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Introduction			
Paragraph #	Passage	Citation	Citation Part 2
COP2	for instance, powerful political leaders recently have condemned **"Black Lives Matter"** advocacy as **"hate speech"** (as well as **"disinformation"** and **"terrorist**" speech).	Cohen, M. (2020, July 1). Trump: Black lives matter is a "symbol of hate." POLITICO. https://www.politico.com/news/2020/07/01/trump-black-lives-matter-347051	Corley, C. (2021, May 25). Black Lives Matter Fights Disinformation To Keep The Movement Strong. NPR. https://www.npr.org/2021/05/25/999841030/black-lives-matter-fights-disinformation-to-keep-the-movement-strong
COP9	Consistent with the mission of Oxford University Press's What Everyone Needs To Know **([**"**WENTK**"**)]** series, this book seeks to **"offer** "[] a balanced and authoritative primer" on " free speech.	Oxford University Press. (2023). What everyone needs to know®. What Everyone Needs to Know®. https://whateveryoneneedstoknow.com/	

Chapter 1		

Paragraph #	Passage	Citation
Footnote 1	Even more longstanding are **Virginia´s 1776 Declaration of Rights,** which protects press freedom,	Mason, G. (1776). *The Virginia Declaration of Rights.* National Archives and Records Administration. https://www.archives.gov/founding-docs/virginia-declaration-of-rights
Footnote 1	and the **1789 French Declaration of the Rights of Man and the Citizen**, which forms part of the French constitution, and protects freedom of opinion and expression.	*Declaration of the Rights of Man - 1789.* (1789). Yale.edu; The Avalon Project. https://avalon.law.yale.edu/18th_century/rightsof.asp
5	Many people use the term terms "**freedom of speech**" and "First Amendment" interchangeably.	United States Courts. (n.d.). *What Does Free Speech Mean?* United States Courts; United States Courts. https://www.uscourts.gov/about-federal-courts/educational-resources/about-educational-outreach/activity-resources/what-does
5	Many people use the term terms "freedom of speech" and "**First Amendment"** interchangeably.	U.S. Const. amend. I
6	Indeed, the U.S. government is premised on the view that free speech—along with other "**unalienable rights**"—is a "**natural**" human right, with which we are "**endowed**" by virtue of our humanity, and that the purpose of our laws and government is "**to secure**" that pre-existing right (the quoted phrases are in the Declaration of Independence and the	Jefferson, T. (1776, July 4). *Declaration of Independence*. National Archives; The U.S. National Archives and Records Administration. https://www.archives.gov/founding-docs/declaration-transcript National Archives. (2018). *The Constitution of the United States: A Transcription*. National Archives; The U.S. National Archives and Records

	Constitution).	Administration. https://www.archives.gov/founding-docs/constitution-transcript
7	The British writer George Orwell underscored this essential real-world dimension of free speech: "**If large numbers of people believe in freedom of speech, there will be freedom of speech even if the law forbids it. But if public opinion is sluggish, inconvenient minorities will be prosecuted, even if laws exist to protect them**."	Orwell, G. (2011, December 7). Freedom of the Park. *The Orwell Foundation*. Www.orwellfoundation.com. https://www.orwellfoundation.com/the-orwell-foundation/orwell/essays-and-other-works/freedom-of-the-park/
9	Not until **1925 did the Supreme Court recognize** that the First Amendment imposes any limits at all on speech violations by state and local officials, which were rampant.	*Gitlow v. New York*, 268 US 652 (1925).
9	And not until **1965 did the Supreme Court first strike down a federal law under the First Amendment,** although Congress had a long history of passing such laws, dating all the way back to the infamous 1798 Alien and Sedition Acts, which criminalized criticism of government officials, a preeminently important type of speech in our democratic republic	*Lamont v. Postmaster General*, 381 US 301 (1965).

9	And not until 1965 did the Supreme Court first strike down a federal law under the First Amendment, although Congress had a long history of passing such laws, dating all the way back to the infamous **1798 Alien and Sedition Acts,** which criminalized criticism of government officials, a preeminently important type of speech in our democratic republic	*Alien and Sedition Acts*. (1789). National Archives. https://www.archives.gov/milestone-documents/alien-and-sedition-acts#:~:text=Passed%20in%20preparation%20for%20an,brink%20of%20war%20with%20France
9	As recently as the 1960s, civil rights demonstrators were regularly punished for their efforts to peacefully protest racial apartheid, which is why **Martin Luther King wrote his historic letter from a Birmingham jail;** far from government protecting Dr. King's free speech rights and those of his allies in the civil rights movement, it punished them for daring to (try to) exercise these rights.	Martin Luther King, Jr. (1963). *Letter from Birmingham Jail*. Bill of Rights Institute. https://billofrightsinstitute.org/primary-sources/letter-from-birmingham-jail
13	In some contexts, concerning some cherished views that we seek to express, all of us will inevitably depend on the First Amendment's shield against "**the tyranny of the majority**."	Alexis de Tocqueville. (1875). *Democracy in America.*
14	It is often quipped that most people support "**freedom of speech for me, but not for thee.**"	Milton, J. (n.d.). *Areopagitica: Text*. Milton.host.dartmouth.edu. Retrieved September 17, 2023, from https://milton.host.dartmouth.edu/reading_room/areopagitica/text.htm

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16	One recent illustration is the **Supreme Court's 2021 decision protecting the free speech rights of high school student Brandi Levy.**	*Mahanoy Area School District v. B.L.*, 594 US _ (2021).
16	In one fell swoop, she was able to enjoy the diverse benefits of multiple types of expression: the self-expression of "**blowing off steam**" through her strongly-worded messages, including repeated uses of "the F-bomb";	*Mahanoy Area School District v. B.L.*, 594 US _ (2021).
16	In one fell swoop, she was able to enjoy the diverse benefits of multiple types of expression: the self-expression of "blowing off steam" through her strongly-worded messages, including repeated uses of "**the F-bomb**";	*Mahanoy Area School District v. B.L.*, 594 US _ (2021).
17	At the very least, there is the satisfaction that flows from being true to oneself by openly conveying one's identity and convictions. And there is also a likelihood that we are thereby helping "t**he moral arc of the universe bend[] toward justice,"** in Martin Luther King's poetic phrase.	Luther King Jr., M. (1965). "Remaining Awake Through a Great Revolution." https://www2.oberlin.edu/external/EOG/BlackHistoryMonth/MLK/CommAddress.html

24	The first is the eloquent abolitionist champion Frederick Douglass, who had been born into slavery in 1818 and escaped in 1838. In 1860, he declared: "**Slavery cannot abide free speech. Five years of its exercise would banish the auction block and break every chain in the South."**	Douglass, F. (1860). *What, to the Slave, Is the Fourth of July.* Createspace Independent Publishing Platform.
24	In 2019, law professor Dale Carpenter, a lifelong champion of LGBTQ+ rights, wrote: "**It's no stretch to say that…[t]he First Amendment created gay America … [I]t…protected gay cultural and political institutions from state regulation. . . . No other [constitutional right] helped us more."**	Carpenter, D. (2019). *Born in Dissent: Free Speech and Gay Rights*. SMU Law Review.
25	In the Supreme Court's words: "**The right to think is the beginning of freedom, and speech…is the beginning of thought."**	*Ashcroft v. Free Speech Coalition*, 535 US 234 (2002).
25	In the same vein, recall seventeenth-century philosopher Rene Descartes' famous phrase: "**I think, therefore I am.**"	René Descartes. (1637). *Discourse on the method of rightly conducting the reason, and seeking truth in the sciences.* 1St World Library Literary Society.

25	The flipside of this enduring insight was chillingly conveyed in George Orwell's dystopian novel 1984. In the totalitarian state of Oceania, the "**Newspeak**" language reduced people's vocabulary, precisely in order to reduce their ability to think. By eliminating certain words, the goal was to eliminate the "subversive" concepts these words conveyed.	Orwell, G. (1949). *1984*. Pearson Education.
25	The flipside of this enduring insight was chillingly conveyed in George Orwell's dystopian novel 1984. In the totalitarian state of Oceania, the "Newspeak" language reduced people's vocabulary, precisely in order to reduce their ability to think. By eliminating certain words, the goal was to eliminate the "**subversive**" concepts these words conveyed.	Orwell, G. (1949). *1984*. Pearson Education.
26	The Universal Declaration of Human Rights (UDHR), which the United Nations General Assembly adopted without dissent in 1948, proclaims: "**Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and**	United Nations. (1948, December 10). *Universal Declaration of Human Rights*. United Nations. https://www.un.org/en/about-us/universal-declaration-of-human-rights

	regardless of frontiers."	
26	Even if some of those provisions constitute mere "**lip service**" because government officials do not actually honor them in practice, they demonstrate that free speech is universally recognized as an ideal.	Cambridge Dictionary. (2023, September 13). *lip service*. @CambridgeWords. https://dictionary.cambridge.org/us/dictionary/english/lip-service
32	**[T]he roots of free speech are ancient, deep, and sprawling. The Athenian statesman Pericles extolled the democratic value of open debate and tolerance of social dissent in 431 BCE. In the ninth century CE, the irreverent freethinker Ibn al-Rawandi used the fertile intellectual climate of the Abbasid Caliphate to question prophecy and holy books. In 1582 the Dutchman Dirck Coornhert insisted that it was "tyrannical to…forbid good books in order to squelch the truth." The first legal protection of press freedom was instituted in Sweden in 1766 and Denmark became the first state in the world to abolish any and all censorship in 1770.**	Mchangama, J. (2022). *Free speech : a global history from Socrates to social media*. Basic Books.
33	It documents the continuing free speech aspirations even during what it terms "**the not-so-Dark-Ages,**" discussing both "inquiry and inquisition" in the medieval Islamic realm,	Mchangama, J. (2022). *Free speech : a global history from Socrates to social media*. Basic Books.

	as well as medieval Europe	
33	It documents the continuing free speech aspirations even during what it terms “the not-so-Dark-Ages,” discussing both “**inquiry and inquisition**” in the medieval Islamic realm, as well as medieval Europe	Mchangama, J. (2022). *Free speech : a global history from Socrates to social media*. Basic Books.
33	Of the many free speech champions it quotes, from many ages and regions, I will cite just one example: Mahatma Gandhi, who hailed freedom of speech and its cognate freedom of assembly as the “**two lungs that are absolutely necessary for a man to breathe the oxygen of liberty.”**	Mchangama, J. (2022). *Free speech : a global history from Socrates to social media*. Basic Books.
34	As the acclaimed writer and free speech champion Salman Rushdie said, in the 1991 statement that is this book’s epigram: “**Free speech is life itself.”**	Rushdie, S. (1991, December 12). Excerpts From Rushdie’s Address: 1,000 Days “Trapped Inside a Metaphor.” *The New York Times.* https://www.nytimes.com/1991/12/12/nyregion/excerpts-from-rushdie-s-address-1000-days-trapped-inside-a-metaphor.html
34	More recently, speaking from his prison cell upon receiving the Nobel Peace Prize in 2010, Chinese human rights activist Liu Xiaobo eloquently described this precious freedom, for which he had sacrificed his physical liberty: “**Free expression is the foundation of human rights, the source of humanity, and the mother of truth.”**	Xiaobo, L. (2010). *The Nobel Peace Prize 2010*. NobelPrize.org. https://www.nobelprize.org/prizes/peace/2010/xiaobo/lecture/

36	The First Amendment permits government to outlaw the speech that is the most dangerous, consistent with the "**emergency**" principle: speech that, considered in its overall context, directly, imminently causes or threatens specific serious harm.	Lukianoff, G., & Strossen, N. (2022, January 13). Does free speech assume words are harmless? Part 7 of answers to bad arguments against free speech. The Foundation for Individual Rights and Expression. https://www.thefire.org/news/blogs/eternally-radical-idea/does-free-speech-assume-words-are-harmless-part-7-answers-bad
38	Although speech that doesn't satisfy the emergency principle ("**non-emergency speech**") may well potentially cause harm, it is dangerous to grant government the added latitude to punish speech with a less direct, imminent connection to potential harm; predictably, government (which is accountable to majoritarian and other powerful nterest groups) disproportionately exercises its discretion to suppress minority voices and views.	Lukianoff, G., & Strossen, N. (2022, January 13). Does free speech assume words are harmless? Part 7 of answers to bad arguments against free speech. *The Foundation for Individual Rights and Expression*. https://www.thefire.org/news/blogs/eternally-radical-idea/does-free-speech-assume-words-are-harmless-part-7-answers-bad

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Paragraph #	Passage	Citation
Summary	Before the modern Supreme Court adopted these speech-protective precepts—which are often summarized as the **"emergency**	*Schenck v. United States*, 249 U.S. 47 (1919).
Summary	and **"viewpoint neutrality"** principles—the government had discretion to restrict speech with an indirect	*Rosenberger v. Rector and Visitors of the University of Virginia*, 515 U.S. 819 (1995).

Summary	, speculative connection to potential harm under the **"bad tendency"** test; it predictably wielded such discretion disproportionately to suppress its critics and advocates of human rights and social justice causes.	*Patterson v. Colorado*, 205 U.S. 454 (1907).

Chapter 2		
Paragraph #	Passage	Citation
First Page, second paragrpah (no paragraph # indicated)	It cites human rights activists from the U.S. and other countries, who have concluded that **"counterspeech"** such as education is more effective than censorship in advancing their goals, and it dispels common misunderstandings about counterspeech to hate speech —for example, that it is the responsibility of targeted minority groups.	Counterspeech Doctrine Archives. (n.d.). *The Free Speech Center*. Retrieved September 20, 2023, from https://firstamendment.mtsu.edu/encyclopedia/case/counterspeech-doctrine/.
2 (footnote 1)	The Supreme Court has said that speech regulations based on a speaker's **"specific motivating ideology or . . . opinion or perspective"**—that is, viewpoint-based regulations—constitute an especially **"egregious form of content discrimination,"** but all content-based regulations are subject to the same strict First Amendment standards.	*Rosenberger v. Rector,* 515 U.S. 819 (1995).
3	Later answers will outline specific kinds of speech restrictions that the First Amendment bars, but the present answer will focus on the preeminently important general principle of viewpoint (or content) neutrality, which the Supreme Court has hailed as the **"bedrock principle underlying the First Amendment."**	*Texas v. Johnson*, 491 U.S. 397 (1989).
3	In its landmark 1972 decision that first expressly set out this principle, **Police Department of Chicago v. Mosley**, the Court declared: **"[A]bove all else, the First Amendment means that government has no**	*Police Department of Chicago v. Mosley*, 408 U.S. 92 (1972).

	power to restrict expression because of its message, its ideas, its subject matter, or its content."	
4	The Supreme Court has explained that any viewpoint-based speech regulations would subvert not only individual liberty, but also our democratic self-government, due to the inherent danger that officials would enforce such regulations to **"suppress unpopular ideas or information or manipulate public debate."**	*Turner Broadcasting System, Inc. v. FCC,* 512 U.S. 622, 641 (1994).
5	As far back as **1951, the Court** acknowledged these intertwined forms of discrimination when it struck down a city's refusal to grant a Jehovah's Witnesses group a permit to use a park for Bible talks, even though it had granted such permits for other religious and political groups.	*Niemotko v. Maryland*, 340 U.S. 268 (1951).
5	The Court observed that **"the permit was denied because of the city's dislike for or disagreement with the Witnesses."**	*Niemotko v. Maryland*, 340 U.S. 268 (1951).
5	And in ***Mosley*** itself, the Court invoked the Constitution's Equal Protection Clause, as well as the Free Speech Clause, in striking down a Chicago ordinance that outlawed picketing on certain topics, which had been wielded to punish a Black man's peaceful picketing against racial discrimination.	*Police Department of Chicago v. Mosley*, 408 U.S. 92 (1972).
5	And in *Mosley* itself, the Court invoked the Constitution's **Equal Protection Clause**, as well as the **Free Speech Clause**, in striking down a Chicago ordinance that outlawed picketing on certain topics, which had been wielded to punish a Black man's peaceful picketing against racial discrimination.	*Police Department of Chicago v. Mosley*, 408 U.S. 92 (1972).
5	Notably, the ***Mosley*** opinion was written by Thurgood Marshall, the Court's first Black Justice, who had headed the NAACP	*Police Department of Chicago v. Mosley*, 408 U.S. 92 (1972).

	(National Association for the Advancement of Colored People) Legal Defense and Educational Fund.	
5	The ***Mosley*** case illustrates a significant pattern in the Court's speech-protective rulings, which will be evident throughout this book: many of these decisions, regarding multiple specific free speech issues, protect speech by minority speakers and/or advocating equal rights causes.	*Police Department of Chicago v. Mosley*, 408 U.S. 92 (1972).
6	In sum, **"above all else,"** the First Amendment bars viewpoint-discriminatory speech regulations because they endanger liberty, equality, and democracy alike.	*Police Department of Chicago v. Mosley*, 408 U.S. 92 (1972).
7	In contrast, the government may regulate speech for reasons other than its disfavored message, so that **"there is no realistic possibility that official suppression of ideas is afoot."**	*R.A.V. v. City of St. Paul*, 505 U.S. 377 (1992).
8	One example is a **"true threat**": when the speaker directs the expression to one person or a small group, and intends to instill a **"reasonable"** or objective fear of harm on the part of the targeted person(s).	*Virginia v. Black*, 538 U.S. 343 (2003).
9	For instance, in August 2017, when hundreds of Unite the Right demonstrators in Charlottesville, Virginia, menacingly crowded in upon a small group of counter-demonstrators on the University of Virginia campus, while brandishing lighted tiki torches, **the demonstrators' expression constituted punishable threats**; the marchers intentionally instilled in counter-demonstrators a reasonable fear that they would be subject to harm. Moreover, nine people who had been injured during the demonstrations **successfully sued two dozen white nationalists** and organizations who had	Lavoie, D. (2021, November 23). Jury awards $26M in damages for Unite the Right violence. *AP News*. https://apnews.com/article/violence-lawsuits-race-and-ethnicity-charlottesville-01d9437ec28ed71b4bae293d7e0d815d

	spearheaded the threats and violence; in 2021, a jury held the defendants culpable of conspiracy and imposed **$25 million in damages upon them.**	
10	Although the viewpoint neutrality principle bars government from punishing hate speech solely due to its hateful—and hated—message, hate speech often constitutes evidence that facilitates convictions under **"hate crimes"** statutes.	United States Department of Justice. (2022, November 1). *Learn about Hate Crimes*. https://www.justice.gov/hatecrimes/learn-about-hate-crimes
10	For example, on the basis of such hate speech, the murderers of Ahmaud Arbery—who killed him while he was jogging through their neighborhood in Glynn County, Georgia—**were found guilty on federal hate crimes charges in 2022.**	United States Department of Justice. (2022, August 8). Federal Judge Sentences Three Men Convicted of Racially Motivated Hate Crimes in Connection with the Killing of Ahmaud Arbery in Georgia. *Department of Public Affairs*. https://www.justice.gov/opa/pr/federal-judge-sentences-three-men-convicted-racially-motivated-hate-crimes-connection-killing
19	Given its logical forceappeal, it is not surprising that this analysis is reflected in not only First Amendment law, but also **the major United Nations treaty governing free speech**, as well as the free speech law in many other countries.	*Universal Declaration of Human Rights*. United Nations. Retrieved September 18, 2023, from https://www.un.org/en/about-us/universal-declaration-of-human-rights
19	i.e., a restriction that targets particular topics or ideas—is subject to **"strict scrutiny,"** requiring the government to demonstrate that the restriction is **"necessary"** and the **"least restrictive"** means for materially promoting a	David L. Hudson, Jr. (2021 August, 16). Strict Scrutiny. *The Free Speech Center*. Retrieved September 18, 2023, from

	countervailing goal of **"compelling importance."**	https://firstamendment.mtsu.edu/article/strict-scrutiny/
20	The strict scrutiny test, which courts use to **"scrutinize"** or review restrictions on various constitutional rights—including freedom of speech—is essentially another way of formulating the emergency standard for reviewing speech restrictions in particular.	David L. Hudson, Jr. (2021 August, 16). Strict Scrutiny. *The Free Speech Center.* Retrieved September 18, 2023, from https://firstamendment.mtsu.edu/article/strict-scrutiny/
21	Justice Louis Brandeis eloquently set out this view, and the corresponding emergency principle, in an often-quoted **1927 opinion, which the modern Supreme Court unanimously endorsed in a 1969 case: "Fear of serious injury cannot alone justify suppression of free speech…. Men feared witches and burnt women…. Those who won our independence by revolution were not cowards….They did not exalt order at the cost of liberty….Only an emergency can justify repression."**	*Whitney v. California*, 274 U.S. 357 (1927).
23	Supreme Court Justice Oliver Wendell Holmes well captured this reality when he noted that **"every idea is an incitement,"** therefore rejecting the government's argument that it should be permitted to censor speech with a **"tendency"** to **"incite"** harmful conduct.	*Gitlow v. New York,* 268 U.S. 652 (1925)
23	There are **myriad documented cases** of individuals who credibly claim that they were **"incited"** to commit heinous crimes, including mass murders, based on their (mis)readings of everything from Dostoievksy's classic novel, Crime and Punishment, to the Bible, to the Qu'ran.	*Brandenburg v. Ohio*, 395 US 444 (1969)

24	The evidence to date indicates that the assailant was induced to commit this crime by the ***1989 fatwa*** issued by Iran's then-Supreme Leader, Ayatollah Khomeini, based on his view that Rushdie's 1988 novel, The Satanic Verses, blasphemed the prophet Muhammad.	Casteran, Claude. (2022). "'No One Will Any Longer Dare Offend Islam': The 1989 Fatwa against Salman Rushdie." *The Times of Israel*. https://www.timesofisrael.com/no-one-will-any-longer-dare-offend-islam-the-1989-fatwa-against-salman-rushdie/
25	As lifelong gay rights champion Jonathan Rauch wrote: "**If someone calls me a `fucking faggot,' I interpret her as telling me that she needs counseling, not that that I am a fucking faggot**."	Rauch, J. (2021). The Constitution of Knowledge: A Defense of Truth. *Brookings Institution Press.*
27	**Substantial elements of their expression were appropriately punishable**, consistent with the emergency principle, in light of the overall context in which it was uttered—that isi.e., as targeted threats or conspiratorial plans.	Lavoie, D. (2021, November 23). Jury awards $26M in damages for Unite the Right violence. *AP News.* https://apnews.com/article/violence-lawsuits-race-and-ethnicity-charlottesville-01d9437ec28ed71b4bae293d7e0d815d
29	The latter conclusion was supported by none other than Susan Bro, the mother of Heather Heyer, the counter demonstrator who was murdered when a Unite the Right supporter ruthlessly drove his car into a crowd of counter-demonstrators. (**In 2019, he was sentenced** to life imprisonment plus 419 years for these crimes, and in 2021, an appellate court confirmed his conviction.)	United States Department of Justice. (2019, June 28). Ohio Man Sentenced to Life in Prison for Federal Hate Crimes Related to August 2017 Car Attack at Rally in Charlottesville, Virginia. *Office of Public Affairs*. https://www.justice.gov/opa/pr/ohio-man-sentenced-life-prison-federal-hate-crimes-related-august-2017-car-attack-rally.

29	[W]e walk into the room blindly if we don't take the time to know what the other side is thinking. . . . [H]ate groups …want a violent reaction or they want no one to oppose them at all. [N]either approach is effective. . . . [T]he effective approach is to show up in even larger numbers, without violence, to assertively say, "We see you, we don't like you [or] what you're saying…." And we saw this in the second Unite the Right Rally in Washington when they showed up in very small numbers and . .. were met with counter protesters. . . in. . . very large numbers, saying "go home, go away."	
31	Is **"Black Lives Matter"** advocacy hate speech, and/or disinformation/misinformation, and/or terrorist/extremist speech, as influential right-leaning politicians have claimed?	About. (n.d.). Black Lives Matter. Retrieved September 18, 2023, from https://blacklivesmatter.com/about/
31	Is information about the **"lab leak theory"** for the origins of the COVID pandemic hate speech (against Chinese people) and/or disinformation/misinformation, as influential left-leaning politicians have claimed?	Maxmen A. (2021). Divisive COVID 'lab leak' debate prompts dire warnings from researchers. Nature, 594(7861), 15–16. https://doi.org/10.1038/d41586-021-01383-3
34	In 2018, Germany implemented strict limits on internet hate speech as part of its new **"NetzDG" law**, which deputized online companies to enforce Germany's pre-existing non-emergency hate speech restrictions.	Gesley, J. (2021) Germany: Network Enforcement Act Amended to Better Fight Online Hate Speech. *Library of Congress*, https://www.loc.gov/item/global-legal-monitor/2021-07-06/germany-network-enforcement-act-amended-to-better-fight-online-hate-speech/.

34	Jörg Rupp, a social worker and political activist, also had his Twitter account banned, after he invoked the language of right-wing groups to underscore their **“cruelty”** toward asylum seekers.	Satariano, A. (2019, May 6). Europe Is Reining In Tech Giants. But Some Say It’s Going Too Far. *The New York Times.* https://www.nytimes.com/2019/05/06/technology/europe-tech-censorship.html
34	His conclusion: **“It’s dangerous . . . to be ironic.”**	Satariano, A. (2019, May 6). Europe Is Reining In Tech Giants. But Some Say It’s Going Too Far. *The New York Times.* https://www.nytimes.com/2019/05/06/technology/europe-tech-censorship.html
p32 footnote 3	This is an abbreviation of the term **“Netzwerkdurchsetzunggesetz,”** which is commonly translated as the “Network Enforcement Act.”	Gesley, J. (2021).Germany: Network Enforcement Act Amended to Better Fight Online Hate Speech. *Library of Congress*, https://www.loc.gov/item/global-legal-monitor/2021-07-06/germany-network-enforcement-act-amended-to-better-fight-online-hate-speech/.
p32 footnote 3	This is an abbreviation of the term “Netzwerkdurchsetzunggesetz,” which is commonly translated as the **“Network Enforcement Act.”**	Gesley, J. (2021) Germany: Network Enforcement Act Amended to Better Fight Online Hate Speech. *Library of Congress*, https://www.loc.gov/item/global-legal-monitor/2021-07-06/germany-network-enforcement-act-amended-to-better-fight-online-hate-speech/.

p36 footnote 4	But as one expert pointed out in 2010, **"Even now, Zundel's website is still running and regularly updated with his 'letters from prison' despite his incarceration."**	Yaman Akdeniz, Governing Racist Content on the Internet: *National and International Responses*, 56 U.N.B. L.J. 103, 123 (2007).
37	In a September 19, 2022 article in the Forward entitled, **"When Trump Supporters Gave Him the Finger, Was it Really a Nazi Salute?,"**	Fox, M. (2022, September 19). When Trump supporters gave him the finger, was it really a Nazi salute? *The Forward*. https://forward.com/culture/518529/trump-rally-salute-index-fingers-hate-symbols/.
40	Hate speech, as listed in the Anti-Defamation League's database, includes such basic options as **"100%,"** which white supremacists use to reference the idea of a completely white society. …Other numerals, including 1, 2, 12, 13, and 14, can also be hate symbols.	100%. (n.d.). *Anti-Defamation League*. Retrieved September 19, 2023, from https://www.adl.org/resources/hate-symbol/100.
40	**"Coors,"** a major brand of cheap, light beer — [whose current ownership] does not endorse white supremacy — can also stand for **"Comrades of our racial struggle."**	COORS Family Skins. (n.d.). *Anti-Defamation League*. Retrieved September 19, 2023, from https://www.adl.org/resources/hate-symbol/coors-family-skins.

42	(Box quote) The most powerful "fake news" deceptions are not usually made up of neatly self-contained messages. For example, the well-documented misperception among most Americans that crime ha[d] been rising [during periods when it was in fact decreasing] cannot be attributed solely to election candidates' "pants-on-fire" lies, but is also due to factual but selective reporting by news media as well as fictional depictions of violence in entertainment media. Similarly, hate campaigns comprise disaggregated collections of historical narratives, tropes about being and belonging, stereotypes about the Other, and curated streams of news and opinion that reinforce favored ideologies. Viewed singly, most of these messages may not cross any regulatory threshold; it is in the audience's heads that they combine to harmful effect.	
43	In light of the diffuse and pervasive nature of problematic speech, George concludes that, in contrast with the inevitably futile attempts to restrict it, **"much more attention needs to be paid to the demand side of disinformation and hate campaigns."**	
43	Just as it takes **"two to tango,"** it takes two (at least) to communicate.	It takes two to tango. (2023, September 13). https://dictionary.cambridge.org/us/dictionary/english/it-takes-two-to-tango.
44	Third and finally, some such expression will remain unchanged, or perhaps even ramped up, as the speakers seek the publicity and sympathy that regularly result from suppression efforts; due to the well-documented **"forbidden fruits"** or "boomerang" phenomenon, censored material tends to garner increased interest and support.	Filley, D. (1999). Forbidden Fruit: When Prohibition Increases the Harm It Is Supposed to Reduce. *The Independent Review*, 3, 441–451.

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45	Before the Supreme Court's adoption of the speech-protective emergency principle in the second half of the twentieth century, government was permitted to punish speech with a harmful potential or **"bad tendency."**	Parker, R. (2023, August 7). Clear and Present Danger Test. *The Free Speech Center*. https://firstamendment.mtsu.edu/article/clear-and-present-danger-test/.
46	These include: anti-discrimination laws; laws against **"hate crimes"** or "bias crimes," which address crimes whose victims are singled out for discriminatory reasons;	United States Department of Justice. (2022, November 1). *Learn about Hate Crimes*. https://www.justice.gov/hatecrimes/learn-about-hate-crimes
46	These include: anti-discrimination laws; laws against "hate crimes" or **"bias crimes,"** which address crimes whose victims are singled out for discriminatory reasons;	United States Department of Justice. (2022, November 1). *Learn about Hate Crimes*. https://www.justice.gov/hatecrimes/learn-about-hate-crimes
46	and **"counterspeech,"** which constitutes any speech that counters hateful ideas, including by proactively promoting positive countervailing values.	Counterspeech Doctrine Archives. (n.d.). *The Free Speech Center*. Retrieved September 20, 2023, from https://firstamendment.mtsu.edu/encyclopedia/case/counterspeech-doctrine/.

