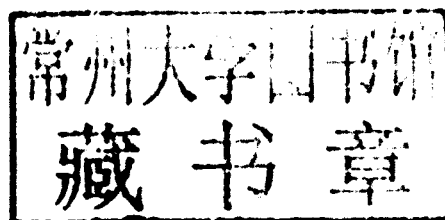

THE FIRST AMENDMENT AND RELATED STATUTES

PROBLEMS, CASES AND
POLICY ARGUMENTS

FOURTH EDITION



by

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*To my parents, Anne and Vladimir,
who taught me by their example
about the importance of freedom—and of courage;
and to Leslie, Benjamin, and Samuel.*

*

INTRODUCTION—UNUSUAL FEATURES OF THIS TEXT-BOOK

This textbook is structured differently from traditional law school casebooks in five important ways:

1. *The Problem Method.* Rather than using the traditional case method, this book is focused around problems.

The best way to understand the principles that a case sets forth is by applying them to concrete situations. This is what you'll do in real life, on the bar exam, and probably on the exam for this class. Thus, you should read the problem first (this is why the problems usually precede the cases in the casebook), read the cases with an eye towards solving the problem, and then reread the problem. After you get through the doctrinal analysis of the problem, you might ask whether the result makes policy sense.

2. *Summary of the Law.* To make it easier to learn the basic rules, this book includes a *rough summary* of the substantive law. This of course is a *supplement* to the cases and the class discussion, not a substitute. (Among other things, to properly understand what the tests actually mean, you have to know how they've been applied by the cases.) To make it easier to absorb the structure of the rules, the summary is written as an outline rather than as traditional prose.

3. *The Pervasive Method.* While some problems only ask you to apply what you've learned in the particular unit for which they're assigned, other problems require you to think back to other units you've studied throughout the semester. This, too, makes the problems more like the exam, like the bar, and like real life.

4. *Explicit Focus on the Structure of Policy Arguments.* This book aims to describe in detail the various kinds of free speech policy arguments and the common counterarguments, more explicitly than they are usually explained in most casebooks and classes. These explanations aren't meant to persuade you which arguments are right and which are wrong; rather, they're meant to illustrate the rhetoric of First Amendment law, rhetoric that you can use in your client's interest.

Each policy section gives the basic structure of an argument and of the standard counterarguments and counter-counterarguments. It also gives examples from various sources. Each example could work for you in two ways. First, by showing you concrete instances in which the argument has been given, it can help you make similar arguments of your own. Second, it may also help you make a counterargument to the claim that the example illustrates, by helping you show the dangers of this sort of claim.

Say, for instance, that one of the examples of a "Constitutional Tension" argument (an argument that speech restrictions may be justified by some other constitutional value) shows this sort of argument being used to

justify censoring antiwar speech, on the theory that such censorship is authorized by Congress's constitutionally established war power. You can then respond to other kinds of Constitutional Tension arguments by saying "Oh, that argument is a Constitutional Tension argument, and it's dangerous because it can equally well be used—and has in fact been used—to suppress antiwar speech."

The policy sections intentionally include arguments that apply to various substantive areas of First Amendment law; thus, for instance, the No-Value or Low-Value Speech section gives examples from obscenity, libel, commercial speech, and other areas. This is done to show how arguments made in one context can be adapted to other contexts, and how accepting an argument in one sort of case may have implications for other cases.

Please read carefully through the policy sections, and consider how you can adapt the arguments given there to the particular problems that you're assigned.

5. A Bit More History. Though this book primarily focuses on the law as it is (or as it could have been), it also includes more historical materials than other books do, in places where those materials remain relevant to modern debates. Thus, for example, it includes a case applying the Sedition Act of 1798, and discusses Abraham Lincoln's defense of speech restrictions during the Civil War alongside the Court's defense of speech restrictions during World War I. Also, quite a few of the policy argument examples are drawn from late 1700s and 1800s cases and commentators, including James Madison, Joseph Story, John Stuart Mill, and others. This should help avoid the "1919 effect," in which many students of free speech implicitly (but erroneously) learn that free speech discourse burst full-grown from the heads of Holmes and Brandeis in 1919.

