

Guided Article Analysis
The First Amendment in Current Events

Names: _____ Pd: _____ Date: _____

Before You Read: Basic Information

Title		Author	
Date		Source	

Part One: Overall Analysis

<p>Main Idea: Summarize this article in 1-2 sentences</p>	
<p>Purpose: Why was this article written? What is its main argument?</p>	
<p>Perspective: What is the author's tone toward the subject?</p> <ul style="list-style-type: none"> • Eg. How does the author seem to feel about the topic? • Is the author biased? 	
<p>Audience: Who is the author trying to appeal to?</p> <ul style="list-style-type: none"> • Who might agree with the author? • Who might disagree with the author? 	
<p>Call To Action: What change does the author want to see? What might the author want the reader to do about this topic?</p>	

Part Two: Constitutional Connection

<p>Which clause of the 1st Amendment does this story relate to?</p>	
<p>What is the argument that your current event VIOLATES the 1st Amendment?</p>	

What is the argument that your current event <u>DOES NOT VIOLATE</u> the 1st Amendment?	
How does your current event relate to the <u>Alien & Sedition Acts</u> (or another historical event of your choosing)?	

Part Three: Evaluation

Based upon the article you read, did this current event constitute a violation of the 1st Amendment?

Include a quote from the article AND a quote from the Amendment in your response.

CNN is suing the White House over Jim Acosta's press pass. Does the network have a case?

By Deanna Paul. *The Washington Post*. November 13, 2018



CNN filed a lawsuit against the Trump administration on Tuesday, alleging a First Amendment violation and demanding that journalist Jim Acosta's White House credentials be restored.

The lawsuit comes in the aftermath of a heated news conference held by President Trump on Wednesday, after the midterms.

After several questions about Trump's inflammatory rhetoric regarding a caravan of Central American migrants, the president lashed out at Acosta, calling the CNN reporter "a rude, terrible person."

"You shouldn't be working for CNN," he snapped. Hours later, the hostility between the administration and CNN's star White House correspondent reached new heights, when Acosta announced that his press pass had been suspended.

White House press secretary Sarah Sanders initially attributed the revocation to Acosta's interaction with a White House intern at the news conference, saying that he'd placed his hands on the intern, who was trying to take the microphone away from Acosta during his back-and-forth with the president.

In a statement after CNN sued, however, Sanders shifted and blamed the reporter's alleged rowdy behavior and "attempts to monopolize the floor."

CNN's lawsuit — filed in U.S. District Court in Washington — names CNN and Acosta as plaintiffs. Trump, Chief of Staff John F. Kelly, Deputy Chief of Staff for Communications Bill Shine, Sanders, and the U.S. Secret Service are named as defendants. The lawsuit alleges a violation of the First Amendment; a violation of the Fifth Amendment, which guarantees due process in government actions; and a violation of the Administrative Procedure Act.

It asks for the immediate restoration of Acosta's credential, or restoration pending a hearing before a "neutral" arbiter.

"While the suit is specific to CNN and Acosta, this could have happened to anyone," the network said in a statement. "If left unchallenged, the actions of the White House would create a dangerous chilling effect for any journalist who covers our elected officials."

But is this really a press freedom issue? Or is it just a dispute between a White House executive and a specific news organization?

What is the law?

The First Amendment guarantees freedom of the press, meaning the government is barred from discriminating against viewpoint.

Under no circumstance can the White House revoke a reporter's access to open press briefings simply because it doesn't like that reporter's questions. However, the First Amendment does not guarantee all reporters the right to attend White House briefings. Whether the White House is justified in blocking a reporter's access is a determination made by a judge.

First Amendment lawyer Floyd Abrams told The Washington Post that the Constitution doesn't allow content discrimination against journalists who publish things that a political figure disagrees with, or against reporters who ask difficult and probing questions of that official. That conduct is protected.