46	For instance, in 2017 the European Centre for Press and Media Freedom issued a statement opposing increased German restrictions on hate speech, explaining: **"Combating illegal incitement to violence, hatred, . . . and discrimination is indeed . . . crucial. . . . But . . . censoring speech has never [been] shown to be effective: it is rather by more speech . . . that our societies will be helped."**	Eddy, M., & Scott, M. (2017, June 30). Delete Hate Speech or Pay Up, Germany Tells Social Media Companies. *The New York Times*. https://www.nytimes.com/2017/06/30/business/germany-facebook-google-twitter.html.
47	They have instead advocated **"harm reduction"** and "restorative justice."	United Nations. (n.d.). Why tackle hate speech?. *United Nations*. Retrieved September 20, 2023, from https://www.un.org/en/hate-speech/impact-and-prevention/why-tackle-hate-speech.
47	They have instead advocated "harm reduction" and **"restorative justice.**"	Andrew, B. (2019). Making Restorative Justice happen for hate crime across the country. *Why me? Victims for Restorative Justice.*
48	Censoring speech is a **"prohibition"** strategy, seeking to dry up the supply and consumption of the dangerous item—in this case, controversial speech—by punishing those who supply and consume it.	Prohibition Definition & Meaning. (n.d.). *Merriam-Webste*r. Retrieved September 20, 2023, from https://www.merriam-webster.com/dictionary/prohibition.
	For example, **mental health experts say** that all of us can be trained to be resilient in the face of speech that is potentially upsetting, insulting, and traumatizing, such as hate speech.	

48	As another example, even leaders of overtly discriminatory organizations have been **"redeemed"** (their own term) through extended communications with people who patiently engage with them, gradually leading them to question and ultimately reject their former views.	Jilani, Z. (2017, August 17). This Group Has Successfully Converted White Supremacists Using Compassion. Trump Defunded It. *The Intercept.* https://theintercept.com/2017/08/17/this-group-has-successfully-converted-white-supremacists-using-compassion-trump-defunded-it/
48	Organizations such as **"Life After Hate"** enlist hundreds of such "formers" (again, their own term) to reach out to others who are still active in hateful organizations, or who are sympathetically considering the organizations' ideas, to "redeem" them as well.	About Us. (n.d.). *Life After Hate*. Retrieved September 20, 2023, from https://www.lifeafterhate.org/about-us/.
48	Organizations such as "Life After Hate" enlist hundreds of such **"formers"** (again, their own term) to reach out to others who are still active in hateful organizations, or who are sympathetically considering the organizations' ideas, to "redeem" them as well.	About Us. (n.d.). *Life After Hate*. Retrieved September 20, 2023, from https://www.lifeafterhate.org/about-us/.
48	Organizations such as "Life After Hate" enlist hundreds of such "formers" (again, their own term) to reach out to others who are still active in hateful organizations, or who are sympathetically considering the organizations' ideas, to **"redeem"** them as well.	About Us. (n.d.). *Life After Hate*. Retrieved September 20, 2023, from https://www.lifeafterhate.org/about-us/.
49	Far from privileging freedom of speech above equality rights, U.S. law treats both as **"fundamental"** rights, which are equally entitled to the strongest constitutional protection.	Strict scrutiny. (n.d.). *Legal Information Institute*. Retrieved September 20, 2023, from *https://www.law.cornell.edu/wex/strict_scrutiny.*

51	The government bears the burden of vindicating any such measure under the **"strict scrutiny"** test: government must demonstrate that the restriction is necessary to promote a countervailing goal of compelling importance; if the goal could be furthered through an alternative measure, which is less restrictive of the right, the government must instead pursue that alternative.	David L. Hudson, Jr. (2021 August, 16). Strict Scrutiny. *The Free Speech Center.* Retrieved September 18, 2023, from https://firstamendment.mtsu.edu/article/strict-scrutiny/.
52	Likewise, restrictions on racist expression that constitutes **"hostile environment"** harassment in an educational or employment setting are also constitutional: racist expression that is **so objectively offensive, severe, and pervasive that it denies equal educational or employment opportunities on the basis of race**.	*Aurelia Davis, as Next Friend of Lashonda D. v. Monroe County Board of Education et al.*, 526 U.S. 629 (1999).
52	A vivid example is certainthe expression byof the Unite the Right marchers in Charlottesville in 2017, , **some of which constituted punishable "true threats"**; the speakers meant to instill reasonable fear on the part of directly targeted counter-demonstrators that they would be subject to violence..	Lavoie, D. (2021, November 23). Jury awards $26M in damages for Unite the Right violence. *AP News*. https://apnews.com/article/violence-lawsuits-race-and-ethnicity-charlottesville-01d9437ec28ed71b4bae293d7e0d815d
53	"In many countries, [hate speech] rules . . . are abused by the powerful to limit non-traditional, dissenting, critical, or minority voices, or discussion about challenging social issues. Hate speech . . . laws ironically are often employed to suppress the very minorities they purportedly are designed to protect."	

55	For example, several Supreme Court decisions unanimously rejected First Amendment challenges to laws requiring formerly all-male organizations to admit women, notwithstanding the organizations' argument that this would undermine their **"freedom of expressive association."**	
56	Nonetheless, the Court concluded that the speech could not be punished, in light of other considerations: it took place on public streets, which constitute **"traditional public forums"** that (to quote a 1939 decision) "have immemorially been held in trust for…purposes of …communicating thoughts between citizens, and discussing public questions"; and it addressed matters of public concern, which have always been considered of utmost importance in our representative democracy	Freedom of Association Archives. (n.d.). *The Free Speech Center.* Retrieved September 20, 2023, from https://firstamendment.mtsu.edu/encyclopedia/case/freedom-of-association/.
56	Nonetheless, the Court concluded that the speech could not be punished, in light of other considerations: it took place on public streets, which constitute **"traditional public forums"** that (**to quote a 1939 decision**) **"have immemorially been held in trust for…purposes of …communicating thoughts between citizens, and discussing public questions";** and it addressed matters of public concern, which have always been considered of utmost importance in our representative democracy	*Hague v. Committee for Industrial Organization*, 307 U.S. 496
56	The Court stated: "Speech is powerful. It can stir people to action, move them to tears of both joy and sorrow, and – as it did here – inflict great pain. . . . [W]e cannot react to that pain by punishing the speaker. As a Nation we have chosen a different course – to protect even hurtful speech on public issues to ensure that we do not stifle public debate."	*Snyder v. Phelps*, 562 U.S. 443 (2011).

59	(Holmes did not use the precise phrase, **"the marketplace of ideas,"** but he did avert to that concept.)	Marketplace of Ideas. (2009, January 1). *The Free Speech Center*. https://firstamendment.mtsu.edu/article/marketplace-of-ideas/.
59	Consistent with Holmes' skeptical philosophical outlook, he hypothesized that the free exchange of ideas might be a better alternative than **"persecution for the expression of opinions,"** explaining: **"[W]hen men have realized that time has upset many fighting faiths, they may come to believe. . . that the ultimate good desired is better reached by free trade in ideas–that the best test of truth is the power of the thought to get itself accepted in the competition of the market." [emphasis added]**	*Abrams v. United States,* 250 U.S. 616 (1919).
62	Rather, he explained, **"the theory of our Constitution"** is that free speech is better suited for truth-seeking than censorship, but he acknowledged that this approach **"is an experiment, as all life is an experiment,"** since it is necessarily **"based upon imperfect knowledge."**	*Abrams v. United States,* 250 U.S. 616 (1919).
62	Nonetheless, Holmes concluded that "**[w]hile that experiment is part of our system, . . . we should be eternally vigilant against attempts to check the expression of opinions that we loathe and believe to be fraught with death, unless they so imminently threaten immediate interference with the lawful and pressing purposes of the law that an immediate check is required to save the country."**	*Abrams v. United States,* 250 U.S. 616 (1919)

63	Since Holmes wrote those memorable words, more than a century ago, evidence accumulated through our ongoing First Amendment **"experiment"** continues to reaffirm that free speech is a less imperfect vehicle for pursuing truth than is the censorial alternative.	*Abrams v. United States,* 250 U.S. 616 (1919).
63	Government officials and experts had condemned this theory as "**fake news**" and even "**hate speech**" (against Chinese people) since the pandemic's outbreak in early 2020, and it had been suppressed in major traditional and social media outlets.	Davidson, H. (2020, May 8). Global report: Virus has unleashed a "tsunami of hate" across world, says UN chief. *The Guardian*. https://www.theguardian.com/world/2020/may/08/global-report-china-open-to-cooperate-with-who-on-virus-origin-as-trump-repeats-lab-claim.
63	Yet in the spring of 2021, **the theory was rehabilitated** as at least deserving serious consideration.	Maxmen A. (2021). Divisive COVID 'lab leak' debate prompts dire warnings from researchers. *Nature*, 594(7861), 15–16. https://doi.org/10.1038/d41586-021-01383-3.
65	In 1984, Professor Melville Nimmer well captured the core skeptical, relativistic notion underlying the truth-seeking rationale for free speech. Referring to Holmes's above-quoted language, he asked: "**If acceptance of an idea in the competition of the market"**—i.e..e., among "**the public at large"—"is not the `best test' of its truth, what is the alternative?**" Logically, as he concluded, the answer could "**only be acceptance of an idea by some individuals or group narrower than that of the public at large**"—that isi.e., some elite subset of the public.	Nimmer, Melville B. 1984. *Nimmer on Freedom of Speech: A Treatise on the Theory of the First Amendment.* M. Bender.

65	Are "**We the People**," who wield sovereign power in our democratic republic, willing to entrust any individual or group with the incalculable power of determining which ideas are fit for our consideration and discussion?	U.S. Const. pmbl.
65	**"Given the human tendency to reject unorthodox ideas and to screen out those that do not confirm pre-existing notions, the vision of truth easily conquering error is too optimistic. But without tight controls on censorship of ideas, truth may be deprived even of a fighting chance."**	Curtis, Michael Kent. 2000. *Free Speech, The People's Darling Privilege: Struggles for Freedom of Expression in American History.* Durham, NC: Duke University Press.
68	In 1960, journalist A. J. Liebling famously quipped that "**[f]reedom of the press is guaranteed only to those who own one**."	Liebling, A. J. 14 May 1960. "The Wayward Press: Do You Belong in Journalism?" *The New Yorker:* 109.
68	The Supreme Court celebrated this liberating, equalizing potential of online expression in its landmark 1997 decision that upheld robust free speech rights in the then-new online context: "**Any person with a phone line can become a town crier with a voice that resonates farther than it could from any soapbox.**"	*Reno v. ACLU*, 521 US 844 (1997).
70	Elected officials are predictably responsive to majorities or powerful interest groups, so the Constitution enshrines rights such as freedom of speech precisely to protect unpopular individuals and marginalized minorities from "**the tyranny of the majority**," as illustrated by many of the Supreme Court decisions that this book summarizes.	Madison, J. (1788). *The Federalist Papers: No. 51.* New York Packet.

72	When there is a sufficiently tight and direct causal nexus between speech and specific serious **imminent harm**, including violence, such speech may be punished, consistent with the emergency principle. For instance, government may punish a speaker who **intentionally incites imminent violence that is also likely to happen imminently**.	*Brandenburg v. Ohio*, 395 US 444 (1969).
72	As another example, under the "**fighting words**" doctrine, government may punish a direct, face-to-face personal insult that is intended and likely to provoke an immediate violent reaction.	*Chaplinsky v. New Hampshire,* 315 U.S. 568 (1942).
72	As yet another example, when a speaker addresses an individual or small group of individuals and intentionally instills in the audience members a reasonable fear that they will be subject to violence, that is a punishable "**true threat**" (even when the speaker doesn't intend to actually carry out the threatened violent act).	*Virginia v. Black,* 538 U.S. 343 (2003).
73	For instance, in the 1963 ***Edwards v. South Carolina*** decision, the Supreme Court overturned "**breach of the peace**" convictions, which had been imposed by a South Carolina trial court and affirmed by the South Carolina Supreme Court, on a group of high school and college students who had peacefully marched on the state capitol grounds, "**carrying placards bearing such messages as ``I'm proud to be a Negro' and ``Down with Segregation,' and singing the Star Spangled Banner and other patriotic and religious songs**." The U.S. Supreme Court observed that the students "**were convicted upon evidence which showed no more than that the opinions which they were peaceably expressing were sufficiently opposed to the views of the majority of the**	*Edwards v. South Carolina*, 372 U.S. 229 (1963).

	community to attract a crowd and necessitate police protection."	
74	To cite another example, a 1965 Supreme Court decision, **Cox v. Louisiana,** overturned a Black minister's criminal conviction for leading a group of Louisiana college students in a peaceful pro–-civil rights demonstration, based in part on a sheriffpolice officer's testimony that "**the students were ``violent' because they . . . …disrupt[] do things that disrupts [sic] our way of living down here**."	Cox v. Louisiana, 379 U.S. 559 (1965)
74	In the same vein, the trial judge said that the minister's breach- of- the- peace conviction—and his 21-month prison sentence, plus a $5,500 fine (equivalent to about $52,000 in 2023)—was justified because "**[i]t [is] it is "inherently dangerous . . .… to bring 1,500 . . .… colored people [to] the predominantly white business district in . . .… Baton Rouge and . . . …sing songs . . .… carrying lines such as ``black and white together.' . . . …That has to be an inherent breach of the peace.**"	*Cox v. Louisiana*, 379 U.S. 536 (1965).
75	Referring to then-President Lyndon Baines Johnson, Watts said: "**If they ever make me carry a rifle the first man I want to get in my sights is L.B.J. They are not going to make me kill my black brothers**."	*Watts v. United States*, 394 U.S. 705 (1969).
75	However, characterizing Watts's statement as "**political hyperbole**," the Supreme Court reversed his conviction, explaining that **"[t]he language used in the political arena . . . is often vituperative, abusive and inexact."**	*Watts v. United States*, 394 U.S. 705 (1969).
76	In the 1982 **Claiborne Hardware v. NAACP** case, the Court held that NAACP officials had a First Amendment right to threaten violent reprisals against violators of an NAACP-organized boycott of racially	*NAACP v. Claiborne Hardware Co.*, 458 U.S. 886 (1982).

	discriminatory white merchants (which dated back to 1966).	
76	NAACP field organizer Charles Evers had warned boycott violators: "**If we catch any of you going in any of them racist stores, we're gonna break your damn neck**."	*NAACP v. Claiborne Hardware Co.*, 458 U.S. 886 (1982).
76	Although several Black people who patronized white merchants were subsequently subject to violent attacks, the Court held that Evers's words did not satisfy the demanding test for punishable incitement of violent conduct, because the violence did not occur "**imminently**." The Court observed that we must tolerate such violent language because "**strong and effective extemporaneous rhetoric cannot be nicely channeled in purely dulcet phrases. An advocate must be free to stimulate his audience with . . . emotional appeals**."	*NAACP v. Claiborne Hardware Co.*, 458 U.S. 886 (1982).
77	Alarmingly, in a **2022 survey by FIRE** (the Foundation for Individual Rights and Expression) and College Pulse, one in five college students (20%) said that it is acceptable to use violence "**sometimes**" or "**rarely**" to shut down a controversial speaker.	The Foundation for Individual Rights and Expression, "2022-2023 College Free Speech Rankings," https://www.thefire.org/research-learn/2022-2023-college-free-speech-rankings (September 16, 2023).
80	In contrast with the general public, modern Supreme Court Justices across the ideological spectrum have regularly supported freedom "e**ven for the thought that [they] hate,**" which Justice Holmes extolled as the constitutional principle "**that more imperatively calls for attachment than any other**."	*United States v. Schwimmer*, 279 U.S. 644 (1929).

80	Liberal Justices have supported free speech even for **white supremacists' racist and anti-Semitic rants**, and conservative Justices have supported free speech even for a Communist who expressed his contempt for the United .States. by burning the American flag	*Brandenburg v. Ohio,* 395 U.S. 444 (1969).
80	Liberal Justices have supported free speech even for white supremacists' racist and anti-Semitic rants, and conservative Justices have supported free speech even for a **Communist who expressed his contempt for the United .States. by burning the American flag**	*Texas v. Johnson*, 491 U.S. 397 (1989).
80	Probably the most (in)famous example is the **American Civil Liberties Union (ACLU)'s 1977–-78 defense of free speech for neo-Nazis demonstrating in Skokie**, Illinois, the home of many Jews, including many Holocaust survivors.	*National Socialist Party of America v. Village of Skokie*, 432 U.S. 43 (1977).
81	As an ACLU brief in the Skokie case pointed out, the very same speech-protective principles that permitted the neo-Nazis' provocative march in a community where their ideas were viewed as hateful and dangerous had also permitted "**Martin Luther King, Jr.'s confrontational march into**" another Illinois community—Cicero.	Senate Committee on Health, Education, Labor and Pensions. 2017."Exploring Free Speech on College Campuses." Retrieved September 20, 2023, from https://www.govinfo.gov/content/pkg/CHRG-115shrg27450/html/CHRG-115shrg27450.htm.
81	In 1966, Time magazine described Cicero as "**a Selma [, Alabama,] without the Southern drawl**."	"Civil Rights: Crossing the Red Sea." 1966. *Time*.

82	As the great civil rights champion and longtime Congressman John Lewis observed: "**Without freedom of speech, the civil rights movement would have been a bird without wings**."	*"Remembering Civil Rights History, When 'Words Meant Everything'"* PBS NewsHour. Retrieved September 16, 2023 from https://www.pbs.org/newshour/show/words-meant-everything-poetry-advanced-civil-rights-movements-call-justice.
84	Neier was the ACLU's executive director in 1977–78, when the ACLU **successfully defended the First Amendment rights of neo-Nazis to demonstrate in Skokie**, Illinois, with its large Jewish population, including many Holocaust survivors.	*Village of Skokie v. National Socialist Party of America*, 373 N. E. 2d 21 (Ill. 1978).
85	**"I am unwilling to put anything, even love of free speech, ahead of detestation of the Nazis. . . . I could not bring myself to advocate freedom of speech in Skokie if I did not believe that the chances are best for preventing a repetition of the Holocaust in a society where every incursion on freedom is resisted. Freedom has its risks. Suppression of freedom, I believe, is a sure prescription for disaster."**	Neier, Aryeh. 1979. *Defending My Enemy: American Nazis, the Skokie Case, and the Risks of Freedom*. International Debate Education Association, at 3.
87	**"Remarkably, pre-Hitler Germany had laws very much like the Canadian anti-hate law. Moreover, those laws were enforced with some vigour. During the fifteen years before Hitler came to power, there were more than two hundred prosecutions based on anti-Semitic speech. And, in the opinion of the leading Jewish organization [in Germany] of that era, no more than 10% of the cases were mishandled by the authorities."**	Borovoy, Alfred Alan. 1988. *When Freedoms Collide: The Case for Our Civil Liberties*. 50, Lester & Orpen Dennys.

88	For instance, Danish journalist Flemming Rose reports that between 1923 and 1933, the virulently anti-Semitic newspaper Der Stürmer, published by Julius Streicher, "**was either confiscated or [its] editors [were] taken to court on . . . thirty-six occasions.**" Yet, "**[t]he more charges Streicher faced, the greater became the admiration of his supporters. The courts became an important platform for Streicher's campaign against the Jews.**"	"Copenhagen, Speech, and Violence." 2015. *The New Yorker*. https://www.newyorker.com/news/news-desk/copenhagen-speech-violence.
89	As Neier commented in his classic book about the Skokie case: "**The lesson of Germany in the 1920s is that a free society cannot be . . . maintained if it will not act . . . forcefully to punish political violence. It is as if no effort had been made in the United States to punish the murderers of Medgar Evers, Martin Luther King, Jr. . . . and . . . other victims**" of violence during the civil rights movement.	Neier, Aryeh. 1979. *Defending My Enemy: American Nazis, the Skokie Case, and the Risks of Freedom*. International Debate Education Association.
90	"**Counterspeech**" is a shorthand term for any speech that seeks to counter or reduce the potential adverse impacts of controversial speech, including hate speech.	Counterspeech Doctrine Archives. (n.d.). *The Free Speech Center*. Retrieved September 20, 2023, from https://firstamendment.mtsu.edu/encyclopedia/case/counterspeech-doctrine/.
93	According to ASU Law Professor Charles Calleros, who was closely involved in the situation, a "**racially degrading poster**" had been displayed on the outer door of a room in a campus dormitory. Calleros recounted that the "**four black women students**" who noticed the poster engaged in constructive counterspeech with the occupant of that room, as well as others on campus, and this episode became the springboard for university-wide anti-racism initiatives.	Calleros, Charles. Letter to the Editor "African-American Women Respnd to Poster with Courage, Intelligence," *State Press*, Feb. 15, 1991, at 5.

93	In addition to the four Black women who initially saw the poster, these initiatives were spearheaded by another student, Rossie Turman, in his capacity as chair of ASU's African American Coalition. Turman commented: "**When you get a chance to swing at racism, and you do, you feel more confident about doing it the next time. It was a personal feeling of empowerment, that I don't have to take that kind of stupidity**."	Turman, Rossie. "The Speech We Hate" (editorial). *Progressive*. August 1992, at 8-9.
93	Had the response instead been punitive, a contemporaneous Progressive Magazine editorial opined, that would have served to "**increase[d] the dependency of . . . …victims of hate and oppression. Instead of empowering them, [a punitive response] enfeebles them**."	Turman, Rossie. "The Speech We Hate" (editorial), Progressive, August 1992, at 8-9.
94	University of Pennsylvania Professor Sigal Ben-Porath coined the apt term "**inclusive freedom**" to connote the ideal of meaningful freedom of speech for all—a freedom that everyone can equally enjoy, rather than a mere theoretical promise that only a privileged few can actually exercise.	Ben-Porath, Sigal R. 2017. *Free Speech on Campus*. University of Pennsylvania Press.
95	In fact, the pioneering law professors who initially advocated non-emergency restrictions on hate speech in the United .States. starting in the 1980s—Richard Delgado, Charles Lawrence, and Mari Matsuda—**consistently bemoaned the lack of counterspeech** at that time, contending that counterspeech would significantly reduce hate speech's harmful impact.	Matsuda, Mari, Charles Lawrence, Richard Delgado, and Kimberlé Crenshaw. 1993. *Words That Wound: Critical Race Theory, Assaultive Speech, and The First Amendment.* Faculty Books. https://scholarship.law.columbia.edu/books/287.
95	For instance, during the civil rights movement, Martin Luther King, Jr. said: "**In the end, we will remember not the words of our enemies, but the silence of our friends**."	King, Jr., Martin Luther. 1967. "Conscience for Change."

95	And the influential international human rights leader Aryeh Neier credited anti-Nazi speech with having spared some European Jews during the Holocaust, while he correspondingly blamed the absence of such speech for facilitating the murders of so many others: **"Where political and religious leaders did speak out against the Nazis, notably in . . . …Denmark, most Jews were saved. Those Jews who died . . . …were victims of the silence of Europe's moral leadership as [much as] ththey were victims of the Nazis."**	Neier, Aryeh. 1979. *Defending My Enemy: American Nazis, the Skokie Case, and the Risks of Freedom*. International Debate Education Association.
97	**Experts have observed that** counterspeech —(as well as other anti-discrimination measures) —have been so successful that any speech that is even arguably biased has already been preemptively discredited at the moment it is uttered—that is,i.e., not requiring any specific counterspeech in rebuttal.	Lepoutre, Maxime Charles (2019). "Can 'More Speech' Counter Ignorant Speech?" *Journal of Ethics and Social Philosophy.* Retrieved on September 16, 2023 from https://doi.org/10.26556/jesp.v16i3.682.
97	Two British scholars, Dennis J. Baker and Lucy Zhao, have observed that if anyone is marginalized by hateful, discriminatory speech these days, it is those who express hateful opinions, noting. They conclude that "**the message that we are all equal . . . is very visible in Western democracies [and] . . . is backed up with a mass of . . . laws**." As a consequence, they concluded, **"media scrutiny, public shaming, and strong majority attitudes"** should "**prevent denigrating expression from making those denigrated feel as less than full members of society.**"	Baker, Dennis J., and Lucy X. Zhao (2013). "The Normativity of Using Prison to Control Hate Speech: The Hollowness of Waldron's Harm Theory." *New Criminal Law Review: An International and Interdisciplinary Journal* 16(4): 621–56.

97	Susan Benesch, the founding Director of the Dangerous Speech Project, asks two rhetorical questions to memorably illustrate the relative power of, respectively,: (1) the social norms that are both reflected in and reinforced by counterspeech; and (2) government censorship/punishment:. **“How many people use the N-word?”** aAnd **“How many people commit murder or rape?”**	Dangerous Speech Project. https://dangerousspeech.org
100	Initially laid out by Harvard psychology professor Gordon Allport in his classic 1954 book, The Nature of Prejudice, the “**contact theory**” posits that the most effective way for people to overcome their prejudice toward someone they view as “**other**” is to interact with “**others**.”	Allport, Gordon W (1954). *The Nature of Prejudice*. Oxford, England: Addison-Wesley
100	**A 2011 meta-analysis** of 515 studies, involving more than 250,000 subjects, concluded that “**intergroup contact typically reduced prejudice**” toward multiple often-stigmatized groups, including various ethnic groups, the disabled, mentally ill people, and LGBTQ+ people.	Pettigrew, Thomas F., and Linda R. Tropp (2006). “A Meta-Analytic Test of Intergroup Contact Theory.” *Journal of Personality and Social Psychology* 90(5): 751–83.
100	**In 2002, a political scientist demonstrated** that contact with people who had different political beliefs fostered political tolerance.	Mutz, Diana C. (2002). “Cross-Cutting Social Networks: Testing Democratic Theory in Practice.” *The American Political Science Review* 96(1): 111–26.
100	Social scientists have concluded that this “**wide applicability suggests that contact effects may**” result from “**mere exposure**.”	Pettigrew, Thomas F., Linda R. Tropp, Ulrich Wagner, and Oliver Christ (2011). “Recent Advances in Intergroup Contact Theory.” *International Journal of Intercultural Relations* 35(3): 271–80.

100	Experiments have repeatedly shown that greater exposure to members of any "**outgroups**," standing alone, "**can significantly enhance liking for**" not only those groups, but also other outgroups.	Pettigrew, Thomas F., and Linda R. Tropp (2006). "A Meta-Analytic Test of Intergroup Contact Theory." *Journal of Personality and Social Psychology* 90(5): 751–83.
100	Additionally, these positive results reveal "**a remarkable universality**," with decreased prejudice manifested "**across national, gender, and age groups.**"	Pettigrew, Thomas F., Linda R. Tropp, Ulrich Wagner, and Oliver Christ (2011). "Recent Advances in Intergroup Contact Theory." *International Journal of Intercultural Relations* 35(3): 271–80.
101	The positive impacts of contact flow not only from the direct contact and communications with actual "**others**" that result from anti-discrimination and pro-integration measures, but also from the indirect, vicarious contact that results from viewing media depictions of such others.	Park, Sung-Yeon (2012). "Mediated Intergroup Contact: Concept Explication, Synthesis, and Application." *Mass Communication & Society* 15(1): 136–59.
101	While some research indicates that the changed attitudes that are caused resulting from by vicarious contact might not be are not as durable as those that are caused by resulting from actual direct contact, such indirect vicarious contact is especially effects are important beneficial for people who have less opportunity for direct contact with "**others**."	Brown, Rupert, and Jenny Paterson (2016). "Indirect Contact and Prejudice Reduction: Limits and Possibilities." *Current Opinion in Psychology* 11: 20–24.
102	For example, the committee that enforces the UN's International Convention on the Elimination of All Forms of Racial Discrimination (CERD), which requires ratifying countries to outlaw hate speech, in 2013 downplayed the enforcement of censorship and instead stressed the importance of "**education for tolerance, and**	"General Recommendation No. 35: Combating Racist Hate Speech (2013)." *OHCHR*. https://www.ohchr.org/en/resources/educators/human-rights-education-training/d-general-recommendation-no-3

	counterspeech . . ... . [as] effective antidotes to racist hate speech."	5-combating-racist-hate-speech-2013.
103	Psychological research shows that even more effective than debunking disinformation after its dissemination is "**pre-bunking**": inoculating people against disinformation before they are exposed to it.	Roozenbeek, Jon et al. (2022). "Psychological Inoculation Improves Resilience against Misinformation on Social Media." *Science Advances* 8(34): eabo6254.
103	An academic article that was published in August 2022 by researchers at the University of Cambridge, the University of Bristol, and Google detailed seven pre-bunking experiments involving one million adults, and found an increase in their ability to recognize misinformation techniques **"not just across the conspiratorial spectrum but across the political spectrum."**	Roozenbeek, Jon et al. (2022). "Psychological Inoculation Improves Resilience against Misinformation on Social Media." *Science Advances* 8(34): eabo6254.
105	For example, the 1525 tirade by the Dutch philosopher Erasmus against the then-newest communications technology – the printing press -- foreshadows the current condemnations of social media companies; he complained that the new technology was able to "**fill the world with**" materials that are "**foolish, ignorant, malignant, libellous, mad, impious and subversive; and such is the flood that even things that might have done some good lose all their goodness.**"	Roterodamus, Desiderius Erasmus. *Adagia.1508.*
106	In its landmark 1997 decision in **Reno v. ACLU,** the Supreme Court unanimously rejected arguments that online expression, which was then new and widely feared, should receive anything less than full-fledged First Amendment protection.	*Reno v. ACLU*, 521 US 844 (1997).
106	Likewise, iMoreover, **in 2017, the Court struck down restrictions on assertedly dangerous expression on pronounced social**	*Packingham v. North Carolina*, 582 US 98 (2017).

	media, hailing it as **"the most important"** forum **"for the exchange of views."**	
107	A typical newspaper story in 1926 lamented that radio was **"keeping children . . . up late nights, wearing down their vitality for lack of sleep and making laggards out of them at school."**	Friedersdorf, Conor (2023). "The Battle Over Smartphones at School." *The Atlantic*. https://www.theatlantic.com/newsletters/archive/2023/06/the-battle-over-smartphones-at-school/674338/.
108	For example, in the 1950's, when comic books were increasingly popular among young people, there was a mounting concern about what was then called "**juvenile delinquency**"; not surprisingly, comic books depicting violence or crime were blamed for contributing to this problem, and accordingconsequently laws banned their sale to minors.	González, Jennifer (2022). "The Senate Comic Book Hearings of 1954." *The Library of Congress*. https://blogs.loc.gov/law/2022/10/the-senate-comic-book-hearings-of-1954/#:~:text=Fear%20of%20the%20"Comic%20Book,1954%2C%2068%20years%20ago%20today.
109	Fast- forward to the early 1990's, when the general public became aware of the iInternet. Our nation was then undergoing what has been called a "**moral panic**" about child sexual exploitation, involving too many exaggerated or even fabricated claims.	Potter, Roberto Hugh, and Lyndy A. Potter (2001). "The Internet, Cyberporn, and Sexual Exploitation of Children: Media Moral Panics and Urban Myths for Middle-Class Parents?" *Sexuality and Culture* 5(3): 31–48.
109	In this climate, the Iinternet was feared as potentially facilitating the sexual exploitation of children, prompting Congress to enact the 1996 "**Communications Decency Act**," which outlawed all "**indecent**" or "**patently offensive**" online expression that minors could access—including a vast array of material with positive benefits for minors' well-being, health, and even lives, such as	Telecommunications Act of 1996, Pub. LA. No. 104-104, 110 Stat.

	information about sexual orientation, gender identity, contraception, and safer sex preventing sexually transmitted diseases.	
112	**When the Supreme Court examined the Communications Decency Act's censorious provisions regarding online speech in 1997**, it unanimously concluded that the indisputably important goal of protecting children's safety could be advanced at least as effectively through more narrowly tailored, less speech-restrictive measures, which would not suppress adults' free speech rights. I**The Court noted that individual parents could choose to install filtering and blocking software** on their own home computers, to shield their own young children from certain online material.	*Reno v. ACLU*, 521 US 844 (1997).
113	For example, **key officials in the Biden aAdministration, as well as Democratic members of Congress, have strongly pressured social media companies** to restrict expression that is inconsistent with the aAdministration's preferred policies on important controverted issues, including elections and COVID.	Bond, Shannon, and Natalie Escobar (2023). "Appeals Court Slaps Biden Administration for Contact with Social Media Companies." *NPR*. https://www.npr.org/2023/09/08/1197971952/biden-administration-fifth-circuit-ruling-social-media-injunction.
113	While the advocates of these restrictions tout the important goals of countering disinformation and promoting democracy, in fact, the restrictions hamper democratic self-governance and the search for truth, both of which depend on the most vigorous exchanges among "**We the People,**" free from government censorship.	U.S. Const. pmbl.

