

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

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

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

# First Amendment Curriculum/Activity Guide



**1FAC**  
ILLINOIS **FIRST** AMENDMENT CENTER

**Grades 8 – 12+**

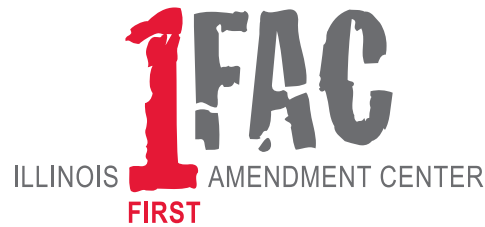
*2010 Edition*

**The First Amendment**

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

- Via e-mail
- CD-ROM (\$1.00 shipping charge)

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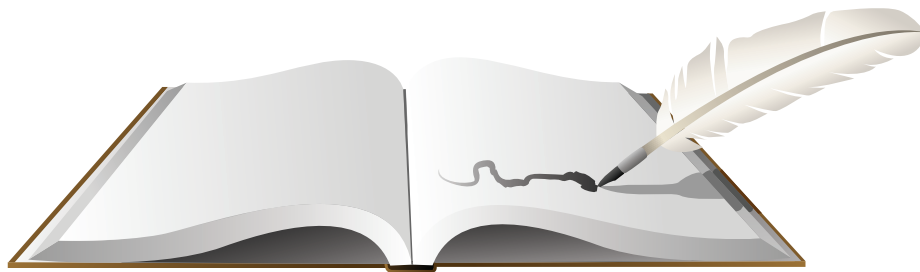
**This curriculum guide was made possible through funding from the McCormick Foundation.  
2010 revision by Beverly Vaillancourt, M.Ed.**

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**The First Amendment**

# The First Amendment (1789)

*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.*



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

Illinois First Amendment Center  
Dennis DeRossett, Executive Director  
Sue Montalvo, Director.

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**The First Amendment  
Keep It Strong!**



# How to Use This Curriculum Guide

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

## This guide is divided into five units:

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

## Goals of the First Amendment Curriculum:

- Understand the content and importance of the First Amendment
- Trace the history of the First Amendment
- Analyze and interpret varied texts
- Write effectively using inductive reasoning to summarize and draw conclusions
- Work cooperatively and effectively with others in a group
- Conduct research using web-based resources
- Effectively use technology to access and share information

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

## Learning Standards

Each unit begins with an outline of the objectives and matching Learning Standards. Teachers are provided with a list of what students should: **Know** (vocabulary and content), **Understand** (essential ideas), and be able to demonstrate (skills).

Next, essential information needed by the student to understand the First Amendment is provided.

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

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

## Handouts, Glossary and Court Cases

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

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



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

*“A Bill of Rights is what the people are entitled to against every government, and what no just government should refuse, or rest on inference.” Thomas Jefferson*

# History of the First Amendment

## Unit Overview

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

## Objectives

As a result of this unit, students will be able to:

- Identify the rights embodied in the First Amendment
- Trace the historical roots of the First Amendment
- Explain why the First Amendment is a living document
- Analyze the modern-day importance and relevance of the First Amendment

## Illinois State Standards

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

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

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

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

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

## National History Standards

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

## National Civics and Government Standards

What are the Foundations of the American Political System?

## Know

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

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

## Content:

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

## Understand

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

# History of the First Amendment



## History of the Development of the First Amendment

*Contributed by Kim Freitag*


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

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

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

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

## History of the First Amendment



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

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

### First Amendment Timeline

- 1215** King John of England signs Magna Carta – the first time that sovereign powers are limited.
- 1641** The First Amendment has its early beginnings when, in 1641, the first broad statement of American liberties is drafted by the Massachusetts General Court, entitled the Massachusetts Body of Liberties containing right to petition and a due process statement.
- 1663** Religious freedom is granted in Rhode Island.
- 1689** English Bill of Rights established.
- 1708** Connecticut passes a statute allowing “full liberty of worship” to Anglicans and Baptists.
- 1776** On July 4th, the Declaration of Independence, in its final form, is adopted by the Continental Congress. Virginia passes their state’s Declaration of Rights – the first state in America to have a bill of rights as part of its state constitution.
- 1777** Draft of a Virginia state bill addressing religious freedom is completed by Thomas Jefferson, later known as the Virginia Statute for Religious Freedom.
- 1789** U.S. Constitution is adopted, but contains no Bill of Rights.
- 1791** The first 10 amendments (Bill of Rights) to the U.S. Constitution are adopted on December 15.



## History of the First Amendment

### Five Freedoms and Related Court Cases:

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

<b>Religion</b>	Cantwell v. Connecticut (1940) Epperson v. Arkansas (1968) Lemon v. Kurtzman (1971) Wisconsin v. Yoder (1972) Locke v. Davey (2004) McCreary County, KY v. ACLU of Kentucky (2005)
<b>Speech</b>	Schenck v. U.S. (1919) Stromberg v. California (1931) Gitlow v. New York (1937) Thornhill v. Alabama (1940) Chaplinsky v. New Hampshire (1942) West Virginia State Board of Education v. Barnette (1943) Roth v. United States (1957) New York Times v. Sullivan (1964) Tinker v. Des Moines (1969) Brandenburg v. Ohio (1969) Cohen v. California (1971) Miller v. California (1973) NSPA v. Skokie (1978) Texas v. Johnson (1979) Bethel v. Fraser (1986) R.A.V. v. St. Paul (1992) USA Patriot Act (2001, as renewed in 2006)
<b>Press</b>	Patterson v. Colorado (1907) Schenck v. U.S. (1919) Near v. Minnesota (1931) New York Times v. Sullivan (1964) Branzburg v. Hayes (1972) Hazelwood v. Kuhlmeier (1988)
<b>Assembly</b>	United States v. Cruikshank (1876) DeJonge v. Oregon (1937) Thornhill v. Alabama (1940) NAACP v. Alabama (1958) Cox v. Louisiana (1965) Boy Scouts of America v. Dale (2000)
<b>Petition</b>	Thornhill v. Alabama (1940) United States v. Harris (1954) Edwards v. South Carolina (1963) Brown v. Louisiana (1966) United States v. Grace (1983)

## History of the First Amendment

### Hook Activity

**Purpose:** To help students reflect on how the First Amendment affects their daily lives

**Teacher Explanation Notes:**

**Materials Needed:** First Amendment written on chart paper, a whiteboard, or overhead transparency

Circle the word *establishment* and define how it is used in the First Amendment. Then pose the following question:

- *How would you feel if the government told you that you had to practice a certain religion? How would your family feel? Why?*
- List student emotions as students identify how they would respond to the government determining a single religion for everyone.

Circle the word *prohibiting* and define it by providing an example of something that is prohibited at your school.

Then pose the following question:

- *For those of you whose families practice a religion, how do you think your family would feel if the government told your family that they could no longer practice the religion of their choice? Why?*
- List student emotions in a second column.

Circle the word *abridging* and define it by providing an example of something you have the power to abridge within your classroom setting. Then ask the following question:

- *What if I made it against the rules for you to share your thoughts in class? What if the principal decided to shut down the school paper? How would you feel? Why?*
- List student emotions in a third column.

Circle the word *right* and explain that a right is a freedom granted to you by the government.

Then ask the following question:

- *What if the government decided you no longer had the right to meet with others, and that meeting with others to discuss school rules would result in a very severe punishment? Would you think that was fair? Why? How would you feel?*
- Once again, create a list of emotions in a new column.

Lastly, circle the words *petition*, *redress*, and *grievances* and define the words as necessary.

Then ask this last question:

- *What if you could never complain about any school rule, and that there would not be any possible way to ever change a school rule no matter how unfair it might be? How would you feel? Why?*
- Create a last list of emotions in another separate column.

Circle emotions from each column that are the same. For example, *angry* might be listed in more than one column. Point out which emotions are noted more than once. Explain that the colonists felt in similar ways when they decided it was time to break from the rule of Great Britain and form an independent United States.

**The First Amendment (1789)** *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.*

## History of the First Amendment

### LEARNING ACTIVITIES

#### Activity #1 – Whole Class Instruction – Orientation to the First Amendment (also will be used in later activities)

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

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

#### Activity #2 – Small Group or Individual Work – History of the Development of the First Amendment – Document Detectives

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

Documents:

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

Primary Sources:

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

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

## History of the First Amendment

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



### **Activity #3 – Newspaper Activity: Whole Class Activity – Importance and Relevance of the First Amendment Today – News Search**

Materials needed: Newspapers; scissors for each student; red pens for each student; glue sticks for each student; 5 sheets of chart paper – label each sheet with one of the Five Freedoms.

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

### **Activity #4 – Whole Class Activity – First Amendment Freedoms – Classroom Survey**

Materials needed: Abridged version of the Knight Foundation Report Survey


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

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

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

1. The First Amendment became part of the U.S. Constitution more than 200 years ago. This is what it says:  
“Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.”  
  
Based on your own feelings about the First Amendment, indicate whether you agree or disagree with the following statement: The First Amendment goes too far in the rights it guarantees.  
a) Strongly agree   b) Mildly agree   c) Mildly disagree   d) Strongly disagree   e) Don’t know
2. Overall, do you think the press in America has too much freedom to do what it wants, too little freedom to do what it wants, or is the amount of freedom the press has about right?  
a) Too much freedom   b) Too little freedom   c) About right   d) Don’t know

## History of the First Amendment

- 
3. People should be allowed to express unpopular opinions.  
a) Strongly agree   b) Mildly agree   c) Mildly disagree   d) Strongly disagree   e) Don't know
  4. People should be allowed to burn or deface the American flag as a political statement.  
a) Strongly agree   b) Mildly agree   c) Mildly disagree   d) Strongly disagree   e) Don't know
  5. Musicians should be allowed to sing songs with lyrics that others might find offensive.  
a) Strongly agree   b) Mildly agree   c) Mildly disagree   d) Strongly disagree   e) Don't know
  6. Newspapers should be allowed to publish freely without government approval of a story.  
a) Strongly agree   b) Mildly agree   c) Mildly disagree   d) Strongly disagree   e) Don't know
  7. High School students should be allowed to report controversial issues in their student newspapers without the approval of school authorities.  
a) Strongly agree   b) Mildly agree   c) Mildly disagree   d) Strongly disagree   e) Don't know
  8. Do you agree or disagree with the following statement: "Americans don't appreciate First Amendment freedoms the way they ought to."  
a) Strongly agree   b) Mildly agree   c) Mildly disagree   d) Strongly disagree   e) Don't know
  9. Are the rights guaranteed by the First Amendment something you personally think about or are they something you take for granted?  
a) Personally think about      b) Take for granted      c) Don't know
  10. What about most people in the U.S. – do you think the rights guaranteed by the First Amendment are something people specifically think about or are they something they take for granted?  
a) Personally think about      b) Take for granted      c) Don't know

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

11. Under current law, do Americans have the legal right to burn the American flag as a means of political protest?  
a) Yes      b) No
12. Under current law, do the courts have the right to send reporters to jail for refusing to reveal a news source?  
(Correct answer depends on state.)  
a) Yes      b) No
13. Under current law, does the government have the right to restrict indecent material on the Internet?  
a) Yes      b) No
14. Under current law, does someone have the legal right to shout "fire" in a crowded arena as a prank?  
a) Yes      b) No

## History of the First Amendment



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

### Activity #5 – Small Groups – Examination of Knight Foundation Report Results about the Importance and Relevance of the First Amendment

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

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

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

# Assessment

## History of the First Amendment



### True / False — For every false statement, rewrite it to make it true.

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

### Multiple Choice

11. English philosopher John Locke argued that \_\_\_\_\_ is a natural right.  
a) authority    b) education    c) privacy    d) liberty
12. The first document in English history that limited the power of the king was the \_\_\_\_\_.  
a) Mayflower Compact    b) English Bill of Rights  
c) Magna Carta    d) Declaration of Independence
13. Several Americans insisted that \_\_\_\_\_ be added to the Constitution:  
a) state courts    b) a Bill of Rights    c) a cabinet    d) the national bank

14. The period of time in European history that emphasized reason and science, and which influenced Founding Fathers such as Thomas Jefferson, was known as the  
a) Enlightenment      b) Reformation      c) Dark Ages      d) Middle Ages

15. Federalists, such as \_\_\_\_\_, encouraged states to ratify the Constitution.  
a) James Madison    b) George Mason    c) Patrick Henry    d) Thomas Jefferson

**Essay**

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

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17. What does the First Amendment mean to you? Use vocabulary words and documents from the unit.

