Free Speech, Religion, Press, Assembly,Petition

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First amendment

***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.***



**using rELEVANT AND hISTORICAL CASES**

**Overview**: In the following section you will find six cases with lesson plans developed around each case. The materials and lesson plans can be adapted to fit your classroom needs. Moreover, you can take the material and make it your own by integrating it with lesson plans you already have. Or, as you read through each case, you might want to use a formal or informal mock trial approach.

**Formal Mock Trial Approach:** Although mock trials are often competitive events both for high school and college students, the format can still be used by the classroom teacher. Imitating a trial in your classroom with any of the six cases can be a fun and educational experience as students learn trial procedures, research techniques, and the need for clear, logical thinking. The following two web sites can guide your efforts.

The Ohio Center for Law-Related Education at [www.oclre.org](http://www.oclre.org)

Mini-Mock Trial Manual at [www.teachingcivics.org](http://www.teachingcivics.org)

**Informal Trial Approach:** If time and curriculum restraints make it difficult to use a complete mock trial format, you can still present the cases for student discussion and debate. You might want to

* Reveal just the background story and legal problem and have your class come up with arguments for and against before disclosing the actual arguments used.
* Reveal the background story, legal problem and arguments in favor and against and have your class reach a verdict before disclosing the actual outcome.
* Reveal all parts of the case and argue the validity of the outcome.

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Relevant Free Speech Case – *Evans v. Bayer (2010)*

**Background Story:** While Katherine Evans was a senior at Pembroke Pines Charter High School in Florida, she created a Facebook page to rant against a teacher. The page was for students to voice how much they disliked this teacher.

* The posting was made from Evans’ home computer during after school hours.
* The teacher never saw the posting.
* Principal Bayer saw the posting. He suspended Evans, an honor student, for three days and dismissed her from AP classes even though she removed the page two days after it was discovered.
* The school board upheld the suspension.
* Others helped Evans bring suit to have the disciplinary action removed from her academic record.
* Evans claimed the principal violated her rights under the **First Amendment**, which states:

***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.***

**Legal Problem:** Was Evans denied her right to free speech? Did her speech pose a threat to the teacher?

**Arguments in favor of Evans:**

* Posting on Facebook outside school hours, off school grounds, on a personal home computer was a private exercise of free speech.
* The page did not cause any disruption at school.
* The page was not lewd, vulgar, or threatening.
* The page did not advocate any illegal or dangerous behavior.
* The suspension is an unjustifiable stain on Evans’ academic record.

**Arguments in favor of the principal**:

* Evans was disruptive and engaged in cyber bullying/harassment toward a staff member. She deserves to be punished for doing so.
* Evans’ speech was libelous and disruptive, thus was not protected speech.
* Bayer was acting as the principal of PPCHS; he is protected personally from lawsuits and can only be liable in his official capacity.

**The Outcome:**

* The Florida District Court ruled that the principal violated Evans’ **First Amendment** and **Fourteenth Amendment** rights when he suspended her. **(See the materials on Search and Seizure: A Reasonable Test - Redding v. Stafford and New Jersey v. T.L.O.)** It has not been appealed.
* A student’s opinion, published off campus, causing no on-campus disruption, and using no lewd, vulgar or threatening language is protected speech.
* She never accessed the page at school so, in effect, she caused no on-campus disruption or on-campus concerns.
* The ruling suggests the reach of a school, its teachers, and administration has limits.
* This case is groundbreaking in the intersection of student-school relationships, the **First Amendment**, and social media.

Lesson Plans for *Evans v. Bayer*

Lesson Plan 1: Log On

**Recommended time:** 30 minutes

**Objectives:** Students will

* Generate sample comments used on You Tube, WhatsApp, Twitter, Instagram, Snapchat or another social media platform
* State the difference between libel and slander
* Apply the standards of libel and slander
* Compose a written opinion about free speech

**Directions:** A recent Pew survey shows that 95% of teens have access to a smartphone with 45% saying they are online almost constantly. Many popular platforms are Twitter, YouTube, Snapchat, Tik Tok and Instagram.

1. Based on what you learned in ***Evans v. Bayer*** what topics might you comment on about a teacher, or anybody else for that matter, on Instagram? Do you have freedom of speech to make these statements?

2***. Evans v. Bayer*** did not address defamation law, which is another consequence. Defamation law deals with the balance between a person’s right to free speech and another person’s right to protect his good name. Sometimes it is difficult to know which personal statements are proper and which are either libelous or slanderous.

**Libel** is a statement made in writing and published that hurts a person’s reputation.

**Slander** is a spoken statement that is hurtful.

A person who has suffered from either **libel** **or slander** may sue the person who made the statements. Such a lawsuit rests upon

**Someone made a statement;**

**That statement was published;**

**The statement caused injury to the person;**

**The statement was false; and**

**The statement did not fall into a privileged category such as witnessing at a trial.**

3. Look at your list of topics again. Based on libel and slander can you still make comments about those topics? In what specific ways can a person be injured because of the words of others? What might be some comments students could make for which they can be sued?

4. Write about the following statement using examples and evidence to support your ideas. **Your right to free speech is your obligation to know when, where, and how to exercise it.**

5. Discuss in class your written answer.

Lesson Plan 2: Cyber bullying and Free Speech

**Recommended time:** 30 minutes with additional time needed for research

**Objectives:** Students will

* Construct definition and examples of cyber bullying
* Apply ***Evans v. Bayer*** to cyber bullying
* Identify protected speech test
* Research laws concerning cyber bullying

**Directions:**

1. Discuss the following questions:

What is cyber bullying?

What are examples of cyber bullying?

What is the relationship between cyber bullying and libel?

What is the relationship between free speech and cyber bullying?

If ***Evans v. Bayer***was a case between two students (Evans online ranting about Bayer), would the outcome have been different? Why or why not?

Can you say anything you want online under the umbrella of free speech?

2. School districts in Ohio, as well as in many other states, are required to have bullying/cyber bullying policies. Many school districts are including off-campus activities and the “**substantial disruption**” of education standard in their bullying and discipline policies. What happens online and through other electronic communications even outside of school (cell phones, for example) can be addressed by schools. If such a policy had been in place, would it have changed the outcome of ***Evans v. Bayer?*** Can adults be cyber bullied by students?

3. A test about protected speech evolved out of ***Evans v. Bayer*.**

* **If a student’s statements on a web site represent a “true threat” as viewed by a reasonable person, the speech is not protected by the First Amendment.**
* **The speech must be knowingly communicated to the object of the threat or to a third person.**

Do you know of examples where messages on Instagram or Twitter or ones texted between students do not pass this test?

4. Research laws that apply to students who cyber bully.

* What are the consequences if you are accused and convicted of cyber bullying?
* In what ways do these laws relate to free speech?
* Check out www.osbf.org **B4USend** program for more information about cyber bullying and Ohio laws.



Lesson Plan 3: Is Turnabout Fair Play?

**Recommended time:** 20 minutes with additional time for writing

**Objectives:** Students will

* Discuss when free speech rights are violated
* Compose a written response

**Directions:** A Florida teacher was suspended without pay for five days after posting on Facebook that he hated his job and his students. A North Carolina teacher was suspended for posting a video of her pole dancing. A suburban Chicago 5th grade teacher posted negative and somewhat vulgar comments about her class and was put on leave. Write answers to the following questions and share your answers in class.

1. Were these teachers **First Amendment** free speech rights violated?

2. Should they have been allowed to post their feelings and/or activities without paying a price?

3. Should there be different considerations in each of these three cases?

4. Should teachers have the right to post online messages similar to what Evans did if it is not libelous? Why or why not?

5. The type of online speech that gets most teachers in trouble is the negative speech about students, fellow teachers, or principals. Courts have ruled that if it does touch on a matter of public concern, it’s very disruptive to the workplace. An example that got a Texas high school English teacher, Georgia Clark, fired was when she sent tweets to then President Trump’s twitter account asking him to remove the illegals from Fort Worth because her school was being overtaken by undocumented students from Mexico. Were her free speech rights violated? Should she have been fired?

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Relevant Free Speech Case – *Morse v. Frederick (2007)*

**Background Story**: On January 24, 2002, the Olympic Torch Relay passed through Juneau, Alaska. Principal Morse, of Juneau-Douglas High School, decided that students and staff should participate in this historic event.

* Joseph Frederick, a senior, was late to school that day.
* All the students were already waiting outside for the relay when he got there.
* As torchbearers and camera crews passed by, Frederick and his friends unfurled a fourteen-foot banner that read “**BONG HiTS 4 JESUS**.”
* Principal Morse immediately demanded the banner be taken down.
* Frederick’s friends complied, but he did not.
* Frederick was suspended.
* His appeal of the suspension failed.
* Frederick brought a lawsuit against the principal stating his right to free speech was being denied.

