ABSOLUTE CONSTITUTIONAL RIGHT OR FREEDOM

There is no such thing in United States Constitutional Law.

Any constitutional right or freedom can be limited or regulated if a compelling state interest is served and the limit or regulation is narrowly tailored to serve that interest.[1] Indeed, some constitutional rights may be limited by only a substantial state interest.[2]

There is, however, no precise formula for what constitutes a compelling state interest or substantial state interest. In practice, the level of interest being served by regulation or limitation is established by the courts, and is afterwards guided by the application of *stare decisis.*

Accordingly, when one hears of claims of absolute right or freedom, one can be assured that the speaker does not know what he or she is talking about. For reference, below are listed various constitutional rights and freedoms with citations to cases in which the courts have determined a right can be limited or regulated:

Association: *Boy Scouts of America v. Dale,* 530 U.S. 640, 640-1 (2000)("[T]he freedom of expressive association is not absolute: it can be overridden by regulations adopted to serve compelling state interests, unrelated to the suppression of ideas, that cannot be achieved through means significantly less restrictive of associational freedoms.")

Liberty: *Doe v. Moore,* 410 F.3d 1337 (11th Cir. 2005)(Upheld Florida Sex Offender Act's requirement of sex offender registration and notification that burdened the sex offenders' liberty rights of travel as constitutional based upon state interest's interest of protecting citizens from criminal activity.)

Privacy. *Roe v. Wade*, 410 U.S. 113 (1973)(A state may regulate a woman's pregnancy in the last trimester.)

Religion. *United States v. Lee,* 455 U.S. 252, 257 (1982)(Court upheld imposition of taxes upon an Amish employee who claimed that paying such taxes violated the free exercise of his religion, saying "Not all burdens on religion are unconstitutional...The state may justify a limitation on religious liberty by showing that it is essential to accomplish an overriding governmental interest.")

Search and seizure. The constitutional provisions against compelling one to testify against oneself or to disclose incriminating information are possibly the very most protected areas found in the 5th and 14th Amendments. Nevertheless, the right is not absolute. See, e.g., *Doe v. United States*, 487 U.S. 201 (1988)(Court finds that a consent directive to a grand jury investigation target to have foreign banks disclose records of his accounts did not violate the target's 5th Amendment privilege against self-incrimination.)

Speech**.** A number of well-settled legal doctrines allow limitation and regulation of speech otherwise protected by the 1st Amendment. In this setting, speech includes not only words, documents or pictures, but also conduct. Two of those well-settled doctrines are, but not limited to:

> Time, Place, and Manner: This area of 1st Amendment limitation is not complicated and comports with common sense. With this limitation, the content of the speech or expressive conduct (for example, a protest march) is not regulated, but the where, when and how of the speech or expressive conduct may

be limited or regulated. For example, no matter how protected speech for a political rally may otherwise be, it can be banned near a facility such as a hospital or a school to protect the important government interests in health, safety and education. In contemporary settings, litigation in this area of speech limitation is commonly found in circumstances where the interests of a women's health clinic collide with the speech of persons and organizations opposed to women's health advice and to abortion. See, e.g., *Hill, et al. v. Colorado, et al.*, 530 U.S. 703 (2000)(On the basis of a time, place and manner analysis, the U.S. Supreme Court upheld a Colorado statute that prohibited persons from approaching within eight feet of a health care facility for the purpose of displaying a sign, engaging in oral protest, education, counseling or passing leaflets or handbills unless the person confronted consents to the approach.) Fighting Words: Verbally abusive epithets and conduct that are inherently likely to invite violent reaction may be banned. See, e.g., *Virginia v. Black, et al.*, 538 U.S. 343 (2003)(U.S. Supreme Court upholds a Virginia statute that makes it a felony "for any person...with the intent of intimidating any person or group...to burn...a cross on the property of another, a highway or other public place.")

To bear arms**.** The law has long supported that mentally ill persons, felons, persons under protection orders could be banned from gun ownership. Beyond that, the United States Supreme Court has recognized that the 2nd Amendment is not unlimited. See, *District of Columbia, et al. v. Heller,* 554 U.S. 570, 595 (2008)(The high court in ruling that a District of Columbia statute violated the 2nd Amendment and clarified the ruling by saying "[T]he Second Amendment conferred an individual right to keep and bear arms. Of course, the right was not unlimited, just as the First Amendment's right of free speech was not[.] Thus, we do not read the Second Amendment to protect the right of citizens to carry arms for *any sort* of confrontation, just as we do not read the First Amendment to protect the right of citizens to speak for *any purpose.*") (emphasis in the original)**.**

1.See, e.g., *Kramer v. Union Free School District,* 395 U.S. 621, 627 (1969)(In examining a right, "the court must determine whether [the limitation of the right is] necessary to promote a compelling state interest." In this case the Supreme Court weighed whether excluding some voters was constitutional.

2.See, e.g., *Central Hudson Gas &Electric v. Public Service Commission of New York,*447. U.S. 557 (1980) (Commercial speech can be regulated and analysis of the regulation must serve a substantial governmental interest.)