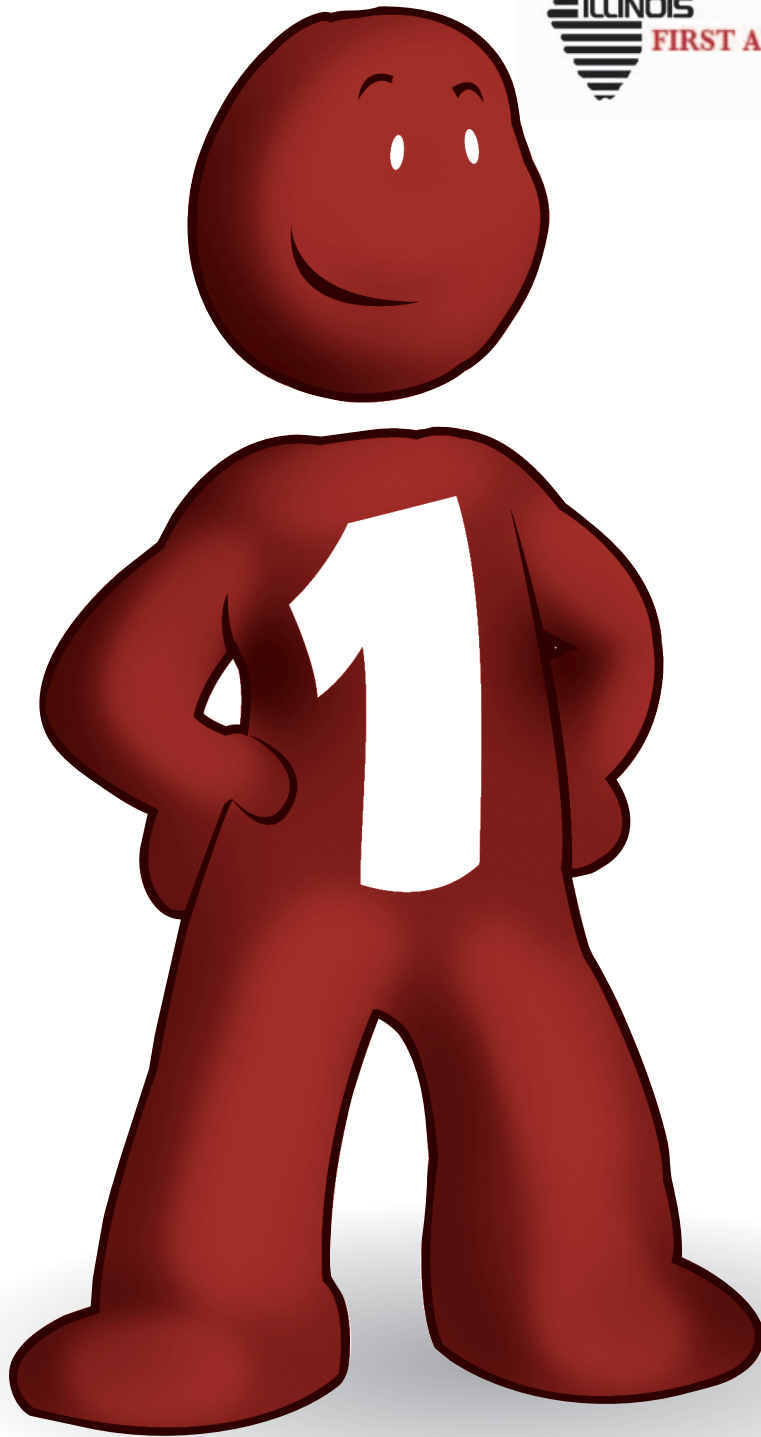


Congress shall make no law respecting an establishment of RELIGION, or prohibiting the free exercise thereof; or abridging the freedom of SPEECH, or of the PRESS; or the right of the people peaceably to ASSEMBLE, and to PETITION the government for a redress of grievances.

First Amendment Curriculum Guide



FIRST AMENDMENT CENTER



The First Amendment

thereof; or abridging the freedom of **SPEECH**, or of the **PRESS**; or the right

Congress shall make no law respecting an establishment of **RELIGION**, or prohibiting the free exercise

of the people peaceably to **ASSEMBLE**, and to **PETITION** the government for a redress of grievances.

**This First Amendment Curriculum Guide
is available in the following formats:**

- Via e-mail
- CD-ROM
- Hard (printed) copy
- Combination of any of these

For your free curriculum, please contact:

Illinois First Amendment Center
900 Community Drive
Springfield, IL 62703
Email: firstamendment@il-press.com


Website: www.illinoisfirstamendmentcenter.com

© 2005 Illinois First Amendment Center

Recipient acknowledges and agrees to be bound by the following terms: The Illinois First Amendment Center has developed the Posters & Course materials for use in junior high, high school, college classrooms and other educational settings. Recipient ("Licensee") acknowledges that the Illinois First Amendment Center (IFAC) owns the copyright to the Poster & Course Materials. In consideration for Licensee's use of the Poster & Course Materials in classrooms or other educational settings, the Illinois First Amendment Center, as licensor, agrees to grant Licensee a non-exclusive license to the Poster & Course Materials for the following uses, and only the following uses: to reproduce the Course Materials in copies, the number of copies not to exceed the number of Licensee's students enrolled in Licensee's classes at any point in time; to distribute copies of the Course Materials to students enrolled in Licensee's classes; and to display the Poster & Course Materials in Licensee's classroom(s) and on adjacent displays, including hallways and bulletin boards. In consideration for receipt of the enclosed Poster & Course Materials and the granting of the aforementioned license, Licensee agrees to the terms of said license, including the uses of the Poster & Course Materials. Licensee acknowledges that any other use of the Poster & Course Materials is prohibited under this license without prior approval of the Illinois First Amendment Center. Any commercial use of these products is expressly prohibited, and any effort to distribute for a commercial purpose or gain is likewise expressly prohibited. Unauthorized use of the Poster & Course Materials may be subject to civil and criminal prosecution and damages under the Copyright Act of 1976, 17 United States Code Section 101 et seq.

T h e F i r s t A m e n d m e n t

Foreword



Lest anyone think that First Amendment curricula are well established, thoroughly understood, and conscientiously applied in schools, consider findings of the January 2005 Knight Foundation report of high school students' understanding of their freedoms:

- Nearly 75% of those polled say they don't know how they feel about the First Amendment or that they take it for granted.
- Students are less likely than adults to think that people should be allowed to express unpopular opinions or that newspapers should be allowed to publish freely without government approval of stories.
- 75% of those polled lack knowledge and understanding about key aspects of the First Amendment and its protections.

Without question there is an urgent need for committed teaching, lively debate, and consistent application of the First Amendment. A unit on the First Amendment seems particularly relevant to literature, journalism, and social studies courses. But it can be applied with equal relevance to a music class discussion of controversial songs and censorship or to a science class exploring the Darwinian theory of evolution and the inherent religious implications.

With your creativity, inspiration, and commitment as instructors, the First Amendment is relevant to every subject of the school curriculum and every topic of school interest.

Table of Contents

3	Foreword
5	Acknowledgments
6	How to Use This Curriculum Guide
7	Unit 1: History of the First Amendment Overview, Objective, Learning Standards Understand – Know – Do (Skills) items History of First Amendment First Amendment Time Line Five Freedoms and Related Court Cases Hook Activity / Learning Activities Assessment
21	Unit 2: Freedom of Religion Overview, Objective, Learning Standards Understand – Know – Do (Skills) items Key Cases Hook Activity / Learning Activities Assessment Supporting Materials and Resources
32	Unit 3: Freedom of Speech Overview, Objective, Learning Standards Understand – Know – Do (Skills) items Key Cases Hook Activity / Learning Activities Assessment
43	Unit 4: Freedom of Press Overview, Objective, Learning Standards Understand – Know – Do (Skills) items History of Press Freedom Key Cases and Questions to Consider Hook Activities / Learning Activities Assessment
54	Unit 5: The Right to Assemble / Right to Petition the Government Overview, Objective, Learning Standards Understand – Know – Do (Skills) items History of Right to Assemble and Petition Key Cases Hook Activity / Learning Activities Assessment – Questions & Answers Supporting Materials
61	Student Journalism
63	First Amendment Handouts
67	Additional First Amendment Activities
68	Test Bank of Questions
76	Synopses of First Amendment Supreme Court Cases
80	Glossary of First Amendment Terms

**The First Amendment
Keep It Strong!**



Acknowledgments



We appreciate the John S. and James L. Knight Foundation's dedication to expanding awareness of and commitment to the First Amendment. The findings of the Knight Foundation January 2005 Key Findings report underscore the urgent need for diligent, authentic instruction in every teaching-and-learning setting throughout the country.

Special thanks to the following teachers and leaders whose invaluable work and dedication at the 2005 Illinois First Amendment Center Curriculum Conference made this resource possible:

Christopher Busse	O'Fallon Township High School, O'Fallon, IL
Jill Flanagan*	Bartlett High School, Bartlett, IL
Kim Freitag*	Community Consolidated School District #93, Carol Stream, IL
Paulette Goodman	Kennedy Junior High, Lisle, IL
Shelly Gruenwald	Central Catholic High School, Bloomington, IL
Steve Kramer	Partners for Success, Addison, IL
Janet Levin	John Hersey High School, Arlington Heights, IL
Gregg Long	Lake Park High School, Roselle, IL
Terry Lootens*	Heyworth High School, Heyworth, IL
Nicole Mountain	Liberty Community School District #2, Liberty, IL
Mike Mowen	Winnebago High School, Winnebago, IL
Diane Mueller	Normal Community West High School, Normal, IL
Curt Onstad	Lakes Community High School, Lake Villa, IL
Kirstin Sleeth	Richwoods High School, Peoria, IL
Donna Vorreyer	Hinsdale Middle School, Hinsdale, IL
Karen Barrett	Wheeling High School, Wheeling, IL

Special thanks to Kim Freitag for her role as facilitator at the April 2005 Curriculum Conference, for her review of this curriculum guide, and for her personal contributions to content.

We also wish to recognize and thank Randy Swikle for writing the first Illinois First Amendment Center curriculum resource, a stirring and dynamic call to action for the education community since its publication in 2002 and an integral resource and springboard for the 2005 edition.

There is no quick way to measure the impact of original thought, or to thank those whose insight helps to move a nation forward. Likewise, there is no way to adequately thank those who continue the cause, who understand that a people cannot stay in one place, but rather move either forward or backward. To every teacher, administrator, and parent who embraces the First Amendment and shares it with the next generation, we offer our profound thanks. Through you, freedom will surely be defined for those who follow.

*Steering Committee Member

How to Use This Curriculum Guide

This Curriculum Guide provides teachers with the tools they will need to plan and implement instruction with students about the First Amendment.

The guide is divided into five units:

- History of the First Amendment
- Freedom of Religion
- Freedom of Speech
- Freedom of Press
- Rights to Assemble and to Petition

Each section has been developed as a complete stand-alone lesson or may be used in combination with other sections above. In this way, teachers have maximum flexibility in making instructional decisions that align with the needs of their students and within the boundaries of their regular curriculum.

Learning Standards

Each section begins with an outline of the objectives and matching Learning Standards. Teachers are provided with a list of what students should: **Understand** (essential ideas), **Know** (key facts and vocabulary), and be able to **Do** (skills) as a result of the lesson in that section.

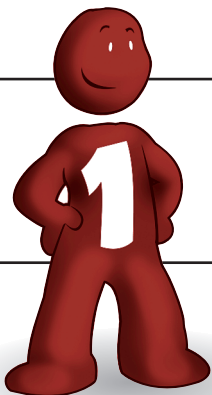
Next, a **menu of learning activities** aligned to the objectives is provided. Activities are included to aid in the teaching of key objectives of the section. Also included are **optional activities** for teachers who are able to extend the section for a longer instructional time frame.

Finally, **assessment items** aligned to the objectives are included. These items comprise a bank of test questions that teachers may use to assess student mastery of the objectives.

Handouts, Glossary and Court Cases

The educators who have designed the First Amendment Curriculum guide assume that teachers will have access to history and government textbooks within their schools which can be used to provide a foundation or to extend students' understanding of the First Amendment. For this reason, content commonly found in standard social studies texts has not been included in this curriculum. Instead, an appendix featuring a glossary of terms, handouts, and synopses of First Amendment court cases has been provided.

NOTE: Questions and answers supplied in this curriculum are intended as sample questions only, and do not necessarily reflect current law in your state. Answers may also vary from those provided depending on the specific facts in any case or scenario. Verification of current law in your state may be necessary when using questions and answers provided.



Uno, the mascot embodying First Amendment freedoms, will be your companion throughout this curriculum for classroom instruction, and likewise will serve as a reminder to students of their freedoms inherent in The First Amendment.

History of the First Amendment



Section Overview

Freedom – the essence of democracy – requires enlightenment. The First Amendment of the United States Constitution – a mere 45 words - stands as a cornerstone of freedom. Its protection enables all Americans to participate in democracy – to believe what they want to believe and to say what they think. This unit provides an overview of the History of the First Amendment.

Objective

The objective of this section is to orient students to the rights embodied in the First Amendment, its historical roots, its ongoing implementation and interpretation, how Americans today understand the First Amendment, and its modern day importance and relevance.

Illinois State Standards

14.F.3a: Analyze historical influences on the development of political ideas and practices as enumerated in the Declaration of Independence, the United States Constitution, the Bill of Rights, and the Illinois Constitution.

14.F.3b: Describe how United States political ideas and traditions were instituted in the Constitution and the Bill of Rights.

14.F.4a: Determine the historical events and processes that brought about changes in United States political ideas and traditions (e.g., the New Deal, Civil War).

14.F.5: Interpret how changing geographical, economic, technological, and social forces affect United States' political ideas and traditions (e.g., freedom, equality and justice, individual rights).

16.A.5b: Explain the tentative nature of historical interpretation.

National History Standards

3B: The student understands the guarantees of the Bill of Rights and its continuing significance.

National Civics and Government Standards

What are the Foundations of the American Political System?

Understand

- The First Amendment's roots can be traced back to British documents, colonial documents, and early post-revolution state documents.
- The First Amendment was developed in response to fear of abuses of power by government officials.
- "There is a national tension between security and liberty." (Benjamin Franklin)
- The First Amendment is a dynamic document that changes in meaning when courts interpret it.
- Many Americans do not fully understand their freedoms as guaranteed by the First Amendment.

Know

Vocabulary: (See Glossary for definition of Vocabulary terms.)

- | | | |
|---------------------|-----------------|-------------------|
| 1. Founding Fathers | 4. Constitution | 6. Bill of Rights |
| 2. Federalist | 5. Amendment | 7. Ratification |
| 3. Anti-Federalist | | |

Facts:

1. First Amendment's Five Freedoms
2. Arguments for and against inclusion of a Bill of Rights in the Constitution
3. First Amendment freedoms embodied in selected documents

History of the First Amendment



Skills – Students Will Be Able To:

- Work cooperatively and effectively with others in groups
- Analyze and interpret varied texts
- Use inductive reasoning to summarize and draw conclusions from qualitative / quantitative data
- Write an effective paragraph to summarize and draw conclusions from evidence
- Develop a product to educate others about the First Amendment
- Trace the history of the First Amendment

History of the Development of the First Amendment

Contributed by Kim Freitag


Thomas Jefferson stated, “A bill of rights is what the people are entitled to against every government on earth, general or particular, and what no just government should refuse, or rest on inference.” Jefferson’s view was a product of the new philosophical thought of the 18th century, the Enlightenment. Enlightenment thinkers such as the Founding Fathers believed that basic political rights were inherent in man’s nature as a rational being. This was a shift in belief from Medieval times when all political rights and powers were vested in a “divinely ordained” monarch to whom ordinary people owed unquestioning allegiance. Enlightenment thinkers asserted that the people through their consent were the source of political legitimacy. Thus, the authority governmental officials exercised was a result of the people freely giving them that authority, not the result of divine appointment. Further, the job of government was not to grant rights but to secure and protect these God-given, natural rights for the people.

British intellectual, John Locke, was an eloquent writer advocating Enlightenment ideas. He articulated life, liberty, and property as natural rights. His work served as inspiration for the American Founders, particularly Thomas Jefferson. Locke’s countrymen, John Trenchard and Thomas Gordon, writing a series of essays under the title, *Cato’s Letters*, argued for freedom of speech as a natural right. Thus, Enlightenment thought, augmented by the Founders’ colonial experience of tyranny under British rule as well as the erosion of authority of absolute monarchs and protection of rights and freedoms enshrined in documents from the Magna Carta in 1215 to state constitutions in the post-Revolution era, shaped the fundamental freedoms outlined in the First Amendment. The explicit articulation of these freedoms, however, was not included in the Constitution written in 1787. This absence of a bill of rights was a stumbling block to the document’s ratification.

Debate about ratification of the new constitution was fierce, and the American press played a central role in advancing the arguments of both sides. Those who advocated ratification of the constitution styled themselves as Federalists while the opponents were left with the negative moniker, Anti-Federalists. Federalists Alexander Hamilton, James Madison, and John Jay wrote a series of articles under the pseudonym, Publius, which were published in state newspapers such as the *New York Independent Journal* and the *Gazette of the United States*. These 85 essays were later gathered and re-published as the *Federalist Papers*.

The Anti-Federalists were less organized in their approach; however, opponents of the new constitution such as George Mason, George Clinton, Robert Yates, John Mercer, Samuel Bryan, and Patrick Henry wrote articles or made speeches outlining their arguments against ratification. Anti-Federalist essays were published under various pennames including Brutus, Federal Farmer, and Centinel. A key newspaper which provided a forum for the Anti-Federalist message was the *Philadelphia General Advertiser* (also known as the *Aurora*), published by Benjamin Franklin Bache, grandson of Benjamin Franklin. These essays were also later collected and published as the *Anti-Federalist Papers*.

History of the First Amendment




While Anti-Federalist arguments against the constitution were mostly variations on a single theme – fear of concentration of power in a central government which could ultimately exercise that power in a tyrannical fashion similar to that of the British crown – the specific criticism of the constitution which most powerfully resonated with the American public was the absence of a bill of rights. The American public supported the Anti-Federalist position that explicit guarantees of individual liberties not expressly stated in the constitution were essential. The Anti-Federalist position regarding the bill of rights was bolstered by the opinion of Thomas Jefferson who was absent from the Constitutional Convention as he was serving as the U.S. minister to France. Jefferson wrote to his friend, Madison, and argued that the absence of a bill of rights in the constitution exposed Americans to the risk of tyranny. Jefferson asserted that a bill of rights designed to restrict the powers of the central government was needed.

Thus, the Federalists, recognizing popular support for a bill of rights and anxious to see the new constitution ratified, promised that upon ratification of the Constitution, the first business of the new Congress would be to draft and approve a bill of rights. Thus, James Madison, in 1789, drafted the Bill of Rights, which were adopted by the states in 1791.

First Amendment Timeline

- 1215** King John of England signs Magna Carta – the first time that sovereign powers are limited.
- 1641** The First Amendment has its early beginnings when, in 1641, the first broad statement of American liberties is drafted by the Massachusetts General Court, entitled the Massachusetts Body of Liberties containing right to petition and a due process statement.
- 1663** Religious freedom is granted in Rhode Island.
- 1689** English Bill of Rights established.
- 1708** Connecticut passes a statute allowing “full liberty of worship” to Anglicans and Baptists.
- 1776** On July 4th, the Declaration of Independence, in its final form, is adopted by the Continental Congress. Virginia passes their state’s Declaration of Rights – the first state in America to have a bill of rights as part of its state constitution.
- 1777** Draft of a Virginia state bill addressing religious freedom is completed by Thomas Jefferson, later known as the Virginia Statute for Religious Freedom.
- 1789** U.S. Constitution is adopted, but contains no Bill of Rights.
- 1791** The first 10 amendments (Bill of Rights) to the U.S. Constitution are adopted on December 15.
- 1868** The Constitution’s Fourteenth Amendment is ratified, stating “. . . no State shall deprive any person of life, liberty, or property, without due process of law. . .”.
- 1907** Supreme Court hears the first free-press case in *Patterson v. Colorado*.
- 1917** With the passage of the Espionage Act, it becomes a crime “to willfully cause or attempt to cause insubordination, disloyalty, mutiny, or refusal of duty, in the military or naval forces of the United States.” or “willfully obstruct the recruiting or enlistment service” of the U.S.

History of the First Amendment



1918 Sedition Act is passed, forbidding spoken or printed criticism of the U.S. government, Constitution or flag. (Repealed in 1921.)

1919 Clear and present danger test is established in *Schenck v. U.S.*

1940 The Smith Act (a.k.a. Alien Registration Act of 1940) is passed making it a crime to advocate violent overthrow of the government.

1957 Supreme Court establishes that “obscenity is not within the area of constitutionally protected speech or press.” Obscenity is defined in *Roth v. United States* as “material which deals with sex in a manner appealing to prurient interest.”

1962 Supreme Court determines that a state-mandated non-denominational prayer was “contrary to the spirit and command of the First Amendment's ban against the establishment of religion.”

Other key cases: *Tinker v. Des Moines* in 1969, *Yoder* in 1972, *Miller* in 1973, *NSPA v. Skokie* in 1978, *Bethel v. Fraser* in 1986, *Hazelwood v. Kuhlmeier* in 1988, *Texas v. Johnson* in 1989, *R.A.V. v. City of St. Paul* in 1992, *Boy Scouts of America v. Dale* in 2000, Patriot Act is signed on October 26, 2001.

Five Freedoms and Related Court Cases:

(See *Synopses of First Amendment Supreme Court Cases* section of this guide for descriptions of most cases listed below.)

