

THE FIRST AMENDMENT

the press; or the right of the people peaceably to assemble, and to petition the Government for a redress

FREEDOM OF

ate and district wherein committed, which district

well regulated Militia, being necessary to the

shall have been previously ascertained by law, and

ASSEMBLY AND PETITION

Article III

nesses in his favor, and to have the Assistance of

Its Constitutional History and the Contemporary Debate

Article IV

he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Article V

o person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or himb; nor shall be compelled in any Criminal Case to be a witness against himself, nor be deprived of life, liberty,

of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Article VIII

excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Article IX

he enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Article X

he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.



Published 2010 by Prometheus Books

Freedom of Assembly and Petition (The First Amendment): Its Constitutional History and the Contemporary Debate. Copyright © 2010 by Margaret M. Russell. All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, digital, electronic, mechanical, photocopying, recording, or otherwise, or conveyed via the Internet or a Web site without prior written permission of the publisher, except in the case of brief quotations embodied in critical articles and reviews.

Inquiries should be addressed to
Prometheus Books
59 John Glenn Drive
Amherst, New York 14228–2119
VOICE: 716–691–0133
FAX: 716–691–0137
WWW.PROMETHEUSBOOKS.COM

14 13 12 11 10 5 4 3 2 1

Library of Congress Cataloging-in-Publication Data

Russell, Margaret M.

The First Amendment, freedom of assembly and petition: its constitutional history and the contemporary debate / edited by Margaret M. Russell.

p. cm. — (Bill of Rights series)

Includes bibliographical references.

ISBN 978-1-59102-777-5 (pbk.: alk. paper)

- 1. Assembly, Right of—United States. 2. Assembly, Right of—United States—History.
- 3. Petition, Right of—United States. 4. Petition, Right of—United States—History.
- I. Russell, Margaret M.

KF4778.F743 2010 342.7308'54—dc22

2009039249

Printed in the United States of America

Portions of "Petitions" and "Women and Freedom of Expression before the Twentieth Century" originally appeared in *Rampant Women: Suffragists and the Right to Assembly* by Linda J. Lumsden. Copyright © 1997 by the University of Tennessee Press.

Used with permission.

TITLES AVAILABLE IN THE BILL OF RIGHTS SERIES

THE FIRST AMENDMENT

The Establishment of Religion Clause: Its Constitutional History and the Contemporary Debate

Edited by Alan Brownstein

Freedom of the Press: Its Constitutional History and the Contemporary Debate Edited by Garrett Epps

The Free Exercise of Religion Clause: Its Constitutional History and the Contemporary Debate

Edited by Thomas C. Berg

Freedom of Speech: Its Constitutional History and the Contemporary Debate Edited by Vikram David Amar

Freedom of Assembly and Petition: Its Constitutional History and the Contemporary Debate Edited by Margaret M. Russell

THE FOURTH AMENDMENT

Searches and Seizures
Edited by Cynthia Lee

BILL OF RIGHTS SERIES

Series Editor:

David B. Oppenheimer, Clinical Professor of Law and Director of Professional Skills University of California, Berkeley, School of Law

Advisory Committee

Erwin Chemerinsky

Dean and Professor of Law, University of California, Irvine, School of Law

Jesse Choper

Earl Warren Professor of Public Law, University of California, Berkeley, School of Law (Boalt Hall)

Sheila Rose Foster

Associate Dean for Academic Affairs and Albert A. Walsh Professor of Law, Fordham Law School

Cheryl Harris

Professor of Law, University of California, Los Angeles, School of Law

Marjorie Heins

Founder and Director, Free Expression Policy Project (FEPP)

Kevin R. Johnson

Dean and Mabie-Apallas Professor of Public Interest Law and Chicana/o Studies, University of California, Davis, School of Law (King Hall)

Carrie J. Menkel-Meadow

Professor of Law; A. B. Chettle, Jr., Chair in Dispute Resolution and Civil Procedure, Georgetown University Law Center