"It cannot happen because of disagreement with a journalist about the content of his or her reporting. It cannot happen in an effort to retaliate because of prior reporting," Abrams said Tuesday.

There are situations where a journalist's access to a news conference can be effectively stripped, though they are rare, Abrams said. For example, if a journalist is an ongoing threat to people present in the area, the government has a legitimate argument to take away his or her access.

Courts have never before seen a presidential administration bar a journalist for nonthreatening, but disruptive, behavior — as Sanders has alleged. But they could.

In this case, the court will come back to whether Acosta is being discriminated against because of the content of his speech or the quality of his behavior.

What will CNN argue?

The media will occasionally bring First Amendment violation cases, typically when the lone reporter representing an outlet or the entire news organization itself is blocked.

That's not true here: CNN still has multiple reporters covering the White House. But Jameel Jaffer, director of the Knight First Amendment Institute at Columbia University, called the lawsuit "entirely justified" and said CNN appears to have a strong case.

"It's pretty clear from the factual record that the White House revoked Acosta's access because of the content of his questions. At the end of the day, that's enough to establish a First Amendment violation," Jaffer said.

Despite the press secretary's original claim that Acosta placed his hands on an intern, several experts argued that the undoctored video evinced no excessive contact between the two. (Sanders, in supporting her claim, tweeted an apparently doctored video of the incident.) The intern "bumped into [Acosta] reaching for the microphone," Freedom Forum Institute President Gene Policinski said. Still, that contact probably provided the White House with bit of a rationale.

Policinski said that deliberate and repeated disruption could amount to a reasonable basis to block a reporter from attendance. But, he said, Acosta's questions were asked in a responsible way.

"Journalists attend press briefings to ask tough questions. Sometimes you'll ask a question that some people find repellent, but that comes with the territory. Nothing in the First Amendment says journalists must be polite," he said.

What will the White House argue?

The case comes down to an individual reporter and his right to be there, according to Stuart Karle, former general counsel for the Wall Street Journal and the former chief operating officer of Reuters News.

"If CNN was barred entirely, that would be problematic," said Karle, now an adjunct professor at Columbia Journalism School.

The White House should be granting press access to news organizations with broad audiences, but no one reporter has an absolute right to attend, Karle said.

Presidential news conferences are events where reporters are expected to behave with a certain level of decorum. Failure to do so would be a reasonable basis to deny a press pass, Karle said. “Whether Acosta behaves badly — worse than anyone else — is a factual question. The White House just needs to articulate a legitimate reason,” he said.

The White House latched onto this notion, too, saying in a statement that CNN “has nearly 50 additional hard pass holders, and Mr. Acosta is no more or less special than any other media outlet or reporter with respect to the First Amendment. . . . The White House cannot run an orderly and fair press conference when a reporter acts this way, which is neither appropriate nor professional. The First Amendment is not served when a single reporter, of more than 150 present, attempts to monopolize the floor.”

The White House has broad authority about whom to call on and how many questions to take. Under other presidents, reporters have generally been limited to one question and possibly a related follow-up.

And CNN still has White House credentials. Other reporters can cover the president and his administration. (Just two days after the Acosta-Trump flare-up, the president insulted CNN’s Abby Phillip after she asked a question about acting attorney general Matthew G. Whitaker.)

Still, said Abrams, the First Amendment expert: “The White House may not choose the identity of the journalist that CNN sends to a press conference. That’s not a presidential prerogative.”

It's Unconstitutional

Trump's executive order is an unlawful attack on Muslims that must be struck down in its entirety.

By *Mark Joseph Stern*

Slate.com, January 29, 2017

Demonstrators gather near the White House to protest President Donald Trump's travel ban on seven Muslim countries on Sunday in Washington.
Zach Gibson/Getty Images



On Saturday night, **several federal judges ruled** that part of Donald Trump's immigration ban, which targeted refugees from Muslim-majority countries, **likely ran afoul** the United States Constitution. The rulings freed hundreds of lawful immigrants who were detained pursuant to Trump's executive order and threatened with deportation. Protesters who had gathered at airports around the country rightfully celebrated the rulings as an extraordinary victory.

