

Freedom Exists for All, Comics Included: An Evaluation of How the First Amendment Applies  
to Comic Books

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Abstract:

This paper is intended to evaluate how the First Amendment applies to Comic Books and other publications involving graphic images. The paper will present evidence from several US Supreme Court cases and evaluate how the Supreme Court ruled in the cases. The history of this paper spans seventy years and spans multiple states. The paper will also define what a comic book is in the eyes of the law as well as the different ways comic book content was censored. The Comic Code Authority is discussed and its history. In addition to the aforementioned content, this article will also reference comic books as a medium for adults.

## **Introduction**

Comic books are a major part of society and have been for decades. One could say this is a rather opinionated statement to begin a paper with, but if one takes a second to examine the reach of comic books, they will begin to see their influence. For example, if one analyzes superhero comic book characters. Superhero characters are a huge part of pop culture. From 2000 on, there has been an increase in superhero movies, so much so that schools allow superheroes on college gear to show school pride (Pepper, 2015). With at least forty-one superhero films since 2000, it is not surprising the impact it has made on culture. Another aspect to consider in the rise of superhero motion pictures is their “blockbuster” factor (Bukatman, 2011). Since superheroes are popular, constantly being created, and valued by society, it is important to evaluate how much freedom they are allowed. Superhero comic books like many other forms of literature have had their share of legal battles in terms of what can be printed versus what should be censored. The question under evaluation is: what happens when to freedom of speech when American society attempts to censor comic books, superhero-related or otherwise?

### **The US Supreme Court Protects the Sale of Comic Books**

One of the earliest cases involving censorship and comic books is the 1948 case of *Winters v. New York*. New York passed an obscenity law which forbids the sale of publications that are, “principally made up of criminal news, police reports or accounts of criminal deeds or pictures or stories of deeds of bloodshed, lust or crime.. (Vile).” This particular law relates to comic book censorship because 1) several comic books involve crime and detective work. 2) The case in question convicted Murray Winters for intending to sell magazines. The Supreme Court, however, overruled the New York obscenity law involving magazine comics because it violated

the First Amendment through extremely vague language. The leading judge at the time wrote in his opinion for the court that the items forbidden in the statute are protected under the First Amendment. He went on to say, "What is one man's amusement, teaches another's doctrine. Though we can see nothing of any possible value to society in these magazines, they are as much entitled to the protection of free speech as the best of literature (Vile)." In this case, the U.S. Supreme Court protected a good majority of comic book content by not allowing this statute to stay in place.

Another case that involves the sale of comic books being illegal is the 1958 US Supreme Court Case, *Adams v. Hinkle*. This case specifically concerns whether the sale of comic books without a license is legal. The case also outlines what exactly defines a comic book. "'Comic book' means any book, magazine or pamphlet, sold or distributed for profit, a major part of which consists \*767 of drawings depicting or telling a story of a real or fanciful event or series of events, with a substantial number of said drawings setting forth the spoken words of the characters with pointers, or brackets, or enclosures, or by such other means as will plainly indicate the character speaking such words: Provided, however, That no comic section of any regularly published daily or weekly newspaper shall be deemed to be a 'comic book' for the purposes of this act (*Adams v. Hinkle*).'" The act referenced in the quote is the statute that banned the sale of comic books without a license unless the comic is directly tied to a newspaper. This case made its way to the US Supreme Court. The court overturned the ruling because it violates the First and Fourteenth Amendments. The Fourteenth Amendment allows States the power to utilize the First Amendment to protect against limited speech. This case also parallels the early 18<sup>th</sup> century when American citizens were arrested for selling pamphlets contrary to British

teachings (*Adams v. Hinkle*). The parallel was another reason the US Supreme Court overruled the case.

