



MR. POGREBA, PARKER SCHOOL

Unit 6 Civil Liberties: The First Amendment



The Five Fundamental Freedoms of the First

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The United States Constitution's Bill of Rights (1789)

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WHOSE BEHAVIOR DOES THE FIRST AMENDMENT RESTRAIN?

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"All the News
That's Fit to Print"

The New York Times

LATE CITY EDITION

Weather: Partly sunny today; fair tonight. Chance of rain tomorrow.
Temp. range: today 50-64; Monday 45-66. Full U.S. report on Page 25.

VOL. CXXII... No. 42,101

© 1973 The New York Times Company

NEW YORK, TUESDAY, MAY 1, 1973

15 CENTS

NIXON ACCEPTS ONUS FOR WATERGATE, BUT SAYS HE DIDN'T KNOW ABOUT PLOT; HALDEMAN, EHRLICHMAN, DEAN RESIGN; RICHARDSON PUT IN KLEINDIENST POST

**Biaggi Testimony to Jury
Ordered Released in Full**

**U.S. Judge Criticizes Candidate's Petition
—Delays Disclosure Pending Appeal**



2 AIDES PRAISED | NEW DATA CITED

**Counsel Forced Out | President Tells How
—Leonard Garment | He Changed Mind
Takes Over Job | About Charges**

Freedom of Speech and Press

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White House,
said he had
no knowledge
of the plot to
cover it up.
The President
went on na-

FREE SPEECH/PRESS

- ▶ While the language of the First Amendment is absolutist, it has always been subject to limitations ranging from **protecting national security** to **restricting false advertising**.
- ▶ As the foundational American right, the First has been subject to repeated court fights and disputes about its precise meaning.
- ▶ **Landmark** court decisions and legislative fights characterize our struggle to define the First Amendment through today.