Religion

Cantwell v. Connecticut – 1940
Epperson v. Arkansas – 1968
Lemon v. Kurtzman – 1971
Wisconsin v. Yoder - 1972

Speech

Schenck v. U.S. – 1919
Stromberg v. California – 1931
Gitlow v. New York – 1937
Thornhill v. Alabama – 1940
Chaplinsky v. New Hampshire - 1942
West Virginia State Board of Education v. Barnette - 1943
Roth v. United States – 1957
New York Times v. Sullivan - 1964
Tinker v. Des Moines – 1969
Brandenburg v. Ohio – 1969
Cohen v. California – 1971
Miller v. California – 1973
Bethel v. Fraser - 1986

Press

Patterson v. Colorado - 1907
Schenck v. U.S. – 1919
Near v. Minnesota – 1931
New York Times v. Sullivan - 1964

History of the First Amendment

Branzburg v. Hayes - 1972
Hazelwood v. Kuhmeier - 1988

Assembly

United States v. Cruikshank - 1876
DeJonge v. Oregon, 1937
Thornhill v. Alabama - 1940
NAACP v. Alabama - 1958
Cox v. Louisiana - 1965

Petition

Thornhill v. Alabama – 1940
United States v. Harris - 1954
Edwards v. South Carolina – 1963
Brown v. Louisiana – 1966
United States v. Grace - 1983

Hook Activity

Simulation Scenario - “Defenders of America vs. Guardians of Liberty”

Materials needed: *See Simulation Scenario, in this unit.*

1. Present Simulation Scenario to students in a manner designed to engage and excite students.
2. The presentation of this simulation can be enhanced through the use of drama. For example, the teacher can enlist the assistance of colleagues and make a news broadcast videotape of this information to show to the class. Or, the teacher can ask the principal to make this announcement over the public address system targeting the announcement to his/her classroom. Or, the teacher could arrange for a student or colleague to breathlessly barge into the classroom, interrupt instruction, and read this message. By creating as realistic a scenario as possible, teachers can increase students’ engagement and their willingness to immerse themselves into the simulation.
3. If time does not permit a teacher to engage in all aspects of this topic, he/she can abbreviate the scenario and instructions.

The activities are clustered as follows:

- Hook Activity - Simulation Scenario
- Activity #1 - Simulation Scenario and Explanation of Student Tasks
- Activity #2 - Orientation to the First Amendment
- Activity #3 - Small Group Work – History of the Development of the First Amendment – Document Detectives
- Activity #4 - Importance and Relevance of First Amendment Today – News Search
- Activity #5 - Whole class – First Amendment Freedoms – Classroom Survey
- Activity #6 - Small groups – Examination of Knight Foundation Report Results on Importance of the First Amendment
- Activity #7 - Whole class - Importance and Relevance of First Amendment Freedoms – News Search
- Activity #8 - Mapping Activity

NOTE: Teachers could also save class time by assigning some of the in-class tasks (e.g., readings, classroom survey, news search, product development, etc.) for homework, thus reserving class time for discussion. Feel free to alter the simulation scenario to suit your classroom needs.

History of the First Amendment

Hook Activity

Simulation Scenario: Defenders of America vs. Guardians of Liberty

News flash!

We interrupt this class to bring you the following message.

A radical contingent of authoritarian-minded Senators has just introduced a bill to nullify the First Amendment! Citing a need for national unity in the face of increasing external threats to national security, the Senators are proposing the following –

- That a state religion grounded in one set of values be developed to increase national unity. This religion will be funded by taxpayers through an additional levy of 1% on federal income taxes. All Americans will be required to participate in this religion.
- That producers of all forms of media – newspapers, TV, movies, the Internet, magazines, art, music, etc. – will need to submit their work to a government review board prior to publication or dissemination. Failure to do so will result in punishment such as fines, jail time, and/or disbanding of the media source.
- That all Americans will need to sign an oath of loyalty to the U.S. and government officials. Americans will not be permitted to criticize the government.
- That all gatherings – meetings of organizations and clubs, parades, etc. – are hereby cancelled until the sponsoring groups are vetted by government officials to ensure their loyalty to the nation and its officials.
- That anyone who dissents from the opinion of the majority of loyal Americans will be silenced and either fined, jailed, or deported.

This group of Senators who have adopted the moniker, Defenders of America, argues that attacks on Americans both at home and abroad indicate that there is a crisis and that the fundamental security of the U.S. is at stake. Thus, these Senators argue, their proposed changes to the Constitution are imperative. An unnamed source close to the Defenders of America noted that the Senators feel confident that, given the apathy and ignorance of most Americans regarding First Amendment freedoms, as well as fears of terrorism and cultural clashes, most Americans will support their proposal to cancel the First Amendment in favor of increased national security and unity.

Senators who oppose the Defenders of America are forming their own group, Guardians of Liberty, to prevent the Defenders of America from eradicating the First Amendment. The Guardians of Liberty are calling upon the nation's young people to assist them in their efforts to educate their fellow citizens about the development, history, and importance of First Amendment freedoms. Your teacher has been contacted by the Guardians of Liberty to coordinate efforts at your school. He/she will now explain to you how you can help the Guardians of Liberty prevent the elimination of First Amendment freedoms.

Teacher Explanation Notes

In order to help the members of the Guardians of Liberty protect the First Amendment, we need to better understand what rights the First Amendment contains, how and why these rights were included in the Constitution, and why these rights are important today. Therefore, we need to do the following –

1. Read and understand the rights contained in the First Amendment.
2. Learn about the history of the development of the First Amendment (History of the Development of the First Amendment).
3. Determine what Americans today know and think about the First Amendment (The Knight Foundation Report & local surveys).
4. Learn about the relevance and importance of the First Amendment today (News Search).
5. Develop products to communicate our findings and educate the public about the First Amendment.

History of the First Amendment

LEARNING ACTIVITIES

Activity #1 - Whole class instruction – Teacher explanation of tasks to assist Guardians of Liberty in educating the public about the history and importance of the First Amendment

Materials needed: Teacher explanation notes for teacher reference

Using the teacher explanation notes as a guide, outline the tasks for students as presented in the simulation.

Activity #2 - Whole Class Instruction – Orientation to the First Amendment (will also be used in later activities)

Materials needed: Copies of the First Amendment; highlighters and pens for each student; 5 sheets of chart paper; colored markers.

1. Distribute copies of the First Amendment. Using pens and highlighters, have students identify the five freedoms contained in the amendment.
2. Write the name of each freedom on separate pieces of chart paper. Afterwards, post the chart paper on the classroom walls. Use a color coding system to note each freedom. For example:
Red = freedom of religion
Green = freedom of speech
Blue = freedom of the press
Yellow = right to petition
Orange = right to assemble

Activity #3 - Small Group Work – History of the Development of the First Amendment - Document Detectives

Materials needed: Copies of documents; highlighters and pens for each student; post-it notes; 1 sheet of chart paper; colored markers

Documents:

- History of the Development of the First Amendment (See page 8)
- First Amendment Timeline (See pages 9 – 10)

Primary Sources:

- Magna Carta (available: www.yale.edu/lawweb/avalon/medieval/magna.htm)
- Massachusetts Body of Liberties (available: www.constitution.org/bcp/mabodlib.htm)
- English Bill of Rights (available: www.yale.edu/lawweb/avalon/england.htm)
- Declaration of Independence (available: www.law.indiana.edu/uslawdocs/declaration.html)
- First Amendment Antecedents in Post-Revolution State Constitutions, 1776 – 1791 (available: 1stam.umn.edu/archive/historic/pdf/State%20constitutions%201791.pdf)
- Federalist #84 (available: www.yale.edu/lawweb/avalon/federal/fed84.htm)
- Anti-Federalist #84 (available: www.constitution.org/afp/afpchron.htm)
- Letter from John DeWitt to Citizens of Massachusetts (available: www.constitution.org/afp/afpchron.htm)
- Madison-Jefferson Correspondence on a Bill of Rights (available: 1stam.umn.edu/archive/historic/pdf/Jefferson%20Madison%20correspondence.pdf)
- Drafts of the Bill of Rights (available: 1stam.umn.edu/main/historic/Bill%20of%20rights%20Draft.htm)

1. Distribute copies of “History of the Development of the First Amendment” and “First Amendment Timeline.” Have students read as background information.
2. Label a new piece of chart paper, “Arguments for and against the Bill of Rights,” and post on the classroom walls next to the Five Freedoms charts.
3. Divide students into working groups.

History of the First Amendment

4. Provide students with copies of the primary source documents listed above. (Teachers may want to be selective in choosing and assigning documents.) Assign student groups responsibility for reviewing specific documents.
5. Acting as document detectives, students will read documents carefully to locate references to First Amendment freedoms contained in the documents. Using highlighters, students can mark such references. Using post-it notes, students will record document sections that refer to First Amendment freedoms. Then students will place the post-it notes on the appropriate wall chart, e.g., post-it notes that record document sections that pertain to freedom of the press will be placed on the Freedom of the Press wall chart. Students who are assigned to research the selected Federalist and Anti-Federalist Paper essays as well as the letters of Jefferson and Madison will note the arguments for and against the Bill of Rights and place their post-it notes on that wall chart.

Activity #4 – Whole Class Activity - Importance and Relevance of the First Amendment Today – News Search

Materials needed: Newspaper sections from various papers and days containing stories that deal with First Amendment Freedoms; scissors for each student; red pens for each student; glue sticks for each student; 5 sheets of chart paper – label each sheet with one of the Five Freedoms.

1. Distribute newspapers, scissors, and pens to students.
2. Have students scan the papers to find an article dealing with a First Amendment Freedom.
3. When located, the student should read the article to determine the topic or issue reported about in the article. Students can use a red pen to underline key words or phrases that indicate the topic or issue.
4. Next, the student should determine whether the First Amendment Freedom featured in the story is being exercised or threatened. Students can use a red pen to write “E” (exercised) or “T” (threatened) in the margin of the article.
5. Then, students should cut out their article.
6. Finally, students should use a glue stick to attach their article to the appropriate First Amendment Freedom chart paper.

Activity #5 – Whole Class Activity – First Amendment Freedoms – Classroom Survey

Materials needed: Abridged version of the Knight Foundation Report Survey

1. Distribute copies of abridged version of the Knight Foundation Report Survey (Below)
2. Collect, score, and report statistics for use in Activity #6.

Classroom Survey (based on the Knight Foundation Study, *Future of the First Amendment – What America’s High School Students Think About Their Freedoms*)

Directions: Read each item carefully. Mark the answer of the response that best describes your opinion.

1. The First Amendment became part of the U.S. Constitution more than 200 years ago. This is what it says:
“Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.”

Based on your own feelings about the First Amendment, indicate whether you agree or disagree with the following statement: The First Amendment goes too far in the rights it guarantees.

- a) Strongly agree b) Mildly agree c) Mildly disagree d) Strongly disagree e) Don’t know
2. Overall, do you think the press in America has too much freedom to do what it wants, too little freedom to do what it wants, or is the amount of freedom the press has about right?
a) Too much freedom b) Too little freedom c) About right d) Don’t know

History of the First Amendment

3. People should be allowed to express unpopular opinions.

- a) Strongly agree b) Mildly agree c) Mildly disagree d) Strongly disagree e) Don't know

4. People should be allowed to burn or deface the American flag as a political statement.

- a) Strongly agree b) Mildly agree c) Mildly disagree d) Strongly disagree e) Don't know

5. Musicians should be allowed to sing songs with lyrics that others might find offensive.

- a) Strongly agree b) Mildly agree c) Mildly disagree d) Strongly disagree e) Don't know

6. Newspapers should be allowed to publish freely without government approval of a story.

- a) Strongly agree b) Mildly agree c) Mildly disagree d) Strongly disagree e) Don't know

7. High School students should be allowed to report controversial issues in their student newspapers without the approval of school authorities.

- a) Strongly agree b) Mildly agree c) Mildly disagree d) Strongly disagree e) Don't know

8. Do you agree or disagree with the following statement: "Americans don't appreciate First Amendment freedoms the way they ought to."

- a) Strongly agree b) Mildly agree c) Mildly disagree d) Strongly disagree e) Don't know

9. Are the rights guaranteed by the First Amendment something you personally think about or are they something you take for granted?

- a) Personally think about b) Take for granted c) Don't know

10. What about most people in the U.S. – do you think the rights guaranteed by the First Amendment are something people specifically think about or are they something they take for granted?

- a) Personally think about b) Take for granted c) Don't know

Below is a series of statements about how people might try to exercise their rights under the First Amendment. Indicate whether you think under current law Americans have the legal right or not to do these things:

11. Under current law, do Americans have the legal right to burn the American flag as a means of political protest?

- a) Yes b) No

12. Under current law, do the courts have the right to send reporters to jail for refusing to reveal a news source? (Correct answer depends on state.)

- a) Yes b) No


13. Under current law, does the government have the right to restrict indecent material on the Internet?

- a) Yes b) No

14. Under current law, does someone have the legal right to shout "fire" in a crowded arena as a prank?

- a) Yes b) No

History of the First Amendment



Findings of the Knight Report	
1.	12% Strongly agree; 23% Mildly agree; 19% Mildly disagree; 25% Strongly disagree; 21% Don't know
2.	32% Too much freedom; 10% Too little freedom; 37% About right; 21% Don't know
3.	51% Strongly agree; 32% Mildly agree; 5% Mildly disagree; 2% Strongly disagree; 10% Don't know
4.	8% Strongly agree; 8% Strongly agree; 11% Mildly disagree; 63% Strongly disagree; 10% Don't know
5.	40% Strongly agree; 30% Mildly agree; 14% Mildly disagree; 7% Strongly disagree; 9% Don't know
6.	24% Strongly agree; 27% Mildly agree; 22% Mildly disagree; 14% Strongly disagree; 13% Don't know
7.	30% Strongly agree; 28% Mildly agree 18% Mildly disagree; 11% Strongly disagree; 13% Don't know
8.	17% Strongly agree; 33% Mildly agree 18% Mildly disagree; 9% Strongly disagree; 23% Don't know
9.	27% Personally think about it; 26% Take for granted; 37% Don't know
10.	10% Personally think about it; 56% Take for granted; 34% Don't know
11.	25% Yes; 75% No
12.	31% Yes; 69% No
13.	49% Yes; 51% No
14.	23% Yes; 77% No

Activity #6 – Small Groups – Examination of Knight Foundation Report Results about the Importance and Relevance of the First Amendment

Materials needed: Documents; chart paper (sheets in number equal to the number of groups); colored markers

Documents Needed: Knight Foundation Report (available: www.firstamendmentfuture.org), Classroom Survey Results (from Activity #5)

1. Divide students into small groups.
2. Provide each group with a copy of the Knight Foundation Report.
3. Using chart paper, have each group classify findings into two categories – findings that show public understanding of and/or support for First Amendment Freedoms; findings that show public lack of understanding and/or support for First Amendment Freedoms. Have students note their group's reasons for their classification decisions.
4. Have each group compare the findings of the Knight Foundation Report to the survey results of your classmates (from activity #5). Have students note similarities and differences. Direct students to classify the Classroom Survey results into the categories given above in #3.
5. Direct students to write a summary statement/paragraph drawing conclusions on the basis of their analysis of the Knight Foundation Report and Classroom Survey results.
6. Post charts side-by-side in the classroom.

Activity #7 – Whole class activity - Importance and Relevance of the First Amendment Today – News Search

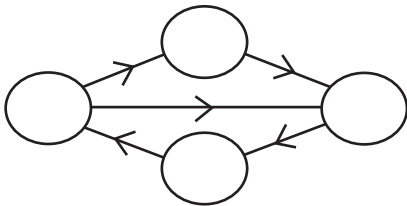
Materials needed: Newspaper sections from various papers and days containing stories that deal with First Amendment Freedoms; scissors for each student; red pens for each student; glue sticks for each student; 5 sheets of chart paper – label each sheet with one of the Five Freedoms.

History of the First Amendment

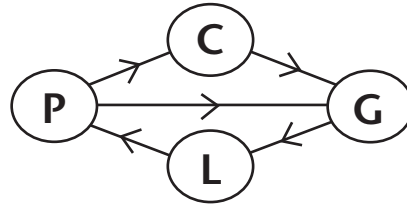
1. Distribute newspapers, scissors, and pens to students.
2. Have students scan the papers to find an article dealing with a First Amendment Freedom.
3. When located, the student should read the article to determine the topic or issue reported about in the article.
Students can use a red pen to underline key words or phrases that indicate the topic or issue.
4. Next, the student should determine whether the First Amendment Freedom featured in the story is being exercised or threatened. Students can use a red pen to write “E” (exercised) or “T” (threatened) in the margin of the article.
5. Then, students should cut out their article.
6. Finally, students should use a glue stick to attach their article to the appropriate First Amendment Freedom chart paper.

Activity #7 - Mapping activity¹

Put the following diagram on the board with the words:
People, Government, Constitution, Laws.



Ask students to place the terms in the appropriate circles. Which controls which? Which has precedence over which? (Arrows indicate line of control, philosophically speaking.) Let the students work on it for a while, then provide them with the “philosophically accepted” answer:



This then opens the door to a discussion of the existing system, its power, and the inevitable fact that rights are only present when they are enforced and exercised by the people.

Activity #8 - The First Amendment Quiz

List the Five Freedoms (or rights) guaranteed in the First Amendment of the U.S. Constitution. Place each in the appropriate blank below in the context of the First Amendment.

Congress shall make no law respecting an establishment of _____, or prohibiting the free exercise thereof;

or abridging the freedom of _____, or of the _____; or the right of the people

peaceably to _____, and to _____ the government for a redress of grievances.

¹First conceived of by Joseph White, Social Studies teacher at McLean County Unit #5 High School.

Assessment

History of the First Amendment



True / False

1. **TRUE FALSE** The freedoms expressed in the First Amendment were new ideas developed for the first time by the Founding Fathers in 1789.
2. **TRUE FALSE** According to the Knight Foundation Report, most Americans have a solid understanding of their First Amendment rights.
3. **TRUE FALSE** In times of concern about national security, rights and freedoms under the First Amendment have been abridged by government officials.
4. **TRUE FALSE** There is a widespread agreement about the meaning and interpretation of the First Amendment which has remained static over time.
5. **TRUE FALSE** Newspapers played an important role in the debate between Federalists and Anti-Federalists about ratification of the Consitution of 1787.
6. **TRUE FALSE** The U.S. Supreme Court has devised a series of “tests” to guide in the interpretation and application of First Amendment rights and freedoms.
7. **TRUE FALSE** An examination of today’s newspapers reveals that First Amendment issues have been largely settled and are no longer relevant and important in modern life.
8. **TRUE FALSE** The Magna Carta guaranteed freedom of speech to the citizens of England.
9. **TRUE FALSE** The Anti-Federalists refused to ratify the Constitution without a Bill of Rights.
10. **TRUE FALSE** The Constitution originally established the Anglican Church as the church of the United States.

Multiple Choice

1. English philosopher John Locke argued that _____ is/are (a) natural right(s).
a) Life b) Liberty c) Property d) All
2. The first document in English history that limited the power of the king was the _____.
a) Mayflower Compact b) English Bill of Rights
c) Magna Carta d) Declaration of Independence
3. Those Americans who refused to ratify the Constitution unless a Bill of Rights was added were known as the:
a) Federalists b) Anti-Federalists

4. The period of time in European history that emphasized reason and science, which influenced Founding Fathers such as Thomas Jefferson, was known as the:
a) Enlightenment b) Reformation c) Dark Ages d) Middle Ages
5. _____ advocated the inclusion of a bill of rights to the Constitution during the ratification debate.
a) Alexander Hamilton b) John Jay c) James Madison d) Thomas Jefferson

Essay

1. What role does freedom of expression play in the development of opinions, ideas, and thoughts in a free society?

2. What does the First Amendment mean to you? Use vocabulary words and reference material from the unit.

3. Should the rights of students or others to engage in political expression be limited in a time of crisis?

4. Explain what actions brought about the writing of the Bill of Rights, and more specifically the First Amendment. Use vocabulary words and reference material from the unit.

Answers

History of the First Amendment

True/False

1. False – These ideas were part of a long history of limiting government power and protecting individual rights. These ideas can be traced by examining documents such as the Magna Carta, English Bill of Rights, and state constitutions.
2. False – The Knight report reveals profound misunderstandings about the First Amendment.
3. True – Beginning with the Alien and Sedition Acts in 1798, First Amendment liberties have been curtailed during times of crisis.
4. False – There are significant disagreements, and the document's meaning is dynamic. Indeed, some scholars argue that the First Amendment now is a “virtual First Amendment” in light of Supreme Court interpretations (cf. Barry Krusch www.krusch.com/real/real2.html).
5. True – Federalist and Anti-Federalist essays arguing their respective points of view were published in newspapers.
6. True – For example, the Lemon test for freedom of religion.
7. False – Newspapers today document that First Amendment issues continue to be debated, defined, and relevant to the lives of ordinary Americans.
8. False – Limited Power of Kings – Took away absolute power.
9. True – They felt that the new national government would have too much power without limits.
10. False

Multiple Choice

1. D
2. C
3. B
4. A
5. D

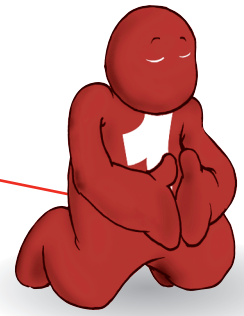
Supporting Materials

Stone, Geoffrey R. *Perilous Times: Free Speech in Wartime from The Sedition Act of 1798 to The War on Terrorism*. New York: W.W. Norton and Co., 2004. Stone chronicles the government's habits of truncating First Amendment rights in the face of war. His discussion of the history and turning points of each crisis is balanced with an optimistic look at the future. A good resource to expand on the facts when discussing First Amendment issues.

