

ASPEN PUBLISHERS

STONE
SEIDMAN
SUNSTEIN
TUSHNET
KARLAN

THE FIRST
AMENDMENT

*Third
Edition*



Wolters Kluwer

Law & Business

© 2008 Geoffrey R. Stone, Robert H. Seidman, Trustee; Cass R. Sunstein;
Mark Tushnet; Pamela Karlan; and Rebecca and Laura Tushnet.
Published by Aspen Publishers. All Rights Reserved.

No part of this publication may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopy, recording, or any information storage and retrieval system, without permission in writing from the publisher. Requests for permission to make copies of any part of this publication should be mailed to:

Aspen Publishers
Attn: Permissions Department
76 Ninth Avenue, 7th Floor
New York, NY 10011-5201

To contact Customer Care, e-mail customer.care@aspenpublishers.com,
call 1-800-234-1660, fax 1-800-901-9075, or mail correspondence to:

Aspen Publishers
Attn: Order Department
PO Box 990
Frederick, MD 21705

Printed in the United States of America.

2 3 4 5 6 7 8 9 0

ISBN 978-0-7355-6929-4

Library of Congress Cataloging-in-Publication Data

The First Amendment/Geoffrey R. Stone . . . [et al.]. — 3rd ed.
p. cm.

Includes bibliographical references and index.

ISBN 978-0-7355-6929-4

1. Freedom of speech — United States. 2. Freedom of the press —
United States. 3. Freedom of religion — United States. 4. United
States. Constitution. 1st Amendment. I. Stone, Geoffrey R.

KF4770.F558 2008
342.7308'53 — dc22

2007043455

The First Amendment

EDITORIAL ADVISORS

Vicki Been

Elihu Root Professor of Law
New York University School of Law

Erwin Chemerinsky

Alston & Bird Professor of Law
Duke University School of Law

Richard A. Epstein

James Parker Hall Distinguished Service Professor of Law
University of Chicago Law School
Peter and Kirsten Bedford Senior Fellow
The Hoover Institution
Stanford University

Ronald J. Gilson

Charles J. Meyers Professor of Law and Business
Stanford University
Marc and Eva Stern Professor of Law and Business
Columbia Law School

James E. Krier

Earl Warren DeLano Professor of Law
The University of Michigan Law School

Richard K. Neumann, Jr.

Professor of Law
Hofstra University School of Law

David Alan Sklansky

Professor of Law
University of California at Berkeley School of Law

Kent D. Syverud

Dean and Ethan A. H. Shepley University Professor
Washington University School of Law

Elizabeth Warren

Leo Gottlieb Professor of Law
Harvard Law School

About Wolters Kluwer Law & Business

Wolters Kluwer Law & Business is a leading provider of research information and workflow solutions in key specialty areas. The strengths of the individual brands of Aspen Publishers, CCH, Kluwer Law International and Loislaw are aligned within Wolters Kluwer Law & Business to provide comprehensive, in-depth solutions and expert-authored content for the legal, professional and education markets.

CCH was founded in 1913 and has served more than four generations of business professionals and their clients. The CCH products in the Wolters Kluwer Law & Business group are highly regarded electronic and print resources for legal, securities, antitrust and trade regulation, government contracting, banking, pension, payroll, employment and labor, and healthcare reimbursement and compliance professionals.

Aspen Publishers is a leading information provider for attorneys, business professionals and law students. Written by preeminent authorities, Aspen products offer analytical and practical information in a range of specialty practice areas from securities law and intellectual property to mergers and acquisitions and pension/benefits. Aspen's trusted legal education resources provide professors and students with high-quality, up-to-date and effective resources for successful instruction and study in all areas of the law.

Kluwer Law International supplies the global business community with comprehensive English-language international legal information. Legal practitioners, corporate counsel and business executives around the world rely on the Kluwer Law International journals, loose-leafs, books and electronic products for authoritative information in many areas of international legal practice.

Loislaw is a premier provider of digitized legal content to small law firm practitioners of various specializations. Loislaw provides attorneys with the ability to quickly and efficiently find the necessary legal information they need, when and where they need it, by facilitating access to primary law as well as state-specific law, records, forms and treatises.

Wolters Kluwer Law & Business, a unit of Wolters Kluwer, is headquartered in New York and Riverwoods, Illinois. Wolters Kluwer is a leading multinational publisher and information services company.