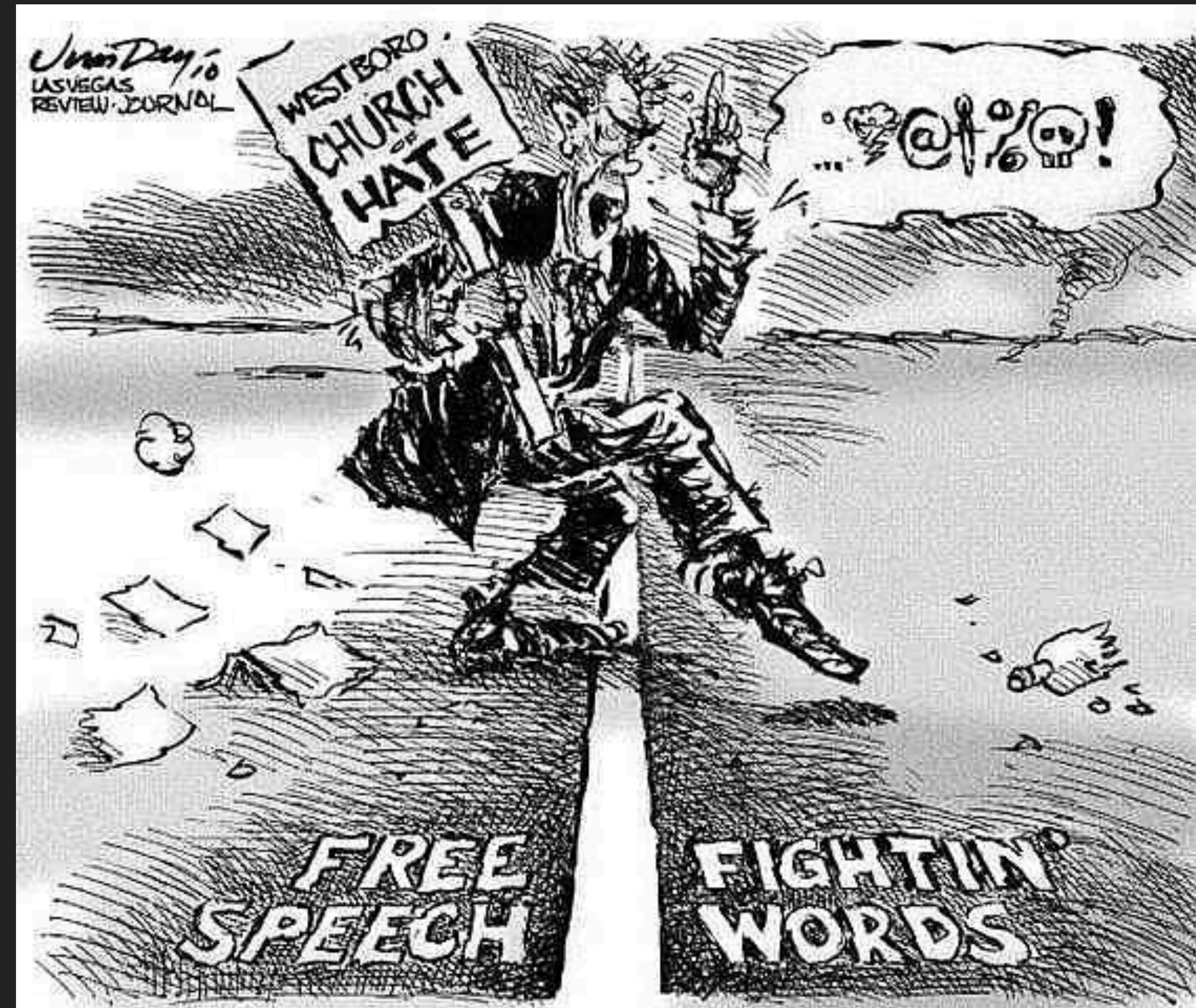
OBSCENITY

- ▶ In 1963, a Supreme Court justice famously said of obscenity, “I know it when I see it.”
- ▶ The **Miller v. California** decision established a three-part test for the definition of obscene:
 - ▶ (1) whether ‘the average person, applying contemporary community standards’ would find that the work, ‘taken as a whole,’ appeals to ‘prurient interest’
 - ▶ (2) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law, and
 - ▶ (3) whether the work, ‘taken as a whole,’ lacks serious literary, artistic, political, or scientific value.



FIGHTING WORDS

- ▶ In 1943, the **Chaplinsky v. New Hampshire** decision ruled that insults likely to incite physical fights or incite violence were not protected speech.
- ▶ This has become anything but established law. As Professor David Hudson noted, the courts "have reached maddeningly inconsistent results" on what is and is not protected by the First Amendment in the area of fighting words."



