

The First Amendment: Five Freedoms

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Introduction

In this history course students have studied the discovery of America, colonization of the thirteen colonies, and the Revolutionary War. The class then shifts to a civics based curriculum with a focus on the Declaration of Independence, the creation of the Constitution and the rights the citizens of the United States have. The most recent lessons leading up to this curriculum unit has focused on the three branches of government working under a system of checks and balances. Prior to day one of this unit, students have analyzed the arguments for and against a Bill of Rights during the Constitutional Convention as a review. This series of lessons will focus only on the 1st Amendment to the Constitution and will serve as an introduction to the Bill of Rights. In the weeks following this unit students will become familiar with the rest of the Bill of Rights as well as several other amendments to the Constitution that extended civil rights in the history of the United States. Each of the four days planned in this unit are designed for a 50 minute class period.

Massachusetts Curriculum Standards

- USG.2.2 Analyze and interpret central ideas on government, individual rights, and the common good in founding documents of the United States.
- USG.2.4 Define and provide examples of foundational ideas of American government, including popular sovereignty, constitutionalism, republicanism, federalism, and individual rights, which are embedded in founding-era documents.
- USG.3.11 Compare core documents associated with the protection of individual rights, including the Bill of Rights, the Fourteenth Amendment to the United States Constitution, and Article I of the Massachusetts Constitution.

Essential Questions

- What freedoms are granted to Americans through the Bill of Rights?
- How would our lives be different without the Bill of Rights?
- Assess how the Bill of Rights has been used to make Supreme Court Case decisions.

Objectives

- Given a scenario, students will be able to identify the part of the first amendment that would prevent it from happening.
- Students will analyze what their lives would be like without the 1st Amendment.
- Students will utilize Supreme Court cases to connect the 1st Amendment with an actual scenario.

Vocabulary

- Bill of Rights
- Separation of Church and State
- Petition
- Assembly

Day 1Warm Up Activity:

Utilizing a 2-column note format, students will record the definition of the following vocabulary words: Bill of Rights, separation of church and state, petition, assembly. In addition to the definition students will list a synonym and use each word in a sentence.

Learning Activity:

1. Students will work on answering the following question in a think, pair, share format: Thinking about the Constitution and the work we have done on the 3 branches of government, why or why not are Amendments necessary?
2. Students will then take notes on the creation of the Bill of Rights including a teacher directed lecture. This will serve as a foundation of working with the 1st Amendment in the next few days to come.

Practice:

Students will be asked to summarize the arguments for and against the creation of a Bill of Rights. This material will come from the unit prior and will serve as a review for the students before we examine the 1st Amendment.

Day 2Warm Up Activity: Focus Question

How and why is the U.S. Constitution considered to be a living document?

Learning Activity:

1. Focus Question will be reviewed and discussed.
2. Day 1 Homework Review
3. Students will take notes on the five freedoms guaranteed by the Bill of Rights from a PowerPoint slideshow. This will provide students with notes but will also incorporate class discussion throughout the presentation.
4. Teacher will give two to three examples of scenarios that the First Amendment would protect. Students will identify which of the five freedoms are protected in the scenario. This is a model for their homework assignment.
 - a. Students across the state are enraged by the Governor's new law that extends the school day to 10 hours a day, 12 months a year. To show their anger they create a petition and have every student in their schools sign it. They then send the petition to their local representatives. Why can they do this?- Freedom to Petition
 - b. A law is passed that all students must attend religion classes 3 times a week. If students refuse, they will be suspended from school and will not be allowed at the moving on ceremony. Can the government do this?- Freedom of Religion
 - c. Students at Higgins Middle School uncover a secret plot between the principle at their school and the mayor in which the mayor is bribing the principle to pass certain students whose parents are promising their vote. Students report their findings to the Salem News and a shocking article is printed detailing all the evidence of the secret plot, which resulted in the firing of the principle and the removal of the mayor from office. Was it illegal for the students and the newspaper to write such an article?- Freedom of the Press

Practice:

Create three scenarios in which the rights of the 1st Amendment are used to protect the freedoms of Americans. Use the examples from class as a model, be creative!

Day 3Warm Up: Focus Question

The Bill of Rights is based on the idea of individual rights for America. In addition to the First Amendment, what other rights do you believe an American should have?

Learning Activity:

1. Focus question is reviewed and discussed as a class.
2. Each student will choose one of the three scenarios they created to share with the class. The class will then identify which of the five freedoms is being protected by the 1st Amendment.
3. As a class we will review the Supreme Court Case “Tinker vs. Des Moines”. Case will be read as a group and the decision will be discussed.