113	As Justice Robert Jackson wrote in 1945: "**The very purpose of the First Amendment is to foreclose public authority from assuming a guardianship of the public mind . . . . [E]very person must be his own watchman for truth, because the forefathers did not trust any government to separate the true from the false for us.**"	*Thomas v. Collins*, 323 U.S. 516 (1945).
115	For example, notwithstanding their vast policy differences during the 2020 election campaign—including their diametrically different views about what was (allegedly) wrong with online expression—**both Donald Trump** and Joe Biden **concurred that online platforms should lose their immunity for third-party content** under the 1996 federal law known as "**Section 230**."	Brown, Abram (2020). "What Is Section 230—And Why Does Trump Want To Change It?" *Forbes.* https://www.forbes.com/sites/abrambrown/2020/05/28/what-is-section-230-and-why-does-trump-want-to-change-it/.
115	For example, notwithstanding their vast policy differences during the 2020 election campaign—including their diametrically different views about what was (allegedly) wrong with online expression—both Donald Trump and **Joe Biden concurred that online platforms should lose their immunity for third-party content** under the 1996 federal law known as "**Section 230**."	Ufberg, Max (2021). "Biden Said He Wanted to 'revoke' Section 230. So Why Is the DOJ Defending It?." https://fortune.com/2021/11/25/biden-trump-doj-section-230/.
118	**Evidence indicate**s that polarization is fueled by multiple factors, including expression on traditional media, and that online media may not even have a net negative impact in this regard.	Guess, Andrew M. et al. (2023). "How Do Social Media Feed Algorithms Affect Attitudes and Behavior in an Election Campaign?" *Science* (New York, N.Y.) 381(6656): 398–404.

118	Just as the "**surveillance capitalism**" business model of social media has allegedly driven the "**echo chamber**" phenomenon, the new subscriber-based business model of formerly ad-dependent traditional media has allegedly had a parallel impact.	Zuboff, Shoshana (2022). "Surveillance Capitalism or Democracy? The Death Match of Institutional Orders and the Politics of Knowledge in Our Information Civilization." Retrieved on September 16, 2023 from https://journals.sagepub.com/doi/full/10.1177/26317877221129290.
120	**Credible sources** have cited evidence that the companies are engaging in unprecedentedly pervasive and granular surveillance of our online activities, and then using the resulting detailed information, with the aid of algorithms, to present each of us with individualized content streams that are designed to prolong our engagement, including by stimulating negative emotions.	Dwivedi, Yogesh K. et al. (2021). "Setting the Future of Digital and Social Media Marketing Research: Perspectives and Research Propositions." *International Journal of Information Management* 59: 102168
122	For example, in 1957, —when TVs were becoming common in homes throughout the United .States, —. -- journalist Vance Packard's bestselling book **The Hidden Persuaders** maintained that TV ads used subliminal messaging to manipulate viewers to favor particular products and politicians.	Packard, Vince (1957). *The Hidden Persuaders*.
122	A 2013 re-examination of this book in the **Journal of Advertising** rejected these charges.	Nelson, Michelle (2013). "The Hidden Persuaders: Then and Now." *Journal of Advertising* 37: 113–26.
123	Even if Big Tech's "**design choices**" do in fact "**interfere with the free choices of users,**" as stated in proposed Congressional legislation that would mandate various content curation practices, anysuch top-down, one-size-fits-all federal control also interferes with users' choices.	Hawley, Josh (2019). Social Media Addiction Reduction Technology Act.

126	To further facilitate meaningful freedom of choice for platform users, another policy proposal that bears serious consideration is requiring the platforms to offer users a range of filtering options both directly and by enabling other software providers to "**interoperate**" with the platforms' key elements.	Klobuchar, and Grassley (2023). American Innovation and Choice Online Act.

Chapter 3		
Paragraph #	Passage	Citation
1	Along with all constitutional law, First Amendment is a type of "common law" or **"case law"**, which develops incrementely over time, in a case-by-case manner	Legal Information Institute. (n.d.). *Case law.* Legal Information Institute. https://www.law.cornell.edu/wex/case_law#:~:text=Case%20law%20is%20law%20that,concrete%20facts%20of%20a%20case.
3	The first is whether the regulated expressive conduct constitutes **"speech"** within the scope of the Free Speech Clause, so that it is entitled to some constitutional protection	First Amendment | *Constitution annotated* | congress.gov ... (n.d.-b). https://constitution.congress.gov/browse/amendment-1/
5	The First Amendment's **"Free Speech Clause"** provides:	First Amendment | *Constitution annotated* | congress.gov ... (n.d.-b). https://constitution.congress.gov/browse/amendment-1/

6	... was embraced even by Justice Antonin Scalie, the Court's leading champion in **"originalism"**	Brett Curry (Updated June 2017 by David L. Hudson Jr.). (n.d.). Antonin Scalia. https://www.mtsu.edu/first-amendment/article/1356/antonin-scalia
7	In his historic 208 opinion that expansively interpreted the Second Amendment **"right to bear arms"**, Scalie made the important point about the First Amendment	Legal Information Institute. (n.d.-b). *The Heller decision and individual right to firearms*. Legal Information Institute. https://www.law.cornell.edu/constitution-conan/amendment-2/the-heller-decision-and-individual-right-to-firearms
9	By way of preview, the bold language immediately below sets out a clairfied, expanded version of this constituional language, which summarizes the Court's major intepretations...	U.S. Constitution - *First Amendment* - Library of Congress. ConstitutionAnnotated. (n.d.). https://constitution.congress.gov/constitution/amendment-1/
10	The court has construed **"Congress"** to refer not only to the sole government body to which that word literally refers- the legislative branch of the national government- but also to all government bodies and officals, ...	U.S. Constitution - *Article I* | Resources - Congress.gov. ConstitutionAnnotated. (n.d.). https://constitution.congress.gov/constitution/article-1/
11	The legal term for this important concept is **"the state action doctrine,"** signaling that the First Amendment...	Legal Information Institute. (n.d.). *State action doctrine and free speech*. Legal Information Institute. https://www.law.cornell.edu/constitution-conan/amendment-1/state-action-doctrine-and-free-speech

11	That decision embraced the "incorporation doctrine," which reads the broad language of the Fourteenth Amendment's Due Process Clause (barring states from "depriv[ing] any person of life, liberty, or property, without due process of law") as "incorporating" certain fundamental rights, making them enforceable against state/local officials.	Legal Information Institute. (n.d.-a). *Incorporation doctrine*. Legal Information Institute. https://www.law.cornell.edu/wex/incorporation_doctrine#:~:text=The%20incorporation%20doctrine%20is%20a,clause%20of%20the%20Fourteenth%20Amendment.
13	The second exception to the state action doctrine is the **"entanglement"** exception	No. 17-874 in the Supreme Court of the United States. (n.d.). https://www.law.edu/_media/moot-court-forms/sutherland%20briefs/2020/15-Respondent.pdf
14	The First Amendment religious liberty clause bars any "law...prohibiting the free exercise" of religion, in contrast to the freedom of speech and press clauses, which bar any "law...abridging the freedome of speech of the p	U.S. Constitution - *First Amendment* - Congress.gov. (n.d.-b). https://constitution.congress.gov/constitution/amendment-1/
14	Accordingly, the First Amendment's explicit language bars not only such outright "prohibitions" on free expression as criminal bans or prior restraints, but also other measures that "abridge" or limit free expression.	U.S. Constitution - *First Amendment* - Congress.gov. (n.d.-b). https://constitution.congress.gov/constitution/amendment-1/
14	The Supreme Court consistently has held that the Free Speech Clause is implicated by any government measure that, as a practical matter, substantially curtails free expression, including by exerting a sufficient deterrent or "chilling" impact on it.	*Chilling effect overview*. The Foundation for Individual Rights and Expression. (n.d.). https://www.thefire.org/research-learn/chilling-effect-overview#:~:text=The%20%22chilling%20effect%22%20refers%20to,too%20broad%20or%20too%20vague.

15	Let me describe an important case that implemented this functional concept of "abridgement."	U.S. Constitution - *First Amendment* - Congress.gov. ConstitutionAnnotated. (n.d.-a). https://constitution.congress.gov/constitution/amendment-1/
15	Specifically, the notices advised the distributors that the cCommission had a duty to recommend prosecution of "purveyors of obscenity,"	Green, W. C. (n.d.). *Hicklin test*. Hicklin Test. https://www.mtsu.edu/first-amendment/article/969/hicklin-test
15	and that it had circulated lists of "objectionable" publications to local police departments;	Green, W. C. (n.d.). *Hicklin test*. Hicklin Test. https://www.mtsu.edu/first-amendment/article/969/hicklin-test
15	the notices also requested the distributors' "cooperation."	Green, W. C. (n.d.). *Hicklin test*. Hicklin Test. https://www.mtsu.edu/first-amendment/article/969/hicklin-test
15	The Court commented that it would "look through forms to the substance and recognize that informal censorship may sufficiently inhibit the circulation of publications to warrant" First Amendment protection.	*Bantam Books, Inc. v. Sullivan*, 372 U.S. 58 (1963)
16	The Court has deemed a wide range of government actions to have sufficiently speech-suppressive impacts to constitute "abridgements" of speech that warrant First Amendment review.	U.S. Constitution - *First Amendment* - Congress.gov. ConstitutionAnnotated. (n.d.-a). https://constitution.congress.gov/constitution/amendment-1/

S7	How does the Court interpret “No law . . . abridging the freedom of speech”?	National Archives and Records Administration. (n.d.). *The bill of rights: A transcription.* National Archives and Records Administration. https://www.archives.gov/founding-docs/bill-of-rights-transcript#:~:text=Congress%20shall%20make%20no%20law,for%20a%20redress%20of%20grievances.
17	Former Supreme Court Justice Hugo Black, who generally espoused speech-protective views about the Free Speech Clause, repeatedly stressed that the Clause’s word “no” should be construed literally, as permitting no “law . . . abridging the freedom of speech” whatsoever.	Harry Kalven, Jr., "*Upon Rereading Mr. Justice Black on the First Amendment,*" 14 UCLA Law Review 428 (1967)
17	In contrast with other modern-era Justices, Black concluded that “speech” did not extend to nonverbal expressive conduct such as labor picketing and wearing black armbands.	Harry Kalven, Jr., "*Upon Rereading Mr. Justice Black on the First Amendment*," 14 UCLA Law Review 428 (1967)
17	Other free speech proponents, including Justices, have endorsed certain speech restrictions on the ground that they do not “abridge” or violate “the freedom of speech,” reasoning that this freedom does not extend to speech that poses an emergency.	*Freedom of speech and the Press*. National Constitution Center – constitutioncenter.org. (n.d.). https://constitutioncenter.org/the-constitution/amendments/amendment-i/interpretations/266#:~:text=abridging%20the%20freedom%20of%20speech%2C%20or%20of%20the%20press.”,write%2C%20except%20in%20exceptional%20circumstances.

17	The best-known statement of this view was in a much-quoted 1919 opinion by Justice Oliver Wendell Holmes: “The most stringent protection of free speech would not protect a man falsely shouting fire in a theatre and causing a panic.”	*Schenck v. United States*, 249 U.S. 47 (1919)
S8	How does the Court interpret “speech”?	First Amendment | *Constitution annotated* | congress.gov ... (n.d.-b). https://constitution.congress.gov/browse/amendment-1/
19	Even if the Court agreed that a challenged regulation targeted “speech,” the Court could still uphold the regulation.	First Amendment | *Constitution annotated* | congress.gov ... (n.d.-b). https://constitution.congress.gov/browse/amendment-1/
19	To quote the Free Speech Clause’s language, even a restrictions on “speech” does not necessarily constitute a “law . . . abridging e[] the freedom of speech.”	*Freedom of speech and the Press*. National Constitution Center – constitutioncenter.org. (n.d.). https://constitutioncenter.org/the-constitution/amendments/amendment-i/interpretations/266#:~:text=abridging%20the%20freedom%20of%20speech%2C%20or%20of%20the%20press.”,write%2C%20except%20in%20exceptional%20circumstances.
19	In other words, for a speech restriction to violate the First Amendment, it is necessary—but not sufficient—that the restriction limits (i.e., “abridge[es]”) expressive conduct that is considered “speech.”	*Freedom of speech and the Press*. National Constitution Center – constitutioncenter.org. (n.d.). https://constitutioncenter.org/the-constitution/amendments/amendment-i/interpretations/266#:~:text=abridging%20the%20freedom%20of%20speech%2C%20or%20of%20the%20press.”,write%2C%20except%20in%20exceptional%20circum

		stances.
20	Rather, the modern Court has consistently treated "speech" as synonymous with "expression" of any mode, including not only words, but also images.	First Amendment | Constitution annotated | *congress.gov* ... (n.d.-b). https://constitution.congress.gov/browse/amendment-1/
20	Accordingly, the Court declared in a 2010 decision involving videogames: "[T]he basic principles of freedom of speech and the press do not vary when a new and different medium for communication appears."	*Brown, et al. v. Entertainment Merchants Assn. et al.*, 564 U.S. 786 (2011).
20-3	In its first decision about the then-new film medium, in 1915, the Court held that "the exhibition of moving pictures is a business, not to be regarded…as part of the press."	*Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495 (1952).
20-3	The Court's 1952 decision unanimously struck down New York's ban on a film deemed "sacrilegious" (the 1948 Italian film "The Miracle," by the acclaimed director Roberto Rossellini, about a devout peasant girl who believes that she is the Virgin Mary, whose pregnancy resulted from "immaculate conception," leading her contemptuous townsfolk to drive her out of town).	*Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495 (1952).
20	Most importantly, certain "patently offensive" or "indecent" expression that is constitutionally protected in all other media—including certain four-letter words—is still unprotected in over-the-air radio and TV broadcasts.	Broadcast of Obscenity, Indecency, and Profanity. *Federal Communications Commission*. (n.d.). https://www.fcc.gov/enforcement/areas/broadcast-obscenity-indecency-profanity#:~:text=Under%2018%20U.S.C.,or%20both."%20Under%2018%20U.S.C.

21	The Court has expansively interpreted "speech" in yet another respect—as extending to certain nonverbal expression, which it sometimes labels "symbolic expression," "symbolic conduct," or "expressive conduct."	Overview of Symbolic Speech | Constitution Annotated | *Congress.gov* ... (n.d.-c). https://constitution.congress.gov/browse/essay/amdt1-7-14-1/ALDE_00000760/
21	On the one hand, the Court has rejected "the view that an apparently limitless variety of conduct can be labeled 'speech' whenever the person engaging in the conduct intends thereby to express an idea.	*Texas v. Johnson*, 491 U.S. 397 (1989).
21	On the other hand, it has recognized that "a narrow, succinctly articulable message is not" a prerequisite for First Amendment protection, observing that such a standard would exclude "the unquestionably shielded painting of Jackson Pollock, music of Arnold Schoenberg, or Jabberwocky verse of Lewis Carroll."	*Hurley v. Irish-American Gay, Lesbian, and Bisexual Group of Boston, Inc.*, 515 U.S. 557 (1995)
21	Accordingly, the Court has held that marches or parades constitute protected expression because they have an "inherent expressiveness," even if they "combin[e] multifarious voices" and do not "isolate an exact message."	*Hurley v. Irish-American Gay, Lesbian, and Bisexual Group of Boston, Inc*., 515 U.S. 557 (1995).
23	Let me cite one important example of expressive conduct that the Court held to be protected in a noteworthy 1963 case: litigation for the purpose of advancing racial justice (and other public interest causes).	*NAACP v. Button*, 371 U.S. 415 (1963).

23	The Court upheld the rights of the NAACP and NAACP Legal Defense and Educational Fund to engage in litigation as "a means for achieving the…equality of treatment for" Black people.	*NAACP v. Button*, 371 U.S. 415 (1963).
23	The Court elaborated: "Groups which find themselves unable to achieve their objectives through the ballot frequently turn to the courts.…[L]itigation may well be the sole practicable avenue open to a minority to petition for redress of grievances."	*NAACP v. Button*, 371 U.S. 415 (1963).
23	For these reasons, the Court concluded that the NAACP litigation was a "form of political expression" and struck down a 1956 Virginia statute that broadly banned attorneys' solicitation of clients, which state officials had enforced to bar NAACP lawsuits.	*NAACP v. Button*, 371 U.S. 415 (1963).
23	Indeed, Justice William O. Douglas's concurring opinion cited evidence that the statute had been enacted precisely for purposes of thwarting the NAACP's school desegregation litigation in the wake of the Court's historic 1954 and 1955 Brown v. Board of Education rulings.	*NAACP v. Button*, 371 U.S. 415 (1963).
24	In a series of decisions dating back to its 1976 Buckley v. Valeo ruling, the Supreme Court has held that the First Amendment governs restrictions on "campaign finance"—making financial contributions to, or spending money on behalf of, political campaigns for candidates or ballot issues	*Buckley v. Valeo*, 424 U.S. 1 (1976).

24	The Court has held that spending money to advance a political message constitutes expressive conduct, just as it has held regarding a wide array of other conduct that advances political messages: e.g., burning a flag, wearing an armband, marching in a parade, and pursuing litigation.	*Buckley v. Valeo*, 424 U.S. 1 (1976)
25	In Buckley, the Court explained how the "contribution and expenditure limitations" in campaign finance laws curtail expression by "impos[ing] direct quantity restrictions on political communication and association by persons, groups, candidates, and political parties"	*Buckley v. Valeo*, 424 U.S. 1 (1976).
27	For example, even in the controversial 2010 Citizens United decision, which upheld the First Amendment challenge to some campaign finance restrictions on unions and corporations, the Court also rejected the First Amendment challenge to other such restrictions.	*Citizens United v. FEC*, 558 U.S. 310 (2010).
28	the Court never has supported the plainly nonsensical holding that "money is speech."	*Citizens United v. FEC*, 558 U.S. 310 (2010).
28	Rather, consistent with its long line of expressive conduct cases concerning widely diverse conduct, the campaign finance decisions have supported two other holdings that are plainly sensible: first, that the conduct of spending money in the campaign context is intended to and does in fact convey messages; and second, that restrictions on this expressive conduct have the impact of restricting the messages.	*Citizens United v. FEC*, 558 U.S. 310 (2010).

30	In sum, the Court has never said that "money is speech," but—with almost unanimous support among all Justices from 1976 onward—it has recognized that spending money facilitates the exercise of speech freedom, while restricting such spending does the opposite.	*Citizens United v. FEC*, 558 U.S. 310 (2010).
S10	What is the relationship between "freedom of speech" and other, similar rights that the First Amendment also explicitly protects?	U.S. Constitution - First Amendment - *Library of Congress*. (n.d.-c). https://constitution.congress.gov/constitution/amendment-1/
31	In addition to the Free Speech Clause, the First Amendment contains five other clauses, two of which concern religion, and three of which are closely related to speech: "Congress shall make no law. . . 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" [emphasis added].	*National Archives and Records Administration*. (n.d.). The bill of rights: A transcription. National Archives and Records Administration. https://www.archives.gov/founding-docs/bill-of-rights-transcript#:~:text=Bill%20of%20Rights.%22-,Amendment%20I,for%20a%20redress%20of%20grievances.
31	These other clauses refer to particular modes of expression, and therefore they have been assimilated into the Court's broad construction of the concept of "speech," which itself extends to all modes of expression, including via the "press," "assembly," and/or "petition."	First Amendment | Constitution annotated | congress.gov ... (n.d.-b). https://constitution.congress.gov/browse/amendment-1/
31	Consequently, the same general First Amendment principles and standards that the Court has forged to assess the constitutionality of restrictions on "speech" also govern restrictions on the specific, important types of expression these other clauses single out.	First Amendment | Constitution annotated | *congress.gov* ... (n.d.-b). https://constitution.congress.gov/browse/amendment-1/

S11	What is the relationship between “freedom of speech” and “freedom of the press”?	Legal Information Institute. (n.d.-d). Freedom of Press Overview. *Legal Information Institute*. https://www.law.cornell.edu/constitution-conan/amendment-1/freedom-of-press-overview
32	One key question about the relationships among the Free Speech Clause and other First Amendment clauses concerns the relationship between the speech and press clauses in particular: by virtue of the latter clause, should members of “the press”—i.e., institutional media and professional journalists—receive any additional protections, beyond those that the Free Speech Clause secures for all members of the general public?	Overview of freedom of the Press | Constitution Annotated | *congress* ... (n.d.-d). https://constitution.congress.gov/browse/essay/amdt1-9-1/ALDE_00000395/[’fifth’,%20’amendment’]
34	A second type of special First Amendment right also has been advocated to pertain only to members of “the press”: a “reporters’ privilege,” which insulates journalists from having to disclose their confidential sources even when members of the general public would have to provide comparable information—e.g., when subpoenaed to provide information in grand jury investigations	Introduction to the reporter’s privilege compendium. *The Reporters Committee for Freedom of the Press*. (n.d.). https://www.rcfp.org/introduction-to-the-reporters-privilege-compendium/

34	Just as a number of officials and agencies have chosen to provide members of the press with special access to certain government institutions and actions, almost all state legislatures have chosen to enact “shield laws,” guaranteeing the reporters’ privilege in specified circumstances.	Legal Information Institute. (n.d.-d). Shield laws. *Legal Information Institute*. https://www.law.cornell.edu/wex/shield_laws
35	For example, in the first such case, the Court sweepingly declared that “[t]he Constitution does not. . . require government to accord to the press special access to information not shared by members of the public generally.”	David L. Hudson, Jr. (n.d.). Press access. *Press Access*. https://www.mtsu.edu/first-amendment/article/1605/press-access
36	The Court did recognize that the First Amendment provides some protection for the newsgathering process, given how essential that process is: “[W]ithout some protection for seeking out the news, freedom of the press could be eviscerated.”	*Branzburg v. Hayes*, 408 U.S. 665 (1972).
36	Nonetheless, the Court concluded that there was inadequate evidence that the newsgathering process would be sufficiently hampered by the absence of a reporters’ privilege to outweigh the countervailing law enforcement interests.	*Branzburg v. Hayes*, 408 U.S. 665 (1972).
36	In addition, the Justices noted that it would be difficult to decide who should—and should not—be entitled to exercise such a privilege.	*Branzburg v. Hayes*, 408 U.S. 665 (1972).
36	It observed that freedom of the press has always extended to “the lonely pamphleteer” as well as “the large metropolitan publisher.”	*Branzburg v. Hayes*, 408 U.S. 665 (1972).

36	Furthermore, the Court stressed, "the informative function" that "representatives of the organized press" serve "is also performed by lecturers, political pollsters, novelists, academic researchers, and dramatists."	*Branzburg v. Hayes*, 408 U.S. 665 (1972).
36	Therefore, the Court rejected the notion that "freedom of the press" confers special rights, above and beyond those secured by "freedom of speech".	*Branzburg v. Hayes*, 408 U.S. 665 (1972).
37	In the intervening decades, the advent of the Internet has further blurred the always-unclear line (if any) between members of "the press" and of the general public, thus further undermining claims that these two groups should have different First Amendment rights.	Overview of freedom of the Press | Constitution Annotated | *congress* ... (n.d.-d). https://constitution.congress.gov/browse/essay/amdt1-9-1/ALDE_00000395/['fifth',%20'amendment']
38	Some Justices reject the concept of "substantive due process," whereby the Due Process Clauses of the Fifth and Fourteenth Amendments have been construed to protect certain implicit rights concerning sexual and family matters	Legal Information Institute. (n.d.-e). Substantive due process. *Legal Information Institute*. https://www.law.cornell.edu/wex/substantive_due_process
38	As the Court stated in a 1982 case: "The First Amendment is …broad enough to encompass those rights that, while not unambiguously enumerated in the very terms of the Amendment, are nonetheless necessary to the enjoyment of other First Amendment rights."	Globe Newspaper Co. v. Superior Ct., 457 U.S. 596 (1982). *Justia Law*. (n.d.-b). https://supreme.justia.com/cases/federal/us/457/596/#:~:text=Globe%20Newspaper%20Co.-,v.,%2C%20457%20U.S.%20596%20(1982)
39	One major point that previous answers noted bears repeating in this context: just as "speech" itself is not immune from all restrictions, the same is true for these implicitly protected First	First Amendment | Constitution annotated | *congress.gov* ... (n.d.-b). https://constitution.congress.gov/browse/amendment-1/

	Amendment rights.	
40	Sometimes described as “freedom of conscience,” this right extends to both religious beliefs (which are also protected by the First Amendment’s Free Exercise Clause) and secular beliefs and ideas.	Freedom of Conscience. *The Foundation for Individual Rights and Expression*. (n.d.). https://www.thefire.org/defending-your-rights/freedom-of-conscience
41	Critics of substantive due process stress that the Due Process Clauses’ language explicitly refers solely to procedural rights; they bar government from “depriv[ing]” anyone “of life, liberty, or property, without due process of law.”	Legal Information Institute. (n.d.-c). Due process. *Legal Information Institute.* https://www.law.cornell.edu/wex/due_process#:~:text=The%20Fifth%20Amendment%20says%20to,legal%20obligation%20of%20all%20states
41	As the Supreme Court declared in 2001: “speech is the beginning of thought.”	*Ashcroft v. Free Speech Coalition*, 535 U.S. 234 (2002).
42	In a landmark 1943 decision, West Virginia Board of Education v. Barnette, the Supreme Court for the first time expressly protected both the implied freedom of conscienceand the implied freedom from compelled expression.	*West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943).
42	The Court specifically held that both of these unenumerated First Amendment rights were violated by state laws compelling public school students to salute the U.S. flag and recite the Pledge of Allegiance	*Wooley v. Maynard*, 430 U.S. 705 (1977).
42	As the Court elaborated in a later case, “[t]he right to speak and the right to refrain from speaking are complementary components of the broader concept of ‘individual freedom of mind.’”	*Wooley v. Maynard*, 430 U.S. 705 (1977).