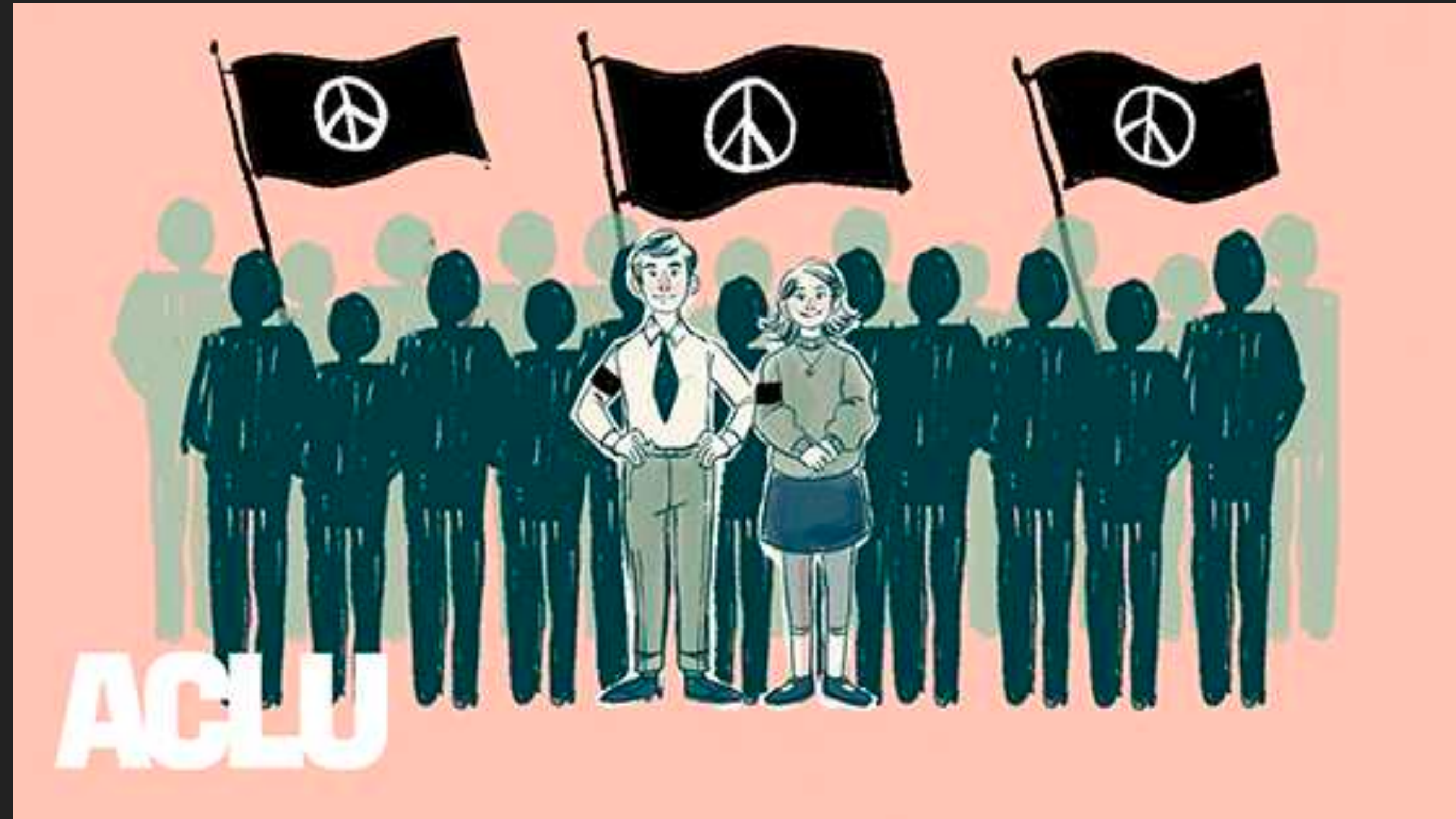
SYMBOLIC SPEECH

- ▶ **Symbolic Speech:** expression by conduct, as opposed to words. Examples: picketing, wearing certain symbols, etc.
- ▶ **Texas v. Johnson (1989)** By a 5-4 decision, the Court ruled that burning a US flag was protected speech.
- ▶ **U.S. v. O'Brien (1971):** A 7-1 court decided that it was not a violation of the First Amendment to criminalize burning a draft card.



STUDENT SPEECH

- ▶ The **Tinker v. Des Moines (1969)** decision found that students had free speech rights on school campuses as long as the speech did not infringe on the educational goals of the school.
- ▶ A 8-1 court reaffirmed this with a 2021 decision about mean cheerleader Snapchats.
- ▶ However, in 1988, a 5-3 court ruled in *Hazelwood School District v. Kuhlmeier* that schools could censor student publications.