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

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

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# Answers

## History of the First Amendment

### True/False

1. False – These ideas were part of a long history of limiting government power and protecting individual rights. These ideas can be traced by examining documents such as the Magna Carta, English Bill of Rights, and state constitutions.
2. False – The Knight report reveals profound misunderstandings about the First Amendment.
3. True – Beginning with the Alien and Sedition Acts in 1798, First Amendment liberties have been curtailed during times of crisis.
4. False – There are significant disagreements, and the document's meaning is dynamic. Indeed, some scholars argue that the First Amendment now is a “virtual First Amendment” in light of Supreme Court interpretations (cf - Barry Krusch [www.krusch.com/real/real2.html](http://www.krusch.com/real/real2.html)).
5. True – Federalist and Anti-Federalist essays arguing their respective points of view were published in newspapers.
6. True – For example, the Lemon test for freedom of religion.
7. False – Newspapers today document that First Amendment issues continue to be debated, defined, and relevant to the lives of ordinary Americans.
8. False – Limited Power of Kings – Took away absolute power.
9. True – They felt that the new national government would have too much power without limits.
10. False – The United States Constitution did not establish any church as the church of the United States.

### Multiple Choice

11. d
12. c
13. b
14. a
15. d

### Essay

16 – 19. Answers will vary. Accept all answers that show an understanding of First Amendment rights.

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### Supporting Materials

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

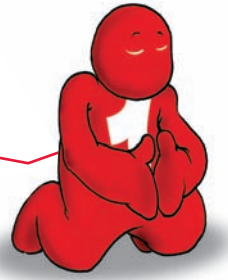
Hartman, Gert, et al. *Landmark Supreme Court Cases: the Most Influential Decisions of the Supreme Court of the United States*. Hartman and Mersky, 2007. This extensive reference divides landmark Supreme Court cases into several categories, several which address First Amendment issues. A summary of each case, its significance, aftermath, and related cases are provided.

Zinn, Howard. *You Can't Be Neutral on a Moving Train: A Personal History of Our Times*. Boston: Beacon Press, 1994.

Zinn chronicles his participation in the Selma, Alabama Civil Rights Movement and the Vietnam war protests of the 1960s and 1970s. His account of the protesters' efforts to take advantage of their rights to assemble (told in a straightforward, candid style) is useful background when giving examples of the power and responsibility of the First Amendment (i.e. you've got to stand up for your rights since it's not enough that they're listed in the Constitution).

*“There is not a shadow of right in the general government to intermeddle with religion. Its least interference with it would be a most flagrant usurpation.” James Madison*

# Freedom of Religion



## Unit Overview

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

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

## Objectives

As a result of this unit, students will be able to:

- Explain the Establishment Clause
- Explain the Free Exercise Clause
- Discuss court cases that involve First Amendment freedom of religion issues
- Compare and contrast freedom of religion in nations around the world
- Use the Establishment Clause and Free Exercise Clause to analyze current events

## Illinois State Standards

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

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

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

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

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

## National Standards

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

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

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

## Know:

### Vocabulary:

- |                                |                         |                                    |
|--------------------------------|-------------------------|------------------------------------|
| 1. Free Exercise Clause        | 5. Pluralism            | 9. Dissenting Opinion              |
| 2. Establishment Clause        | 6. Tolerance            | 10. Partisan / Non-Partisan        |
| 3. Established Church/Religion | 7. Appellant / Appellee | 11. Tax Exempt                     |
| 4. Parochial                   | 8. Majority Opinion     | 12. Separation of Church and State |

# Freedom of Religion



## Facts:

- The First Amendment right of freedom of religion has two parts – the establishment clause and the free exercise clause.
- Early colonists wanted religious freedom for themselves but did not extend that right to those who did not share their beliefs.
- Early colonies had government established official religions. Colonies that deviated from this practice in whole or part included Rhode Island, Maryland, and Pennsylvania.
- The Constitution protects religious freedom by prohibiting a religious test for public office (Article VI), prohibiting the establishment of an official state religion and protecting the free exercise of religion from government interference at the federal level (1st Amendment) and state and local levels (14th Amendment).
- The phrase, “wall of separation of church and state,” is not found in the Constitution but was articulated by Thomas Jefferson in a letter to a group of church leaders.
- Religious groups must be non-partisan in their activities in order to maintain their tax-exempt status.

## Understand

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

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## Key Cases

**Establishment:** Everson v. Board of Education (Interpretation of church & state) (1947)  
Lemon v. Kurtzman (1971)  
County of Allegheny v. ACLU (1989)

**Neutrality:** Zelman v. Simmons-Harris (2002)  
Mitchell v. Helms (2000)

**Schools:** Engel v. Vitale (1962)  
Abington v. Schempp (1963)  
Florey v. Sioux Falls School District (1980)  
Zorach v. Clauson (1952)  
Stone v. Graham (1980)  
McCollum v. Board of Education (1948)

## Freedom of Religion

### Hook Activity

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

**Purpose:** To help students assess their understanding of the role of the United States Constitution in ensuring and protecting freedom of religion

#### Teacher Explanation Notes:

- Divide students into working groups.
- Distribute the Freedom of Religion Quiz to each group.
- Have students consider each situation to decide whether the scenario is constitutional or unconstitutional. Groups should be prepared to explain their reasoning.
- Reconvene the class as a whole group and ask each group to report their answers. Record on the board, overhead transparency, or chart paper.
- Discuss scenarios. Provide the opportunity for students to energetically discuss whether each scenario is constitutional or unconstitutional.
- Explain that constitutionality is determined by the U.S. Supreme Court upon its review of a ruling handed down by a lower court (judicial review). Explain that students will have the opportunity to study some of those court decisions.

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

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

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

# Freedom of Religion



## LEARNING ACTIVITIES

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

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

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

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

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

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

### Document Analysis Worksheet

Name/Title of the Document \_\_\_\_\_

Date of Document \_\_\_\_\_

Type of Document \_\_\_\_\_

Author of Document \_\_\_\_\_

For what audience was this document written? \_\_\_\_\_

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

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## Freedom of Religion



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

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What does this document reveal about:

a. the author \_\_\_\_\_

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

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

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

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

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

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

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

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

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

## Freedom of Religion

- Variations:

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

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

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

#### Conceptual Perspective

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

#### Historical Perspective

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

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

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

Documents: Cases can be found online at: [www.firstamendmentcenter.org](http://www.firstamendmentcenter.org). Click on “religious liberty.” Click on “history of religious liberty.” Click on “cases and resources.” Click on “some major church-state cases.” Click on the case name. For the full case, click on the primary link. For a case summary and the option to select justices’ opinions, click on the secondary link.

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

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

## Freedom of Religion



### Activity #5 – Newspaper Activity: Small group instruction – Religious Freedom in the News Today – Newspaper Search

Materials needed: Newspapers for each group; guiding prompts sheet for each group; pen/pencils for each student group. If newspaper stories deal with religious freedom abroad, students will need access to a computer with Internet.

- Divide students into groups of two or three.
  - Direct students to scan newspapers to find articles about religious freedom.
  - Have students select and carefully read an article and use the following guiding prompts to analyze the story.
- 1) Briefly describe/summarize the facts of the newspaper account.
  - 2) Identify the religious issue featured in the story.
  - 3a) If the story is an account of an event or situation in the U.S., what First Amendment religious freedom is at issue – no establishment or free exercise?
  - 3b) If the story is an account of an event or situation in another country, go to the following web sites to get additional information about the status of religious freedom in that country.
    - American Society of International Law (<http://www.asil.org/ilib/ilib0107.htm>)
    - State Department (<http://www.state.gov/g/drl/irf/>) – annual report about international religious freedom
  - 4) What action(s) have government officials taken with regard to the religious issue featured in the story?
  - 5a) If the story is an account of an event or situation in the U.S., what U.S. Supreme Court cases might be relevant to the story?
  - 5b) If the story is an account of an event or situation in another country, what precedents (legal, cultural, historical) from that country or region of the world might be relevant to the story?



# Assessment

## Freedom of Religion



1. Which was the first colony to permit freedom of religion?  
a) Virginia                      b) Pennsylvania                      c) Maryland                      d) Rhode Island
2. Where is the phrase "separation of church and state" found in the U.S. Constitution?  
a) The Preamble                      b) in the Bill of Rights                      c) nowhere                      d) Article I
3. Which prohibits the federal government from setting up a religion?  
a) Establishment Clause                      b) Article II                      c) Article IV                      d) the states
4. Which prohibits government from interfering with a person's practice of religion?  
a) Elastic Clause                      b) Supremacy Clause                      c) Establishment Clause                      d) Free Exercise Clause
5. How did the Founding Fathers view freedom of religion?  
a) as part of government                      b) as a natural right  
c) as not important                      d) as limited to property owners
6. Which word describes a type of school that includes religious education?  
a) discrimination                      b) tolerance                      c) pluralism                      d) parochial
7. A strong supporter of a Bill of Rights and absent from the Constitutional Conventions was  
a) George Washington                      b) Ben Franklin                      c) Thomas Jefferson                      d) Roger Sherman
8. The belief in a "free exercise of religion," is also found in the  
a) 1776 Virginia Declaration of Rights                      b) Preamble to the U.S. Constitution  
c) Sixth Amendment                      d) Magna Carta

### True / False – For every false statement, rewrite it to make it true.

9. TRUE FALSE Congress can restrict religious practice.
10. TRUE FALSE Students can lead prayer over the intercom in public schools.
11. TRUE FALSE All religions have equal representation in the First Amendment.
12. TRUE FALSE The U.S. government may create a state/national religion.
13. TRUE FALSE Student religious clubs may meet before or after school using school facilities.
14. TRUE FALSE A student may wear a large cross necklace and a t-shirt that states "I love Jesus."