Robert C. Post

David Boies Professor of Law, Yale Law School

john powell

Professor of Law, Gregory H. Williams Chair in Civil Rights and Civil Liberties; Executive Director, Kirwan Institute for the Study of Race and Ethnicity, Ohio State University, Michael E. Moritz College of Law

Deborah L. Rhode

Ernest W. McFarland Professor of Law, Stanford Law School

Stephanie M. Wildman

Professor of Law and Director for the Center for Social Justice & Public Service, Santa Clara University School of Law

Eric Ken Yamamoto

Professor of Law, University of Hawaii, William S. Richardson School of Law

THE FIRST AMENDMENT FREEDOM OF ASSEMBLY AND PETITION

CONTENTS

Acknowledgments	15
Series Editor's Preface David B. Oppenheimer	17
Editor's Introduction Margaret M. Russell	21
PART I. "THE RIGHT OF THE PEOPLE": ASSEMBLY AND PETITION AS A UNITARY CLAUSE	25
Freedom's Associations Jason Mazzone	
A Right of Access to Court under the Petition Clause of the First Amendment: Defining the Right Carol Rice Andrews	32

The Bill of Rights as a Constitution Akhil Reed Amar	
PART II. " TO PETITION THE GOVERNMENT FOR A REDRESS OF GRIEVANCES"	43
CHAPTER 1. ORIGINS AND EARLY HISTORY	
The Vestigial Constitution: The History and Significance of the Right to Petition Gregory A. Mark	47
"Petitions" from Rampant Women: Suffragists and the Right to Assembly Linda J. Lumsden	60
A Short History of the Right to Petition Government for the Redress of Grievances Stephen A. Higginson	66
Initiative Petition Reforms and the First Amendment Emily Calhoun	69
John Quincy Adams, Slavery, and the Disappearance of the Right to Petition David C. Frederick	72
CHAPTER 2. SCOPE AND MEANING	
The First Amendment Right to Petition Government for a Redress of Grievances: Cut from a Different Cloth Julie M. Spanbauer	85
A Right of Access to Court under the Petition Clause of the First Amendment: Defining the Right Carol Rice Andrews	94

Michael 7. Wishnie

11

CONTENTS

12 CONTENTS

PART III. " THE RIGHT OF THE PEOPLE PEACEABLY TO ASSEMBLE"	185
CHAPTER 1. ORIGINS AND EARLY HISTORY	
The Intent of the Framers M. Glenn Abernathy	189
Women and Freedom of Expression before the Twentieth Century Linda J. Lumsden	195
Freedom's Associations Jason Mazzone	200
The Neglected Right of Assembly Tabatha Abu El-Haj	205
CHAPTER 2. ASSEMBLY AND ASSOCIATION	
Hanging with the Wrong Crowd: Of Gangs, Terrorists, and the Right of Association David Cole	207
Freedom of Association: An Introductory Essay Amy Gutmann	217
CHAPTER 3. CONTEMPORARY DEBATE	
Hanging with the Wrong Crowd: Of Gangs, Terrorists, and the Right of Association David Cole	225
Speaking in the First Person Plural: Expressive Associations and the First Amendment Daniel A. Farber	234

		CONTENTS	13
	Association and Assimilation Deborah L. Rhode	•	241
	The Expressive Interest of Associations Erwin Chemerinsky and Catherine Fisk		250
	The Neglected Right of Assembly Tabatha Abu El-Haj		255
	APPENDIXES		
	Constitution of the United States of America		261
•	The Amendments to the Constitution		277

TITLES AVAILABLE IN THE BILL OF RIGHTS SERIES

THE FIRST AMENDMENT

The Establishment of Religion Clause: Its Constitutional History and the Contemporary Debate

Edited by Alan Brownstein

Freedom of the Press: Its Constitutional History and the Contemporary Debate Edited by Garrett Epps

The Free Exercise of Religion Clause: Its Constitutional History.

