

## **Schenck v. United States / Background ••**

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By 1916, World War I had been going in Europe for two years and there was much debate about whether the United States should join the war. Many Americans did not want to be involved in an overseas war. Women's groups opposed the war and some political dissidents of the time called it a "capitalist war" and a "war for empire." In the same year, Woodrow Wilson was reelected president after running his campaign on the slogan, "He kept us out of war."

After Germany's attempt to band with Mexico against the United States, as well as a series of attacks on U.S. ships, President Wilson reversed his position. The United States formally declared war against Germany and entered World War I on April 2, 1917. Congress then passed the Selective Service Act of 1917, authorizing the first military draft since the Civil War.

The case of *Schenck v. United States* is important to understanding the right to free speech. The case involves the Espionage Act passed by Congress in June 1917. The Espionage Act made it a "...crime to cause insubordination, disloyalty, mutiny, refusal of duty, in the military or to obstruct military recruiting." It also gave the national government the authority to censor some speech by refusing to deliver mail that violated the act. The Espionage Act was directed toward people trying to resist the draft and disrupt war mobilization. People spied on and reported neighbors for violating the act. In total more than 2,000 people were prosecuted and 900 sent to jail for violating the Espionage Act.

Charles T. Schenck was the general secretary for the Philadelphia Socialist Party. He printed and mailed out 15,000 leaflets to young men who were subject to the draft. On the side of the flier entitled "Long Live the Constitution of the United States," the Socialist Party argued that the draft was a form of "involuntary servitude" and thereby outlawed by the 13<sup>th</sup> Amendment. Schenck's flier also urged its recipients "to write to [their] Congressman and tell him you want the [draft] law repealed." The flier encouraged recipients "exercise [their] rights of free speech, peaceful assemblage, and petitioning the government for a redress of grievances." On the reverse side entitled "Assert Your Rights!", Schenck urged his audience to "do [their] share to maintain, support and uphold the rights of the people of this country."

Schenck believed he had the right to distribute these fliers under the First Amendment, which states, "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."

Schenck believed he was encouraging people to legally express their opinion to their federal government. The First Amendment to the U.S. Constitution protects the freedom of speech. However, like all rights protected by the Constitution, the right to free speech is not absolute. The government can place reasonable limits on protected rights in many instances. How much the government can limit free speech depends on the context including the time, manner, and

place the speech occurs. Generally, the government cannot control the content of someone's speech. At various points in history, the government has argued that national security concerns or times of war allow the government to place additional restrictions on speech.

The U.S. government did not agree with Schenck and arrested him for violating the Espionage Act. The government argued Schenck's actions to disrupt the military draft actually endangered the country. Schenck asked the U.S. Supreme Court to hear his case, and the Court agreed.

### **Questions to Consider**

1. What was Charles T. Schenck encouraging young men to do in his leaflets?
2. What rights are protected in the First Amendment?
3. Why did Schenck believe the First Amendment protected his actions?
4. Why did the U.S. government argue it had the authority to censor and arrest Charles T. Schenck?