15. **TRUE FALSE** Early settlers such as the Puritans believed in religious freedom for all people.

16. **TRUE FALSE** By law, all Americans must practice some religion.

17. **TRUE FALSE** Religious groups may speak out about moral issues and try to influence public policy but may not engage in partisan politics or they risk losing their tax-exempt status.

18. **TRUE FALSE** In defining and applying the principles of religious freedom articulated in the First Amendment, the Supreme Court has developed a series of “tests” to determine whether or not an action is constitutional.

**Essay**

19. Two views that represent possible understandings of religious freedoms are given below. Choose one and write a counterpoint response to those who advocate the view you have chosen. Draw upon the information from this unit to support your response.

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

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

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

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21. Select a Supreme Court case which focused on a religious liberty issue. Critique the court's decision. Provide reasoning based on the First Amendment to support your critique.

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

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# Answers

## Freedom of Religion

### Multiple Choice

1. d, 2. c, 3. a, 4. d, 5. b, 6. d, 7. c, 8. a

### True/False

9. False – Congress may not restrict religious practice

10. False – Students may not lead prayer over the intercom in public schools

11. True

12. False – The U.S. government may not create a state/national religion.

13. True

14. True

15. False – Many early settlers, such as the Puritans, believed that everyone in the community must adhere to the same religious beliefs and practices.

16. False – Based on First Amendment rights, everyone living in the United States may choose to practice any religion, or choose not to practice a religion.

17. True

18. True

### Essay

19 – 22. Answers will vary. Accept all answers that show an understanding of First Amendment rights.

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## Supporting Materials

### Videos:

*Not in our town*, [http://www.pbs.org/niot/citizens\\_respond/illinois.html](http://www.pbs.org/niot/citizens_respond/illinois.html)

*Alters of the World – The Eastern and Western Religions* (DVD)

### Resources

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

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

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

[www.adherents.com/Religions\\_By\\_Adherents.html](http://www.adherents.com/Religions_By_Adherents.html)

[http://www.civiced.org/index.php?page=the\\_constitution\\_papers](http://www.civiced.org/index.php?page=the_constitution_papers)

[http://topics.law.cornell.edu/wex/First\\_amendment](http://topics.law.cornell.edu/wex/First_amendment)

*“Without Freedom of thought, there can be no such Thing as Wisdom; and no such Thing as public Liberty, without Freedom of Speech.” Benjamin Franklin*

# Freedom of Speech



## Unit Overview

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

## Objectives

As a result of this unit, students will be able to:

- Compare and contrast “free speech” and “free expression”
- Analyze speech scenarios through the lens of time, place, and manner
- Interpret current events in the light of the First Amendment (free speech/rights)
- Express popular ideas clearly and effectively
- Express unpopular ideas clearly and effectively
- Analyze landmark Supreme Court cases relating to free speech and free expression

## Illinois State Standards

### Social Studies

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

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

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

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

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

### English/Language Arts

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

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

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

## National Standards

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

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

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

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

# Freedom of Speech

## Know

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

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

### Facts:

- Invasion of privacy
- *Schenck*
- Bethel v. Fraser
- *Tinker v. Des Moines* (1969)
- Texas v. Johnson
- Supreme Court precedent

## Understand

- Students' rights do not end when they enter the schoolhouse gate.
- Rights come with responsibilities.
- The First Amendment does not protect all types of speech.
- One of the rights guaranteed by the First Amendment is the freedom of speech: clothing, hairstyle, Internet, text messaging, statements made in public, etc.
- Protected speech: *Tinker v. Des Moines* (1969)
- Nine categories of unprotected speech:
  1. Obscenity
  2. Defamation
  3. Expression intended and likely to incite imminent lawless action
  4. Fighting words
  5. Unwarranted invasion of privacy
  6. Deceptive or misleading advertisements or those for illegal products or services
  7. Clear and immediate threats to national security
  8. Copyright violations
  9. Expression on school grounds that causes a material and substantial disruption of school activities
- Supreme Court precedent is the defining factor in speech cases. There is no written "set of rules" for citizens to follow; the freedom is shaped by Supreme Court decisions.

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## Key Cases

### Schenck v. U.S. (1919)

Court develops a two-pronged test to evaluate speech acts. Speech can be prohibited if (1) it is "directed at inciting or producing imminent lawless action" and, (2) it is "likely to incite or produce such action."

- Websites:
  - <http://www.oyez.org/oyez/resource/case/346/>
  - <http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=249&invol=47>

### Tinker v. Des Moines (1969)

Students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."

- Websites:
  - <http://www.landmarkcases.org/tinker/home.html>
  - [http://www.bc.edu/bc\\_org/avp/cas/comm/free\\_speech/tinker.html](http://www.bc.edu/bc_org/avp/cas/comm/free_speech/tinker.html)

## Freedom of Speech

### **Texas v. Johnson (1989)**

Flag burning is protected speech.

- Websites:
  - <http://www.oyez.org/oyez/resource/case/379/>
  - [http://www.bc.edu/bc\\_org/avp/cas/comm/free\\_speech/texas.html](http://www.bc.edu/bc_org/avp/cas/comm/free_speech/texas.html)
  - <http://www.landmarkcases.org/texas/home.html>

### **Bethel School v. Fraser (1986)**

The same rights given to adults do not apply to children in a school setting.

- Websites:
  - <http://www.oyez.org/oyez/resource/case/36/>
  - <http://www.law.uh.edu/teacher/bethel/>

### **Teacher Reference:**

- Website: Electronic Privacy Information Center: [http://www.epic.org/free\\_speech](http://www.epic.org/free_speech).  
This site offers teachers background information in the section, "Overview of Free Speech Protection," and includes a listing and description of unlawful restrictions and lawful regulations on speech.

### **Hook Activity**

#### **So What Do You Think?**

#### **Materials needed: newspapers, highlighters, paper and pencils**

Write OPINION on the board or chart paper. Have students identify words or phrases that suggest someone is offering an opinion, such as *I think, I believe, it seems to me*, etc. Write the words and phrases as they are generated. Have willing students use a selected word or phrase in a sentence to express an opinion.

Display several different images covering as many different topics as possible.

As each image is displayed, students should write down what they think of the image and/or event using as many different opinion words as possible. For now, have students keep their opinions to themselves.

Continue with the activity until all the images have been displayed. Create two columns on the board or chart paper: POSITIVE – NEGATIVE. Redisplay each image. Have students raise their hands as to whether they felt positively or negatively about the image.

Discuss how different opinions are about what people see and hear.

If possible, share a recent news clip of people in protest. Discuss how the First Amendment is used to express opinions. Talk about how free speech is protected and how different our society would be if free speech was not a basic right.

#### **Activity #1 – Whole Class & Student-Pairs Instruction – Freedom of Speech and Expression in Schools – Dress Codes.**

Materials needed: For whole class instruction = Copy of the Tinker decision & analysis sheet, copy of the current school dress code (see e.g., school handbook, Board of Education policies, athletic handbook), and a survey sheet for each student.

For student-pairs instruction = access to computer with Internet for each student pair.

## Freedom of Speech



### Whole Class Instruction - Survey

- Assign each student to conduct a survey of 10 people (2 students, 2 teachers, 2 school administrators, 2 parents of school-aged children, and 2 community members who do not have children in school) about school dress codes. Survey questions can include =
  - In general, do you favor or oppose school dress codes?
  - What are your reasons for favoring or opposing school dress codes?
  - If you favor dress codes, what should be included (e.g., clothing allowed, clothing forbidden, gender-specific rules, rules about hair length, rules about tattoos or piercing, etc.)?
  - What should be the consequences for violations of school dress codes?
- Collate survey responses, analyze trends, and have students discuss the merits and limitations of views expressed in surveys.

### Whole Class Instruction – Tinker decision

- Assign as homework, student reading and analysis of Tinker decision. Analysis sheet =
  - Briefly list the facts of the case.
  - When was the case decided?
  - What was the key issue of the case?
  - What did the majority decide?
- Discuss the Tinker case using the analysis sheet to guide discussion.

### Whole Class Instruction – School Dress Code

- Distribute copies of the current school dress code.
- Analyze the current school dress code in light of the Tinker decision and the survey results.

### Student Pairs Instruction – Dress Code Cases

- Have student pairs access the First Amendment Center website = [http://www.firstamendmentcenter.org/Speech/studentexpression/topic.aspx?topic=clothing\\_dress\\_codes\\_uniforms](http://www.firstamendmentcenter.org/Speech/studentexpression/topic.aspx?topic=clothing_dress_codes_uniforms)
- Have student pairs read and discuss the article by David Hudson, Jr.
- Assign student pairs to read and summarize additional dress code cases as linked to this website via “Related” articles at the end of Hudson’s article.

### **Activity #2 – Simulated School Board Hearing on Changing the Dress Code Policy**

Materials needed: Arrange room furniture to simulate a school board hearing.

- Divide the class into five groups: school board members (5 to 7), parents for a dress code, parents against a dress code, students for a dress code, students against a dress code.
- Explain that the school board group will determine the rules and procedure for the school board hearing, including how long people have to speak.
- Provide time for the four opinion groups to organize their ideas to present to the school board. As time allows, either have a spokesperson for each group speak to the school board, or allow individuals to speak as they choose.
- Conduct the simulated school board hearing.
- Following talk about how public hearings allow the public to express their opinions and influence public policy decisions.

### **Activity #3 – Book Censorship: Book Challenges and Banning in Schools and Public Libraries**

Materials needed: Whole class instruction = copies of quotations on censorship, paper, pens/pencils, simulation handout with tasks and roles, contact information for school and district officials for simulation; student-pairs instruction = access to computer with Internet for each student pair.



## Freedom of Speech



### Whole Class Instruction – Quotations on Censorship

- Provide each student with a list of quotations about censorship. Have students read the list, select one or two that resonate with them, and jot notes about their thoughts regarding the quote for discussion.
- Conduct a whole class discussion about the quotes students selected and their thoughts. Record ideas in summary form for the class to see. Save the summary form.

### Whole Class Instruction – Objectionable Content and Books Challenged/Banned

- Have each student divide a sheet of paper in half. On one half, have students brainstorm the types of objectionable content that might cause some people to challenge or ban a book. On the other half, have students brainstorm the titles of books that they are familiar with that they think may have been challenged or banned.
- Call on each student in turn to state his/her brainstormed ideas about objectionable content and then about challenged or banned works. Record all ideas on a summary form for the class to see. Save the summary form.

### Student Pairs Instruction – Online Research about Objectionable Content and Books Challenged or Banned

- Assign student pairs to search one of the following websites. Students should check off brainstormed ideas on the summary form as they find support for them on the websites and add to the brainstormed summary form as they find new information.
- Have student note any books that have been banned or challenged that are currently taught as part of the approved curriculum in their school.