45	In one of the most widely quoted statements the Court has ever issued, it declared: "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion, or force citizens to confess by word or act their faith therein. If there are any circumstances which permit an exception, they do not now occur to us."	*West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943).
46	The Court has applied Barnette's principles to many factual situations, including compelled statements of fact, as well as the "matters of opinion" to which Barnette expressly referred	*West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943).
46	However, since "commercial speech" traditionally has received less First Amendment protection than speech with other content, the Court has held that government may require the dissemination of "purely factual and uncontroversial information" in commercial advertising.	*Zauderer v. Office of Disc. Counsel*, 471 U.S. 626 (1985).
47	Referring to the long-discredited "loyalty oaths" that educational institutions imposed on faculty members during the Cold War/McCarthy period, which the Supreme Court struck down under the First Amendment, the AFA emphasized that the current mandatory statements—although different in content—"are in principle indistinguishable from" any "other statements of belief that university officials have…attempted to force	AFA. (2021, November 5). AFA statement on mandatory statements. *Academic Freedom Alliance*. https://academicfreedom.org/afa-statement-on-mandatory-statements/

	members of the faculty to endorse in the past."	
47	Consistent with the fundamental viewpoint neutrality principle, the AFA underscored: "No matter how widely shared or normatively desirable any particular statement of values might be, individual professors should not be…coerced to endorse…such statements."	AFA. (2021, November 5). AFA statement on mandatory statements. *Academic Freedom Alliance*. https://academicfreedom.org/afa-statement-on-mandatory-statements/
48	In a 1995 decision, which invalidated a law barring the distribution of anonymous campaign literature, the Court observed that a speaker's decision to remain anonymous "may be motivated by fear of economic or official retaliation [or] social ostracism"; furthermore, the Court observed, anonymity enables a speaker "who may be personally unpopular to ensure that readers will not prejudge her message simply because they do not like its proponent."	*McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334 (1995).
S16	In Douglass's words: "To suppress free speech is a double wrong. It violates the rights of the hearer as well as those of the speaker."	No. 17-874 in the Supreme Court of the United States. (n.d.-a). https://www.law.edu/_media/moot-court-forms/sutherland%20briefs/2020/15-Respondent.pdf
s16	In a 1965 opinion, Brennan wrote: "The dissemination of ideas can accomplish nothing if otherwise willing addressees are not free to receive and consider them. It would be a barren marketplace of ideas that had only sellers, and no buyers."	*Lamont v. Postmaster General*, 381 U.S. 301 (1965).

s16	And in a 1982 opinion, Brennan added: "[T]he right to receive ideas is a necessary predicate to the recipient's meaningful exercise of his own rights of speech."	*Island Trees Sch. Dist. v. Pico by Pico*, 457 U.S. 853 (1982).
50	To be sure, the First Amendment does expressly protect "the right of the people peaceably to assemble," which is one important manifestation of the more general freedom of association.	U.S. Constitution - First Amendment - *Library of Congress*. (n.d.-c). https://constitution.congress.gov/constitution/amendment-1/
50	While this explicit "Assembly Clause" focuses on public gatherings, the implied freedom of association extends to meetings in private settings, and even to "intimate associations," such as relationships among family members and friends.	Doctrine on Freedoms of Assembly and Petition - *Congress.gov*. (n.d.-b). https://constitution.congress.gov/browse/essay/amdt1-10-2/ALDE_00000223/
50	The Court held that this requirement impermissibly burdened the associational freedom of people who would otherwise choose to become or remain NAACP members, given how deeply controversial the organization and its civil rights mission then were in the deep South, prompting reasonable fears that identified members would face various punitive consequences.	*NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958)
51	As the Supreme Court declared in the NAACP v. Alabama case: "Effective advocacy of …points of view, particularly controversial ones, is undeniably enhanced by group association….[Such] freedom… is an inseparable aspect of…freedom of speech."	*NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958).

52	The Supreme Court has protected freedom of association for both "intimate" and "expressive" associations.	*Overview of Freedom of Association* | Constitution Annotated | congress ... (n.d.-d). https://constitution.congress.gov/browse/essay/amdt1-8-1/ALDE_00013139/
53	The Supreme Court's seminal 1958 NAACP v. Alabama case stressed that the freedom of association, along with freedom of speech itself, applies to all ideas, regardless of subject or viewpoint: "[I]t is immaterial whether the beliefs sought to be advanced by association pertain to political, economic, religious or cultural matters."	*NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958).
54	In its unanimous 1995 ruling in Hurley v. Irish-American Gay, Lesbian, and Bisexual Group of Boston ("GLIB"), the Supreme Court overturned lower court rulings that enforced the Massachusetts public accommodations law against the South Boston Allied War Veterans Council, "an…association of individuals" that organized a "St. Patrick's Day-Evacuation Day" parade.	*Hurley v. Irish-American Gay, Lesbian, and Bisexual Group of Boston, Inc.*, 515 U.S. 557 (1995).
54	Hurley held that the First Amendment protected the Council from being required to include a GLIB contingent in its parade.	*Hurley v. Irish-American Gay, Lesbian, and Bisexual Group of Boston, Inc.*, 515 U.S. 557 (1995).

55	[A] contingent marching behind [GLIB]'s banner would at least bear witness to the fact that some Irish are gay, lesbian, or bisexual, and …would suggest their view that people of their sexual orientations have as much claim to unqualified social acceptance as heterosexuals…. The parade's organizers may not believe these facts about Irish sexuality to be so, or they may object to unqualified social acceptance of gays and lesbians or have some other reason for wishing to keep GLIB's message out of the parade. But whatever the reason, it boils down to the choice of a speaker not to propound a particular point of view, and that choice is…beyond the government's power to control.	*Hurley v. Irish-American Gay, Lesbian, and Bisexual Group of Boston, Inc*., 515 U.S. 557 (1995).
56	The Hurley Court stressed that its holding was viewpoint neutral, neither endorsing nor disapproving either the Council's message or GLIB's: "Our holding today rests not on any particular view about [either] message…. Disapproval of a private speaker's statement does not legitimize use of the [government]'s power to compel the speaker to alter the message by including one more acceptable to others.	*Hurley v. Irish-American Gay, Lesbian, and Bisexual Group of Boston, Inc*., 515 U.S. 557 (1995).
58	By a 5-4 vote, the Court held in 2000 that the Boy Scouts of America (BSA) had a First Amendment right to bar a gay man, James Dale, from serving as a scout leader, notwithstanding that this bar violated a state public accommodations law.	*Boy Scouts of America v. Dale*, 530 U.S. 640 (2000).

58	In contrast, in three cases in the 1980s, the Court held without dissent that several historically all-male organizations (including the Jaycees and the Rotary Club) did not have a First Amendment right to bar women from joining their organizations, as state public accommodations laws required.	Unsure of which of the the cases I should cite
59	In the all-male organization cases, the Court held that any infringement on the organizations' First Amendment expressive association rights that resulted from the inclusion of women was necessary/the least restrictive alternative to promote the compellingly important goal of gender equality.	*Roberts v. U.S. Jaycees*, 468 U.S. 609 (1984).
59	In contrast, in the Boy Scouts case, the Court's narrow majority accepted the BSA's "assert[ions] that…the organization does not want to promote homosexual conduct as a legitimate form of behavior," and that "Dale's presence as an assistant scoutmaster would significantly …interfere with the Scouts' choice not to propound a point of view contrary to its beliefs."	*Boy Scouts of America v. Dale*, 530 U.S. 640 (2000).
59	Moreover, the majority concluded that the countervailing equality concerns did "not justify such a severe intrusion on the Boy Scouts' rights to freedom of expressive association."	*Boy Scouts of America v. Dale*, 530 U.S. 640 (2000).

59	In his constitutional law treatise, Berkeley Law School Dean Erwin Chemerinsky provided the following hypothetical examples of "a right to discriminate where discrimination is integral to expressive activity": "the Klan likely could exclude African Americans or the Nazi party could exclude Jews because discrimination is a key aspect of their message."	Chemerinsky, E., & Fisk, C. L. (1970, January 1). *The expressive interest of associations*. Berkeley Law. https://lawcat.berkeley.edu/record/1117864?ln=en
61	The Supreme Court has held that the First Amendment implicitly protects the autonomy of academic institutions to make basic decisions about which faculty members to hire and which students to enroll, as well as what subjects will be researched and taught.	*Sweezy v. New Hampshire*, 354 U.S. 234 (1957)
61	For example, in a much quoted passage in a 1967 case, the Court stated: "Our Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us, and not merely to the teachers concerned. That freedom is therefore a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom."	*Keyishian v. Board of Regents*, 385 U.S. 589 (1967).

62	The Court has invoked these academic freedom concerns in cases that struck down McCarthy-era programs targeting faculty members who were suspected of being "subversive," including: a state legislative investigation into lectures delivered at a state university; and a state "loyalty oath" requirement that each faculty member declare that "I am not and have never been a member of the Communist Party."	*Keyishian v. Board of Regents*, 385 U.S. 589 (1967).
63	In rejecting arguments that such programs violated the Equal Protection Clause, Justice Lewis Powell's influential 1978 opinion in University of California v. Bakke invoked the countervailing academic freedom concerns, which a 2003 majority opinion endorsed: "Academic freedom, though not a specifically enumerated constitutional right, long has been…a special concern of the First Amendment. The freedom of a university to make its own judgments as to education includes the selection of its student body.	*Regents of Univ. of California v. Bakke*, 438 U.S. 265 (1978).
63	Deferring to the universities' judgment that their affirmative action programs would promote student body "diversity," with attendant educational benefits, Powell concluded that "[u]niversities must be accorded the right to select those students who will contribute the most to the robust exchange of ideas."	*Regents of Univ. of California v. Bakke*, 438 U.S. 265 (1978).

64	For instance, in accord with the implicit freedom of association, the Court has held that this clause protects groups of people who form various types of organizations—including unincorporated associations, partnerships, and corporations—when the organizations engage in expression.	B*urwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014).
65	In its 2010 Citizens United v. FEC decision, the Court elucidated why speaker-based speech restrictions, which selectively restrict speech due to the speaker's identity, are as constitutionally suspect as content-based restrictions, which selectively restrict speech due to its message.	*Citizens United v. FEC*, 558 U.S. 310 (2010)
66	Citizens United explained that content-based and speaker-based restrictions, "[a]s instruments to censor,…are interrelated: Speech restrictions based on the identity of the speaker are all too often simply a means to control content."	*Citizens United v. FEC*, 558 U.S. 310 (2010).

67	Finally, the Court pointed out, by depriving certain parties of the First Amendment right to speak, government thereby also deprives everyone else of the First Amendment right to listen to those would-be speakers: "By taking the right to speak from some and giving it to others, the Government deprives the disadvantaged person or class of the right to use speech to strive to establish worth, standing, and respect for the speaker's voice. The Government may not by these means deprive the public of the right and privilege to determine for itself what speech and speakers are worthy of consideration."	*Citizens United v. FEC*, 558 U.S. 310 (2010)
68	The Citizens United decision spelled this out: "The Court has upheld a narrow class of speech restrictions that operate to the disadvantage of certain persons"—such as government employees—"but these rulings were based on an interest in allowing governmental entities to perform their functions," not on an interest in suppressing speech by those persons.	*Citizens United v. FEC*, 558 U.S. 310 (2010).
69	Therefore, in the controversial 2010 Citizens United case—which held that certain limits on corporations' and unions' expenditures for political messages violated these groups' First Amendment rights—it is noteworthy that all nine Justices agreed that corporations (both for-profit and not-for-profit) do have First Amendment rights.	*Citizens United v. FEC*, 558 U.S. 310 (2010).

71	The Court's very first decision enforcing the implicit freedom of association said that "it is immaterial" what beliefs the association seeks "to… advance[]," including beliefs that "pertain to… economic…matters."	*NAACP v. Alabama*, 357 U.S. 449 (1958)
71	Furthermore, as long ago as 1945, the Court spurned the argument "that the First Amendment's safeguards are wholly inapplicable to business or economic activity."	*Thomas v. Collins*, 323 U.S. 516 (1945).
71	It repudiated the state's position that First Amendment protections should not extend to "an organization" that "is engaged in business activities."	*Thomas v. Collins*, 323 U.S. 516 (1945).
72	In the 1976 Planned Parenthood v. Danforth decision, which upheld minors' constitutional right to abortion under the then-governing precedent of Roe v. Wade, the Supreme Court reaffirmed that minors are entitled to all constitutional rights, specifically citing earlier decisions that had upheld minors' free speech rights (as well as other rights).	*Planned Parenthood v. Danforth*, 428 U.S. 52 (1976).
72	The Court declared: "Constitutional rights do not mature and come into being magically only when one attains the state-defined age of majority. Minors, as well as adults, are protected by the Constitution."	*Planned Parenthood v. Danforth*, 428 U.S. 52 (1976).
72	Nonetheless, the Danforth opinion also observed that "the State has somewhat broader authority to regulate the activities of children than of adults."	*Planned Parenthood v. Danforth*, 428 U.S. 52 (1976).

72	In support of that statement, the Court cited only one, narrowly focused case concerning minors' general free speech rights (i.e., outside of the public school context), in which it had held those rights to be less extensive than adults': the 1968 Ginsberg v. New York decision, ruling that government had more power to bar the distribution of certain sexual expression to minors than to adults.	*Ginsberg v. New York*, 390 U.S. 629 (1968).
73	In contrast with its Ginsberg holding, the Court consistently has rejected government arguments that minors should be barred from access to other—i.e., non-sexual—materials "that a legislative body thinks unsuitable for them," including violent materials.	*Erznoznik v. City of Jacksonville*, 422 U.S. 205 (1975).
73	In a 2011 decision, the Court said that Ginsberg did not vest the government with "a free-floating power to restrict the ideas to which children may be exposed."	*Brown, et al. v. Entertainment Merchants Assn*. et al., 564 U.S. 786 (2011).
75	That is true, for instance, of the landmark 1943 flag salute case, which eloquently endorsed two major implied First Amendment rights for everyone: freedom of conscience and freedom from government-compelled expression.	*West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943).
76	As long ago as 1945, substantially before the modern Court began to strongly enforce free speech rights in general, the Court conclusorily stated: "Freedom of speech and of press is accorded aliens residing in this country."	*Bridges v. Wixon*, 326 U.S. 135 (1945).

76	The Free Speech Clause's text supports that conclusion, since it is framed as a limit on government power generally, not a grant of rights to particular people (again, it provides that "Congress shall make no law…abridging the freedom of speech").	First Amendment | Constitution annotated | *congress.gov* ... (n.d.-b). https://constitution.congress.gov/browse/amendment-1/
77	In 2012, the Supreme Court affirmed a lower court decision, Bluman v. FEC, upholding a federal statute that barred non-citizens who were temporary U.S. residents from making financial contributions or expenditures in connection with U.S. elections.	*Bluman v. Fed. Election Comm'n*, 800 F. Supp. 2d 281 (D.D.C. 2011).
77	The Court long has held that any such campaign finance restrictions limit the political expression that is especially important in our representative democracy, and hence these restrictions are presumptively unconstitutional and subject to intense judicial review.	*Buckley v. Valeo*, 424 U.S. 1 (1976).
77	That said, precisely because non-citizens who are temporarily in the U.S. are not members of our political community, restrictions on their expressive activities that are "intimately related to the process of democratic self-government" have been held to satisfy even the demanding strict scrutiny standard	*Bernal v. Fainter*, 467 U.S. 216 (1984).
77	The Bluman decision ruled that the restrictions at issue were necessary/the least restrictive alternative for promoting the compelling interest in "preventing foreign influence over the U.S.	*Bluman v. Fed. Election Comm'n*, 800 F. Supp. 2d 281 (D.D.C. 2011).

	political process.”	
77	The Bluman decision ruled that the restrictions at issue were necessary/the least restrictive alternative for promoting the compelling interest in “preventing foreign influence over the U.S. political process.”	*Bluman v. Fed. Election Comm'n*, 800 F. Supp. 2d 281 (D.D.C. 2011).
77	For example, the decision posited that the restriction at issue might violate the First Amendment rights of “lawful permanent residents who have a more significant attachment to the United States than the temporary resident plaintiffs in this case.”	*Bluman v. Fed. Election Comm'n*, 800 F. Supp. 2d 281 (D.D.C. 2011).
79	This issue was squarely presented in a class action lawsuit filed in 2015 by Central American mothers who were seeking asylum in the U.S. for themselves and their children, and were imprisoned in detention facilities while their asylum cases were pending.	Separated family members seek monetary damages from United States (2023, July 12). *American Immigration Council*. https://www.americanimmigrationcouncil.org/litigation/separated-family-members-seek-monetary-damages-united-states#:~:text=Five%20asylum%2Dseeking%20mothers%20and,in%20their%20country%20of%20origin.
79	For instance, law professor Michael Kagan wrote: “Citizens United …articulates a compelling, progressive reason to encourage a diversity of voices in public life, and to closely scrutinize any government attempt to exclude a speaker based on who they are.”	Kagan, Michael, (2015)."*Speaker Discrimination: The Next Frontier of Free Speech.*" Scholarly Works. 901. https://scholars.law.unlv.edu/facpub/901

Chapter 4		
Paragraph #	Passage	Citation

C4P1	“The real issue in every free speech controversy is this: whether the state can punish all words which have some tendency, however remote, to bring about acts in violation of law, or only words which directly incite to acts in violation of law.”	Chafee, Z. (1919). Freedom of Speech in War Times. United States. *U.S. Government Printing Office*.
C4P4/FN1	The U.S. legal system has permitted some speech that causes similar emotional or psychic harms to be punished through civil tort actions for “intentional infliction of emotional distress.” As a later answer discusses, tort law defines this concept very narrowly, and the Supreme Court has imposed additional First Amendment limits on it.	Cornell Law School. (n.d.). Intentional infliction of emotional distress. *Legal Information Institute*. https://www.law.cornell.edu/wex/intentional_infliction_of_emotional_distress
C4P6	The Supreme Court made this point, for instance, in a 2011 decision that reaffirmed our national commitment “to protect even hurtful speech on public issues to ensure that we do not stifle public debate.”	*Snyder v. Phelps*, 562 U.S. 443 (2011).
C4P7	Accordingly, the speech may cannot be restricted solely based on any harm attributed to its message—or “content”—considered alone. In contrast, the speech may be restricted based on a specific harm that directly results from its message being conveyed in certain circumstances—that isi.e., in “context.”	Various cases, see, e.g. *Reed v. Town of Gilbert*, 576 U.S. 155 (2015).

C4P8	The “emergency” principle” is a shorthand label for government’s power to restrict speech that immediately causes or imminently threatens specific serious harms.	Strossen, N. (2018). Counterspeech in response to changing notions of free speech. *Human Rights Magazine.* 43(4).
C4P8/FN2	In some pre-modern cases, the Court used the phrase “clear and present danger” to summarize the standard for restricting speech based on its harmful potential. Construed literally, this phrase certainly could be understood to embody the emergency principle. However, the pre-modern Court repeatedly invoked a much-diluted (mis)interpretation of the phrase to uphold speech restrictions based on speculative dangers that were neither “clear” nor “present.” Therefore, the modern Court has abandoned this pre-modern terminology.	*Whitney v. California*, 274 U.S. 357 (1927)

C4P8	An often-quoted explanation of this key concept distinction comes from the 1927 opinion by Supreme Court Justice Brandeis in Whitney v. California. At that time, decades before the Court began to adopt its modern speech-protective principles, it allowed government to restrict speech that had only a loose, indirect, speculative connection to potential harm. Accordingly, the Whitney Court approved the criminal punishment of expression advocating socialism on the ground that it might induce audience members to engage in illegal or violent conduct.	*Whitney v. California*, 274 U.S. 357 (1927)
C4P8	"[E]ven advocacy of [lawbreaking] . . .… is not a justification for denying free speech where the advocacy falls short of incitement and there is nothing to indicate that [it] would be immediately acted on. . . ….. [N]o danger flowing from speech can be deemed [punishable], unless the incidence of the evil apprehended is so imminent that it may befall before there is opportunity for full discussion. . . .… Only an emergency can justify repression."	*Whitney v. California*, 274 U.S. 357 (1927) (Brandeis, J. dissenting)
C4P10	Recall Justice Holmes's warning that "[e]very idea is an incitement."	*Gitlow v. New York,* 268 U.S. 652 (1925).

C4P11	Suppressing speech based on its feared attenuated connection to future harm not only undermines the individual liberty of each member of "We the People" to choose what expression to convey and to receive;	U.S. Const. pmbl.
C4P11	it also undermines our collective sovereignty, by stifling the vigorous debate and dissent that has been saluted as "the lifeblood of democracy."	*R v Secretary of State for the Home Department ex parte Simms* (2000) 2 AC 115 HL at 126
C4P11	The Supreme Court has warned that a content-based speech restriction permits officials to "manipulate public debate" by "[suppress[ing] unpopular ideas or information."	*Turner Broadcasting System, Inc. v. FCC*, 512 U.S. 622 (1994).
C4P11	In contrast, when government restricts speech because, considered in context, the speech inflicts an independent harm—such as violating intellectual property rights or intentionally inciting imminent violence—"there is no realistic possibility that" the government is engaging in "official suppression of ideas."	*R.A.V. v. City of St. Paul*, 505 U.S. 377 (1992).
C4S4	What are "prophylactic rules," which err in favor of protecting "too much" speech, rather than too little?	Canminker, E. (2001). Miranda and Some Puzzles of "Prophylactic" Rules. *University of Cincinnati Law Review*, 70, 1–29.
C4P12	"it is better for ten guilty people to go free, than for one innocent person to be convicted."	Blackstone, S. (1753). *Commentaries on the Laws of England in Four Books*, vol. 2. J. B. Lippincott.

C4P12	In other words, acknowledging that no rule can infallibly separate the guilty from the innocent, these "prophylactic" or preventative rules are deliberately designed to over-protect criminal defendants' rights, as preferable to the alternative of under-protecting them.	Canminker, E. (2001). Miranda and Some Puzzles of "Prophylactic" Rules. *University of Cincinnati Law Review*, 70, 1–29.
C4P12	the Supreme Court has laid out some prophylactic rules, which intentionally shield some expression that would be constitutionally punishable, as the appropriate price for avoiding the punishment and deterrence of speech that should be constitutionally protected.	Canminker, E. (2001). Miranda and Some Puzzles of "Prophylactic" Rules. *University of Cincinnati Law Review,* 70, 1–29.
C4P13	A famous case in which the Court articulated these general considerations is its unanimous 1964 ruling in New York Times v. Sullivan. In order to prevent excessive self-censorship in criticizing public officials, for fear that the officials could pursue credible (even if ultimately unsuccessful) defamation lawsuits against their critics, the Court held that the First Amendment required additional limits on such lawsuits, beyond those imposed by traditional defamation tort law.	*New York Times Co. v. Sullivan*, 376 U.S. 254 (1964)

C4P13	Concerning the false statements at issue, the Court ruled, defamation plaintiffs who were public officials had to show that the defendant either knew the statements were false or uttered them with reckless disregard as to their truth or falsity. Moreover, public official defamation plaintiffs had to make this showing under the more demanding "clear and convincing evidence" standard, in contrast with the usual civil litigation standard of "preponderance of the evidence."	*New York Times Co. v. Sullivan*, 376 U.S. 254 (1964)
C4P15-17	[W]e consider this case against the background of a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials. . . .… The constitutional protection does not turn upon the truth, popularity, or social utility of the ideas and beliefs which are offered. . . .… .[E]rroneous statement is inevitable in free debate, and . . .… it must be protected if the freedoms of expression are to have the breathing space that they need . . . to survive. . . .… (continues)	*New York Times Co. v. Sullivan*, 376 U.S. 254 (1964)

C4P19	The prominent constitutional scholar Erwin Chemerinsky has flagged this challenging aspect of this body of law: “Part of what makes First Amendment analysis difficult is that . . …. there is no prescribed order for analysis. . . ….. [I]t is not possible to comprehensively flowchart the First Amendment as a defined series of questions in a required sequential order.”	Chemerinsky E. (2006). *Constitutional Law--Principles and Policies* (3rd ed.). Aspen.
C4P20	The Free Speech Clause unqualifiedly bars any law “abridging the freedom of speech,” without drawing explicit distinctions among various instances of “speech” depending on either their content or their context.	U.S Const. amend. I
C4P21	Let me cite one recent illustration, arising from a 2016 campaign rally for then-pPresidential-candidate Donald Trump. Referring to some anti-Trump demonstrators, the candidate urged his supporters to “get ’‘em out of here.”	*Nwanguma v. Trump*, No. 17-6290 (6th Cir. 2018)
C4P21	Reviewing the many pertinent facts that bore on the key question of whether Trump could be held culpable for “intentionally inciting” his supporters’ assaultive conduct, the federal appellate court concluded that one phrase in Trump’s exhortation to his supporters required a negative	*Nwanguma v. Trump*, No. 17-6290 (6th Cir. 2018)

	answer to that question: “Don’t hurt ‘’em.”	
C4P22	On January 6, Trump said: “I know that everyone here will soon be marching over to the Capitol building to peacefully and patriotically make your voices heard.”	Trump, Donald. (2021, 6 January). *March to Save America*
C4P22	stress these other statements he also made, and the explosive context in which he made them: “We fight like hell. And if you don’t fight like hell, you’re not going to have a country anymore.”	Trump, Donald. (2021, 6 January). *March to Save America*
C4P30	In a significant 1948 decision, Winters v. New York, t, the Court overturned a ruling by New York state’s highest court, which had held that the First Amendment did not shield publications that “so massed their collection of pictures and stories of bloodshed and of lust as to become vehicles for inciting violent and depraved crimes against the person."	*Winters v. New York*, 333 U.S. 507 (1948)
C4P30	Reversing this holding, the Supreme Court rejected the argument that the First Amendment applied only to “information” or “ideas,” explaining: “The line between the informing and the entertaining is too elusive. . . ….. Everyone is familiar with instances of propaganda through fiction. What is one	*Winters v. New York*, 333 U.S. 507 (1948)

	man's amusement teaches another's doctrine."	
C4P31	The Court's longstanding recognition that "freedom of speech" is not confined only to expression that communicates information or ideas, has the following corollary: Ffreedom of speech embraces expression that may not communicate anything at all to any third party, but rather constitutes solely individual self-expression.	*Cohen v. California*, 403 U.S. 15 (1971)
C4P31-32	[M]uch linguistic expression serves a dual communicative function: it conveys not only ideas capable of relatively precise, detached explication, but otherwise inexpressible emotions as well. In fact, words are often chosen as much for their emotive as their cognitive force. We cannot sanction the view that the Constitution, while solicitous of the cognitive content of individual speech, has little or no regard for that emotive function which, practically speaking, may often be the more important element of the overall message sought to be communicated.	*Cohen v. California*, 403 U.S. 15 (1971)
C4S10	"must convince the Postmaster General that his publication positively contributes to the public good," explaining:	*Hannegan v. Esquire*, 327 U.S. 146 (1946)

C4P34	"Under our system of government, there is an accommodation for the widest varieties of tastes and ideas. . . ….. [A] requirement that literature or art conform to some norm prescribed by an official smacks of an ideology foreign to our system. From the multitude of competing offerings, the public will pick and choose. What seems to one to be trash may have for others fleeting or even enduring value."	*Hannegan v. Esquire*, 327 U.S. 146 (1946)
C4P35	1948 Winters v. New York decision, the Justices extended First Amendment protection to the publications at issue (magazines and comic books depicting criminal and sexual conduct) even though "we can see nothing of any possible value to society" in them. Nonetheless, the Court concluded, these publications "are as much entitled to . . …. protection . . …. as the best of literature."	*Winters v. New York*, 333 U.S. 507 (1948)
C4P35	Justice Frankfurter endorsed this particular proposition with language signaling that it was not even subject to debate: "Wholly neutral futilities, of course, come under the protection of free speech as fully as do Keats' poems or Donne's sermons."	*Winters v. New York*, 333 U.S. 507 (1948)

C4P36	Just as the content-neutrality principle preserves individuals' rights to make their own determinations about the value of particular political ideas, it also preserves these same rights regarding "esthetic and moral judgments about art and literature."	*United States v. Playboy Entertainment Group, Inc. ,* 529 U. S. 803, 818 (2000)
C4P36	The Court has proclaimed that all such judgments "are for the individual to make, not for the Government to decree, even with the mandate or approval of a majority."	*United States v. Playboy Entertainment Group, Inc. ,* 529 U. S. 803, 818 (2000)
C4P37	Notwithstanding the predominant theme in First Amendment decisions that the amendment protects even expression without "any possible value,"	*Winters v. New York*, 333 U.S. 507 (1948)
C4P37-38	There are certain well defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem. These include the lewd and obscene, the profane, the libelous, and the insulting or "fighting" words— -- those which, by their very utterance, inflict injury or tend to incite an immediate breach of the peace. . . ….. [S]uch utterances are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be	*Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942)

	derived from them is clearly outweighed by the social interest in order and morality.	
C4P38	squarely repudiated core elements of this Chaplinsky passage in striking down New York's ban on publications depicting "bloodshed and lust."	*Winters v. New York*, 333 U.S. 507 (1948)
C4P38	Winters expressly rejected Chaplinsky's's assertion, —which the defenders of the New York lawstate understandably had invoked, —that the First Amendment "applies only to the exposition of ideas."	*Winters v. New York*, 333 U.S. 507 (1948)
C4P38	Winters rejected Chaplinsky's indication that the First Amendment applies only to expression that has more than "slight social value" and that contributes " to truth."	*Winters v. New York*, 333 U.S. 507 (1948)
C4P40	When the Supreme Court actually had to decide whether government could restrict speech on the rationale that it was "no essential part of any exposition of ideas," and had only "slight social value as a step to truth"—as it had to do in Winters—the the Court answered those questions with a resounding "No!"	*Winters v. New York*, 333 U.S. 507 (1948)

C4P40	incorporate the Chaplinsky dicta's central concept: that certain content-defined categories of speech have no value, or only "low value," and therefore that the First Amendment leaves such speech either wholly unprotected or less protected than speech with other content.	*Winters v. New York*, 333 U.S. 507 (1948)
C4P40	Consistent with the modern Court's increasingly strong enforcement of the content-neutrality principle, the Court has steadily reduced the number and scope of such content-defined categories of unprotected or less- protected speech that it formerly recognized. For instance, in a 1975 case, declaring that "a State cannot foreclose the exercise of constitutional rights by mere labels," the Court rejected earlier rulings that speech could be denied First Amendment protection solely because it was labeled "commercial" based on the subject it addressed.	*NAACP v. Button*, 371 U.S. at 371 U. S. 429

C4P40	FurthermoreMoreover,, in a landmark 2010 ruling, the Court announced that it would not add any new content-based categories of unprotected or less- protected speech to the few remaining, “narrowly defined” content-based categories of speech that historically had been excluded from full First Amendment protection.	*United States v. Stevens*, 559 U.S. 460 (2010)
C4P41	“Obscenity” constitutes a Court-defined category of sexual expression that is excluded from First Amendment protection; one element of the definition is that the material lacks “serious” value.	*Miller v. California*, 413 U.S. 15 (1973)
C4P42	The Court also has invoked the “lesser value” rationale to relegate several other categories of sexual expression, beyond the obscenity exception, to less First Amendment protection than speech about other topics.	Genevive Lakier, "*The Invention of Low-Value Speech,*" 128 Harvard Law Review 1 (2015).
C4P42	a 1976 decision that upheld content-based zoning restrictions for “adult” movie theaters (i.e., theaters showing sexually explicit films)	*Young v. American Mini Theatres*, 427 U.S. 50 (1976)
C4P42	“[F]ew of us would march our sons and daughters off to war to preserve the citizen’s right to see [the film] ‘`Specified Sexual Activities’ exhibited in the theaters of our choice.”	*Young v. American Mini Theatres*, 427 U.S. 50 (1976)

