

Ray L. Winstead Position Statement on Freedom of Speech,  
i.e., a selected compilation of quotes from others that express concepts and conclusions that I accept as  
my own.

(Also includes Limitations on Free Speech = Unprotected Speech)

## I. My Letter to the Editor – Editorial

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## Wisdom for Today from Nation's Past Ray Winstead



Whatever a person's political preferences or philosophical inclinations are, it is worthwhile to be reminded that freedom of speech is a fundamental American right as expressed by the following notable Americans from our nation's history.

- Hugo Black, Supreme Court justice: "I do not believe that it can be too often repeated that the freedoms of speech, press, petition and assembly guaranteed by the First Amendment must be accorded to the ideas we hate or sooner or later they will be denied to the ideas we cherish."
- Oliver Wendell Holmes Jr., Supreme Court justice: "If there is any principle of the Constitution that more imperatively calls for attachment than any other it is the principle of free thought, not free thought for those who agree with us but freedom for the thought that we hate."
- Charles Evans Hughes, Supreme Court chief justice: "When we lose the right to be different, we lose the right to be free."

- William J. Brennan Jr., Supreme Court justice: “If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.”
- Abe Fortas, Supreme Court justice: “Dissent and dissenters have no monopoly on freedom. They must tolerate opposition. They must accept dissent from their dissent.”
- Adlai Stevenson II, presidential nominee: “My definition of a free society is a society where it is safe to be unpopular.”
- John Paul Stevens, Supreme Court justice: “Just as the right to speak and the right to refrain from speaking are complementary components of a broader concept of individual freedom, so also the individual’s freedom to choose his own creed is the counterpart of his right to refrain from accepting the creed established by the majority.”
- Earl Warren, Supreme Court chief justice: “When the rights of any individual or group are chipped away, the freedom of all erodes.”
- Warren E. Burger, Supreme Court chief justice: “Free speech carries with it some freedom to listen.”

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## II. Additional Quotes about the Freedom of Speech

- James Madison: "The First Amendment protects our right to think what we like and say what we please. And if we the people are to govern ourselves, we must have these rights, even if they are misused by a minority."
- John Stuart Mill: "Cicero, the ancient orator, has left it on record that he always studied his adversary's case as intensely as he did his own, if not even more so. What Cicero practiced as the means of success in the law courts should be imitated by anyone who studies any subject in order to arrive at the truth. It isn't enough that he should hear the arguments of opponents from his own teachers, presented in their way and accompanied by what they offer as refutations. That isn't the way to do justice to the opposing arguments, or to bring them into real contact with his own mind. He must be able to hear them from people who actually believe them, defend them in earnest, and do their very best for them. If he doesn't know the opposing arguments in their most plausible and persuasive form, he will never really possess the portion of truth."
- Benjamin Franklin: "Freedom of speech IS the great bulwark of liberty; they prosper and die together!"
- Benjamin Franklin: "Whoever would overthrow the liberty of a nation, will begin by subduing the freeness of speech!"
- Benjamin Franklin: "Freedom of speech has ever been justly deemed the only effectual guardian of every other right!"

### III. Limitations on Free Speech = Unprotected Speech

([Be aware that Quotes below are from this website.](https://www.thefire.org/research-learn/unprotected-speech-synopsis))

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#### Incitement.

"The First Amendment does not protect speech that is "directed to inciting or producing imminent lawless action and is likely to incite or produce such action." Mere advocacy of lawbreaking or violence remains protected speech as long as it is not intended to and likely to provoke immediate unlawful action."

#### True Threats.

True threats are "those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals."

#### Fighting Words.

"Fighting words are those that, by the very act of being spoken, tend to incite the individual to whom they are addressed to respond violently and to do so immediately, with no time to think things over. The fighting words category is an exceedingly limited classification of speech, encompassing only face-to-face communications that would obviously provoke an immediate and violent reaction from the average listener."

#### Obscenity.

"The Supreme Court outlined a three-prong standard that material must meet in order to be considered legally obscene:

"If all three prongs are met, the material enjoys virtually no First Amendment protection in the jurisdiction where it is adjudicated obscene, and the government may regulate its transmission, communication, or sale.

- 1) whether the average person, applying contemporary community standards, would find that the work, taken as a whole, appeals to the "prurient interest" (an inordinate interest in sex;
- 2) whether the work depicts or describes, in a patently offensive way, sexual conduct;
- 3) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value. (Note: This third prong is considered an "objective" standard and is judged by reference to national rather than community standards.)"

#### Defamation.

"The First Amendment protects false speech, with very limited exceptions, including defamation and fraud. Defamation is a false statement of fact that (1) is communicated to a third party; (2) is made with the requisite guilty state of mind; and (3) harms an individual's reputation. To be defamatory, a statement must be an assertion of fact (rather than mere opinion or rhetorical hyperbole) and capable of

being proven false. As to state of mind, if the person allegedly defamed is a public figure, he or she must prove “actual malice” — namely, that the speaker made the statement either with knowledge of its falsity or with reckless disregard for the truth. A non-public figure need only prove that the speaker was negligent in making the false statement." (See libel and slander.)

### Fraud and Perjury.

"The First Amendment makes no categorical exception for false or misleading speech, certain types of fraudulent statements fall outside its protection. The government generally can impose liability for false advertising or on speakers who knowingly make factual misrepresentations to obtain money or some other material benefit (such as employment). Prohibitions on perjury — knowingly giving false testimony under oath — also are constitutional."

### Especially note:

"What about “hate speech” and harassment?"

Some readers may wonder why “hate speech” and harassment are not in the list of categories of unprotected speech.

Contrary to popular misconception, there is no First Amendment exception for so-called hate speech. The First Amendment fully protects speech that is unpopular or that some may find downright offensive."

"The Supreme Court stated the general rule regarding protected speech when it held the “government may not prohibit the verbal or nonverbal expression of an idea merely because society finds the idea offensive or disagreeable.” Federal courts have consistently followed this holding when applying the First Amendment."

"The government may also prohibit harassment, properly defined, in the workplace. This includes quid pro quo harassment — where a supervisor conditions continued employment or job benefits on sexual favors — and hostile work environment harassment based on race, sex, or another protected characteristic. The latter arises when the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider hostile, abusive, or intimidating."