

Video Transcript: First Amendment Overview Part I

[NARRATOR]

Hi, I'm Leah, and we're here at the National Constitution Center in Philadelphia.

Right over there is Independence Hall – the place where our founders met to write the Declaration of Independence and the Constitution. Today, we're going to focus on the First Amendment.

You've heard of the Bill of Rights, you know, the first 10 Amendments to the Constitution. Well the First Amendment is probably the most famous one, because it includes what we call the five freedoms: the freedom of religion, freedom of the press, freedom of speech, freedom of assembly, and freedom of petition.

But what are these five freedoms really about? What's the big idea behind them, and why do they represent the core of American democracy? To find out, let's ask an authority on Constitution law, Supreme Court Justice Elena Kagan.

[KAGAN]

The First Amendment says "Congress shall make no law abridging the freedom of speech or of the press." And I guess, one question to ask, maybe the first question, is why is that in the Constitution at all? Why did the Framers put it there? And I think you have to go back to the history, and you have to understand this was maybe a decade or a little bit more than that after Americans had broken from England, had declared their independence and had started the great experiment of founding of a new nation. And what was clearest in their minds – front and center – was the need to give people the ability to do what they had just done. Which was, to criticize the government. To say why the government was acting wrongly, and to say that they wanted no part of it anymore. And that was the whole idea of the First Amendment; was to say: "You have a right. It's a Constitutional right. It's the highest kind of right that you can have." You have a right to tell the government why it's no longer to be respected – either when you're off fomenting a revolution, or less traumatically, when the government is just making bad choices. Choices that you want to change. You have the ability to tell government officials what it is they're doing wrong.

[NARRATOR]

The First Amendment protects the rights of freedom of thought, expression, and conscience. The framers of the Constitution believe that these are natural rights, that are so special they're given to you by God or by Nature and are above the government. So, where did this idea come from in America?

Thomas Jefferson read the ideas of a guy named John Locke and imbedded the idea of natural rights in the second sentence of the Declaration of Independence.

You may have heard this one before: "We hold these truths to be self-evident, that all men are created equal, and they are endowed by their Creator with certain unalienable rights."

That's it right there: unalienable rights – those are natural rights. The writers of the Bill of Rights knew that in order to protect our rights, we form governments, and that's expressed in the second sentence of The Declaration: "To secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed."

Let's ask Jeff Rosen, the head of the National Constitution Center, to tell us a little more about this.

[JEFF]

When we move from the state of nature to civil society, we alienate or surrender to government the power to control certain rights in order to obtain greater security and safety of the rights we've retained. What's the quintessential, unalienable and retained right? Well, it's the right of conscience. What happens when government threatens the very rights that it's supposed to protect? That's where the Bill of Rights comes in.

So, when James Madison drafted the Bill of Rights, he didn't make it up out of thin air, he cut and pasted from the revolutionary era state constitutions that were drafted beginning in 1776.

So, let's go check out those revolutionary era sources to understand why it was that the framers thought that the rights of the First Amendment were natural and unalienable.

Let's begin with the New Hampshire Constitution of 1783 because that better expresses the natural law foundation of the conscience rights than any other. "Among the natural rights, some are, in their very nature unalienable, because no equivalent can be given or received for them. Of this kind are the rights of conscience."

The Virginia Declaration of Rights of 1776 gives us even more detail. This is so important, it was written by George Mason and Madison and Jefferson had it by their sides when they wrote the Bill of Rights and the Declaration of

Independence. Listen to this amazing language, "That religion, or the duty which we owe to our Creator and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and therefore, all men are equally entitled to the free exercise of religion, according to the dictates of conscience." Isn't that a remarkable statement of the enlightenment of faith, only reason and conviction, not force or violence can determine our religious beliefs or lack of beliefs.

And then finally, to complete this fascinating puzzle, let's look at Madison's Memorial and Remonstrance Against Religious Assessments from 1786 where he quoted that language from the Virginia Declaration of Rights, and goes on to say, "The religion then of every man must be left to the conviction and conscience of every man; and it is the right of every man to exercise it as these may dictate this right is in its nature an unalienable right. It is unalienable, because the opinions of men, depending only on the evidence contemplated by their own minds cannot follow the dictates of other men." That is just such a beautiful encapsulation of the enlightenment philosophy. And that's why Madison later went on to say that the rights of conscience and opinion must be equally and completely exempted from government regulation. And that is why the final text in the First Amendment says that Congress shall make no law respecting the freedom of speech, religion, press, assembly, or petition.

[NARRATOR]

So, that's the rundown of the First Amendment. The framers of the Constitution thought that our opinions and beliefs are the product of reason, and the government cannot coerce or compel our opinions and beliefs in any way. They are ours, and we have a right to them. Even if they're unpopular.

The framers thought that we as individuals have the freedom to think, to worship, to believe, and we also have the freedom to express our opinions and beliefs unless those opinions are intended to and likely to cause imminent violence.