

# Analyzing Free Speech Jurisprudence: Evolving Judicial Perspectives and Notions

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**Abstract:** For many hundreds of years, the freedom to speak out has been an important part of democracies. Over time, cultural beliefs, science progress, and the state of the government have all changed. As a result, its meaning and security have also changed. There is a critical analysis of important events, problems, and court choices in this case study on the past of free speech. As social norms changed, so did the law's choices about free speech. Both old and new problems needed to be looked at by the courts. There is less room for free speech and more worry about spreading fake information in online groups and social networks. Judges had a tough time balancing old ideas with new situations, which frequently caused heated arguments about the limits of free speech. These studies reveal how changes in the law, society, and technology have impacted the basic political right over time.

**Keywords:** Free speech, jurisprudence, judicial approach, critical analysis

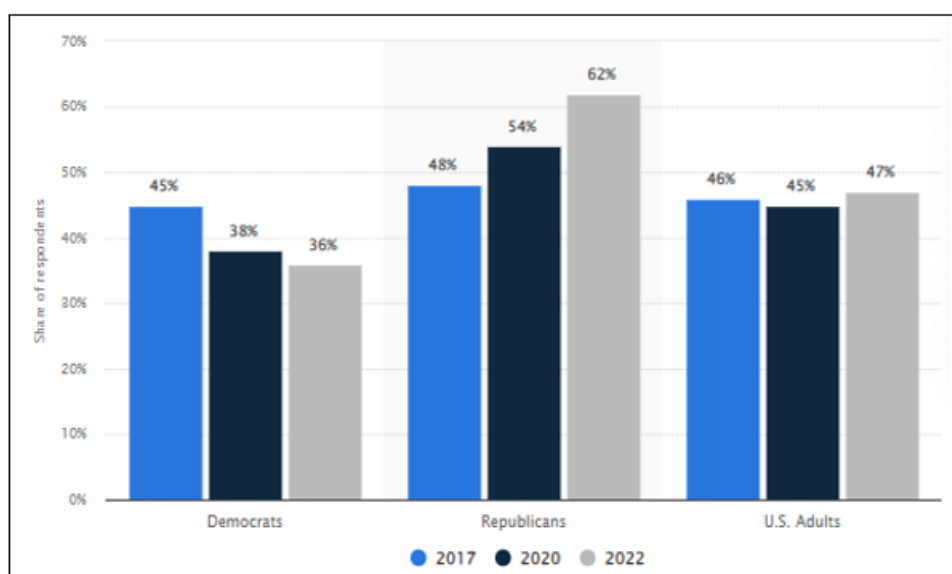
## 1. Introduction

These changes have happened to the basic right to free speech and how it is interpreted. In the case study, the development of free speech law is the main topic. In the past, ancient civilizations like Greece and Rome had legal systems that protected free speech. There was a growing understanding of free speech in the 17th and 18th centuries. It became easier to protect free speech after the First Amendment was added to the US Constitution. The amendment formed the basis for strong law systems that protect free speech. While courts have always had to find a balance between protecting free speech and social interests and concerns, this has created a dynamic

and complex body of law that is still changing in response to new challenges and readings.

## 2. Materials and Methods

By looking at this case study, it will see how free speech law has changed over time and how judges feel about it. The study is mainly about doing critical analyses of legal writings, case law, and academic works. Case studies and relevant laws will be chosen based on their impact on free speech, their central role in forming court views, and how they relate to the changing environment of freedom of speech.



**Figure 1:** Free speech online political stance  
(Source: <sup>1</sup>)

The study wants to illuminate the development of free speech with the help of these sources<sup>2</sup>. It seeks to contribute to a deeper understanding of the interplay between law, society and evolving conceptions of freedom of expression through a

comprehensive examination of legal frameworks and precedents.

<sup>1</sup>Strossen, N., 2024. Defending pornography: Free speech, sex, and the fight for women's rights. NYU Press.

<sup>2</sup> Graber, M.A., 2023. Transforming free speech: The ambiguous legacy of civil libertarianism. Univ of California Press.