LIBEL AND SLANDER

- ▶ **Defamation** is to make a **false statement of fact** that harms another's reputation.
 - ▶ **Libel** generally refers to written defamation.
 - ▶ **Slander** generally refers to spoken defamation.
- ▶ In 1966, Justice Potter Stewart wrote that defamation law "reflects...our basic concept of the **essential dignity and worth of every human being** – a concept at the root of any decent system of ordered liberty."
- ▶ Others argue that defamation suits have a **chilling effect** on free speech.
- ▶ In general, libel and slander cases are hard to win in the United States.
- ▶ An important type of case today is a **SLAPP suit**, or strategic lawsuit against public participation



Lawsuits aimed at censoring constitutionally protected speech are a metastasizing scourge that many courts have proven themselves ill-equipped to handle....“SLAPP suits” pose a constant threat to the First Amendment and undermine free expression in every U.S. jurisdiction. Given inadequate anti-SLAPP protections in many states and the ease with which even the best states’ anti-SLAPP statutes can be circumvented, a federal anti-SLAPP law is essential to defend against efforts to chill constitutionally protected speech through baseless litigation.

Daniel Horowitz, First Amendment Attorney

PRIOR RESTRAINT

- ▶ One key legal concept in free speech law is that **prior restraint**—punishing or forbidding communication before it is presented—is not permitted.
- ▶ The most important case before the Court was the **Pentagon Papers** case, when the federal government tried to stop the New York Times from publishing top secret information about the Vietnam War.
- ▶ Publishers can still face criminal or civil penalties for publication.





Freedom of Religion

FREEDOM OF RELIGION

- ▶ Two key components to the First Amendment on religion:
 - ▶ The **Establishment Clause** prohibits the creation of/ promotion of a state religion.
 - ▶ It protects the right to **exercise the religious beliefs and practices** of our choice.

10/10, remember this.

**NO LAW
RESPECTING AN
ESTABLISHMENT
OF RELIGION, OR
PROHIBITING THE
FREE EXERCISE
THEREOF**

FREEDOM OF RELIGION

SEPARATION OF CHURCH AND STATE

- ▶ In 1802, Thomas Jefferson said that the Establishment Clause “built a **wall of separation between the church and state.**”
 - ▶ In practical terms, it meant that while Christianity was treated as the **de facto religion** of the U.S., churches were not supported by taxes or govt. mandate.
- ▶ To be constitutional, a statute must:
 - ▶ have a secular purpose
 - ▶ must have principal effects that neither advance nor inhibit religion
 - ▶ must not foster “an excessive government entanglement with religion.”
- ▶ Public laws and accommodations must also pass the **neutrality test.**



