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The State of the First Amendment

Posted By [Timothy Zick](#) On September 29, 2008 @ 3:58 pm In [First Amendment](#) | [2 Comments](#)

The First Amendment Center has released the results of its annual nationwide [survey](#) ^[1] regarding First Amendment liberties. As usual, respondents expressed general support for free speech and other First Amendment liberties. But when asked about specific situations, the answers suggest a willingness to accept a substantial measure of governmental control.

As usual, a number of survey questions related to broadcast and other media. There was substantial support for content restrictions and even some government directives with regard to media. For example, 66% of respondents said the government should require television broadcasters to allot equal time to liberal and conservative broadcasts (62% would extend that requirement to newspapers); 39% of respondents would extend the indecency regulations applied to broadcast television to cable and satellite media; and 38% would permit government to require broadcasters to report a specified amount of "positive news" in return for licenses to operate. These numbers are relatively consistent over the past several years. One number that did creep up a bit—the number of respondents who agree with the statement "the falsifying or making up of stories in the American news media is a widespread problem" (66%).

Various other content regulations also garnered substantial support. For example, nearly a third of respondents disagreed that musicians should be allowed to sing songs with lyrics that others might find offensive; 42% responded that speakers should not be allowed to say things in public that might offend religious groups; 54% said the same thing with respect to racial groups. And 50% thought schools ought to be able to discipline students for posting (while off campus) entries on social networking sites that may be "disruptive" to school classes. These numbers, too, seem relatively consistent across time.

These, however, were not the most interesting (or disturbing) results of the survey.

What really caught my attention was the number of adult Americans surveyed who could not name a *single* First Amendment liberty. *Four in ten* respondents could not name even one of the freedoms mentioned in the text of the First Amendment — the lowest percentage in the 11-year history of this survey. I recall one particular experience that is consistent with these results. Years ago, I was listening to a radio program during which callers were challenged (with prizes at stake) first to name a freedom in the First Amendment and then to state the last name of a Simpsons character. Most of the callers in this (admittedly unscientific) sample readily identified Apu's last name (Nahasapeemapetilon), for example, yet could not list even one First Amendment freedom.

At the risk of sounding "elitist," that's just appalling. I used to think that events like "Constitution Day" were somewhat gimmicky. But this and more would seem to be necessary — not to *celebrate* the Constitution, but to simply *learn* something about its basic principles. Among other fundamental problems, results like these expose high-minded principles like "consent of the governed" as somewhat farcical notions. How can you *consent* when you don't know the basic rules under which you are actually being governed? Perhaps I'm making too much of the inability of 40% of respondents to simply list First Amendment freedoms. There are, after all, 27 amendments — can we *really* expect Americans to know what they all say? Perhaps these respondents understand their First Amendment freedoms on some other terms, or by some alternative name. I have serious doubts about the latter proposition. As to the former, which I admit was offered somewhat sarcastically, I don't think it asks too much of the citizenry upon which so much First Amendment theory and doctrine rests to at least have the power of recall with regard to these essential liberties. So I wonder, to get back to the survey results, how many of the 40% who cannot list a single First Amendment freedom are among those who would accept, for example, outright content restrictions in public places. After all, you can hardly be expected to defend liberties you don't even know exist.

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[1] survey: <http://www.firstamendmentcenter.org/commentary.aspx?id=20533>

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