

Highlights in the 2026-1 Release

This is the second release of 2026 (Release #52) for Smolla and Nimmer on Freedom of Speech. Updated twice a year by an award-winning author and First Amendment scholar, this treatise provides a comprehensive analysis of First Amendment Law. Directed toward legal practitioners, this treatise is also highly useful for other professionals, including professors, publishers, and media industry experts.

- In *American Association of University Professors v. Trump*, the United States District Court for the Northern District of California issued a preliminary injunction barring President Trump and his subordinate federal officials from proceeding with their threats to cancel some \$1.2 billion in federal funding to the University of California.
- In *White Hat v. Murrill*, the Fifth Circuit upheld that a Louisiana law that prohibited trespassing on pipeline construction sites, rejecting the argument that it was content-based discrimination prohibited by the First Amendment.
- The Ninth Circuit in *Powell v. United States Securities & Exchange Commission*, refused to hold unconstitutional a Security and Exchange Commission Rule, SEC Rule 202.5(e). As explained by the court, Rule 202.5(e) reflects SEC policy, in place since 1972, that the agency will not settle a civil enforcement action with a defendant unless the defendant agrees not to publicly deny the allegations against the defendant.
- In *Doe v. University of Massachusetts*, the First Circuit engaged in extended analysis of the free speech rights of college students, finding the case “close” but ultimately exonerating the student.
- In *Schmitt v. Rebertus*, the Eighth Circuit held that the Minnesota Department of Corrections violated the First Amendment by cancelling a program entitled “The Quest for Authentic Manhood” on the grounds that the program conflicted with the diversity, equity, and inclusivity values of the Department by defining manhood, or the study of masculinity, through a biblical lens of what a “real man looks like.”
- In *Hawkins v. Youngkin*, the Fourth Circuit rejected the claim that the entirely discretionary nature of Virginia’s voting re-enfranchisement system under which the Governor of the Commonwealth has unfettered discretion to grant clemency restoring voting rights, violated the First Amendment’s unfettered-discretion doctrine. The court held that the unfettered discretion rule applies to licensing regimes that implicate prior restraint principles, and that the exercise of clemency by Virginia’s Governor was simply not a licensure scheme.