Practice:

Students will be assigned a series of questions to answer based on the case “Tinker vs. Des Moines”

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. Pretend that students in your school wanted to protest the school-wide ban on smoking. Should they be allowed to protest by wearing T-shirts that read "Up with 'Butts'!"? Why or why not?

Day 4Warm Up: Focus Question

Do you agree or disagree with the decision the Supreme Court made concerning the case of “Tinker vs. Des Moines”? Explain.

Learning Activity:

1. Focus Question will be reviewed and discussed.
2. Students will be broken up into 4 small groups, each receiving one of two different Supreme Court Cases. As a small group they will read the case and answer the questions that correspond with the case.

3. When each group is done they will share with the rest of the class a brief summary of the case, the decision, and which part of the 1st Amendment the case was decided upon. The groups not presenting will be filling in their organization chart found in the attachments section.

Practice: Open Response Question

Imagine you were a Supreme Court judge making a decision on the case you worked on today in class. Analyze both sides of the case and then make an argument for which way you would have ruled. Be sure to include what role the 1st Amendment made in your decision.

AttachmentsVocabulary

Seperation of church and state	Definition: Synonym Use in a sentence:
petition	Definition: Synonym Use in a sentence:
Bill of Rights	Definition: Synonym Use in a sentence:
assembly	Definition: Synonym Use in a sentence:

Supreme Court Cases**Tinker vs. Des Moines (1969)**

John and Mary Beth Tinker attended public school in Des Moines, Iowa. In December of 1965 a community group in Des Moines decided to protest American involvement in the Vietnam War by wearing black armbands. The Tinkers agreed to wear their black armbands to school. However, principals in the school district, aware of the students' plans created a rule that any student wearing an armband to school would be suspended unless the student removed the armband. Although the Tinkers knew about this rule, they decided to come to school wearing armbands anyway. After refusing to take the armbands off, John and Mary Beth Tinker were sent home by the principal. Their suspension lasted until they agreed to come back to school without the armbands.

The Tinkers filed a suit in the U.S. District Court to stop the school principals from enforcing the rule in the future. Although the District Court said that this type of protest was a form of expression protected under the First Amendment's freedom of speech clause, the Court sided with the school officials, saying that the rule was needed to "prevent the disturbance of school activities." The Tinkers appealed their case to the U.S. Eighth Circuit Court of Appeals, but they lost. The Tinkers decided to appeal the case to the Supreme Court of the United States.

The fundamental question of the case came down to this: Does the First Amendment's promise of free speech extend to the symbolic speech of public school students? And, if so, in what circumstances is that symbolic speech protected? The First Amendment to the Constitution says, "Congress shall make no law . . . abridging the freedom of speech." The Fourteenth Amendment extends this rule to state government as well, of which schools are a part. However, the First Amendment does not say which kinds of speech are protected. It also does not specify what types of expressive actions should be considered as speech.

The question of what kind of speech or action is protected under the First Amendment has been considered many times by the Supreme Court of the United States. Generally, the Court has held that the First Amendment protects adult symbolic speech that does not harm or threaten to harm. However, at the time of *Tinker*, it was unclear whether students' rights in this area were different.

In 1968 the Supreme Court of the United States agreed to hear the Tinker's case and consider whether the Des Moines public schools ban on armbands was an unconstitutional violation of the students' right to free speech. The Court's decision in *Tinker v. Des Moines* was handed down in 1969.

The Decision

By a large majority, the justices of the Supreme Court ruled that the suspension of the students from school was unconstitutional.

Questions to Consider:

5. Do you think that the school policy banning armbands was fair? Why or why not?
6. 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?
7. 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?
8. Pretend that students in your school wanted to protest the school-wide ban on smoking. Should they be allowed to protest by wearing T-shirts that read "Up with 'Butts!'"? Why or why not?

Texas vs. Johnson (1989)

In 1984, the Republican National Convention was held in Dallas, Texas. Gregory Lee Johnson took part in a demonstration there. He and his group were protesting against nuclear weapons among other things. They marched through the streets shouting.

Johnson was carrying an American flag. When he reached Dallas City Hall, Johnson poured kerosene on the flag. Then he set it on fire. While the flag burned, people shouted, "America, the red, white, and blue, we spit on you." No one was hurt, but some people who were there said they were very upset.