### 3. Results

A gradual expansion of the scope of protected speech is shown by the analysis of landmark cases. For example, *New York Times Co. v. Sullivan*. The malice standard was established by *v. Sullivan* to protect public figures from libelous statements. The decision made it possible for more freedom of speech. The imminent lawless action test was introduced in order to limit the protection of speech that encourages violence. A key part of free speech has been thought to be the First Amendment to the United States Constitution. The 1918 Seditious Act and the 2001 Patriot Act are not the same.

#### 3.1 Analysis of landmark cases shaping free speech jurisprudence throughout history

##### a) Case 1: Impact and significance on freedom of speech interpretation

The *New York Times* is the first landmark case that had an impact on freedom of speech was *v. Sullivan*. The case established that public officials have to prove that a statement against them was false or reckless<sup>3</sup>. The decision made it difficult for public officials to recover damages for false statements made against them.

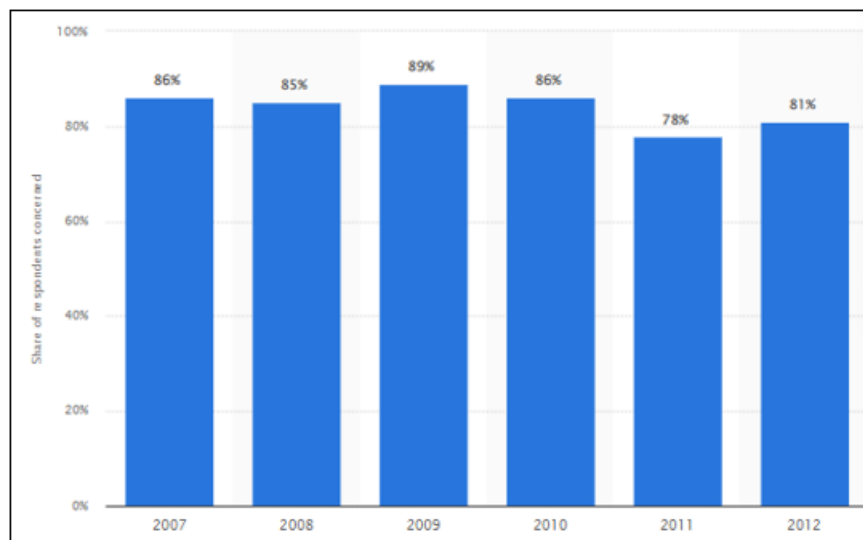


Figure 2: Concerned are you about protecting freedom of speech

Source: <sup>4</sup>

##### b) Case 2: Role in establishing limitations on free speech

The imminent lawless action test was established by the Supreme Court to determine if speech that advocates for immediate and unlawful violence is protected by the First Amendment. The decision helped to define the limits of free speech and established that speech that encourages violence or illegal activity can be restricted.

##### c) Case 3: Influence on balancing competing rights with freedom of expression

The relationship between flag burning and the first amendment was addressed in the case of *Texas v. Johnson*. It is legal to burn flags as a form of symbolic speech under the First Amendment<sup>5</sup>. The decision showed the tension between freedom of expression and other interests.

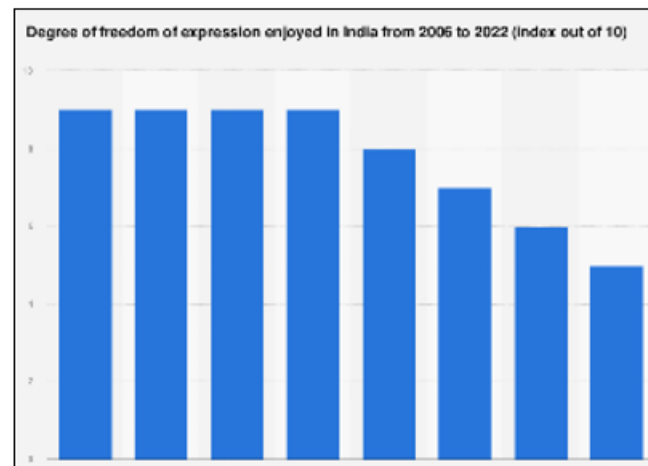


Figure 3: U. S. college students on hate speech in social media

(Source: <sup>6</sup>)

#### 3.2 Examination of key legislative developments affecting freedom of speech protection

<sup>3</sup> Butler, J., 2021. *Excitable speech: A politics of the performative*. Routledge.

