

2008 WE THE PEOPLE INSTITUTE HEARING QUESTIONS
The First Amendment: Founding Principles and Contemporary Debates

1. In what ways, if any, does freedom of expression contribute to individual liberty and to good government?

- What forms of expression does the First Amendment protect? Why?
- A legal scholar argues that “Constitutional protection should be accorded only to speech that is explicitly political.”* Do you agree or disagree? Why?

* Robert H. Bork, “Neutral Principles and Some First Amendment Problems,” *Indiana Law Journal* 47, no. 1, p. 20 (Fall 1971).

2. The Supreme Court has held that Congress has “the power to prohibit acts intended to overthrow the government by force and violence.” But the Court added “The question ...is ... whether the means which it employs conflict with the First and Fifth Amendments.”*

- What is your assessment of whether the means currently used to combat terrorism comport with the First and Fifth Amendments?
- What criteria would you use to determine when, if ever, the right of freedom of expression, conflicts with the common good?

* *Dennis et.al. v. United States*, 391 U.S. 494 (1951) Chief Justice Vinson announcing the judgment of the Court.

3. “Laws alone cannot secure freedom of expression; in order that every man may present his views without penalty there must be a spirit of tolerance in the entire population.”* Do you agree or disagree with this statement? Why?

- What are the major legal and constitutional protections for freedom of expression in the United States?
- What is the relationship, if any, of freedom of expression to representative government?

* Albert Einstein, “On Freedom,” 1940, in *Out of My Later Years*, 12, 13 (1950). Reprinted in Fred Shapiro’s *The Oxford Dictionary of American Legal Quotations*. (New York: Oxford University Press, 1995), p. 155.

4. Why have First Amendment rights been viewed as essential to the functioning of a free society?

- In what ways have these rights been of particular importance to women and minorities?
- Although these rights are considered essential in a constitutional democracy, it is sometimes argued that they must be limited. Under what circumstances, if any, do you think this is justified? Explain your answer.
- What are commonly accepted limitations on freedom of expression? Should all of those limitations apply in times when national security is threatened?

5. The First Amendment emphatically states that “Congress shall make no law ...abridging the freedom of speech.” Even so, the legislative and judicial branches of government have established limits or boundaries to freedom of expression. What are the most important of those boundaries? Are they in keeping with the spirit of the Constitution? Why or why not?

- What considerations has the Supreme Court used to limit freedom of expression?
- When, if ever, does the right of free speech come into conflict with the common good and how should such conflicts be addressed?

6. What are the costs and benefits that freedom of speech and press offer to the individual and to society?

- Under what circumstances, if any, should government be able to limit those freedoms? Why?
- Under what circumstances, if any, should an individual’s right not to speak be protected? Why?