For Andrew, Ellen, Jackson, Jessica, Julie, Laura Eve,
Leonard, Madeline, Mollie, Nora, Rebecca, and Viola

Preface

This work is derived from Stone, Seidman, Sunstein, Tushnet, and Karlan, *Constitutional Law* (5th ed. 2005). 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.”

December 2007

G.R.S.
L.M.S.
C.R.S.
M.V.T.
P.S.K.

Acknowledgments

Excerpts from the following books and articles appear with the kind permission of the copyright holders:

Alfange, Dean. The Draft-Card Burning Case. 1968 Supreme Court Review 1, 15, 16, 23, 26, 27. Copyright © 1969 by The University of Chicago. Reprinted with permission.

Anderson, David. Libel and Press Self-Censorship. Published originally in 53 Texas Law Review 422 (1975). Copyright © 1975 by the Texas Law Review Association. Reprinted with permission of the Texas Law Review Association and the author.

Baat-Ada, Judith. Freedom of Speech as Mythology, or Quill Pen and Parchment Thinking in an Electronic Environment. 8 N.Y.U. Review of Law and Social Change 271, 275, 278-279 (1978-1979). Reprinted with permission.

Baker, C. Edwin. Advertising and a Democratic Press. 140 University of Pennsylvania Law Review 2097, 2139, 2178, 2180-2181 (1992). Reprinted with permission of the University of Pennsylvania Law Review, Fred B. Rothman & Company, and the author.

_____. Press Rights and Government Power to Structure the Press. Reprinted from 34 University of Miami Law Review 819, 839-845 (1980), with permission.

_____. Scope of the First Amendment Freedom of Speech. 25 UCLA Law Review 964, 974-978 (1978). Reprinted with permission of Fred B. Rothman Company.

_____. Turner Broadcasting: Content-Based Regulation of Persons and Presses. 1994 Supreme Court Review 57, 61, 66, 72, 85-86, 91. Copyright © 1995 by The University of Chicago. Reprinted with permission.

_____. Unreasoned Reasonableness: Mandatory Parade Permits and Time, Place, and Manner Regulations. Reprinted by special permission of Northwestern University School of Law, Northwestern University Law Review, Volume 78, Issue 5, pp. 937, 1013-1018 (1983).

- Balkin, Media Filters, The V-Chip and The Foundations of Broadcast Regulations, 45 Duke L.J. 1131, 1139, 1142, 1148, 1150, 1157, 1165, 1173 (1996). Copyright © 1996 Duke Law Journal. Reprinted with permission.
- Barnett, Stephen. The Puzzle of Prior Restraint. Copyright © 1977 by the Board of Trustees of the Leland Stanford University. Reprinted with permission of the Stanford Law Review and the Fred B. Rothman Company.
- Bartky, Sandra. "On Psychological Oppression," in *Philosophy and Women* (S. Bishop & M. Weinzwieg eds. 1979). Reprinted with the author's permission.
- Berman, Jerry and Daniel Weitzner. Abundance and User Control: Renewing the Democratic Heart of the First Amendment in the Age of Interactive Media. Reprinted with permission of the Yale Law Journal Company, the authors, and Fred B. Rothman & Company from *The Yale Law Journal*, Vol. 104, pp. 1624-1634.
- Berns, Walter. The First Amendment and the Future of American Democracy (1976). Copyright © 1977 by Basic Books, Inc. Reprinted by permission of HarperCollins Publishers, Inc.
- BeVier, Lillian. An Informed Public, An Informing Press: The Search for a Constitutional Principle. Reprinted from *California Law Review*, Vol. 68, No. 3, pp. 482-517, by permission.
- . Money and Politics: A Perspective on the First Amendment and Campaign Finance Reform. Reprinted from *California Law Review*, Vol. 73, No. 4 (July 1985), pp. 1045-1090, by permission.
- 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 © 1975 by Yale University Press. Reprinted with permission.
- 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.
- . Prior Restraint on Demonstrations. 68 *Michigan Law Review* 1481, 1514 (1970). Reprinted with permission of the Michigan Law Review Association and the author.
- . Toward a Theory of Prior Restraint: The Central Linkage. 66 *Minnesota Law Review* 11, 87-91 (1981). Reprinted with the author's permission.
- Bloustein, Edward. The Origins, Validity, and Interrelationships of the Political Values Served by Freedom of Expression. 33 *Rutgers Law Review* 372, 381 (1981). Reprinted with permission of the Rutgers Law Review and the estate of Edward Bloustein.

