**Schenck versus United States (1919)**

***(First Amendment)***

**Background:**

Schenck v. United States was the first in a line of Supreme Court Cases defining the modern understanding of the First Amendment. Charles Schenck and Elizabeth Baer were members of the Executive Committee of the [Socialist Party](https://en.wikipedia.org/wiki/Socialist_Party) in Philadelphia, of which Schenck was General Secretary. The executive committee authorized, and Schenck oversaw, printing and mailing more than 15,000 fliers to [men slated for conscription](https://en.wikipedia.org/wiki/Conscription_in_the_United_States) during World War I. The fliers urged men not to submit to the draft, saying "Do not submit to intimidation", "Assert your rights", "If you do not assert and support your rights, you are helping to deny or disparage rights which it is the solemn duty of all citizens and residents of the United States to retain," and urged men not to comply with the draft on the grounds that military conscription constituted [involuntary servitude](https://en.wikipedia.org/wiki/Involuntary_servitude), which is prohibited by the [Thirteenth Amendment](https://en.wikipedia.org/wiki/Thirteenth_Amendment_of_the_United_States_Constitution).

After jury trials Schenck and Baer were convicted of violating Section 3 of the [Espionage Act of 1917](https://en.wikipedia.org/wiki/Espionage_Act_of_1917). Both defendants appealed to the United States, arguing that their conviction, and the statute which purported to authorize it, were contrary to the [First Amendment](https://en.wikipedia.org/wiki/First_Amendment_of_the_United_States_Constitution). They relied heavily on the text of the First Amendment, and their claim that the Espionage Act of 1917 had what today one would call a "chilling effect" on free discussion of the war effort.

**Majority Opinion:**

The Court, in a unanimous opinion written by Justice [Oliver Wendell Holmes, Jr.](https://en.wikipedia.org/wiki/Oliver_Wendell_Holmes%2C_Jr.), held that Schenck's criminal conviction was constitutional. The statute only applied to successful obstructions of the draft, but common-law precedents allowed prosecution for attempts that were dangerously close to success. Attempts made by speech or writing could be punished like other attempted crimes; the First Amendment did not protect speech encouraging men to resist induction, because, "when a nation is at war, many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight, and that no Court could regard them as protected by any constitutional right." In other words, the court held, the circumstances of wartime allow greater restrictions on free speech than would be allowed during peacetime, if only because new and greater dangers are present.

The opinion's most famous and most often quoted passage was this:

*The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic. [...] The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent.*