### Websites:

American Library Association:

<http://www.ala.org/ala/oif/bannedbooksweek/bannedbooksweek.htm>

First Amendment Center:

[http://www.firstamendmentcenter.org/Speech/studentexpression/topic.aspx?topic=book\\_censorship](http://www.firstamendmentcenter.org/Speech/studentexpression/topic.aspx?topic=book_censorship)

American Civil Liberties Union:

<http://www.aclu.org/freespeech/censorship/11433res20050926.html>

Online Books Page at University of Pennsylvania:

<http://onlinebooks.library.upenn.edu/banned-books.html>

National Coalition Against Censorship:

[http://www.ncac.org/action\\_issues/Classrooms.cfm](http://www.ncac.org/action_issues/Classrooms.cfm)

### Whole Class Instruction – School Policy Simulation

- Have students note that there are competing interests in issues of book selection – i.e., free speech rights, parental rights and interests to control children's access to materials and transmit their beliefs/values to their children, intellectual freedom rights, interests and obligation of professional educators to select quality materials to fulfill curricular objectives and state standards – thus making book selection a challenging decision.
- Assign or allow students to choose their role in the simulation – e.g., school board members, teachers, attorney, curriculum director, superintendent, parents, students, community members.
- Simulation task = Develop a board policy for the selection of books. Determine whether the board will ban any books. Determine whether parents or students can opt out of reading a required book. If so, determine what alternative assignments should be made for a student who is not reading the required book. Determine whether parents or community members can challenge a book. If so, determine the procedure for a challenge.
- Provide students with time to research and gather information in light of their roles. Facilitate students contacting school district personnel and other stakeholders for their insights.
- Hold policy making sessions in class for students to begin to develop policy.
- Compare student-developed policy with actual school district policy.

## Freedom of Speech



### Censorship Quotations

- “There is nothing more frightening than active ignorance.” – *Goethe*
- “Did you ever hear anyone say, ‘That work had better be banned because I might read it and it might be very damaging to me?’” – *Joseph Henry Jackson*
- “One cannot and must not try to erase the past merely because it does not fit the present.” – *Golda Meir*
- “You have not converted a man because you have silenced him.” – *John Morely*
- “I wrote Tom Sawyer and Huck Finn for adults exclusively, and it always distressed me when I find that boys and girls have been allowed access to them. The mind that becomes soiled in youth can never again be washed clean.” – *Mark Twain*
- “Liberty of speech invites and provokes liberty to be used again, and so brings much to a man’s knowledge.” – *Sir Francis Bacon*
- “I know of no safe depository of the ultimate powers of society than the people themselves; and if we think them not enlightened enough to exercise their control with a wholesome discretion, the remedy is not to take it from them, but to inform their discretion.” – *Thomas Jefferson*
- “Give me the liberty to know, to utter, and to argue freely according to conscience, above all liberties.” – *John Milton*
- “There are no crimes of thought; there are only crimes of action.” – *Clarence Darrow*
- “[W]e consider this case [New York Times v. Sullivan] against the background of a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.” – *Justice William J. Brennan, Jr.*
- “We can never be sure that the opinion we are endeavoring to stifle is a false opinion; and if we were sure, stifling it would be an evil still.” – *John Stuart Mill*
- “The fact is that censorship always defeats its own purpose, for it creates, in the end, the kind of society that is incapable of exercising real discretion.” – *Henry Steele Commager*

### For additional quotes, see:

<http://www.angelfire.com/ga/page451/quotes.html>

<http://www.online-literature.com/forums/showthread.php?t=3192>

<http://en.thinkexist.com/quotations/censorship/>

<http://www.brainyquote.com/quotes/keywords/censorship.html>

<http://chatna.com/theme/censorship.htm>

<http://www.worldofquotes.com/topic/Censorship/index.html>

[http://quotes.liberty-tree.ca/quotes\\_about/censorship](http://quotes.liberty-tree.ca/quotes_about/censorship)

## Freedom of Speech



### Activity #4 – Free Expression collage

Materials needed: magazines, glue sticks, scissors, large chart paper

- As a large group, discuss the concept of free expression. Talk about how free expression is shown within the school, within the community, within society at large
- Divide the class into small groups.
- Provide each group with a set of materials
- Students should look through the magazines and cut out images that depict free expression.
- Each group should create a free expression collage.
- Display the collages in the room.

### Activity #5 – What's in a Quote?

Materials needed: Quotes used in Activity 3, markers.

- Divide the class into small groups.
- Give three quotes to each group.
- Students are to create a poster around the quote in some way. For example the quote could be used to outline an image.
- Have each group share its poster.
- Display the posters in the room or hallway.

# Assessment

## Freedom of Speech



### Multiple Choice

Match the scenario to the correct category of unprotected speech.

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

1. A protester threatens to plant a bomb in a mall unless the military pulls its troops out of all foreign engagements. \_\_\_\_\_
2. A radio station advertises a radar detector that has been declared illegal in states reached by its airwaves. \_\_\_\_\_
3. A student throws rocks at the fans of a rival soccer team and incites other students to join in the brawl. \_\_\_\_\_
4. A disgruntled parent stands up at a parent-teacher meeting and says that a popular teacher "must be constantly drunk" because students can't figure out his grading system. \_\_\_\_\_
5. A local coffee shop uses an official likeness of the Simpsons on its signs without obtaining permission from Matt Groening or Fox TV. \_\_\_\_\_

**Constitutional or Unconstitutional?**

Based on your understanding of the First Amendment, explain why you believe each of the following to be constitutional or unconstitutional.

6. Five students come to school wearing black armbands to protest a new school rule that prohibits students from wearing hats in school.

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7. After giving a student campaign speech at school using “suggestive” language that could be considered vulgar, even though the literal meaning of the words was not obscene, the student is suspended.

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8. A student wears a button in class that says, “Legalize Marijuana.”

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9. A student wears a button in class that says, “Smoke Marijuana.”

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10. A student wears a shirt in class showing a marijuana leaf and the words, “Tastes Good!”

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11. A student in class wears a large cross necklace and a shirt that says, “I Love Jesus.”

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**Essay**

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

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13. 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?

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

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

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

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# Answers

## Freedom of Speech

### Multiple Choice

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

### Constitutional or Unconstitutional? (Answers will vary. Accept all reasoned responses.)

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

### Essay

- 12 – 16. Answers will vary. Accept all answers that show an understanding of First Amendment rights.



*“The freedom of the press is one of the great bulwarks of liberty, and can never be restrained but by a despotic government” Thomas Jefferson*

# Freedom of the Press



## Unit Overview

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

## Objectives

- As a result of this unit, students will be able to:
- Understand the meaning of freedom of the press
- Understand the historical development of press freedom
- Defend their journalistic decisions
- Understand how our “news” would be severely limited without press freedom
- Interpret current events in light of the First Amendment, specifically the Press
- Analyze landmark Supreme Court cases relating to press freedom

## Illinois State Standards

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

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

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

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

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

## National Standards

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

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

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

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

## Know

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

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

### Facts:

- New York v. Zenger
- Near v. Minnesota
- Schenck v. United States
- New York Times v. Sullivan
- FOIA – Freedom of Information Act
- Hazelwood v. Kuhlmeier
- New York Times v. Hayes

## Freedom of the Press



### Understand

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

<http://www.rcfp.org/homefrontconfidential/index.html>

### History of Press Freedom

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

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

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

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


### Historical Development of Freedom of the Press

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

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

After the American Revolution, newspapers took a more critical stance with the newly formed government. Newspapers reported the financial difficulties created by the worthless American currency and argued against new stamp taxes. When the states began to meet to discuss the formation of a new central government, the Constitution’s “Founding Fathers”

## Freedom of the Press



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

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

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

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

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### Key Cases

#### New York v. Zenger (1735)

Truth is valid defense against libel.

- Websites:
  - <http://www.nycourts.gov/history/zenger.htm>
  - <http://www.law.uh.edu/teacher/zenger>

#### Near v. Minnesota (1931)

Prior restraint case; U.S. Supreme Court struck down a Minnesota law designed to impose prior restraint (censor) a publication.

- Websites:
  - [www.oyez.org/oyez/resource/case/271/](http://www.oyez.org/oyez/resource/case/271/)
  - [http://www.bc.edu/bc\\_org/avp/cas/comm/free\\_speech/near.html](http://www.bc.edu/bc_org/avp/cas/comm/free_speech/near.html)

#### New York Times v. U.S. (1971)

Prior restraint case; newspapers cannot be prevented from publishing excerpts from a classified Department of Defense study of U.S. involvement in Indochina.

- Websites:
  - <http://www.oyez.org/oyez/resource/case/278/>
  - <http://www.lectlaw.com/files/case25.htm>
  - <http://www.law.umkc.edu/faculty/projects/ftrials/conlaw/priorrestraints.htm>

## Freedom of the Press

### Branzburg v. Hayes (1972)

Shield law case; news reporters must appear and testify before state and federal courts if subpoenaed.

- Websites:
  - <http://www.oyez.org/oyez/resource/case/48/>
  - [http://www.bc.edu/bc\\_org/avp/cas/comm/free\\_speech/branzburg.html](http://www.bc.edu/bc_org/avp/cas/comm/free_speech/branzburg.html)

### Hazelwood v. Kuhlmeier (1988)

Students' free press rights case; school administrators may censor school-sponsored publications as long as their actions are "reasonably related to pedagogical concerns"; thus, the court in this case held that student journalists do not have the same rights as professional journalists.

- Websites:
  - <http://www.oyez.org/oyez/resource/case/158/>
  - [http://www.bc.edu/bc\\_org/avp/cas/comm/free\\_speech/hazelwood.html](http://www.bc.edu/bc_org/avp/cas/comm/free_speech/hazelwood.html)
  - <http://www.landmarkcases.org/hazelwood/home.html>

### New York Times v. Sullivan (1964)

Libel case; public officials will not be awarded damages for defamatory falsehood related to their official conduct unless they can prove "actual malice" (i.e., that the publication made a statement with knowledge of its falsity or with reckless disregard for the truth).

- Websites:
  - <http://www.oyez.org/oyez/resource/case/277/>
  - [http://www.bc.edu/bc\\_org/avp/cas/comm/free\\_speech/nytvullivan.html](http://www.bc.edu/bc_org/avp/cas/comm/free_speech/nytvullivan.html)
  - [http://www.law.cornell.edu/supct/html/historics/USSC\\_CR\\_0376\\_0254\\_ZS.html](http://www.law.cornell.edu/supct/html/historics/USSC_CR_0376_0254_ZS.html)

## Hook Activity



### Newspaper Activity

Teacher should obtain several copies of newspapers. Engage in censorship of selected articles/ads by either crossing out information with a magic marker or tearing out articles/ads.