**Legal Problem:** Were his free speech rights violated? Does a school have the right to ban illegal drug-related messages at school-sponsored events? Can a student be punished for displaying such a message?

**Arguments in favor of the school:**

* This banner was clearly advocating illegal drug use in violation of school policy.
* The torch relay became a school-sponsored event when Principal Morse decided to allow students and faculty to participate.
* A school has the right to restrict student expression if it advocates illegal activity (like smoking marijuana, which was illegal at the time).
* Frederick’s speech was not political. He did not advocate changing marijuana laws. The sign just promoted illegally using the drug.

**Arguments in favor of Frederick:**

* The banner had numerous other interpretations besides advocating illegal drug use. **“It was just meaningless and funny,”** argued Frederick.
* Even if the banner advocated illegal drug use, the school did not show that the banner caused any disruption of school activity.
* **“I wasn’t even at school**.” He was off school grounds watching a parade.

**The Outcome:**

* The U.S. Supreme Court (5-4) ruled in favor of the school.
* Suspending Frederick for refusing to take down the banner was a justifiable restriction of his free speech rights as a student in an educational context.
* The event was part of school that day. Frederick was among students during school hours at a sanctioned school activity.
* Interpreting “**BONG HiTS 4 JESUS**” as advocating illegal drug use is reasonable even though Frederick said it was just “**meaningless and funny**.”
* Schools do not have to tolerate students urging others to use illegal drugs while in a school setting. That speech may be restricted.
* Deterring illegal drug use is an important and compelling interest for school officials.
* Frederick’s banner was not a political statement, and therefore, was not protected speech.

Lesson Plans for *Morse v. Frederick*

Lesson Plan 1: Pushing the Limits

**Recommended time:** 20 to 30 minutes with extended time if students write out their answers

**Objectives:**  Students will

* Review ***Morse v. Frederick***
* Generate examples of pranks
* Define dividing line between acceptable and offensive behavior

1. Brainstorm some practical jokes or pranks you have heard about (old TV shows such as **Candid Camera,** **Punk’d** or **Impractical Jokers** use pranks as entertainment). You may think of students you know who have “pranked” teachers such as setting classroom clocks forward, having coughing or sneezing epidemics during a class or filling a hallway with balloons. You may think of “senior pranks” done almost yearly in local high schools or that are highlighted with YouTube videos. List them on the board.

2. Review Frederick’s defense that “**BONG HiTS 4 JESUS**” was just meaningless and funny. Do you think he thought that this was just a harmless prank? Why really did he get in trouble? Do you think he would have done it if he had known the consequences? Would you?

3. Discuss each prank you brainstormed by considering the **time**, **place**, and **manner** in which it was performed. Was each one basically meaningless and funny or did it push the limits of decency and/or school policies?

4. Discuss: What is the line between someone’s meaningless, fun, and offensive behavior? Is the line you define a free speech issue? Why or why not?

5. Discuss: What if the drug is not illegal? Do the same rules apply?

Lesson 2: An Easy Choice?

**Recommended time:** 45 minutes

**Objectives:** Students will

* Evaluate, using scenarios, freedoms of speech versus societal values
* Form a response to U.S. Supreme Court **“higher standards”** application
* Write a personal response

**Directions:**

1. Consider the following situations as to whether each one pushes the limits of freedoms of speech versus societal values as did Frederick with his sign.

* Excessive swearing and vulgarity in the media (TV reality shows, movies, video games, celebrity videos, magazines, and advertising)
* Sex and nudity in the media
* Violence in the media, including news reports
* Depiction of illegal drug use
* Racial, religious, ethnic, or gender messages in the media

2. The U.S. Supreme Court has ruled that **“higher standards”** can apply to protect minors from indecent material, especially vulgar and offensive spoken language, as well as obscene material (material that is not protected by the **First Amendment**). What is good taste and decency are questions often out forth as people debate what is good for individuals and for society.

3. In a paragraph or two give your definition of “**good taste and decency”** versus “**bad taste and indecency.”** Support your definitions with examples of what you have heard and seen via today’s media. Next, define what you think “**higher standards”** should be for minors. Will a minor’s age make a difference?

4. Share with your class what you wrote.

* Is it reasonable for the media to protect minors from certain kinds of programming? If so, what kinds of programming?
* Should there be censorship?
* Who would do the censoring?
* Should the media self-censor? How would that look?
* What is the relationship between freedom of speech and censorship?
* If it is on TV, it must be OK, or is it?
* Has society become too lax in setting any kind of standards concerning free speech?

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Historical Free Speech Case - *Tinker v. Des Moines School District (1969)*

**Background Story**: In December 1965, a group of adults and students decided to protest American military actions in Vietnam. Part of the group’s plan was to wear black armbands during the holiday season.

* John and Mary Beth Tinker agreed to wear their black armbands to school.
* The principals of Des Moines schools, aware of the plan, enacted a policy that any students wearing an armband in school would be asked to remove it. If students did not, they would be suspended.
* Knowing about the policy, John and Mary Beth Tinker wore armbands to school on December 16, but they refused to take them off.
* They were suspended and sent home. The suspension would last until they came back to school without the armbands.
* They brought a lawsuit in U.S. District Court against the school district. This Court sided with school officials saying the policy was needed to prevent school disturbances.
* The Tinkers appealed their case to the U.S. Eighth Circuit Court of Appeals and lost again.
* They then appealed to the U.S. Supreme Court.

**Legal Problem:** Does the **First Amendment's** promise of free speech extend to the symbolic speech of public-school students?

**Arguments in favor of the school:**

* Allowing this kind of protest would cause serious disruption of school activities.
* The duty of schools to provide effective education to students overrides the students’ free speech right to protest while in school. Nothing is wrong with protesting; it just cannot be allowed in schools.
* The **First Amendment** does not say which kinds of speech are protected.
* Types of expressive actions, which are considered the same as speech, are not specified in the **First Amendment.**

**Arguments in favor of the Tinkers:**

* Wearing a black armband is not an attempt to disrupt school activities.
* The **First Amendment** protects exactly this kind of speech, even by students

in a school.

* The restriction on black armbands did not extend to other political messages. Anti-Vietnam sentiment was the only message being suppressed.

**The Outcome:**

* The U.S. Supreme Court voted (7-2) in favor of the Tinkers.
* Students wearing armbands in protest is **“pure speech,”** which cannot be suppressed even by educators. **First Amendment** “rights are not confined to just verbal expression.”
* Even while in school, students are **“persons”** with fundamental rights under the Constitution, including free speech rights.
* The principals lacked any real reason for imposing any limits. Just because expression is unpopular does not justify suppressing it.
* The armbands did not really interfere with needed school discipline.
* This was political speech unlike what occurred in ***Bethel v. Fraser. (See page 19.)***



<http://www.uscourts.gov/multimedia/podcasts/Landmarks/tinkervdesmoines.aspx>

Lesson Plans for *Tinker* ***V.*** *Des Moines*

Lesson Plan 1: It’s Not Fair (Or Is It?)

**Recommended time:** Two 45-minute periods or one 90-minute block with additional time for lawyer or principal participation and for extended writing.

**Objectives:** Students will

* Apply ***Tinker v. Des Moines***ruling to present day scenarios
* Generate examples of “**symbolic speech”** protest
* Craft protest signs and slogans
* Evaluate **First Amendment** rights

**Directions:**

1. Discuss the following:

* Think about some of the following policies schools might enforce: no hats in the building; no gang-related colors; no provocative t-shirts that include political, religious, drug-related, gender identity, sexual orientation or sexually suggestive messages. Are these policies fair? Why or why not? Would you protest any of them even if doing so got you suspended? Are there any differences between these topics and the protesting of the Vietnam War?
* If they wore armbands to school, the Tinkers knew they would be suspended. They did so anyway. Why do you think they ignored the rule? Should they have? Were they just asking for trouble?
* What policies or ideas would you protest through “**symbolic speech**,” such as the wearing of armbands, the carrying of protest signs, sit-ins, marching, or other such nonviolent actions? Why? Would you participate in a National School Walkout Day if it were called for a social controversy such as Black Lives Matter?

2. In groups of two or three create a protest sign that includes a graphic and a slogan about an issue you care about deeply. Choose a topic where there is disagreement. Next, think of an audience you want to show the sign to and the method you would use to get that audience to see the sign and listen to your ideas.

3. Invite a lawyer in to assess your signs and to talk about the dos and don’ts of the **First Amendment**.

* Is what you created protective symbolic speech?
* Depending on what your poster says, your audience, and the delivery of your message, have you crossed any lines either legally or ethically?
* Is there a difference between legal and ethical? Should there be a difference?

