Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ HW: 1st Amendment

Due: Friday 11/30/12

**Constitutional Rights**

The Constitution guarantees human rights, or fundamental freedoms, but ultimately it is the responsibility of United States citizens to ensure the strength and endurance of these rights. If citizens do not meet their responsibilities, the guarantees become meaningless, and society suffers.

The Bill of Rights, composed of the first 10 amendments, prohibits the abuse of power by the national government. The Fourteenth Amendment, ratified in 1868, prohibits the states from:

• making or enforcing laws that “abridge the privileges and immunities of citizens . . .”

• depriving “any person of life, liberty, or property without due process of law . . .”

Through a process called incorporation, the Supreme Court has ruled that the Fourteenth

Amendment applies the guarantees in the Bill of Rights to state and local governments. In effect, this means that through the process of nationalization, individuals who believe a state or local government has denied them basic rights can sue in federal courts.

**Freedom of Religion**

The establishment clause of the First Amendment states that “Congress shall make no law respecting an establishment of religion.” The free exercise clause prohibits the government from unduly interfering with religious practices. The interpretation of these clauses has led to controversial Supreme Court rulings, many of them related to education.With respect to the establishment clause, the Court has:

• developed a three-part test to decide if states can give aid to parochial schools, schools operated by a church or religious group. To be constitutional, the aid must: (1) have a clear . . . nonreligious purpose; (2) neither advance nor inhibit religion; and (3) avoid “excessive government entanglement with religion”;

• found that public schools may grant students release time to attend religious instruction

carried on in private facilities but not in public facilities;

• banned various forms of religious observance in public schools when they are officially sponsored.

However, it has found that student-initiated and led religious clubs may use school facilities. The

Equal Access Act ensured that such clubs should be just as eligible to use school facilities as other student organizations. It has also ruled that the constitutional ban on school prayer does not

apply to government meetings. The Supreme Court has interpreted the free exercise clause to mean that freedom of religion does not protect all behavior, particularly when religious practices conflict with criminal laws. In one notable instance the Court reversed itself. A 1940 decision

found that students could be required to salute the flag, even if it violated their religious beliefs. In 1943 the Court ruled that such laws were an unconstitutional interference with the free exercise of religion.

**Freedom of the Press**

The Supreme Court has identified two categories of speech that are protected by the First Amendment:

• **Pure speech** Verbal expression of thoughts and opinions before an audience that has

chosen to listen.

• **Symbolic speech** Sometimes called expressive conduct, symbolic speech uses actions

and symbols to express opinions.

Expressive conduct that endangers public safety, trespasses, or unnecessarily blocks traffic is not

protected. In addition, the Court has ruled that government can regulate or forbid expressive conduct in unusual, narrowly defined circumstances. The Court also has developed three doctrines that it applies when deciding whether speech has gone beyond the limits of First Amendment guarantees:

• **Clear and present danger** Speech that clearly presents an immediate danger is not protected.

• **Bad tendency doctrine** Speech that has a tendency to lead to illegal action is not protected.

• **Preferred position doctrine** Any law that limits First Amendment freedoms should be

presumed unconstitutional unless the government can show that it is absolutely necessary

Furthermore the Court has ruled that the First Amendment does not protect the following

categories of speech:

• **Seditious speech** Speech intended to advocate immediate, concrete acts of violence against the

government is not protected.

• **Defamatory speech** False speech that damages a person’s character, or reputation is not

protected.

• **Fighting words** Words so insulting that they provoke an immediate violent reaction from the listener are not protected.

The Court also has upheld the right of school officials to regulate lewd or indecent speech at

school events as well as student speech in school sponsored activities.

**Freedom of the Press**

On freedom of the press issues, the Supreme Court has ruled that:

• government may exercise prior restraint, censorship of information before it is published, only if

it can show that publication would endanger the national security;

• pretrial and courtroom publicity can interfere with the right to a fair trial. Consequently it has permitted

judges to bar the press from pretrial hearings if warranted. The Court also allows protective measures such as moving the location of a trial and sequestering the jury, or holding it in custody, until the trial ends;

• reporters cannot refuse to testify or surrender evidence. However, thirty states have passed shield laws designed to give reporters some means of protection against being forced to disclose “confidential information or sources”;

• government can require radio and television stations to observe certain standards and can punish

stations that broadcast obscene language; • motion pictures and the Internet are protected by free-press guarantees.

**Freedom of Assmbly**

The Constitution defines freedom of assembly as “the right of the people peaceably to assemble, and

to petition the Government for a redress of grievances.” The Court has interpreted this right in the

following ways:

• In the interest of public order and safety, government can require demonstrators to obtain advance

permission.

• Authorities may halt a demonstration to preserve order. However, they may not arrest peaceful

demonstrators if the audience is the cause of the disorder.

• Protesters cannot enter facilities such as prisons without permission or hold demonstrations

intended to disrupt educational instruction.

• Protesters cannot convert private property (such as malls) to their own use. • Government may ban or limit picketing by labor unions under certain circumstances.

• The state can restrict “freedom of association” —the right to join an organization—but only if it can show that the group is making actual preparations for the use of force against the government.

In the space provided, write the word or phrase that best completes each of the following sentences.

1. The Constitution guarantees \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ , or fundamental freedoms.

2. The Fourteenth Amendment applies the guarantees in the Bill of Rights to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ governments.

3. The \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ clause of the First Amendment prohibits the government from unduly interfering with religious practices.

4. Symbolic speech is the use of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and symbols to express opinions.

5. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ speech is intended to advocate immediate, concrete acts of violence against the government.

6. The term \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ refers to censorship of information before it is published.

7. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ orders are court orders barring pretrial publication of certain types of

information.

8. Government can punish television and radio stations that broadcast \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ language.

9. In the interest of public order and safety, government can require demonstrators to

obtain \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ .

**Organizing Information** Examine the following diagram and consider the list of phrases describing

concepts and issues that are related to First Amendment freedoms. Write each item under the appropriate

heading on the map

First Amendment Freedoms

• **shield laws** • **clear and present danger** • **freedom of association**

• **the establishment clause** • **the bad tendency doctrine** • **school prayer**

• **union picketing** • **pretrial publicity**

**Critical Thinking**

Answer the following question on a separate sheet of paper.

10. What three questions would the Supreme Court consider when deciding if a state can pay for a science

textbook to be used in a parochial school?