Walston, E. “Landmark Supreme Court Cases.” *Johns Hopkins University Center for Technology in Education*. 29 July 1999 (<http://cte.jhu.edu/techacademy/fellows/Walston/supreme/supremecourt/supremecourt.html>). Accessed 27 April 2005. A Web Quest that postulates situations for students to react to (“Suppose you printed an underground newspaper that criticized your school—can you get in trouble?”) with hints and links for the students to use in order to discover Supreme Court precedent. Useful and interesting.

Zinn, Howard. *You Can't Be Neutral on a Moving Train: A Personal History of Our Times*. Boston: Beacon Press, 1994. Zinn chronicles his participation in the Selma, Alabama Civil Rights Movement and the Vietnam war protests of the 1960s and 1970s. His account of the protesters' efforts to take advantage of their rights to assemble (told in a straightforward, candid style) is useful background when giving examples of the power and responsibility of the First Amendment (i.e. you've got to stand up for your rights since it's not enough that they're listed in the Constitution).

Freedom of Religion



Section Overview

The First Amendment contains two clauses regarding freedom of religion. The first is known as the Establishment Clause, which prohibits the government from passing laws that will establish an official religion or show preference for one religion over another. The courts have interpreted this clause to accomplish the separation of church and state.

The second clause, known as the Free Exercise Clause, prohibits the government from interfering with a person's practice of religion. Religious actions and rituals, however, can be limited by civil and federal laws.

Objective

The objective of this unit is to provide students with an understanding of the (no) establishment clause and the free exercise clause. Students should gain an understanding of the key concepts of the Freedom of Religion.

Illinois State Standards

14.F.3a: Analyze historical influences on the development of political ideas and practices as enumerated in the Declaration of Independence, the U.S. Constitution, the Bill of Rights, and the Illinois Constitution.

14.F.4a: Determine the historical events and processes that brought about changes in United States political ideas and traditions.

14.F.5: Interpret how changing geographical, economic, technological and social forces affect United States political ideas and traditions (e.g., freedom, equality and justice, individual rights).

16.A.5a: Analyze historical and contemporary developments using methods of historical inquiry (pose questions, collect and analyze data, make and support inferences with evidence, report findings).

16.A.5b: Explain the tentative nature of historical interpretation.

National Standards

Civics Standard 3: Understands the sources, purposes, and functions of law, and the importance of the rule of law for the protection of individual rights and the common good.

Civics Standard 8: Understands the central ideas of American constitutional government and how this form of government has shaped the character of American society.

United States History, Standard 8: Understands the institutions and practices of government created during the Revolution and how these elements were revised between 1787 and 1815 to create the foundation of the American political system based on the U.S. Constitution and the Bill of Rights

Understand

- The Founding Fathers came to view freedom of religion as a natural and inalienable right.
- The First Amendment provides freedom of religion to Americans of all faiths as well as to nonbelievers.
- The concept of freedom of religion in America has evolved over time. This evolution resulted in a movement from established state religions to no establishment of a state religion and from religious intolerance to tolerance to freedom of conscience and the right to freely exercise religious beliefs.
- The meaning of the two clauses of Freedom of Religion in the First Amendment is dynamic and refined as a result of governmental action, e.g., court decisions and legislation.
- Religious beliefs have a long-standing and legitimate role in American public life.
- While freedom of conscience or the right to believe as one chooses is absolute under the First Amendment, the right to act on those beliefs can be prescribed by the government under certain circumstances.
- Different nations have diverse concepts of and degrees of religious freedom.
- An important part of American history is the experiences, roles, and contributions/effects that various religious groups have made to the nation.

Freedom of Religion

Know:

Vocabulary:

- | | | |
|--------------------------------|-------------------------|------------------------------------|
| 1. Free Exercise Clause | 5. Pluralism | 9. Dissenting Opinion |
| 2. No Establishment Clause | 6. Tolerance | 10. Partisan / Non-Partisan |
| 3. Established Church/Religion | 7. Appellant / Appellee | 11. Tax Exempt |
| 4. Parochial | 8. Majority Opinion | 12. Separation of Church and State |

Facts:

- The First Amendment right of freedom of religion has two parts – the no establishment clause and the free exercise clause.
- Early colonists wanted religious freedom for themselves but did not extend that right to those who did not share their beliefs.
- Early colonies had government established official religions. Colonies that deviated from this practice in whole or part included Rhode Island, Maryland, and Pennsylvania.
- The Constitution protects religious freedom by prohibiting a religious test for public office (Article VI), prohibiting the establishment of an official state religion and protecting the free exercise of religion from government interference at the federal level (1st Amendment) and state and local levels (14th Amendment).
- The phrase, “wall of separation of church and state,” is not found in the Constitution but was articulated by Thomas Jefferson in a letter to a group of church leaders.
- Religious groups must be non-partisan in their activities in order to maintain their tax-exempt status.

Skills – Students Will Be Able To:

- Work cooperatively and effectively with others in groups
- Analyze and interpret varied texts
- Engage in inductive reasoning to summarize and draw conclusions from qualitative data
- Trace the history of the principles of religious freedom embodied in the First Amendment
- Discuss court cases that involve First Amendment freedom of religion issues
- Compare and contrast the state of religious freedom in nations around the world
- Conduct research using web-based resources
- Describe the experiences and contributions/effects of various religious groups on American life
- Understand court case precedents and religious freedom “tests.”

Key Cases

Establishment:	Eversen v. Board of Education (Interpretation of separation of church & state) Lemon v. Kurtzman County of Allegheny v. ACLU
Neutrality:	Zelman v. Simmons-Harris Mitchell v. Helms
Schools:	Engel v. Vitale Abington v. Schempp Florey v. Sioux Falls School District, 8th Circuit Zorach v. Clauson Stone v. Graham McCullum v. Board of Education

Freedom of Religion

Hook Activity

Materials needed: Freedom of Religion Quiz (following), chalkboard or whiteboard, or overhead projector with transparency paper and markers, or 1 sheet of chart paper and colored markers

- Divide students into working groups.
- Distribute the Freedom of Religion Quiz to each group.
- Have students consider each situation to decide whether the scenario is constitutional or unconstitutional. Groups should be prepared to explain their reasoning.
- Reconvene the class as a whole group and ask each group to report their answers. Record on the board, overhead transparency, or chart paper.
- Discuss scenarios in which there is diversity of responses.
- Provide the correct answers to groups and use student questions and comments as a springboard to the rest of the unit.

Freedom of Religion Quiz (Answers may vary depending on the specific facts in any case or scenario.)

Directions: Read each situation carefully. Come to consensus with your group members as to whether the scenario is constitutional or unconstitutional. Be prepared to explain your group's reasoning and responses.

1. A public school has a policy to allow students to lead prayers before football games.
2. A public school was prohibited from broadcasting a prayer over the intercom and allowing student-led prayers in class during the school day.
3. A court orders medical treatment for a seriously ill child whose parents' religious beliefs do not permit such treatment.
4. A competent adult refuses medical care for him/herself on the basis of religious belief, even though the result of this refusal will almost certainly be death.
5. A high school that permits student clubs to meet after school on school grounds is required to allow student religious groups to meet after school on school property.
6. A student misses school to celebrate a religious holiday, and the school counts the absence as unexcused.
7. A public school board requires each classroom teacher to post a copy of the Ten Commandments in the room.
8. The Jones family uses a taxpayer-funded voucher to pay for their child's tuition at a parochial school.

Answers to Freedom of Religion Quiz

- | | |
|---------------------|---------------------|
| 1. Unconstitutional | 5. Constitutional |
| 2. Constitutional | 6. Unconstitutional |
| 3. Constitutional | 7. Unconstitutional |
| 4. Constitutional | 8. Constitutional |

Freedom of Religion

LEARNING ACTIVITIES

Activity #1 – Paired group instruction - Document Study - Historical Roots of Freedom of Religion

Materials needed: Documents; pens/pencils for each student work group; Document Analysis Worksheet for each pair (see following)

Documents: Select from a variety of historical materials given on the First Amendment Center website (available: www.firstamendmentcenter.org) Click on “1st amendment library.” Click on “Freedom of Religion.” Click on “Historical Materials.” These documents vary in length and complexity, so teachers have choices to meet the needs of their students. Suggested choices include:

- Benjamin Franklin, Letter to the London Packet
- Carolina Fundamental Constitutions
- Debate in North Carolina Ratifying Convention
- Delaware Charter of 1701
- John Locke, A Letter concerning Toleration
- Patrick Henry, Religious Tolerance
- Roger Williams, The Bloody Tenet, of Persecution for Cause of Conscience
- The Body of Liberties of the Massachusetts Collonie in New England
- Thomas Jefferson, A Bill for Establishing Religious Freedom
- Virginia Declaration of Rights

Note: The phrase “separation between church and state” is NOT found in the Constitution or First Amendment. Teachers may want to assign a student pair to research this phrase’s origins. (see – Library of Congress website available: <http://www.loc.gov/loc/lcib/9806/danpost.html>)

- Divide students into groups of two.
- Assign student pairs to read and analyze [a] specific document(s). Students should record information on their Document Analysis Worksheet.

Document Analysis Worksheet

Name/Title of the Document _____

Date of Document _____

Type of Document _____

Author of Document _____

For what audience was this document written? _____

List the author’s key points about freedom of religion as articulated in this document.

Freedom of Religion



What was the author's purpose in writing this document?

What does this document reveal about:

a. the author _____

b. life in the U.S. at the time the document was written _____

Compare and contrast the key points about freedom of religion in this document with the First Amendment expression of freedom of religion.

Your response to the document (e.g., what surprised you, what questions you still have, etc.)

Activity #2 – Whole class instruction – Discussion of Document Analysis

Materials needed: Chalkboard or whiteboard, or overhead projector with transparency paper and markers, or 1 sheet of chart paper and colored markers; writing paper; pens/pencils for each student pair

- Starting with the group which examined the earliest dated document, have student pairs share their findings with regard to the principles of freedom of religion as articulated in the document(s) reviewed.
- Record the key findings on the board, overhead transparency, or chart paper.
- Distribute a piece of writing paper to each student pair.
- Have student partners work collaborate again to draft a brief summary of the evolution of Americans' ideas about religious freedom from the colonial era to the drafting of the First Amendment.

Activity #3 - Whole class instruction – Reading & Note-taking – History of Religious Liberty in America

Materials needed: Document, "History of Religious Liberty in America," by Charles Haynes (document can be found at www.firstamendmentcenter.org, or by using a search engine and typing in the document title and author); note-taking guide sheet for each student (found in this unit); pens/pencils and highlighters for each student.

- Distribute copies of the document, "History of Religious Liberty in America," and the note-taking guide sheet to each student.
- Direct students in reading, highlighting, and note-taking using the note-taking guide sheet. (The teacher may wish to model this process for students.)

Freedom of Religion

- Variations:

- (a) Organize students into working groups to complete the task, rather than doing it individually,
- (b) Assign portions of the reading and note-taking to individual students or student working groups.
- (c) Provide struggling students with a copy of the document that has already been highlighted to expedite their reading and note-taking.

Share and discuss student responses. Have students make corrections or additions to their notes. Have students retain notes for reference and exam preparation purposes.

“History of Religious Liberty in America,” by Charles Haynes – Notetaking Guide (teacher key)

Conceptual Perspective

- | | |
|--|--|
| 1. What is central to the lives of many Americans? | Faith, religious beliefs |
| 2. How has religious pluralism expanded in the U.S.? | Moved beyond a diversity of Protestant religions to include almost every religion in the world. |
| 3. Freedom of religion means freedom of conscience for whom? | For all, including nonbelievers |
| 4. Why is religious liberty called the “first Liberty?” | Freedom of conscience is the foundation of all other freedoms |
| 5. How can religious groups be involved in public life? | Through speaking out on issues of moral concern, attempting to shape public policy, working to change societal condition |

Historical Perspective

- | | |
|--|---|
| 1. How did Puritans define religious freedom? | Their freedoms applied only to themselves; all laws were grounded in God’s laws |
| 2. Who articulated the idea of freedom of conscience? | Roger Williams of Rhode Island |
| 3. What was his reasoning? | Freedom of conscience was the will of God |
| 4. Which colony was the first to grant religious liberty to all? | Rhode Island |
| 5. How was religious freedom guaranteed to individuals against interference by federal government? | Through the First Amendment |

Activity #4 – Small group instruction – Apprentice to the Bar – Examining Supreme Court Case Decisions regarding Religious Freedom

Materials needed: Case documents; summary guide sheet for each student group; pens/pencils for each student group

Documents: Cases can be found online at: www.firstmamentcenter.org). Click on “religious liberty.” Click on “history of religious liberty.” Click on “cases and resources.” Click on “some major church-state cases.” Click on the case name. For the full case, click on the primary link from Find Law. For a case summary and the option to select justices’ opinions, click on the secondary link from the Legal Information Institute.

Teachers can either reserve computer lab time and provide students with directions for accessing this site or ask the LLC director to bookmark the site, or print hard copies of the case documents for distribution to student groups who can work in the classroom.

- Divide students into triads (groups of three). Give each “Apprentice to the Bar” group a name of a famous Supreme Court justice (e.g., The John Jay Apprentices, The Oliver Wendell Holmes Apprentices, The John Marshall Apprentices, etc.).
- Assign one case to the group.
- Direct students to read the case and complete the case summary sheet.

Additional Activities Based on Research

Focus - Religious Groups in Public Life: Have students research the experiences and contributions of various religious groups in

Freedom of Religion



America. Groups could include the following: Puritans, Quakers/Friends, Mormons/Church of Jesus Christ of Latter Day Saints, Ku Klux Klan (group with quasi-religious overtones), Jews, Roman Catholics, Nation of Islam, Dr Martin Luther King, Jr. and the Southern Christian Leadership Conference, Jerry Falwell and the Moral Majority, Pat Robertson and the Christian Coalition.

Students could examine the group's key beliefs, social goals, political goals, methods/tactics to attain goals, positive/negative contributions to America, obstacles faced, status of the group today.

Focus: Status of Freedom of Religion and Nations. Have students research various nations to determine which countries have established official religions and which do not, as well as the religious freedom guarantees (or lack thereof) provided in various nations. The following web sites are excellent resources:

- a. <http://www.asil.org/ilib/ilib0107.htm> American Society of International Law
- b. <http://www.state.gov/g/drl/irf/>
State Department site re: international religious freedom including the 2004 report

Assessment

Freedom of Religion



Constitutional or Unconstitutional?

Answer A (constitutional) or B (unconstitutional)

1. In fulfillment of an assignment to write a book report on any book, a student chooses to present a book report on the Holy Bible before her classmates. The student's action is:
a) Constitutional b) Unconstitutional
2. The football coach leads his team in prayer before the big game. The coach's action is:
a) Constitutional b) Unconstitutional
3. A girl is reading the Holy Bible in study hall, and the teacher takes it away from her. The teacher says the Holy Bible cannot be read in school due to separation of church and state. The teacher's action is:
a) Constitutional b) Unconstitutional
4. The principal allows "Away in a Manger" to be broadcast over the public address system during passing periods at school during the Christmas season. The principal's action is:
a) Constitutional b) Unconstitutional
5. Mr. Smith, the world history teacher in a public school, is teaching a unit about the Ottoman Empire. He assigns students to read a handout describing the tenets of the religious faith, Islam.
a) Constitutional b) Unconstitutional

Multiple Choice

1. _____ was the first colony to permit freedom of religion.
a) Virginia b) Pennsylvania c) Maryland d) Rhode Island
2. Religious freedom is protected in the Constitution by:
a) First Amendment b) Article VI c) Fourteenth Amendment d) All
3. The phrase, "wall of separation between church and state," was developed by:
a) James Madison b) Thomas Jefferson
c) Roger Williams d) the U.S. Supreme Court Justices
4. The beliefs of _____ are protected under the First Amendment's freedom of religion.
a) Christians b) Atheists c) Buddhists d) All

True / False

1. **TRUE FALSE** Congress can restrict religious practice.

2. **TRUE FALSE** Students can lead prayer over the intercom in public schools.
3. **TRUE FALSE** All religions have equal representation in the First Amendment.
4. **TRUE FALSE** The U.S. government may create a state/national religion.
5. **TRUE FALSE** Student religious clubs may meet before or after school using school facilities.
6. **TRUE FALSE** A student may wear a large cross necklace and a t-shirt that states "I love Jesus."
7. **TRUE FALSE** Early settlers such as the Puritans believed in religious freedom for all people.
8. **TRUE FALSE** Americans are united by common religious beliefs.
9. **TRUE FALSE** Religious groups may speak out about moral issues and try to influence public policy but may not engage in partisan politics or they risk losing their tax-exempt status.
10. **TRUE FALSE** In defining and applying the principles of religious freedom articulated in the First Amendment, the Supreme Court has developed a series of "tests" to determine whether or not an action is constitutional.

Essay

1. Two extreme views that represent misunderstanding of religious freedom are given below. Choose one and write a response to those who advocate the extreme view you have chosen. Draw upon the information from this unit to support your response.

VIEW A: The U.S. has always been a "Christian nation." We need to take action to reinsert Christianity (values and practices) into our public schools, politics, etc.

VIEW B: Separation of church and state means that religion has NO place in public life. We should eradicate any mention of religion in all aspects of life, e.g. public schools, coins, swearing on the Bible in court, etc.

2. Given that early colonies and some states had official, established churches, why did the Founding Fathers reject the establishment of a state religion?

3. How have religious groups (past or present) made positive contributions to American society? Have any groups had a negative effect on American life? Support your answer with specific facts and examples.

4. Select a Supreme Court case which focused on a religious liberty issue. Critique the court's decision.

5. How do other nations define religious freedom? How do these values and practices compare to those in the First Amendment? Support your answer with specific facts and examples.

Answers

Freedom of Religion

Constitutional or Unconstitutional? (Answers may vary depending on the specific facts in any case or scenario.)

1. a – Constitutional. So long as it was the student who chose to do the book report on the Holy Bible, it is constitutional. But if the student begins “preaching” rather than sticking to the teacher’s criteria for the book report, then the speech is no longer protected in a public school.

2. b – Unconstitutional. In a public school, the law requires a separation between church and state. The coach is not allowed to promote religion by leading his team in prayer.

3. b – Unconstitutional. Just as public school officials are not allowed to promote religion, they are not allowed to deny the religious rights of a student.

4. b – Unconstitutional. While secular Christmas songs, such as “Here Comes Santa Claus,” are protected, a song with a religious theme used in the manner described would likely be ruled as a violation of the separation of church and state doctrine.

5. b – Unconstitutional. Public schools may teach ABOUT religion but may not teach religion so as to advocate or cause students to believe in any particular faith.

Multiple Choice

1. D – Rhode Island; 2. D – All; 3. B – Thomas Jefferson; 4. D – All

True/False

- | | |
|----------|----------|
| 1. True | 6. True |
| 2. False | 7. False |
| 3. True | 8. False |
| 4. False | 9. True |
| 5. True | 10. True |

Supporting Materials

Videos:

Not in our town, 45 minutes

Altars of the World – the Western Religions, 90 minutes

Altars of the World – the Eastern Religions, 90 minutes

Any tape dealing with the differences or similarities of religions

Resources

Holder, A.R., Holder, J.T.R. *We the People: The Meaning of the Constitution*. 3rd edition.

Hauppauge, New York: Barron’s Educational Series, inc. 1997.

Haynes, C.C., et al. *The First Amendment in Schools*. Alexandria, Virginia: ASCD. 2003.

With Liberty and Justice for all: The Story of the Bill of Rights. Calabasas, California: Center for Civic Education. 1992.

www.adherents.com/Religions_By_Adherents.html

www.splcenter.org/index.jsp

www.earlyamerica.com/review/summer97/secular.html

Freedom of Speech



Section Overview

Freedom of speech is the right to speak out publicly or privately. This unit covers freedom of expression in all forms – including newspapers, magazines, books, television, radio, movies, and the Internet. While the right to free speech is not absolute, its protection is broad.

Objective

This lesson is designed to increase students' understanding of free speech and free expression.

Illinois State Standards

Social Studies

14.F.3a: Analyze historical influences on the development of political ideas and practices as enumerated in the Declaration of Independence, the U.S. Constitution, the Bill of Rights and the Illinois Constitution.

14.F.4a: Determine the historical events and processes that brought about changes in United States political ideas and traditions.

14.F.5: Interpret how changing geographical, economic, technological, and social forces affect United States political ideas and traditions (e.g., freedom, equality and justice, individual rights).

16.A.5a: Analyze historical and contemporary developments using methods of historical inquiry (pose questions, collect and analyze data, make and support inferences with evidence, report findings).

16.A.5b: Explain the tentative nature of historical interpretation.

English/Language Arts

4.A.3b: Compare a speaker's verbal and nonverbal messages.

4.A.5a: Use group discussion skills to assume leadership and participant roles within an assigned project or to reach a group goal.

4.A.4b: Apply listening skills in practical settings (e.g. classroom note-taking, interpersonal conflict situations, giving and receiving directions, evaluate persuasive message).

National Standards

U.S. History, Standard 8: Understands the institutions and practices of government created during the Revolution and how these elements were revised between 1787 and 1815 to create the foundation of the American political system based on the U.S. Constitution and the Bill of Rights

Civics, Standard 8: Understands the central ideas of American constitutional government and how this form of government has shaped the character of American society.

