

THE FIRST AMENDMENT

THREE MYTHS & THREE FACTS



ALLIANCE DEFENDING
FREEDOM

A black podium is shown with several microphones attached. A white sign is mounted on the front of the podium. The sign has the words 'CREATE' and 'FREELY' in large, teal, serif capital letters, stacked vertically. Below the sign, the text '303 CREATIVE' is visible in a smaller, dark blue font. The background is a blurred image of a large, white, classical building with columns, likely the U.S. Capitol.

CREATE
FREELY

303 CREATIVE

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WHAT YOU CAN DO NOW

On July 9, 1722, Benjamin Franklin wrote that “Without Freedom of Thought, there can be no such Thing as Wisdom; and no such Thing as public Liberty, without Freedom of Speech.”

Franklin’s words—written 65 years prior to the drafting of the U.S. Constitution—reflect how important freedom of speech was to our Founding Fathers, who listed it among the very first freedoms protected by the Constitution.

The freedom to hold and express your own opinions without fear of government punishment is foundational to America’s unique character.

Unfortunately, far too many Americans do not understand and appreciate the First Amendment. That’s why Alliance Defending Freedom has created this helpful guide—to equip you to counter a few common myths about free speech with the truth. We pray this allows you to have important conversations with friends and family about free speech.

It is crucial that all Americans are motivated to protect the right to free speech. That starts by understanding what the First Amendment says—and doesn’t say—about free speech.

ONE

MYTH

The First Amendment doesn't protect "offensive" speech.

FACT

The First Amendment is designed to protect unpopular speech.

Far too often we hear and read the term "hate speech" in mainstream media reports, political commentary, and on social media. But what does it really mean? It can mean different things to different people. But too often, "hate speech" is just a label for "speech I disagree with."

That subjectivity carries risk. Every call to ban or regulate "hate speech" also empowers governments to define what is acceptable speech and what is offensive. That's dangerous. It's also contrary to the First Amendment, which was created, in part, to protect unpopular speech even, or especially, when it gives offense. Otherwise, the majority could always silence views they oppose.

Could you imagine giving the government authority to silence opposing views?

That would amount to a form of mob rule—giving majorities the ability to suppress dissent and criticism. And once minority views are silenced, as Franklin observed, liberty itself is snuffed out.

If the government was allowed to censor speech it disagrees with, would we have ever heard important speeches by abolitionists? Or those advocating for women’s suffrage? Almost certainly not.

Thankfully, the First Amendment stands firmly on the side of free speech—even for speech we do not like. The U.S. Supreme Court has emphatically stated that so-called “hate” speech is protected speech: “Speech that demeans on the basis of race, ethnicity, gender, religion, age, disability, or any other similar ground is hateful; but the proudest boast of our free speech jurisprudence is that we protect the freedom to express ‘the thought that we hate.’” *Matal v. Tam* (2017).

LEARN MORE:

[U.S. Supreme Court protects free speech for all in 303 Creative case. Find out more!](#)

#TWO

MYTH

Speech that the government deems dangerous is not protected.

FACT

Even if the government believes your speech is a “clear and present danger,” it cannot silence you.

When discussing free speech with a friend, you may have heard this rebuttal: “But what about ‘dangerous’ speech? You can’t shout ‘fire’ in a crowded theater, right?”

Wrong.

The standard is much higher. Government can’t restrict speech it deems dangerous unless the speech is “directed to inciting or producing imminent lawless action and is likely to incite or produce such action.” “directed to inciting or producing imminent lawless action and is likely to incite or produce such action.” *Brandenburg v. Ohio* (1969).

That landmark Supreme Court decision makes clear that unless your speech incites unlawful action on purpose and is likely to cause unlawful action to break out, the government has no right to censor or silence it. Our Founding Fathers had the wisdom to realize that giving government officials the authority to restrict anything they label “dangerous” speech would lead to overreach.

If the state’s assessment of “danger” was the standard for governments to silence speech, how could citizens truly “petition the Government for a redress of grievances”? Couldn’t government officials argue that protests calling for change were “dangerous” to the established order and institutions?

This is one way authoritarian dictatorships suppress dissent—by calling peaceful citizen protests “dangerous.”

Again, the First Amendment guarantees the right of every citizen to voice their opinion, without fear of government punishment.

LEARN MORE:

[Local California library silences women who spoke the truth about gender at public event](#)

#THREE

MYTH

The First Amendment has nothing to do with “cancel culture”.

FACT

The First Amendment is the foundation for a culture that values free speech.

It seems every time you turn around, another celebrity or business is “canceled” due to an unpopular opinion expressed on social media. Often you hear one side of the debate arguing that a “First Amendment right” is being violated, while the other side claims that “free speech doesn’t mean freedom from consequences for your speech.”

In this instance, it is true that the First Amendment is only designed to protect speech from government intrusion, not public reaction and private consequences. For instance, the First Amendment does not, generally, protect an employee from punishment for expressing derogatory opinions about their private sector employer in a social media post.

However, supporting the spirit of the First Amendment—the right to one’s own opinion, and the right to express that opinion without fear—is crucial to building a culture that honors and respects speech. A culture that allows Americans to happily live alongside neighbors even if they happen to disagree about contentious political issues.

That’s what all Americans should be working to build—together.

LEARN MORE:

[“Cancel culture” is real. Just ask one college student who stood up to those who targeted him for expressing his opinion.](#)

WHAT YOU CAN DO NOW



PRAY

Pray that God would melt hearts of stone in our culture—that we would not seek to destroy the careers and lives of those we disagree with but would engage in productive dialogue instead. Pray that our elected leaders, judges, and justices would respect the First Amendment’s promise to Americans that their opinions and voices are their own, and are not subject to censorship or restriction by the government. Much prayer is needed!



SHARE

Did you find this helpful? Make sure to pass it along to a friend or someone you know that has questions about free speech.



GIVE

ADF never charges our clients a dime for defending them in court—we rely on the [generous support](#) of people like you to defend free speech in the U.S. and around the world. Requests for legal assistance have skyrocketed, and we receive thousands of requests for help each year!



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