For example, censor articles/ads that

- (1) are critical of local, state, and/or federal government officials
- (2) feature material that someone might consider "obscene," e.g., an article about sexual matters, lingerie ads
- (3) feature products that someone might deem undesirable, e.g., alcohol.
- (4) feature opinions on the editorial page that the teacher doesn't agree with
- (5) are critical of a sports team or figure.

Ask students to share

- (1) their thoughts about your rationale for censorship in their newspapers
- (2) their thoughts about the legality of such newspaper censorship
- (3) reasons that some might support such censorship
- (4) reasons that some object to such censorship
- (5) their feelings about reading a censored paper
- (6) their thoughts about who, if anyone, should have the power to censor.

Note: This type of newspaper and magazine censorship is practiced in the Kingdom of Saudi Arabia. Topics typically censored include

- (1) anything deemed critical of the government, (2) anything deemed critical of Islam or holy figures such as Muhammed or Jesus, (3) anything deemed offensive to Saudi interpretation of Islamic sensibilities – e.g., women or men in shorts, underwear; ads or mention of forbidden foods such as alcohol or pork products, or (4) anything that speaks positively about the State of Israel.

## Freedom of the Press



### **Activity # 1 – Newspaper Activity: Exploration of Freedom of Press Issue(s)**

Materials needed: Student access to computers with Internet or hard copies of materials on websites given below. Students will also need copies of recent editions of newspapers.

Teacher decisions – Determine whether you want students to explore a variety of freedom of press issues, or prefer to have the class select one issue to explore in greater depth. Students can work individually, in pairs, or in small groups. Whole class sharing of student research and reflection is recommended.

Student Task – Explore issue(s) by searching designated websites. Make notes about the following:

- (1) What are the key historical developments for the issue?
- (2) What court cases are important for this issue?
- (3) What did you learn that was – surprising, encouraging, alarming?

Next, search recent newspapers for stories about the freedom of press issue. Make notes about the following:

- (1) Briefly summarize the newspaper account.
- (2) Which freedom of press issue is at stake in the article?
- (3) Based on your internet research about the issue's history and court cases, what do you predict will happen in this particular instance related in the newspaper account?
- (4) Does this news account reflect events that are serving to protect free press rights or threaten free press rights? Explain.

### **Freedom of Press Issues – Libel and defamation, Prior restraint, Shield laws, Blogging**

Sources for Freedom of Press Issues:

Libel and defamation

- Website: [http://www.firstamendmentcenter.org/press/information/topic.aspx?topic=libel\\_defamation](http://www.firstamendmentcenter.org/press/information/topic.aspx?topic=libel_defamation)  
This site features information about: (1) libel and defamation from an historical perspective with cases referenced and linked  
(2) basic requirements for plaintiffs in a defamation case (3) defenses and privileges to defend against a defamation claim.

Prior restraint

- Website: [http://www.firstamendmentcenter.org/press/information/topic/topic.aspx?topic=prior\\_restraint](http://www.firstamendmentcenter.org/press/information/topic/topic.aspx?topic=prior_restraint)  
This site features information about prior restraint from an historical perspective with cases referenced and linked.

Shield laws

- Website: [http://www.firstamendmentcenter.org/press/information/topic/topic.aspx?topic=shield\\_laws](http://www.firstamendmentcenter.org/press/information/topic/topic.aspx?topic=shield_laws)  
This sites features information about prior restraint from an historical perspective with cases referenced and linked.
- Website: <http://www.rcfp.org> (Reporters Committee for a Free Press) – click on “Shields and Subpoenas” on left sidebar.  
This site link features (1) newspaper accounts about shield laws, (2) proposed bills before Congress regarding shield laws.

Blogging

- Website: <http://www.firstamendmentcenter.org/press/information/topic/topic.aspx?topic=blogging>  
This site features information about: (1) blogging from an historical perspective with cases referenced and linked,  
(2) whether bloggers are journalists or not, (3) ramifications of blogging in the work place, and, (4) blogger anonymity.
- Website: <http://www.eff.org> (Electronic Frontier Foundation)  
This site features: (1) news stories, (2) court cases, (3) lots of linked topics including bloggers' rights, anonymity, censorship, Patriot Act.

### **Activity #2 – Freedom of the Press & the War on Terrorism**

Materials needed: Student access to computers with Internet or hard copies of materials on website given below.

## Freedom of the Press

Teacher decisions – Determine whether you want students to explore a variety of issues regarding freedom of the press and war on terrorism, or prefer to have the class select one issue to explore in greater depth. Students can work individually, in pairs, or in small groups. Whole class sharing of student research and reflection is recommended.

Student Task – Explore issue(s) by searching designated websites. Make notes about the following:

- (1) What is the context for this White Paper – see the “Forward” link.
- (2) Who developed/sponsored this White Paper?
- (3) Click on the “Chronology” link and quickly scroll through. What are the starting and ending dates for the chronology? What types of events are noted? From just a brief scan of the chronology, what conclusions might you draw? (Possible response = events are ongoing and complex; it’s hard for average citizens to keep track of all of these events)
- (4) Using an outline or bullet point format, what are the key points of the article on the issue you explored?
- (5) What are your thoughts and feelings about the issue?
- (6) Do you agree with the website’s use of Department of Homeland Security colors warning system to frame your issue? Explain.

Freedom of the Press and War on Terrorism Issues

- Covering war
- Access to terrorism-related court proceedings
- Domestic coverage
- Patriot Act
- Reporters’ privilege
- Freedom of information
- Roll back in state openness

Source for Freedom of the Press and War on Terrorism Issues:

Website: [www.rcfp.org](http://www.rcfp.org) (Reporters Committee for a Free Press) – click on “Homeland Confidential” on left side bar – link takes you to White Paper entitled, “Homeland Confidential: How the War on Terrorism Affects Access to Information and the Public’s Right to Know.” <http://www.rcfp.org/homefrontconfidential/index.html>

### Activity #3 – Freedom of the Press and Freedom of Information Act

Materials needed: Student access to computers with Internet or hard copies of materials on website given below.

Teacher decisions – The website given below features 13 sections of information about the FOIA. The sections vary in length and complexity, so teachers can match students to sections that will provide the appropriate level of challenge for each student. Students can work individually, in pairs, or in small groups. Whole class sharing of student research and reflection is recommended.

Student Task – Explore your assigned FOIA section by searching the designated website. Using an outline or bullet point format, what are the key points of the article on the issue you explored? Brainstorm some types of information you would be interested in obtaining through the FOIA.

Source for FOIA: Website: [http://www.firstamendmentcenter.org/press/information/topic.aspx?topic=how\\_to\\_FOIA](http://www.firstamendmentcenter.org/press/information/topic.aspx?topic=how_to_FOIA)

Extension ideas –

- Click on the “Post 9/11” link on the right side bar. How has FOIA been impacted by 9/11?
- Conduct a newspaper search to locate stories in which the reporter gained information by using FOIA.
- As a class, select a topic of interest, and submit a FOIA request.

## Freedom of the Press

### Activity # 4 – Global Freedom of the Press

Materials needed: Student access to computers with Internet or hard copies of materials on website given below.

Teacher decisions – Determine student work groupings - individually, in pairs, in small groups, or as a whole class. If whole class instruction is desired, access to an LCD projector is desirable.

Student Task – Explore the website given below to answer the following questions:

- (1) Where has the U.S. ranked in freedom of the press compared with other nations for the past the years 2003, 2004, 2005? Does the U.S.'s ranking surprise you? Explain.
- (2) Has the U.S.'s ranking changed over time? If so, how? If so, why? Given your research in the other activities in this Freedom of the Press section, what do you predict would be the U.S.'s ranking for 2006?
- (3) What criteria/rationale does the organization use in its rankings? Do these criteria seem sound and reasonable? Would you suggest altering in the criteria? Explain.
- (4) Who are named as “predators” – or threats to press freedom and why?
- (5) What differences in levels of press freedom do you notice for various regions of the world? What may account for those differences?

Source for Global Freedom of the Press:

Website: [http://www.rsf.org/article.php3?id\\_article=11715](http://www.rsf.org/article.php3?id_article=11715) (Reporters Sans Frontiers – Reporters Without Borders)



### Activity #5 – Create a Class Newspaper

Materials: newspapers

As a class, discuss the different sections of the newspaper, such as national and local news, opinion page, sports, and features.

Divide the class into small groups. Assign one section of the class newspaper to each group. One small group should be in charge of production. Each group should write one or two articles for the paper. The production group will monitor the progress of each group, plan, and produce the newspaper. Ask interested students to create any needed art and design a banner.

Compile the class newspaper. Create a new edition of the newspaper as time allows.

# Assessment

## Freedom of the Press



### Constitutional or Unconstitutional?

Based on your understanding of the First Amendment, explain why you believe each of the following to be constitutional or unconstitutional.

1. The official student newspaper is censored simply because of the position taken in an editorial.

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2. All copies of an “underground” newspaper (produced off school grounds and passed out to students during lunch hour) are confiscated because it is believed that an unofficial student newspaper does not have First Amendment protection in school.

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3. School administration says that an “underground” newspaper may be distributed on school grounds but ONLY in the cafeteria during lunch hours.

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4. The editor of the student newspaper writes a column in which he calls the principal a “jerk” for demanding the newspaper be submitted for the principal’s prior review before publication.

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5. The distribution of an “underground” newspaper on school grounds is banned because students have been caught reading it during their class time, which is a disruption.

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

- |                                   |  |
|-----------------------------------|--|
| <b>6. Schenck v United States</b> | <i>A. Supreme Court defines what constitutes obscenity.</i><br><i>B. Reporter wrote story of illegal drug use and refused to obey a court order to reveal sources.</i>                     |
| <b>7. Hazelwood v Kuhlmeier</b>   | <i>C. Involved the Espionage Act.</i><br><i>D. Government can't stop publication unless threat to national security is established, nor punish for publication.</i>                        |
| <b>8. Miller v California</b>     | <i>E. Journalists can't be protected for shielding a source for illegal activity.</i><br><i>F. Individual convicted after producing a pamphlet stating that military draft is illegal.</i> |
| <b>9. New York Times v U.S.</b>   | <i>G. Individual circulated sexually explicit pamphlets and lost in Supreme Court.</i><br><i>H. Allows administrator to censor if article does not have "valid educational purpose."</i>   |
| <b>10. Branzburg v Hayes</b>      | <i>I. Students sue school district for censoring articles in school newspaper on pregnancy.</i><br><i>J. After the fact, top-secret defense papers are printed.</i>                        |

**True / False – For every false statement, rewrite it to make it true.**

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

**Essay**

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

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

*Bethel v. Fraser*                      *Hazelwood v. Kuhlmeier*                      *Tinker v. Des Moines*

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

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# Answers

## Freedom of the Press

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

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

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

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

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

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

### **Matching**

- 6. C & F
- 7. H & I
- 8. A & G
- 9. D & J
- 10. B & E

### **True/False**

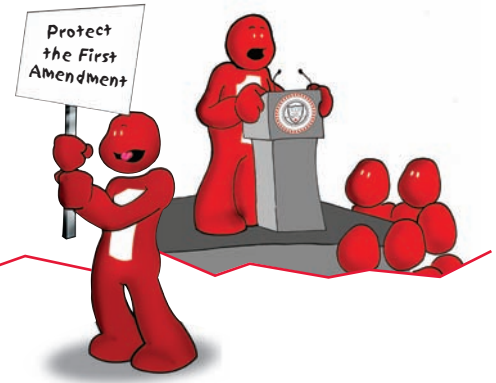
- 11. True
- 12. False – Web page publishers must operate under press laws.
- 13. False – Photos found on web pages are protected by copyright laws.
- 14. False – Reporters face possible contempt of court charges for shielding their sources.
- 15. False – Ethics are dynamic. Laws determine what you can do legally.