<sup>4</sup>Leheza, Y., Pisotska, K., Dubenko, O., Dakhno, O. and Sotskyi, A., 2023. The essence of the principles of Ukrainian Law in modern jurisprudence. *RevistaJurídicaPortucalense*, pp.342-363

<sup>5</sup>Tobia, K., 2022. *Experimental jurisprudence*. *The University of Chicago Law Review*, 89(3), pp.735-802.

<sup>6</sup>Abdikhakimov, I., 2023. *The Uncertainty Principle: How Quantum Mechanics Is Transforming Jurisprudence*. *International Journal of Cyber Law*, 1(7).

**a) Legislation 1: Impact on expanding or restricting free speech rights**

The amendment guarantees the freedom of speech and has had an impact on it. Courts have said that the amendment protects speech that is disliked, controversial, or insulting. There are limits on free speech set by the courts.

**b) Legislation 2: Changes in legal framework governing hate speech or incitement**

Hate speech rules make it illegal to say things that make people hate or hurt others because of their race, religion, gender, or sexual orientation<sup>7</sup>. People say that these rules limit free speech because they protect weak groups from hurtful speech.

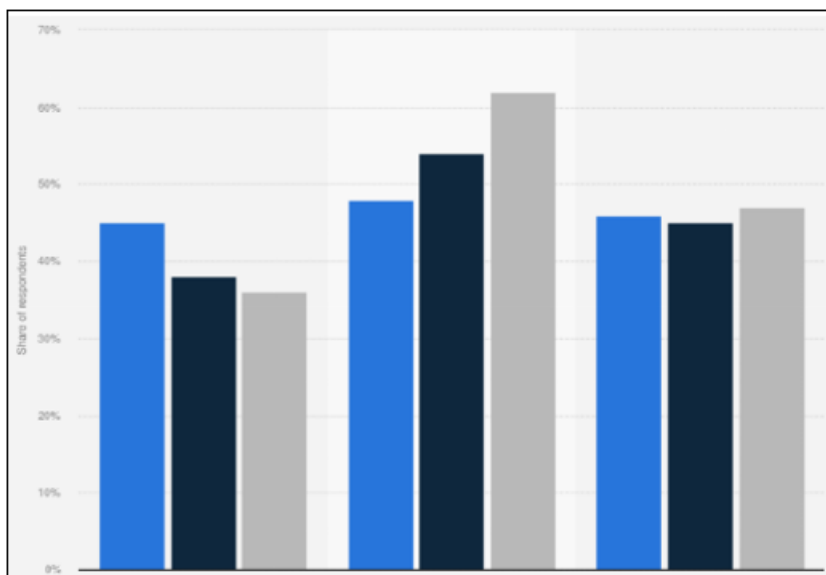


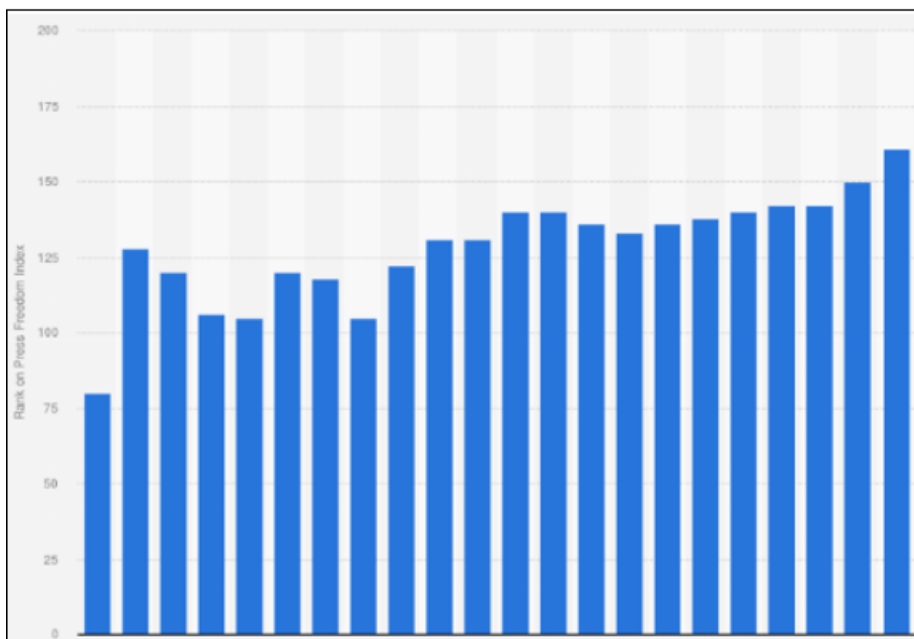
Figure 4: Freedom of Speech (Source: <sup>8</sup>)

**3.3 Critical evaluation**

**a) Strengths and weaknesses in current approach towards freedom of speech:**

Our freedom of expression policy has pros and cons. It has allowed individuals to speak freely without fear of

repercussions. This has fostered open communication and free expression, which is essential for democracy<sup>9</sup>. Some said the plan was too broad and ambiguous. Technology and information change too fast for the system to keep up.



<sup>7</sup> Sommers, R., 2021. Experimental jurisprudence. Science, 373(6553), pp.394-395.

<sup>8</sup>Leheza, Y., Pisotska, K., Dubenko, O., Dakhno, O. and Sotskyi, A., 2023. The essence of the principles of Ukrainian Law in modern jurisprudence. RevistaJurídicaPortucalense, pp.342-363

<sup>9</sup>Abdikhakimov, I., 2023. The Uncertainty Principle: How Quantum Mechanics Is Transforming Jurisprudence. International Journal of Cyber Law, 1(7).

**Figure 5:** Freedom of Speech of Political Stance  
(Source: <sup>10</sup>)