C4P44	“For if the guarantees of the First Amendment were reserved for expression that more than a “`few of us”’ would take up arms to defend, then the right of free expression would be defined and circumscribed by current popular opinion. The guarantees of the Bill of Rights were designed to protect against precisely such majoritarian limitations on individual liberty.	*Young v. American Mini Theatres*, 427 U.S. 50 (1976) (Stewart, J. dissenting)
C4P45	”Stewart’s dissent presciently concluded: “I can only interpret today’s decision as an aberration.”	*Young v. American Mini Theatres*, 427 U.S. 50 (1976) (Stewart, J. dissenting)
C4P46	Observing that “[s]peech is an essential mechanism of democracy, for it is the means to hold officials accountable to the people,” the Court has concluded that “speech on public issues occupies the highest rung of the hierarchy of First Amendment values, and is entitled to special protection.”	*Connick v. Myers*, 461 U.S. 138 (1983)
C4P47	As the Supreme Court stated, the First Amendment “has its fullest and most urgent application to speech uttered during a campaign for political office.”	*Monitor Patriot Co. v. Roy*, 401 U.S. 265 (1971)

C4P47	modern Justices have overwhelminglyunanimously concurred that serious First Amendment concerns are raised by campaign finance restrictions, because they limit the amount of money available to disseminate this "most [urgent[ly]" important expression, hence limiting its dissemination.	*Citizens United v. FEC*, 558 U.S. 310 (2010)
C4P47	the Justices also have broadly concurred that any such restriction violates the First Amendment unless government can prove that it sufficiently promotes other important valuesconcerns, although they have strongly disagreed about whether the government has satisfied that burden of proof regarding particular restrictions.	*Citizens United v. FEC*, 558 U.S. 310 (2010)
C4P48	the Court has emphasized that the expression addressed a matter of public concern as a factor supporting its protection. For example, the Court has issued two decisions about First Amendment limits on tort actions for "intentional infliction of emotional distress," which arose from offensive, hateful speech.	*Falwell Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46 (1988). and *Snyder v. Phelps*, 562 U.S. 443 (2011).
C4P48	the Court has extended some protection to government employees' speech about matters of public concern but	*Pickering v. Board of Education*, 391 U.S. 563 (1968). *Garcetti v. Ceballos*, 547 U.S. 410 (2006).

	no protection to their speech about other matters.	
C4P49	For instance, in a 2001 decision, the Court overturned judgments against a radio station and its reporter for having broadcast the recording of an illegally intercepted phone conversation between two teachers' union leaders, about contentious ongoing negotiations with the local school board; the plaintiffs had sued under federal and state statutes barring non-consensual wiretapping.	*Bartnicki v. Vopper*, 532 U.S. 514 (2001).
C4P49	the Court also noted that "[i]In this case, privacy concerns give way when balanced against the interest in publishing matters of public importance."	*Bartnicki v. Vopper*, 532 U.S. 514 (2001).
C4P52	"The portrayal of sex . . .… is not itself sufficient reason to deny material . . .… constitutional protection. . . ….. Sex, a great and mysterious motive force in human life, has indisputably been a subject of absorbing interest to mankind through the ages; it is one of the vital problems of human interest and public concern."	*Roth v. United States*, 354 U.S. 476 (1957).
C4P54	The Court initially articulated the obscenity doctrine in 1957. It applied that label to a subset of sexually explicit speech, defined by its content, and held it to be completely excluded	*Roth v. United States*, 354 U.S. 476 (1957).

	from First Amendment protection.	
C4P54	In its 1973 decision in Paris Adult Theatre v. Slaton, the Court re-examined this controversial exception to general free speech principles, but reaffirmed it by a 5–-4 vote.	*Paris Adult Theatre I v. Slaton*, 413 U.S. 49 (1973).
C4P55	Furthermore, the work, taken as a whole, must appeal to the "prurient" interest in sex (which the Court has defined as an interest that is "sick and morbid" rather than "normal and healthy"), and the work must be "patently offensive" to "an average person, applying contemporary community standards."	*Miller v. California*, 413 U.S. 15 (1973).
C4P55	in contrast, older tests judged a work from the perspective of "the most susceptible" community members.	*Pinkus v. United States*, 436 U.S. 293 (1978).
C4P55	Tthe work, taken as a whole, must lack "serious literary, artistic, political, or scientific value," as judged by contemporary national standards; the focus on national standards means that more parochial perspectives about a work's lack of serious value will not suffice to brand it as obscene.	*Miller v. California*, 413 U.S. 15 (1973).
C4P56	it still poses vagueness problems, failing to provide sufficient guidance to "a person	*Connally v. General Construction Co.*, 269 U.S. 385 (1926).

	of ordinary intelligence" about what expression is outlawed.	
C4P56	Can such a person distinguish, for example, between a "sick" and a "healthy" interest in sex, in determining whether certain expression appeals to the "prurient" interest in sex?	*Brockett v. Spokane Arcades, Inc.*, 472 U.S. 491 (1985)
C4P56	Justice Potter Stewart candidly acknowledged that he could "perhaps . . …. never succeed in intelligibly" defining obscenity, instead expressly relying on his personal, subjective perceptions: "I know it when I see it."	*Jacobellis v. Ohio*, 378 U.S. 184 (1964) (Stewart, J. concurring)
C4P57	Paris Adult acknowledged that there is no evidence that obscene expression directly causes or threatens any imminent harm, thus underscoring that the obscenity exception is squarely inconsistent with the emergency principle, as well as the content-neutrality principle. Instead, the majority relied on the loose "bad tendency" standard that the Court had jettisoned in other modern First Amendment contexts. The Paris Adult opinion said that obscenity could be criminalized based on "unprovable assumptions" that "commerce in obscene materials" has "a tendency to exert a corrupting and debasing impact leading to antisocial behavior."	*Paris Adult Theatre I v. Slaton*, 413 U.S. 49 (1973).

C4P58	For example, in a 1987 case, three Justices—two liberals and one moderate—indicted "the vagueness inherent in criminal obscenity statutes."	*Pope v. Illinois*, 481 U.S. 497 (1987).
C4P58	the Court's leading arch-conservative at the time, Antonin Scalia, echoed that judgment, complaining that "at least" the serious value prong of the obscenity definition is marred by the "lack of[s] . . ….. an ascertainable standard,"—thus indicating that either or both of the other two prongs (requiring that the work must be "patently offensive" and appeal to the "prurient interest" in sex) might also share this fundamental flaw. Observing that the "serious value" criterion cannot be subject to "an objective assessment" because it essentially reflects matters of "taste," Scalia concluded: "Just as there is no use arguing about taste, there is no use litigating about it."	*Pope v. Illinois*, 481 U.S. 497 (1987) (Scalia, J. concurring).
C4P59	First, the Court's "unprovable assumptions" about obscenity's assertedly negative impacts specifically focused on, concerned "commerce in obscene" materials.	*Paris Adult Theatre I v. Slaton*, 413 U.S. 49 (1973).

C4P59	In its unanimous 1969 ruling on point, the Court declared: “If the First Amendment means anything, it means that a State has no business telling a man, sitting alone in his own house, what books he may read or what films he may watch. Our whole constitutional heritage rebels at the thought of giving government the power to control men’s minds.”	*Stanley v. Georgia,* 394 U.S. 557 (1969).
C4P59	In that case, the government had surmised that “exposure to obscene material may lead to deviant sexual behavior or crimes of sexual violence.” Consistent with its general repudiation of the former “bad tendency” approach, tThe Court rejoined that “[t]he State may no more prohibit mere possession of obscene matter on the ground that it may lead to antisocial conduct than it may prohibit possession of chemistry books on the ground that they may lead to the manufacture of homemade spirits.”	*Stanley v. Georgia,* 394 U.S. 557 (1969).
C4P60	For example, in 1971 the Court dismissed the contention that wearing a jacket with the slogan “Fuck the Draft” in a courthouse could be punished as obscenity, explaining that constitutionally unprotected obscenity “must be, in some significant way, erotic.”	*Cohen v. California*, 403 U.S. 15 (1971).

C4P60	As the Court declared in one such case, in 2010: "[T]he obscenity exception . . …. does not cover whatever a legislature finds shocking, but only depictions of sexual conduct."	*Brown, et al. v. Entertainment Merchants Assn. et al.,* 564 U.S. 786 (2011)
C4P61	In the 1968 Ginsberg v. New York decision, the Supreme Court upheld an obscenity conviction of a bookseller who had sold "girlie magazines" to a 16-year-old, even though the Court acknowledged that the magazines would not constitute obscenity in any other context.	*Ginsberg v. New York*, 390 U.S. 629 (1968)
C4P61	The New York statute that Ginsberg upheld tailored its general obscenity definition by inserting the qualification "as to minors" for each element of the definition	*Ginsberg v. New York*, 390 U.S. 629 (1968)
C4P62	In 2011, the Court struck down a California statute—similar to other state statutes—that outlawed the sale of certain violent videogames to minors,	*Brown, et al. v. Entertainment Merchants Assn. et al.,* 564 U.S. 786 (2011)
C4P62/FN3	The outlawed material is often sometimes described by the misleading term "harmful to minors," thus inaccurately misleadingly connoting a broader concept of expressive material, beyond obscenity as to minors, with its exclusively sexual focus. YetTo the contrary, the Court has broadly upheld minors' free speech rights concerning in all other	*Ginzburg v. United States,* 383 U.S. 463 (1966), *Brown, et al. v. Entertainment Merchants Assn. et al.*, 564 U.S. 786 (2011)

	cases, involving speech with all other (i.e., non-sexual) content.	
C4P63	"California [may] not . . …. prohibit selling offensively violent works to adults" [emphasis in original], it may not do so regarding minors either.	*Brown, et al. v. Entertainment Merchants Assn. et al.,* 564 U.S. 786 (2011)
C4P63	the Court has struck down federal statutes that outlawed "indecent" and "patently offensive" online expression on a child-protection rationale.	*Reno v. ACLU*, 521 U.S. 844 (1997)
C4P64	The Court-created obscenity doctrine (created in 1957, reaffirmed in 1973, and not re-examined since then) is an outlier in contemporary First Amendment law.	*Roth v. United States***,** 354 U.S. 476 (1957) ; *Miller v. California*, 413 U.S. 15 (1973)
C4P64	1942 Chaplinsky decision, which had broadly supported government power to restrict speech it deemed to be "no essential part of any exposition of ideas, and . . . of such slight social value as a step to truth that any benefit . . …. from [such speech] is clearly outweighed by the social interest in order and morality."	*Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942)
C4P65	In a landmark 2010 decision (by an 8-1 vote), the Court completely repudiated that speech-suppressive rationale of the Chaplinsky case.	*United States v. Stevens*, 559 U.S. 460 (2010)

C4P65	arguing that "[w]hether a given category of speech enjoys First Amendment protection depends upon a categorical balancing of the value of the speech against its societal costs."	*United States v. Stevens*, 559 U.S. 460 (2010)
C4P66	As a free-floating test for First Amendment coverage, that sentence is startling and dangerous. The First Amendment's guarantee of free speech does not extend only to categories of speech that survive an ad hoc balancing of relative social costs and benefits. The First Amendment itself reflects a judgment by the American people that the benefits of its restrictions on the Government outweigh the costs. Our Constitution forecloses any attempt to revise that judgment simply on the basis that some speech is not worth it.	*United States v. Stevens*, 559 U.S. 460 (2010)
C4P67	Court announced that it would not add any new content-based categories of unprotected or less- protected speech to the few remaining, "narrowly defined" content-based categories of speech that historically had been excluded from full First Amendment protection.	*United States v. Stevens*, 559 U.S. 460 (2010)

C4P67/FN4	The Court acknowledged the possibility that "some categories of speech that have been historically unprotected . . . have not yet been specifically identified or discussed . . . in our case law." However, the Court stressed that the government would have to show "persuasive evidence that a novel restriction on content is part of a long (if heretofore unrecognized) tradition of proscription."	*United States v. Stevens*, 559 U.S. 460 (2010)
C4P68	The Court has stressed that the justification for outlawing child pornography is to protect children from the inevitable harm they endure from the production process, and not solely disapproval of the material's content, considered apart from the production process.	*New York v. Ferber,* 458 U.S. 747 (1982)

C4P68/FN5	In distinguishing child pornography from this other material, the Court not only stressed the exceptional importance of protecting children, but also concluded that child pornography "presented a special case" because "[t]he market for [it] was intrinsically related to the underlying abuse, and was therefore an integral part of the production of such materials." The Court accepted the government's argument that, given the "low profile, clandestine" nature of the child pornography production process, it was difficult to prosecute those engaged in it, and therefore "the most expeditious, if not the only practical" way to prevent the child abuse that the pornography depicts is to "dry up the market" for it.	*United States v. Stevens*, 559 U.S. 460 (2010)

C4P69	the Court's 2002 decision in Ashcroft v. Free Speech Coalition. That case struck down a federal statute that outlawed "virtual child pornography": sexually explicit depictions that "appeared" to depict minors, but were made without using actual minors, instead using youthful-looking adults or computer morphing techniques. The Court highlighted the content-neutral nature of its prior holding that government may outlaw "real child pornography" because that "was based upon how it was made, not on what it communicated."	*Ashcroft v. Free Speech Coalition*, 535 U.S. 234 (2002)

C4P70	Free Speech Coalition also rejected the government's furtheralternative argument for outlawing virtual child pornography: that it "whets the appetites of pedophiles and encourages them to engage in illegal conduct." The Court castigated this attempted resurrection of the discredited bad tendency test, while strongly reaffirming the emergency principle in general and the pertinent concept of punishable incitement in particular: "The mere tendency of speech to encourage unlawful acts is not a sufficient reason for banning it. . . …. First Amendment freedoms are most in danger when the government seeks to control thought. . . ….. The government may not prohibit speech because it increases the chance an unlawful act will be committed at some indefinite future time."	*Ashcroft v. Free Speech Coalition*, 535 U.S. 234 (2002)
72	"Iindecent" or "patently offensive" speech that is conveyed via over-the-air broadcast TV or radio (the Court has treated speech conveyed via broadcast as less protected than the very same speech conveyed via other media)	*FCC v. Pacifica Foundation*, 438 U.S. 726 (1978)

75	For instance, the Court refused to extend the concept of illegal child pornography to images that look identical to it, but—crucially— – did not use any actual minors in the production process.	*Ashcroft v. Free Speech Coalition*, 535 U.S. 234 (2002)
75	the Court consistently has refused to permit the government to ban "indecent" or "patently offensive" expression in any other media, beyond the broadcast media.	*FCC v. Pacifica Foundation*, 438 U.S. 726 (1978)
77	For example, bills that were introduced in the Indiana and Iowa legislatures in 2022 would criminalize as obscene even material that had "legitimate educational purposes."	Schaibley, D. (n.d.). House Bill 1447. Indiana General Assembly. https://iga.in.gov/legislative/2023/bills/house/1447/details
77	the obscenity definition does not extend to encompass expression with "serious . . …. value,." such as material with "legitimate educational purposes."	*Miller v. California*, 413 U.S. 15 (1973)
S19	How protected is "commercial" speech?	*Valentine v. Chrestensen*, 316 U.S. 52 (1942)
78	The Court has used the term "commercial speech" to refer to advertising and other speech about commercial transactions, although it has not delineated a specific definition of such expression.	*Valentine v. Chrestensen*, 316 U.S. 52 (1942)

78	In its milestone 1975 Virginia v. Bigelow ruling, though, the Court recognized that there is no clear distinction between the political speech that it has always considered supremely important and the commercial speech that it had traditionally deemed of lesser value.	*Bigelow v. Virginia*, 421 U.S. 809 (1975)
79	Bigelow has recently gained renewed relevance, in light of the Court's June 2022 Dobbs v. Jackson Women's Health Organization decision overturning Roe v. Wade	*Dobbs v. Jackson Women's Health Organization*, 597 U.S. ___ (2022)
79	The ad at issue in Bigelow advised women in Virginia, where abortion was then illegal, that they could receive abortions in New York, where they were legal.	*Bigelow v. Virginia*, 421 U.S. 809 (1975)
79	We can also anticipate the type of criminal prosecution that Virginia successfully brought against the newspaper editor of the Virginia "alternative newsweekly" that had published the ad.	*Bigelow v. Virginia*, 421 U.S. 809 (1975)
79	The Virginia Supreme Court had upheld the editor's criminal conviction under a state statute that made it a misdemeanor "to encourage or prompt the procuring of abortion," including "by advertisement."	*Bigelow v. Virginia*, 421 U.S. 809 (1975)

79	The Virginia Supreme Court rejected the publisher's First Amendment defense based on U.S. Supreme Court precedents that had denied First Amendment protection to paid commercial ads	*Bigelow v. Virginia*, 421 U.S. 809 (1975)
80	After the 2022 Dobbs decision, the National Right to Life Committee circulated a model anti-abortion statute that parallels the Virginia statute in Bigelow; it outlaws "aiding and abetting" illegal abortions, and it defines "aiding and abetting" sufficiently broadly to include ads like the one in Bigelow.	Bopp, J. (2022, June 15). NRLC.org. https://www.nrlc.org/wp-content/uploads/NRLC-Post-Roe-Model-Abortion-Law-FINAL-1.pdf
Footnote 6	The Virginia Supreme Court also concluded that this state statute was not undermined by the U.S. Supreme Court's 1973 Roe decision, because Roe did not "mention . . .… abortion advertising."	*Bigelow v. Virginia*, 421 U.S. 809 (1975)
81	In Bigelow, the U.S. Supreme Court rejected former holdings that commercial speech was categorically excluded from First Amendment protection, in part because such speech could not be clearly distinguished from political speech.	*Bigelow v. Virginia*, 421 U.S. 809 (1975)

82	"The advertisement . . …. did more than simply propose a commercial transaction. It . . …. conveyed information of potential interest and value to a diverse audience— -- not only to readers possibly in need of the [abortion] services offered, but also to those with a general curiosity about . . …. the subject matter, . . …. and to readers seeking reform in Virginia."	*Bigelow v. Virginia*, 421 U.S. 809 (1975)
83	Additionally, the Court observed, “the activity advertised pertained to constitutional interests,” citing its 1973 Roe ruling.	*Bigelow v. Virginia*, 421 U.S. 809 (1975)
84	Just one year after the 1975nBigelow decision, the Court extended its protection of commercial speech even to the very kind of bare-bones ad that “did not do no “more than simply propose a commercial transaction”—in other words, offering to sell certain products or services at specified prices—which Bigelow had distinguished from the abortion services ad in that case.	*Va. Pharmacy Bd. v. Va. Consumer Council*, 425 U.S. 748 (1976)
84	In further contrast with the Bigelow ad, this one did not “[pertain] to to constitutional” interests such as reproductive freedom.	*Va. Pharmacy Bd. v. Va. Consumer Council*, 425 U.S. 748 (1976)

84	In Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, t, the Court struck down a Virginia law barring any pharmacists' ads for prescription drugs that included the drugs' prices.	*Va. Pharmacy Bd. v. Va. Consumer Council*, 425 U.S. 748 (1976)
86	[W]e may assume that the advertiser's interest is . . …. purely economic. . . ….. That hardly disqualifies him from protection under the First Amendment.	*Va. Pharmacy Bd. v. Va. Consumer Council*, 425 U.S. 748 (1976)
87	Notwithstanding the Court's recognition that commercial speech addresses matters of public concern, a factor that weighs in favor of strong First Amendment protection, commercial speech restrictions are not subject to the same demanding "strict scrutiny" test that generally applies to content-based speech restrictions.	*MD II ENTERTAINMENT, INC. v. City of Dallas*, Tex., 935 F. Supp. 1394 (N.D. Tex. 1995)
87	Instead, the Court subjects commercial speech restrictions to the less demanding "intermediate scrutiny" test, under which the government must show only that the restriction "substantially" promotes a "significant" government interest, —in contrast with strict scrutiny's required showing that the restriction is "necessary"/"the least restrictive alternative" to	*MD II ENTERTAINMENT, INC. v. City of Dallas*, Tex., 935 F. Supp. 1394 (N.D. Tex. 1995)

	promote a government interest of "compelling importance."	
87	The Court has said that commercial speech warrants only this lesser degree of protection because commercial speech "occurs in an area traditionally subject to government regulation."	*Central Hudson Gas & Elec. v. Public Svc. Comm'n*, 447 U.S. 557 (1980)
88	In a 2001 concurring opinion, Justice Thomas suggested that even restrictions on advertising harmful products, —such as tobacco products, —to minors should be limited to the same narrow concept of punishable incitement applicable to other expression—including classic political speech-- that potentially induces other harmful conduct.	*Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525 (2001)

89	Calls for limits on expression always are made when the specter of some threatened harm is looming. The identity of the harm may vary. People will be inspired by totalitarian dogmas and subvert the Republic. They will be inflamed by racial demagoguery and embrace hatred and bigotry. Or they will be enticed by cigarette advertisements and choose to smoke, risking disease. It is therefore no answer for the State to say that the makers of cigarettes are doing harm: perhaps they are. But in that respect they are no different from the purveyors of other harmful products, or the advocates of harmful ideas. When the State seeks to silence them, they are all entitled to the protection of the First Amendment.	*Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525 (2001) (Thomas, C., concurring)
90	The Court explained this conclusion in its 1952 decision overturning the 1915 decision that had denied First Amendment protection for movies on the ground that "the exhibition of moving pictures is a business."	*Mutual Film Corp. v. Industrial Comm'n of Ohio*, 236 U.S. 230 (1915)

91	It is urged that motion pictures do not fall within the First Amendment's aegis because their production, distribution, and exhibition is a large-scale business conducted for private profit. We cannot agree. That books, newspapers, and magazines are published and sold for profit does not prevent them from being a form of expression whose liberty is safeguarded by the First Amendment.	*Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495 (1952)
92	The First Amendment itself expressly protects the freedom of both "speech" and "press."	U.S. Const. amend. I.
93	The Court still permits government to restrict "patently offensive" or "indecent" speech that is transmitted via over-the-air broadcast, even though it fully protects that very same speech when transmitted via any other medium: print, telephone, cable, or Iinternet.	FCC v. Pacifica Foundation, 438 U.S. 726 (1978)
93	The Court's dated decisions relegating broadcast expression to less-protected status were based on the following factors: "the history of extensive Government regulation of the broadcast medium . . .…; the scarcity of available frequencies at its inception . . .…; and its invasive nature."	*Reno v. ACLU*, 521 U.S. 844 (1997)

94	In 1997, when the Court first considered the extent to which online expression should receive First Amendment protection, it concluded that "none of [the] factors" that had supported broadcast regulation "are . . …. present in cyberspace."	*Reno v. ACLU*, 521 U.S. 844 (1997)
94	The Court characterized members of the broadcast audience as passive—and at least in some cases unwilling—recipients of expression that is thrust upon them in an "invasive" fashion, whereas iInternet users affirmatively seek out expressive content.	*Reno v. ACLU*, 521 U.S. 844 (1997)
94	For these reasons, the Court explained, online expression was not governed by its earlier decisions that upheld restrictions on "patently offensive" or "indecent" broadcast expression, in order to shield audience members who might prefer not to see it—in particular, to assist parents who seek to shield their children from such expressioexpressionn.	*Reno v. ACLU*, 521 U.S. 844 (1997)

100	When I am interviewed on broadcast television about one of the most important Supreme Court free speech decisions, which overturned a young man's Vietnam-era conviction for wearing a jacket with the message "Fuck the Draft,", that crucial word "Fuck" is bleeped out; otherwise, the broadcaster could incur a fine of up to $325,000 for each utterance of the word, and an increased risk that its broadcast license would not be renewed.	*Cohen v. California*, 403 U.S. 15 (1971), Vicini, J. (2012, June 21). U.S. Court Rules Against FCC in TV Profanity, Nudity Cases. Reuters. https://www.reuters.com/article/entertainment-us-usa-televsion-indecency/u-s-court-rules-against-fcc-in-tv-profanity-nudity-cases-idUSBRE85K10W20120621
102	This "place" factor applies to speech that is conveyed not via a communications medium, but rather, in person—for examplee.g., via talking, leafletting, or picketing.	
102	(Because of the state action doctrine, private- property owners have no First Amendment obligation to permit expressive activities on their property.)	*Edmonson v. Leesville Concrete Co., Inc*., 500 U.S. 614 (1991)
103	For purposes of assessing what speech restrictions are permissible on particular types of public property, the Court has classified all such property into three categories of "public forums": "traditional public forums," "limited public forums," and "non-public forums."	*Perry Educ. Ass'n v. Perry Educators' Ass'n*, 460 U.S. 37 (1983)

Footnote 7	The Court also has occasionally used the term “designated public forum” to denote public property other than traditional public forums, which the government has chosen to designate as being available for some free speech uses.	*Good News Club v. Milford Central School*, 533 U.S. 98 (2001)
105	In some earlier cases, Citizens United recognized, the Court had held that some people have only reduced free speech rights in certain contexts: namely, public school students, prisoners, military personnel, and government employees.	*Citizens United v. FEC*, 558 U.S. 310 (2010)
105	Crucially, though, while these diminished free speech rights “operate to the disadvantage of certain persons,” they do not flow from the speakers’ identities, considered alone.	*Citizens United v. FEC*, 558 U.S. 310 (2010)
105	Rather, as Citizens United pointed out, such lessened free speech rights result from another factor that critically affects the free speech analysis: in what capacity the government is acting and, correspondingly, the role that the individual is playing in that particular context.	*Citizens United v. FEC*, 558 U.S. 310 (2010)
107	Content-based speech restrictions constitute the most dangerous form of censorship, because they “raise the specter that the Government may effectively drive certain ideas	*R.A.V. v. City of St. Paul*, 505 U.S. 377 (1992)

	or viewpoints from the marketplace."	
Footnote 8	The Supreme Court has said that speech regulations based on a speaker's "specific motivating ideology or . . . opinion or perspective"—that is,i.e., viewpoint-based regulations—constitute an especially "egregious form of content discrimination," but all content-based regulations are subject to the same First Amendment standards. Therefore, this book generally refers to viewpoint and content interchangeably.	*Rosenberger v. Rector and Visitors of the University of Virginia*, 515 U.S. 819 (1995)
107	Under the "strict scrutiny" test, a court will closely examine the regulation, and uphold it only if the government can demonstrate that the regulation is necessary to promote a goal or purpose of "compelling" importance.	*United States v. Carolene Products Co.*, 304 U.S. 144 (1938)
107	To satisfy this requirement, the government must show not only that the regulation does materially promote the government's purpose, but also that it is "the least restrictive alternative" means for doing so—in other words.e., that no less speech-suppressive measure would effectively do so.	*United States v. Carolene Products Co.*, 304 U.S. 144 (1938)

108	To cite one example, w this is the reason why the Supreme Court struck down two federal statutes outlawing “indecent” and “patently offensive” online speech accessible to children, whose stated purpose was to protect children’s well-being.	*Reno v. ACLU*, 521 U.S. 844 (1997)
109	For instance, in cases striking down restrictions on adult access to “indecent” or “patently offensive” telephone and cable communications, which had been premised on the child-protection rationale, the Court said that “the Government may not [reduc[e] the adult population . . .... to . . . ... only what is fit for children.”	*Reno v. ACLU*, 521 U.S. 844 (1997)
110	Content-neutral speech restrictions are often referred to as “time, place, and manner” regulations, because they limit when, where, and how the speech occurs.	*Ward v. Rock Against Racism*, 491 U.S. 781 (1989)
110	For instance, as a 1949 Supreme Court decision recognized, a content-neutral regulation could bar sound trucks from blaring their messages in residential neighborhoods at times when most residents are sleeping; such a bar would apply evenhandedly to any and all expression, regardless of its topic or perspective.	*Kovacs v. Cooper*, 336 U.S. 77 (1949)

110	Along with restrictions that comply with the emergency principle, content-neutral restrictions also present "no realistic" risk that government is "[suppress[ing] . . …. ideas."	*R.A.V. v. City of St. Paul*, 505 U.S. 377 (1992)
111	For this reason, the Court sensibly requires government to vindicate content-neutral regulations by showing, (among other things) , that there are "ample alternative channels" for speakers to convey their messages—that isi.e., at other times, in other places, and/or in other manners.	*Hill v. Colorado*, 530 U.S. 703 (2000)
112	Although the applicable "intermediate scrutiny" test is less demanding than the "strict scrutiny" that applies to content-based regulations (as the labels clearly denote), government nevertheless often fails to satisfy it.	*United States v. Carolene Products Co.*, 304 U.S. 144 (1938)
112	Under intermediate scrutiny, the government must show not only the "ample alternative channels" referenced above, but also that the speech restriction "substantially" promotes a goal of "significant" importance, and is "narrowly tailored" to do so.	*United States v. Carolene Products Co.*, 304 U.S. 144 (1938)

112	Government often fails to show that the restriction actually is effective in promoting its purpose and that it is "narrowly tailored"—in other words.e., that it does not "burden substantially more speech than necessary to further the government's" interests.	*Hill v. Colorado*, 530 U.S. 703 (2000)
114	The Supreme Court answered that question in the affirmative in its 1988 Frisby v. Schultz decision—so long as the restriction barred only picketing that solely targeted a single residence.	*Frisby v. Schultz*, 487 U.S. 474 (1988)
114	In contrast, the Court stressed, the law in Frisby did allow picketing in the general neighborhood—indeed even picketing focused on the single block in which the targeted residence was located.	*Frisby v. Schultz*, 487 U.S. 474 (1988)
114	In a 1980 case, for example, the Court had said that "the home becomes something less than a home [during] . . .… picketing . . . . [The] tensions and pressures may be psychological, not physical, but they are not, for that reason, less inimical to family privacy and truly domestic tranquility."	*Carey v. Brown*, 447 U.S. 455 (1980)