Johnson was arrested. He was charged with violating a Texas law that said people couldn't vandalize a respected object. He was convicted, sentenced to one year in prison, and fined \$2,000.

Johnson appealed his case to the Texas Court of Criminal Appeals, which agreed with him. The court said that the First Amendment protection of free speech included "symbolic speech," which is an action that expresses an idea. It said that flag burning was a form of symbolic speech so Johnson could not be punished.

The State wanted to maintain order and to preserve the flag as a symbol of national unity. The State had argued its interests were more important than Johnson's symbolic speech rights. The court did not agree with the State's arguments.

The court said the government cannot "carve out a symbol of unity and prescribe a set of approved messages to be associated with that symbol . . ." The court also said that the flag burning did not cause or threaten to cause a breach of the peace.

The State of Texas asked the Supreme Court of the United States to hear the case. In 1989, the Court made a decision.

The Decision

The court ruled that Johnson was within his constitutional rights when he burned the U.S. flag in protest.

Questions to Consider:

1. What did Gregory Johnson do? What happened to him as a result?

2. What does the First Amendment say about freedom of speech? Why did Johnson say his First Amendment rights had been violated?
3. What argument could you make that flag burning is likely to cause violence and therefore should be against the law?
4. What argument could you make that flag burning is symbolic speech protected by the First Amendment?
5. The Texas Court of Appeals said the government cannot "carve out a symbol of unity and prescribe a set of approved messages to be associated with that symbol . . ." What does this mean? Do you agree that the government should not be able to do this? List your reasons.
6. How should the Supreme Court of the United States decide this case? Why?

Hazelwood vs. Kuhlmeier (1988)

In May 1983, students in the Journalism II class at Hazelwood East High School in St. Louis, Missouri, created the final edition of the school paper, the *Spectrum*. Before publishing the paper, they submitted it to their advisor, Howard Emerson, so he could review it. Emerson was new to the job, so he followed the procedures of the previous advisor. Those guidelines required him to give Principal Robert Reynolds, the opportunity to review the paper before it was published.

When Principal Reynolds reviewed the paper, he found two articles that concerned him. The first dealt with the issue of teen pregnancy. It included comments from pregnant students at the school. To protect their privacy, names were not given. However, when Reynolds read the article, he realized that the details in the article would make it easy for other students to identify the pregnant teens. The second article addressed the issue of divorce. Like the first article, this one included personal articles. One student, whose parents were divorced, made negative comments about her father. She said that her father was always out with the guys and that her father didn't spend enough time with the family. Principal 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.

Reynolds wanted the journalism students to modify the articles. However, it was almost the end of the school year. If they took the time to revise, they would miss the deadline for publishing the newspaper. If that happened, the other students might never get to read the paper. He felt like he had to act quickly, so he told Emerson to delete the two pages with the offending articles and publish the rest of the *Spectrum*. He told his supervisors about this decision and they agreed with him.

The students had worked hard on 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 correct them. They were upset to find out instead that two pages, which included a number of nonoffensive articles, had been deleted. They felt that their First Amendment rights had been violated. They took the case to the U.S. District Court for the Eastern District of Missouri.

The Court did not agree with the students. In the ruling, the judges said that school officials may 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 can 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 Court. This court reversed the decision of the lower court, saying that the students' First Amendment rights were violated. In the opinion, the Court explained that the newspaper was part of the school curriculum but 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".

The Decision

The court ruled that the 1st Amendment rights of the students who wrote the *Spectrum* had not been violated when the school principal withheld their articles from publication.

Questions to Consider:

1. Why did the newspaper advisor give the paper to Principal Reynolds for review? Was that standard procedure?
2. What concerns did Principal Reynolds have regarding the two articles? Were these legitimate concerns? Were there other ways that the principal could have handled the situation?
3. Do you think Principal Reynolds was justified in deleting the two pages of the paper? Should a principal be able to censor student newspapers? If so, under what conditions?
4. What rights did the students believe had been violated?
5. Were there any steps the students could have taken other than filing a lawsuit?
6. Should a principal or other school authority be able to silence other forms of student speech? If so, under what conditions? How does speech by an individual student differ from speech by the school newspaper?

Case Name	Summary	Decision	Amendment
Texas vs. Johnson			
Tinker vs. Des Moines			
Hazelwood vs. Kuhlmeier			

Bibliography

“Landmark Cases of the U.S. Supreme Court”

<http://www.streetlaw.org/en/landmark.aspx>
