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THE FIRST
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The First Amendment

Fifth Edition

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For our families

1. The first step in the process of family therapy is to establish a relationship with the family. This is often done through a series of interviews with the family members. The therapist will try to understand the family's history, the relationships between the members, and the problems that are causing the family to seek therapy. This process is often called "assessment" and is usually the first step in the therapy process.

2. The second step in the process of family therapy is to identify the problems that are causing the family to seek therapy. This is often done through a series of interviews with the family members. The therapist will try to understand the family's history, the relationships between the members, and the problems that are causing the family to seek therapy. This process is often called "assessment" and is usually the first step in the therapy process.

3. The third step in the process of family therapy is to develop a plan of action. This is often done through a series of interviews with the family members. The therapist will try to understand the family's history, the relationships between the members, and the problems that are causing the family to seek therapy. This process is often called "assessment" and is usually the first step in the therapy process.

4. The fourth step in the process of family therapy is to implement the plan of action. This is often done through a series of interviews with the family members. The therapist will try to understand the family's history, the relationships between the members, and the problems that are causing the family to seek therapy. This process is often called "assessment" and is usually the first step in the therapy process.

5. The fifth step in the process of family therapy is to evaluate the results of the therapy. This is often done through a series of interviews with the family members. The therapist will try to understand the family's history, the relationships between the members, and the problems that are causing the family to seek therapy. This process is often called "assessment" and is usually the first step in the therapy process.

6. The sixth step in the process of family therapy is to provide ongoing support and guidance. This is often done through a series of interviews with the family members. The therapist will try to understand the family's history, the relationships between the members, and the problems that are causing the family to seek therapy. This process is often called "assessment" and is usually the first step in the therapy process.

Preface

This work is derived from Stone, Seidman, Sunstein, Tushnet, and Karlan, *Constitutional Law* (7th ed. 2013). It incorporates the material in chapters VII and VIII of that book and its most recent Supplement, with only modest revisions. It presents the most recent developments in the area.

The first amendment is a suitable subject for treatment apart from the rest of constitutional law. First amendment cases and issues raise questions both about constitutional law generally and about the specific domains of free expression and religious liberty. Although this book generally assumes that students have had an introduction in which they have already considered the justifications offered for judicial review, the cases and materials allow students to explore questions about the appropriate roles of courts and legislatures in developing fundamental law. The free expression materials show how such important considerations as democratic theory and the claim that individuals are self-directing, autonomous beings might influence the development of constitutional doctrine. The materials on the first amendment's religion clauses pose questions, among others, about the ability of constitutional law to foster or support religious liberty in a society characterized by religious pluralism. These characteristics of the first amendment materials intersect with characteristics of constitutional law and theory in other substantive areas of constitutional law, and students might be encouraged to think about the connections.

The goals we pursue are to introduce students to the main lines of first amendment doctrine, to place that doctrine in its historical setting (particularly emphasized in Chapter II of Part I) and its social setting (an important theme in Part II), and to ensure that students connect particular doctrines and lines of doctrinal development with more general approaches to constitutional interpretation such as originalism, natural law/natural rights thinking, and the

like. Although the materials assume a general familiarity with controversies over the justifications for judicial review, the book can be used in a free-standing course on the first amendment. At some points the materials present information about constitutional practices in other democratic societies, in an effort to combat the parochialism of United States constitutional thinking. As noted in *Constitutional Law*, "we offer no systematic survey; but we do hope to shed light on our own problems by exploring how other nations operate."

January 2016

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- Bezanson, Randall. *Institutional Speech*, 80 *Iowa L. Rev.* 735, 736, 755, 761, 739 (1995). Copyright © 1995 *Iowa Law Review*. Reprinted with permission.
- . *Political Agnosticism, Editorial Freedom, and Government Neutrality Toward the Press*. 72 *Iowa Law Review* 1359, 1371 (1987). Reprinted with permission.
- Bickel, Alexander. *The Morality of Consent*. Copyright © Yale University Press (1975). Reprinted with permission of Yale University Press.
- Blasi, Vincent. *The Checking Value in First Amendment Theory*. 1977 *American Bar Foundation Research Journal* 521, 527-542, 596, 640. Copyright © 1977 by the American Bar Foundation. Reprinted with permission.
- . *The Pathological Perspective and the First Amendment*. This article originally appeared at 85 *Columbia Law Review* 449 (1985). Reprinted with permission of the *Columbia Law Review* and the author.
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- . *Toward a Theory of Prior Restraint: The Central Linkage*. 66 *Minnesota Law Review* 11, 87-91 (1981). Reprinted with the author's permission.
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- Bollinger, Lee. *Images of a Free Press*. Copyright © 1991 by The University of Chicago. Reprinted with permission.
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- Branscomb, Anne. *Anonymity, Autonomy, and Accountability: Challenges to the First Amendment in Cyberspace*. Reprinted with permission of the

