

F.O.R.C.E. STUDY GUIDE - FREEDOM OF SPEECH

Content-based Questions

1. What protections did individuals have under the first amendment's free speech clause?
2. Which statement did the founders think was the lesser of two evils?
 - a. Assigning to the government the job of banning dangerous or indecent expressions...
 - or
 - b. Letting citizens say or print whatever they wanted, even if it was indecent, or potentially dangerous
3. **True or False** (and explain why): The First Amendment is basically an outgrowth that the majority should get to decide how things should go. The underlying assumption is that the majority is - by definition - going to make the best choice for the whole.
4. To the framers of the First Amendment, "better ideas" would always rise to the top, if vigorous debate and challenge were allowed. Do you think that is still true today?
5. Is it legal for the government to arrest people who are peacefully assembling (e.g using their bodies, their signs, and voices to support something) if it is an idea that would be BAD for society? What if they are protesting to object to something that is GOOD for society?
6. What does content neutrality mean? What is the difference between a content-based law/regulation vs. a content neutral law?
7. Hate speech - is it legally protected? What's the difference, if any, legally, between hate speech and a hate crime? Provide examples.
8. What is it in the First Amendment that supports children in schools refusing to salute the flag and recite the Pledge of Allegiance? Or athletes taking a knee and refusing to sing the National Anthem?

Engaging the Material

1. Think about the notion of “the marketplace of ideas”, as the Founders envisioned it, and their belief that the best and truest ideas, if tossed into the mix of all ideas, would naturally emerge eventually as the best and truest. The notion has held a lot of sway for many years. Do you think it is applicable in the age of social media and information or new “silos”?
2. Give several examples of non-verbal (other than language) expressions, objects or behaviors that might be called “symbolic speech”. The examples need to be/have the intent to convey a message.
3. What do you think about money you or I give to campaigns as “free speech”? What do you think about money from corporations donated to campaigns, without identifying the individuals, as free speech?
4. Does the government have to allow groups that are “obviously” anti-American in principle (e.g the Ku Klux Klan or the White Supremacists) to march, make demonstrations, publish posters, buy ads, etc? Why or why not?
5. Can a community allow a demonstration in support of full rights for LGBTQ+ individuals even if they lack a majority vote from their city council? If allowed, what other types of demonstrations might the city council be required by law to allow?
6. Are we protected from people stating and publishing lies that are literally hurtful or even deadly?
 - a. What about sources that have downplayed COVID-19 (e.g the virus wasn't dangerous, would be over in a few weeks, etc.) even in the face of scientific evidence to the contrary?
 - b. What about deliberately untrue “news” on other topics?
 - c. How would you personally decide what is “dangerous”?

Content-based Answer Guide

1. Ability to form opinions, exchange opinions, and the ability to try to persuade others of your opinions; freedom from government censorship
2. B: Letting citizens say or print whatever they wanted, even if it was indecent, or potentially dangerous
3. False; the First Amendment allowed for individuals to form different opinions and be protected from those who may disagree with them, even if the opinions go against the majority.
4. Opinion-based; answers will vary.
5. The government is prohibited from arresting people who are peacefully assembling an idea that is BAD for the society, or protesting to object to an idea that is GOOD for the society.
6. Content neutrality → The government can't support some ideas and suppress others- it can't pick and choose ideas.
A content-based law/regulation discriminates against speech (or symbolic speech) based on the substance of what it communicates- the idea being expressed. In contrast, a content neutral law/regulation applies to expression without regard to its substance.
7. Hate speech is legally protected. The difference between hate speech and hate crime, legally, is that hate crime is NOT protected. Examples can vary.
8. Under the First Amendment, the government does not have the power to compel speech. Thus students and/or athletes cannot be forced to stand and recite the pledge or the National Anthem due to the freedom of speech clause.