- Bollinger, Lee. Freedom of the Press and Public Access: Toward a Theory of Partial Regulation of the Mass Media. 75 Michigan Law Review 1, 26-36 (1976). Reprinted with the author's permission.
- . Images of a Free Press. Copyright © 1991 by The University of Chicago. Reprinted with permission.
- . Imagining a Free Press. 90 Michigan Law Review 1246, 1262-1263 (1992). Reprinted with permission of the Michigan Law Review Association and the author.
- . The *Skokie* Legacy: Reflections on an “Easy Case” and Free Speech Theory. 80 Michigan Law Review 617, 629-631 (1982). Reprinted with the author's permission.
- Bollinger, Lee C. & Geoffrey R. Stone, eds. Eternally Vigilant: Free Speech in the Modern Era. Copyright © 2002 by the University of Chicago. All rights reserved.
- Bowman, Cynthia. Street Harassment and the Informal Ghettoization of Women. Copyright © 1993 by the Harvard Law Review Association. Reprinted with permission of the Harvard Law Review Association and the author.
- 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.
- Diamond, David. *The First Amendment and Public Schools*. Published originally in 59 *Texas Law Review* 477 (1981). Copyright © 1981 by the Texas Law Review Association. Reprinted with permission of the Texas Law Review Association and the author.
- Easterbrook, Frank. *Insider Trading, Secret Agents, Evidentiary Privileges, and the Production of Information*. 1981 *Supreme Court Review* 309, 345-347. Copyright © 1982 by The University of Chicago. Reprinted with permission.
- Eisgruber, Christopher. *Madison's Wager: Religious Liberty in the Constitutional Order*. Reprinted by special permission of Northwestern University School of Law, *Northwestern University Law Review*, Volume 89, Issue 2, pp. 347, 408 (1995).
- . *Political Unity and the Powers of Government*. Originally published in 41 *UCLA Law Review* 1297. Copyright © 1994, The Regents of the University of California. All Rights Reserved.
- Ely, John Hart. *Democracy and Distrust*. Copyright © 1980 by the President and Fellows of Harvard College. Reprinted with permission of Harvard University Press.
- . *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. *Unconstitutional Conditions, State Power, and the Limits of Consent*. Copyright © 1988 by the Harvard Law Review Association. Reprinted with permission of the Harvard Law Review Association and the author.
- . *Was New York Times v. Sullivan Wrong?* 53 *University of Chicago Law Review* 782, 797, 804 (1986). Reprinted with permission.
- Estlund, *Freedom of Expression in the Workplace and The Problem of Discriminatory Harassment*. Published originally in 75 *Texas Law Review* 697 (1997). Copyright © by The Texas Law Review Association. Reprinted by permission.

- Fallon, Richard. Sexual Harassment, Content-Neutrality, and the First Amendment Dog That Didn't Bark. 1994 Supreme Court Review 1, 15-16, 42-44. Copyright © 1995 by The University of Chicago. Reprinted with permission.
- 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.
- Fried, Charles. A New First Amendment Jurisprudence: A Threat to Liberty. 59 University of Chicago Law Review 225, 245-255 (1992). 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.
- Greenawalt, Kent. Free Speech Justifications. This article originally appeared at 89 Columbia Law Review 119 (1989). Reprinted with permission of the Columbia Law Review and the author.
- Greene, Abner. The Political Balance of the Religion Clauses. Reprinted with permission of the Yale Law Journal Company, the author, and Fred B. Rothman & Company from The Yale Law Journal, Vol. 102, p. 1611.
- 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.
- Harper, Michael. The Consumer's Emerging Right to Boycott. Reprinted with permission of the Yale Law Journal Company, the author, and Fred B. Rothman & Company from The Yale Law Journal, Vol. 93, p. 425.
- Henkin, Louis. Foreword: On Drawing Lines. Copyright © 1968 by the Harvard Law Review Association. Reprinted with permission of the Harvard Law Review Association and the author.