4. Now do the same exercise again but only about an issue in your school. Invite your principal in to look at the posters. Have your principal discuss the issues and your suggested means of protest considering **First Amendment** rights. Discuss again the statement: Your right to free speech is your obligation to know when, where, and how to exercise it.

Lesson Plan 2: Free Speech or Think Again

**Recommended time:** 30 minutes

**Objectives:** Students will

* Review **First Amendment**
* Compare and evaluate free speech protections

**Directions:** You will find situations below where ideas are expressed verbally or expressed symbolically through actions. You need to determine if the situation is free speech protected by the **First Amendment**. If you are unsure, check “think again.” State your rationale.

|  |  |  |  |
| --- | --- | --- | --- |
| Situations | Free Speech | Think Again | Rationale |
| A student uses vulgarity toward a teacher |  |  |  |
| A bumper sticker uses a hate speech slur recognized by most people |  |  |  |
| A teacher’s car in a school parking lot has 20 magnets supporting a certain religious belief |  |  |  |
| A student uploads negative and insulting messages about a principal’s action on a YouTube video |  |  |  |
| Students wearing political protest buttons at school that go against what most of the students think |  |  |  |
| A student posts an insulting comment about another student on Instagram or Twitter |  |  |  |
| A student wears certain clothing that identifies gang membership |  |  |  |
| A student plays a vulgar rap song during a pep rally while students are walking in |  |  |  |
| A student calls someone else vulgar names because he’s been called those names |  |  |  |
| A student yells at school board members at their meeting because the board lets go of a popular coach |  |  |  |
| Girl wants to wear a tux in a yearbook senior picture even though doing so goes against dress code policy |  |  |  |
| A student protests bathroom access for transgender students |  |  |  |

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Historical Free Speech Case - *Bethel School Dist. No. 403 v. Fraser (1986)*

**Background Story:**  Matthew Fraser of Bethel, Washington, gave a speech to nominate a classmate for student body vice president at a mandatory high school assembly.

* The speech was full of sexual puns and innuendos that were quite graphic and revealing.
* Two teachers who had reviewed the speech in advance told him the speech was **“inappropriate and that he probably should not deliver it.”** His delivery of the speech might have **"severe consequences."**
* Student response to the speech was divided.
* Some students reacted by laughing, hooting, yelling, and making rude gestures.
* Other students were embarrassed and bewildered. They were expecting a serious speech.
* Fraser broke school rules against **“obscene, profane language or gestures**.”
* He received a two-day suspension from school and could not speak at graduation even though a student write-in vote elected him as a speaker.
* Fraser’s parents sued the school district claiming a violation of his **First Amendment** right to free speech.

**Legal Problem:** Did Fraser have a right to deliver a sexually graphic speech at a school assembly? Were his free speech rights violated? Does the **First Amendment** prevent a school from disciplining a student for giving a lewd speech at an assembly?

**Arguments in favor of the school:**

* Fraser’s speech was disruptive in the assembly and against school rules.
* A school has an interest in teaching students socially appropriate behavior. A high school assembly or classroom is no place for a sexually explicit language directed toward an unsuspecting audience of teenagers.
* Vulgar speech and/or lewd conduct are wholly inconsistent with the “**fundamental values**” of public-school education.
* Fraser had been forewarned about the possible consequences if he went ahead with the speech.
* His speech was not protected by ***Tinker v. Des Moines*** because it was not a political speech.

**Arguments in favor of Fraser:**

* A few innuendos did not pose a grave threat to fundamental values. It was not disruptive as the school had implied.
* Vulgar joking among adolescents is common. In some school settings (locker rooms, cafeteria, hallways) it happens all the time. Also, it is constitutionally protected outside of school.
* It was not an example of ***Tinker’s*** disruption standard. School officials had a separate standard that allowed punishment of vulgar speech just because they did not like it. Why should this be?
* This was Fraser’s speech. He had the right to say what he wanted in support of his candidate’s nomination.

**The Outcome:**

* The U.S. Supreme Court (7-2) ruled for the school.
* Fraser’s discipline did not violate the **First Amendment’s** **Free Speech Clause.**
* Students’ free expression rights at school are not totally equal to that of an adult’s freedom of speech.
* Schools have the right to determine what type of speech is inappropriate.
* The Court said that the sexual content of Fraser’s speech was quite different from the nondisruptive, political speech in ***Tinker v. Des Moines*.**
* Schools teach certain values, and one value taught is about socially

acceptable speech.

* Schools have an interest in protecting children from vulgar and offensive language.
* A school’s disciplinary policy does not need to be as descriptive as a criminal code because a school’s policy does not impose criminal sentences.
* Fraser received ample notice that his inappropriate speech could result in punishment. The **Fourteenth Amendment’s** **Due Process Clause** was not violated.
* Fraser is important because it states that school officials are responsible for more than educating students. They also have the right to expect students to behave in ways that are not disruptive to school activities.

Lesson Plans for *Bethel School District v. Fraser*

Lesson Plan 1: Defining the Limits

**Recommended time:** 45 minutes

**Objectives:** Students will

* Review U.S. Supreme Court **“tests”** for free speech limits
* Apply tests to scenarios
* Determine outcomes for each scenario

**Directions**

1. Think about the following general **“tests**” the U.S. Supreme Court has issued about free speech limits.

* **Clear and present danger – Will the speech create a dangerous situation?**

**(**Compare to the outcomes of ***Evans v. Bayer, Morse v. Frederick, and Tinker v. Des Moines)***

* **Fighting words – Will face-to-face verbal exchanges cause immediate violence?**
* **Libel and slander - Will what is said damage someone’s reputation?**

**Libel** is a statement made in writing and published that hurts a person’s reputation

**Slander** is a spoken statement that is hurtful

* **Conflict with other social or governmental interests – For example, will such language give information to the enemy during time of war? Will it hurt our ability to fight or do harm to our troops?**
* **Obscenity - Is what is said offensive to others?**

2. Think about one of the issues raised in ***Bethel School District v. Fraser*** concerning obscenity. In ***Miller v. California*** (1973) the U.S. Supreme Court ruled that materials are obscene if the following three questions are answered yes.

* **Would the average person using community standards (the morals and behaviors accepted by most members in a certain group or area) view what is said or done as too focused on sex?**
* **Are the sexual words or actions obviously offensive or meant to be offensive?**
* **Does what is said or presented lack serious literary, artistic, political, or scientific value?**

**“Obscene”** (not protected by the **First Amendment**) is different from **“indecent**” material which is speech protected for adults but not for children. The U.S. Supreme Court has ruled that **“higher standards”** can apply to protect minors from indecent material, as well as obscene material, especially vulgar and offensive spoken language.

3. Based on what you have learned about the **First Amendment** identify each of the following situations as obscene, indecent, or unsure. Give a rationale for your decision.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Situations** | **Obscene** | **Indecent** | **Unsure** | **Rationale** |
| **Sagging pants/revealing tops** |  |  |  |  |
| **Telling sexual jokes to friends** |  |  |  |  |
| **Telling sexual jokes in mixed company** |  |  |  |  |
| **Lewd behavior at a shopping mall where others can watch** |  |  |  |  |
| **Using foul language when children are around such as on a school bus** |  |  |  |  |
| **Mooning cars on a school bus** |  |  |  |  |
| **Vulgar cheering at a football game** |  |  |  |  |
| **Art project that is sexually suggestive** |  |  |  |  |
| **Over-the-top public display of affection in the hallways** |  |  |  |  |
| **Making unwanted sexual comments to the opposite sex** |  |  |  |  |
| **Making unwanted sexual comments to the opposite sex and then saying, “Just kidding.”** |  |  |  |  |
| **Cursing loudly and repeatedly while messing around in front of a neighbor’s home** |  |  |  |  |
| **Locker room banter** |  |  |  |  |
| **Playing sexually suggestive songs on your phone that others can hear** |  |  |  |  |

Lesson Plan 2: Going Deeper

**Recommended time:** 45 minutes with additional time for research

**Objectives:** Students will

* Research two U.S. Supreme Court cases
* Summarize the cases
* Debate the rulings in each case

**Directions:**

1. The following two cases were decided on the same day by the same U.S. Court of Appeals but with different outcomes.

***Layshock v. Hermitage School Dist****.* (2010)

***J. S. v. Blue Mountain School Dist.*** (2010)

* Both cases involve students who made up fake Facebook profiles of their school principals and posted them online.
* Both students were punished at school.
* Both dealt with **First Amendment** rights.
* Both case outcomes used ***Tinker*** and ***Fraser*** in their rationales.
* In **J. S.** the school district won**. J. S**. used vulgar language, false accusations, and made and brought paper copies of the profile to school, causing some disruption. The court ruled in favor of the school.
* In **Layschock** the student won. The Court ruled against the school because it had no right to discipline **Layschock** for his out-of-school expressive conduct.