A WORD ABOUT EDITED CASES

Until I started writing this casebook, I didn't fully appreciate just how drastically many cases needed to be edited in order to fit into a casebook. This isn't just a question of casebook size, but also of the amount of attentive reading that students are likely to do. My goal has been to keep all cases at 10 pages or fewer, and I've generally succeeded; but this means that, just to give one example, *Texas Monthly v. Bullock* had to be edited down from 14,750 words to under 2,750.

Some of this editing can be done by eliminating citations, discussions of issues that are unrelated to why the case is included, less significant facts and procedural details, and tangential footnotes. But often the only way to suitably trim the case is by excluding some substantive arguments, both from the majority opinion and from the concurrences and dissents.

When I've had to do this, I've generally tried to start by trimming discussions of some of the precedents on which the case relies, but which aren't included in the readings. These discussions may have been quite important to the Justices, and may still be important to lawyers who practice in the field, but they tend to be (and I emphasize that this is only a tendency) less significant to understanding the core of the Court's holding

or reasoning. I've also, when necessary, edited out some of the repetition that the Justices often included for rhetorical effect. Finally, I have sometimes edited out the arguments that seem the most tangential, that seem related to debates that raged at the time but that haven't remained important, or that were rejected in later cases.

I generally mark all omissions with ellipses ("..."), except for omissions of footnotes and citations; I mark changes or additions with brackets ("[" and "]"); I mark moved text with braces ("{" and "}"). I have also felt free to delete and insert paragraph breaks to make the material more readable. When a case quotes another case and adopts the other case's reasoning, I often omit the citation to that other case; such citations are often distracting, and are not really important when the citing case is adopting the quoted reasoning as its own. I also changed "Mr. Justice" in pre-1981 opinions to "Justice," to make the references consistent.

The risk, of course, is that the editing process may weaken the persuasive force of the opinions, and may thus be unfair to the opinions' authors and supporters. I have tried hard to avoid this, but I am sure that I've at times failed, especially since the judgment about which arguments are "tangential" and even what is "repetition" are so subjective. I apologize in advance for that, and hope that readers find the edits to be generally fair despite my inevitable lapses.

EPIGRAPHS

Some chapters begin with epigraphs, generally excerpts from poems or other writings that I think say interesting things (though not always things with which I fully agree) about law, speech, or something else. They are sometimes specifically focused on the materials in the chapter, and sometimes just provide a possibly intriguing or amusing perspective on the class—or on law—generally. I'm always looking for good new epigraphs; please e-mail me suggestions at volokh@law.ucla.edu.