114	The Court laid these out: "Protestors . . . may enter [residential] neighborhoods, alone or in groups, even marching. . . . They may go door-to-door to proselytize their views. They may distribute literature in this manner . . . or through the mails. They may contact residents by telephone."	*Frisby v. Schultz*, 487 U.S. 474 (1988)
115	Whatever your own views may be about Roe and Dobbs, Frisby illustrates yet again why we must all defend "freedom for the thought that we hate" if we are to enjoy freedom for the thought that we love.	*United States v. Schwimmer*, 279 U.S. 644 (1929)
116	Along with content-based restrictions, "prior restraints" on speech constitute another type of speech regulation that the Court has held to be presumptively unconstitutional.	*Near v. Minnesota*, 283 U.S. 697 (1931)
116	Indeed, it the Court has said that "[a]ny system of prior restraints of expression come to this Court" bearing[] a heavy presumption against its constitutional validity, " of unconstitutionality, pronouncing such restraints them "the most serious and least tolerable infringement on First Amendment rights."	*Nebraska Press Assn. v. Stuart,* 427 U.S. 539 (1976)

121	The second of the two most common types of prior restraint, a court order barring speech, is illustrated by the famous 1971 “Pentagon Papers case.”	*New York Times Co. v. United States*, 403 U.S. 713 (1971)
122	Reviewing the case in record-breaking time, thus underscoring its urgency, the Supreme Court rejected the aAdministration’s arguments, concluding that the government “had not met” “carrie[d]” its “heavy burden of showing justification” for the injunctions.	*New York Times Co. v. United States*, 403 U.S. 713 (1971)
124	“The entire thrust of the Government’s claim throughout these cases has been that publication of the material sought to be enjoined `‘ “could,”’ or ‘` “might,”’ or ‘` “may”’ prejudice the national interest in various ways. But the First Amendment tolerates absolutely no prior judicial restraints of the press predicated upon surmise or conjecture that untoward consequences may result.”	*New York Times Co. v. United States*, 403 U.S. 713 (1971)
125	For example, Justice Hugo Black wrote: “The Government’s power to censor the press was abolished so that the press would remain forever free to censure the Government. . . ….. Only [a[n] . . …. unrestrained press can	*New York Times Co. v. United States*, 403 U.S. 713 (1971)

	effectively expose deception in government."	
126	"The security of the Nation is not at the ramparts alone. Security also lies in the value of our free institutions. A cantankerous press, an obstinate press, a ubiquitous press must be suffered by those in authority to preserve the even greater values of freedom of expression and the right of the people to know."	*New York Times Co. v. United States*, 403 U.S. 713 (1971)
127	The primary concern is to avoid language that is either "substantially overbroad" or "unduly vague," hence suppressing even more speech than what the regulation seeks to target.	*Broadrick v. Oklahoma*, 413 U.S. 601 (1973), *Kolender v. Lawson*, 461 U.S. 352 (1983)
127	The adverbs "substantially" and "unduly" recognize that, given language's inevitable imprecision, any regulation will likely be at least somewhat overbroad and vague; the First Amendment bars only pronounced degrees of overbreadth and vagueness.	*Broadrick v. Oklahoma*, 413 U.S. 601 (1973), *Kolender v. Lawson*, 461 U.S. 352 (1983)
128	A "substantially overbroad" law encompasses a substantial amount of constitutionally protected expression, as well as constitutionally unprotected expression	*Broadrick v. Oklahoma*, 413 U.S. 601 (1973)

128	Stressing that "some false statements are inevitable" in any "open and vigorous expression of views in public and private conversation," the Court noted that a purported government power to punish false speech "absent any evidence that the speech was used to gain a material advantage" would have "no clear limiting principle," but could extend to "an endless list of subjects."	*United States v. Alvarez*, 567 U.S. 709 (2012)
128	Referring to George Orwell's dystopian novel 1984, the Court said that "our constitutional tradition stands against the idea that we need Oceania's Ministry of Truth."	*United States v. Alvarez*, 567 U.S. 709 (2012)
129	The Supreme Court has held that any law is "unduly vague," and hence unconstitutional, when people "of common intelligence must necessarily guess at its meaning."	*Connally v. General Construction Co.*, 269 U.S. 385 (1926)
129	Any overly vague law violates tenets of "due process" or fairness, as well as equality, because it is inherently susceptible to arbitrary and discriminatory enforcement.	*Connally v. General Construction Co.*, 269 U.S. 385 (1926)
129	For these reasons, the Supreme Court has enforced the "void for vagueness" doctrine with special strictness concerning laws that regulate speech.	ConstitutionAnnotated. (n.d.). Amdt5.8.1 overview of void for vagueness doctrine - constitution annotated. Constitution.Congress.gov. https://constitution.congress.gov/br

		owse/essay/amdt5-8-1/ALDE_00013739/
130	To illustrate these intertwined problems, I will quote the 2021 federal appellate court decision that points to both problems with the University of Central Florida's "discriminatory harassment" policy.	Speech First, Inc. v. Alexander Cartwright, No. 21-12583 (11th Cir. 2022)
131	[W]hat does it mean for one student's speech to "unreasonably . . . alter[]" another student's educational experience? Both terms—"unreasonably" and "alter[]"—are pretty amorphous, [and] their application would likely vary from one student to another. . . ….. At oral argument, we asked the University's lawyer . . …. whether particular statements would violate the discriminatory-harassment policy: (1) "abortion is immoral"; (2) "unbridled open immigration is a danger to America on a variety of levels"; and (3) "the Palestinian movement is antisemitic." To his considerable credit—but to the policy's considerable discredit—he candidly acknowledged that while "it d[id] not sound to [him]" like the speech would be proscribed under the policy, he couldn't say for sure. . . ….. If UCF's own attorney . . …. can't tell	Speech First, Inc. v. Alexander Cartwright, No. 21-12583 (11th Cir. 2022)

	whether a particular statement would violate the policy, it seems eminently fair to conclude that the school's students can't either.	
132	Referring to campus hate speech codes, she said: "It is technically impossible to write an anti-speech code that cannot be twisted against speech nobody means to bar. It has been tried and tried and tried."	Challenges to Freedom of Speech on College Campuses: Hearing before the Subcommittee on Healthcare, Benefits and Administrative Rules and the Subcommittee on Intergovernmental Affairs, 115th Cong. (2017). https://www.govinfo.gov/content/pkg/CHRG-115hhrg26855/html/CHRG-115hhrg26855.htm
133	Other contextually defined categories of punishable speech, which also comport with the general viewpoint-neutrality/ emergency principles (and hence with the complementary viewpoint neutrality principle),, are listed here in alphabetical order: bribery, child pornography, crime-facilitating speech, extortion (which includes "quid pro quo sexual harassment"), "fighting words," (which is a specific type of intentional incitement), harassment, intentional incitement, perjury, speech that violates intellectual property rights, and "true threats."	*Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742 (1998), *Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942), *Virginia v. Black*, 538 U.S. 343 (2003)

135	Article 19, the London-based international free speech organization (whose name derives from the speech-protecting provision in the Universal Declaration of Human Rights), described RTLM's role as having "organised[ing]" genocide, "notably by identifying targets . . . [and] refuges where potential victims were hiding."	Article 19. (1994, April 12). Broadcasting Genocide. Article19.org. https://www.article19.org/data/files/pdfs/publications/rwanda-broadcasting-genocide.pdf
136	The Court consequently held that the First Amendment therefore protected the following statements that a Ku Klux Klan leader made at a rally of his followers, since they did not satisfy these criteria: "I believe the Nigger should be returned to Africa, the Jew returned to Israel. . . . [I]f our [government] continues to suppress the white, Caucasian race, it's possible that there might have to be some revengeance [sic] taken."	*Brandenburg v. Ohio*, 395 U.S. 444 (1969)
137	Several Black people who violated the boycott were subsequently subject to violence, but the Court held that Evers's words did not constitute punishable incitement because the violent acts occurred weeks or months later, so the critical "imminency" standard was not satisfied.	*NAACP v. Claiborne Hardware Co.*, 458 U.S. 886 (1982)

138	Enraged by this scene, one of the Black men, Todd Mitchell, asked the others, “Do you all feel hyped up to move on some white people?”	*Wisconsin v. Mitchell*, 508 U.S. 476 (1993)
138	As the boy walked by, Mitchell said to his companions: “You all want to fuck somebody up? There goes a white boy; go get him.”	*Wisconsin v. Mitchell*, 508 U.S. 476 (1993)
139	In the 1942 Chaplinsky case, before the modern Court adopted this current limited concept of punishable fighting words, the Court upheld a fighting words conviction based on the since-repudiated bad tendency rationale that it then endorsed at that time	*Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942)
139	Chaplinsky held that punishable “fighting words” include any words that “tend to incite an immediate breach of the peace.”	*Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942)
139	The “fighting words” that led to the criminal conviction in Chaplinsky included the speaker’s denunciation of the law enforcement officer who arrested him, a typical situation in fighting words cases; the speaker had called the officer “a damned Fascist.”	*Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942)
141	As his flag burned, Street said: “We don’t need no damn flag . . …. If they let that happen to Meredith we don’t need an American flag.”	*Street v. New York*, 394 U.S. 576 (1969)

141	The Court explained: "[W]e cannot say that [Street's] remarks were so inherently inflammatory as to come within that small class of `fighting words' which are likely to provoke the average person to retaliation, and thereby cause a breach of the peace."	*Street v. New York*, 394 U.S. 576 (1969)
142	According to Officer Berner's testimony, which the trial judge accepted as true, Mrs. Lewis "started yelling and screaming that I had her son or did something to her son and she wanted to know where he was. . . . She said, 'you god damn m. f. police— -- I am going to [the Superintendent of Police] about this.'"	*Lewis v. City of New Orleans*, 408 U.S. 913 (1972)
Footnote 11	Mr. Lewis testified that Officer Berner's first words were: "'"Let me see your god damned license. I'll show you that you can't follow the police all over the streets.'" Mr. Lewis's testimony continued: "[Mrs. Lewis] got out [of the truck] and said 'Officer, I want to find out about my son.' He said 'you get in the car, woman. Get your black ass in the god damned car or I will show you something.'" Mrs. Lewis testified that she had not used "any profanity toward the officer."	*Lewis v. City of New Orleans*, 408 U.S. 913 (1972)

142	Nonetheless, even assuming (hypothetically) that Mrs. Lewis had made the statements that Officer Berner ascribed to her, the Supreme Court overturned her conviction because it was based on a New Orleans ordinance that outlawed speech far beyond constitutionally unprotected fighting words, making it unlawful "to curse or revile or to use obscene or opprobrious language toward or with reference to" a police officer performing his/her duties.	*Lewis v. City of New Orleans*, 408 U.S. 913 (1972)
143	As Powell observed, "the only witnesses are the arresting officer and the person charged. All that is required for conviction is that the court accept the [officer's] testimony."	*Lewis v. City of New Orleans*, 408 U.S. 913 (1972) (Powell, L., concurring)
143	The facts of the Lewis case, he said, "well illustrate the possibility of abuse."	*Lewis v. City of New Orleans*, 408 U.S. 913 (1972) (Powell, L., concurring)
143	Powell also cited the American Law Institute's 1961 recommendation that the fighting words doctrine should not apply to words uttered to law enforcement officials, since "a properly trained officer may reasonably be expected to exercise a higher degree of restraint than the average citizen, and thus be less likely to respond belligerently to" such words.	*Lewis v. City of New Orleans*, 408 U.S. 913 (1972) (Powell, L., concurring)

144	For example, in 1997, the North Carolina Supreme Court stated that "[n]o fact is more generally known than that a white man who calls a black man a 'nigger' within his hearing will hurt and anger the black man, and often provoke him to confront the white man and retaliate."	*In Re Spivey*, 480 S.E.2d 693 (1997)
146	For example, in 2012, a proposed Arizona anti-harassment law would have made it a crime "for any person, with intent to . . . harass, annoy or offend, to use any electronic . . . device and use any obscene, lewd or profane language."	Media Coalition. (2012). House Bill 2549 - Arizona Legislature. mediacoalition.org. https://www.azleg.gov/legtext/55leg/1r/bills/hb2549h.pdf
146	As enacted, the law was limited to speech that was "directed[ed]" to the person whom the speaker intended to "harass," and threatened physical harm, or consisted of "anonymous, unwanted or unsolicited electronic communications" that disturbed the recipient's "peace, quiet or right of privacy."	Media Coalition. (2012). House Bill 2549 - Arizona Legislature. mediacoalition.org. https://www.azleg.gov/legtext/55leg/1r/bills/hb2549h.pdf
147	"Hostile environment" harassment (sometimes referred to as "discriminatory harassment") arises in settings where individuals are required to be: workplaces or educational institutions.	*Meritor Savings Bank v. Vinson*, 477 U.S. 57 (1986)

147	The Supreme Court has ruled that workplace expression may be punished as hostile environment harassment if it is sufficiently "severe or pervasive to alter the conditions of [the victim's] employment and create an abusive working environment."	*Meritor Savings Bank v. Vinson*, 477 U.S. 57 (1986)
147	The Court has ruled that expression may be punished as hostile environment harassment in educational contexts when it is "so severe, pervasive, and objectively offensive, that it effectively bars the victim's access . . . to an educational opportunity or benefit."	*Davis v. Monroe County Bd. of Ed.*, 526 U.S. 629 (1999)
148	Even in an employment setting, the Court has indicated that "a mere offensive utterance" is unlikely to constitute hostile environment harassment.	*Harris v. Forklift Systems, Inc.*, 510 U.S. 17 (1993)
149	In a 2021 decision, the U.S. Court of Appeals for the Fifth Circuit reaffirmed a conclusion that it (and other appellate courts) had previously reached: that, in the workplace, even a single instance of a racial epithet might support a hostile environment harassment workplace claim, if it was "sufficiently severe," taking into account "the totality of the circumstances."	*Woods v. Cantrell*, No. 21-30150 (5th Cir. 2022)

149	(The appellate court did not conclude that this incident did constitute hostile environment harassment, but it rejected the employer's argument that it could not possibly rise to that level, and remanded the case to the lower court to evaluate all the "circumstances" and to make the final determination accordingly.)	*Woods v. Cantrell*, No. 21-30150 (5th Cir. 2022)
149	Other federal appellate courts have observed that "[p]erhaps no single act can more quickly ``alter the conditions of employment and create an abusive working environment'— – i.e., the Supreme Court's definition of a hostile workplace— -- than the use of an unambiguously racial epithet such as [the N-word] by a supervisor in the presence of his subordinates."	*Adams v. Austal, United States, L.L.C.,* 754 F.3d 1240 (11th Cir. 2014)
150	The federal Equal Employment Opportunity Commission recently settled a case in which it charged that a company's Black employees had been subjected to a racially hostile work environment due to multiple incidents of racist "hate speech"	Air Systems Inc. to Pay $1.25 Million to Settle EEOC Racial Harassment Suit. US EEOC. (2020, August 21). https://www.eeoc.gov/newsroom/air-systems-inc-pay-125-million-settle-eeoc-racial-harassment-suit
151	Government may constitutionally punish what the Court has labeled "true threats," to distinguish them from the broader connotations	*Virginia v. Black*, 538 U.S. 343 (2003)

	of the term “threat” in everyday usage.	
151	True threats are statements through which “the speaker means to communicate a serious expression of an intent to commit . . . unlawful violence to a particular individual or group of individuals” and, in consequence, the targeted individuals reasonably fear that violence.	*Virginia v. Black*, 538 U.S. 343 (2003)
152	When the white supremacists marched while chanting racist slogans such as, “You will not replace us” and “Jews will not replace us,” the slogans’ abhorrentodious messages alone did not justify punishing the marchers; that would have violated the viewpoint-neutrality principle.	Wildman, S. (2017, August 15). “You will not replace us”: A French Philosopher Explains the Charlottesville Chant. Vox. https://www.vox.com/world/2017/8/15/16141456/renaud-camus-the-great-replacement-you-will-not-replace-us-charlottesville-white
153	Moreover, when such expression occurs in an employment or educational setting, it constitutes punishable hostile environment harassment if it is sufficiently “severe” or “pervasive,” respectively, to “create an abusive working environment” or to “effectively bar[][bar]” ” targeted persons’ “access . . .… to an educational opportunity or benefit.”	*Davis v. Monroe County Bd. of Ed.*, 526 U.S. 629 (1999)

155	On the one hand, the defendant plausibly argued, — –and the Wisconsin Supreme Court held (by a divided vote), —that the added penalty constituted a "thought crime," punishing him for his hateful ideas and thus violating the viewpoint-neutrality principle.	*Wisconsin v. Mitchell*, 508 U.S. 476 (1993)
156	Such an anti-discrimination conception of hate crime laws—which is better captured by the term "bias crimes"—is highlighted by considering laws that bar employment discrimination in the United .States.	Federal Bureau of Investigation. (n.d.). Bias-Motivated/Hate Crime. Bureau of Justice Statistics. https://bjs.ojp.gov/topics/crime/hate-crime
156	The Supreme Court repeatedly has rejected First Amendment challenges to such anti-discrimination laws; it stated, for example, it stated that Title VII, the federal statute that bars employment discrimination, is "a permissible content-neutral regulation of conduct."	*Wisconsin v. Mitchell*, 508 U.S. 476 (1993)

Chapter 5		
Paragraph #	Passage	Citation
Summary Paragraph	This chapter summarizes the general flaws of all speech restrictions that violate the First Amendment's **"emergency"** and "viewpoint- neutrality" principles	YouTube. (2022). *Nadine Strossen explains the 'emergency principle' and what justifies suppressing speech*: YouTube. Retrieved October 2, 2023, from https://www.youtube.com/watch?v=wuiu5Xf5sns.

Summary Paragraph	This chapter summarizes the general flaws of all speech restrictions that violate the First Amendment's "emergency" and **"viewpoint- neutrality"** principles	*Content based.* The Free Speech Center. (2023, September 20). https://firstamendment.mtsu.edu/article/content-based/#:~:text=BY%2DNC%202.0)-,A%20content%2Dbased%20law%20or%20regulation%20discriminates%20against%20speech%20based,what%20is%20said%20or%20expressed.
Summary Paragraph	and may well even amplify the speech, due to the **"forbidden fruits"** phenomenon	*The three arguments in support of free speech*. The Foundation for Individual Rights and Expression. (n.d.). https://www.thefire.org/research-learn/three-arguments-support-free-speech
Summary Paragraph	The chapter also lays out the specific flaws with such **"non-emergency"** restrictions on many particular kinds of controversial speech:	YouTube. (2022). *Nadine Strossen explains the 'emergency principle' and what justifies suppressing speech:* YouTube. Retrieved October 2, 2023, from https://www.youtube.com/watch?v=wuiu5Xf5sns.
8	The term **"hate speech"** has been hurled at a seemingly endless array of speech	Kpekoll. (2023, February 8). *Hate speech and hate crime*. Advocacy, Legislation & Issues. https://www.ala.org/advocacy/intfreedom/hate
11	In fact in 1951, the Court rejected a First Amendment challenge to an Illinois hate speech law, albeit by a deeply divided 5–-4 vote.	*Beauharnais v. Illinois*, 343 U.S. 250 (1952)
12	For instance, the European Commission against Racism and Intolerance, which monitors the implementation of the many European hate speech laws, recently concluded that, in contrast with such laws, **"counterspeech is much more likely to be effective"** in countering intolerance (emphasis added).	*ECRI*. (2015, December 8). ECRI general Policy Recommendation no. 15 on combating hate speech. https://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech/16808b5b01

13	One person's cherished **"erotica"** is someone else's revileddespised **"hard-core pornography."**	Cohen v. California, 403 U.S. 15 (1971)
13	Quoting the latter term, Supreme Court Justice Potter Stewart illustrated this point when he famously wrote: **"I shall not today attempt further to define the kinds of material I understand to be embraced within that shorthand description, and perhaps I could never succeed in intelligibly doing so. But I know it when I see it."**	*Jacobellis v. Ohio*, 378 U.S. 184 (1964)
14	In the 1980s, the "radical feminist" anti-pornography movement	Kaminer, W. (1992, November 1). *Feminists against the First Amendment*. *The Atlantic*. https://www.theatlantic.com/magazine/archive/1992/11/feminists-against-the-first-amendment/305051/
14	In stark contrast with the anti-porn feminists, however, the Meese Commission targeted sexual expression that it viewed as undermining "traditional family values" and "the traditional nuclear family."	(1986, July 10). *Meese panel asks porn crackdown : Sexually violent materials and actions connected, commission concludes*. *Los Angeles Times*. https://www.latimes.com/archives/la-xpm-1986-07-10-mn-22453-story.html

16	The Supreme Court has held that several, relatively narrowly defined subsets of sexual expression are either wholly excluded from First Amendment protection (obscenity and child pornography) or relegated to receiving only reduced First Amendment protection ("patently offensive" or "indecent" speech over the broadcast media, in mandatory high school assemblies, and in adult businesses located near schools and other places where children are likely to be present).	FCC v. Pacifica Foundation, 438 U.S. 726 (1978), Bethel School District v. Fraser, 478 U.S. 675 (1986)
17	Tsvetkova's mother made the following, sadly ironic comment to the Associated Press in 2021: "Yulia has always been against pornography . . ….. Feminists are against pornography because it's exploitation of women's bodies."	(2021, April 20). Russia puts feminist activist on trial for pornography. *AP News.* https://apnews.com/article/trials-europe-russia-vladimir-putin-cffdc9b9c67d24d4468339456426ed91
18	Following their usual playbooks, left-leaning critics have complained that the play **"objectifies"** women as sexual objects, whereas right-leaning critics have complained that the play glorifies sexual freedom and pleasure untethered to procreation and "the traditional nuclear family."	Cooper, C. M. 2007. "Worrying about Vaginas: Feminism and Eve Ensler's The Vagina Monologues"

18	Most recently, U.S. campus student groups have cancelled their previously annual productions of the play, saying that it **"excludes the experiences of transgender women who don't have a vagina."**	Mulhere, K. (2015, January 21). Women's College cancels play, saying it excludes transgender experiences. *Inside Higher Ed* | Higher Education News, Events and Jobs. https://www.insidehighered.com/news/2015/01/21/womens-college-cancels-play-saying-it-excludes-transgender-experiences#:~:text=A%20student%20group%20at%20Mount,don't%20have%20a%20vagina.
19	The "Comstock Act," which was spearheaded by the controversial "anti-vice" crusader Anthony Comstock, outlaws **"obscene, lewd, or lascivious"** materials, and in the same phrase outlaws **"any article. . . intended for the prevention of conception or procuring of abortion," as well as "any . . . information"** about any of the prohibited materials – thus expressly conflating expression about contraception and abortion with other expression outlawed as **"obscene."**	Comstock Act of 1873 (1873) - The Free Speech Center. (2023, September 20). *The Free Speech Center.* https://firstamendment.mtsu.edu/article/comstock-act-of-1873-1873/
19	In 1914, pioneering birth control advocate Margaret Sanger was indicted under the Comstock Act for giving women information about their reproductive health and options.	Margaret Sanger. (1999, December 3). https://www.cdc.gov/mmwr/preview/mmwrhtml/mm4847bx.htm#:~:text=In%201914%2C%20Sanger's%20articles%20in,her%20to%20flee%20to%20England.
19	In April 2023, a federal judge in Texas ordered a hold on the FDA's approval of mifepristone, citing the Comstock Act in his opinion.	Alliance for Hippocratic Medicine et al v. U.S. Food and Drug Administration et al, No. 2:2022cv00223 - Document 137 (N.D. Tex. 2023). (n.d.). Justia Law. https://law.justia.com/cases/federal/dis

		trict-courts/texas/txndce/2:2022cv00223/370067/137/
21	In 1992, some Canadian feminists persuaded the Canadian Supreme Court, in a case called Butler v. The Queen, to incorporate this concept into Canada's anti-obscenity law.	*R v Butler*, [1992] 1 S.C.R. 452
21	Customs officials explained that these books **"illegally eroticized pain and bondage."**	*R v Butler*, [1992] 1 S.C.R. 452
22	LEAF This organization, the Women's Legal Education and Action Fund (LEAF), joined with anti-censorship feminists in 1993 to issue a joint news release that **"condemned the use of the Butler decision to justify the discriminatory use of laws to harass and intimidate lesbians and gays."**	*R. v. Butler* (1992) - LEAF. (2021, November 25). *LEAF*. https://www.leaf.ca/case_summary/r-v-butler-1992/#:~:text=LEAF's%20arguments,done%20by%20and%20through%20pornography.
22	The LEAF signatories further conceded that **"[s]ince . . . Butler . . . Canada Customs, some police forces . . . and some government funders have exploited obscenity law to harass bookstores, artists, and AIDS organizations, sex trade workers, and safe sex educators."**	*R. v. Butler* (1992) - *LEAF*. (2021, November 25). LEAF. https://www.leaf.ca/case_summary/r-v-butler-1992/#:~:text=LEAF's%20arguments,done%20by%20and%20through%20pornography.
23	Iintentional incitement of imminent violence, which is likely to happen imminently	*Brandenburg v. Ohio*, 395 U.S. 444 (1969)

23	“Ffighting words”—direct, face-to-face personal insults, which are intended and likely to produce an immediate violent response	*Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942)
23	Solicitation or facilitation of specific violent acts against specific individuals	*Giboney v. Empire Storage & Ice Co.*, 336 U.S. 490 (1949)
23	true threats”—speech directly targeting a single individual or small group, when the speaker intends to instill a reasonable fear in listeners that they will be subject to imminent violence.	*Virginia v. Black,* 538 U.S. 343 (2003)
29	Before the modern Supreme Court adopted the emergency principle, it permitted the government to restrict speech with only a more speculative, attenuated connection to potential violence, thus giving the government essentially unlimited power to punish any speech whose message it disfavored.	*Debs v. United States,* 249 U.S. 211 (1919)
29	As ACLU Legal Director David Cole observed: **“A. Mitchell Palmer, J. Edgar Hoover, and Joseph McCarthy all used the advocacy of violence as a justification to punish people who associated with Communists, socialists, or civil rights groups.”**	Cole, D. (2020, July 13). Why We Must Still Defend Free Speech | David Cole | *The New York Review of Books.* https://www.nybooks.com/articles/2017/09/28/why-we-must-still-defend-free-speech/

31	Likewise, in the its 1969 Tinker v. Des Moines decision ruling, the Court enforced the emergency principle to protect speech that had been suppressed because of a speculative, **"undifferentiated"** fear that it might cause violence due to its unpopular message: criticizing the Vietnam War.	*Tinker v. Des Moines Independent Community School District,* 393 U.S. 503 (1969)
31	Acknowledging the **"discomfort . . .… that always accompan[ies] an unpopular viewpoint,"** and officials' worries that the audience members' negative reactions might lead to violence, the Court nonetheless concluded that **"undifferentiated fear or apprehension of"** such potential problems violence **"is not enough to overcome the right to freedom of expression."**	Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969)
32	Even if **"hostile audience"** members directly threaten imminent violence, such retaliatory anti-speaker violence would justify punishing the threatening hostile audience members, not the speaker.	*Feiner v. New York,* 340 U.S. 315 (1951)

33	The Supreme Court has struck down every one of the multiple fighting words convictions it has reviewed under this standard, because law enforcement officials had invoked the fighting words concept to punish speech that fell far short of it, including much speech that protested the officials' conduct.	fighting words. (n.d.). *LII / Legal Information Institute.* https://www.law.cornell.edu/wex/fighting_words
34	This important preceptcentral point is illustrated by Texas v. Johnson, the Court's 1989 decision protecting the First Amendment right to burn the American flag in political protest.	*Texas v. Johnson,* 491 U.S. 397 (1989)
34	The government argued that the flag burning at issue angered and offended many onlookers, who therefore might have been provoked to assault the flag burner (no such assault actually occurred).	*Texas v. Johnson,* 491 U.S. 397 (1989)
34	The Court concluded, though, that this expression did not **"fall within [the] small class of"** punishable fighting words, because **"[n]o reasonable onlooker would have regarded" the "generalized expression of dissatisfaction with [government] policies . . . . as a direct personal insult or an invitation to exchange fisticuffs."**	*Texas v. Johnson,* 491 U.S. 397 (1989)

35	In The Negro and the First Amendment, his classic 1965 book about the essential role that the Supreme Court's modern speech-protective decisions played in the civil rights movement, The Negro and the First Amendment, University of Chicago Law Professor Harry Kalven coined the term **"hecklers' veto"** to describe the common pattern before these decisions.	Kalven, H. (1965, January 1). The Negro and the First Amendment. *Columbus : Ohio State U. P.*
35	When peaceful civil rights demonstrators were greeted by hostile audience members, local officials too often permitted these **"hecklers"** to **"veto"** or cancel the free speech rights of speakers and audience members who wanted to hear them.	Kalven, H. (1965, January 1). The Negro and the First Amendment. Columbus : *Ohio State U. P.*
35	Too often the officials failed to punish the hecklers for threatening and violent conduct, instead suppressing and even punishing the speakers—for example, under laws against **"breach of the peace"** or **"disorderly conduct."** In effect, Kalven concluded, the government transferred "the power of censorship to the crowd."	Kalven, H. (1965, January 1). The Negro and the First Amendment. Columbus : *Ohio State U. P.*

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36	Consequently, the Court repeatedly overturned hecklers' vetoes against pro–-civil rights and anti–-Vietnam War speakers.	*Gregory v. City of Chicago*, 394 U.S. 111 (1969)
36	Consistent with the general emergency/strict scrutiny standard, the Court has insisted that hostile audience concerns may justify suppressing speech only as a last resort, in situations that should occur extremely rarely, if ever: when government could not protect public safety in any other way.	*Feiner v. New York,* 340 U.S. 315 (1951)
37	The university's official statement explained: **"Due to the threat of escalating violence . . …. , Penn State University Police determined that it was necessary to cancel the speaking event in the interest of campus safety."**	Ives, M. (2022, October 25). Penn State Cancels Event by Proud Boys Founder, Citing Threat of Violence. *The New York Times.* https://www.nytimes.com/2022/10/25/us/proud-boys-penn-state-gavin-mcinnes.html