2. You can find summaries of these cases on Google, or you can access [www.Findlaw.com](http://www.Findlaw.com). Research each case. You may want to present the background story, the legal problem, and the arguments for and against each side. Look at the Court of Appeals rulings and put on your robes. As a class take on the role of the U.S. Supreme Court and decide whether the rulings should be upheld or overturned.

Note: In January 2012, the U.S. Supreme Court declined to hear either one of these cases. As a class, discuss the implications of this decision. Do you understand your **First Amendment** rights as they pertain to the issues in these cases? Why or why not?

LESSON PLAN 3: COMMUNITY STANDARDS

**Recommended time: 45 minutes**

**Objectives:** Students will

* Determine today’s community standards for the United States as a whole and their community standards in particular
* Discuss how community standards have changed just over their lives
* Discuss the need to enforce or not community standards

**Directions:**

1. Brainstorm the types of social movements that want to change or address community standards of behaviors. Think about how political correctness is dealt with in schools and in the workplace or about how programs about implicit bias or inclusion often address what community standards should be. You might want to brainstorm the motivations behind the #MeToo Movement, the Black Lives Matter Movement or continuing protests involving the LBGTQ community. Why are these motivations important or not important? Is the importance based more on your individual social groups or what you think is best for society as a whole?
2. Discuss how you think these movements try to redefine community standards in the nation and in your community. For example, what standards does the #MeToo Movement want all Americans to display as acceptable and non-acceptable behaviors? Do they go against present day community standards? Should they? Do they go too far or not far enough?
3. Discuss the essential community standards of behavior that Americans should agree to if society is to stay strong, especially in polarized times. What institutions are responsible to ensure the common welfare of Americans? Government (both local and national)? Religious organizations? Schools and universities? Media platforms? Others?



Free Speech, Religion, Press, Assembly, Petition

We’re Number One!

Relevant Freedom of Religion Case - *Board of Education v. Mergens (1990)*

**Background Story**: Bridget Mergens, a student at Westside High School in Omaha, Nebraska, asked permission to hold a Christian Bible study at school.

* The school denied her request.
* Westside cited the **Establishment Clause** in the **First Amendment,** which essentially means that the government will not give preference to one religion over another.
* Westside also denied the request because they lacked a faculty sponsor.
* Mergens and several other students sued the school district.

**Legal Problem:** Are schools that permit other non-curriculum clubs in violation of the Constitution if they ban religious clubs? Does separation of church and state apply in this case?

**Arguments in favor of Mergens:**

* The Equal Access Act of 1984 states that groups expressing “religious, political, philosophical, or other content” messages be allowed to form clubs in a school.
* The school’s decision violated the **First Amendment’s** guarantee to free exercise of religion without government interference.

**Arguments in favor of the school:**

* The school is a part of the state.
* The **First Amendment’s** **Establishment Clause** requires separation of church and state.
* A religious club on school grounds violates that separation.
* The Equal Access Act did not apply, and even if it did, it was unconstitutional anyhow.
* According to the Equal Access Act, teachers are not allowed to participate in student religious clubs, except as monitors.

**The Outcome:**

* The U.S. Supreme Court ruled (8-1) that the Equal Access Act does not violate the **First Amendment’s Establishment Clause**.
* Schools are not endorsing religion by giving equal treatment to all student-initiated clubs.
* The Equal Access Act protects student-initiated and student-led meetings from discrimination.
* The Court noted that there is a "**crucial difference between government speech endorsing religion, which the Establishment Clause forbids, and private speech endorsing religion, which the Free Speech and Free Exercise clauses protect."**
* Westside permitted other after-school clubs, and therefore, could not discriminate against a Bible study.
* Students freely chose to join. They were not a captive audience being forced to listen to religious messages against their will.

Lesson Plans for *Board of Education v. Mergens*

Lesson Plan 1: Extreme Choices

**Recommended time:** 30 to 45 minutes

**Objectives:** Students will

* Review Board of ***Education v. Mergens***
* Compare and contrast Mergensto fictional case
* Decide outcome for fictional case based on ***Mergens*** ruling

**Directions:**

1. Read the following scenario.

A religious group of students in your school believes that only its religion is the one true belief. They want to form a school club and publicly state their intent is to recruit as many students as possible to join them. They loudly protest against every other religion and even suggest that violence may be a solution to many of the world’s “evils.” Many of their beliefs seem racist, hateful, and extreme, but they seem to have touched a nerve with students who feel left out. Many students are upset as well as parents.

2. The school has three options:

* Allow the club and brace for trouble.
* Ban the club and be willing to fight a lawsuit, maybe all the way to the U.S. Supreme Court.
* Exercise the exception rule in the Equal Access Act. A school can “opt out” of the Equal Access Act by prohibiting all non-curriculum clubs if some groups “materially and substantially interfere with the orderly conduct of educational activities within the school.”

3. Present pros and cons for each course of action. As a class, decide what you think the school should do. Consider what U.S. Supreme Court Justice John Paul Stevens wrote as the one dissenting vote in ***Mergens.***

"**Can Congress really have intended to issue an order to every public high school in the nation stating, in substance, that if you sponsor a chess club, a scuba club, or a French club -- without having formal classes in those subjects -- you must also open your doors to every religious, political, or social organization no matter how controversial or distasteful its views may be? I think not."**

Lesson Plan 2: Online Quiz

**Recommended time:** 45 minutes

**Objectives:** Students will

* Access their own understanding of separation between church and state
* Evaluate their assessment

**Directions:**

1. Take the quiz at [www.ffrf.org/statechurchquiz](../flash_drive_backups/flash_drive_backups/flash_drive_backups/Constitutional%20Classroom%20Materials/www.ffrf.org/statechurchquiz). The quiz tests your knowledge of what is and is not in the Constitution about separation of church and state.

2. Check your answers and discuss what you learned.



Lesson Plan 3: To Teach or Not to Teach

**Recommended time:** 15 minutes with extended time for research

**Objectives:** Students will

* Read about and review four different perspectives about the teaching of religion in schools
* Determine a personal response
* Compose a written response citing sources

**Directions:**

1. Even though church and state are separated, many people argue that teaching **about** religion in schools is necessary. Historically, we cannot ignore the world’s religious heritage in shaping mankind, both for good and for bad. Yet what should be taught and how it should be taught are challenging issues.

2. The four following show the differences as to what people believe should be taught in school about religion. See [www.religioustolerance.org](http://www.religioustolerance.org) for more information about religious terms.

* Many people with [exclusivist views](http://www.religioustolerance.org/rel_plur.htm) -- those who believe that theirs is the only [true religion](http://www.religioustolerance.org/reltrue.htm) -- feel very strongly that their religion should be taught in the schools. Some want their religion taught as truth. Some do not approve of religions other than theirs being taught on an equal basis to their own.
* Many people with [inclusivist beliefs](http://www.religioustolerance.org/rel_plur.htm) -- those who believe that their religion is true but that some truth may be often found in other religions as well -- want all major religions discussed in the schools, but want their religion to be given special treatment.
* Many people with [pluralistic views](http://www.religioustolerance.org/rel_plur.htm) -- those who believe that all religions are true, when evaluated against their local culture -- feel that a truly educated person needs to have some knowledge of all of the major world religions and belief systems. Some are concerned that, in practice, some teachers may teach one particular religion as truth.
* Some strong [Agnostics](http://www.religioustolerance.org/agnostic.htm), [Atheists](http://www.religioustolerance.org/atheist.htm), [Humanists](http://www.religioustolerance.org/humanism.htm), secularists, etc., feel that religion should not be taught in schools because attempts to do so often degenerate into indoctrination of the students with the beliefs of the dominant religion.

1. Write a short essay about which category accurately describes your position and give two to three reasons why. Cite any sources you have used to help you write your thoughts.

LESSON PLAN 4: WHO DECIDES?

**Recommended time: 15-30 minutes**

**Objectives:** Students will

* Read the summary below of a 2020 Supreme Court ruling
* Determine whether freedom of religion has been denied

**Directions:**

1. Read

New York Gov. Andrew M, Cuomo imposed strict restrictions on churches to combat the coronavirus in 2020. Earlier in May and July the Supreme Court had allowed governors in California and Nevada to restrict attendance at religious services in order to control the spread of the virus. The court reversed itself in December in a 5-4 vote when an application filed by the Roman Catholic Diocese of Brooklyn and more applications filed by two synagogues and individuals argued that the restrictions violated constitutional protections for the free exercise of religion. The synagogue applications also argued that Mr. Cuomo had “singled out a particular religion for blame and retribution for an uptick in a society wide pandemic.” Cuomo’s restrictions were prompted largely by rising coronavirus cases in Orthodox Jewish areas but covered all houses of worship. “It is time — past time — to make plain that, while the pandemic poses many grave challenges, there is no world in which the Constitution tolerates color-coded executive edicts that reopen liquor stores and bike shops but shutter churches, synagogues and mosques,” Justice Gorsuch wrote.

