

Prior Restraint Outline

****Near** (1931)**

Prior restraint is unconstitutional with these three exceptions:

1)wartime, 2) obscenity, 3) incitement to violence

PentagonPapers (1971)

Court followed Near precedent, allowing for publication of classified information on the Vietnam war because the government did not prove danger to national security

Progressive (1979)

Introduced the concept of “classified at birth”

Contract Law

Marchetti (1972)/Snepp (1980)

Once contracts have been signed, contract law trumps First Amendment arguments

CIA may censor:

1. Anything classified
2. Anything learned during employment
3. Anything not elsewhere on the public record

Time/Place/Manner Regulation

Skokie 1978)/Collin (1978)

Cases illustrate unconstitutional censorship of parades, demonstrations, etc.

Constitutional regulation must:

- be content neutral
- serve substantial government interest
- not totally prohibit speech
- not be overbroad

Symbolic Speech

Texas 1989)/RAV (1992)/VA (2003)

Flag and cross burning protected as symbolic speech

Speech in Schools

Hazelwood (1988)

High school officials may censor material not in line with educational mission

Kincaid (2001)

Hazelwood rationale rejected in relation to a college yearbook, which was considered a “limited public forum” (6th Circuit)

Hosty (2006)

Hazelwood rationale applied to a college newspaper, allowing for prior restraint of publication (7th Circuit); SC denied cert