Civics, Standard 18: Understands the role and importance of law in the American constitutional system and issues regarding the judicial protection of individual rights.

Civics, Standard 26: Understands issues regarding the proper scope and limits of rights and the relationships among personal, political and economic rights.

Understand

- Students' rights do not end when they enter the schoolhouse gate.
- Rights come with responsibilities.
- The First Amendment does not protect all types of speech.

Know

Vocabulary: (See Glossary for definition of Vocabulary terms.)

- | | | | |
|----------------------|---------------------|-----------------------|----------------|
| 1. Obscenity | 4. Symbolic Speech | 7. Unprotected Speech | 10. Truth |
| 2. Hate Speech | 5. Political Speech | 8. Slander | 11. Boycott |
| 3. Commercial Speech | 6. Protected Speech | 9. Censorship | 12. Defamation |

Freedom of Speech

Facts:

- Invasion of privacy
- *Schenck*
- Bethel v. Fraser
- *Tinker*
- Texas v. Johnson
- Supreme Court precedent

Skills – Students Will Be Able To:

- Analyze speech scenarios through the lens of time, place, and manner.
- Interpret current events in light of the First Amendment (free speech / rights).
- Defend appropriate free speech.
- Express popular ideas clearly and effectively.
- Express unpopular ideas clearly and effectively.

Discussion Topics:

- One of the rights guaranteed by the First Amendment is the freedom of speech. What exactly constitutes speech? Clothing, hairstyle, Internet, text messaging, statements made in public, etc.
- Protected speech: introduce *Tinker*
- Why is not all speech protected? Nine categories of unprotected speech:
 1. Obscenity
 2. Defamation
 3. Expression intended and likely to incite imminent lawless action
 4. Fighting words
 5. Unwarranted invasion of privacy
 6. Deceptive or misleading advertisements or those for illegal products or services
 7. Clear and immediate threats to national security
 8. Copyright violations
 9. Expression on school grounds that causes a material and substantial disruption of school activities
- Supreme Court precedent is the defining factor in speech cases. There is no written “set of rules” for citizens to follow; the freedom is shaped by Supreme Court decisions.

Key Cases

Schenck v. United States (1919)

The Case:


During World War I, Charles Schenck, general secretary of the Socialist Party, produced a pamphlet maintaining that the military draft was illegal. He was convicted under the Espionage Act of attempting to cause insubordination in the military and to obstruct recruiting. Schenck argued that his arrest violated his constitutional right to freedom of speech and freedom of the press.

When the United States was at war with Germany during World War I, Congress passed the Espionage Act, outlawing any attempt to foster insubordination or obstruct the draft. This act was the basis for Schenck’s arrest.

The Decision:

The Supreme Court upheld the conviction, holding that in a time of war, extraordinary conditions may take effect where Congress has the right to forbid printed materials or speech aimed at hindering the war effort. In his opinion for the Supreme Court, Justice Oliver Wendell Holmes rejected Schenck’s argument that the First Amendment protected the

Freedom of Speech



pamphlet. He argued that speech may be suppressed if it creates a clear and present danger that it will produce a “substantive evil” which can be legally prevented. The test for “a clear and present danger” was formulated to deal with questions regarding freedom of speech.

Subsequent court decisions would limit the clear and present danger test to violent actions, and not the mere advocacy of ideas. Holmes himself later agreed that the 1919 decision had been abused by the federal government in cases where political dissidents were prosecuted.

Texas v. Johnson (1989)

The Case:

During the 1984 Republican National Convention in Dallas, Texas, Gregory Lee Johnson participated in a political demonstration to protest the policies of the Reagan administration and some Dallas-based corporations. After marching through the city streets chanting political slogans and stopping at several targeted corporate locations, Johnson accepted an American flag from a fellow protester who had taken it from a flagpole outside one of the targeted locations. In front of Dallas City Hall, Johnson unfurled the flag, doused it with kerosene, and set it on fire while protesters chanted. Johnson was the only protester charged with a crime.

Authorities charged him with desecration of a venerated object in violation of Texas Penal Code. He was convicted, sentenced to one year in prison, and fined \$2,000.

The Decision:

The State Court of Appeals in Texas initially affirmed the conviction. The Texas Court of Criminal Appeals reversed the decision, holding that the State, consistent with the First Amendment, could not punish Johnson for burning the flag in these circumstances. They found that the flag burning was expressive conduct protected by the First Amendment.

In addition, the court concluded that the State could not criminally sanction flag desecration in order to preserve the flag as a symbol of national unity. The statute also did not meet the State’s stated goal of preventing breaches of the peace, since it was broadly stated to apply ONLY to flag burnings that would likely result in more serious disturbance.

Background Summary & Questions for Tinker v. Des Moines

Thirteen-year-old Mary Beth Tinker and two other students wore black armbands to school in protest of the Vietnam War. School officials had quickly adopted policy that prohibited students from wearing armbands when they got advanced warning of the planned protest. Officials said they wanted to avoid disruption. When the students refused to remove their armbands, they were suspended and sent home. Mary Beth challenged the suspension in court as a violation of her First Amendment rights. The U.S. Supreme Court reversed lower court decisions and ruled: “First Amendment rights, applied in the light of the special characteristics of the school environment, are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”

The Court established four criteria for identifying unprotected student speech. Expression:

- Must not be libelous.
- Must not be obscene.
- Must not create a clear and substantial disruption in the school.

Freedom of Speech

The case came down to this fundamental question: Do the First Amendment rights of free speech extend to symbolic speech by students in public schools? And, if so, in what circumstances is that symbolic speech protected? The First Amendment states "Congress shall make no law . . . abridging the freedom of speech." The Fourteenth Amendment extends this rule to state governments as well, of which school systems are a part. The First Amendment, however, does not identify which kinds of speech are protected. For example, it is not clear whether hate speech against an individual or group is protected. Neither does the First Amendment specify what types of expressive actions should be considered as speech.

The Supreme Court of the United States has made many attempts to determine what types of symbolic speech are protected under the First Amendment. In 1919, the Court decided in Schenck v. United States that the right of an individual to protest World War I by distributing pamphlets urging draftee non-compliance was unconstitutional because the distribution "create[ed] a clear and present danger that . . . will bring about . . . substantive evils." The Court wrestled with the issue of the right to symbolic speech again in the case of Thornhill v. Alabama (1940) when the Court ruled that picketing was a form of symbolic speech protected by the First Amendment because no clear and present danger of destruction of life or property or of breach of the peace was inherent in the action. Three years later in West Virginia v. Barnette (1943), the Court extended the First Amendment protection of symbolic speech to students in public schools. In Barnette, the Court held "[i]f there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion. . . ." In 1968 the Supreme Court of the United States agreed to hear the Tinkers' case and consider the constitutionality of the Des Moines principal's anti-armband policy. The Court's decision in Tinker v. Des Moines was handed down in 1969: "We express no opinion as to the form of relief which should be granted, this being a matter for the lower courts to determine. We reverse and remand for further proceedings consistent with this opinion."

Questions to Consider:


1. Do you think that the school policy banning armbands was fair? Why or why not?
2. The students knew they would be suspended if they wore armbands to school and chose to do so anyway. Why do you think they ignored the rule?
3. The First Amendment says "Congress shall make no law . . . abridging the freedom of speech." Why do you think the Supreme Court of the United States has ruled that certain actions should have the same protection as verbal speech? Are these reasons valid?
4. In both *Schenck* and *Thornhill*, the Court seemed to make a rule that certain actions were guaranteed protection under the First Amendment's freedom of speech clause as long as those actions did not . . . What rule or test did the Court seem to make?
5. Pretend that students in your school wanted to protest the school-wide ban on smoking. Should they legally be allowed to protest by wearing T-shirts that read "Up with 'Butts'!"? Why or why not?

Background Summary and Questions for Bethel School v. Fraser

In front of 600 students in a school assembly, 17-year-old Matthew Fraser, a student at Bethel High School in Washington, strung together a list of double-entendres, saying the candidate he supported was " . . . a man who is firm — he's firm in his pants . . . in his character . . . a man who takes his point and pounds it in . . . who will go to the very end — even to the climax, for each and every one of you."

Fraser's candidate won the election. Fraser was suspended for two days. The central issue in the 1986 case was whether the First Amendment prevents a school district from disciplining a high school student for giving a lewd election campaign speech at a high school assembly.

Freedom of Speech



The Supreme Court said Bethel High School officials in Washington did not violate the First Amendment by punishing 17-year-old Matthew Fraser for a campaign speech that was considered lewd. Both of the lower courts had ruled for Fraser because there was no disruption following the speech given in the school auditorium. Chief Justice Warren E. Burger distinguished between political speech (protected in *Tinker v. Des Moines Independent Community School District* in 1969) and vulgar or lewd speech. Because it was a school-sponsored activity, the Supreme Court said school officials had the right to punish the risqué content of his speech. After Bethel, rather than providing evidence of substantial interference, as is required in the *Tinker* standard, school officials must meet a standard of reasonableness if they choose to restrict school-sponsored expression. The Court held, “Under the First Amendment, the use of an offensive form of expression may not be prohibited to adults making what the speaker considers a political point, but it does not follow that the same latitude must be permitted to children in a public school. It is a highly appropriate function of public school education to prohibit the use of vulgar and offensive terms in public discourse. ... The inculcation of these values is truly the work of the school, and the determination of what manner of speech is inappropriate properly rests with the school board.”

“The process of educating our youth for citizenship in public schools is not confined to books, the curriculum, and the civics class; schools must teach by example the shared values of a civilized social order.”

The United States Supreme Court held that it is a "highly appropriate" function of public school education to prohibit vulgar and offensive terms in public discourse and that Fraser's "offensively lewd and indecent speech" was not protected by the First Amendment.

Questions to Consider:

1. What happened in the case in the lower courts (the courts that heard the case before the Supreme Court)?
2. Was the action taken by the school fair or unfair?
3. Who should determine what is “vulgar and offensive”?
4. How can you determine the difference between “vulgar and offensive” speech and political speech? What tools were provided by the Supreme Court?
5. What constitutional right is at issue?
6. Should students have the same rights in school that they have outside of school?

Hook Activities

Outlawed Phrases

Write an “outlawed” phrase or expression on an index card and distribute to students. Inform students that they are not allowed to use those phrases or expressions during the class period. Suggested words would include “like,” “that’s hot,” “you know,” “thank you.” Students are not allowed to raise their hands in class. Near the end of class, discuss with students the difficulty they encountered in trying to express themselves without the “right” to express themselves freely – verbally or physically.

Photographs

Find pictures of people with very different appearances—what are their appearances “saying?” Speech not only includes the words you speak, but also the clothes you wear, your hairstyle, etc.

Freedom of Speech



Case Studies

Write one sentence / phrase that best explains the precedent set by these cases:

Bethel v Fraser – Example: The same rights given to adults do not apply to those of children in a school setting.

Texas v Johnson – Example: Flag burning is protected speech.

Schenck v United States – Example: The Court used a two-pronged test to evaluate speech acts. Speech can be prohibited if (1) it is “directed at inciting or producing imminent lawless action” and (2) it is “likely to incite or produce such action.”

Tinker v Des Moines – Example: Students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”

Hazelwood School District v Kuhlmeier – Example: Concerning censorship of a high school newspaper.

LEARNING ACTIVITIES

Monument to the Freedom of Speech *(Excellent Activity for art class.)*

Your town/village government has decided to erect a monument that celebrates the freedom of speech we all enjoy as American citizens. Students have been requested to submit designs and should consider the following elements in planning and designing their monuments:

- Placement of the monument – Where will the monument be placed in your town to best highlight its importance?
- Design materials – What will your monument be made of? Will your materials represent some part of your message? How well will your materials stand up to the elements?
- Symbolism and Meaning – Consider why the freedom of speech is celebrated – How could you represent that in a symbolic way in your monument? Be able to explain the choices you make.

Final designs can be submitted in any of the following ways:

1. Drawing/painting with explanation.
2. Three-dimensional model.
3. Computer graphics design.
4. Detailed written explanation that helps the reader visualize the monument.

Current “Speech” Issues

Comment or write a report on two current issues involving freedom of speech. Instructor should be prepared for varying responses. The newspaper is an excellent source, in addition to the Internet, to examine the content of the Supreme Court calendar.

Freedom of Speech



Rave Your Faves!

Read the topics in the left column. Then list your favorite and least favorite of each item. Afterwards, identify the type of speech. Students could trade papers and defend their choices. Have students explain why it is important to protect the right to express their ideas, even if those ideas are unpopular.

Type of Item	My Personal Favorite	My Least Favorite
Song		
Book/magazine		
T-shirt		
Political Leader		
Entertainer		
Television show		

Assessment

Freedom of Speech



Multiple Choice

Match the scenario to the correct category of unprotected speech.

- A Obscenity
- B Defamation
- C Expression intended and likely to incite imminent lawless action
- D Fighting words / hate speech
- E Unwarranted invasion of privacy
- F Deceptive or misleading advertisements or those for illegal products or services
- G Clear and immediate threats to national security
- H Copyright violations
- I Expression on school grounds that causes a material and substantial disruption of school activities

1. A protester gives a speech that reveals troop movements in Iraq. _____
2. A radio station advertises a radar detector that has been declared illegal in states reached by its airwaves. _____
3. A student throws rocks at the fans of a rival soccer team and incites other students to join in the brawl. _____
4. A disgruntled parent stands up at a parent-teacher meeting and says that a popular teacher “must be constantly drunk” because students can’t figure out his grading system. _____
5. A local coffee shop uses an official likeness of the Simpsons on its signs without obtaining permission from Matt Groening or Fox TV. _____

Constitutional or Unconstitutional?

Answer A (constitutional) or B (unconstitutional)

1. Five students come to school wearing black armbands to protest a new school rule that prohibits students from wearing hats in school. The students’ actions are:
a) Constitutional b) Unconstitutional
2. After giving a student campaign speech at school using “suggestive” language that could be considered vulgar, even though the literal meaning of the words was not obscene, the student is suspended. His suspension is:
a) Constitutional b) Unconstitutional

3. A student wears a button in class that says, "Legalize Marijuana." The student's action is:

- a) **Constitutional** b) **Unconstitutional**

4. A student wears a button in class that says, "Smoke Marijuana." The student's action is:

- a) **Constitutional** b) **Unconstitutional**

5. A student wears a shirt in class showing a marijuana leaf and the words, "Tastes Good!"

The student's action is:

- a) **Constitutional** b) **Unconstitutional**

6. A student in class wears a large cross necklace and a shirt that says, "I Love Jesus."

The student's action is:

- a) **Constitutional** b) **Unconstitutional**

Essay

1. Your school has adopted a dress code policy that requires all students to wear gender-appropriate clothing. A boy wears a skirt to school and is asked to change or go home. The student's family has decided to take legal action against the school for violating the boy's free speech rights. Would you support the school's decision to send the student home, or would you support the student's right to wear what he chooses? Explain your answer thoroughly using your knowledge of protected and unprotected free speech.

2. The First Amendment says, "Congress shall make no law . . . abridging the freedom of speech." Why do you think the Supreme Court of the United States has ruled that certain actions should have the same protection as verbal speech? Are these reasons valid?

3. Students in your high school want to protest a school-wide ban on smoking. They plan to protest by wearing t-shirts that read "Up with Butts!" Should this type of protest be legally allowed? Why or why not?

4. Explain why the right of free speech is particularly important for those who lack power or those who hold a minority opinion.

5. In Schenck v United States, the courts ruled that distributing pamphlets urging non-compliance with the draft during World War I constituted a "clear and present danger of destruction of life or property or breach of peace inherent in action." Describe a possible scenario related to the Iraq War that may be ruled a "clear and present danger" according to the Schenck precedent.

Answers

Freedom of Speech

Multiple Choice

1. G, Clear and immediate threats to national security
2. F, Deceptive or misleading advertisements or those for illegal products or services
3. C, Expression intended and likely to incite imminent lawless action
4. B, Defamation
5. H, Copyright violations

Constitutional or Unconstitutional? (Answers may vary depending on the specific facts in any case or scenario.)

1. a – Constitutional. Except for the subject of protest, this case is very similar to *Tinker* in which the U.S. Supreme Court ruled that within certain parameters, student expression in school is protected by the First Amendment.
2. a – Constitutional. This is the scenario of the 1986 case of *Bethel v. Fraser* in which the U.S. Supreme Court ruled that while a campaign speech delivered during an assembly for a student council election may have been protected beyond school walls, it could be censored in a school setting. (See *Tinker* for more details.)
3. a – Constitutional. Censorship of student expression cannot be based solely on the popularity of the message. For a student to promote a political position, such as the legalization of marijuana, it is protected speech under both *Tinker* and *Hazelwood*, so long as the requirements of those decisions are met.
4. b – Unconstitutional. School officials would be justified in suppressing speech in school promoting unlawful acts.
5. b – Unconstitutional. School officials would be justified in suppressing speech in school advertising illegal products.
6. a – Constitutional. Absent any other compelling reasons, students are allowed to wear religious icons in school.

Freedom of the Press



Section Overview

The press serves as an important guardian of the people's rights. The democratic health of the United States relies on a public educated about the issues of the day. This unit covers the responsible workings of a free press and how freedom of the press allows individuals to express themselves through publication.

Objective

This unit is designed to aid students in the understanding of what freedom of the press means and relating it to their daily lives.

Illinois State Standards

14.F.3a: Analyze historical influences on the development of political ideas and practices as enumerated in the Declaration of Independence, the United States Constitution, the Bill of Rights and the Illinois Constitution.

14.F.4a: Determine the historical events and processes that brought about changes in United States political ideas and traditions.

14.F.5: Interpret how changing geographical, economic, technological and social forces affect United States political ideas and traditions (e.g., freedom, equality and justice, individual rights).

16.A.5a: Analyze historical and contemporary developments using methods of historical inquiry (pose questions, collect and analyze data, make and support inferences with evidence, report findings)

16.A.5b: Explain the tentative nature of historical interpretations.

National Standards

United State History, Standard 8: Understands the institutions and practices of government created during the Revolution and how these elements were revised between 1787 and 1815 to create the foundation of the American political system based on the U.S. Constitution and the Bill of Rights.

Civics, Standard 8: Understands the central ideas of American constitutional government and how this form of government has shaped the character of American society.

Civics, Standard 9: Understands the importance of Americans sharing and supporting certain values, beliefs, and principles of American constitutional democracy.

Civics, Standard 18: Understands the role and importance of law in the American constitutional system and issues regarding the judicial protection of individual rights.

Understand

- The news we as Americans receive would be severely limited without freedom of the press.
- An independent press is an essential guardian of freedom.
- First Amendment rights come with responsibilities.
- Prior restraint is contrary to our democratic way of life.

Know

Vocabulary: (See Glossary for definition of Vocabulary terms.)

- | | | | | |
|--------------------|-------------------|-------------------|-----------------------|--------------|
| 1. Prior Restraint | 4. Censorship | 7. Editorializing | 10. Subjectivity | 13. Opinion |
| 2. Shield laws | 5. Copyright laws | 8. Defamation | 11. Objectivity | 14. Features |
| 3. Ethics | 6. Libel | 9. Intrusion | 12. The Fourth Estate | 15. News |

Facts:

- Zenger v Cosby
- Near v Minnesota
- Schenck v United States
- FOIA – Freedom of Information Act
- Hazelwood v Kuhlmeier (See end of unit for case synopsis/questions)

Freedom of the Press



Skills – Students Will Be Able To:

- Understand the historical development of press freedom.
- Defend their journalistic decisions.
- Understand how our “news” would be severely limited without press freedom.
- Interpret current events in light of the First Amendment, specifically the Press.

History of Press Freedom

Source: *Illinois Press Association Guide to First Amendment and Illinois Access Laws (1995)*

The United States seems to be the elite leader of press freedom, due to the First Amendment protection afforded to it. The press in America has gravitated towards the role of watchdog over the government, which has earned it the title of the “Fourth Estate.” In this role, the U.S. media has a privileged status – internationally, the roles of media and government tend to be reversed.

The newly founded democracies in Central and Eastern Europe are attempting to develop and guarantee press freedoms in their constitutions. They face many challenges that the press in the U.S. are constitutionally protected from, such as imprisonment and execution of journalists, closure of press facilities, censorship and restraint of publication, and other economic and ethical pressures. According to Leonard Sussman of the Freedom House, an international human rights organization, 1994 marked the fourth year of steady decline in press freedoms around the world. The result of this is one-sided, if any, debate of issues, a less-informed citizenship, and overall decreased knowledge for all.

Americans have educated themselves on the First Amendment in order to prevent loss of freedoms and unconstitutional governmental controls. The American press developed out of the struggles for freedom and independence from Great Britain. This legacy was transcribed in the First Amendment of the Constitution’s Bill of Rights and continues today. Freedom of the Press in the U.S. covers invasion of privacy, free expression, access to government information, prior restraint, commercial speech, libel, and slander.


Historical Development of Freedom of the Press

Before the Stamp Act of 1765, most printers in the colonies treated newspapers as any ordinary printing job, similar to books, pamphlets, and posters. Most of the information in these newspapers included reprints of other publications, stories of local interest, literature, advertisements, and opinions. With the introduction of the Stamp Act, the printers became publishers. Samuel Adams, a radical journalist, roused the people by using the colonial press to resist the Stamp Act, which eventually was repealed. Adams’ response to this success bore the signs of modern journalism: “But YOUR Press has sounded the alarm. YOUR Press has spoken to us the words of truth. It has pointed to this people their danger and their remedy. It has set before them liberty and slavery...”