### **Essay**

16 – 18. Answers will vary. Accept all answers that show an understanding of First Amendment rights.

*“The First Amendment makes confidence in the common sense of our people and in their maturity of judgment the great postulate of our democracy.”*  
Justice William O. Douglas

# Right to Assemble/ To Petition Government



## Unit Overview

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

## Objectives

As a result of this unit, students will be able to:

- Understand the right to peaceably assemble
- Understand the right to petition the government for a redress of grievances
- Explain the proper process for exercising the right to assemble
- Explain the proper process for exercising the right to petition
- Interpret current events in light of one's First Amendment right to assemble
- Interpret current events in light of one's First Amendment right to petition
- Identify how the rights of assembly and petition have evolved throughout U.S. history
- Analyze landmark Supreme Court cases relating to the right to assemble and petition

## Illinois State Standards

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

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

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

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

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

## National History Standards

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

## National Civics and Government Standards

What are the Foundations of the American Political System?

## Know

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

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

## Right To Assemble/To Petition Government

### Facts:

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

### Understand

- Rights come with responsibilities.
- Government policies, positions, and officials can be challenged/criticized without fear of reprisal.
- People often organize in order to more effectively express their ideas in the civic arena by exercising rights to petition and assembly.
- The Founders drew upon British and American colonial historical experiences to formulate the rights of petition and assembly in the First Amendment.

### Brief History of Right to Peaceably Assemble and Petition the Government

- 1776 – 1790** Declarations of Rights of newly-formed states of Pennsylvania (1776), North Carolina (1776), New Hampshire (1784), and Massachusetts (1790) include guarantees for peaceable assembly and petition.
- 1670** William Penn arrested in London for delivering an orderly sermon and charged with “unlawful, tumultuous assembly that disturbed the king’s peace.”
- 1876** In *United States v. Cruikshank*, it is determined that “The very idea of a government, republican in form, implies a right . . . to meet peaceably for consultation in respect to public affairs, and to petition for a redress of grievances.”
- 1937** U.S. Supreme Court rules that the right to peaceably assemble “for lawful discussion, however unpopular the sponsorship, cannot be made a crime.”
- 1939** In *Hague v. C.I.O.*, the Court rules that peaceful demonstrators may not be prosecuted for “disorderly conduct.”
- 1940** Supreme Court holds that “orderly union picketing that informs the public of the issues is protected by the constitutional freedom of speech and of the press and the right of peaceable assembly. . .”
- 1941** In *Cox v. New Hampshire*, Supreme Court upholds a local ordinance that requires every parade or procession on a public street to obtain a license for a fee.”
- 1963** In *Edwards v. South Carolina*, the Supreme Court overturns breach of peace convictions of 180 black students who had peacefully marched to the state capitol to protest discrimination.
- 1980** The Supreme Court upholds the authority of military base commanders to require approval before military personnel can petition members of Congress.
- 1983** Supreme Court holds that the distribution of leaflets and the carrying of picket signs on public sidewalks are protected by the First Amendment.

## Right To Assemble/To Petition Government

### Key Cases

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

### Hook Activity

#### Public Assembly

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

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

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

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

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

## Right To Assemble/To Petition Government

### LEARNING ACTIVITIES

#### Activity #1 – Historical Overview

Materials needed: Student access to computers with Internet or hard copies of materials on websites given below.

Websites:

- <http://caselaw.lp.findlaw.com/data/constitution/amendment01/21.html> (Use for Questions 1 – 6 below.)
- <http://www.firstamendmentcenter.org/petition/overview.aspx> (Use for Questions 7 – 11 below.)
- <http://www.firstamendmentcenter.org/Assembly/overview.aspx> (Use for Questions 12 – 14 below.)

Student Task:

Explore the history of the rights to assemble and petition. Make notes using the following guiding questions. Students can work individually, in pairs, or in small groups. Whole class discussion of student responses is encouraged.

<b>Question</b>	<b>Sample Student Responses</b>
1. Describe the key event in British history leading to development of the right to petition.	1. Details about 1215 – Magna Carta.
2. How has the meaning of the right to petition expanded?	2. Demands for government to exercise its powers; right to access to courts.
3. What issue was at stake when the First Amendment right to petition began to be more widely exercised?	3. Slavery
4. What was the first U.S. Supreme Court case involving the right to petition?	4. Cruikshank.
5. What were the major findings of the U.S. Supreme Court in the Hague case?	5. Based on the Fourteenth Amendment privileges and immunities clause, the state can place some regulations on the right to assemble, but not use regulations to essentially abridge or deny this right, based on the Fourteenth Amendment due process clause, the right to assemble applies to aliens as well as to U.S. citizens.
6. Which rights can be categorized under the banner, “freedom of expression?”	6. Freedom of speech, freedom of the press, right to petition, and right to assemble.
7. What did the Founders view as King George III’s fatal error?	7. Refusal to listen and respond to the colonists’ petitions for redress of grievances.
8. During the colonial era, who was permitted to petition for a redress of grievances?	8. Women, Native Americans, slaves – in addition to male, property-owning elite.
9. What issues were submitted as petitions during colonial times?	9. Tax questions, issues about tribal lands, emancipation, public corruption, debt actions, property settlements, estate contests, divorce judgments, criminal appeals, etc.
10. As the colonies grew and developed, what changes occurred with regard to the ability of colonists to petition?	10. Government officials were less able to respond to persona petitions; some assemblies imposed rules to try to lessen the number and complexity of petitions submitted.
11. By the 1800s, how had the right to petition changed?	11. Moved from a personal plea to an organized way for a group to express an opinion – e.g., abolitionists, suffragists, etc.
12. Give examples of groups who have exercised the right to assemble.	12. Striking workers, civil rights advocates, anti-war demonstrators, KKK marchers.
13. Describe the case in which the U.S. Supreme court defended the assembly rights of a person who talked about an unpopular doctrine.	13. DeJonge v. Oregon – 1937 – protected right of appellant to hold a meeting to teach about the tenets of communism.
14. What type of assembly does the First Amendment protect? When can the state restrict this right?	14. Peaceful; must be a “clear and present danger” or an “imminent incitement of lawlessness.”

## Right To Assemble/To Petition Government



### Activity #2 – Newspaper Activity: Rights to Petition and Assemble Today

Materials needed: Newspapers (variety of recent dates and newspaper resources) for students, scissors, poster board, markers, glue.

#### Student Task:

Americans today exercise their right to petition the government in a variety of ways – lobbying, letter-writing, e-mail campaigns, testifying before tribunals, filing lawsuits, supporting or opposing referenda, collecting signatures for ballot initiatives, peaceful protests, speaking out at public meetings, or filing lawsuits. We exercise our right to assemble by holding peaceful gatherings such as protests, parades, meetings, or assemblies. We can join organizations or associations for social, political, professional, recreational, economic, or other peaceful purposes.

Conduct a newspaper search for articles and/or photographs about people exercising their petition and/or assembly rights. Cut out the article and paste it on poster board under the category, “right to petition” or “right to assemble.” Consider whether other First Amendment rights – e.g., freedom of religion, freedom of speech, or freedom of the press – are featured in the article and/or photograph. Be prepared to discuss the content of your clippings. Also include any articles and/or photos that illustrate threats to the rights to petition or assemble.

Students can work individually, in pairs, or in small groups. Whole class sharing of posters is encouraged. Students should note any trends that their newspaper search reveals.

### Activity #3 – Balancing Competing Interests in Exercising the Rights to Petition and Assemble

Materials needed: Student access to computers with Internet or hard copies of materials on websites given below.

Opportunities for students to interview members of the press and media, police, and local governmental officials.

#### Websites:

- <http://www.justiceonline.org> = Partnership for Civil Justice – click on “National Lawyers Guide report” – right sidebar
- <http://www.firstamendmentcenter.org/assembly/overview.aspx> = First Amendment Center – click on links on right sidebar
- City of Chicago v. Morales et al (1999) <http://www.law.cornell.edu/supct/html/97-1121.ZS.html>

#### Student Task:

The exercise of one’s individual rights is always balanced by the need to protect the rights of others. Using the websites given and through interviews with relevant members of the press and media, police, and local government, explore the following issues and prepare arguments to support both points of view. Whole class discussion of these issues and viewpoints is encouraged.

#### Striking a Balance between:

- Protecting security by having the police, FBI, etc. keep tabs on suspected terrorists or criminals, and engaging in the practice of collecting information and invading the privacy of individuals or groups who are not violent or engaged in criminal activity but who advocate unpopular ideas or are opposed to those in political office. When is it okay to spy on, infiltrate, create lists and data files, or conduct interviews with those suspected of terrorism or criminal activity? What is the danger of abusing powers and engaging in intimidation of innocent citizens? What exists to protect people from abuses? What is the danger of failing to gather relevant intelligence in order to arrest criminals or prevent future terrorist acts?
- Keeping the peace, protecting the health and safety of the public, avoiding undue public inconvenience during assemblies, and permitting people to assemble and express views that are unpopular or in opposition to those in political office. What types of rules are reasonable and necessary – e.g., permits, fees for police presence and clean-up, liability insurance, restrictions



## Right To Assemble/To Petition Government



on time, place, and manner? Are practices such as “free speech zones” or “buffer zones” reasonable or an infringement on First Amendment rights? Are crowd-control practices such as checkpoints, arrests and detentions, use of non-lethal weapons (e.g., tasers, tear gas, etc.), or containment pens reasonable and necessary? What exists to protect people from abuse of police power and intimidation? What exists to protect non-protesters from breaches of safety or excessive costs due to protester damage?

- How can the press and media ensure that its coverage of events is fair, balanced, and unbiased? Do members of the press and media allow their personal views – political, moral, religious, etc. – to color their reporting of events? Do members of the press and media focus on the sensational, emotional, violent, or extreme in order to generate public interest and attention and perhaps distort the view of an event? Do members of the press or media ignore some events and thus limit the ability of some groups to petition and bring issues into the public sphere? Do corporate interests or ties of the press or media influence their coverage of events? What exists to promote fair, balanced, and unbiased news coverage?