#### **b) Challenges posed by technological advancements and global connectivity:**

New technologies and globalization pose challenges to freedom of expression, including internet and social media. Since information is so easily shared and obtained, hate speech and misleading information are new speech control issues<sup>11</sup>. Due to the global nature of the internet, concerns exist concerning unprotected speech and the necessity for a common norm for speech management in all nations.

### **4. Discussion**

Judges' views on free speech have been shaped by several factors. Social media and other internet platforms have altered writing and speech. The courts must adjust to these developments without weakening other core rights by allowing free expression<sup>12</sup>. To protect both free speech and national security, the courts had to find a balance. There are different ways to protect free speech.

#### **4.1 An Analysis of the judicial approach towards the changing notion of freedom of speech**

Over the years, as judges have thought about what protected speech is, their attitude to freedom of speech has changed. One of the key aspects of the evolution is the expansion of protected speech to include forms of expression that were previously not considered protected.

##### **a) Judicial interpretation and evolution in defining protected speech:**

The courts have defined the scope of protected speech in landmark cases such as *Texas v. Johnson* (1989) and *Irish American gay, lesbian and bisexual group of Boston* (1995). The *citizens united* case highlighted the challenges of balancing free speech with other interests.

##### **b) Balancing free speech with other competing rights, such as privacy or national security:**

The judicial approach towards freedom of speech involves balancing the right to free expression with other rights, such as the right to privacy and national security. In the case of *hustler magazine*<sup>13</sup>. *Falwell*, the supreme court ruled that parody advertisements that might be perceived as offensive or harmful to public figures are still protected under the first amendment<sup>14</sup>. The landmark *New York Times Co. v. Sullivan* is there. The government was able to restrict publication of classified information.