The American Revolution produced many historic newspapermen. Their strong feelings in support of independence and revolution were poured into their writings, spurring public interest and education on the issue. In essence, this was the beginning of the press’ role with the government, developing the press freedom that would later be set in the Constitution.

After the American Revolution, newspapers took a more critical stance with the newly formed government. Newspapers reported the financial difficulties created by the worthless American currency and argued against new stamp taxes. When the states began to meet to discuss the formation of a new central government, the Constitution’s “Founding Fathers” kept their deliberations secret. There was no public access, freedom of information, open meetings, or “right to know” guarantees then.

Freedom of the Press



Although the Constitution contained a clause for freedom of the press in the Bill of Rights, the government originally set many controls on the press and quieted the opinions of most early journalists. Later, the First Amendment was put on the back burner when the federal government muzzled the press through the use of the Sedition Act of 1798, which made any speech or writings against the U.S. government unlawful.

The focus of American journalism soon began to center on the new capital, Washington D.C., in 1810. Joseph Gales and William Seaton, publishers of the *National Intelligence*, brought objective reports of congressional debates and other governmental events to the public's attention. Politics began to play more of a role in reporting as the 19th century progressed. Slavery, presidential elections, the suffrage movement, temperance, free education and foreign policy (i.e. the Monroe Doctrine of 1823) were news. Newspapers, which could now be produced rapidly and more cheaply, were becoming the catalyst to social change by bringing information on many national issues to the masses.

Throughout the mid- to late-1800s, newspapers also became more focused on sensationalism. Stories about love, tragedy, crime and entertainment found their way into newspaper in order to increase circulation. With Horace Greeley's 1835 statement that the future was in the west in a *New Yorker* article, more newspapers spread throughout the west. Photography was improved, and photos began appearing regularly in newspapers. This new medium publicized images of the Civil War. Political cartoons were also an addition to the papers at that time. Such politicians as Boss Tweed and Abraham Lincoln in turn hated and celebrated the satirical drawings, as influences on their success, or lack of it, in the political arena.

Prior to the 1930s, the Supreme Court position on First Amendment freedoms was to suspend free speech and press if the expressions constituted a "reasonable tendency" to endanger society. These expressions were judged by whether they created a "clear and present danger" to society. These were the beginnings of press freedom in America, the evolution of the "Fourth Estate."

Key Cases


Background Summary & Discussion Questions for Hazelwood v. Kuhlmeier

In May 1983, students in the Journalism II class at Hazelwood East High School in St. Louis, Missouri, generated the final edition of their school paper, the *Spectrum*. As was customary, they submitted the paper to their advisor, Howard Emerson, who was new to the job. He followed the procedures of the previous advisor, giving the principal, Robert Reynolds, the opportunity to review the paper prior to publication.

When Reynolds reviewed the paper, two articles concerned him. The first article addressed the issue of teen pregnancy, including comments from pregnant students at the school. Although names were not given, Reynolds thought there were enough details in the article to make it easy for other students to determine the identities of the pregnant teens. He was concerned about the privacy of those students. The second article was about divorce and, like the first article, this one included personal details. In this article, Reynolds was not as concerned about the students as about what was said about their families. For instance, one student whose parents were divorced made negative comments about her father, claiming that her father was always out with the guys, that he didn't spend enough time with his family, and that the father and mother were always arguing. Reynolds was troubled by the fact that the father had not been given a chance to defend himself by responding to his daughter's comments. He also noticed that the article mentioned sex and birth control. He did not think that students in ninth grade should be reading about sex and birth control.

Reynolds wanted the students to make changes in their articles, but he was afraid that if they took the time to do so, they would miss the deadline for publishing the *Spectrum*. He did not want that to happen, especially because it was the last

Freedom of the Press



issue of the year and there would not be another chance to publish the paper. He felt like he had to make a quick decision, so he told Emerson to delete the two pages with the questionable articles and publish the remainder of the paper. He informed his superiors in the school system of this decision; they supported him wholeheartedly.

The students had invested a great deal of time and energy in producing the paper and felt that they had followed proper journalism procedures. If they had been approached about the problems, they may have been able to resolve them. They were upset to find out instead that two pages, which included a number of non-offensive articles, had been deleted. They felt that this censorship was a direct violation of their First Amendment rights, so they took their case to the U.S. District Court for the Eastern District of Missouri. This court did not agree with the students; the judges said that school officials might impose limits on students' speech in activities that are "an integral part of the school's educational function" as long as their decision "has a substantial and reasonable basis." In other words, the court felt that if the school has a good reason to do so, it could place limits on curricular activities, such as the publication of the school newspaper.

Unhappy with the outcome, the students appealed their case to the Court of Appeals for the Eighth Circuit. This court reversed the decision of the lower court, saying that the students' First Amendment rights were violated. In the opinion, the court conceded that the newspaper was indeed a part of the school curriculum but noted that it was also a "public forum." As a public forum, the newspaper was "intended to be and operated as a conduit for student viewpoint." Because the paper was a forum for student discussion, the principal or other officials could censor it only when "necessary to avoid material and substantial interference with school work or discipline . . . or the rights of others."

The school appealed the decision of the Court of Appeals and the Supreme Court of the United States agreed to hear the case. In determining whether or not students' rights were violated, it would consider whether or not the student newspaper was a public forum and whether the First Amendment "requires a school affirmatively to promote particular student speech."

On January 13, 1988, the U.S. Supreme Court, with a 5-3 vote, reversed the decision of the U.S. Court of Appeals. The Court ruled that Principal Reynolds had the right to censor articles in the student newspaper deemed contrary to the school's educational mission.

Questions to Consider:

- 1) What concerns did Principal Reynolds have regarding the two articles?
- 2) Do you think the principal had any options other than deleting entire pages from the student paper?
- 3) What is the constitutional right at issue?
- 4) Were there steps the students could have taken other than filing a lawsuit?
- 5) Should a principal be able to censor student newspapers? If so, under what conditions?
- 6) Should a principal or other school official be able to silence other forms of student speech?
If so, under what conditions?
- 7) How does speech by an individual student differ from speech by the school newspaper?

Background Summary & Questions for Tinker v. Des Moines

Thirteen-year-old Mary Beth Tinker and two other students wore black armbands to school in protest of the Vietnam War. School officials had quickly adopted policy that prohibited students from wearing armbands when they got advanced warning of the planned protest. Officials said they wanted to avoid disruption. When the students refused to remove their armbands, they were suspended and sent home. Mary Beth challenged the suspension in court as a violation of her First Amendment rights. The U.S. Supreme Court reversed lower court decisions and ruled: "First Amendment rights, applied in

Freedom of the Press



the light of the special characteristics of the school environment, are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”

The Court established four criteria for identifying unprotected student speech. Expression:

- Must not be libelous.
- Must not be obscene.
- Must not create a clear and substantial disruption in the school.
- Must not otherwise invade the rights of others.

The case came down to this fundamental question: Do the First Amendment rights of free speech extend to symbolic speech by students in public schools? And, if so, in what circumstances is that symbolic speech protected? The First Amendment states "Congress shall make no law . . . abridging the freedom of speech." The Fourteenth Amendment extends this rule to state governments as well, of which school systems are a part. The First Amendment, however, does not identify which kinds of speech are protected. For example, it is not clear whether hate speech against an individual or group is protected. Neither does the First Amendment specify what types of expressive actions should be considered as speech.

The Supreme Court of the United States has made many attempts to determine what types of symbolic speech are protected under the First Amendment. In 1919, the Court decided in Schenck v. United States that the right of an individual to protest World War I by distributing pamphlets urging draftee non-compliance was unconstitutional because the distribution "create[d] a clear and present danger that . . . will bring about . . . substantive evils." The Court wrestled with the issue of the right to symbolic speech again in the case of Thornhill v. Alabama (1940) when the Court ruled that picketing was a form of symbolic speech protected by the First Amendment because no clear and present danger of destruction of life or property or of breach of the peace was inherent in the action. Three years later in West Virginia v. Barnette (1943), the Court extended the First Amendment protection of symbolic speech to students in public schools. In Barnette, the Court held "[i]f there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion. . . ." In 1968 the Supreme Court of the United States agreed to hear the Tinkers' case and consider the constitutionality of the Des Moines principals' anti-armband policy. The Court's decision in Tinker v. Des Moines was handed down in 1969: "We express no opinion as to the form of relief which should be granted, this being a matter for the lower courts to determine. We reverse and remand for further proceedings consistent with this pinion."

Questions to Consider:

- 1) Do you think that the school policy banning armbands was fair? Why or why not?
- 2) The students knew they would be suspended if they wore armbands to school and chose to do so anyway. Why do you think they ignored the rule?
- 3) The First Amendment says "Congress shall make no law . . . abridging the freedom of speech." Why do you think the Supreme Court of the United States has ruled that certain actions should have the same protection as verbal speech? Are these reasons valid?
- 4) In both Schenck and Thornhill, the Court seemed to make a rule that certain actions were guaranteed protection under the First Amendment's freedom of speech clause as long as those actions did not . . . What rule or test did the Court seem to make?
- 5) Pretend that students in your school wanted to protest the school-wide ban on smoking. Should they legally be allowed to protest by wearing T-shirts that read "Up with 'Butts'!"? Why or why not?

Freedom of the Press



Background Summary and Questions for Bethel School v. Fraser

In front of 600 students in a school assembly, 17-year-old Matthew Fraser, a student at Bethel High School in Washington, strung together a list of double-entendres, saying the candidate he supported was “... a man who is firm — he’s firm in his pants ... in his character ... a man who takes his point and pounds it in ... who will go to the very end — even to the climax, for each and every one of you.”

Fraser’s candidate won the election. Fraser was suspended for two days. The central issue in the 1986 case was whether the First Amendment prevents a school district from disciplining a high school student for giving a lewd election campaign speech at a high school assembly.

The Supreme Court said Bethel High School officials in Washington did not violate the First Amendment by punishing 17-year-old Matthew Fraser for a campaign speech that was considered lewd. Both of the lower courts had ruled for Fraser because there was no disruption following the speech given in the school auditorium. Chief Justice Warren E. Burger distinguished between political speech (protected in Tinker v. Des Moines Independent Community School District in 1969) and vulgar or lewd speech. Because it was a school-sponsored activity, the Supreme Court said school officials had the right to punish the risqué content of his speech. After *Bethel*, rather than providing evidence of substantial interference, as is required in the *Tinker* standard, school officials must meet a standard of reasonableness if they choose to restrict school-sponsored expression. The Court held,

“Under the First Amendment, the use of an offensive form of expression may not be prohibited to adults making what the speaker considers a political point, but it does not follow that the same latitude must be permitted to children in a public school. It is a highly appropriate function of public school education to prohibit the use of vulgar and offensive terms in public discourse. ... The inculcation of these values is truly the work of the school, and the determination of what manner of speech is inappropriate properly rests with the school board.”

“The process of educating our youth for citizenship in public schools is not confined to books, the curriculum, and the civics class; schools must teach by example the shared values of a civilized social order.”

The United States Supreme Court held that it is a "highly appropriate" function of public school education to prohibit vulgar and offensive terms in public discourse and that Fraser's "offensively lewd and indecent speech" was not protected by the First Amendment.

Questions to Consider:

- 1) What happened in the case in the lower courts (the courts that heard the case before the Supreme Court)?
- 2) Was the action taken by the school fair or unfair?
- 3) Who should determine what is “vulgar and offensive”?
- 4) How can you determine the difference between “vulgar and offensive” speech and political speech?
What tools were provided by the Supreme Court?
- 5) What constitutional right is at issue?
- 6) Should students have the same rights in school that they have outside off the school grounds?

Freedom of the Press



Hook Activities

What is *The Press*?

Who's a part of the press? Why is the press so important in the United States?

Exercising the First Amendment

How do you exercise your First Amendment rights? Are you using the First Amendment on a daily basis? Have you ever been in a chat room? Has your name ever been on a blog? Have you ever downloaded music or movies? (Anytime you publish, the rules must be followed.)

Newspaper Clips

Clip from a daily newspaper examples of stories or photos dealing with each of the Five Freedoms protected by the First Amendment: Religion (church meetings, religious celebrations, religious issues, etc.); Speech (speaker addressing an audience, letters to the editor, columnists, etc.); Press (editorials, stories about press conferences, interviews, etc.); Assembly (stories of meetings, demonstrations, parades, etc.); Petition (articles dealing with citizens protesting governmental policy, with citizens criticizing government officials, with people organizing in opposition to those in authority, etc.). Summarize in a sentence or two the nature of each example. Discuss why the press covers these types of stories. Why should the press cover these? How does it help all citizens?

LEARNING ACTIVITIES

Criticism Crossout

Distribute the same section of newspaper to each student. Have each student individually cross out every story, picture, editorial, letter to the editor, or other item criticizing or questioning the local or federal government, every article that criticizes a public figure, every story dealing with religion or any other freedom guaranteed by the First Amendment. Compare results. Then, discuss how Americans benefit from a free press and how Americans would be adversely affected if the First Amendment did not guarantee freedom of the press.

Student Newspaper vs. Professional Newspaper

List the major similarities and differences between these two types of newspapers. What conclusions do you reach as a result of your study? This may be done as a group activity.

Reporter Restrictions

Make a list showing restrictions reporters for a student newspaper have under the Hazelwood case that professional reporters for a commercial newspaper do not have. Discuss the significance of the different restrictions.

Editor's Chat

Invite the editor of your local paper to talk to the class about how the newspaper uses the protection of the First Amendment to access and disseminate information. What are the current First Amendment issues that concern the editor? How does the newspaper work to protect the five freedoms? (Provide these topics to the editor beforehand.)

Freedom of the Press



Think, Pair, Share Activity

A school secretary at the junior high is charged with embezzling \$20,000 from the student activity fund. Should this story be covered in the high school newspaper? The secretary's son is a student at the high school. Should that influence the decision on whether or not to cover the story? The secretary's son is also under psychiatric care for depression. What if the staff decides to cover the story, but the principal threatens to censor it because of his concern for the psychological damage that the embarrassment could cause the secretary's son, who is totally innocent. Is there any remedy to the dilemma short of censorship? Split students into small groups and share with the whole class.

Nine Areas of Unprotected Speech

Discuss how the nine areas of Unprotected Speech might affect your school newspaper. Which area(s) would most likely play a part in the inclusion or exclusion of newspaper articles or other content?

1. Obscenity
2. Defamation
3. Expression intended and likely to incite imminent lawless action
4. Fighting words
5. Unwarranted invasion of privacy
6. Deceptive or misleading advertisements or those for illegal products or services
7. Clear and immediate threats to national security
8. Copyright violations
9. Expression on school grounds that causes a material and substantial disruption of school activities

“Underground Newspapers”

Students who publish “underground” (nonschool-sponsored) publications have the right to distribute them on school grounds during the school day. Officials may determine reasonable times and places for the distribution.

Underground newspapers cannot be censored or their staff members disciplined in the absence of exceptionally compelling circumstances. A number of courts have ruled that underground publications are not subject to prior review. Officials cannot require that they be submitted for approval prior to distribution.

The bottom line is that courts protect the right of students to express themselves, even when their message may be controversial and cause discomfort to others. The protection, however, has parameters. Students are advised to honor the substance and the spirit of the First Amendment by basing decisions on ethical standards. School officials are encouraged to recognize student rights and to teach students about the First Amendment.

Nonpublic Schools

Students should understand that private and parochial schools are not agencies of the state. They therefore have far fewer protections under the First Amendment. Official student publications, whether part of the curriculum or not, are protected from censorship within the parameters of *Tinker* and *Hazelwood*. If the publication is recognized by policy or practice as a public forum (with the publication open for indiscriminate use for sharing information and opinions), then it is exempt from *Hazelwood's* restrictions.

Assessment

Freedom of the Press



Constitutional or Unconstitutional?

Answer A (constitutional) or B (unconstitutional)

1. The official student newspaper is censored simply because of the position taken in an editorial.
This action is:
a) Constitutional b) Unconstitutional
2. All copies of an “underground” newspaper (produced off school grounds and passed out to students during lunch hour) are confiscated because it is believed that an unofficial student newspaper does not have First Amendment protection in school. This action is:
a) Constitutional b) Unconstitutional
3. School administration says that an “underground” newspaper may be distributed on school grounds but ONLY in the cafeteria during lunch hours. This action is:
a) Constitutional b) Unconstitutional
4. The editor of the student newspaper writes a column in which he calls the principal a “jerk” for demanding the newspaper be submitted for the principal’s prior review before publication.
The editor’s action is:
a) Constitutional b) Unconstitutional
5. The distribution of an “underground” newspaper on school grounds is banned because students have been caught reading it during their class time, which is a disruption. This action is:
a) Constitutional b) Unconstitutional

Matching Each case on left has two matching items from the right.

- | | |
|-----------------------------------|--|
| 1. Schenck v United States | A. Supreme Court defines what constitutes obscenity.
B. Reporter wrote story of illegal drug use and refused to obey a court order to reveal sources. |
| 2. Hazelwood v Kuhlmeier | C. Involved the Espionage Act.
D. Government can't stop publication unless threat to national security is established, nor punish for publication. |
| 3. Miller v California | E. Journalists can't be protected for shielding a source for illegal activity.
F. Individual convicted after producing a pamphlet stating that military draft is illegal. |
| 4. New York Times v U.S. | G. Individual circulated sexually explicit pamphlets and lost in Supreme Court.
H. Allows administrator to censor if article does not have “valid educational purpose.” |
| 5. Branzburg v Hayes | I. Students sue school district for censoring articles in school newspaper on pregnancy.
J. After the fact, top-secret defense papers are printed. |

True / False

1. **TRUE FALSE** Truth is a defense for libel.
2. **TRUE FALSE** Web page publishers do not need to operate under press laws.
3. **TRUE FALSE** Student journalists can publish a photo from any web page.
4. **TRUE FALSE** According to the Supreme Court, reporters can shield any source.
5. **TRUE FALSE** Ethics considers what you can do legally.

Essay

1. The wrestling coach learns that the newspaper is planning to print an action picture of one of his wrestlers in a match that he lost. The wrestling coach summons the photographer and demands that the photo she took not be used. The picture shows the two wrestlers in an upright position with neither at an advantage. The winning wrestler, however, from the visiting school is a girl. Does the coach have the right to ask the paper not to run the picture? What is the best way to resolve the situation?

2. Freedom of the Press is a right guaranteed by the First Amendment to all Americans. As someone involved in student press, what are your rights and limitations? Include evidence from the listed court decisions, and support with appropriate vocabulary:

Bethel v Fraser

Hazelwood v Kuhlmeier

Tinker v Des Moines

3. Choose a recent controversial governmental action reported in the news and defend the press' right to investigate and report on the topic.



Constitutional or Unconstitutional? (Answers may vary depending on the specific facts in any case or scenario.)

1. b – Unconstitutional. The First Amendment protects the right to express unpopular views. One cannot legally censor an opinion simply because one disagrees with it. At the least, he must have a legitimate, educational reason for suppressing speech.

2. b – Unconstitutional. “Underground” newspapers have First Amendment protection at school and may be distributed on school property during school hours at a reasonable time and place determined by school officials.

3. a – Constitutional. School officials may regulate the reasonable time and place for distributing an “underground” newspaper on campus during school hours.

4. a – Constitutional. While name-calling may be protected in this case, many reputable journalists would consider it a breach of ethics. Many who support the rights of student journalists urge students to practice the “3 R’s” of the First Amendment: Rights, Responsibilities, and RESPECT.

5. b – Unconstitutional. The obligation in this case is to discipline the student who is off task. Had the student been reading Newsweek magazine during class time, would that publication have been banned at the school?

Matching

- 1. C & F
- 2. H & I
- 3. A & G
- 4. D & J
- 5. B & E

True/False

- 1. True
- 2. False
- 3. False
- 4. False
- 5. False

Right to Assemble/ To Petition Government



Section Overview

Freedom of Assembly is the right of people to gather peacefully to exchange ideas or to peacefully protest social, economic, or political conditions and seek reform. The First Amendment also guarantees people the right to ask the government to provide relief for a wrong through the courts or other governmental action, and works with the Right of Assembly to allow people to join together to seek change.

Objective

This lesson is designed to aid students in the understanding of the right to petition the government for a redress of grievances and peaceably assemble.

Illinois State Standards

14.F.3a: Analyze historical influences on the development of political ideas and practices as enumerated in the Declaration of Independence, the U.S. Constitution, the Bill of Rights, and the Illinois Constitution.

14.F.4a: Determine the historical events and processes that brought about changes in United States political ideas and traditions.

14.F.5: Interpret how changing geographical, economic, technological, and social forces affect United States political ideas and traditions (e.g. freedom, equality and justice, individual rights).

16.F.5a: Analyze historical and contemporary developments using methods of historical inquiry (pose questions, collect and analyze data, make and support inferences with evidence, report findings).

16.F.5b: Explain the tentative nature of historical interpretation.

National History Standards

3B: The student understands the guarantees of the Bill of Rights and its continuing significance.

National Civics and Government Standards

What are the Foundations of the American Political System?

Understand

- Rights come with responsibilities.
- Government policies, positions, and officials can be challenged/criticized without fear of reprisal.
- How to distinguish between public versus private in relation to freedom of assembly.
- How people can effectively organize and communicate their opinions with others and with the government.
- Historical basis for inclusion of right to assemble.
- Historical basis for inclusion of right to petition (ex. English Common law, Magna Carta, Declaration of Independence).

Know

Vocabulary: (See Glossary for definition of Vocabulary terms.)

