

A little background info for discussion of H.18

U.S. Constitution, Amend. I

“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.”

Vermont Constitution, Chapter I, Article 13. [Freedom of speech and of the press]

“That the people have a right to freedom of speech, and of writing and publishing their sentiments, concerning the transactions of government, and therefore the freedom of the press ought not to be restrained.”

These provisions guarantee the free and public expression of opinions without censorship, interference and restraint by the government.

Constitutional rights, including those afforded by the 1st A. are not absolute and the government frequently implicates these rights by regulating speech and conduct. The questions considered are the type of speech, the degree of the infringement, and the government’s reason for the infringement.

Generally, speech is protected under the 1st A. unless it falls into one of the narrow categories of unprotected speech - i.e., obscenity, fighting words, incitement, threats, child sexual abuse materials.

The character and context of the speech determines what level of scrutiny the Court will use to ascertain whether the government has enacted a law that impermissibly infringes on a person’s right to free speech – i.e. political speech is afforded greater protection and a higher standard or scrutiny than commercial speech.

Facial challenge vs as applied – A facial challenge means that a law, as written, “on its face”, is unconstitutional at all times in all scenarios and invalidates the law for everyone. An as-applied challenge means that the law is constitutional under a certain set of facts and circumstances before the Court. This means that a successful facial challenge can prohibit the law from being used in that context, but the law itself survives because there are other constitutional applications.