- 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.
- Kagan, Elena. *The Changing Faces of First Amendment Neutrality*. 1992 *Supreme Court Review* 29, 31-32, 38-40. Copyright © 1993 by The University of Chicago. Reprinted with permission.
- _____. *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.
- _____. *Meiklejohn and the Barenblatt Opinion*. 27 *University of Chicago Law Review* 315, 325-326 (1960). Reprinted with permission.
- _____. *The Metaphysics of the Law of Obscenity*. 1960 *Supreme Court Review* 1, 15-16. Copyright © 1961 by The University of Chicago. Reprinted with permission.
- _____. *The Negro and the First Amendment* (1965). Reprinted with permission of Betty Kalven.
- _____. *The New York Times Case: A Note on "The Central Meaning of the First Amendment."* 1964 *Supreme Court Review* 191, 208-209. Copyright © 1965 by The University of Chicago. Reprinted with permission.
- _____. *A Worthy Tradition: Freedom of Speech in America* (1988). Copyright © 1988 by The Harry Kalven, Jr. Trust. Reprinted by permission of Harper-Collins Publishers, Inc.
- Krattenmaker, Thomas and L. Scot Powe. *Converging First Amendment Principles for Converging Communications Media*. Reprinted with permission of the Yale Law Journal Company, the authors, and Fred B. Rothman & Company from *The Yale Law Journal*, Vol. 104, pp. 1721-1740.
- Kurland, Philip. *The Religion Clauses and the Burger Court*. 34 *Catholic University Law Review* 1, 13-14 (1984). Reprinted with permission.

- Lawrence, Charles. If He Hollers, Let Him Go: Regulating Racist Speech on Campus. 1990 Duke Law Journal 431, 439-440. Reprinted with the author's permission.
- LeBel, Paul. Reforming the Tort of Defamation: An Accommodation of the Competing Interests Within the Current Constitutional Framework. 66 Nebraska Law Review 249, 293 (1987). Copyright © 1987 by the University of Nebraska. Reprinted with permission.
- Lessig, Lawrence. The Path of Cyberlaw. Reprinted with permission of the Yale Law Journal Company, the author, and Fred B. Rothman & Company from The Yale Law Journal, Vol. 104, pp. 1750-1752.
- Lewis, Anthony. A Preferred Position for Journalism? 7 Hofstra Law Review 595, 616-617 (1979). Reprinted with permission.
- Linde, Hans. "Clear and Present Danger" Reexamined: Dissonance in the *Brandenburg* Concerto. Copyright © 1970 by the Board of Trustees of the Leland Stanford University. Reprinted with permission of the Stanford Law Review and the Fred B. Rothman & Company.
- 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.
- MacKinnon, Catherine. Feminism Unmodified: Discourses on Life and Law. Copyright © 1987 by the President and Fellows of Harvard College. Reprinted with permission of Harvard University Press.
- . Pornography, Civil Rights, and Speech. 20 Harvard Civil Rights-Civil Liberties Law Review 1, 52-54 (1985). Copyright © 1985. Permission granted by the President and Fellows of Harvard College. Harvard Civil Rights-Civil Liberties Law Review.
- Marshall, William. *Village of Schaumburg v. Citizens for a Better Environment, etc.* 13 Loyola of Los Angeles Law Review 953, 960, 973 (1980). Reprinted with the author's permission.
- Matsuda, Mari. Public Response to Racist Speech: Considering the Victim's Story. 87 Michigan Law Review 2320, 2332, 2336-2337, 2357, 2359 (1982). Reprinted with permission of the Michigan Law Review Association and the author.
- McConnell, Michael. Accommodation of Religion. 1985 Supreme Court Review 1, 1-3. Copyright © 1986 by The University of Chicago. Reprinted with permission.
- Meiklejohn, Alexander. The First Amendment is an Absolute. 1961 Supreme Court Review 245, 255-257, 263. Copyright © 1962 by The University of Chicago. Reprinted with permission.
- . Free Speech and Its Relation to Self-Government. Copyright © 1948 Harper & Brothers, renewed © 1976 by Helen E. Meiklejohn. Reprinted with permission of HarperCollins Publishers, Inc.
- Monaghan, Henry. First Amendment "Due Process." Copyright © 1970 by the Harvard Law Review Association. Reprinted with permission of the Harvard Law Review Association and the author.
- 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.
- Note, Anti-Pornography Laws and First Amendment Values. Copyright © 1984 by the Harvard Law Review Association. Reprinted with permission of the Harvard Law Review Association.
- _____. Community Standards, Class Actions, and Obscenity under *Miller v. California*. Copyright © 1975 by the Harvard Law Review Association. Reprinted with permission of the Harvard Law Review Association.
- _____. The Nonpartisan Freedom of Expression of Public Employees. 76 Michigan Law Review 365, 392-393 (1977). Reprinted with permission of the Michigan Law Review Association.
- _____. The Political Boycott: An Unprivileged Form of Expression. 1983 Duke Law Journal 1076. Reprinted with permission.
- O'Neil, Robert. Religious Expression: Speech or Worship — or Both? 54 Missouri Law Review 501, 505-506 (1989). Copyright © 1989 by the Curators of the University of Missouri. Reprinted with permission.
- Post, Robert. The Constitutional Concept of Public Discourse: Outrageous Opinion, Democratic Deliberation and *Hustler Magazine v. Falwell*. Copyright © 1990 by the Harvard Law Review Association. Reprinted with permission of the Harvard Law Review Association and the author.
- _____. Racist Speech, Democracy, and the First Amendment. 32 William & Mary Law Review 267, 312-317 (1991). Reprinted with permission.
- _____. Subsidized Speech. Reprinted by permission of The Yale Law Journal and Fred B. Rothman & Company from The Yale Law Journal, Vol. 106, 151-191.
- Powe, L. Scot. Mass Speech and the Newer First Amendment. 1982 Supreme Court Review 243, 268-269, 282-283. Copyright © 1983 by The University of Chicago. Reprinted with permission.
- _____. "Or of the [Broadcast] Press." Published originally in 55 Texas Law Review 39 (1976). Copyright © 1976 by the Texas Law Review Association. Reprinted with permission of the Texas Law Review Association and the author.
- Powell, John A. As Justice Requires/Permits: The Delimitation of Harmful Speech in a Democratic Society, 16 Law & Inequality 97, 103, 147-149 (1998). Reprinted with permission of the University of Minnesota.
- Redish, Martin. The Content Distinction in First Amendment Analysis. Copyright © 1981 by the Board of Trustees of the Leland Stanford University. Reprinted with permission of the Stanford Law Review, Fred B. Rothman & Company, and the author.
- _____. The First Amendment in the Marketplace: Commercial Speech and the Values of Free Expression. 39 George Washington Law Review 429, 433, 441-444 (1971). Reprinted with the permission of The George Washington Law Review, copyright © 1971.

