

## Measurement Topic 3, Learning Target 1

### Interpretations of the Bill of Rights

#### First Amendment Cases

In the last measurement topic, we did a brief overview of all ten amendments to the Bill of Rights. In this learning target, we are just focusing on two amendments: the First and the Fourteenth. The First Amendment protects four important, basic rights and freedoms: Religion, Speech, Press, and Assembly.

The Freedom of Religion actually has two main parts: the Establishment Clause and the Free Exercise Clause. The Establishment Clause basically states that the government cannot establish or support an official religion. This has been interpreted to mean that there should be a “wall of separation” between church (religion) and state (government). In the famous case of *Lemon v. Kurtzman*, the Supreme Court established a three part test to see if a government action violated the separation of church and state. To be constitutional, a government action must: 1) have a non-religious purpose; 2) neither support nor inhibit a religion; and 3) avoid excessive entanglement between government and religion.

The second part, the Free Exercise Clause, states that the government cannot prevent anyone from practicing a religion. Again, there are two parts to this: religious belief and religious practice. Religious belief is what people think and feel about their religion, while religious practices are those things they do as part of their religion. The Supreme Court has consistently ruled that religious belief is absolute and cannot be violated. However, religious practices may be limited or restricted if: 1) they conflict with criminal law; or 2) if they violate laws protecting the health, safety, or morals of the community.

The Freedom Speech is considered an essential part of democracy. The Supreme Court has defined speech as belonging to one of two categories: pure speech and symbolic speech (sometimes called expression). Pure speech is the verbal expression of a thought or opinion. In other words, pure speech refers to the words you say out loud. Symbolic speech involves using actions or symbols to express your opinion. This could involve everything from burning the American flag, to wearing a t-shirt that supports a political candidate, to painting your face to show support for your favorite sports team.

Today, the Supreme Court gives speech a preferred position among all your other basic rights. Because it provides the basis for all other liberties, freedom of speech is limited only when absolutely necessary. Speech might be limited if it creates a clear and immediate danger to public safety. For instance, if someone shouted “Fire!” in a crowded theater, this might cause a stampede that could result in people getting injured. Also, defamatory speech is not protected. These are false statements that damage another person’s good name, character, or reputation. This is also called slander. So-called “fighting words” are another example of non-

protected speech. This involves using insults or threats against another person. Finally, speech may be limited if it is considered obscene.

The Freedom of the Press, along with the Freedom of Speech, is considered an important safeguard for your other rights and liberties. In general, the Constitution does not allow prior restraint. That is, the government cannot censor information before it is published. Like with Free Speech, there are a few exceptions to this rule. Freedom of the Press can be limited if the information being published could endanger national security. As with free speech, published information that is false or damaging to another person can also be restricted. This is called libel. Also, publications that are considered obscene can be censored if they violate community standards of decency. Finally, radio, television, and advertising can be regulated by the government. Certain words or images may be censored on public radio or television since these use publicly owned airwaves to broadcast their messages. Advertising can be regulated since it is considered commercial speech rather than political speech.

The Freedoms of Assembly and Petition are often closely linked to the freedom of speech and the press. The Freedom of Assembly has been interpreted in two ways: The first is the right to publicly protest. This means that people have the right to gather in public to protest some government action or draw attention to a problem or cause. The second is the freedom of association. This means that people have the right to join groups or organizations that have a common set of beliefs or goals. As with other rights, your freedom of assembly can only be restricted under special circumstances. For example, groups might need permits to hold a parade or demonstration in order to preserve public order. These permits may restrict the time and place of the protest so that the demonstration does not interfere with the rights of others trying to use the same public space. Protests might also be restricted if they are taking place on private property as opposed to public property or if the demonstration presented a danger to public safety. Finally, there might be restrictions on a certain type of protest called picketing. This means gathering in front of a business or other establishment and trying to convince workers and the public not to enter it.