# Assessment

## Right To Assemble/ To Petition Government



### Multiple Choice

1. The Supreme Court has held the government may regulate the right to assemble if the “event”
  - a) Threatens the public’s health and safety
  - b) Differs from those of most of society
  - c) Subjects other groups to ridicule
  - d) Is thought to be unpatriotic
2. The right to assemble can only be limited if the restrictions
  - a) Apply equally to all groups
  - b) Serve to fulfill a legitimate government interest (protection of public property)
  - c) Are vague and confusing
  - d) Both a and b
3. The Supreme Court has ruled that demonstrators may
  - a) Be arrested for disorderly conduct if their actions lead to a public disturbance
  - b) Not be required to obtain permits in order to demonstrate in public places
  - c) Be required to obtain a permit before proceeding with a public demonstration
  - d) Not be arrested for disorderly conduct simply because others have reacted to their march with violence
4. The government can enforce rules about
  - a) The time and content of assemblies
  - b) The time and place of assemblies
  - c) Both a and b
  - d) Neither a nor b
5. The American Nazi Party sought to parade in a community where many Jewish people lived. The Supreme Court would likely find the parade
  - a) Unconstitutional because the march presents a clear and present danger to the community
  - b) Constitutional and uphold the right of Nazis to parade peacefully
  - c) Unconstitutional and allow for the arrest and convictions of the Nazi marchers
  - d) A question outside of their jurisdiction and matter for the local community to decide

### Constitutional or Unconstitutional

Based on your understanding of the First Amendment, explain why you believe each of the following to be constitutional or unconstitutional.

6. Lobbying congressmen by the National Rifle Association is an activity protected by the right of assembly.

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

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

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9. The government may place restrictions on assembly that only apply to certain groups or only because of theme or subject.

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

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**Essay**

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

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

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13. Cite three examples of how restrictions have been imposed on the right of assemble, and explain how those restrictions have been justified by the government.

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# Answers

## Right To Assemble/To Petition Government

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

1. a
2. d
3. d
4. b
5. b

### Constitutional – Unconstitutional

6. Sample answer – Constitutional. The National Rifle Association is a nationally recognized group that has the right to come together to lobby congresspersons.
7. Sample answer – Unconstitutional. The student has a constitutional right to circulate a petition among his or her classmates.
8. Sample answer – Constitutional. It is against the law to assemble with the intent of harming others.
9. Sample answer – Unconstitutional. The government may not restrict the right of individuals to assemble as long as they assemble peacefully.
10. Sample answer – Constitutional. Students may exercise the First Amendment right to peacefully assemble.

### Essay

11 – 13. Answers will vary. Accept all answers that show an understanding of First Amendment rights.

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## Supporting Materials

### Texts:

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

Smith, D.E. (2009). *We the People: The citizen and the Constitution*. Calabasas, CA. Center for Civic Education. Available from [www.civiced.org](http://www.civiced.org)

### Videos:

Skokie: Rights or Wrong

Constitution: The delicate balance

### Web sites:

[http://www.firstamendmentcenter.org/Assembly/cases\\_resources\\_summary.aspx](http://www.firstamendmentcenter.org/Assembly/cases_resources_summary.aspx) - First Amendment Center list of Freedom of Assembly and Petition Supreme Court Cases

[www.billofrights.org](http://www.billofrights.org) – Bill of Rights Institute

[www.crf-usa.org](http://www.crf-usa.org) – Constitutional Rights Foundation

# Student Journalism

*Contributed by Randy Swikle*

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

## Values of a Student Newspaper

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

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

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

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

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

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

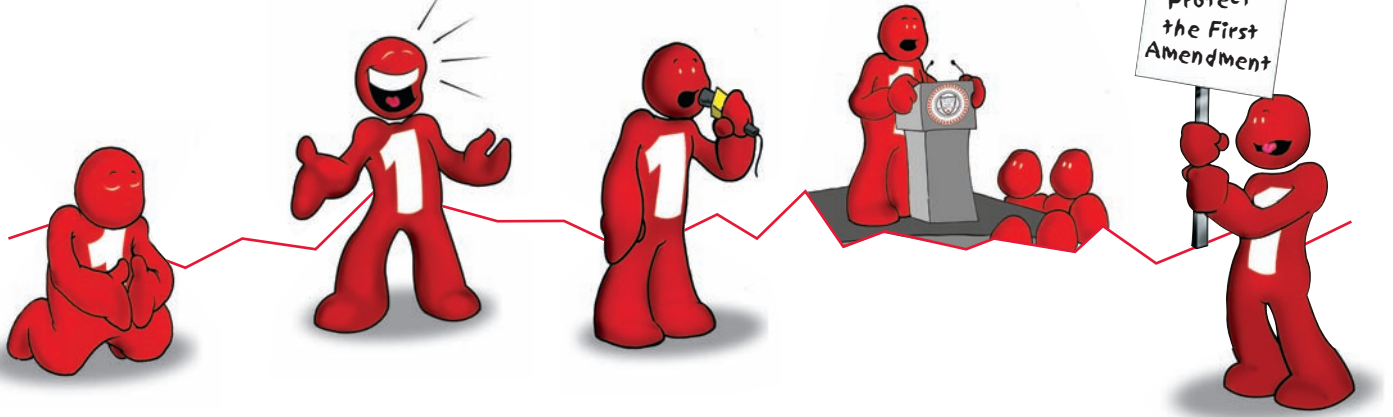
Finally, a journalism class and a student newspaper provide diverse learning opportunities that enable students to engage in the school's mission rather than to approach the mission as if it were merely a conceptual guide that lacks practical application.

## Ethics in Student Journalism

1. Be truthful in your reporting! Verify your facts. Your job is to REPORT the news, not create it.
2. Be accountable for your work. If a mistake is made, run a retraction/correction immediately.
3. Let ethics guide you. Staff members should report in an ethical and responsible manner.
4. Be judicious with regard to stories run. Do not unnecessarily embarrass individuals. Ask yourself – is this story newsworthy?

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

# First Amendment Handout



## Five freedoms are guaranteed by the First Amendment

### Religion

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

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

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

### Speech

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

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

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

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

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

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

### Press

America's first newspaper, *Publick Occurrences, Both Forreign and Domestick*, was published on Sept. 25, 1690.

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

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

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

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

### Assembly

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

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

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

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

### Petition

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

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

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

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

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

# First Amendment Handout

## Not all speech is protected

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

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

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

### (1) Obscenity

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

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

### (2) Defamation

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

- *Publication.*

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

- *Identification.*

The statement must identify the person claiming to be libeled.

- *Harm.*

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

- *Fault.*

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

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

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

### (4) Fighting words

When a person uses words so offensive and inflammatory that they disrupt the peace by provoking the person addressed to acts of violence, the speaker is not protected by the First Amendment. If words (apart from the content of the ideas they convey) are likely

to shock passersby and incite them to commit unlawful acts, the speaker is not protected.

### (5) Unwarranted invasion of privacy

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

- *Public disclosure of private and embarrassing facts.*

Does the information lack legitimate public concern?

- *False light.*

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

- *Intrusion.*

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

- *Misappropriation.*

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

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

Advertising that misleads a reasonable consumer (buyer) by



misrepresenting or omitting important information is not protected by the First Amendment.

Advertising for illegal products or services is also subject to government penalties. The government may regulate advertising in some situations to protect consumers.

### (7) Clear and immediate threats to national security

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

### (8) Copyright violations

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

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

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



# First Amendment Handout

## DEFINING MOMENTS

### Courts interpret the First Amendment



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

# First Amendment Handout

## Rights also bring responsibilities

The shield of the First Amendment can be used for good or bad. A person's motives, values and moral awareness are among the factors that direct an individual to good or bad, right or wrong decisions. First Amendment freedoms intentionally or inadvertently can be abused. Supreme Court Justice Byron White warned against frustrating the core value of the

amendment, which is protecting the "flow of intelligence" necessary to support self-government in a free society. He criticized those who would use the shield of the amendment for unethical purposes.

### Defining Ethics

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

### Deciding What's Right

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

### Adopting a Code of Ethics

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

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

### Promoting Ethics

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



# Additional First Amendment Activities

## Which Freedom Would You Sacrifice?

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

## The Majority Can Be Wrong

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

## First Amendment For All!

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

## Five Freedom Scenarios

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

## Debate

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

## Identify the Freedom(s)

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

- Tinker v. Des Moines (Speech, Press)
- Hazelwood School District v. Kuhlmeier (Speech, Press)
- New York Times v. Sullivan (Speech, Press)
- Branzburg v. Hayes (Press)
- Abington School District v. Schempp (Religion)
- Texas v. Johnson (Speech)

## Deceptive Ads

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



### Newspaper Activity: Court’s Interpretation

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



### Newspaper Activity: Letters to the Editor

Question: Should letters to the editor be checked for factual accuracy before publication? Using the Letters to the Editor section of your local newspaper, underline verifiable factual information as opposed to opinion.

As editor of the newspaper, would you feel ethically compelled to check the accuracy of the information, knowing that inaccurate information could be just as “influential” as accurate information? How much would it cost in time and money to verify? Would you contact the sender to confirm the source of the letter? Would or should a small newspaper with fewer resources than a large, metropolitan newspaper take similar precautions. In small groups, develop a list of ethical practices for printing letters to the editor.

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



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

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

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

1. A student is prohibited from passing out anti-war brochures on school grounds because they were not produced in school by an official organization. This action is:  
**a) Constitutional**                      **b) Unconstitutional**

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2. In fulfillment of an assignment to write a book report on any book, a student chooses to present a book report on the Holy Bible before her classmates. The student's action is:  
**a) Constitutional**                      **b) Unconstitutional**

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3. The football coach leads his team in prayer before the big game. The coach's action is:  
**a) Constitutional**                      **b) Unconstitutional**

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4. A girl is reading the Holy Bible in study hall, and the teacher takes it away from the girl. The teacher says that the Holy Bible cannot be read in school due to separation of church and state. The teacher's action is:  
**a) Constitutional**                      **b) Unconstitutional**

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5. The official student newspaper is censored by administration because of a position taken in an editorial. This action is:  
**a) Constitutional**                      **b) Unconstitutional**

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6. All copies of an “underground” newspaper are confiscated by administration because authorities believe an unofficial student newspaper does not have First Amendment protection at school. This newspaper is produced off school grounds and distributed to students during lunch hour. This action is:

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

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7. School officials say that an “underground” newspaper may be distributed on school grounds but ONLY in the cafeteria during lunch hours. This action is:

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

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8. The editor of the student newspaper writes a column in which he calls the principal a “jerk” for demanding the newspaper be submitted for the principal’s prior review before publication. The editor’s action is:

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

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9. The student newspaper publishes an editorial calling for students to walk out of their 2nd period class on Tuesday to demonstrate their support of an upcoming school referendum. The newspaper’s action is:

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

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10. Five students come to school wearing black armbands to protest a new school rule that prohibits students from wearing hats in school. The students’ actions are:

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

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11. During his lunch hour, a student circulates a petition calling for better food and quicker service in the cafeteria. The principal punishes the student for circulating a petition that criticizes the school cooks. The principal’s action is:

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

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12. The principal bans the distribution of an “underground” newspaper on school grounds because students have been caught reading it during their class time, which is a disruption.