- | | | | |
|---------------------|----------------------------|----------------------|-------------------------|
| 1. Assembly | 4. FOIA | 7. Open Meetings Act | 10. Police Power |
| 2. Association | 5. Government neutrality | 8. Petition | 11. Prior Restraint |
| 3. Equal Access Act | 6. Lobby (act of lobbying) | 9. Picket | 12. Time, place, manner |

Right To Assemble/To Petition Government

Facts:

- Powers of government to set boundaries for peaceful protest
- National Socialist Party v Skokie
- Gregory v Chicago
- Fourteenth Amendment
- Right to petition branches
- Executive
- Legislative (communication)
- Judicial (appeals, right to file suit)

Skills – Students Will Be Able To:

- Identify and explain the proper process for exercising right to assemble.
- Identify and explain the proper process for exercising right to petition.
- Interpret current events in light of one's First Amendment right to assemble and petition.
- Identify how the rights of assembly and petition have evolved throughout U.S. history.

Brief History of Right to Peaceably Assemble and Petition the Government

1776 – 1790 Declarations of Rights of newly-formed states of Pennsylvania (1776), North Carolina (1776), New Hampshire (1784), and Massachusetts (1790) include guarantees for peaceable assembly and petition.

1670 William Penn arrested in London for delivering an orderly sermon and charged with “unlawful, tumultuous assembly that disturbed the king’s peace.”

1876 In *United States v. Cruikshank*, it is determined that “The very idea of a government, republican in form, implies a right . . . to meet peaceably for consultation in respect to public affairs, and to petition for a redress of grievances.”

1937 U.S. Supreme Court rules that the right to peaceably assemble “for lawful discussion, however unpopular the sponsorship, cannot be made a crime.”

1939 In *Hague v. C.I.O.*, the Court rules that peaceful demonstrators may not be prosecuted for “disorderly conduct.”

1940 Supreme Court holds that “orderly union picketing that informs the public of the issues is protected by the constitutional freedom of speech and of the press and the right of peaceable assembly. . .”

1941 In *Cox v. New Hampshire*, Supreme Court upholds a local ordinance that requires every parade or procession on a public street to obtain a license for a fee.”

1963 In *Edwards v. South Carolina*, the Supreme Court overturns breach of peace convictions of 180 black students who had peacefully marched to the state capitol to protest discrimination.

1980 The Supreme Court upholds the authority of military base commanders to require approval before military personnel can petition members of Congress.

1983 Supreme Court holds that the distribution of leaflets and the carrying of picket signs on public sidewalks are protected by the First Amendment.

Right To Assemble/To Petition Government

Key Cases

Gregory v Chicago (1969)
National Socialist Party v Skokie (1977)
DeJonge v Oregon (1937)
Lloyd Corp. v Tanner (1972)
Board of Education of Westside Community Schools v Mergens (1990)
Good News Club, et al v Milford Central School (2001)
Clark v Community for Creative Nonviolence (1984)
Communist Party of the United States v Subversive Activities Control Bd. No. 12 (1961)
Edwards v South Carolina (1963)
Lamb's Chapel v Center Moriches Union Free School District (1993)
Police Department v Mosley (1972)
Pruneyard Shopping Center v Robins (1980)
Scales v United States (1961)
Boys Scouts of America v Dale (2000)

Hook Activity

Public Assembly

Break into seven small groups and give each group one of the following scenarios:

The following seven situations raise questions about when people should be able to assemble and demonstrate on public property. Students will work in small groups to examine one situation and answer the questions that follow.

1. Demonstrators are marching in front of a private home to protest the actions of the person who lives there.
2. People are assembling to march through a shopping mall.
3. People are marching through a public school while it is in session.
4. Pickets are blocking the entrance to a factory.
5. Pickets are blocking the entrance to an abortion clinic.
6. A group is demonstrating by sitting on the floors of the hallways of government buildings such as city hall, the university, and the courts.
7. A group is demonstrating during rush hour on a bridge over an expressway.

Be prepared to present and defend your group's position before the class.

1. List the rights, values, and interests involved in each situation.
2. What other information do you need to know before you can decide whether to support this exercise of the right to assemble?
3. Develop one or more considerations that should be used in balancing these factors. For example, what considerations should be used in deciding when public safety should outweigh the right to demonstrate or when the right to demonstrate should be limited?
4. What arguments might be given in each situation by people supporting the right to assemble and demonstrate?
5. What arguments might be given by those opposing the assembly and demonstration?
6. What competing values and interests are involved in each situation?

Right To Assemble/To Petition Government

LEARNING ACTIVITIES

Think, Pair, Share Activity

Explain how the right to assemble can play a role in bringing about social reform or political change. What actions can individuals take to promote change in government and society?

Media and Assembly

In the computer lab with your group, investigate current examples of the right of assembly presented in the media and report on them. Suggestions: Boulder High School, Washington University, student sit-ins, World Trade Organization protests, Georgianna Page at RNC, abortion clinics, etc.

History and Assembly

Research the use of the right to assemble and petition during historical reforms. Discuss mobilization on issues and why vast support is necessary to make a difference.

- a. Suffrage Movement
- b. Abolitionist Movement
- c. Civil Rights Movement
- d. Labor Movement
- e. Anti-War Movement

Electronic Petitioning

Create a Web notice or e-blast advocating social or political reform connected to a historical or contemporary topic. (1 day)

Order in the Court

Hold a mock judicial hearing on a First Amendment case involving the Right to Assemble and/or Petition. Research the case, assign a panel of judges to hear the case, attorneys for both plaintiffs and defendants, and other court personnel. Present the arguments for both sides, and have the judges decide the case and issue an opinion. Those who are not involved in the above-mentioned positions are the press, and are responsible for presenting the information to the people. (2-3 days)

Conflicting Rights

Using a magazine or newspaper, find an example of “conflicting rights.” (For example, a photo of a demonstration that impedes traffic - the right to assemble vs the right to use a public road.) (1 day)

Clip and Share

Clip from a daily newspaper examples of stories or photos that deal with the First Amendment freedoms of assembly (stories of meetings, demonstrations, parades, etc.) and petition (articles dealing with citizens protesting governmental policy, with citizens criticizing government officials, with people organizing in opposition to those in authority, etc.). Summarize in a sentence or two the nature of each example. Discuss why the press covers these types of stories. (1 day)

Identify and Share

Have students select a medium of their choice – music, art, drama, writing, or video – in which to express their views about the importance and interrelationship of First Amendment rights in a free society. Have students share their work with the class. (1-3 days)

Assessment

Right To Assemble/ To Petition Government



Multiple Choice

1. The Supreme Court has held the government may regulate the right to assemble if the “event”
 - a) Threatens the public’s health and safety
 - b) Differs from those of most of society
 - c) Subjects other groups to ridicule
 - d) Is thought to be unpatriotic

2. The right to assemble can only be limited if the restrictions
 - a) Apply equally to all groups
 - b) Serve to fulfill a legitimate government interest (protection of public property)
 - c) Are vague and confusing
 - d) Both a and b

3. The Supreme Court has ruled that demonstrators may
 - a) Be arrested for disorderly conduct if their actions lead to a public disturbance
 - b) Not be required to obtain permits in order to demonstrate in public places
 - c) Be required to obtain a permit before proceeding with a public demonstration
 - d) Not be arrested for disorderly conduct simply because others have reacted to their march with violence

4. The government can enforce rules about
 - a) The time and content of assemblies
 - b) The time and place of assemblies
 - c) Both a and b
 - d) Neither a nor b

5. The American Nazi Party sought to parade in a community where many Jewish people lived. The Supreme Court would likely find the parade
 - a) Unconstitutional because the march presents a clear and present danger to the community
 - b) Constitutional and uphold the right of Nazis to parade peacefully
 - c) Unconstitutional and allow for the arrest and convictions of the Nazi marchers
 - d) A question outside of their jurisdiction and matter for the local community to decide

True / False

1. **TRUE FALSE** Lobbying congressmen by the National Rifle Association is an activity protected by the right of assembly.

2. **TRUE FALSE** During lunch hour, a student circulates a petition calling for better food in the cafeteria. The principal punishes the student for circulating a petition that criticizes the school cooks. The principal’s action is constitutional.

3. **TRUE FALSE** The idea protected by the freedom of assembly clause of the First Amendment is that people are free to assemble as they wish except when their actions may result in disorder or unrest.

4. **TRUE FALSE** The government may place restrictions on assembly that only apply to certain groups or only because of theme or subject.

5. **TRUE FALSE** It is constitutional for a large group of students from ABC High School to get together in the school parking lot before school to protest the firing of a well-respected English teacher.

Essay

1. In an attempt to revitalize the waterfront, the city of Justice decided to demolish a vacant building which had recently been condemned by the city's health inspector. A number of homeless people who used the building as a shelter during the winter wanted to protest the city's actions. They showed up at City Hall with blankets saying they would set up camp in the hallway outside the mayor's office until the mayor changed his mind about the building. Mayor Smith, concerned about the city's image, asked a judge to issue an order for the police to remove the homeless from City Hall. Question: Can the judge issue such an order? Why or why not?

2. Explain how the rights of assembly and petition have been important in American history. Identify an historical example which resulted in social reform or political change.

3. What restrictions have been imposed on the right of assembly, and how have these restrictions been justified by the government?

Answers

Right To Assemble/To Petition Government

Multiple Choice *(Answers may vary depending on the specific facts in any case or scenario.)*

1. A
2. D
3. D
4. B
5. B

True/False *(Answers may vary depending on the specific facts in any case or scenario.)*

1. True
 2. False
 3. True
 4. False
 5. True
-

Supporting Materials

Texts:

Haynes, C.C. et al. (2003). *The First Amendment in Schools*. Alexandria, VA. Association for Supervision and Curriculum Development.

Smith, DE. (1995). *We the People: The citizen and the Constitution*. Calabasas, CA. Center for Civic Education.
Available from www.civiced.org

Videos:

Skokie: Rights or Wrong

Constitution: The delicate balance

Web sites:

http://www.firstamendmentcenter.org/Assembly/cases_resources_summary.aspx - First Amendment Center list of Freedom of Assembly and Petition Supreme Court Cases

www.billofrights.institute.org – Bill of Rights Institute

www.crf-usa.org – Constitutional Rights Foundation

Student Journalism

Contributed by Randy Swikle

With its inherent diversity and holistic approach, scholastic journalism has profound influence beyond the classroom doors. A dynamic journalism class that supports a free and responsible student newspaper benefits the entire community by promoting the core values of a school's mission. It makes concepts come alive!

Values of a Student Newspaper

First, the newspaper serves as a catalyst for *thinking skills*, and thereby benefits not only the student journalist but also every reader.

Decision making: It's more than a concept; it's a constant. In journalism class, students constantly deal with the process, the strategies, the ethics, the options and other considerations for making good choices. With the newspaper, they apply decision-making skills and touch the thinking of readers. They influence adult decision-makers by providing a student perspective of issues and events, and they stir the involvement of their peers by providing a more panoramic awareness of things.

Second, the newspaper serves as a vehicle for advancing *knowledge* in every academic discipline that is relevant to a particular story topic or to a process vital to gathering information about the story topic.

Math: It's more than numbers and quantitative operations; it's a discipline that breathes life into a technological world. In journalism class, students learn the mathematics of opinion polls, page design, finances, camera settings, computer programming, and other things that support stories and production. With the newspaper, they apply those math skills to assist with the dissemination of information and the discovery of truth.

Third, the newspaper serves as a medium to apply *life skills* in a context that contributes to the well-being of citizens and to the principles of our democratic society.

Emotional wellness: It's more than managing stress and coping with feelings; it's maximizing performance and interacting with people. In journalism class, students learn how to deal with deadlines, how to maintain objectivity, how to analyze body language, how to build rapport with news sources and co-workers, and how to get readers to *feel* the significance of a story. With the newspaper, they recognize achievement, provide uplifting stories, entertain, and inspire intrinsic motivation that leads to maximum performance. The newspaper also becomes a safety valve, allowing students to vent their feelings in editorials, letters to the editor, and other constructive ways that satisfy the need to be heard and the desire to participate.

Finally, a journalism class and a student newspaper provide diverse learning opportunities that enable students to engage in the school's mission rather than to approach the mission as if it were merely a conceptual guide that lacks practical application.

Ethics in Student Journalism

1. Be truthful in your reporting!

Verify your facts. Your job is to REPORT the news, not create it.

2. Be accountable for your work.

If a mistake is made, run a retraction/correction immediately.

3. Let ethics guide you. Staff members should report in an ethical and responsible manner.

4. Be judicious with regard to stories run. Do not unnecessarily embarrass individuals. Ask yourself – is this story newsworthy?

See corresponding Handout in this guide, "Rights Also Bring Responsibilities."

Student Journalism



Resources for Student Journalists:

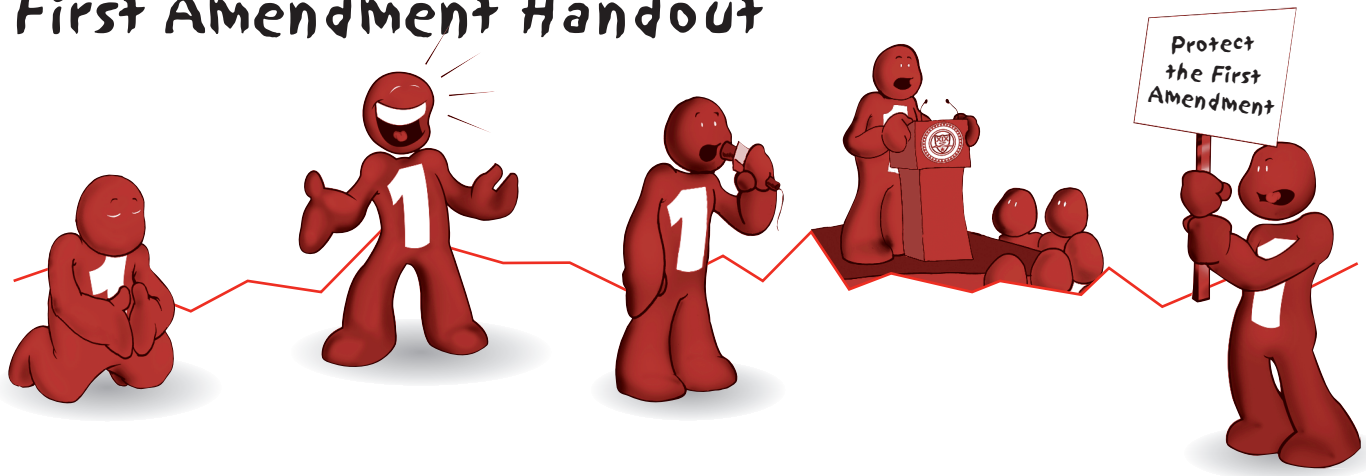
Starting up a student newspaper? Need tips to improve your existing newspaper? Learn all you need to know by going to the following site to view *Start the Press!*, *How to Start a High School Newspaper*, by Auburn University Journalism Students Newspaper Management

www.highschooljournalism.org/images/editors/startthepress.pdf

Or search for Start the Press – How to Start a High School Newspaper

Society of Professional Journalists: www.spj.org/ethics_code.asp

First Amendment Handout



Five freedoms are guaranteed by the First Amendment

Religion

Religious persecution was one reason why many people escaped to the New World in the 17th century. But even in the colonies, religious freedom could be elusive.

In 1636, Roger Williams founded Rhode Island where he allowed full religious freedom declaring, “A man’s conscience is not under state control.” In the next century, the Founding Fathers added religious protection in the First Amendment: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof”

The government must be neutral. It can neither promote nor discourage religious practice. Hundreds of issues have been raised before the courts regarding the interpretation of the religious liberty clause. Today, no country on earth is more religiously diverse than the U.S.

Speech

Freedom of speech was reserved for a powerful few—including royal governors and clergymen—in the early days of the colonies.

Others who spoke publicly about controversial issues risked punishment, particularly if their views disagreed with those in authority.

As elected colonial assemblies gained power, the common man began to lift his voice. When the Bill of Rights was ratified, freedom of speech was granted to all citizens.

Now, more than 200 years after the First Amendment was ratified, America’s concept of freedom of speech continues to evolve.

What are the limits of free speech? What should happen when your freedom of speech collides with the rights of another individual?

In a world fearful of terrorism, will free speech erode?

Press

America’s first newspaper, *Publick Occurrences, Both Foreign and Domestic*, was published on Sept. 25, 1690.

It lasted one issue, suppressed because its publisher—Benjamin Harris—printed it without getting permission from the governor who wanted to approve each article before publication.

In 1735, freedom of the press got a big boost when printer John Peter Zenger was found not guilty of libeling the colonial governor of New York.

Today, the press serves as an important guardian of the people’s rights. By educating the public about the issues of the day, it is essential to the health of a democracy. Where the people rule, it is vital for the people to be informed.

As newspaperman Jerry W. Friedheim put it, “A strong, free country and a strong, free press are inseparable.”

Assembly

In 1976, the American Nazi Party requested a permit to demonstrate in the strongly Jewish community of Skokie near Chicago.

Town officials opposed the request, with many citizens arguing that the First Amendment should not protect people who preach hate and violence. Others, however, said that the First Amendment must be for everyone, or else it is for no one. After a lengthy court battle, the Nazis won the right to hold their demonstration.

More recently, a law in Chicago allowed police to break up groups of young people on street corners if they believed the gathering was gang-related. The Supreme Court, however, ruled that the ordinance was unconstitutional.

Freedom of assembly protects the right of people to organize in opposition to government policies or for other lawful purposes.

Petition

In some countries, just voicing opposition to government policies can result in a penalty of death.

These oppressive governments do whatever it takes to prevent people from organizing in opposition to those in authority. By stifling free expression, it is easier for tyrants to control public opinion and retain their power.

The First Amendment protects the right of citizens “to petition the Government for a redress of grievances” without the fear of reprisals.

In other words, the law protects your right to criticize the government and its public officials—so long as the criticism is not libelous (a published communication that falsely and maliciously harms a person’s reputation).

Today, issues involving the right of petition are mostly absorbed by the protection of freedom of speech.

First Amendment Handout

Not all speech is protected

The freedoms of the First Amendment are not absolute. Every right has certain limitations.

It is up to the courts to weigh one person's rights against another's, and individual rights against what is best for society. Whenever rights seem to conflict, the courts attempt to honor the spirit of the First Amendment and achieve a proper balance.

The courts have identified nine categories of speech not protected by the First Amendment:

(1) Obscenity

The statement that "beauty is in the eye of the beholder" poses the dilemma that courts have wrestled with in establishing a definition of obscenity that will promote consistent interpretation by judges.

The Supreme Court has held that material is obscene if it "appeals to a prurient interest in sex" by portraying "sexual conduct in a patently offensive way."

(2) Defamation

The First Amendment does not protect someone who "defames" a person by attacking the individual's good name by slander or libel. A person suing for

defamation must prove four things:

- **Publication.**

The statement must have been communicated to someone other than the person it was about.

- **Identification.**

The statement must identify the person claiming to be libeled.

- **Harm.**

The statement must harm the person's reputation in the eyes of the community.

- **Fault.**

It must be proven that the defendant was at fault for publishing the statement. Truth is the best defense against defamation.

(3) Expression intended and likely to incite imminent lawless action

In its 1969 *Brandenburg v. Ohio* ruling, the Supreme Court said that people may talk about resorting to violence. But if their words are directly linked to lawless action about to happen, or if the words help cause action, the speaker loses First Amendment protection.

(4) Fighting words

When a person uses words so offensive and inflammatory that they disrupt the peace by provoking the person addressed to acts of violence, the speaker is not protected by the First Amendment. If words

(apart from the content of the ideas they convey) are likely to shock passersby and incite them to commit unlawful acts, the speaker is not protected.

(5) Unwarranted invasion of privacy

"The right to be let alone is indeed the beginning of all freedoms," wrote Justice William O. Douglas. Privacy law includes four different kinds of complaints:

- **Public disclosure of private and embarrassing facts.**

Does the information lack legitimate public concern?

- **False light.**

Does the information unflatteringly portray a person as something that he or she is not?

- **Intrusion.**

Was the information obtained in a way that infringed upon a person's reasonable expectation for privacy?

- **Misappropriation.**

Was the information an unauthorized use of a person's name, likeness, voice or endorsement to promote the sale of a commercial product or service?

(6) Deceptive or misleading advertisements or those for illegal products or services

Advertising that



misleads a reasonable consumer (buyer) by misrepresenting or omitting important information is not protected by the First Amendment. Advertising for illegal products or services is also subject to government penalties. The government may regulate advertising in some situations to protect consumers.

(7) Clear and immediate threats to national security

Every nation has the right to suppress speech that would pose a grave threat to national security. This is especially true during times of war. People who disclose vital secrets or say things that can help the enemy can be punished. The government can censor information that would help the enemy. However, the courts have said that

circumstances should be extreme if First Amendment rights are to be curtailed.

(8) Copyright violations

People who work with words and other means of expression have the right to have their work protected for their exclusive use. Others may not copy their material for unauthorized use except in such manner as the law allows.

(9) Expression on school grounds that causes a material and substantial disruption of school activities

School officials may suppress student speech in school if they can provide compelling evidence that the speech would result in imminent or immediate physical disruption or the commission of unlawful acts.

First Amendment Handout

DEFINING MOMENTS

Courts interpret the First Amendment



U.S. judicial system is charged with defining the 45 words of the First Amendment as they apply to real life situations. Judges must balance the First Amendment's freedoms with other factors that protect the rights of citizens and the welfare of society. It is a delicate task — sometimes rights come into conflict.

For example, young people have a right to attend school in a safe environment, free from disruption. But what happens when school officials fear that a student's exercise of free speech will cause a disruption?