#### **4.2 Examination of international comparisons and cross-jurisdictional influences**

##### **a) Comparative analysis of free speech jurisprudence in different countries**

In different countries, free speech jurisprudence has evolved. The first amendment ensures free expression in the US, and the supreme court has interpreted this right broadly, protecting speech that may be offensive or unpopular<sup>15</sup>. In some other places, people can be silenced if their speech is seen as rude or biased.

##### **b) Impact of international human rights standards on domestic legal frameworks**

Individual countries' protection of free speech is affected by a large number of international human rights norms<sup>16</sup>. "General Statement of Human Rights" and "International Agreement on Civil and Political Rights" are two examples. This way of thinking has affected free speech laws, especially in places that have signed these deals.

#### **4.3 Critical assessment of current challenges and debates surrounding freedom of speech**

##### **a) Controversial cases highlighting conflicting interpretations and opinions**

It's not always clear what the limits of hate speech are. This is one of the main issues with free speech laws right now. The case of *Charlie Hebdo* in France, where the publication of pictures of the Prophet Muhammad caused a lot of trouble and protests, shows how hard it is to protect weak groups from hate speech while still letting people speak their minds.

##### **b) Emerging issues related to hate speech, misinformation, and political discourse**

The rise of social media has made it harder to regulate free speech. The spread of misinformation and hate speech on platforms has led to calls for greater regulation. Concerns about the potential for governments to suppress dissent are raised.

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<sup>10</sup>Tamanaha, B.Z., 2020. Sociological jurisprudence past and present. *Law & Social Inquiry*, 45(2), pp.493-520.

<sup>11</sup>Smirnov, D.A., Tereshchenko, E.A., Botasheva, L.E., Trofimov, M.S., Melnikova, V.A. and Dolgoplov, K.A., 2020. Digital jurisprudence. *RevistaInclusiones*, pp.273-283.

<sup>12</sup>Leheza, Y., Pisotska, K., Dubenko, O., Dakhno, O. and Sotskyi, A., 2023. The essence of the principles of Ukrainian Law in modern jurisprudence. *RevistaJurídicaPortucalense*, pp.342-363

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<sup>14</sup>Sellers, B.G. and Arrigo, B.A., 2022. The narrative framework of psychological jurisprudence: Virtue ethics as criminal justice practice. *Aggression and violent behavior*, 63, p.101671.

<sup>15</sup>Tamanaha, B.Z., 2020. Sociological jurisprudence past and present. *Law & Social Inquiry*, 45(2), pp.493-520.

<sup>16</sup>Kawalek, A., 2020. A tool for measuring therapeutic jurisprudence values during empirical research. *International Journal of law and Psychiatry*, 71, p.101581.

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## References

- [1] Abdikhakimov, I., 2023. The Uncertainty Principle: How Quantum Mechanics Is Transforming Jurisprudence. *International Journal of Cyber Law*, 1 (7).
- [2] Butler, J., 2021. *Excitable speech: A politics of the performative*. Routledge.
- [3] Graber, M. A., 2023. *Transforming free speech: The ambiguous legacy of civil libertarianism*. Univ of California Press.
- [4] Kawalek, A., 2020. A tool for measuring therapeutic jurisprudence values during empirical research. *International Journal of law and Psychiatry*, 71, p.101581.
- [5] Leheza, Y., Pisotska, K., Dubenko, O., Dakhno, O. and Sotskyi, A., 2023. The essence of the principles of Ukrainian Law in modern jurisprudence. *RevistaJurídicaPortucalense*, pp.342 - 363.
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- [8] Sommers, R., 2021. Experimental jurisprudence. *Science*, 373 (6553), pp.394 - 395.
- [9] Strossen, N., 2024. *Defending pornography: Free speech, sex, and the fight for women's rights*. NYU Press.
- [10] Tamanaha, B. Z., 2020. Sociological jurisprudence past and present. *Law & Social Inquiry*, 45 (2), pp.493 - 520.
- [11] Tobia, K., 2022. Experimental jurisprudence. *The University of Chicago Law Review*, 89 (3), pp.735 - 802.