- Yale Law Journal Company, the author, and Fred B. Rothman & Company from The Yale Law Journal, Vol. 104, pp. 1652-1653.
- Brownstein, Rules of Engagement for Culture Wars: Regulating Conduct, Unprotected Speech, and Protected Expression in Anti-Abortion Protests, 29 U.C. Davis Law Rev. 553, 586-588, 628 (1996). Copyright © 1996 Regents of The University of California. Reprinted with permission.
- Cantor, Norman. Forced Payments to Service Institutions and Constitutional Interests in Ideological Non-Association. 36 Rutgers Law Review 3, 16, 26 (1984). Reprinted with permissions.
- Chaffee, Zechariah. Book Review. 62 Harvard Law Review 891, 899-900 (1949). Copyright © 1949 by the Harvard Law Review Association. Reprinted with permission of the Harvard Law Review Association.
- _____. Free Speech in the United States. Copyright © 1941 by the President and Fellows of Harvard College. Reprinted with permission of Harvard University Press.
- Clark, Lorene. "Liberalism and Pornography," originally appearing in In Search of the Feminist Perspective: The Changing Potency of Women (Resources for Feminist Research Special Publication #5, Toronto, Spring 1975).
- Clor, Harry. Obscenity and Public Morality. Copyright © 1969 by The University of Chicago. Reprinted with permission.
- Coase, Ronald. Advertising and Free Speech. 6 Journal of Legal Studies 1, 2, 14 (1977). Copyright © 1977 by The University of Chicago. Reprinted with permission.
- _____. The Federal Communications Commission. 2 Journal of Law & Economics 1, 14-18 (1959). Copyright © 1959 by The University of Chicago. Reprinted with permission.
- Collins, Ronald and David Skover. The Death of Discourse (1996). Copyright © 1996 by WestviewPress. Reprinted by permission of WestviewPress.
- Comment. *Snepp v. United States*: The CIA Secrecy Agreement and the First Amendment. This article originally appeared at 81 Columbia Law Review 662 (1981). Reprinted with permission of the Columbia Law Review and the author.
- Cox, Archibald. Foreword, Freedom of Expression in the Burger Court. Copyright © 1980 by the Harvard Law Review Association. Reprinted with permission of the Harvard Law Review Association and the author.
- Developments Note. The National Security Interest and Civil Liberties. Copyright © 1972 by the Harvard Law Review Association. Reprinted with permission of the Harvard Law Review Association.
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- _____. Flag Desecration: A Case Study in the Roles of Categorization and Balancing in First Amendment Analysis. Copyright © 1975 by the Harvard Law Review Association. Reprinted with permission of the Harvard Law Review Association and the author.
- Emerson, Thomas. The Affirmative Side of the First Amendment. This article was originally published at 15 Georgia Law Review 795 (1981) and is reprinted with permission.
- _____. The Doctrine of Prior Restraint. 20 Law & Contemporary Problems 648, 656-660 (1955). Reprinted with permission.
- Epstein, Richard. Was *New York Times v. Sullivan* Wrong? 53 University of Chicago Law Review 782, 797, 804 (1986). Reprinted with permission.
- Fairman, Christopher M. FUCK: Word Taboo and Protecting Our First Amendment Liberties 27-29, 44-45, 55, 60 (2009). Used by permission of Sourcebooks.
- Farber, Daniel. Commercial Speech and First Amendment Theory. 74 Northwestern University Law Review 372, 385-386 (1979). Reprinted with permission of Daniel Farber.
- Farber, Daniel and John Nowak. The Misleading Nature of Public Forum Analysis: Content and Context in First Amendment Adjudication. 70 Virginia Law Review 1219, 1234 (1984). Reprinted with permission.
- Fiss, Owen. In Search of a New Paradigm. Reprinted with permission of the Yale Law Journal Company, the author, and Fred B. Rothman & Company from The Yale Law Journal, Vol. 104, pp. 1614-1615.
- Freund, Paul. The Supreme Court and Civil Liberties. 4 Vanderbilt Law Review 533, 539 (1951). Reprinted with permission.
- Goldberger, David. Judicial Scrutiny in Public Forum Cases: Misplaced Trust in the Judgment of Public Officials. 32 Buffalo Law Review 175, 206-207, 217-218 (1983). Copyright © 1983 by the Buffalo Law Review. Reprinted with permission.
- _____. A Reconsideration of *Cox v. New Hampshire*. Published originally in 62 Texas Law Review 403 (1983). Copyright © 1983 by the Texas Law Review Association. Reprinted with permission of the Texas Law Review Association and the author.
- Goldstein, Robert. Political Repression in Modern America (1978). Reprinted with permission of Schenkman Books and the author.

