

FIRST AMENDMENT: FREEDOM OF ASSEMBLY

This activity centers on the First Amendment's freedom of assembly in the Supreme Court case **Cox v. New Hampshire, 312 U.S. 569 (1941)**.

About These Resources

- Analyze the [facts and case summary](#) for *Cox v. New Hampshire*.
- Build arguments for both sides of the issues in the case, starting with these [talking points](#).

How to Use These Resources

This activity is a modified [Oxford style debate](#).

1. To get started, have participants read the *Cox v. New Hampshire* [facts and case summary](#).
2. Assign student attorneys to the issues listed in the [talking points](#). They are suggested points— not a script— for the debate. Student attorneys are encouraged to add their own arguments.
3. All other students are jurors who deliberate (and may refer to these talking points) during the open floor debate. They debate among themselves in the large group or smaller groups and come to a verdict after the attorneys present closing arguments.

FACTS AND CASE SUMMARY: COX V. NEW HAMPSHIRE

Facts and case summary for **Cox v. New Hampshire, 312 U.S. 569 (1941)**

Reasonable time, place, and manner restrictions on speech are constitutionally permissible.

FACTS	A New Hampshire town required that a license be obtained before parades could be held within the town. A group of Jehovah's Witnesses held a sidewalk parade without first obtaining the license and they were fined for violating the law. The Jehovah's Witnesses challenged the New Hampshire law, saying that its provisions violated their First Amendment rights. Specifically, they challenged the fee attached to the permit as a means of suppressing their free speech rights.
ISSUE	Whether time, place, and manner restrictions on holding a parade violate the First Amendment freedoms of speech and assembly.
RULING	No.
REASONING (9-0)	A unanimous Supreme Court, via Justice Charles Evans Hughes, held that, although the government cannot regulate the contents of speech, it can place reasonable time, place, and manner restrictions on speech for the public safety. The Court held that the New Hampshire law was not meant to prohibit speech, but simply to regulate it when it took the form of a parade or other form of large gathering. The Court said that the government had a legitimate interest in keeping order at such events, and it could impose a fee for the license that was proportional to the amount of police presence that would be required to ensure the peaceable nature of the event.

TALKING POINTS

Question: Are certain restrictions placed on speech and assembly unconstitutional under the First Amendment?

Cox

New Hampshire

1. Are time, place and manner restrictions placed on public assemblies unconstitutional?

Affirmative. Yes.

The First Amendment ensures freedom of speech and assembly. The plain text of the Amendment does not permit regulations on the time, place, and manner of assemblies. The right to assembly is a very important means for conveying ideas that are protected by the First Amendment. Even "neutral" regulations, such as those present here, that impinge upon the right of individuals to assemble infringe upon the First Amendment. Moreover, there is a risk that as one has to go through more and more "procedures" to be able to assemble, the right to assembly (and, consequently, to convey one's ideas) will be further intruded upon.

Negative. No.

The State of New Hampshire does not intend to prohibit Cox or other members of the Jehovah's Witness religion from holding a parade and expressing their views. Each New Hampshire town, however, is responsible for ensuring safety of public thoroughfares and the safety of these types of events. For this reason, the state is permitted to enact reasonable regulations that effect that the time, place, and manner in which parades and other such assemblies can occur. These regulations are completely content-neutral and in no way impose on the views that are expressed by Cox or members of his religion.

2. Are licensing fees for public assemblies arbitrary, prohibitive, and unconstitutional?

Affirmative. Yes.

The First Amendment protects the right of individuals to assemble and to convey their ideas. The Amendment does not permit the charging of fees to assemble. Although the State argues that the fees are "reasonable" and are simply meant to ensure a police presence for ensuring safety, these actions are not constitutionally permissible. The State need not ensure a police presence at these events—at least when there is not any indication that violence may arise. The nature of this event is a simple parade through town. The organizers are capable of planning it themselves. Moreover, the "sliding-scale" licensing fees may give too much discretion to town authorities. For instance, who is to determine what constitutes a "reasonable fee"? Thus, town officials may end up discriminating against unpopular groups by arbitrarily making those groups' fees higher than groups whose ideas are popular.

Negative. No.

The fee in this case is not meant to be prohibitive. It varies depending on the size of the assembly and the amount of police presence that is necessary to effectively police the crowd. The State in no way argues that Cox or other members of the Jehovah's Witnesses religion should be prohibited from holding a parade. Fairness, however, demands that they should be made to pay their fair share of the cost of hosting this event. So long as the fee is not unreasonable and the fees are applied in a neutral manner, there should not be any constitutional problems.