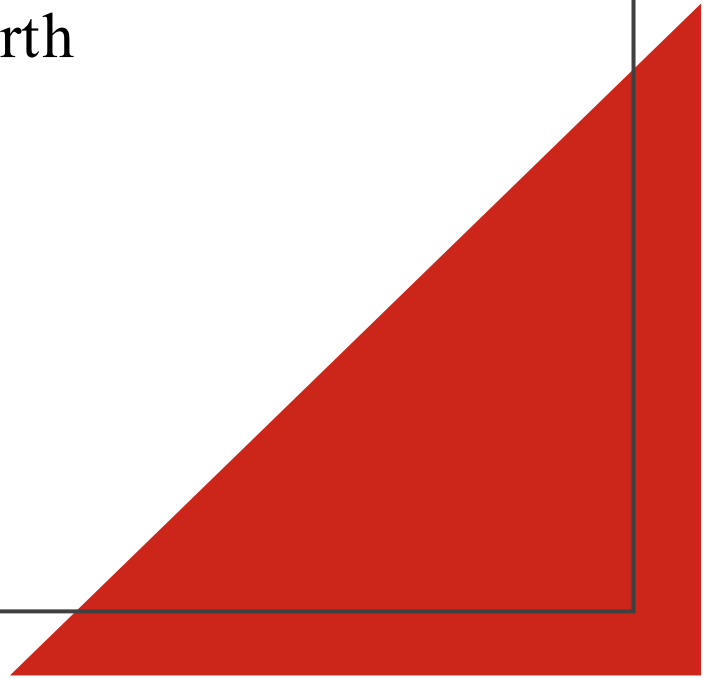


Bill of Rights



Bill of Rights


- Based upon the Massachusetts Compromise, there had been an agreement to propose a bill of rights to set forth individual rights.
- Seventeen (instead of ten) amendments were first proposed. (five were deleted by Congress)



What Five were Deleted?

1. Adding words to the Preamble
2. Adding that the Bill of Rights applied to the States
3. Spelling out the federal government's limited role (some of this survived in the Tenth Amendment)
4. More detailed version of Second Amendment.
5. Placing the amendments in the original text of the Constitution (not as individual amendments)

Twelve Amendments Remain

- Two of the twelve original amendments were not ratified at the time.
 - The two amendments not ratified were:
 - 1) Congressional Apportionment Amendment: one House of Representatives member for every 50,000 people (would be 1,700 HOR members now, instead of 435)
 - 2) Cannot change compensation for House of Representatives and Senate until next election. (this was ratified 203 years later and is now called the 27th Amendment.
- 

First Amendment

- Originally proposed as the Third Amendment.
- Original draft introduced in the House of Representative by James Madison on June 8, 1789
 - “The people shall not be deprived or abridged of their right to speak, to write, or to publish their sentiments; and the freedom of the press, as one of the great bulwarks of liberty, shall be inviolable.”
- Changed by congress to the version we have now.
- The first two proposed amendments were not ratified so the Third Amendment became the First Amendment.
- Ratified on December 15, 1791.



Importance of Free Speech

Why is it important?

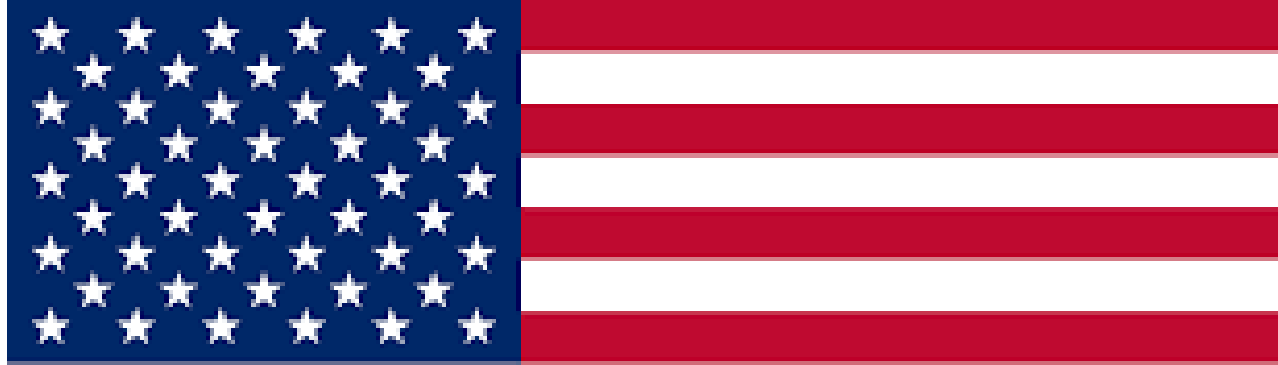
- Is the First Amendment the most important Amendment?
 - No state religion
 - Ability to speak out against wrong
 - Freedom from tyranny of a king
 - Can change things
- The Government cannot tell you what to say or do.
- “Uninhibited marketplace of ideas.”
- “Invites dispute, unrest, and even stirs people to anger.”
- Freedom to express opinions without censorship. Interference, or resistance by the Government.



As President Ronald Reagan said:

- Freedom is never more than one generation away from extinction. We didn't pass it to our children in the bloodstream. It must be fought for, protected, and handed on for them to do the same, or one day we will spend our sunset years telling our children and our children's children what it was once like in the United States where men were free





- We celebrate our 250th anniversary on July 4, 2026.
- We have been blessed by God as the greatest nation on earth.
- Our Sons have fought and died in World War I, World War II, and others to keep this nation free.
- If the United States is going to survive another 250 years in its current form, “We the People” must rise up and fight for the freedom of future generations.

Final Remarks