- Graber, Mark. Old Wine in New Bottles: The Constitutional Status of Unconstitutional Speech. 48 Vanderbilt Law Review 349, 352, 364, 367-368, 371-372 (1995). Reprinted with permission.
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- Gunther, Gerald. Learned Hand and the Origins of Modern First Amendment Doctrine: Some Fragments of History. Copyright © 1975 by the Board of Trustees of the Leland Stanford University. Reprinted with the author's permission.
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- Howe, Mark DeWolfe. The Garden and the Wilderness (1965). Reprinted by permission of the Frank L. Weil Institute for Studies in Religion and Humanities, Hebrew Union College-Jewish Institute of Religion.
- Imwinkelried, Edward and Donald Zillman. An Evolution in the First Amendment: Overbreadth Analysis and Free Speech Within the Military Community. Published originally in 54 Texas Law Review 42 (1975). Copyright © 1975 by the Texas Law Review Association. Reprinted with permission of the Texas Law Review Association and the authors.
- Ingber, Stanley. The Marketplace of Ideas: A Legitimizing Myth. 1984 Duke Law Journal 1, 4-5. Reprinted with permission.
- Israel, Jerrold. *Elfbrandt v. Russell*: The Demise of the Oath? 1966 Supreme Court Review 193, 219. Copyright © 1967 by The University of Chicago. Reprinted with permission.
- Jackson, Thomas and John Jeffries. Commercial Speech: Economic Due Process and the First Amendment. 65 Virginia Law Review 1, 17-18, 30-31 (1979). Reprinted with permission.
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- _____. Private Speech, Public Purpose: The Role of Governmental Motive in First Amendment Doctrine, 63 U. Chi. L. Rev. 415, 467-475 (1996). Copyright © 1996 by University of Chicago Law Review. Reprinted with permission.

- Kalven, Harry. *The Concept of the Public Forum: Cox v. Louisiana*. 1965 Supreme Court Review 1, 18-21. Copyright © 1966 by The University of Chicago. Reprinted with permission.
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- Kurland, Philip. *The Religion Clauses and the Burger Court*. 34 *Catholic University Law Review* 1, 13-14 (1984). Reprinted with permission.
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- Lockhart, William and Robert McClure. *Literature, the Law of Obscenity, and the Constitution*. 38 *Minnesota Law Review* 295, 374-375 (1954). Reprinted with permission of the University of Minnesota Law School.
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- Nagel, Robert. *How Useful is Judicial Review in Free Speech Cases?* 69 Cornell Law Review 302, 303, 304-305, 335-338 (1984). Copyright © 1984 by Cornell University. All rights reserved. Reprinted with permission.
- Nimmer, Melville. *The Meaning of Symbolic Speech Under the First Amendment*. 21 UCLA Law Review 29, 36 (1973). Reprinted with permission of Fred B. Rothman & Company.
- _____. *The Right to Speak from Times to Time: First Amendment Theory Applied to Libel and Misapplied to Privacy*. 56 California Law Review 935, 942-943 (1968). Reprinted with permission of estate of Melville B. Nimmer.
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- _____. The Proper Role of the Prior Restraint Doctrine in First Amendment Theory. 70 *Virginia Law Review* 53, 55, 58 (1984). Reprinted with permission.
- _____. The Value of Free Speech. 130 *University of Pennsylvania Law Review* 591, 633 (1982). Reprinted with permission of the *University of Pennsylvania Law Review*. Fred B. Rothman & Company, and the author.
- Richards, David. Free Speech and Obscenity Law: Toward a Moral Theory of the First Amendment. 123 *University of Pennsylvania Law Review* 45, 62, 82 (1974). Reprinted with the author's permission.
- Rubinfeld, Jed. The First Amendment's Purpose, 53 *Stan. L. Rev.* 767, 768-769 (2001). Copyright © 2001 by Stanford Law Review. Reproduced with permission of Stanford Law Review in the format textbook via Copyright Clearance Center.
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- Schauer, Frederick. Speech and "Speech" — Obscenity and "Obscenity": An Exercise in the Interpretation of Constitutional Language. 67 *Georgetown Law Journal* 899, 906, 922, 923, 926 (1979). Reprinted with permission of the publisher © 1979 and Georgetown University.
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- _____. The Equal Access Controversy: The Religion Clauses and the Meaning of "Neutrality." Reprinted by special permission of Northwestern University School of Law, *Northwestern University Law Review*, Volume 81, Issue 1, pp. 168, 169-170 (1986).