The court cases which follow are a sample of those on First Amendment issues. They are presented to give you an idea of the kind of topics and challenges that judges deal with every year. By entering them on an Internet search engine, you can access more details about each case, including the complete court opinions.

Tinker v. Des Moines Board of Education 393 U.S. 503 (1969)

Thirteen-year-old Mary Beth Tinker and two other students wore black armbands to school in protest of the Vietnam War. School officials had quickly adopted policy that prohibited students from wearing arm bands when they got advanced warning of the planned protest. Officials said they wanted to avoid disruption. When the students refused to remove their armbands they were suspended and sent home. Mary Beth challenged the suspension in court as a violation of her First Amendment rights. The U.S. Supreme Court reversed lower court decisions and ruled: "First Amendment rights, applied in the light of the special characteristics of the school environment, are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." The Court established four criteria for identifying unprotected student speech. Expression:

- Must not be libelous.
- Must not be obscene.
- Must not create a clear and substantial disruption in the school.
- Must not otherwise invade the rights of others.

Hazelwood School District v. Kuhlmeier 484 U.S. 260 (1988)

In the spring of 1983, the *Spectrum* student newspaper at Hazelwood East High School near St. Louis, Mo., was censored by the principal, who objected to two articles on divorce and teenage pregnancy. The principal said the stories were too sensitive and unsuitable for immature audiences. By a 5-to-3 vote, the U.S. Supreme Court reversed the court of appeals and upheld the school's censorship. While reaffirming *Tinker*, the Court established a higher standard under *Hazelwood* with two new considerations:

- (1) Can school officials show they have a valid educational purpose for the censorship and that the censorship is not intended to silence a particular viewpoint they disagree with or that is unpopular? (If not, the *Tinker* standard applies.)
- (2) Has the publication, either by school policy or practice, been opened up as a "public forum" or "forum for student expression" where students have been given the authority to make the content decisions? (If it has, the *Tinker* standard applies.)

New York Times v. Sullivan 376 U.S. 254 (1964)

Thousands of college students were arrested for "sit-in" demonstrations protesting lunch-counter segregation in Greensboro, N.C. The *New York Times* published a full-page advertisement on March 29, 1960, calling for donations to help pay legal expenses of the jailed students and their famous supporter, Dr. Martin Luther King, Jr. The ad noted other cities where "sit-in" demonstrations were held, and it accused police of brutality during a Montgomery, Ala., protest. The ad contained some minor factual errors, and the Montgomery police commissioner decided to sue the *Times* for libel. He was awarded \$500,000 in a district court, but the U.S. Supreme Court reversed the decision, stating that the United States has "a profound national commitment to the principal that debate on public issues should be uninhibited, robust, and wide-open."

Miller v. California 413 U.S. 15 (1973)

Marvin Miller was convicted of violating a state obscenity law after he mailed brochures that contained sexually illicit photographs and advertised provocative "sex" books. He claimed his brochures had an artistic and socially redeeming value. The U.S. Supreme Court disagreed by a five-to-four vote, ruling that Miller's material "lacks serious literary, artistic, political, or scientific value." The Court allowed jurors to apply a "community standard" in determining obscenity.

Texas v. Johnson 491 U.S. 397 (1989)

Gregory Lee Johnson was convicted of burning an American flag at the Republican National Convention in Dallas, Tex., in 1984. He was

sentenced to a year in prison. On appeal, the U.S. Supreme Court ruled Johnson's actions were protected by the First Amendment as symbolic political speech. Justice William Brennan wrote: "We do not consecrate the flag by punishing its desecration, for in doing so we dilute the freedom that this cherished symbol represents."

New York Times v. United States 403 U.S. 713 (1971)

The *New York Times* published material from a top-secret Defense Department document (popularly known as the Pentagon Papers) detailing a history of the Vietnam War. Government lawyers immediately claimed a breach of national security and asked the courts to prohibit the *Times* from printing further excerpts. The Supreme Court refused, ruling that the government had not met the "heavy burden" of proving that national security claims outweighed the First Amendment.

Branzburg v. Hayes 408 U.S. 665 (1972)

A reporter for the *Courier-Journal* in Louisville, Ky., wrote a story about two young men who turned marijuana into hashish, a more potent hallucinogenic drug. The reporter promised the men to keep their names confidential. When the reporter refused to tell a judge the identity of his informants, he risked being jailed for contempt of court. The reporter filed suit against the judge. The case reached the U.S. Supreme Court, which by a 5-to-4 vote ruled that the Court "cannot seriously entertain the notion that the First Amendment protects a newsman's agreement to conceal the criminal conduct of his source." But four justices disagreed, saying news sources would "dry up" if they feared disclosure.

Abington School District v. Schempp 374 U.S. 203 (1963)

The Pennsylvania legislature's action requiring that a public school start its day by reading 10 verses from the Bible was ruled unconstitutional by the U.S. Supreme Court. Justice Tom Clark wrote: "In the relationship between man and religion, the state is firmly committed to a position of neutrality."

R.A.V. v. City of St. Paul, Minnesota 505 U.S. 377 (1992)

A black family living in a white neighborhood awoke one night to discover a cross burning on their front lawn. Two teenagers were arrested and charged with violating a "hate crime" law. One challenged the law as a content-based violation of the First Amendment. The U.S. Supreme Court unanimously agreed, but justices were divided on which standard the Court should apply. Five justices believed that any content-based limitation of speech is unconstitutional. Four justices would retain the "fighting words" exception to the First Amendment but said the city law was "overbroad" in banning some kinds of protected speech.

First Amendment Handout

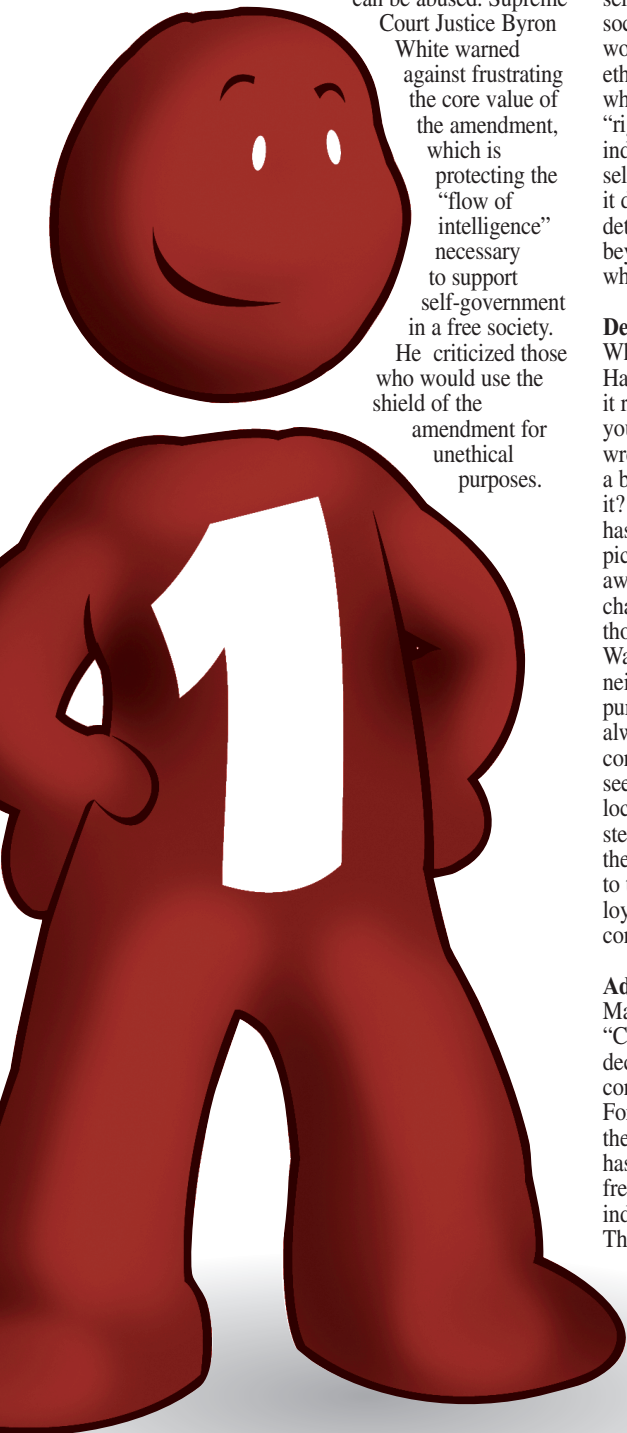
Rights also bring responsibilities

The shield of the First Amendment can be used for good or bad. A person's motives, values and moral awareness are among the factors that direct an individual to good or bad, right or wrong decisions. First Amendment freedoms intentionally or inadvertently

can be abused. Supreme

Court Justice Byron White warned against frustrating the core value of the amendment, which is protecting the "flow of intelligence" necessary to support self-government in a free society.

He criticized those who would use the shield of the amendment for unethical purposes.



Defining Ethics

Ethics is the process we use for determining what is good or bad, right or wrong. Ethics helps us balance our rights with our responsibilities. Ethics causes us to consider what is righteous, to think beyond our self interests in favor of doing what is best for society. The term ethics comes from the Greek word "ethos," which means character. An ethical person is a person of good character who strives to make "right" choices. Those "right" choices are self-determined by each individual. Ethics is voluntary conduct that is self-enforced. Although ethics is related to law, it differs from law in that law is socially determined and socially enforced. Ethics goes beyond the consideration of law. Law tells us what we can do; ethics, what we should do.

Deciding What's Right

What is legal may not be what is ethical. Having the right to say something doesn't make it right to say it. What if the sports editor of your student newspaper picks a photo of a girl wrestler from a visiting team nearly pinning a boy wrestler from your squad. Should he run it? Does it make a difference if the sports editor has a grudge against the boy wrestler? If the picture could win the photographer a major award? If the match is for the state championship? What are "right" answers to those questions? The famous broadcaster Walter Cronkite once said, "Truth knows neither friend nor enemy, nor can those who pursue it." Making "right" decisions is not always easy. Often there is a dilemma of conflicting loyalties. What do you do if you see a stranger stealing something from the locker of your best friend? Or your best friend stealing from a stranger? Would you respond the same way in both incidents? Are you loyal to the concepts of justice and fairness? Or does loyalty to a friend supercede other considerations?

Adopting a Code of Ethics

Many professions have adopted their own "Code of Ethics" to help members make decisions. The codes reflect principles of conduct related to the issues of the profession. For example, "A Statement of Principles" of the American Society of Newspaper Editors has ethical comments on responsibility, freedom of the press, truth and accuracy, independence, impartiality and fair play. They provide guidance for decision-makers

tackling the issues and events of their profession. Such codes provide a thoughtful perspective of what one's colleagues consider to be proper conduct in situations. However, there will always be those who ignore ethical considerations and act on selfish motives. Within the parameters of law, people are permitted to abuse freedom. We cannot make laws forcing people to have unselfish attitudes, virtuous values and noble beliefs. We cannot pass a law that citizens must always make "good" or "right" decisions. In a free society, citizens have choices. Some choices lack ethical integrity, betray the spirit of the First Amendment and fall at the very far edge of a protected freedom. In such a case, the temptation to narrow that freedom may be great. But the temptation must be resisted. A line will always exist between behavior protected by law and behavior that is not. If we reduce the distance to that line each time free speech is challenged, our freedoms perpetually erode. The "Credo for Free and Responsible Communication in a Democratic Society" of the Speech Communication Association defends tolerating expression that falls at the very edge of protected speech: "We support the proposition that a free society can absorb with equanimity speech which exceeds the boundaries of generally accepted beliefs and morals; that much good and little harm can ensue if we err on the side of freedom, whereas much harm and little good may follow if we err on the side of suppression."

Promoting Ethics

The best way to promote ethics and fight abuse of the First Amendment is to develop a keen understanding — a panoramic vision — of that cornerstone of American freedom. The more we learn about the First Amendment, the more we appreciate the beauty of its protective, multidimensional, evolving nature. By considering ethics, legalities, diversity, discovery, and other aspects inherent to the meaning of the First Amendment, one can better apply it in ways that strengthen freedom and democracy. It is wise to remember, however, that different eyes see different things. What is purely manure to one person may be fertilizer to another. The shield of the First Amendment is meant to protect the rights and welfare of all citizens. We must use it with conscious awareness of ethical implications, else that shield may become corroded.

Additional First Amendment Activities



Which Freedom Would You Sacrifice?

Divide the class into groups of two, three, or four. Have each group decide if they had to give up one of the Five Freedoms, which one would it be? Each group gives its rationale for its decision. Could the groups reach a consensus? Did the different groups come up with the same freedom?

The Majority Can Be Wrong

Explain the quotation of Zechariah Chaffee, Jr., “The real value of freedom is not to the minority that wants to talk but to the majority that does not want to listen.” The idea is that the majority can be wrong! The majority once thought that the world was flat. By allowing freedom of speech, the majority must tolerate the expression of views it does not hold. As “unpopular” views are aired and criticism and dissent are allowed, the majority gains new perspectives that help reveal truth.

First Amendment For All!

Explain the statement: “The First Amendment must be for everyone, or else it is for no one.” This statement means that we must honor the protection of the First Amendment not only when it is used in promoting our own views but also when it is used to promote views that we detest. If we don’t honor each other’s rights under the First Amendment, then no one will be protected.

Five Freedom Scenarios

Individually or in small groups, have students write a “school” scenario for each of the Five Freedoms of the First Amendment. For example, a “religion” scenario could have students gathered around the flagpole in a before-school prayer service, or a student could be reading a bible in study hall.

Debate

Have students debate whether flag burning as a manner of protest should be protected by the First Amendment. Have students research flag desecration cases on the Internet and report to the class on how the court has ruled.

Identify the Freedom(s)

Identify which of the Five Freedoms of the First Amendment is relevant to each case:

Tinker v. Des Moines (Speech, Press)

Hazelwood School District v. Kuhlmeier (Speech, Press)

New York Times v. Sullivan (Speech, Press)

Brandenburg v. Hayes (Press)

Abington School District v. Schempp (Religion)

Texas v. Johnson (Speech)

Deceptive Ads

Invite the advertising manager of your local newspaper to address the class on the topic of deceptive or misleading ads.

Court’s Interpretation

Search the newspaper for stories that include a court’s interpretation of the law. What was the issue at hand? How did the court rule?

Letters to the Editor

Question: Should letters to the editor be checked for factual accuracy before publication? Using the Letters to the Editor section of your local newspaper, underline verifiable factual information as opposed to opinion. As editor of the newspaper, would you feel ethically compelled to check the accuracy of the information, knowing that inaccurate information could be just as “influential” as accurate information? How much would it cost in time and money to verify? Would you contact the sender to confirm the source of the letter? Would or should a small newspaper with fewer resources than a large, metropolitan newspaper take similar precautions. In small groups, develop a list of ethical practices for printing letters to the editor.

Test Bank Questions *Pre- and/or Post Test*



Part 1: Name the five freedoms of the First Amendment.

- (a)
- (b)
- (c)
- (d)
- (e)

PART II: Read the scenarios described below and indicate if you believe the action taken is (a) constitutional or (b) unconstitutional under the First Amendment. Unless otherwise noted, the scenarios refer to public schools.

1. A student is prohibited from passing out anti-war brochures on school grounds because they were not produced in school by an official organization. This action is:
a) Constitutional b) Unconstitutional
2. In fulfillment of an assignment to write a book report on any book, a student chooses to present a book report on the Holy Bible before her classmates. The student's action is:
a) Constitutional b) Unconstitutional
3. The football coach leads his team in prayer before the big game. The coach's action is:
a) Constitutional b) Unconstitutional
4. A girl is reading the Holy Bible in study hall, and the teacher takes it away from the girl. The teacher says that the Holy Bible cannot be read in school due to separation of church and state. The teacher's action is:
a) Constitutional b) Unconstitutional
5. The official student newspaper is censored by administration because of a position taken in an editorial. This action is:
a) Constitutional b) Unconstitutional
6. All copies of an "underground" newspaper are confiscated by administration because authorities believe an unofficial student newspaper does not have First Amendment protection at school. This newspaper is produced off school grounds and distributed to students during lunch hour. This action is:
a) Constitutional b) Unconstitutional
7. School officials say that an "underground" newspaper may be distributed on school grounds but ONLY in the cafeteria during lunch hours. This action is:
a) Constitutional b) Unconstitutional

8. The editor of the student newspaper writes a column in which he calls the principal a “jerk” for demanding the newspaper be submitted for the principal’s prior review before publication. The editor’s action is:
a) Constitutional b) Unconstitutional
9. The student newspaper publishes an editorial calling for students to walk out of their 2nd period class on Tuesday to demonstrate their support of an upcoming school referendum. The newspaper’s action is:
a) Constitutional b) Unconstitutional
10. Five students come to school wearing black armbands to protest a new school rule that prohibits students from wearing hats in school. The students’ actions are:
a) Constitutional b) Unconstitutional
11. During his lunch hour, a student circulates a petition calling for better food and quicker service in the cafeteria. The principal punishes the student for circulating a petition that criticizes the school cooks. The principal’s action is:
a) Constitutional b) Unconstitutional
12. The principal bans the distribution of an “underground” newspaper on school grounds because students have been caught reading it during their class time, which is a disruption. The principal’s action is:
a) Constitutional b) Unconstitutional
13. A student is suspended for giving a campaign speech at school because he used “suggestive” language that could be considered vulgar even though the literal meaning of the words was not obscene. This suspension was:
a) Constitutional b) Unconstitutional
14. The principal allows “Away in a Manger” to be broadcast over the public address system during passing periods at school during the Christmas season. The principal’s action is:
a) Constitutional b) Unconstitutional
15. The choir director has the choir sing religious Christmas carols during the Winter Concert at school. The choir director’s action is:
a) Constitutional b) Unconstitutional
16. A student newspaper (not considered a public forum) was censored because it contained two articles on divorce and teen pregnancy. These topics were considered too sensitive and unsuitable for immature audiences. This censoring is:
a) Constitutional b) Unconstitutional
17. A student newspaper selects any “good taste” pictures from the Internet and uses them to illustrate feature stories. The newspaper’s action is:
a) Constitutional b) Unconstitutional

18. The student newspaper prints the names of two 18-year-old students who were arrested (but not yet tried) and charged with stealing computers from the library. The newspaper's action is:
a) Constitutional b) Unconstitutional
19. The school sponsors baccalaureate religious services before graduation. It is an entirely voluntary event, held outside school hours, and all denominations are allowed to participate. The school's action is:
a) Constitutional b) Unconstitutional
20. The administrator of a private school censors the student newspaper because it contained an editorial that opposed a new dress code policy. The administration's action is:
a) Constitutional b) Unconstitutional
21. A student wears a button in class that says, "Legalize Marijuana." The student's action is:
a) Constitutional b) Unconstitutional
22. A student wears a button in class that says, "Smoke Marijuana." The student's action is:
a) Constitutional b) Unconstitutional
23. A student wears a shirt in class showing a marijuana leaf and the words, "Tastes Good!" The student's action is:
a) Constitutional b) Unconstitutional
24. A student in class wears a large cross necklace and a shirt that says, "I Love Jesus." The student's action is:
a) Constitutional b) Unconstitutional
25. A student in class wears a shirt with a Nazi swastika. The student's action is:
a) Constitutional b) Unconstitutional

PART III: Match the area of unprotected speech with the proper example.

- A** Obscenity
- B** Defamation
- C** Expression intended and likely to incite imminent lawless action
- D** Fighting words
- E** Unwarranted invasion of privacy
- F** Deceptive or misleading advertisements or those for illegal products or services
- G** Clear and immediate threats to national security
- H** Copyright violations
- I** Expression on school grounds that causes a material and substantial disruption of school activities

- _____ 26. "False light." Information unflatteringly portrays a person as something that he or she is not.
- _____ 27. Information is maliciously published that contains false information about a person that significantly damages that person's reputation.
- _____ 28. A student wears a Confederate flag T-shirt that so inflames certain classmates that fights break out.
- _____ 29. The student newspaper publishes a picture taken from the Internet without first gaining permission from the owner of the picture to reproduce it.
- _____ 30. A consumer (buyer) is misled by information that significantly misrepresented a product or service.
- _____ 31. Published information that appeals to a prurient interest in sex by portraying sexual conduct in a patently offensive way.
- _____ 32. Someone discloses a vital secret in an attempt to help the enemy during time of war.
- _____ 33. When words (apart from the content of the ideas they conveyed) are likely to shock passersby and incite them to commit unlawful acts.
- _____ 34. If words are directly linked to lawless action which is about to happen or if the words help cause such lawless action.
- _____ 35. "Misappropriation." The information was unauthorized use of a person's name, likeness, voice or endorsement to promote the sale of a commercial product or service.

PART IV: Match the information with the proper Supreme Court case.

A. Tinker v. Des Moines Independent Community School District (1969)

B. Hazelwood School District v. Kuhlmeier (1988)

C. Bethel v. Fraser (1986)

- _____ 36. The Spectrum student newspaper
- _____ 37. Protest against the Vietnam War
- _____ 38. "Expression must not create a clear and substantial disruption of school activities."
- _____ 39. Black armbands

_____ 40. Divorce and teenage pregnancy

_____ 41. Censorship is permitted for legitimate educational reasons not intended to silence a viewpoint that school officials disagree with or that is unpopular.

_____ 42. Students and teachers do not shed their constitutional rights to freedom of speech at the schoolhouse gate.

_____ 43. Lewdness

_____ 44. "Students may not be regarded as closed-circuit recipients of only that which the State chooses to communicate. They may not be confined to the expression of those sentiments that are officially approved."