FREEDOM OF RELIGION

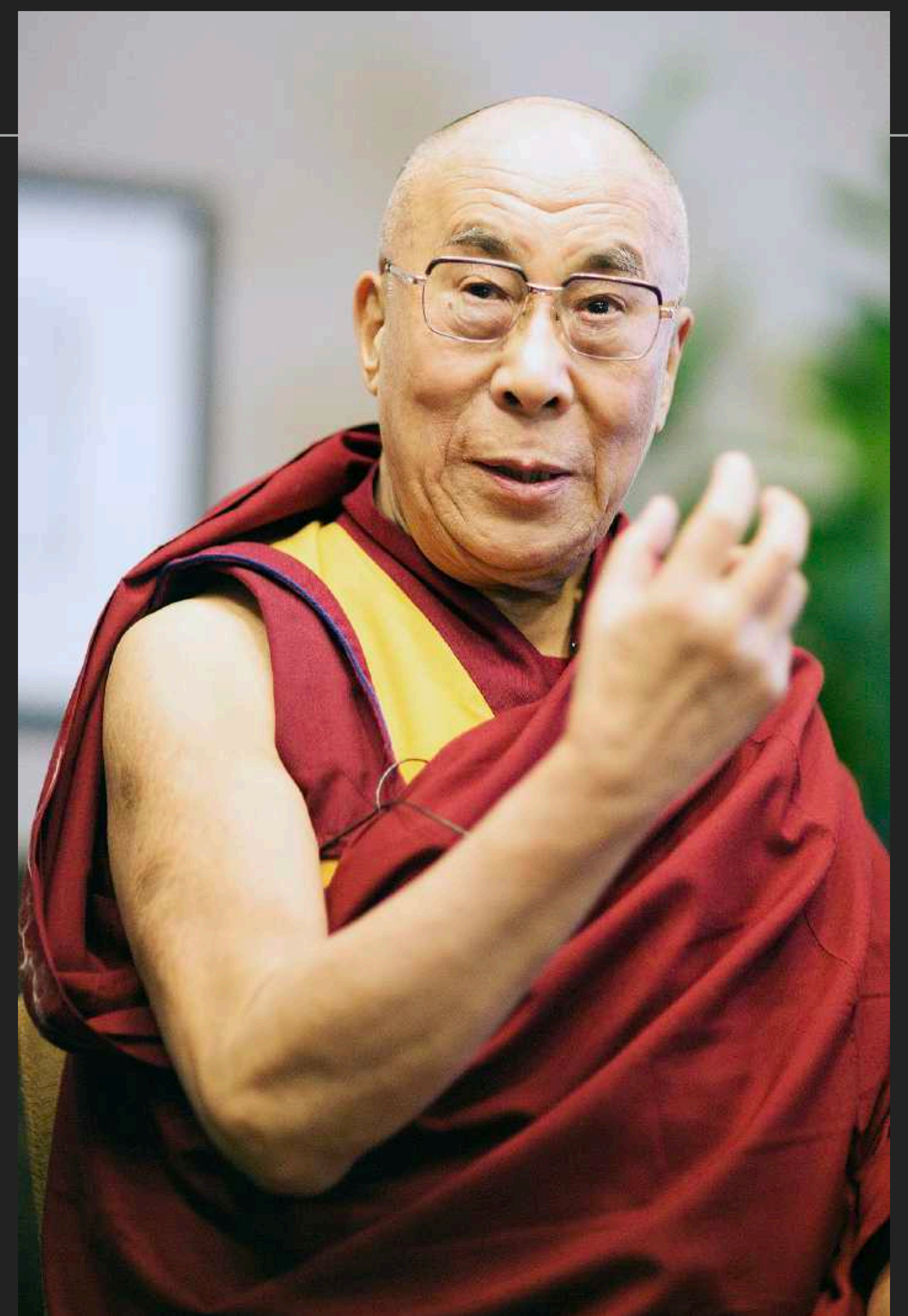
SCHOOL PRAYER & FUNDING

▶ Prayer

- ▶ **Engle v. Vitale** (1962): Public school sponsored prayer is unconstitutional, even if prayer is voluntary.
- ▶ **Lee v. Weisman** (1992): Unconstitutional for clergy to pray as a part of a public school graduation.
- ▶ **Wallace v. Jaffree** (1985): Unconstitutional to provide a one-minute period of silence for voluntary prayer/meditation during the school day.

▶ Funding

- ▶ State funding of religious schools must meet the **Lemon test**:
 - ▶ .Purpose of funding must be clearly secular.
 - ▶ Its effect must not advance nor inhibit religion.
 - ▶ Must avoid an “excessive entanglement of government with religion.”



FREE EXERCISE CLAUSE

- ▶ Can legislatures open with prayers?
- ▶ Can state and federal governments display religious imagery at Christmas?
- ▶ Can states mandate creationism being taught along with evolution?
- ▶ Why is the 2020 *Espinoza v. Montana Department of Revenue* decision so important?
- ▶ What has the court ruled about polygamy?
- ▶ Can the government outlaw drugs as a part of religious ceremonies?





Freedom of Assembly and Petition

FREEDOM OF ASSEMBLY AND PETITION

FREEDOM OF ASSEMBLY/PETITION

- ▶ The First Amendment guarantees the right to **peaceably assemble**. For instance, protesters cannot:
 - ▶ Threaten lives
 - ▶ Engage in violence
 - ▶ Block public streets
- ▶ Government restrictions on assembly and petition must be **content-neutral**.
- ▶ The Supreme Court has not yet ruled on **buffer zones** around abortion clinics or **“free speech zones”** around major political events.