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- Free speech generally: *Cheap Speech and What It Will Do*, 104 Yale L.J. 1805 (1995), reprinted in *First Amendment Law Handbook*, 1996-97, at 53 (Swanson ed.), and 1 Comm. Rev. 261 (1996).
- Free speech generally: *How the Justices Voted in Free Speech Cases, 1994 to 2000*, 48 UCLA L. Rev. 1191 (2001).
- Free speech generally: *Pragmatism vs. Ideology in Free Speech Cases*, 99 Nw. U. L. Rev. 33 (2004).
- II.A.3.d, II.A.3.e, II.B.4.d, II.E.3.e: *The Trouble with "Public Discourse" as a Limitation on Free Speech Rights*, 96 Va. L. Rev. (forthcoming 2011).
- II.A.3.d: *In Defense of the Marketplace of Ideas / Search for Truth as a Theory of Free Speech Protection*, 96 Va. L. Rev. (forthcoming 2011).
- II.A.3.i: *Freedom of Speech and the Constitutional Tension Method*, 3 U. Chi. Roundtable 223 (1996).
- II.B: *Amicus Curiae Brief: Boundaries of the First Amendment's "False Statements of Fact" Exception*, 6 Stan. J. Civ. Rts. & Civ. Libs. 343 (2010), reprinting an amicus brief filed in *United States v. Strandlof* (D. Colo. 2010).
- II.B: *Tort Liability and the Original Meaning of the Freedom of Speech, Press, and Petition*, 96 Iowa L. Rev. 249 (2010).
- II.B.5.c: *Thomas Cooper, Early American Public Intellectual*, 4 NYU J. of Law & Liberty 372 (2009).
- II.B.5.c: *Elizabeth Ryland Priestley, Early American Author on Free Speech*, 4 NYU J. of Law & Liberty 382 (2009).
- II.C: *Freedom of Speech, Shielding Children, and Transcending Balancing*, 1997 Sup. Ct. Rev. 141.
- II.C: *Brief Amici Curiae of First Amendment Scholars in Schwarzenegger v. Entertainment Merchants Ass'n* (U.S. 2010) (with Don Falk and Rita Lomio).
- II.D.2: *Speech as Conduct: Generally Applicable Laws, Illegal Courses of Conduct, "Situation-Altering Utterances," and the Uncharted Zones*, 90 Cornell L. Rev. 1277 (2005).

- II.E: *Petition for Further Review and Appellant's Brief in State v. Drahot*, 280 Neb. 267 (2010)
- II.E.3.e: *Brief Amicus Curiae of Various Law Professors and the Foundation for Individual Rights in Education, Snyder v. Phelps*, 131 S. Ct. ___ (2011).
- II.E.3.e: *Freedom of Speech and the Intentional Infliction of Emotional Distress Tort*, 2010 Cardozo L. Rev. de•novo 300.
- II.E.3.g: *The Mechanisms of the Slippery Slope*, 116 Harv. L. Rev. 1026 (2003) (discussing free speech alongside other matters).
- II.E.4: *Symbolic Expression and the Original Meaning of the First Amendment*, 97 Georgetown L.J. 1057 (2009).
- II.G: *Freedom of Speech and Independent Judgment Review in Copyright Cases*, 107 Yale L.J. 2431 (1998) (with Brett McDonnell).
- II.G: *Freedom of Speech and Intellectual Property: Some Thoughts After Eldred, 44 Liquormart, and Bartnicki*, 40 U. Hous. L. Rev. 697 (2003).
- II.G: *Freedom of Speech and the Right of Publicity*, 40 U. Hous. L. Rev. 903 (2003).
- II.G: *Amicus Brief of Michael Crichton[, Larry David, Jeremiah Healy, Elmore Leonard, Harry Shearer, Ron Shelton, Scott Turow, Paul Weitz, and the Authors Guild, Inc.]*, 11 UCLA Enter. L. Rev. 1 (2004), reprinting an amicus brief filed in *McFarlane v. Twist* (U.S. 2003).
- II.H.2.e: *Speech Restrictions That Don't Much Affect the Autonomy of Speakers*, 28 Const. Comm. (forthcoming 2011).
- II.I: *Freedom of Speech, Permissible Tailoring and Transcending Strict Scrutiny*, 144 U. Pa. L. Rev. 2417 (1996).
- II.J.c: *A Penumbra Too Far*, 106 Harv. L. Rev. 1639 (1993) (with Judge Alex Kozinski).
- II.K.1: *Crime-Facilitating Speech*, 57 Stan. L. Rev. 1095 (2005).
- II.K.3: *Freedom of Speech and Information Privacy: The Troubling Implications of a Right to Stop People from Speaking About You*, 52 Stan. L. Rev. 1049 (2000), excerpted in Daniel J. Solove & Marc Rotenberg, *Information Privacy Law* (2003) and Richard C. Turkington & Anita L. Allen, *Privacy Law* 418-420 (2nd ed. 2002).
- II.K.4: *Freedom of Speech and Appellate Review in Workplace Harassment Cases*, 90 Nw. U. L. Rev. 1009 (1996).
- II.K.4: *Freedom of Speech and Workplace Harassment*, 39 UCLA L. Rev. 1791 (1992), cited in *Avis Rent A Car System, Inc. v. Aguilar*, 529 U.S. 1138 (2000) (Thomas, J., concurring in the judgment), and excerpted in Judi Greenberg, Dorothy Roberts & Martha Minow, *Women and the Law Casebook* 287-95 (2nd ed. 1998), and *Women and Work* 33-45 (Greenberg, Roberts & Frug eds. Supp. 1997).
- II.K.4: *Freedom of Speech, Cyberspace, Harassment Law, and the Clin-*