37	However, university officials said that the last-minute reversal was prompted by unidentified **“individuals”** in the crowd assembled outside the event venue, who **“resorted to physical confrontation and to using pepper spray against others in the crowd, including against police officers.”**	Ives, M. (2022, October 25). Penn State Cancels Event by Proud Boys Founder, Citing Threat of Violence. *The New York Times.* https://www.nytimes.com/2022/10/25/us/proud-boys-penn-state-gavin-mcinnes.html
37	The Uuniversity Ppresident condemned those on both sides who had contributed to the violence, ruing that **“the message too many people will walk away with is that one can manipulate people to generate free publicity, or that one can restrict speech by escalating protest to violence,”** adding that **“[t]hese are not ideas that we can endorse as an institution of higher education.”**	DuBois, W. (n.d.). A message from President Neeli Bendapudi on the cancellation of campus event. *Penn State University.* https://www.psu.edu/news/campus-life/story/message-president-neeli-bendapudi-cancellation-campus-event/#:~:text=Tonight%2C%20the%20message%20too%20many,an%20institution%20of%20higher%20education.
38	Recent years have witnessed multiple assassinations of people who engaged in expression that the assassins viewed as insulting to Islam; these incidents have sparked the term **“assassins’ veto.”**	Revere, R. C. (2016, May 24). Hate Speech Laws: Ratifying the Assassin’s Veto. *Cato.org.* https://www.cato.org/policy-analysis/hate-speech-laws-ratifying-assassins-veto

38	As the Free Speech Debates blog commented: **“Capitulating to violent intimidation could potentially save lives in the short term, but it could also lead to greater . . …. violence if people decide that killing is the most effective way to air their grievances and win their way.”**	*Has innocence of muslims ended the innocence of YouTube?. Free Speech Debate.* *https://freespeechdebate.com/discuss/has-innocence-of-muslims-ended-the-innocence-of-youtube/*
39	I will cite just two current illustrations. Influential politicians have denounced Black Lives Matter advocacy as **“extremist”** or “terrorist” speech (critics also condemn BLM expression with the equally vague epithets “hate speech” and “disinformation”/“misinformation”).	*Fox News.* (2020, July 10). Rudy Giuliani slams New York City mayor Bill de Blasio, black lives matter organization. https://www.foxnews.com/transcript/rudy-giuliani-slams-new-york-city-mayor-bill-de-blasio-black-lives-matter-organization
39	I will cite just two current illustrations. Influential politicians have denounced Black Lives Matter advocacy as “extremist” or **“terrorist”** speech (critics also condemn BLM expression with the equally vague epithets “hate speech” and “disinformation”/“misinformation”).	*Fox News.* (2020, July 10). Rudy Giuliani slams New York City mayor Bill de Blasio, black lives matter organization. https://www.foxnews.com/transcript/rudy-giuliani-slams-new-york-city-mayor-bill-de-blasio-black-lives-matter-organization

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39	I will cite just two current illustrations. Influential politicians have denounced Black Lives Matter advocacy as “extremist” or “terrorist” speech (critics also condemn BLM expression with the equally vague epithets “hate speech” and **“disinformation”/“misinformation”).**	Corley, C. (2021, May 25). Black Lives Matter Fights Disinformation To Keep The Movement Strong. NPR. https://www.npr.org/2021/05/25/999841030/black-lives-matter-fights-disinformation-to-keep-the-movement-strong
39	who were protesting various public school policies, including COVID requirements and the (alleged) teaching of **“critical race theory,”** for engaging in “a form of domestic terrorism.”	Full NSBA letter to Biden Administration and Department of Justice memo. *Parents Defending Education.* (2022, March 24). https://defendinged.org/press-releases/full-nsba-letter-to-biden-administration-and-department-of-justice-memo/
39	who were protesting various public school policies, including COVID requirements and the (alleged) teaching of “critical race theory,” for engaging in **“a form of domestic terrorism.”**	Full NSBA letter to Biden Administration and Department of Justice memo. *Parents Defending Education.* (2022, March 24). https://defendinged.org/press-releases/full-nsba-letter-to-biden-administration-and-department-of-justice-memo/

41	The report pointed out that both algorithmic and human content-moderation techniques have **“caught in the net”** “not only content deemed extremist, but also . . …. useful content like human rights documentation,” with “mistakes at scale that are decimating human rights content.”	York, J. C. (2019, June 3). Caught in the net: The impact of “extremist” speech regulations on human rights content. *Electronic Frontier Foundation.* https://www.eff.org/wp/caught-net-impact-extremist-speech-regulations-human-rights-content
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41	The report elaborated: "**[I]t is difficult for human reviewers— – and impossible for machines—to consistently differentiate activism, counterspeech, and satire about extremism from extremism itself. . . ….. [M]arginalized users are the ones who pay for [the inevitable] mistakes.**"	York, J. C. (2019, June 3). Caught in the net: The impact of "extremist" speech regulations on human rights content. *Electronic Frontier Foundation.* https://www.eff.org/wp/caught-net-impact-extremist-speech-regulations-human-rights-content
41	In the same vein, a 2017 New York Times story described how You Tube, in its YouTube's "**effort to purge extremist propaganda from its platform,**" had led it to "inadvertently removed[ ] thousands of videos that could be used to document atrocities in Syria, potentially jeopardizing future war crimes prosecutions."	Browne, M. (2017, August 22). YouTube removes videos showing atrocities in Syria. *The New York Times.* https://www.nytimes.com/2017/08/22/world/middleeast/syria-youtube-videos-isis.html#:~:text=In%20an%20effort%20to%20purge,observers%20and%20rights%20advocates%20say.
41	In the same vein, a 2017 New York Times story described how You Tube, in its YouTube's "effort to purge extremist propaganda from its platform," had led it to "**inadvertently removed[ ] thousands of videos that could be used to document atrocities in Syria, potentially jeopardizing future war crimes prosecutions.**"	Browne, M. (2017, August 22). YouTube removes videos showing atrocities in Syria. *The New York Times.* https://www.nytimes.com/2017/08/22/world/middleeast/syria-youtube-videos-isis.html#:~:text=In%20an%20effort%20to%20purge,observers%20and%20rights%20advocates%20say.

42	In a comprehensive 2017 report, the Electronic Frontier Foundation concluded: “[T]he question is not whether terrorists are using the Internet to recruit new operatives— – the question is whether taking down pro-terrorism content and accounts will meaningfully contribute to the fight against global terrorism. Governments have not sufficiently demonstrated this to be the case. And some experts believe this absolutely not to be the case.	Sophia Cope, J. C. Y. (2017, July 14). Industry efforts to censor pro-terrorism online content pose risks to free speech. Electronic Frontier Foundation. https://www.eff.org/deeplinks/2017/07/industry-efforts-censor-pro-terrorism-online-content-pose-risks-free-speech
43	A 2012 United Nations (U.N.) nited Nations report, on “The Use of the Internet for Terrorist Purposes,” concluded that “authorities are developing increasingly sophisticated tools to proactively prevent . . …. terrorist activity”	The use of the internet for terrorist purposes . (n.d.-b). https://www.unodc.org/documents/frontpage/Use_of_Internet_for_Terrorist_Purposes.pdf
43	The U.nited .N.ations. report observed: “A significant amount of knowledge about the functioning, activities and sometimes the targets of terrorist organizations is derived from . . . …Internet communications. Further, increased Internet use for terrorist purposes provides a corresponding increase in the availability of electronic data which may be compiled and analysed for counter-terrorism purposes.”	The use of the internet for terrorist purposes . (n.d.-b). https://www.unodc.org/documents/frontpage/Use_of_Internet_for_Terrorist_Purposes.pdf

44	For example, a Kenyan government official opposed shutting down a Twitter account of the Al Shabaab terrorist organization, because “Al Shabaab needs to be engaged positively and [T]witter is the only avenue.”	The use of the internet for terrorist purposes . (n.d.-b). https://www.unodc.org/documents/frontpage/Use_of_Internet_for_Terrorist_Purposes.pdf
45	The term “disinformation” (or “misinformation”) has no specific legal meaning,, but is widely used to describe false or misleading speech that cannot constitutionally be punished precisely because its potential harms are diffuse and speculative.	Misinformation versus disinformation, explained. *The Foundation for Individual Rights and Expression.* https://www.thefire.org/research-learn/misinformation-versus-disinformation-explained
45	The term “disinformation” (or “misinformation”) has no specific legal meaning,, but is widely used to describe false or misleading speech that cannot constitutionally be punished precisely because its potential harms are diffuse and speculative.	Misinformation versus disinformation, explained. *The Foundation for Individual Rights and Expression.* https://www.thefire.org/research-learn/misinformation-versus-disinformation-explained
46	Current debates show that one person’s cherished truth is someone else’s despised or feared “fake news.”	Library guides: News: Fake news, Misinformation & Disinformation. Fake News, Misinformation & Disinformation - News - *Library Guides at University of Washington Libraries.* (n.d.). https://guides.lib.uw.edu/bothell/news/misinfo

46	In contrast, though, the Supreme Court has ruled that ““‘[u]nder the First Amendment there is no such thing as a false idea. However pernicious an opinion may seem, we depend for its correction . . . on the competition of other ideas.’””	*Milkovich v. Lorain Journal,* 497 U.S. 1 (1990)
47	Until the Supreme Court’s historic 1964 New York Times v. Sullivan decision, which reined in the concept of punishable defamation,	*New York Times Co. v. Sullivan,* 376 U.S. 254 (1964)
47	In the Sullivan case alone—which was only one of many such lawsuits that various Southern officials were pursuing—the defendants were facing $500,000 in damages, or about $4.8 million in 2023 dollars.	*New York Times Co. v. Sullivan*, 376 U.S. 254 (1964)
48	For instance, a May 25, 2021, NPR story quoted Mike Gonzalez, a senior fellow with the Heritage Foundation, as stating: “I feel that Black Lives Matter is one of the greatest sources of disinformation. . . . They have manipulated the good nature of many people.”	Corley, C. (2021, May 25). Floyd’s death leads to disinformation about black lives matter movement. *NPR*. https://www.npr.org/2021/05/25/1000042993/floyds-death-leads-to-disinformation-about-black-lives-matter-movement
48	To be sure, such charges of disinformation themselves constitute protected speech—indeed, the very type of “counterspeech” that is the appropriate response to any speech that is believed to be false or misleading.	Counterspeech doctrine. *The Free Speech Center.* (2023b, September 20). https://firstamendment.mtsu.edu/article/counterspeech-doctrine/

49	The Economist reported in February 2021 that "[c]ensorious governments are abusing fake news laws," invoking the pandemic as "an excuse to gag reporters" and to silence critics of their anti-pandemic policies.	The Economist Newspaper. (n.d.). Censorious governments are abusing "fake news" laws. *The Economist.* https://www.economist.com/international/2021/02/13/censorious-governments-are-abusing-fake-news-laws
49	The Economist reported in February 2021 that "[c]ensorious governments are abusing fake news laws," invoking the pandemic as "an excuse to gag reporters" and to silence critics of their anti-pandemic policies.	The Economist Newspaper. (n.d.). Censorious governments are abusing "fake news" laws. *The Economist.* https://www.economist.com/international/2021/02/13/censorious-governments-are-abusing-fake-news-laws
49	in May 2020, the ACLU brought a lawsuit against Puerto Rico's law that made it a crime to knowingly raise a "false alarm" about public emergencies;	ACLU challenges Puerto Rico covid-19 "fake news" laws. *American Civil Liberties Union.* (2020, May 19). https://www.aclu.org/press-releases/aclu-challenges-puerto-rico-covid-19-fake-news-laws
49	The complainants were two prominent investigative journalists, who explained that "developing stories on matters of immense public concern are often complex, contentious, and murky," so that "inadvertent inaccuracies are inevitable even in the most thoroughly vetted reporting."	*United States District Court for the District of Puerto Rico.* (n.d.-c). https://www.courthousenews.com/wp-content/uploads/2020/05/rodriguez_cotto_complaint_5-19-20_filing_final_1.pdf

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49	In April 2023, the federal judge in the ACLU case struck down Puerto Rico's law, declaring that "[t]he watchdog function of speech is never more vital than during a large-scale crisis."	Judge Strikes Down unconstitutional "fake news" law in Puerto Rico. *American Civil Liberties Union.* https://www.aclu.org/press-releases/judge-strikes-down-unconstitutional-fake-news-law-in-puerto-rico
49	Touting the time-honored counterspeech approach, the judge observed: "[I]nstead of criminalizing speech, the Legislature could simply have required the Government to use its multiple communications platforms to present a complete and accurate description of the facts" about COVID and other emergencies.	Court upholds defense of press freedoms in landmark "Fake news" case. *American Civil Liberties Union.* (2023, July 10). https://www.aclu.org/press-releases/court-upholds-defense-of-press-freedoms-in-landmark-fake-news-case#:~:text=%E2%80%9C%5BI%5Dnstead%20of%20criminalizing,to%20emergencies%20in%20Puerto%20Rico.
51	Psychological research shows that even more effective than debunking disinformation after its distribution is "pre-bunking."	Bond, S. (2022, October 28). False information is everywhere. "pre-bunking" tries to head it off early. *NPR.* https://www.npr.org/2022/10/28/1132021770/false-information-is-everywhere-pre-bunking-tries-to-head-it-off-early

51	Its authors analogized pre-bunking to medical immunization: “Pre-emptively warning and exposing people to weakened doses of misinformation can cultivate ‘`mental antibodies’ against fake news.”	Roozenbeek, J., van der Linden, S., & Nygren, T. (2020). Prebunking interventions based on “inoculation” theory can reduce susceptibility to misinformation across cultures. *Harvard Kennedy School (HKS) Misinformation Review.*
52	In two narrow factual contexts, the Supreme Court has upheld government’s power to restrict “patently offensive” speech (which is sometimes also referred to as “indecent”): on the over-the-air broadcast media, and in a high school student’s speech at a school-wide assembly that all students were required to attend, including young teenagers.	*FCC v. Pacifica Foundation*, 438 U.S. 726 (1978)
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53	In all other factual contexts, the Court consistently has struck down government restrictions even on "patently offensive" expression, as well as on the broader category of "offensive" expression.	Miller v. California, 413 U.S. 15 (1973)
53	For example, the Court has invalidated government measures that restricted "patently offensive" expression in all other media that it has considered, aside from over-the-air broadcast media.	*Cantwell v. Connecticut*, 310 U.S. 296 (1940)
54	The Court's refusal to permit non-emergency restrictions on offensive speech has been a consistent hallmark of its rulings, dating all the way back to its unanimous 1940 decision in Cantwell v. Connecticut, long before it adopted other speech-protective stances.	*Cantwell v. Connecticut,* 310 U.S. 296 (1940)
54	Even though listeners were "highly offended" by the speech of Jehovah's Witness preacher Jesse Cantwell, which conveyed "a general attack on all [ed] . . .… organized religious systems as instruments of Satan and injurious to man," and even though the Court found that his expression would "naturally offend" most listeners, it nevertheless spurned those facts as purported justifications for restricting the speech.	*Cantwell v. Connecticut,* 310 U.S. 296 (1940)

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end of 54, 55 is a block quote	The Court hailed the vital role that offensive speech plays in our pluralistic democracy:	*Cantwell v. Connecticut,* 310 U.S. 296 (1940)
56	Cantwell further recognized that protection for offensive speech is especially "necessary . . .… in our . . . …country, for a people composed of many races and of many creeds."	*Cantwell v. Connecticut,* 310 U.S. 296 (1940)

57	The Supreme Court acknowledged this problem with punishing offensive speech in its 1971 Cohen v. California ruling, which upheld the right to wear a jacket proclaiming “Fuck the draft” at a time when that phrase was doubly offensive to many people.	*Cohen v. California,* 403 U.S. 15 (1971)
58	The Cohen decision memorably captured the inescapably subjective nature of of “offensiveness,” observing that “one [person]’s vulgarity is another’s lyric.”	*Cohen v. California,* 403 U.S. 15 (1971)
58	As the Cohen Court concluded: “[I]t is largely because governmental officials cannot make principled distinctions in this area that the Constitution leaves matters of taste and style so largely to the individual.”	*Cohen v. California,* 403 U.S. 15 (1971)
59	The Cohen Court rejected the suggestion that government could “simply” require Paul Cohen to reframe his message by omitting the particular epithet that others considered offensive, without suppressing the message itself: “[W]e cannot indulge the facile assumption that one can forbid particular words without also running a substantial risk of suppressing ideas in the process. Indeed, governments might soon seize upon the censorship of particular words	*Cohen v. California,* 403 U.S. 15 (1971)

	as a convenient guise for banning the expression of unpopular views."	
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59	This was the overt goal of the "Newspeak" language in George Orwell's 1984, which deliberately banned certain words in order to banish the "subversive" ideas they conveyed.	Orwell, G. (2021). *Nineteen Eighty-Four*. Penguin Classics.
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60	In his memoir, author Salman Rushdie uses the label “thought crimes” to link together the many cases, beyond his own, in which “writers and intellectuals across the Islamic world [have been] accused” of “blasphemy, heresy, apostasy, insult, and offense.”	Rushdie, S. (2012). *Joseph Anton: a memoir.* New York, Random House.
60	In his memoir, author Salman Rushdie uses the label “thought crimes” to link together the many cases, beyond his own, in which “writers and intellectuals across the Islamic world [have been] accused” of “blasphemy, heresy, apostasy, insult, and offense.”	Rushdie, S. (2012). *Joseph Anton: a memoir.* New York, Random House.
60	Given the malleability of the epithet “offensive”—as well as all these related terms—permitting speech restrictions on any such rationale would, Rushdie concludes, serve “the accusers’ real project: the stifling of heterodoxy and dissent.”	Rushdie, S. (2012). *Joseph Anton: a memoir.* New York, Random House.
61	For instance, such encouragement was incorporated in the “Chicago Free Speech Principles,” which the University of Chicago adopted in 2014, and which since have been adopted by many, diverse public and private higher education institutions all over the United .States.	Report of the Committee on Freedom of Expression - *University of Chicago.* https://provost.uchicago.edu/sites/default/files/documents/reports/FOECommitteeReport.pdf

61	The pertinent language states: “Although the University greatly values civility, and although all members of the University community share in the responsibility for maintaining a climate of mutual respect, concerns about civility and mutual respect can never be used as a justification for closing off discussion of ideas, however offensive or disagreeable those ideas may be to some members of our community.”	Report of the Committee on Freedom of Expression - *University of Chicago.* https://provost.uchicago.edu/sites/default/files/documents/reports/FOECommitteeReport.pdf
65	For example, in the fall of 2015, Yale undergraduates angrily surrounded and shouted at Professor Nicholas Christakis, in his capacity as “faculty-in-residence” of one of Yale’s residential colleges, because they rejected his view that the college should be a forum for exchanging ideas, not solely a place of “comfort” analogous to a home.	Halloween costume controversy. *The Foundation for Individual Rights and Expression.* https://www.thefire.org/research-learn/halloween-costume-controversy
65	One student screamed at him: “Who the fuck hired you?! You should step down! . . .... You should not sleep at night! You are disgusting!”	Halloween costume controversy. *The Foundation for Individual Rights and Expression.* https://www.thefire.org/research-learn/halloween-costume-controversy

66	Reflecting a major general problem with all non-emergency speech restrictions, the "iuncivil" speech that the Supreme Court has protected against government suppression, unsurprisingly, has often conveyed criticism of government officials and policies; recall, for example, Paul Cohen's jacket proclaiming, "Fuck the Draft."	*Cohen v. California,* 403 U.S. 15 (1971)
66	Reflecting a major general problem with all non-emergency speech restrictions, the "iuncivil" speech that the Supreme Court has protected against government suppression, unsurprisingly, has often conveyed criticism of government officials and policies; recall, for example, Paul Cohen's jacket proclaiming, "Fuck the Draft."	*Cohen v. California,* 403 U.S. 15 (1971)
67	"Blasphemy" is the stigmatizing term for expression that challenges a prevailing religious orthodoxy.	Blasphemy. *The Free Speech Center.* (2023, September 20). https://firstamendment.mtsu.edu/article/blasphemy/
67	This fundamental notion was eloquently enshrined in the 1943 flag salute decision, decreeing that government may not "prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion."	*West Virginia State Board of Education v. Barnette,* 319 U.S. 624 (1943)

68	As the playwrightphilosopher George Bernard Shaw observed, “All great truths begin as blasphemies.”	Shaw, B. (1919). *Annajanska.*
69	And Britain joined Pakistan in subjecting a minor to such laws; in 2008, a 15-year-old British boy was criminally charged and investigated for participating in a demonstration while holding a sign with this message: “Scientology is not a religion, it is a dangerous cult.”	Dawar, A. (2008, May 20). Teenager faces prosecution for calling scientology “cult.” *The Guardian.* https://www.theguardian.com/uk/2008/may/20/1
70	This argument arose, for instance, in the aftermath of “the Danish cartoons controversy”:	*NewsHour, P*. (2015, October 2). A decade after Prophet Muhammad cartoons, tension over free expression endures. https://www.pbs.org/newshour/show/10-years-later
70	“There are no words that excuse the killing of innocents. . . . In this modern world with modern technologies, for us to respond in [a censorial] way to hateful speech empowers any individual who engages in such speech to create chaos around the world. We empower the worst of us if that’s how we respond.”	National Archives and Records Administration. (n.d.). Remarks by the president to the UN General Assembly. *National Archives and Records Administration.* https://obamawhitehouse.archives.gov/the-press-office/2012/09/25/remarks-president-un-general-assembly
71	well summarized the wrong-headedness of suppressing blasphemy for the purpose of preventing responsive violence by those who object to it: “In a liberal democracy, laws protect those who offend from threats, not those who threaten from being offended.”	Journalists And Others From All Over The World. (2017, May 15). *Repeal Denmark’s Blasphemy Ban - A Petition.* openDemocracy. https://www.opendemocracy.net/en/can-europe-make-it/repeal-denmarks-blasphemy-ban-/

71	Readers will recognize that this is precisely the approach that the modern Supreme Court has adopted; it has consistently held that "hostile audience" members may not wield a "hecklers' veto"—or, worse yet, an "assassins' veto"—against expression they reject.	Speech on campus. *American Civil Liberties Union*. https://www.aclu.org/documents/speech-campus#:~:text=In%20fact%2C%20the%20Supreme%20Court,smokescreen%20to%20justify%20shutting%20down
71	Readers will recognize that this is precisely the approach that the modern Supreme Court has adopted; it has consistently held that "hostile audience" members may not wield a "hecklers' veto"—or, worse yet, an "assassins' veto"—against expression they reject.	*Revere, R. C. (2016, May 24). Hate Speech Laws: Ratifying the Assassin's Veto. Cato.org. https://www.cato.org/policy-analysis/hate-speech-laws-ratifying-assassins-veto*
71	Since the late 19th century, American courts have recognized that certain conduct, including expressive conduct, could constitute the tort of "intentional infliction of emotional distress" (IIED),	*Snyder v. Phelps, 562 U.S. 443 (2011)*
71	Consistent with the free speech concerns at stake, courts have narrowly circumscribed the situations in which such a tort action would arise, requiring the actionable conduct to be "outrageous" and the ensuing distress to be "severe."	*Legal Information Institute. (n.d.-a). Intentional infliction of emotional distress. Legal Information Institute. https://www.law.cornell.edu/wex/intentional_infliction_of_emotional_distress*

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	The Supreme Court has decided two cases on point, in both of which it evaluated—and upheld—arguments that civil damages lawsuits for the tort of intentional infliction of emotional distress ("IIED") violated the First Amendment. In both instances, the Court held that the speech at issue addressed matters of public concern, which is of utmost importance in our democratic republic, and hence may not be suppressed through tort lawsuits any more than through the criminal law.	*Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46 (1988), *Snyder v. Phelps*, 562 U.S. 443 (2011)

footnote from 71	According to the influential Restatement (Second) of Torts, for any conduct—including expressive conduct—to constitute IIED, the conduct must be "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community"; additionally, "the distress [it caused] must be so severe that no reasonable [person] could be expected to endure it."	American Law Institute. (1965). *Restatement of the law, second, torts* 2d. St. Paul, Minn. :American Law Institute Publishers,
73	Moreover, the Court has broadly defined the public concern concept as "relating to any matter of political, social, or other concern to the community."	*Snyder v. Phelps,* 562 U.S. 443 (2011), *Connick v. Myers,* 461 U.S. 138 (1983)
73	In its 2011 ruling in Snyder v. Phelps, the Court overturned an IIED damages award to the father of Marine Lance Corporal Matthew Snyder, who had been killed in the line of duty in Iraq.	*Snyder v. Phelps,* 562 U.S. 443 (2011)
73	Although some of the hateful messages specifically targeted Matthew Snyder and his family, the Court determined that "the overall thrust and dominant theme" of the picketing "spoke to broader public issues."	*Snyder v. Phelps,* 562 U.S. 443 (2011)

74	but that the Supreme Court protected: a neo-Nazi demonstration in a community that was home to many Holocaust survivors and other Jewish people; burning the U.S. flag in political protest; wearing a jacket with the message “Fuck the Draft”; wearing a black armband to protest the Vietnam War; and making threatening statements against people who patronized businesses that engaged in racial discrimination.	*Brandenburg v. Ohio,* 395 U.S. 444 (1969)
74	but that the Supreme Court protected: a neo-Nazi demonstration in a community that was home to many Holocaust survivors and other Jewish people; burning the U.S. flag in political protest; wearing a jacket with the message “Fuck the Draft”; wearing a black armband to protest the Vietnam War; and making threatening statements against people who patronized businesses that engaged in racial discrimination.	*Texas v. Johnson,* 491 U.S. 397 (1989)

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74	Indeed, if emotional distress could justify restricting speech, one is hard pressed to think of any government official, political candidate, or individual activist who would not be subject to censorship, given the "vituperative" and "abusive" language that, as the Supreme Court observed, is "often" "used in the political arena."	*Watts v. United States,* 394 U.S. 705, 708 (1969)
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75	To the contrary, the Snyder opinion cited the expert witness testimony that "the emotional anguish" of the plaintiff, Matthew Snyder's father, "had resulted in severe depression and had exacerbated pre-existing health conditions."	*Snyder v. Phelps,* 562 U.S. 443 (2011)
75	Nonetheless, the Court held that since such distress "turned on the . . . viewpoint of the message conveyed . . . at a public place on a matter of public concern," the "speech is entitled to special protection under the First Amendment."	*Snyder v. Phelps,* 562 U.S. 443 (2011)
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76	As the Court observed, the concept of "outrageousness," which is central to the IIED tort, "is a highly malleable standard with an inherent subjectiveness about it which would allow a jury to impose liability. . . on the basis of their dislike of a particular expression."	*Snyder v. Phelps,* 562 U.S. 443 (2011)
76	As the Court observed, the concept of "outrageousness," which is central to the IIED tort, "is a highly malleable standard with an inherent subjectiveness about it which would allow a jury to impose liability. . . on the basis of their dislike of a particular expression."	*Snyder v. Phelps,* 562 U.S. 443 (2011)
77	For example, the leading antebellum pro-slavery advocate Senator John C. Calhoun argued that abolitionists who criticized slavery "inflicted emotional injury" on white people in the South.	- exploring free speech on college campuses. https://www.govinfo.gov/content/pkg/CHRG-115shrg27450/html/CHRG-115shrg27450.htm
77	More recently, a 1965 Supreme Court decision upheld the free speech rights of the Reverend Elton B. Cox, a Black minister who had led a civil rights demonstration by Louisiana students, and whose speech had been criminally punished due to the "emotional upset [that] was caused by Cox's remarks	*Cox v. Louisiana,* 379 U.S. 536 (1965)

	about ``black and white together.’”	
78	Richard Delgado’s pathbreaking 1982 article advocating a new tort action for “racial insults” that cause emotional distress.	Delgado, Richard, Words that Wound: A Tort Action for Racial Insults, Epithets, and Name-Calling (1982). *Harvard Civil Rights-Civil Liberties Law Review*, Vol. 17, p. 133, 1982
78	Delgado recognized that “the emotional damage caused” by such insults “is variable and depends on many factors, only one of which is the outrageousness of the insult.”	Delgado, Richard, Words that Wound: A Tort Action for Racial Insults, Epithets, and Name-Calling (1982). *Harvard Civil Rights-Civil Liberties Law Review*, Vol. 17, p. 133, 1982
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78	Therefore, Delgado acknowledged, even such a loathsome epithet as “You damn nigger [sic]” should not always be actionable; that would “[depends][] on the speaker’s intent, the hearer’s understanding, and whether a reasonable person would consider it a racial insult in the particular context.”	Delgado, Richard, Words that Wound: A Tort Action for Racial Insults, Epithets, and Name-Calling (1982). *Harvard Civil Rights-Civil Liberties Law Review*, Vol. 17, p. 133, 1982

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79	This point was a factor in the famous 1977–-78 "Skokie case," in which multiple state and federal courts (including the U.S. Supreme Court) upheld the free speech rights of neo-Nazis to demonstrate in Skokie, Illinois, which had a large Jewish population, including many of Holocaust survivors.	*National Socialist Party of America v. Village of Skokie*, 432 U.S. 43 (1977)
79	Skokie officials sought to impose non-emergency restrictions on the neo-Nazis' expression on the ground that it might cause "psychological trauma" to Skokie residents.	*National Socialist Party of America v. Village of Skokie,* 432 U.S. 43 (1977)
79	As one court pointed out, though, it is "difficult to distinguish a person who suffers actual psychological trauma from one who is only highly offended, and . . . speech may not be punished merely because it offends."	COULD NOT FIND

80	In its landmark 1964 New York Times v. Sullivan decision, the Court for the first time applied First Amendment standards to state defamation law, which governs false statements that injure someone's reputation, causing demonstrable financial or other harm.	*New York Times Co. v. Sullivan,* 376 U.S. 254 (1964)
80	The Court recognized that civil damages actions for the defamation tort could well have punitive and deterrent impacts on speech that equal, or even exceed, the speech-suppressive impacts of criminal prosecutions.	*New York Times Co. v. Sullivan,* 376 U.S. 254 (1964)
81	Pre-Sullivan state defamation tort law involved essentially "strict" or automatic liability; it permitted massive actual and punitive damages awards to be imposed even for trivial inaccuracies, and even when the speakers and publishers had exercised due care.	Barbas, S. (2021). The Press and Libel Before New York Times v. Sullivan. *The Columbia Journal of Law & The Arts,* 44(4). https://doi.org/10.52214/jla.v44i4.8195
82	On the first theme, the Court issued one of its most- often-quoted pronouncements, celebrating the "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials."	*New York Times Co. v. Sullivan,* 376 U.S. 254 (1964)

82	On the second theme, the Court voiced concern that the state tort law may well deter "would-be critics of official conduct . . .… from voicing their criticism, even though it is believed to be true and even though it is, in fact, true, because of doubt whether it can be proved in court or fear of the expense of having to do so," thereby "dampen[ing] the vigor . . .… of public debate."	*New York Times Co. v. Sullivan,* 376 U.S. 254 (1964)
83	Sullivan formulated a special prophylactic rule for defamation actions brought by public officials, which it later extended to defamation actions brought by "public figures"	*New York Times Co. v. Sullivan,* 376 U.S. 254 (1964)
83	people who either have celebrity status in general, or who have "thrust themselves into the public spotlight" for purposes of affecting a specific public controversy.	*New York Times Co. v. Sullivan,* 376 U.S. 254 (1964)
83	Moreover, public official/figure defamation plaintiffs have to make this showing by "clear and convincing evidence," a more demanding evidentiary standard than the usual "preponderance of the evidence" standard in most civil litigation.	*New York Times Co. v. Sullivan,* 376 U.S. 254 (1964)

83	Moreover, public official/figure defamation plaintiffs have to make this showing by “clear and convincing evidence,” a more demanding evidentiary standard than the usual “preponderance of the evidence” standard in most civil litigation.	Preponderance of the evidence. *Legal Information Institute.* https://www.law.cornell.edu/wex/preponderance_of_the_evidence#:~:text=Preponderance%20of%20the%20evidence%20is,that%20the%20claim%20is%20true.