## **Comic Books Face Censorship**

In the 1950s, many people began to fear the contents of comic books. Comic books were believed to corrupt the youth and create criminals. The Comic Book Legal Defense Fund wrote an article detailing the history of this sentiment. Fears were intensified when psychiatrist Dr. Fredric Wertham began preaching prohibiting the sale of comic books to children. When Wertham wrote a book on how social to raise awareness around comic books, children, and social psychology, the US Senate took note of it. When the Senate committee began investigating, it caused the creation of the Comics Code Authority which would act as a regulatory agency for comics. This code caused several comic book companies to go out of business (Nyberg). The Comics Code acted as the constitution for censoring comic books and unlike the prior Supreme Court case of 1948 which allowed comics to portray criminal deeds in a typical fashion, the Comics Code severely limited what comic books could and could not depict.

The Comic Code was embraced on October 26, 1954. There are over forty standards within the Comic Codes. The purpose of this paragraph is to present evidence of the censorship comic books faced. The Comic Book Legal Defense Fund created an article on the code. Three rules from Part A include: “(6) *In every instance good shall triumph over evil and the criminal punished for his misdeeds*, (10) *The crime of kidnapping shall never be portrayed in any detail, nor shall any profit accrue to the abductor or kidnaper. The criminal or the kidnaper must be punished in every case*, and (1) *Crimes shall never be presented in such a way as to create sympathy for the criminal, to promote distrust of the forces of law and justice, or to inspire others with a desire to imitate criminals* (The Comics Code of 1954).” These exist under the Part

A section of the general standards. There are three general standards sections, a section for religion, costumes, marriage and sex, and comic book advertising. These exist under the Part A section of the general standards. There are three general standards sections, a section for religion, costumes, marriage and sex, and comic book advertising. When one compares the three example rules from the Comics Code, it becomes evident that the Supreme Court overruling from 1948 has been overturned.

When comic book creators were faced with these various types of censorship required, they chose to abide by the rules for some time. The code restricted violence, intercourse, and other content. This caused comic books to exist without realism and severely limited free speech and content. However, in the late 1960s early 1970s, Stan Lee published a comic book storyline that included drug abuse although the Comic Code Authority denied Marvel's request to print the storyline. Stan Lee's action resulted in the Comic Code Authority relaxing some of its rules. A new system was established which made distributors more accepting of comic books without the Comic Code Authority's stamp of approval. By 1989, most comic books were available without the seal, and by 2011, only two publishers still sold comic books with the seal of approval. As of today, comic books are allowed to manage their own comics and utilize their First Amendment right of freedom of speech. Organizations like the Comic Book Legal Defense Fund exist to aid comic book publications should they need help with future censorship (Nyberg). Even during the twenty years of major comic book censoring, comic books did not stay censored for too long.

### **Comic Books as a Medium for Adults**

Comic books have been used as a method of expressing an opinion, an art form, and for political content. A paper written by James D. McWilliams describes the history of comic books and other books on graphic images and their struggle in reference to the First Amendment.

Within the article, McWilliams hopes to emphasize the point that comic books are not only for children but that they should have a place in America despite images being too graphic. It includes several court cases and their rulings. Towards the end of the paper, McWilliams points out how comic books have been used throughout history. He spotlights four points to illustrate how comic books are a serious art form. “[1] Sequences of drawings are among the oldest forms of artistic communication. [2] Comics have always been read largely by adults. [3] Comics are a major source of national culture. [4] Comics are frequently a form of political and creative expression (McWilliams, 2008).” McWilliams continues by showing examples of comic panels throughout history using examples of artists who told stories using images in sequences. He then mentions the various comic book creators who have published stories to help fight Nazi propaganda as well as to push American political narratives (McWilliams, 2008). Some of these publications are still referenced in media today.

## **Conclusion**

The purpose of this article was to examine: what happens when to freedom of speech when American society attempts to censor comic books, superhero-related or otherwise? In several cases, states and even the government have attempted to censor comic book publications. However, in each situation, through either the US Supreme Court or other means, it has been found that the censoring of comic books violates the First Amendment. So much so, that organizations have risen to protect the First Amendment rights of comic book publications. Based on the evidence presented by history, one can assume that the content of comic books is entitled to encompass whatever the creator desires.

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