- ton Administration*, 63 L. & Contemp. Prob. 299 (2000).
- II.K.4: *How Harassment Law Restricts Free Speech*, 47 Rutgers L.J. 561 (1995).
 - II.K.4: *Thinking Ahead About Freedom of Speech and “Hostile Work Environment” Harassment*, 17 Berk. J. Emp. & Labor L. 305 (1996).
 - II.K.4: *What Speech Does “Hostile Work Environment” Harassment Law Restrict?*, 85 Geo. L.J. 627 (1997), excerpted in *Ethical Theory and Business* 369-74 (Tom L. Beauchamp & Norman E. Bowie eds. 2003).
 - II.K.4: *Brief Amicus Curiae of Law Professors in Hampton v. National Research Group* (Cal. Ct. App. 1996).
 - II.K.5: *Parent-Child Speech and Child Custody Speech Restrictions*, 81 N.Y.U. L. Rev. 631 (2006).
 - IV.C.2.f, II.D.1: *Crime Severity and Constitutional Line-Drawing*, 90 Va. L. Rev. 1957 (2004) (discussing free speech alongside other matters).
 - IV.D: *Freedom of Speech and Speech About Political Candidates*, 24 Harv. J.L. & Pub. Pol. 47 (2000).
 - IV.D: *Why Buckley v. Valeo Is Basically Right*, 34 Ariz. St. L.J. 1095 (2003).
 - IV.D: *The Original Meaning of the “Freedom of the Press”: Freedom for the Press as an Industry, or the Press as a Technology?* (forthcoming 2011).
 - IV.E.4: *Brief Amicus Curiae of the American Legislative Exchange Council in Davenport v. Washington Education Association*, 551 U.S. 177 (2007) (with Don Falk).
 - V.E.1.m: *Freedom of Expressive Association and Government Subsidies*, 58 Stan. L. Rev. 1919 (2006), cited in *Christian Legal Society v. Martinez*, 130 S. Ct. 2971 (2010) (majority and concurrence).
 - VI.B, II.G: *Freedom of Speech and Injunctions in Intellectual Property Cases*, 48 Duke L.J. 147 (1998) (with Mark Lemley).
 - VII, II.E, II.B.7, II.K.4.c: *Freedom of Speech in Cyberspace from the Listener’s Perspective*, 1996 U. Chi. Legal Forum 377.
 - VII: *Deterring Speech: When Is It “McCarthyism”? When Is It Proper?*, 92 Calif. L. Rev. 1413 (2005).
 - XII.A: *Equal Treatment Is Not Establishment*, 13 Notre Dame J. Law, Ethics & Pub. Pol. 341 (1999).
 - XIII.A: *A Common-Law Model for Religious Exemptions*, 46 UCLA L. Rev. 1465 (1999).
 - XIII.A: *Intermediate Questions of Religious Exemptions—A Research Agenda with Test Suites*, 21 Cardozo L. Rev. 595 (1999).
 - XIV, II.K.4: *Freedom of Speech, Religious Harassment Law, and Religious Accommodation Law*, 33 Loy. U. Chi. L.J. 57 (2001).