_____ 45. If a student publication by either school policy or practice has been opened up as a "public forum" or "forum for student expression" where students have been given authority to make the content decisions, the standards of which case apply.

PART V: Multiple Choice. Circle the correct answer.

46. How many words are in the First Amendment? 45 65 75 85 95

47. How many freedoms are listed in the First Amendment? 3 5 6 8 9

48. How many amendments are in the Bill of Rights? 3 5 9 10 13

49. What year was the Bill of Rights ratified? 1776 1787 1791 1795 1799

50. Which is not one of the First Amendment 3 R's? Ratification Rights
Responsibility Respect

Test Answers

Pre- and/or Post Test


PART I:

The five freedoms of the First Amendment are: Religion, Speech, Press, Assembly, & Petition.

PART II: (Answers may vary depending on the specific facts in any case or scenario.)

1. (b) *Students have the right to distribute material of protected speech, but school officials can determine the reasonable time and place of distribution.*
2. (a) *So long as it was the student who chose to do the book report on the Holy Bible, it is constitutional. But if the student begins "preaching" rather than sticking to the teacher's criteria for the book report, the speech is no longer protected in a public school.*
3. (b) *In a public school, the law requires a separation between church and state. The coach is not allowed to promote religion by leading his team in prayer.*
4. (b) *Just as public school officials are not allowed to promote religion, they are not allowed to deny the religious rights of a student.*
5. (b) *The First Amendment protects the right to express unpopular views. The administration cannot legally censor an opinion simply because administration disagrees with it. At the least, there must be a legitimate, educational reason for suppressing speech.*
6. (b) *"Underground" newspapers have First Amendment protection at school and may be distributed on school property during school hours at a reasonable time and place determined by school officials.*
7. (a) *School officials may regulate the reasonable time and place for distributing an "underground" newspaper on campus during school hours.*
8. (a) *While name-calling may be protected in this case, many reputable journalists would consider it a breach of ethics. Many who support the rights of student journalists urge students to practice the "3 R's" of the First Amendment: Rights, Responsibilities, and RESPECT. Students should carefully consider the purpose of their words and which strategies of expression will most effectively attain their goals.*
9. (b) *Speech that calls for students to do something illegal or to do something that would create a substantial disruption in school is not protected by the First Amendment.*
10. (a) *Except for the subject of protest, this case is very similar to Tinker v. Des Moines, in which the U.S. Supreme Court ruled that within certain parameters student expression in school is protected by the First Amendment.*
11. (b) *Within the parameters of Tinker and/or Hazelwood, students are permitted to circulate petitions during school hours. Once again, to help prevent such an activity from creating a clear and substantial disruption, school officials may regulate the reasonable time and place for circulating a petition. Courts in different jurisdictions have not agreed over the issue of whether or not school officials may require prior review of a petition. Until the U.S. Supreme Court agrees to hear such a case, lower courts and local school policies will dictate the practice within their own jurisdictions.*

Test Answers (Cont'd)



12. (b) The obligation in this case is to discipline the student who is off task. Had the student been reading Newsweek magazine, would that publication be banned at the school?

13. (a) This is the scenario of the 1986 case of *Bethel v. Fraser* in which the U.S. Supreme Court ruled that while a campaign speech delivered during an assembly for a student council election may have been protected beyond school walls, it could be censored in a school setting. The Court ruled: "It does not follow ... that simply because the use of an offensive form of expression may not be prohibited to adults making what the speaker considers a political point, that the same latitude must be permitted to children in public school. In explaining its decision, the Court reasoned that one mission of school is to promote " 'habits and manners of civility' that are essential to a democratic society."

14. (b) While secular Christmas songs, such as "Here Comes Santa Claus" are protected, a song with a religious theme used in the manner described would likely be ruled as a violation of the separation of church and state doctrine.

15. (a) Intention is the key. The choir can perform a religious Christmas carol as long as the song is approached as a musical exercise without the intention of promoting religious beliefs. In the same sense, a public school can offer a course on the religions of the world.

16. (a) This is the scenario of the U.S. Supreme Court's *Hazelwood* decision. If school officials show that they have a valid educational purpose for their censorship and that the censorship is not intended to silence a particular viewpoint that they disagree with or that is unpopular, they may suppress student speech. In certain cases, such as a student newspaper being recognized as a public forum, the broader protection of the *Tinker* decision would be applied.

17. (b) Student newspapers are required to honor copyrights just as commercial publications are. Be sure to get permission from the owner of the photographer to reproduce the work if it has copyright protection.

18. (a) It is important for student journalists to understand the law of the press, particularly libel law, because the law applies to the student press, too. To say that two students were arrested and charged with a crime is protected, so long as the facts are accurate. But if the reporter writes that the students were arrested for stealing computers, he would be placing himself and his newspaper in jeopardy of a libel suit. Since the case has not yet gone to court, the reporter should not write that the students were arrested "for stealing." They may be innocent. Write instead that the students were "charged with" stealing. That fact is accurate.

19. (b) A public school cannot sponsor religious services.

20. (a) Students in private schools do not have the same First Amendment protections as students in public schools.

21. (a) Censorship of student expression cannot be based solely on the popularity of the message. For a student to promote a political position, such as the legalization of marijuana, is protected speech under both *Tinker* and *Hazelwood* so long as the requirements of those decisions are met.

22. (b) School officials would be justified in suppressing speech in school that promotes unlawful acts.

Test Answers (Cont'd)



23. (b) *School officials would be justified in suppressing speech in school that advertises illegal products.*

24. (a) *Absent any other compelling reasons, students are allowed to wear religious icons in school.*

25. (b) *Court rulings on the issue of students who wear controversial icons in school have been inconsistent. For example, while some courts have protected the right of students to wear “Confederate Flag” T-shirts, other courts have ruled in favor of school policy that bans them. Courts take into consideration the emotional climate of a school and the potential for substantial disruption in rendering their decisions. A student who wears a T-shirt with a Nazi swastika may be required to remove it if school officials can show it would create a clear and substantial disruption of the learning environment.*

PART III:

26. (e)

27. (b)

28. (i)

29. (h)

30. (f)

31. (a)

32. (g)

33. (d)

34. (c)

35. (e)

PART IV:

36. (b)

37. (a)

38. (a)

39. (a)

40. (b)

41. (b)

42. (a)

43. (c)

44. (a)

45. (a)

PART V:

46. (a) 47. (b) 48. (d) 49. (c) 50. (a)

Synopses of First Amendment Supreme Court Cases



Barnette – West Virginia State Board of Education v. Barnette, 319 U.S. 624 (1943)

Concerning West Virginia requirement to salute the U.S. flag violates the free speech clause.

Bethel School District No. 403 v. Fraser, 478 US 675 (1986)

Students' rights "are not automatically coextensive with the rights of adults in other settings."

Brandenburg v. Ohio, 395 U.S. 444 (1969)

Concerning speech advocating use of force or crime

Joseph Burstyn, Inc. v. Wilson, 343 U.S. 495 (1952)

Concerning the First Amendment protection of free speech in films.

Cantwell v. Connecticut, 310 U.S. 296 (1940)

Concerning the state enactment of any law respecting religion.

Central Hudson Gas & Elec. Corp. v. Public Service Comm'n, 447 U.S. 557 (1980)

Concerning censorship of advertising.

Chaplinsky v. New Hampshire, 315 U.S. 568 (1942)

Concerning verbal insults in public places.

Clark v. Community for Creative Nonviolence, 468 U.S. 288 (1984)

Concerning sleeping in connection with protests.

A Book Named "John Cleland's Memoirs of a Woman of Pleasure" v. Attorney General of Massachusetts, 383 U.S. 413 (1966)

Concerning obscenity in a book.

Cohen v. California, 403 U.S. 15 (1971)

Concerning a state attempting to make the expression of four letter words a criminal offense.

Communist Party of the United States v. Subversive Activities Control Bd. No. 12, 367 U.S. 1 (1961)

Concerning the registration of the Communist Party of the United States as a "Communist action organization."

Connick v. Myers, 461 U.S. 138 (1983)

Concerning the dismissal of an Assistant District Attorney for insubordination for questioning the policies of her supervisors.

Cox v. Louisiana, 379 U.S. 536 (1965)

Concerning the content and location of a civil rights protest.


Cox v. Louisiana, 379 U.S. 559 (1965)

Concerning related issues to the previous case.

Curtis Publishing Co. v. Butts, 388 U.S. 130 (1967)

Concerning libel by a reporter against a football coach accused of fixing a game.

Synopses of First Amendment Supreme Court Cases (Cont'd)



Dawson v. Delaware, 503 U.S. 159 (1992)

Concerning the admission of a defendant's personal beliefs if they are irrelevant to the case.

De Jonge v. Oregon, 299 U.S. 353 (1937)

Concerning criminal punishment for participation in public meetings, even if peaceful, because the sponsoring group advocates violence or popular uprising.

Dennis v. United States, 341 U.S. 494 (1951)

Concerning the criminality of anyone knowingly advocating the overthrow of the United States.

Edwards v. South Carolina, 372 U.S. 229 (1963)

Concerning the arrest of peaceful demonstrators for criminal conduct.

United States v. Eichman, 496 U.S. 310 (1990)

Concerning burning of the United States flag.

New York v. Ferber, 458 U.S. 747 (1982)

Concerning the distribution of material promoting underage sex.

Gertz v. Robert Welch, Inc., 418 U.S. 323 (1974)

Concerning the defamation of public officials in the public media.

Gitlow v. People, 268 U.S. 652 (1925)

Concerning the limits of protection of the First and Fourteenth Amendments with regard to public safety and the integrity of the state.

Globe Newspaper Co. v. Superior Court, 457 U.S. 596 (1982)

Concerning the limits of press coverage of sexual offenses involving victims under the age of 18.

Grayned v. City of Rockford, 408 U.S. 104 (1972)

Concerning the permissible levels of noise of a person on grounds adjacent to a school building.

Greer v. Spock, 424 U.S. 828 (1976)

Concerning the distribution of political materials on federal military reservations.

Grosjean v. American Press Co., Inc., 297 U.S. 233 (1936)

Concerning the types of taxes that may be levied against owners of newspapers.

Hague v. Committee for Industrial Organization, 307 U.S. 496 (1939)

Concerning the ability of municipal officers to enforce the ordinances forbidding the distribution of printed matter.


Hazelwood School Dist. v. Kuhlmeier, 484 U.S. 260 (1988)

Concerning censorship of a high school newspaper.

Heffron v. International Soc'y for Krishna Consciousness, 452 U.S. 640 (1981)

Concerning the distribution of any materials, including merchandises, at fairgrounds.

Synopses of First Amendment Supreme Court Cases (Cont'd)



Jacobellis v. Ohio, 378 U.S. 184 (1964)

Concerning censorship of films deemed to be obscene.

Jenkins v. Georgia, 418 U.S. 153 (1974)

Concerning the conviction of a man for showing the film "Carnal Knowledge" in a movie theater.

Keyishian v. Board of Regents, 385 U.S. 589 (1967)

Concerning State University of New York teachers dismissed for refusing to certify that they were not Communists.

Lamb's Chapel v. Center Moriches Union Free School District, 508 U.S. 384 (1993)

Concerning the use of public school property for religious meetings.

Marsh v. Alabama, 326 U.S. 501 (1946)

Concerning the distribution of religious literature on a sidewalk.

Miller v. California, 413 U.S. 15 (1973)

Concerning the test for determining if speech is obscene.

Patterson v. Colorado, 205 U.S. 454 (1907)

The first free press case of the U.S. Supreme Court

Police Department v. Mosley, 408 U.S. 92 (1972)

Concerning picketing at any school involved in labor disputes.

National Association for the Advancement of Colored People v. Button, 371 U.S. 415 (1963)

Concerning the enforcement of a state statute that violates the Fourteenth Amendment.

Near v. Minnesota, 283 U.S. 697 (1931)

Concerning the regular publication of newspapers or magazines thought to be malicious.

New York Times Co. v. Sullivan, 376 U.S. 254 (1964)

Concerning awards due in libel cases considering intent.

Massachusetts v. Oakes, 491 U.S. 576 (1989)

Concerning a man who photographed his 14-year-old stepdaughter nude.

United States v. O'Brien, 391 U.S. 367 (1968)

Concerning the burning of draft cards.


Board of Educ. v. Pico, 457 U.S. 853 (1982)

Concerning the removal of books deemed to be anti-American, anti-Christian, and anti-Semitic, from public high school and junior high school libraries.

Pruneyard Shopping Center v. Robins, 447 U.S. 74 (1980)

Concerning petitioning on privately-owned grounds.

Synopses of First Amendment Supreme Court Cases (Cont'd)



Rosenberger v. Rector & Visitors of the University of Virginia, U.S. (1995)

Concerning the distribution of student funds at a state university to groups with religious publications.

Rosenbloom v. Metro media, 403 U.S. 29 (1971)

Concerning libel stemming from a radio news broadcast of an arrest using pejorative language.

Rust v. Sullivan, 500 U.S. 173 (1991)

Concerning the use of federal funds for family planning which advise patients of the possibility of abortion.

Rutan v. Republican Party of Illinois, 497 U.S. 62 (1990)

Concerning the political nature of a state government hiring freeze.

Scales v. United States, 367 U.S. 203 (1961)

Concerning membership of organizations which advocate the overthrow of the United States.

Schenck v. United States, 249 U.S. 47 (1919)

Concerning a conspiracy to obstruct the draft process.

Stanley v. Georgia, 394 U.S. 557 (1969)

Concerning the possession of obscene films.

Stromberg v. California, 283 U.S. 359 (1931)

Concerning the display of a red flag in California, which is an illegal act.

Texas v. Johnson, 491 US 397 (1989)

Flag desecration is protected speech according to the First Amendment.

Thornhill v. Alabama, 310 U.S. 88 (1940)

Concerning loitering or picketing about a lawful business to affect commerce.

Tinker v. Des Moines Independent Community School Dist., 393 U.S. 503 (1969)

Concerning the suspension of students who wore black armbands protesting the police action in Vietnam.

Watkins v. United States, 354 U.S. 178 (1957)

Concerning witnesses before Congress refusing to answer questions.


Wisconsin v. Yoder, 406 U.S. 205 (1972)

Concerning state of Wisconsin not being allowed to require Amish children to attend school after Grade 8.

Yates v. United States, 354 U.S. 298 (1957)

Concerning the teaching of Communist principles.

Glossary of First Amendment Terms




Amendment	The process of formally altering or adding to a document or record
Anti-Federalist	An opponent of the ratification of the U.S. Constitution
Appellant	One who appeals a court decision
Appellee	One against whom an appeal is taken
Assembly	A group of persons gathered together for a common reason, or a legislative, religious, educational, or social purpose
Association	An organized body of people who have a common interest, activity, or purpose; a society
Bill of Rights	The first ten amendments to the U.S. Constitution, added in 1791 to protect certain rights of citizens
Boycott	To abstain from or act together in abstaining from using, buying, or dealing with as an expression of protest or disfavor or as a means of coercion
Censor	To edit, expurgate, stifle, repress
Censorship	The act, process, or practice of censoring
Christianity	The Christian religion, founded on the life and teachings of Jesus Christ
Commercial Speech	Speech (as advertising) that proposes a commercial transaction
Constitution	The system of fundamental laws and principles that prescribes the nature, functions, and limits of a government or another institution. The fundamental law of the United States, framed in 1787, ratified in 1789, and variously amended since that time.
Copyright laws	The legal right granted to an author, composer, playwright, publisher, or distributor to exclusive publication, production, sale, or distribution of a literary, musical, dramatic or artistic work
Defamation	Communication to third parties of false statements about a person that injures the reputation of or deters others from associating with that person
Dissenting Opinion	Opinion disagreeing with the majority
Diversity	The state of being different; a point or respect in which things differ
Editorial	An article in a publication expressing the opinion of its editors or publishers or commentary on television or radio expressing the opinion of the station or network
Editorializing	To express an opinion in or as if in an editorial
Equal Access Act	Passed by Congress to end growing discrimination against student religious groups that began to occur in public schools
Established Church	A church that a government officially recognizes as a national institution and to which it accords support
Establishment Clause	A clause in the U.S. Constitution forbidding Congress from establishing a state religion
Ethics	A set of principles of right conduct
Features	A prominent or special article, story, or department in a newspaper or periodical
Federalist	An advocate of federalism who was a member or supporter of the Federalist Party
Five Freedoms	Religion, Speech, Press, Assembly and Petition
FOIA	Freedom of Information Act
Founding Fathers	Delegates to the Constitutional Convention
Free Exercise Clause	The clause in the First Amendment to the U.S. Constitution prohibiting Congress from making any law prohibiting the free exercise of religion
Fundamentalism	A usually religious movement or point of view characterized by a return to fundamental principles by rigid adherence to those principles, and often by intolerance of other views and

Glossary of First Amendment Terms (Cont'd)



	opposition to secularism
Government Neutrality	The state or policy of the government being neutral
Hate Speech	Speech intended to degrade, intimidate, or incite violence or prejudicial action against someone based on their race, ethnicity, national origin, religion, sexual orientation, or disability. The term covers written as well as oral communication.
Immigration	To enter and settle in a country or region to which one is not native
Implied	Insinuated, expressed indirectly, hinted at
Intrusion	Uninvited entry, infringement upon, the act of intruding or infringing on others
Islam	A monotheistic (belief in the existence of one God) religion characterized by the acceptance of the doctrine of submission to God and to Muhammad as the chief and last prophet of God
Judaism	The monotheistic (belief in the existence of one God) religion of Jews, tracing its origins to Abraham and having its spiritual and ethical principles embodied chiefly in the Hebrew Scriptures of the Talmud.
Libel	A false publication, as in writing, print, signs, or pictures, that damages a person's reputation or the act of presenting such material to the public
Lobby	To try to influence legislators or other public officials in favor of a specific cause
Magna Carta	The charter of English political and civil liberties granted by King John at Runnymede in June 1215. It serves as a piece of legislation that guarantees basic rights.
Morals	Of or concerned with the judgment of the goodness or badness of human action and character
Neutrality	Unbiased; tolerance attributable to a lack of involvement
News	Information about recent events or happenings, especially as reported by newspapers, periodicals, radio or television presentation of such information, as in a newspaper or on a newscast
Non-partisan	Not supporting the interests or policies of any particular political party
Objectivity	Judgment based on observable phenomena and uninfluenced by emotions or personal prejudices
Obscenity	Something such as a word, act or expression that is indecent or lewd
Open Meetings Act	Ensures that public business is conducted in public view by prohibiting secret deliberations and actions on matters that should be discussed in a public forum
Opinion	A belief or conclusion held with confidence but not substantiated by positive knowledge or proof
Parochial	Of, relating to, supported by, or located in a parish.
Partisan	Supporting the interests or policies of a particular political party
Persecution	The act or practice of persecuting on the basis of race, religion, gender, sexual orientation, or beliefs that differ from those of the persecutor
Petition	A solemn supplication or request to a superior authority; an entreaty or a formal written document requesting a right or benefit from a person or group in authority
Picket	A person or group of persons stationed outside a place of employment, usually during a strike, to express grievance or protest and discourage entry by non-striking employees and/or customers
Police Power	In law, the right of a government to make laws necessary for the health, morals, and

Glossary of First Amendment Terms (Cont'd)



	welfare of the populace.
Political Speech	Any form of speech that is directly linked to the government; in that the speech performs a valuable function as a check and balance of the government. Speaking out against government intervention or financial contributions are considered political speech because it is a method of expressing political ideologies.
Prior Restraint	Prohibition on expression (especially by a publication) before the expression actually takes place
Protected Speech	Speech that is interpreted as protected by the Supreme Court or implied by the First Amendment. The Court has never held that the Constitution establishes an “absolute” right to free speech.
Puritans	A member of a group of English Protestants who, in the 16th and 17th centuries, advocated strict religious discipline along with simplification of the ceremonies and creeds of the Church of England
Ratification	To approve and give formal sanction to; confirm
Religion	Belief(s) concerning the supernatural, sacred, or divine, and the practices and institutions associated with such belief. Belief in God or gods. Any system of faith or worship built around God, or ethical values, a philosophy, etc. Religion takes on an almost infinite number of forms in various cultures and individuals.
Shield Laws	Laws giving journalists the ability to protect the identities of confidential sources without fear of prosecution
Slander	A false and malicious statement or report about someone
Subjectivity	Judgment not based on observable phenomena; influenced by personal opinion, emotions or personal prejudices
Symbolic Speech	A “message” or conduct intended to convey a particular message which is likely to be understood by those viewing it
Tax-exempt	Not subject to being taxed
The Fourth Estate	A name often given to the public press
Time, Place & Manner	The government cannot impose speech restrictions simply because it disagrees with the message of the speaker. In other words, government regulation of speech must be “content neutral.” Furthermore, a time, place, or manner regulation must advance a significant governmental interest, not restrict more speech than necessary to further that interest. An example of a “time” regulation is an ordinance banning loud noises in residential areas during the night. An example of a “place” regulation is a regulation that parades not be held on certain busy streets. An example of a “manner” regulation is a restriction on the size of signs carried by picketers
Tolerance	The capacity for or the practice of recognizing and respecting the beliefs or practices of others
Truth	Conformity to fact or actuality
Unprotected Speech	The nine areas of unprotected speech: Obscenity, Defamation, Expression intended and likely to incite imminent lawless action, Fighting words, Unwarranted invasion of privacy, Deceptive or misleading advertisements or those for illegal products or services, Clear and immediate threats to national security, Copyright violations, and Expression on school grounds that causes a material and substantial disruption of school activities
Values	Principles, standards, or qualities considered worthwhile or desirable