

Schenck v. United States / Background •••

By 1916, World War I had been raging in Europe for two years and there was much debate about whether the United States should join the war effort. Many Americans did not want to be involved in an overseas war. Women's groups denounced 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."

Following the discovery of 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. Shortly thereafter, Congress passed the Selective Service Act of 1917, authorizing the first military draft since the Civil War.

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 attempting 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.

The case of *Schenck v. United States* is an important chapter in the story of the right to free speech. 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 conscription was a form of "involuntary servitude" and thereby outlawed by the 13th Amendment. Schenck's flier also implored its recipients "to write to your Congressman and tell him you want the [conscription] law repealed. Do not submit to intimidation. You have the right to demand the repeal of any law. Exercise your rights of free speech, peaceful assemblage, and petitioning the government for a redress of grievances." On the reverse side entitled "Assert Your Rights!", Schenck adopted more fiery language. He implored his audience to "do your share to maintain, support and uphold the rights of the people of this country" or else "you are helping condone a most infamous and insidious conspiracy" fueled by "cunning politicians and a mercenary capitalist press."

Schenck believed he had the right to distribute literature and information 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 permit 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 did Schenck compare the draft to?
3. What rights are protected in the First Amendment?
4. Why did Schenck believe the First Amendment protected his actions?
5. Why did the U.S. government argue it had the authority to censor and arrest Charles T. Schenck?