and the Contemporary Debate
Edited by Thomas C. Berg

Freedom of Speech: Its Constitutional History and Treedom of Speech: Its Co

Freedom of Assembly and Petition: Its Constitutional History and the Contemporary Debate Edited by Margaret M. Russell

THE FOURTH AMENDMENT

Searches and Seizures
Edited by Cynthia Lee

BILL OF RIGHTS SERIES

Series Editor:

David B. Oppenheimer, Clinical Professor of Law and Director of Professional Skills University of California, Berkeley, School of Law

Advisory Committee

Erwin Chemerinsky

Dean and Professor of Law, University of California, Irvine, School of Law

Jesse Choper

Earl Warren Professor of Public Law, University of California, Berkeley, School of Law (Boalt Hall)

Sheila Rose Foster

Associate Dean for Academic Affairs and Albert A. Walsh Professor of Law, Fordham Law School

Cheryl Harris

Professor of Law, University of California, Los Angeles, School of Law

Marjorie Heins

Founder and Director, Free Expression Policy Project (FEPP)

Kevin R. Johnson

Dean and Mabie-Apallas Professor of Public Interest Law and Chicana/o Studies, University of California, Davis, School of Law (King Hall)

Carrie J. Menkel-Meadow

Professor of Law; A. B. Chettle, Jr., Chair in Dispute Resolution and Civil Procedure, Georgetown University Law Center

Robert C. Post

David Boies Professor of Law, Yale Law School

john powell

Professor of Law, Gregory H. Williams Chair in Civil Rights and Civil Liberties; Executive Director, Kirwan Institute for the Study of Race and Ethnicity, Ohio State University, Michael E. Moritz College of Law

Deborah L. Rhode

Ernest W. McFarland Professor of Law, Stanford Law School

Stephanie M. Wildman

Professor of Law and Director for the Center for Social Justice & Public Service, Santa Clara University School of Law

Eric Ken Yamamoto

Professor of Law, University of Hawaii, William S. Richardson School of Law

THE FIRST AMENDMENT FREEDOM OF ASSEMBLY AND PETITION



THE FIRST AMENDMENT FREEDOM OF ASSEMBLY AND PETITION

Its Constitutional History and the Contemporary Debate

EDITED BY MARGARET M. RUSSELL



Published 2010 by Prometheus Books

Freedom of Assembly and Petition (The First Amendment): Its Constitutional History and the Contemporary Debate. Copyright © 2010 by Margaret M. Russell. All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, digital, electronic, mechanical, photocopying, recording, or otherwise, or conveyed via the Internet or a Web site without prior written permission of the publisher, except in the case of brief quotations embodied in critical articles and reviews.

Inquiries should be addressed to
Prometheus Books
59 John Glenn Drive
Amherst, New York 14228–2119
VOICE: 716–691–0133
FAX: 716–691–0137
WWW.PROMETHEUSBOOKS.COM

14 13 12 11 10 5 4 3 2 1

Library of Congress Cataloging-in-Publication Data

Russell, Margaret M.

The First Amendment, freedom of assembly and petition: its constitutional history and the contemporary debate / edited by Margaret M. Russell.

p. cm. — (Bill of Rights series)

Includes bibliographical references.

ISBN 978-1-59102-777-5 (pbk.: alk. paper)

- 1. Assembly, Right of—United States. 2. Assembly, Right of—United States—History.
- 3. Petition, Right of—United States. 4. Petition, Right of—United States—History.
- I. Russell, Margaret M.

KF4778.F743 2010 342.7308'54—dc22

2009039249

Printed in the United States of America

Portions of "Petitions" and "Women and Freedom of Expression before the Twentieth Century" originally appeared in *Rampant Women: Suffragists and the Right to Assembly* by Linda J. Lumsden. Copyright © 1997 by the University of Tennessee Press.

Used with permission.

To my parents and my children

此为试读,需要完整PDF请访问: www.ertongbook.com