In dissent, Justice Sonia Sotomayor, joined by Justice Elena Kagan, stated that Mr. Cuomo’s restrictions were sensible. She wrote that “free religious exercise is one of our most treasured and jealously guarded constitutional rights. “States may not discriminate against religious institutions, even when faced with a crisis as deadly as this one. But those principles are not at stake today. The Constitution does not forbid states from responding to public health crises through regulations that treat religious institutions equally or more favorably than comparable secular institutions, particularly when those regulations save lives,” Justice Sotomayor wrote. “Because New York’s Covid-19 restrictions do just that, I respectfully dissent.”

1. Discuss the following question: (1) Should government officials or judges strike the balance between public health and religious exercise? (2) Are restrictions an infringement of religious exercise considering a health pandemic? (3) Is there a greater good that needs to be upheld?

Free Speech, Religion, Press, Assembly, Petition

We’re Number One!

Historical Freedom of Religion Case - *Wisconsin v. Yoder* (1972)

**Background Story:** In the Old Order Amish religion and the Conservative Amish Mennonite Church in Wisconsin, followers did not believe in sending children to public schools after the eighth grade.

* The Amish parents Jonas Yoder and Wallace Miller and the Mennonite parents of Adin Yutzy refused to send their children to the public high school after eighth grade.
* These religious communities required a simple life apart from worldly influences.
* The parents were prosecuted under a Wisconsin law that required all children to attend public schools until age 16.
* One of the parents represented all three families in Green County Court and lost.
* The parents were each fined $5 for breaking the law.
* Others helped the Amish as the case eventually made it all the way to the U.S. Supreme Court.

**Legal Problem:** Did Wisconsin's compulsory attendance law violate the **First Amendment’s Free Exercise of Religion Clause**? Were the Amish being punished for their religious beliefs?

**Arguments in favor of Yoder:**

* School attendance beyond 8th grade violates their religious beliefs.
* Amish have genuine religious beliefs that are more than mere personal preferences.
* High school life is too different from the way the Amish raise their children, and it could undermine their religious beliefs.

**Arguments in favor of Wisconsin:**

* Education is necessary as it prepares citizens to participate effectively in American political life.
* Education prepares individuals to be self-reliant and self-sufficient.
* The child should have a right to further his education and be emancipated (freed) from the Amish religion and community.

**The Outcome:**

* The U.S. Supreme Court (7-0, two justices took no part) ruled in favor of Yoder.
* The Court stated that the free exercise of religion (**First Amendment**) outweighed compulsory education beyond the eighth grade.
* Modern American values were “in sharp conflict with the fundamental mode of life mandated by the Amish religion.”
* The Amish provided means for their children to be self-reliant and self-sufficient, and two extra years of schooling would not make them become burdens on society.
* The Court said the question before it was the parents’ rights to exercise freedom of religion and thus did not relate to children’s **First Amendment** rights.

Lesson Plans for *Wisconsin v. Yoder*

Lesson Plan 1: Turn the Other Cheek

**Recommended time:** Two 45-minute class periods or one 90-minute block class

**Objectives:** Students will

* Read about the Amish
* Generate facts from their reading
* Post and share generated information
* Apply ***Wisconsin v. Yoder*** to gathered information
* Recreate ***Wisconsin v. Yoder*** courtroom scene

**Directions:**

1. Listed below are two web sites about the Amish.

* [www.people.howstuffworksamish.com](http://www.people.howstuffworksamish.com)
* [www.pbs.org/wgbh/americanexperience/features/amish-in-america](../flash_drive_backups/flash_drive_backups/flash_drive_backups/Constitutional%20Classroom%20Materials/file-03Free20Speech20and20Equal20Protection2012321%20(2).doc)/

2. Using the websites (or others) list twenty unique facts about the Amish.

3. As a class, pull together all of the information you found by listing the ideas on a sheet of butcher paper.

4. The Amish do not believe in going to court. They prefer to settle their own disputes based on the biblical belief of “turning the other cheek.”

5. Based on what you have learned about the Amish and ***Wisconsin v. Yoder,*** re-enact the Greene County courtroom scene when one of the Amish parents represented the families. Assign student roles of family members, judge, and prosecutor, and even the press. Put a face to the people who had to argue the compulsory education law versus free exercise of religion. What must both sides of the argument have been feeling and thinking knowing that the Amish do not believe in the court system?

Lesson Plan 2: Brainstorming Benefits

**Recommended time:** 30 minutes

**Objectives:** Students will

* Generate arguments for and against a state-sponsored religion
* Draw conclusions from arguments
* Apply **First Amendment** principles to conclusions

**Directions:** Religious liberty is a basic and essential American right affirmed by the **First Amendment.** It gives each individual the right to have and practice his beliefs according to the dictates of his conscience without interference of government.

1. Brainstorm benefits that individuals have because of this right. Be as specific as possible.

2. Brainstorm benefits that our society has gained over its history because of this right. Again, be specific.

3. Now reverse the order. Brainstorm the benefits to individuals if the U.S. had a state-sponsored religion.

4. Brainstorm the benefits to society if there were a state-sponsored religion.

5. What conclusions can you draw about the Founding Fathers’ insistence on this right? You might want to think about religious intolerance and its effects, respect for differences, moral beliefs and values, intellectual freedom and the characteristics of citizenship.

Lesson Plan 3: Religious Differences

**Recommended time:** 30 minutes with additional time for internet research

**Objectives:** Students will

* Define pluralism
* Construct arguments about what is and is not a religion
* Access internet materials on religious beliefs
* Research a religious belief
* Apply **First Amendment** rights to research

**Directions:** Pluralism is the diversity of views. Pluralism in religion is the different paths individuals and groups take both in beliefs and practices of faith. Pluralism in the United States has changed dramatically over the years. Many people have different beliefs aside from the basic beliefs found in Christian, Jewish, and Muslim faiths. Even within major religions diversity is very apparent.

1. What characteristics would you use to define what is and what is not a religion?

2. What limits should the government put on defining a belief as a religion protected by the **First Amendment**? Should a limit be put on religious beliefs and/or just religious actions? How far outside of mainstream beliefs should people be allowed to go? The government must decide when rights collide. What rights might collide with freedom of religion? Consider some examples.

* Animal sacrifice
* Satanic beliefs
* Brainwashing
* Multiple wives or husbands
* Segregation of children from the outside world
* Seclusion of entire communities from society

3. Access

Click on [www.religionfacts.com](http://www.religionfacts.com) . Click on “Big Religion Chart” to find various worldwide religious beliefs and a thumbnail sketch of beliefs and practices. Choose one and report back in writing to your class what you discovered. Does this belief meet your definition of a religion? Have you discovered any belief and/or action not protected by the **First Amendment?**

Lesson Plan 4: Conflict over the Clause

**Recommended time:** 45 minutes with additional time for research and presentations

**Objectives:** Students will

* Research a U.S. Supreme Court case involving the **First Amendment’s** religion clause
* Organize and choose a method of presentation for the research
* Present the case to the class illustrating the case’s use of the religion clause

**Directions:**

1. Below are some historical cases dealing with the **First Amendment’s** **Religion Clause**. Choose one to research.

* ***Reynolds v. United States*** (1879) – Mormons and polygamy
* ***Cantwell v. Connecticut*** (1940) – Spreading of anti-Catholic messages
* ***West Virginia Board of Ed. v. Barnette*** (1943) - Jehovah Witness and the saluting of the flag
* ***United States v. Ballard*** (1944) – Validity of a person’s religious belief
* ***Engle v. Vitale*** (1962) – School prayer
* ***Abington School District v. Schempp*** (1963)- Case on Bible reading
* ***Lemon v. Kurtzman*** (1971) - The test for religious freedom
* ***Wallace v. Jaffee*** (1985) – Moment of silent prayer
* ***Allegheny v. ACLU*** (1989) - Holiday displays by towns
* ***Employment Division v. Smith*** (1990) – Using peyote during a religious ceremony
* ***Church of Lukumi Babalu Aye v. Hialeah*** (1993**)** - Animal sacrifice
* ***Sante Fe School Dist. v. Doe*** *(*2000) - Prayer at athletic events

2. Choose one of the following methods to present the case, the arguments, and its outcome.

* Skit
* Interview of the people involved
* Editorial
* Comic strip or graphic story
* Facebook page
* Blog
* Newspaper story
* Photo essay
* Brochure
* Trifold display
* Speech
* Diary entry of one of the people involved in the case
* News broadcast

Free Speech, Religion, Press, Assembly, Petition

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Present Day Realities – Judging the First Amendment

**Background:** James Madison, as he was preparing proposals in 1789 for the **Bill of Rights,** wrote:

**Freedom is not limited to things that do not matter much. That would be a mere shadow of freedom.**

Madison and others nailed down rather significant matters when they defined human beings as having basic needs to:

1. **Worship as they please**
2. **Speak what they think**
3. **Get and exchange information via a free press**
4. **Assemble as they deem necessary**
5. **Petition their government to listen to them and to right any wrongs**

The five freedoms may not have changed since 1789, but how to safeguard those freedoms against today’s realities is challenging. Questioning the significance of those freedoms in 21st Century society is not a matter for those who want to live in the shadows. The issues may change, but the Constitution still works to address those issues. How do you think the **First Amendment** might address the following questions?