Chapter 6		
Paragraph #	Passage	Citation
1	In stark contrast with government-run public parks, which have traditionally served a prime function as “**traditional public forums**” open to the general public for expressive purposes, these other, special-purpose government-run institutions have other primary purposes.	*Forums*. (2023). LII / Legal Information Institute. https://www.law.cornell.edu/wex/forums#:~:text=Traditional%20public%20forums%20include%20public
1	The freewheeling public free speech rights that are protected in traditional public forums would be incompatible with the primary purposes of these “**nonpublic forums**,” which is why the public does not have open access to them for expressive purposes.	*Forums*. (2023). LII / Legal Information Institute. https://www.law.cornell.edu/wex/forums#:~:text=Traditional%20public%20forums%20include%20public
3	In a 1972 case, the Court decreed: **“[S]tate colleges and universities are not enclaves immune from…the First Amendment.”**	*Healy v. James*, 408 US 169 (1972).

5	Transposing to the public campus context the viewpoint neutrality and emergency principles that govern the public sphere at large, the Supreme Court has struck down several campus speech restrictions, including: **the denial of recognition to a student organization that was controversial on its campus at the time ("SDS," or Students for a Democratic Society);** and the suppression of an "underground" newspaper, containing expression that many observers considered offensive, pornographic, defamatory, and violent.	*Healy v. James*, 408 US 169 (1972).
5	Transposing to the public campus context the viewpoint neutrality and emergency principles that govern the public sphere at large, the Supreme Court has struck down several campus speech restrictions, including: the denial of recognition to a student organization that was controversial on its campus at the time ("SDS," or Students for a Democratic Society); and **the suppression of an "underground" newspaper, containing expression that many observers considered offensive, pornographic, defamatory, and violent.**	*Papish v. Board of Curators of the University of Missouri*, 410 US 667 (1973).

6	Papish overturned the University of Missouri's expulsion of a journalism student for distributing the Free Press Underground on campus, because the University considered two items in this newspaper "indecent": a political cartoon depicting policemen raping the Statue of Liberty and the Goddess of Justice; and an article entitled "M___f__ Acquitted," which addressed the acquittal on an assault charge of a member of an organization known as "Up Against the Wall, M___f___."	*Papish v. Board of Curators of the University of Missouri*, 410 US 667 (1973).
6	Notably, the "F-bomb" was considered so toxic and taboo a term at that time, that Supreme Court Chief Justice Warren Burger had tried to block its usage even in the oral argument and decision in a case squarely addressing whether its public use could be punished (as a previous answer recounts).	*Cohen v. California*, 403 US 15 (1971).
6	The federal trial judge in the Papish case held that the expression at issue constituted constitutionally unprotected obscenity, and indicated that he might well also consider it constitutionally unprotected fighting words, stating: "The plaintiff …intentionally… distribut[ed] the publication to provoke a confrontation with the authorities by pandering the	*Papish v. Board of Curators of the University of Missouri*, 410 US 667 (1973).

	publication with crude, puerile, vulgar obscenities."	
7	These general free speech rulings afford the baseline protection for faculty members at public higher education institutions: in a nutshell, when they speak as citizens (i.e., not specifically in their employment capacity) on matters of public concern, "they may face only those speech restrictions that are necessary for their employers to operate efficiently and effectively."	*Garcetti v. Ceballos*, 547 US 410 (2006).
8	The Court invoked academic freedom in striking down two McCarthy-era programs: **a state legislative investigation into lectures delivered at a state university;** and a state loyalty oath program, requiring faculty members to disavow Communist Party membership.	*Sweezy v. New Hampshire*, 354 US 234 (1957).
8	The Court invoked academic freedom in striking down two McCarthy-era programs: a state legislative investigation into lectures delivered at a state university; **and a state loyalty oath program, requiring faculty members to disavow Communist Party membership.**	*Keyishian v. Board of Regents of Univ. of State of N. Y.*, 385 US 589 (1967).

8	More recently, in a 2006 case in which the Court ruled that government employees' First Amendment rights do not protect expression within the scope of their employment duties, it expressly declined to extend that speech-restrictive holding to faculty members at public educational institutions. Instead, alluding to academic freedom, the Court recognized that "expression related to academic scholarship or classroom instruction implicates additional constitutional interests that are not fully accounted for by this Court's customary employee-speech jurisprudence."	*Garcetti v. Ceballos*, 547 US 410 (2006).
9	Of particular interest, the AAUP has spelled out in the faculty context the general First Amendment rule about all government employees speaking in their role as citizens on matters of public concern. It has said that when faculty members "speak or write as citizens"—i.e., when they are not carrying out their professional scholarly and teaching duties—they should be free from institutional censorship or discipline."	*Academic Freedom of Professors and Institutions.* (2006, July 20). AAUP. https://www.aaup.org/issues/academic-freedom/professors-and-institutions#:~:text=When%20they%20speak%20or%20write

9	The AAUP has elaborated that such "extramural" expression may be grounds for discipline only when it "raise[s] grave doubts concerning the [faculty member's] fitness for his or her position."	*1940 Statement of Principles on Academic Freedom and Tenure | AAUP*. (2016). Aaup.org. https://www.aaup.org/report/1940-statement-principles-academic-freedom-and-tenure
9	Likewise, the AAUP has said that "The controlling principle is that a faculty member's expression of opinion as a citizen cannot constitute grounds for dismissal unless it clearly demonstrates…unfitness," adding that "[e]xtramural utterances rarely bear upon…fitness," and that "a final decision should take into account the faculty member's entire record as a teacher and scholar."	*Statement on Procedural Standards in Faculty Dismissal Proceedings.* (2006, July 22). AAUP. https://www.aaup.org/report/statement-procedural-standards-faculty-dismissal-proceedings

11	For example, in its 1943 West Virginia Board of Education v. Barnette ruling, which struck down state statutes that required all public school students to salute the American flag, the Court did not intimate that students had fewer First Amendment rights than members of the general public. To the contrary, the Court stressed the special importance of public school students' free speech rights, given the schools' special mission to prepare our nation's young people to exercise their civic responsibilities. Although the Court recognized the "highly discretionary" power exercised by local school boards, the Court also cautioned: "That they are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes."	*West Virginia State Board of Education v. Barnette*, 319 US 624 (1943).

12	Declaring that “neither students nor teachers shed their Constitutional rights at the schoolhouse gate,” Tinker bars schools from enforcing any viewpoint-discriminatory rules, and requires schools to validate any speech restriction by showing that it is necessary to prevent a “material” or “substantial” “disruption of the educational process” or a violation of others’ rights.	*Tinker v. Des Moines Independent Community School District*, 393 US 503 (1969).
13	[U]ndifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression.…Any variation from the majority’s opinion may inspire fear. Any word spoken…that deviates from the views of another person may start an argument or cause a disturbance. But our Constitution says we must take this risk; and our history says that it is this sort of hazardous freedom - this kind of openness - that is the basis of our national strength and of the independence and vigor of Americans.	*Tinker v. Des Moines Independent Community School District*, 393 US 503 (1969).

14	For instance, in a 1986 case, the Court held that the speech at issue—student-authored articles in a school newspaper—could fairly be viewed as bearing the school's imprimatur, rather than conveying the students' own views; in that situation, the Court concluded, the school could impose regulations that are "reasonably related to legitimate pedagogical concerns."	*Hazelwood School District v. Kuhlmeier*, 484 US 260 (1988).
15	In its most recent student speech case, its 2021 B.L. v. Mahanoy ruling, the Court held that a public school could not discipline a student for social media posts made on the student's own mobile phone, sent only to a group of the student's friends, from an off-school location, during non-school time... It stressed the special importance of enforcing general speech-protective principles in the school context, explaining that the interest in "protecting a student's unpopular expression" is shared by both the student and "the school itself," because "America's public schools are the nurseries of democracy," which "only works if we protect the marketplace of ideas."	*Mahanoy Area School District v. B.L.*, 594 US _ (2021).

17	It arises from the Court's 2006 decision holding that the First Amendment does not protect a public employee's freedom of speech regarding any speech that is within the scope of the employee's job duties. The Court stated that this holding might not apply to "expression related to academic scholarship or classroom instruction."	*Garcetti v. Ceballos*, 547 US 410 (2006).
18	In a series of cases dating back to 1952, even before the Court significantly protected free speech in general, it "unequivocally rejected" the view that "teachers may constitutionally be compelled to relinquish the First Amendment rights they would otherwise enjoy as citizens to comment on matters of public interest in connection with the operation of the public schools in which they work."	*Pickering v. Board of Education*, 391 US 563 (1968).
18	Likewise, even during the Cold War, the Court held that the First Amendment protected schoolteachers against mandatory loyalty oaths and requirements that they disclose their organizational memberships, parallel to its rulings concerning college/university professors.	*Shelton v. Tucker*, 364 US 479 (1960).

19	In one decision, the Court protected a teacher's right to publish a letter to the editor of a local newspaper, which criticized the school board's allocation of funds.	*Pickering v. Board of Education*, 391 US 563 (1968).
19	In the second case, decided in 1979, the Court protected a teacher's right to complain to her principal about racial discrimination in her school system. ..In a holding that benefited public employees generally, the Supreme Court unanimously ruled that "a public employee" does not "forfeit[]" free speech protection for expression about matters of public concern when the employee "decides to express [these] views privately"—i.e., in a private conversation—"rather than publicly."	*Givhan v. Western Line Consolidated School District*, 439 US 410 (1979).
20	Pico even acknowledged that school authorities "might well defend their claim of absolute discretion in matters of curriculum by reliance upon their duty to inculcate community values."	*Board of Education, Island Trees Union Free School District No. 26 v. Pico by Pico*, 457 US 853 (1982).
20	Nonetheless, since Pico is the Court's only case addressing this "largely uncharted field" (to quote a concurring opinion in the case), it merits a summary, given the many recent controversies about school library books and	*Board of Education, Island Trees Union Free School District No. 26 v. Pico by Pico*, 457 US 853 (1982).

	curricula.	
21	However, the plurality opinion also held, consistent with previous Court decisions about public schools, that when First Amendment rights are "directly and sharply implicated" by school officials' determinations, courts should "intervene." Moreover, the plurality concluded that students' First Amendment rights may well be "directly and sharply implicated by the removal of books from…a school library."	*Board of Education, Island Trees Union Free School District No. 26 v. Pico by Pico*, 457 US 853 (1982).
22	In summarizing its holding, the plurality quoted a core phrase from the landmark Barnette decision: "[S]chool boards may not remove books from school library shelves simply because they dislike the ideas contained in those books and seek by their removal to `prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion.'"	*Board of Education, Island Trees Union Free School District No. 26 v. Pico by Pico*, 457 US 853 (1982).

23	Four dissenting Justices expressly rejected the plurality's analysis, opining that school authorities' discretion to remove library books would be violated only in the limited situations when the removal reflected "narrowly partisan" or racially discriminatory motives—e.g., "[i]f a Democratic school board…ordered the removal of all books written by or in favor of Republicans, or if an all-white school board… remove[d] all books authored by blacks or advocating racial equality and integration."	*Board of Education, Island Trees Union Free School District No. 26 v. Pico by Pico*, 457 US 853 (1982).
23	The ninth Justice, Byron White, expressly declined to opine on the "difficult First Amendment issues" that the case posed "in a largely uncharted field." Since the Court has not returned to this field in the intervening forty years, it remains "largely uncharted."	*Board of Education, Island Trees Union Free School District No. 26 v. Pico by Pico*, 457 US 853 (1982).
24	Rejecting the free speech claim of a Boston police officer who had been fired for expressing political views, Holmes wrote: "[He] may have a constitutional right to talk politics, but he has no constitutional right to be a policeman."	*JOHN J. MCAULIFFE vs. MAYOR AND BOARD OF ALDERMEN OF NEW BEDFORD.* 29 N.E. 517,155 Mass. 216 (1892).

25	In a 1983 decision, the Court squarely rejected Holmes' reasoning; it stated: "[A] public employee does not relinquish rights to comment on matters of public interest by virtue of government employment."	*Garcetti v. Ceballos*, 547 US 410 (2006).
30	If the expression was about a matter of public concern, the reviewing court undertakes "a delicate balancing of the competing interests surrounding the speech and its consequences." The court will uphold a restriction on this expression only if it concludes that the interest in an efficient workplace outweighs the free expression interests.	*Kennedy v. Bremerton School District*, 597 US _ (2022).
32	The Court reasoned: "Restricting speech that owes its existence to a public employee's professional responsibilities does not infringe any liberties the employee might have enjoyed as a private citizen. It simply reflects the exercise of employer control over what the employer itself has commissioned or created." In other words, as the Court amplified in a 2022 decision, "for constitutional purposes," this speech is in effect "the government's own speech."	*Kennedy v. Bremerton School District*, 597 US _ (2022).

33	The Court consistently has distinguished between public employees' speech in their capacity as "citizens"—which they do not forfeit by virtue of becoming public employees—and their speech specifically in their employment capacity, which the government has more latitude to regulate.	Cambridge Dictionary. (2022, September 28). *citizen*. @CambridgeWords. https://dictionary.cambridge.org/us/dictionary/english/citizen
34	However, in this case, the Court concluded that the expression at issue addressed employee grievances, not public concerns, and hence was not protected by the First Amendment.	*Connick v. Myers*, 461 US 138 (1983).
35	Since the name of the case was Pickering v. Board of Education, this test is often referred to as "Pickering balancing."	*Pickering v. Board of Education*, 391 US 563 (1968).

35	Finding that the letter addressed "issues of public importance" and that it did not interfere with the school's operation, the Court held that the firing violated Pickering's First Amendment rights. The Court has listed the following kinds of demonstrable harm that employee speech would have to cause to warrant its restriction under the Pickering test: it "impairs discipline by superiors or harmony among coworkers, has a detrimental impact on close working relationships for which personal loyalty and confidence are necessary, or impedes the performance of the speaker's duties or interferes with the regular operation of the enterprise."	*Pickering v. Board of Education*, 391 US 563 (1968).
36	Summarizing the composite rule resulting from this sequence of cases, the Court's above-referenced 2006 decision made clear that when "employees are speaking as citizens about matters of public concern," their speech rights are strongly protected, and government employers must bear a heavy burden of proof to justify restricting such speech, akin to strict scrutiny: employees "must face only those speech restrictions that are necessary for their employers to operate efficiently	*Garcetti v. Ceballos*, 547 US 410 (2006).

	and effectively."	
37	In a 1987 case, the Court stressed that any restriction on public employees' speech about matters of public concern must be viewpoint neutral, cautioning that "vigilance is necessary to ensure that public employers do not…silence [employees'] discourse, not because it hampers public functions but simply because superiors disagree with the content of employees' speech."	*Garcetti v. Ceballos*, 547 US 410 (2006).
37	Accordingly, the Court upheld the free speech rights of a clerical employee in a county constable's office, who made the following statement to a fellow employee after learning that then-President Ronald Reagan had been shot in an assassination attempt: "If they go for him again, I hope they get him." The Court commented: "The inappropriate or controversial character of a statement is irrelevant to the question whether it deals with a matter of public concern."	*Rankin v. McPherson*, 483 US 378 (1987).
38	Since prisons' primary concerns include protecting the security and safety of inmates and staff, and since the Court traditionally has deferred to prison officials' expertise about those concerns, it reviews any prison speech restriction under its most deferential standard for	*Rational Basis Test.* (n.d.). LII / Legal Information Institute. https://www.law.cornell.edu/wex/rational_basis_test

	reviewing any constitutional rights claim: "rational basis."	
38	The Court will uphold any prison speech regulation so long as it is "rationally related" to a legitimate penological interest.	*Rational Basis Test.* (n.d.). LII / Legal Information Institute. https://www.law.cornell.edu/wex/rational_basis_test
39	In dissenting from a 2006 decision, which completely denied certain inmates access to any secular, nonlegal periodicals, Justice Ruth Bader Ginsburg commented that prison officials had prevailed simply by asserting that "in our professional judgment the restriction is warranted."	*Beard v. Banks*, 542 US 406 (2004).
40	One of the articles it contained, "**Medical Murder**," described how three Black prisoners at the U.S. Penitentiary in Terre Haute, Indiana had died of asthma in 1975. The article recounted that the prison infirmary had only one respirator, which had already been broken as of January 1975, and remained broken in August, when the third Black prisoner died of asthma.	*Thornburgh v. Abbott*, 542 US 406 (2004).
40	The Court deferred to prison officials' decision to block the magazine on the ground that this article "would be detrimental to the good order and discipline of this institution," since its "philosophy could…cause…problems with	*Thornburgh v. Abbott*, 542 US 406 (2004).

	the Medical Staff."	
41	The Court has essentially rubber-stamped any such restriction, accepting without examination military officials' conclusory assertions that the restriction promotes "order and discipline."	*United States v. Ortiz*, 422 US 891 (1975).
41	In terms of constitutional rights, the Court has relegated service members to a status that is both separate and unequal, stating that "the military is, by necessity, a specialized society separate from civilian society."	*U.S. v. Rapert,*75 MJ 164 (2016)
42	Along with so many major free speech cases, this one also centered on expression advocating racial justice. Dr. Howard Levy, an Army captain, urged Black enlisted men to refuse to serve in Vietnam because "they are discriminated against and denied their freedom in the United States, and . . . discriminated against in Vietnam by being given all the hazardous duty and … suffering the majority of casualties.	*Parker v. Levy*, 417 US 733 (1974).
42	Levy was convicted under the Uniform Code of Military Justice (UCMJ) for "conduct unbecoming an officer and a gentleman" and for "disloyal statements" prejudicial to "good order and discipline."	*Parker v. Levy*, 417 US 733 (1974).

42	As the Court held in the landmark 1969 Brandenburg case, even advocacy of illegal conduct is protected; only intentional incitement of imminent illegal conduct, which is likely to happen imminently, is unprotected.	*Brandenburg v. Ohio*, 395 US 444 (1969).
42	Yet, invoking the "specialized society" rationale, the Court rejected Levy's First Amendment claim.	*Parker v. Levy*, 417 US 733 (1974).
43	Pursuant to the "specialized society" approach, the Court even has upheld prior restraints against military personnel's expression based on speculative fears that the expression "could affect adversely" "morale, discipline, and…order."	*Parker v. Levy*, 417 US 733 (1974).
43	First Amendment freedom of speech, but also the specific First Amendment right "to petition the government for a redress of grievances."	*U.S. Constitution - First Amendment* . (n.d.). Constitution.congress.gov; Library of Congress. https://constitution.congress.gov/constitution/amendment-1/
43	In yet another example of the essential role that free speech plays in racial justice advocacy, the petition challenged grooming regulations that, it maintained, "have caused more racial tension, decrease in morale and retention, and loss of respect for authorities than any other official Air Force policy."	*Brown v. Glines*, 444 US 348 (1980).

Chapter 7		
Paragraph #	Passage	Citation
Summary Paragraph	In contrast, in light of the "state action doctrine," the First Amendment binds only "state" or government actors, with very few exceptions	*Terry v. Adams*, 345 U.S. 461 (1953).
C7P2	Under the U.S. Constitution's "Supremacy Clause," the U.S. Constitution is "the supreme law of the land," so any state constitutional ruling, as well as any state statute, that violates the U.S. Constitution would be null and void	U.S. Const. art. VI, cl. 2.

C7P2	In 1979, the California Supreme Court held that its state constitution required privately owned shopping centers to permit members of the public to engage in expressive conduct on their premises (as private entities, these shopping centers had no First Amendment obligation to do this). The shopping center owners challenged the California Supreme Court's holding as violating their own First Amendment rights—specifically, their freedom not to be compelled to convey the messages of the members of the public—— as well as their property rights under the U.S. Constitution. In ruling on that case, the U.S. Supreme Court reaffirmed the state's "sovereign right to adopt in its own Constitution individual liberties more expansive than those conferred by the Federal Constitution," and concluded that the California Supreme Court's holding did not violate either asserted federal constitutional right.	*Pruneyard Shopping Center v. Robins*, 447 U.S. 74 (1980).
Beginning seciton	In contrast, in light of the "state action doctrine,".	*Terry v. Adams*, 345 U.S. 461 (1953).
Beginning Sections	the First Amendment binds only "state" or government actors, with very few exceptions	U.S. Const. amend. XV

Beginning seciton	Under the state action doctrine, they have no First Amendment obligations.	*Terry v. Adams*, 345 U.S. 461 (1953).
C7P4	In contrast, some state high courts have interpreted their state constitutional counterparts of the Free Speech Clause as extending to at least some private sector entities and actions, as illustrated by the California Supreme Court holding that ; for instance, the preceding answer referenced. that holding by the California Supreme Court.	*Robins v. Pruneyard Shopping Center*, 2447 U.S. 74 (1980).
C7P4	The New Jersey Supreme Court likewise has held that the free speech guarantee in New Jersey's constitution extends to private sector entities, including private universities and privately owned shopping centers	*Dublirer v. 2000 Linwood Avenue Owners, Inc., et al.* 220 N.J 71 (2014).
C7P4	As a result of these rulings, members of the general public have the same viewpoint -neutral rights to leaflet, picket, and engage in other expressive conduct in certain areas of these private institutions as they would have in a "traditional public forum"—namely, the malls and open areas that are analogous to public sidewalks, streets, and parks.	*Perry Educ. Ass'n v. Perry Educators' Ass'n*, 460 U.S. 37 (1983).

C7P5	Given the many recent campus free speech controversies, one noteworthy example is California's 1992 "Leonard Law," which secures at private secular educational institutions the same free speech rights that the First Amendment guarantees at public educational institutions.	California Education Code Sections 94367 and 66301
C7P5	In 1995, a California judge held that this law was violated by the hate speech restrictions that Stanford University had adopted.	*Robert J. Corry, et al. v. The Leland Stanford Junior University, et al.*, No. 740309 (Cal. Super. Ct. Feb. 27, 1995).
C7P6	The principles of contract law require enforceable contracts to comply with certain broad substantive legal requirements (—e.g.,.g., the parties must have a "meeting of the minds" and mutually rely on each others' undertakings) —but the law is flexible in terms of format details.	Wex Definitions Team. (2023, July). Meeting of the Minds. Legal Information Institute. https://www.law.cornell.edu/wex/meeting_of_the_minds
C7P8	For example, in 2014 the University of Chicago—a private institution—adopted a set of speech-protective principles that are now generally referred to as "the Chicago Principles," and which have been adopted by many other private universities and colleges. Courts have often held that these kinds of publicly announced pledges of support for free speech give rise to enforceable contracts, binding	The Foundation for Individual Rights and Expression. (2023). Chicago statement: University and Faculty Body Support. https://www.thefire.org/research-learn/chicago-statement-university-and-faculty-body-support

	the university vis-à-vis students and faculty members.	

Chapter 8		
Paragraph #	Passage	Citation
Introduction part	and “Section 230,” which largely immunizes platforms from liability for third-party content.	47 U.S.C. 230
C8P2	Yet the term “cancel culture” captures the concern that some criticism is disproportionately harsh, and has an unduly speech-suppressive impact on not only the directly targeted speaker, but also countless others. Surveys indicate that substantial percentages of all of us, across the political and demographic spectrums, are deterred from voicing certain views, or even from addressing whole subjects, for fear that we might face such harsh consequences. These surveys do not focus on speech that most of us believe should be self-censored, such as including targeted racist or other epithets directed at another person. Rather, they concern general expressions of opinion, or even asking questions, about complex public policy issues, including those involving racial justice, gender equality, abortion, police reform, immigration, law, and pandemic measures.	Vogels, E. A. (2021, May 19). Americans and “cancel culture”: Where some see calls for accountability, others see censorship, punishment. Pew Research Center: Internet, Science & Tech. https://www.pewresearch.org/internet/2021/05/19/americans-and-cancel-culture-where-some-see-calls-for-accountability-others-see-censorship-punishment/

C8P3-C8P6	A thoughtful, nuanced answer was provided by Suzanne Nossel, CEO of the free speech organization PEN America:	Nossel, S. (2018, May 30). Opinion | sometimes more speech isn't the solution to offensive speech. The Washington Post. https://www.washingtonpost.com/opinions/sometimes-more-speech-isnt-the-solution-to-offensive-speech/2018/05/29/7d870a78-635d-11e8-a69c-b944de66d9e7_story.html
C8P9	Consistent with the "state action doctrine," social media companies, as private sector entities, have no general First Amendment obligation to honor free speech rights of anyone who uses their platforms, or seeks to do so	U.S. Const. Amend. XV. §2.1
C8P9	Accordingly, the social media companies may adopt whatever "content moderation" policies	U.S. Const. Amend. XV. §2.1
C8P9	or "community standards" they choose	U.S. Const. Amend. XV. §2.1
C8P10	In a 2017 decision, the U.S. Supreme Court declared: "While in the past there may have been difficulty in identifying the most important places . . .… for the exchange of views, today the answer is clear. It is cyberspace . . .… and social media in particular." Among other things, the Court recognized, social media are the most essential platforms for debate and discussion about public affairs and public	*Packingham v North Carolina*, 582 US, 137 S Ct 1730 (2017) U.S. Const. pmbl.

	officials among “We the People,” and for us to engage with officials and candidates.	
C8P10	This makes it vital for our democracy to maintain the same “uninhibited, robust, and wide-open” free speech in these new venues that the Court has historically shielded in traditional venues	New York Times Co. v. Sullivan, 376 U.S. 254 (1964).
C8P11	have invoked the “entanglement” exception to the state action doctrine. When a private sector action involves a sufficiently close “entanglement” or relationship with the government, then the ostensibly private action is treated as tantamount to government action and subject to the same First Amendment constraints that bind the government itself.	U.S. Const. Amend. XV. §2.1
C8P12	In the Florida case, the federal appellate court accepted that claim	NetChoice, LLC, et al. v. Attorney General, State of Florida, et al., No. 21-12355 (11th Cir. 2022)
C8P12	but in the Texas case it was rejected (over a dissenting opinion).	NetChoice v. Paxton, No. 21-51178 (5th Cir. 2022)

C8P12	The most extensive such discussion to date was in a 2021 opinion by Justice Thomas (not joined by any other Justice), suggesting that the Court should consider permitting government regulation of tech platforms' content moderation on one or more of several theories, which would override the companies' First Amendment claims: that the companies could be considered common carriers, public utilities, and/or public accommodations, and hence required to serve as neutral conduits for third parties' communications.	
C8P12	In 2022, Justice Alito wrote an opinion, joined by Justices Thomas and Gorsuch, indicating their openness to re-examining First Amendment principles and precedents in the social media context.	*NetChoice, LLC, v. Paxton*, No. 21-51178 (5th Cir.)

C8P14	In addition to the social media companies' First Amendment rights, their free speech rights have been reinforced by a federal statute that was enacted in 1996, shortly after the Internet had garnered widespread political and public attention. Commonly referred to as "Section 230," this short section of a comprehensive communications law contains two provisions. The first states: "No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." With a couple exceptions, this provision shields any online entity that hosts third-party content, including social media companies, from liability for the third-party content.	47 U.S.C. 230

CP14	Without this liability shield, online intermediaries would be forced to serve as strict gatekeepers, analogous to newspaper editors or TV producers, allowing only hand-picked, carefully curated third-party content, or perhaps no third-party content at all. Such an approach would have thwarted the Internet's unique potential as "the most participatory form of mass speech yet developed," to quote one of the first court opinions about online free speech rights. For this reason, this first provision in Section 230 has been celebrated as "the 26 words that created the Internet."	Technology and liberty: Internet free speech. American Civil Liberties Union. (2004). https://www.aclu.org/documents/technology-and-liberty-internet-free-speech

C8P15	Section 230's second provision states that online services are not liable for "any action voluntarily taken in good faith to restrict access to or availability of [objectionable content]." Just as the first provision shields online intermediaries from liability for any decision to host third-party content, the second provision shields them from liability for any decision not to host third-party content. The purpose was to permit companies to implement content moderation policies that would encourage user participation, recognizing that users might prefer not to encounter the full panoply of speech that the First Amendment protects. Content moderation policies could include, for instance, blocking spam and blocking certain violent images.	47 U.S.C. 230
C8P16	The Electronic Frontier Foundation, which defends civil liberties in the digital world, explains that Section 230 "has allowed…YouTube and Vimeo users to upload their own videos, Amazon and Yelp to offer countless user reviews, [and] craigslist to host classified ads."	McKinney, I., Cope, S., Greene, D., Mackey, A., & Richman, J. (n.d.). Section 230. Electronic Frontier Foundation. https://www.eff.org/issues/cda230

C8P18	The Committee to Protect Journalists reported that in 2021, 28 journalists worldwide were killed in retaliation for their work, while an additional 294 journalists were imprisoned for their work.	McGhee, G. (2021, December 9). Attacks on the press in 2021. Committee to Protect Journalists. https://cpj.org/2021/12/attacks-on-the-press-in-2021/