But that triumph was really just the start of the legal battle against Trump's discriminatory executive order. The Saturday decisions apply only to immigrants who were already in the U.S. or on their way here when Trump signed the order, because the government was **actively depriving them of liberty** without due process. The rulings do nothing for the thousands of refugees *overseas* who, as long as the executive order stands, will still be denied entry simply because they are Muslims from majority-Muslim countries.

Luckily for these refugees, the entire executive order—not just its application to those currently in the country—is unlawful. Trump's attempt to discriminate against refugees on the basis of religion is just as unconstitutional **as his efforts to detain and deport lawful immigrants** already in America without due process. Any Muslim refugee who was in the process of obtaining a visa when Trump signed his order should have standing to challenge its constitutionality in a U.S. court. Trump's de facto Muslim ban is a violation of the First Amendment's Establishment Clause, which prohibits the government from

favoring one religion over another. And the courts should strike down the order as an unlawful effort to discriminate against Muslims by executive diktat.

The **Establishment Clause** forbids the government from making any law “respecting an establishment of religion.” As the Supreme Court explained in 1982’s *Larson v. Valente*, “the clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another.” This constitutional requirement, the court noted, is “inextricably connected with the continuing vitality of the Free Exercise Clause,” guaranteeing religious liberty for all **by barring** “favoritism among sects.” The court **has also declared** that the government may not “aid or oppose any religion. This prohibition is absolute.”

Trump’s executive order officially prefers Christians and Christianity and disfavors Muslims and Islam. The order is sloppy and at times indecipherable—it was apparently signed **without any input or review** by the executive agencies it affects—but **whoever wrote it** was smart enough to attempt to dress up its animus in pretext. That pretense, however, does nothing to obscure its discriminatory intent and effect. In addition to targeting seven majority-Muslim countries, **the order** suspends the U.S. Refugee Admissions Program for 120 days, no matter a refugee’s country of origin. When that freeze ends, the order directs the secretary of state, “in consultation with the Secretary of Homeland Security,” to:

make changes, to the extent permitted by law, to prioritize refugee claims made by individuals on the basis of religious-based persecution, **provided that the religion of the individual is a minority religion in the individual’s country of nationality.** (Emphasis mine.)



A map of the countries originally included in the “Travel Ban” executive order. This order effectively banned immigrants and refugees from these countries from entering the United States. All 7 nations included have a majority Muslim population.

That limitation is critical—and illegal. It is normal to prioritize “refugee claims made by individuals on the basis of religious-based persecution.” There is a long-standing and bipartisan agreement that America’s refugee policies should always focus, at least in part, on those being persecuted on the basis of religion. But this principle is dramatically altered in the very next clause, which states that a refugee persecuted because of his religion will *only* be prioritized if he “is a minority religion in the individual’s country of nationality.”

The purpose of this limitation is obvious when applied to the Muslim-majority countries with which Trump is concerned: It favors Christian refugees over Muslim refugees. Trump’s executive order will not help Muslim refugees in Muslim countries who face religious persecution. It is instead designed to help Christians in Muslim-majority countries. On a textual and structural level, the order distinguishes between refugees on the basis of religion, helping Christian refugees because they are Christian, and turning away Muslim refugees because they are Muslim. This discrimination plainly contravenes the “clearest command” of the Establishment Clause.