**1. Can a teenager research sexting on the internet in a public library?**

**2. Do Internet Service Providers have the right to block your access to certain web sites?**

**3. Can a DJ swear? Can the DJ get fired for speaking out against a certain religious or ethnic group?**

**4. Can stores be restricted from selling violent video games to minors?**

**5. Should musicians be allowed to sing songs with offensive lyrics in them?**

**6. Should students be allowed to wear Confederate symbols to school or even a Confederate Flag dress to prom?**

**7. Are dial-a-porn services legal?**

**8. If the government is not supposed to prohibit speech, why does it prohibit some kinds of speech?**

**9. Can a Nazi group demonstrate in a mostly Jewish neighborhood?**

**10. Does a shopping mall have a right to ban gathering petitions on its premises?**

**11. Can you pass out literature for or against a candidate or an issue anonymously?**

**12. Do third party candidates have the right to participate in televised political debates even if they have little support and are hardly known?**

**13. Should a blogger (non-traditional journalist) have equal access to the White House briefing room?**

**14. Are you allowed to wear t-shirts with anti-war slogans printed on them when the president speaks to Congress?**

**15. Should corporations and unions have the same freedom of speech rights as individuals do in supporting political candidates?**

**16. Should a Ten Commandments monument be allowed on government properties such as a state capitol? How about a nativity scene?**

**17. Are religions that involve handling of poisonous snakes or that believe a man can have multiple wives protected?**

**18. Can religious people who believe only in faith and prayer refuse medical treatment for their children?**

**19. Should students be allowed to display religious headwear when participating on teams with uniform requirements?**

**20. Can a community petition to keep a mosque from being built in its neighborhood?**

**21. Can religious groups use illegal drugs during their religious practices?**

**22. Should students be allowed to speak of their religious faith in classrooms or at public school events? Offer a prayer at events?**

**23. Should Congress and the President support and participate in a National Day of Prayer?**

**24. Should freedom of religion be granted to extreme or fringe religious groups? Was it meant to?**

**25. Should the United States be considered mostly a Christian nation whose values must be protected?**

**26. Does the First Amendment go too far in protecting the five freedoms listed on page 36?**

**27. What is the relationship between free speech and social media?**

28. **Is speech that incites violence protected speech?**

**Answers to Questions**

**1. Can a teenager research sexting on the internet in a public library?** Yes, but images may be blocked. To receive certain federal funding, the Children’s Internet Protection Act (CIPA) requires libraries to block obscene visual depictions, material harmful to minors, and child pornography. While a teenager could research sexting on the internet in a public library, websites that contain images considered obscene could be blocked. If the material to be viewed is not illegal, a library could disable the filter for the patron conducting legitimate research. The Ohio Legislature has also charged …” local libraries to use filters to screen out obscene and illegal internet materials…” but each public library has complete control over how, of if, the central filtering system established by the legislature is to be used.

**2. Do Internet Service Providers (ISPs) have the right to block your access to certain websites?** The Federal Communications Commission (FCC) and Congress cannot shut down websites, but Internet service providers have a **First Amendment** right to do so. In fact, companies are encouraged to exercise editorial judgment and to “restrict access to or availability of material” that an ISP “considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable….” Debate as to what should be blocked, however, is ongoing and contentious in the U.S. The government does not directly censor sites, but it can indirectly exert pressure through legislative debate, public dialogue, and judicial review. For example, the debate of how to protect minors on the internet and of how to police illegal activity can greatly influence private company policies as to what they judge is acceptable internet content.

**3. Can a DJ swear? Can the DJ get fired for speaking out against a certain religious or ethnic group?** Title 18 of the United States Code governs the airing of obscene, indecent, and profane material. It is a violation of federal law to air obscene programming at any time on broadcast TV and radio. However, the same rules for indecency and profanity do not apply to cable, satellite TV and satellite radio because they are subscription services. For purposes of these regulations, “profanity” is defined as “including language so grossly offensive to members of the public who actually hear it as to amount to a nuisance.” So, yes, a DJ can swear, but it depends on what channel the DJ is on and whether the DJ will be bleeped. Along these same lines, a DJ can be fired for making comments against a certain religious or ethnic group. A well-known example is the case of DJ Don Imus.

In 2012, the U.S. Supreme Court heard the case of the ***FCC v. Fox Television Stations*** a second time after having first addressed it in 2009. The issue was whether the government’s current TV indecency enforcement policies regarding profanity and sexual content violated broadcasters’ rights of free speech and due process.Fox was fined in 2004 for broadcasting fleeting expletives during the Billboard Music Awards in 2002 and 2003. The Federal Communications Commission’s (FCC) position was that it needed to protect young children from obscenity in broadcasting—a position the FCC had followed since the 1974 decision in ***FCC v. Pacifica,*** although the FCC never enforced the decision in any standard way. Fox contended that they were not given fair notice of the FCC’s new enforcement focus and that the current framework was too vague and arbitrary. The Supreme Court ruled in a 5-4 decision on April 28, 2009 that the Federal Communications Commission had not acted arbitrarily when it changed a long-standing policy and implemented a new ban on even "fleeting expletives" from the airwaves.

The Court explicitly declined to decide, however, whether the new rule was constitutional, and sent that issue back to a lower court for its review. The lower appellate court then found that the new indecency standards were unconstitutionally vague. When the case reached the Supreme Court again in 2012 the court upheld the appellate court’s ruling. Justice Kennedy said that “fair notice” is fundamental to due process. Such notice allowed regulated parties to know what was required of them, and therefore, would prevent arbitrary and discriminatory actions

**4. Can stores be restricted from selling violent video games to minors?** No.  Like books, plays, and movies, video games communicate ideas through familiar literary devices and features distinctive to the games, and the basic principles of freedom of speech do not vary with a new and different communication medium (***Brown v. Entm't Merchs. Ass'n-* 2011**). The most basic principle - that government lacks the power to restrict expression because of its message, ideas, subject matter, or content - is subject to a few limited exceptions for historically unprotected speech, such as obscenity, incitement, and fighting words.

**5. Should musicians be allowed to sing songs with offensive lyrics in them?** Yes, unless the music is a sham to protect obscenity, which is an exceedingly difficult to establish.  To deem lyrics offensive, three conditions must be met: (1) whether "the average person, applying contemporary community standards" would find that the work, taken as a whole, appeals to the prurient interest; (2) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by applicable state law; and (3) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value. Often, however, when music is submitted to platforms like Spotify or Apple, two versions exist: explicit version and clean (censored) version. People then can self-censor. Some private companies may censor because they may lose advertisers if they play songs with offensive lyrics.

**6. Should students be allowed to wear Confederate symbols to school or even a Confederate Flag dress to prom?** Schools can prohibit Confederate flag symbols and dress if there is a reasonable forecast of substantial school disruption that may occur (***Defoe v. Spiva*, 2010).** Schools do not have to show actual interference or disruption, but the ban must be based on evidence of "likely racially motivated violence, racial tension, and other altercations directly related to adverse race relations in the community and the school.” This forecast is usually based on past racial incidents and a history of racial tension in the school district. Finally, school administrators can limit speech in a reasonable fashion to further implement policies at the heart of public education. **First Amendment** cases in the school setting are very much dependent on the particular facts and circumstances.

**7. Are dial-a-porn services legal?** Yes, unless the dial-a-porn messages are “obscene” and not merely “indecent.”  Congress at one time tried to ban both, but the U.S. Supreme Court upheld a District Court’s ruling that sexual expression that is simply indecent is protected. Banning adult access to indecent messages “far exceeds that which is necessary” to shield minors from dial-a-porn services. The court distinguished the “dial-it medium” of dial-a-porn, which requires the listener to take affirmative steps to receive the communications, from a broadcast medium, which can intrude on the privacy of the home without warning of content.