TABLE OF SOURCES

Cases

- 44 Liquormart, Inc. v. R.I., 517 U.S. 484 (1996), 244
- Abington School Dist. v. Schempp, 374 U.S. 203 (1963), 203
- Aboud v. Detroit Bd. of Ed., 431 U.S. 209 (1977), 532
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- Arkansas Ed. Television Comm'n v. Forbes, 523 U.S. 666 (1998), 603, 639, 667
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- Ashcroft v. Free Speech Coalition, 535 U.S. 234 (2002), 149
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- Boy Scouts of Am. v. Dale, 530 U.S. 640 (2000), 362, 377
- Brandenburg v. Ohio, 395 U.S. 444 (1969), 5
- Brandreth v. Lance, 8 Paige Ch. 24 (N.Y. 1839), 686
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- Buckley v. American Constitutional Law Foundation, 525 U.S. 182 (1999), 389
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- Capitol Square Review & Advisory Bd. v. Pinette, 515 U.S. 753 (1995), 850
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- Castorina v. Madison County School Bd., 246 F.3d 536 (6th Cir. 2001), 583
- CBS v. DNC, 412 U.S. 94 (1973), 714

- Center for Democracy & Tech. v. Pappert, 337 F. Supp. 2d 606 (E.D. Pa. 2004), 690
- Central Hudson Gas & Elec. v. Public Serv. Comm'n, 447 U.S. 557 (1980), 233
- Chaplinsky v. N.H., 315 U.S. 568 (1942), 174, 996
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- Christian Legal Society v. Martinez, 130 S. Ct. 2971 (2010), 643
- Church of American Knights of the KKK v. Kerik, 356 F.3d 197 (2d Cir. 2004), 416
- Church of the Lukumi Babalu Aye, Inc. v. Hialeah, 508 U.S. 520 (1993), 735
- Cincinnati v. Discovery Network, 507 U.S. 410 (1993), 231, 339
- Citizens Against Rent Control v. City of Berkeley, 454 U.S. 290 (1981), 389
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- Clipper Express v. Rocky Mountain Motor Tariff Bureau, Inc., 690 F.2d 1240 (9th Cir. 1982), 58
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- Cohen v. Cowles Media Co., 501 U.S. 663 (1991), 561
- Comedy III Prods. v. Gary Saderup, Inc., 21 P.3d 797 (Cal. 2001), 222
- Commack Self-Service Kosher Meats, Inc. v. Rubin, 106 F. Supp. 2d 445 (E.D.N.Y. 2000), 902
- Committee for Public Ed. & Religious Liberty v. Nyquist, 413 U.S. 756 (1973), 912, 926
- Commonwealth v. Tate, 432 A.2d 1382 (Pa. 1981), 715
- Communist Party v. Subversive Activities Control Board, 367 U.S. 1 (1961), 201
- Connick v. Myers, 461 U.S. 138 (1983), 567
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- Corporation of the Presiding Bishop v. Amos, 483 U.S. 327 (1987), 773
- County of Allegheny v. ACLU, 492 U.S. 573 (1989), 843, 844, 845, 846, 1045
- Cox v. Louisiana, 379 U.S. 536 (1965), 136
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- Crawford v. Washington, 541 U.S. 36 (2004), 827
- Cubby v. Compuserve, Inc., 776 F. Supp. 135 (S.D.N.Y. 1991), 109
- Cutter v. Wilkinson, 544 U.S. 709 (2005), 784
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- Dennis v. U.S., 341 U.S. 494 (1951), 44
- Diaz v. Oakland Tribune, 188 Cal. Rptr. 762 (Ct. App. 1983), 312
- Doe v. Reed, 130 S. Ct. 2811 (2010), 428, 440
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- Ehrlich v. Culver City, 12 Cal. 4th 854 (1996), 532
- Elane Photography, LLC v. Willock, No. CV-2008-06632 (N.M. Dist. Ct. Dec. 11, 2009), 522
- Elk Grove Unified School Dist. v. Newdow, 542 U.S. 1 (2004), 849, 891
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