As ACLU National Legal Director David Cole **has written**, Trump’s own comments amply support this interpretation of the order. Throughout his campaign, Trump **repeatedly called for** “a total and complete shutdown of Muslims entering the United States.” He also **effectively admitted** that he would dress up his Muslim ban in the pretense of a neutral immigration restriction. “People were so upset when I used the word *Muslim*,” he said on *Meet the Press* on July 24. “Oh, you can’t use the word *Muslim*. Remember this. And I’m OK with that, because I’m talking *territory* instead of *Muslim*.” When a reporter read him Mike Pence’s tweet criticizing his proposed Muslim ban on the July 17 edition of *60 Minutes*, **Trump responded**, “So you call it territories, OK? We’re gonna do territories. ... Call it whatever you want. We’ll call it territories, OK?”

Trump’s order does indeed attempt to use the pretext of “territories,” but it cannot conceal the anti-Muslim animus that lies just beneath its surface. If Trump’s previous comments aren’t enough evidence, consider what his adviser Rudy Giuliani **admitted on Saturday night** while being interviewed on Fox News: Giuliani explained how he helped Trump create a Muslim ban that would also be legal, per the president’s request. “When he first announced it, he said, ‘Muslim ban,’” Giuliani explained.

He called me up and said, "Put a commission together. Show me the right way to do it legally." I put a commission together ... and what we did was we focused on, instead of religion, danger. The areas of the world that create danger for us. Which is a factual basis. Not a religious basis. Perfectly legal, perfectly sensible, and that's what the ban is based on. It's not based on religion. It's based on places where there are [sic] substantial evidence that people are sending terrorists into our country.

But unfortunately for Trump and Giuliani, an unconstitutional executive order does not become lawful because it is dressed up in fatuous legalese. And while courts are sometimes hesitant to examine a law's legislative history to uncover its true intent, they should not ignore Trump's own descriptions of his goals. Unlike a congressional act—which requires the votes of myriad people, some of whom may have different views of the bill before them—this executive order was signed by one man: Trump. He is responsible for it, and his words should guide the courts' interpretation of its meaning and intent.

There are other legal avenues to challenge the Muslim ban. Cato Institute's David Bier **argues persuasively** that Trump's order reaches beyond his executive authority and violates a federal law that forbids discrimination based on national origin in the immigration system. The Fifth Amendment's Due Process Clause **also contains** an equal protection component that bars discrimination on the basis of religion, which bolsters the Establishment Clause claim. (In **freeing immigrants detained** under the order on Saturday night, multiple federal judges cited equal protection principles.) But whatever the exact line of attack, the basic legal logic is straightforward and airtight. The government has no constitutional authority to discriminate against Muslim refugees because of their religion. And that is precisely what Trump just attempted to do.

Clauses of the First Amendment	Explanation
Congress shall make no law respecting an establishment of religion,	Religion and government must remain separate. The government cannot show preference toward or discriminate against one religious group over another.
or prohibiting the free exercise [of religion];	The government cannot prevent people from practicing their religion (as long as that practice doesn't violate the law).
or abridging the freedom of speech,	The government cannot prevent citizens from expressing ideas or opinions, as long as that expression doesn't violate the rights of others.
or of the press;	The government cannot prevent reporters and journalists from investigating and reporting facts and opinions, even if they criticize the government
or the right of the people peaceably to assemble,	Citizens are allowed to gather in public; the right to protest.
and to petition the Government for a redress of grievances.	People are allowed to complain to the government or ask for assistance without fear of punishment.

Clauses of the First Amendment	Explanation
Congress shall make no law respecting an establishment of religion,	Religion and government must remain separate. The government cannot show preference toward or discriminate against one religious group over another.
or prohibiting the free exercise [of religion];	The government cannot prevent people from practicing their religion (as long as that practice doesn't violate the law).
or abridging the freedom of speech,	The government cannot prevent citizens from expressing ideas or opinions, as long as that expression doesn't violate the rights of others.
or of the press;	The government cannot prevent reporters and journalists from investigating and reporting facts and opinions, even if they criticize the government
or the right of the people peaceably to assemble,	Citizens are allowed to gather in public; the right to protest.
and to petition the Government for a redress of grievances.	People are allowed to complain to the government or ask for assistance without fear of punishment.