**8. If the government is not supposed to prohibit speech, why does it prohibit some kinds of speech?** Although the **First Amendment** states that Congress “shall make no law” restricting the freedom of speech or of the press, courts have not applied this language literally. The courts have ruled that certain kinds of communications are either not protected by the **First Amendment** or are entitled to only limited protection. One example is speech likely to cause a public danger, such as a panic. Falsely yelling “fire” in a movie theater is the classic example.  In creating exceptions like this one, courts reason that the framers of the Constitution never intended the **First Amendment** to protect that kind of speech.  In other cases, courts have weighed the pros and cons of the speech restriction and the reason for it. In some cases, courts have found that the benefit to the public in prohibiting certain kinds of speech justifies limiting a speaker’s right to say it. For example, the benefit to the public of regulating false advertising justifies restricting what can be said about a particular product. The courts have also established exceptions to **First Amendment** rights pertaining to obscenity, fighting words, objectionable speech to a captive audience, and libel. The few restrictions on free speech, therefore, are meant to prevent immediate violence, some type of irreparable harm, or invasion of privacy.

**9. Can a Nazi group demonstrate in a mostly Jewish neighborhood?** Yes. Marching, parading, and picketing raise concerns about maintaining public order, especially if potential for conflict exists between competing groups, but they are still subject to significant protection. That means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content (***Collin v. Smith*, 1978**).

**10. Does a shopping mall have a right to ban gathering petitions on its premises?** No. The U.S. Supreme Court in ***Pruneyard Shopping Ctr. v. Robins* (1980)** ruled that high school students asking people to sign a petition addressed to the president and members of Congress was protected. Exercising state-protected rights of expression and petition on mall property outweighs a shopping center's policy prohibiting any visitor or tenant to engage in any publicly expressive activity, including the circulation of petitions.

**11. Can you pass out literature for or against a candidate or an issue anonymously?** Yes. The U.S. Supreme Court in ***McIntyre v. Ohio Elections Comm'n*, (1995)** struck down an Ohio statute that prohibited the distribution of anonymous campaign literature. It recognized that "persecuted groups and sects from time to time throughout history have been able to criticize oppressive practices and laws either anonymously or not at all." The Court stated that “on occasion, quite apart from any threat of persecution, an advocate may believe her ideas will be more persuasive if her readers are unaware of her identity. Anonymity, thereby, provides a way for a writer who may be personally unpopular to ensure that readers will not prejudge her message simply because they do not like its proponent.” The Court also compared this right to the right of the secret ballot, which it described as “the hard-won right to vote one's conscience without fear of retaliation.”

**12. Do third party candidates have the right to participate in televised political debates even if they have little support and are hardly known?** The U.S. Supreme Court in ***Mills v. Alabama* (1966)** stated “we have recognized that the **First** **Amendment** reflects a profound national commitment to the principle that debate on public issues should be uninhibited, robust & wide open.” Getting invited to a televised political debate is another issue.

In ***Arkansas Educ. TV Comm'n v. Forbes* (1998),** the U.S. Supreme Court held that broadcasters have journalistic discretion when including or excluding candidates from a televised debate if the decision is reasonable and a viewpoint-neutral decision. For example, broadcasters must base decisions not on a candidate’s viewpoint or because political pressures to manipulate the process is being applied. Broadcasters, however, can exclude someone if objective lack of public support for the candidate exists and if the broadcaster truly is acting in good faith and no serious arguments that he is not doing so can be put forth.

**13. Should a blogger (non-traditional journalist) have equal access to the White House briefing room?** Depends on who is president. The public has no right of access to the White House, and the right of access due the press generally is no greater than that due the general public. Yet, the White House routinely grants press passes to “bona fide Washington journalists.” The White House press facilities are meant to be a source of information for newsmen. The White House cannot deny reporters press passes arbitrarily or for less than compelling reasons. Neither can it deny access based on the content of a journalist’s speech. But space limitations and security concerns would likely make it impossible to grant equal access to bloggers and other non-traditional journalists, but bloggers have a right to ask for access.

**14. Are you allowed to wear t-shirts with anti-war slogans printed on them when the president speaks to Congress?** Probably. No court ruling on this issue exists, but a 2006 news story reported that Washington Capitol police dropped a charge of unlawful conduct against an antiwar activist. The police “apologized for ejecting her and a congressman’s wife from President Bush’s State of the Union address for wearing T-shirts with war messages.”

**15. Should corporations and unions have the same freedom of speech rights as individuals do in supporting political candidates?** Yes.In ***Citizens United* v. *Federal Election Commission* (2010)**the U.S. Supreme Court ruled that corporations, unions, and other associations have free speech rights just like individuals. The identity of the speaker does not determine whether speech is protected. Individuals and organizations contribute to the discussion, debate, and dissemination of information and ideas the **First Amendment** seeks to foster.

**16. Should a Ten Commandments monument be allowed on government properties such as a state capitol? How about a nativity scene?** Yes, for the Ten Commandments. In ***Van Orden v. Perry* (2005)** the U. S. Supreme Court ruled that the Ten Commandments had religious significance but also had undeniable historical meaning. A monument on the capitol grounds is a passive use of that text whereas posting the Ten Commandments in a schoolroom is not, and therefore, improper.Maybe on the nativity scene, depending on how it is displayed. In ***County of Allegheny v. ACLU* (1989)** the U.S. Supreme Court ruled the nativity scene violated the **Establishment of Religion** **Clause.** The display did not merely acknowledge Christmas as a cultural phenomenon. Instead, it had the effect of endorsing a patently Christian message. However, in ***Lynch v. Donnelly* (1984),** the Court held that the nativity scene, which was displayed alongside Santa’s house and sleigh, candy-striped poles, a Christmas tree, carolers, cutout figures representing a clown, an elephant, teddy bear, and a “SEASONS GREETINGS” banner did not violate the clause.

**17. Are religions that involve handling of poisonous snakes or that believe a man can have multiple wives protected?** No. While the right or freedom to hold religious beliefs and opinions is absolute, the freedom to act or express religious beliefs is not absolute (***Bowen v. Roy*, 1986**). Rather, it is limited and qualified and remains subject to regulation. Free exercise does not relieve an individual of the obligation to comply with a valid or neutral law that requires conduct contrary to his or her religious practice, if the law does not violate other constitutional protections. Adults, for example, may make up their own mind about the handling of snakes, but children should not be subjected to the risk of death. Polygamy now is illegal in the United States, but litigation over the matter continues.

**18. Can religious people who believe only in faith and prayer refuse medical treatment for their children?** No, but the answer seems to be guided by state law. If a state chooses to require medical treatment, then the **FirstAmendment** will not prohibit state intervention. The right to practice religion freely does not include liberty to expose the community or the child to communicable disease or the latter to ill health or death. Under Ohio law, parents/guardians may use spiritual means to treat children’s physical and mental illnesses.

**19. Should students be allowed to display religious headwear when participating on teams with uniform requirements?** Maybe, but safety concerns may outweigh the legitimate religious beliefs of students wishing to participate in high school athletics. The Seventh Circuit Court held that no-headwear rules (ultimately prohibiting the wearing of yarmulkes) did not violate the equal protection clause of the **Fourteenth Amendment** if the rules were designed to promote safety in sports (***Menora v. Illinois High Sch. Assoc.*, 1982**). However, the Court held that if a safe alternative to the headwear could be devised by the religious group, then the school could not restrict its use.

**20. Can a community petition to keep a mosque from building in its neighborhood?** No, not successfully. The **First Amendment** prohibits Congress and state governments from making laws prohibiting the free exercise of religion. In addition to **First Amendment** protections, Congress has passed a law prohibiting state and local governments from burdening people and religious assemblies freely to exercise their beliefs unless the burden furthers a “compelling governmental interest” and is the least restrictive means of doing do (Religious Land Use and Institutionalized Persons Act of 2000).

A group of citizens could petition to keep a mosque from building in its neighborhood; but if the state or local government acted on the petition and prevented the building of the mosque, without a “compelling governmental interest” for doing so, they would be violating the **First Amendment** and federal law.

**21.** **Can religious groups use illegal drugs during their religious practices?** Sometimes, but this is tricky. Federal law cannot prevent religious assemblies to exercise freely their religious beliefs unless it can prove a “compelling governmental interest.” So even if a drug were illegal under federal law and a religious group used the drug in a religious practice, the federal government could only prevent that use if it had a “compelling governmental interest” for doing so.

States can more easily stop illegal drug use by religious groups as states do not have to show a “compelling governmental interest.” So long as the state passes a law that prohibits everyone from using an illegal drug, the state can prohibit a religious group from using that illegal drug in the religious group’s practices.

