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News Release

For Immediate Release

July 14, 2006

Public Opinion on First Amendment Sets Stage For Supreme Court Rulings, Yale Law Study Concludes

Study emphasizes the importance of educating the public on freedom of speech and other civil liberties.

MIAMI – Do public attitudes about the First Amendment matter? The answer, simply, is yes. And here’s the latest reason why: Because public opinion shapes how the Supreme Court rules.

Over the long term public attitudes about free speech controversies affect the direction of U.S. Supreme Court rulings, according to a study released today by the Information Society Project at Yale Law School, which analyzed more than 50 years of research on the subject.

“This study confirms what social scientists have known for a long time – that the Supreme Court’s decisions tend to reflect long term changes in public attitudes, and that is as true for First Amendment doctrine as it is for other parts of the Constitution,” said Jack Balkin, Knight Professor of Constitutional Law and the First Amendment at Yale Law School, who directed the project.

The study – available on the web at <http://research.yale.edu/isp> – was funded in part by a \$150,000 grant from the John S. and James L. Knight Foundation.

Over time public support for free speech helps buttress – or undermine – existing legal protections. Public support for free speech tends to be strongest for speech that clearly promotes an informed citizenry and democratic self-governance. However, the public tends to have less tolerance for offensive speech and speech that it regards as extremist, particularly when it fails to see a connection to democracy.

The public is also much less protective of media rights than individual rights. That makes it less likely that the high court will rule for news organizations in First Amendment cases than it would in an environment of high public respect for the news media.

The study points to a wide range of mechanisms by which public opinion affects judicial decisions, ranging from the appointments process – which shifts the median or “swing” Justice on the Supreme Court – to the fact that judges and Justices live in the same culture as everyone else. These effects may often be indirect, but over time they may matter a great deal.

“We are now engaged in a really vital debate over civil liberties after 9/11, and it becomes ever more important for the public to show its support for our basic freedoms,” said Balkin. “It’s a time of challenge but also a time of opportunity. Courts can’t do everything by themselves, nor should we expect them to. If the public rises to the occasion and supports freedom of speech when it is threatened, the judiciary will be far more likely to protect this core freedom.”

What is needed, the study says, are larger efforts to educate the public about the First Amendment. It proposes a model for educating students and the public on First Amendment issues, focusing on how free speech and a free press advance democracy and serve the public interest. The model education program should also educate the public about the difference between using social norms and social disapproval to regulate speech, and using the power of the state in the form of fines and criminal penalties.

The best way to learn about freedom of speech, the study argues, is by doing. Individuals are more likely to support the sort of speech in which they themselves engage or could imagine engaging. Thus the study suggests that schools create programs that allow students to practice journalism and political expression, using new technologies such as blogs and podcasts.

Even marginal improvements in public education may have important long term effects on public support for the First Amendment, the study concludes. Research suggests that the better educated individuals are, the more tolerant they are of even offensive and indecent speech, and the more willing they are to protect routine journalistic practices.

The Yale Information Society Project was founded in 1997 to study the relationship between law and the new information technologies. It is a world-renowned think tank that organizes conferences and produces research on cutting edge issues affecting the information society. The study’s author is Marvin Ammori, a fellow of the Yale Information Society Project.

The John S. and James L. Knight Foundation promotes journalism excellence worldwide and invests in the vitality of the communities where the Knight brothers owned newspapers. To learn more about Knight’s transformational funding, visit www.knightfdn.org/annual.

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