

THE FIRST AMENDMENT

Cases – Comments – Questions

Fifth Edition



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PREFACE

The First Amendment is an important cultural symbol in American society, but it is also an important part of American constitutional law. Unfortunately, first amendment law is a growth industry. It has outstripped the capacity of constitutional law books to provide materials that are sufficiently comprehensive for a separate first amendment course.

This book is designed for a two or three unit course in the First Amendment. It proceeds on three assumptions:

(1) The body of First Amendment law is sufficiently complicated and interconnected that a variety of organizational patterns can usefully be employed in teaching the course. For that reason we present the materials in a way that will permit instructors to depart from the organization of the casebook with relative ease.

(2) Students benefit from notes and questions that force them to come to grips with the diversity of perspectives arrayed in the rich literature of the First Amendment. In particular we try to expose students to original perspectives or perspectives they might otherwise tend to slide past.

(3) The First Amendment can be characterized as embodying a variety of competing values. In our view, those values are best studied in notes and questions as they emerge from concrete cases rather than from an abstract characterization and classification imposed on the student at the outset of study.

No Supreme Court term passes without further opinions addressing the First Amendment. Hence, we will continue to provide annual supplements for recent developments, including one for the 2010–11 term.

Case and statute citations, as well as footnotes, of the Court and commentators have been omitted without so specifying; other omissions are indicated by asterisks or by brackets. Numbered footnotes are from the original materials; lettered footnotes are ours.

In preparing this casebook we have drawn freely from the first amendment materials in the casebooks we have co-authored and continue to co-author with our friends Yale Kamisar and Richard Fallon. We owe them many thanks. We are grateful for insightful feedback from faculty and students, particularly Robert Cole, Owen Fiss and Abner Greene. Finally, thanks to Jan Rose and Catharine M. Schultz for secretarial and administrative assistance far beyond the call of duty.

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