**22. Should students be allowed to speak of their religious faith in classrooms or at public school events? Offer a prayer at events?** Yes, so long as the speech is individual and does not cause a disruption. The **First Amendment** protects the right of students to speak of their religious beliefs and to pray in school. However, the **First Amendment** prohibits a public school from conducting activities or sponsoring events that either promote or inhibit a particular religion or religions *(****Lemon v. Kurtzman*, 1971**). For example, the U.S. Supreme Court has said a student or a religious official offering prayer at non-mandatory ceremonies, such as graduation, is unconstitutional. The Supreme Court has also said that student-led, student-initiated prayer at public school events, such as over the public address system before a high school football game, violates the **First Amendment** (***Santa Fe Independent School Dist. v. Doe*, 2000**).

**23. Should Congress and the President support and participate in a National Day of Prayer?** At the moment, it is not unconstitutional for Congress and the president to support and participate in a National Day of Prayer.

Those in favor of a National Day of Prayer believe the president and Congress are free to appeal to the public on religious grounds, as well as on political grounds. The appeal does not obligate citizens to pray so the request does not encroach on citizens’ rights. Those in favor may also argue that since the founding of the United States, Congress has requested presidents to call on the citizens to pray, and that every president except Thomas Jefferson, who thought these requests were inconsistent with the **First Amendment**, has complied with Congress’s requests.

Those against a National Day of Prayer might argue that it is a religious exercise sponsored by the government, therefore violating the **First Amendment**, which prohibits the government from sponsoring religious activities. They may further argue that if government were interested only in acknowledging the role of religion in America, it could designate a “national day of religious freedom” rather than promote a particular religious practice, such as prayer. *See* ***Freedom from Religion Foundation, Inc. v. Obama* (2010)**.

**24. Should freedom of religion be granted to extreme or fringe religious groups? Was it meant to?** Freedom of religion is a right of all, including “extreme or fringe religious groups.” The government cannot dictate how people think. However, the right to practice religion as one pleases is not absolute. The effect on individuals involved and on society to “practice one’s religion” must be balanced against religious freedom. In ***Reynolds v. United States* (1879)**, the Supreme Court held that the members of the Church of Latter-Day Saints may not practice polygamy. In ***Church of Lukumi Babula Aye v. Hialeah* (1993)**, animal sacrifice was prohibited as religious practice.

It is unlikely that the **Founding Fathers** foresaw the vast number and variety of religions that would seek shelter under the **First Amendment** umbrella. However, the principles still apply to all beliefs.

**25. Should the United States be considered mostly a Christian nation whose values must be protected?** Under the **First Amendment**, the government may not prefer one religion over another or become excessively involved in religion. However, the source of many of the principles or values of the Constitution is Christianity, being the predominant religion of the **Founding Fathers.** The principles themselves are the law of our country, and they require the government to remain neutral regarding religion. Opinion is still divided, even among the courts, regarding whether the strict application of these principles is necessary to uphold the law.

**26. Does the First Amendment go too far in protecting the five freedoms listed on page 36?** This is everyone's call. The **First Amendment** itself defines some basic freedoms that are the cornerstone of our government and our way of life. However, over time courts and legislatures review those freedoms, and their interpretations can expand or contract those basic principles. The strength of our system of government is as opinions and circumstances change, the interpretation of the basic principles of the **First Amendment** changes also. The authors of the Constitution could not possibly have imagined the world as it is today. Yet, we can rely on and uphold the law as they wrote it because our system allows us continually to assess and challenge its application to our lives.

**27. What is the relationship between free speech and social media?** Complicated. In 2017, Supreme Court Justice Anthony Kennedy said that “cyberspace, and social media in particular, were among the most important places…for the exchange of views” and compared the internet to a public forum, akin to a public street or park. But what one can say and cannot say in the town squares of the internet will be battlegrounds about the future of free speech. Attempts at censorship by government officials critical of social media comments, the rise and hate and extremist speech in cyberspace and the shifting standards of private platforms to censor online expression are evolving issues that courts will probably address. As of 2020, the **First Amendment** protects individuals from government censorship. Social media platforms are private companies, however, and can censor what people post on their websites as they see fit.

28. **Is speech that incites violence protected speech? The First Amendment** protects irresponsible speech unless it is meant to produce imminent lawlessness. The “imminent lawless action” was first established by the Supreme Court in the 1969 case, ***Brandenbury v. Ohio.*** The court ruled that government officials cannot punish inflammatory speech unless that speech is “directed to inciting or producing imminent lawless action and is likely to incite or produce such action.” The Supreme Court struck down an Ohio law at the time that prohibited the mere advocacy of violence because the law was too broadly prohibited. The Supreme Court went on to clarify “imminent” in ***Hess v. Indiana*** (1973). When an anti-war demonstrator, Gregory Hess, advocated illegal activity, the court overturned Hess’s earlier conviction of the state’s disorderly conduct charge. The Supreme Court ruled that Hess’s words was just advocating action for some indefinite, future time and was not meant to incite imminent, further lawless action on the part of the crowd he was in. Because of the assault on the Capitol on January 6, 2021, the courts will probably revisit and rule once again on free speech limits as they relate to insurrection, sedition, and words that are dangerous and false, for example. Stay tuned.

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***Arkansa Educ. TV Comm’n v. Forbes (1998)***  ***47***

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***West Virginia Board of Ed. v. Barnette (1943) 40***

***Wisconsin v. Yoder (1972) 35, 37***

**First Amendment Free Speech and Equal Protection**

**Additional Relevant Lower Court Cases**

The Supreme Court decides to hear a case if at least four of the nine Justices agree to grant the Petition for Writ of Certiorari (a request that the court will hear one’s case). Most of the cases heard by the Supreme Court are appeals from lower federal courts or from state supreme courts. If, however, the Supreme Court chooses not to hear an appeal, the decision from the lower court stands. Only the decisions of the United States Supreme Court are binding precedent on all courts, both state and federal.

These lower court decisions, however, do rule on individual cases brought before them. For example, if a lower court addresses the matter of student free speech (**First Amendment**) on the internet, that decision then can establish a principle for other courts deciding cases with similar issues or facts.

Since the Supreme Court’s last significant case about student free speech was in 2010, some lower court decisions can be researched to see how these cases are being handled until– if and when– the Supreme Court weighs in. The same is true for freedom of religious expression within schools.

**Anderson v. Chesterfield County School District – United States District Court for the District of South Carolina Florence Division (2012)**

Can a school district ask students to attend an in-school worship rally featuring a Christian minister and a Christian rapper or to be allowed to opt out in a detention room instead?

**A.M. v. Taconic Hills Central School District – Court of Appeals for the Second Circuit (2012)**

During a middle school graduation speech, a student wanted to end the speech with a religious message. The school denied the request. Does the school have the right to forbid a student from including a religious message in a speech?

**B. H. v. Eastern Area School District – Court of Appeals for the Third Circuit (2013)**

Does a school district violate a student’s free speech if it disciplines that student for wearing a bracelet stating “I  Boobies” as a part of a breast-cancer awareness campaign? Can a school district restrict potentially offensive speech commenting on social or political issues?

**Wynar v. Douglas County School District – Court of Appeals for the Ninth Circuit (2013)**

Can school administrators expel a student who sends violent and threatening off-campus instant messages about his desire to shoot up his high school to his friends? Would his **First** **Amendment** free speech rights be violated as well as his **Fourteenth Amendment** procedural due-process rights?

**Sagehorn v. Independent School District No. 728 et.al – U.S. District Court of Minnesota (2015)**

Can a school district suspend a student when the student posts a sarcastic tweet he “made out” with a young teacher in answer to an online survey? Did his conduct “constitute a threat, intimidation or assault of a teacher,” or was it just a joke he thought no one would believe? Was the teacher’s reputation damaged or was the student’s **First Amendment** and **Fourteenth Amendment’s** rights violated?

**Bell v. Itawamba County School Board – Court of Appeals for the Fifth Circuit (2015-Supreme Court denied review in 2016)**

Can a student write a rap song about athletic coaches sexually harassing female students at his school and post it on Facebook and YouTube? Does naming the coaches and lambasting their behavior during the song also make a difference as to whether the student can be suspended and forced to attend an alternative school for six weeks?

**Kennedy v. Bremerton School District – United States District Court Western Division of Washington at Tacoma (2016)**

Does a coach have a right to pray with students after athletic events? Can the coach be fired for doing so?

**Longoria v. San Benito Independent Consolidated School District - Court of Appeals for the Fifth Circuit (2019)**

Can a cheerleading coach remove a cheerleader based on “inappropriate” posts on her Twitter account?

**B.L. v. Mahanoy Area School District – Court of Appeals for the Third Circuit (2020)**

Can a cheerleading coach remove a cheerleader based on a disrespectful Snapchat picture and post shared with about 250 “friends? Can appeal courts rule differently? What judgment becomes precedent? This case is being appealed to the Supreme Court.