- . 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.
- Scanlon, Thomas. Freedom of Expression and Categories of Expression. 40 *University of Pittsburgh Law Review* 519, 532-533, 547 (1979). Reprinted with permission of the *University of Pittsburgh Law Review* and the author.
- . A Theory of Freedom of Expression. 1 *Philosophy & Public Affairs* 204, 213-218 (1972). Copyright © 1972 by Princeton University Press. Reprinted by permission of Princeton University Press.
- 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.
- Schwartz, Bernard. Holmes versus Hand: Clear and Present Danger or Advocacy of Unlawful Action? 1994 *Supreme Court Review* 209, 240-241. Copyright © 1995 by The University of Chicago. Reprinted with permission.
- Shiffrin, Stephen. The First Amendment, Democracy, and Romance. Copyright © 1990 by the President and Fellows of Harvard College. Reprinted with permission of Harvard University Press.
- Smolla, Rodney. Let the Author Beware: The Rejuvenation of the American Law of Libel. 132 *University of Pennsylvania Law Review* 1, 4-7, 12, 91-93 (1984). Reprinted with permission of the *University of Pennsylvania Law Review*, Fred B. Rothman & Company, and the author.
- Stewart, Potter. "Or of the Press." Reprinted from 26 *Hastings Law Journal* 631, 633-634 (1975) by permission.
- Stone, Geoffrey. Content Regulation and the First Amendment. 25 *William & Mary Law Review* 189, 217, 222-223, 225-226, 243-244, 280 (1983). Reprinted with permission.
- . 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).
- . *Fora Americana: Speech in Public Places*. 1974 *Supreme Court Review* 233, 237, 238, 251-252. Copyright © 1975 by The University of Chicago. Reprinted with permission.
- . In Opposition to the School Prayer Amendment. 50 *University of Chicago Law Review* 823, 836 (1983). Reprinted with permission.