The principal’s action is:

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

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13. A student is suspended for giving a campaign speech at school because he used “suggestive” language that could be considered vulgar even though the literal meaning of the words was not obscene. This suspension was:

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

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14. The principal allows “Away in a Manger” to be broadcast over the public address system during passing periods at school during the Christmas season. The principal’s action is:

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

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15. The choir director has the choir sing religious Christmas carols during the Winter Concert at school. The choir director’s action is:

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

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16. A student newspaper (not considered a public forum) was censored because it contained two articles on divorce and teen pregnancy. These topics were considered too sensitive and unsuitable for immature audiences. This censoring is:

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

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17. A student newspaper selects any “good taste” pictures from the Internet and uses them to illustrate feature stories. The newspaper’s action is:

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

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18. The student newspaper prints the names of two 18-year-old students who were arrested (but not yet tried) and charged with stealing computers from the library. The newspaper’s action is:

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

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19. The school sponsors bacculaureate religious services before graduation. It is an entirely voluntary event, held outside school hours, and all denominations are allowed to participate.

The school's action is:

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

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20. The administrator of a private school censors the student newspaper because it contained an editorial that opposed a new dress code policy. The administration's action is:

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

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

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

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

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

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

The student's action is:

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

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

The student's action is:

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

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25. A student in class wears a shirt with a Nazi swastika. The student's action is:

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

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

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

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



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

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

**B. Hazelwood School District v. Kuhlmeier (1988)**

**C. Bethel v. Fraser (1986)**

- \_\_\_\_\_ 36. The Spectrum student newspaper
- \_\_\_\_\_ 37. Protest against the Vietnam War
- \_\_\_\_\_ 38. "Expression must not create a clear and substantial disruption of school activities."
- \_\_\_\_\_ 39. Black armbands
- \_\_\_\_\_ 40. Divorce and teenage pregnancy
- \_\_\_\_\_ 41. Censorship is permitted for legitimate educational reasons not intended to silence a viewpoint that school officials disagree with or that is unpopular.
- \_\_\_\_\_ 42. Students and teachers do not shed their constitutional rights to freedom of speech at the schoolhouse gate.
- \_\_\_\_\_ 43. Lewdness
- \_\_\_\_\_ 44. "Students may not be regarded as closed-circuit recipients of only that which the State chooses to communicate. They may not be confined to the expression of those sentiments that are officially approved."
- \_\_\_\_\_ 45. If a student publication by either school policy or practice has been opened up as a "public forum" or "forum for student expression" where students have been given authority to make the content decisions, the standards of which case apply.

**PART V:** Multiple Choice. Circle the correct answer.

- 46. How many words are in the First Amendment?      **45** 65 75 85 95
- 47. How many freedoms are listed in the First Amendment?      3 **5** 6 8 9
- 48. How many amendments are in the Bill of Rights?      3 **5** 9 10 13
- 49. What year was the Bill of Rights ratified?      **1776** 1787 1791 1795 1799
- 50. Which is not one of the First Amendment 3 R's?      **Ratification**      **Rights**  
    **Responsibility**      **Respect**

# Test Answers

## Pre-and/or Post Test

### **PART I:**

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

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

*1. Sample answer – Students have the right to distribute material of protected speech, but school officials can determine the reasonable time and place of distribution.*

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

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

*4. Sample answer – Just as public school officials are not allowed to promote religion, they are not allowed to deny the religious rights of a student.*

*5. Sample answer – The First Amendment protects the right to express unpopular views. The administration cannot legally censor an opinion simply because administration disagrees with it. At the least, there must be a legitimate, educational reason for suppressing speech.*

*6. Sample answer – “Underground” newspapers have First Amendment protection at school and may be distributed on school property during school hours at a reasonable time and place determined by school officials.*


*7. Sample answer – School officials may regulate the reasonable time and place for distributing an “underground” newspaper on campus during school hours.*

*8. Sample answer – While name-calling may be protected in this case, many reputable journalists would consider it a breach of ethics. Many who support the rights of student journalists urge students to practice the “3 R’s” of the First Amendment: Rights, Responsibilities, and RESPECT. Students should carefully consider the purpose of their words and which strategies of expression will most effectively attain their goals.*

*9. Sample answer – Speech that calls for students to do something illegal or to do something that would create a substantial disruption in school is not protected by the First Amendment.*

*10. Sample answer – Except for the subject of protest, this case is very similar to *Tinker v. Des Moines*, in which the U.S. Supreme Court ruled that within certain parameters student expression in school is protected by the First Amendment.*

## Test Answers (Cont d)



11. *Sample answer – Within the parameters of Tinker and/or Hazelwood, students are permitted to circulate petitions during school hours. Once again, to help prevent such an activity from creating a clear and substantial disruption, school officials may regulate the reasonable time and place for circulating a petition. Courts in different jurisdictions have not agreed over the issue of whether or not school officials may require prior review of a petition. Until the U.S. Supreme Court agrees to hear such a case, lower courts and local school policies will dictate the practice within their own jurisdictions.*

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

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

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

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

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

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

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

19. *Sample answer – A public school cannot sponsor religious services.*

20. *Sample answer – Students in private schools do not have the same First Amendment protections as students in public schools.*

## Test Answers (Cont d)

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

22. *Sample answer – School officials would be justified in suppressing speech in school that promotes unlawful acts.*

23. *Sample answer – School officials would be justified in suppressing speech in school that advertises illegal products.*

24. *Sample answer – Absent any other compelling reasons, students are allowed to wear religious icons in school.*

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

### **PART III:**

26. (e)

27. (b)

28. (i)

29. (h)

30. (f)

31. (a)

32. (g)

33. (d)

34. (c)

35. (e)

### **PART IV:**

36. (b)

37. (a)

38. (a)

39. (a)

40. (b)

41. (b)

42. (a)

43. (c)

44. (a)

45. (a)

### **PART V:**

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

# Synopses of First Amendment Supreme Court Cases



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

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

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

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

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

Concerning speech advocating use of force or crime

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

Concerning the First Amendment protection of free speech in films.

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

Concerning the state enactment of any law respecting religion.

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

Concerning censorship of advertising.

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

Concerning verbal insults in public places.

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

Concerning sleeping in connection with protests.

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

Concerning obscenity in a book.

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

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

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

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

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

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

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

Concerning the content and location of a civil rights protest.

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

Concerning related issues to the previous case.

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

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

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

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

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

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

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

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

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

Concerning the arrest of peaceful demonstrators for criminal conduct.

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



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

Concerning burning of the United States flag.

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

Concerning the distribution of material promoting underage sex.

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

Concerning the defamation of public officials in the public media.

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

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

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

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

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

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

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

Concerning the distribution of political materials on federal military reservations.

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

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

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

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

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

Concerning censorship of a high school newspaper.

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

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

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

Concerning censorship of films deemed to be obscene.

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

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

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

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

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

Concerning the use of public school property for religious meetings.

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

Concerning the distribution of religious literature on a sidewalk.

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

Concerning the test for determining if speech is obscene.

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

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


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

Concerning picketing at any school involved in labor disputes.

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

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

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



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

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

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

Concerning awards due in libel cases considering intent.

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

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

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

Concerning the burning of draft cards.

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

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

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

Concerning petitioning on privately-owned grounds.

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

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

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

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

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

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

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

Concerning the political nature of a state government hiring freeze.

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

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

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

Concerning a conspiracy to obstruct the draft process.

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

Concerning the possession of obscene films.

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

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

Texas v. Johnson, 491 US 397 (1989)

Flag desecration is protected speech according to the First Amendment.

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

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

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

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

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

Concerning witnesses before Congress refusing to answer questions.


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

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

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

Concerning the teaching of Communist principles.

# Glossary of First Amendment Terms



<b>Amendment</b>	The process of formally altering or adding to a document or record
<b>Anti-Federalist</b>	An opponent of the ratification of the U.S. Constitution
<b>Appellant</b>	One who appeals a court decision
<b>Appellee</b>	One against whom an appeal is taken
<b>Assembly</b>	A group of persons gathered together for a common reason, or a legislative, religious, educational, or social purpose
<b>Association</b>	An organized body of people who have a common interest, activity, or purpose; a society
<b>Bill of Rights</b>	The first 10 amendments to U.S. Constitution, added in 1791 to protect certain rights of citizens
<b>Boycott</b>	To abstain from or act together in abstaining from using, buying, or dealing with as an expression of protest or disfavor or as a means of coercion
<b>Censor</b>	To edit, expurgate, stifle, repress
<b>Censorship</b>	The act, process, or practice of censoring
<b>Christianity</b>	The Christian religion, founded on the life and teachings of Jesus Christ
<b>Commercial Speech</b>	Speech (as advertising) that proposes a commercial transaction
<b>Constitution</b>	The system of fundamental laws and principles that prescribes the nature, functions, and limits of a government or another institution. The fundamental law of the United States, framed in 1787, ratified in 1789, and variously amended since that time.
<b>Copyright laws</b>	The legal right granted to an author, composer, playwright, publisher, or distributor to exclusive publication, production, sale, or distribution of a literary, musical, dramatic or artistic work
<b>Defamation</b>	Communication to third parties of false statements about a person that injures the reputation of or deters others from associating with that person
<b>Dissenting Opinion</b>	Opinion disagreeing with the majority
<b>Diversity</b>	The state of being different; a point or respect in which things differ
<b>Editorial</b>	An article in a publication expressing the opinion of its editors or publishers or commentary on television or radio expressing the opinion of the station or network
<b>Editorializing</b>	To express an opinion in or as if in an editorial
<b>Equal Access Act</b>	Passed by Congress to end growing discrimination against student religious groups that began to occur in public schools
<b>Established Church</b>	A church that a government officially recognizes as a national institution and to which it accords support
<b>Establishment Clause</b>	A clause in the U.S. Constitution forbidding Congress from establishing a state religion
<b>Ethics</b>	A set of principles of right or proper conduct
<b>Features</b>	A prominent or special article, story, or department in a newspaper or periodical
<b>Federalist</b>	An advocate of federalism who was a member or supporter of the Federalist Party
<b>Five Freedoms</b>	Religion, Speech, Press, Assembly and Petition
<b>FOIA</b>	Freedom of Information Act
<b>Founding Fathers</b>	Delegates to the Constitutional Convention
<b>Free Exercise Clause</b>	The clause in the First Amendment to the U.S. Constitution prohibiting Congress from making any law prohibiting the free exercise of religion
<b>Fundamentalism</b>	A usually religious movement or point of view characterized by a return to fundamental principles by rigid adherence to those principles, and often by intolerance of other views and opposition to secularism
<b>Government Neutrality</b>	The state or policy of the government being neutral
<b>Hate Speech</b>	Speech intended to degrade, intimidate, or incite violence or prejudicial action against someone based on their race, ethnicity, national origin, religion, sexual orientation, or disability. The term covers written as well as oral communication.




## Glossary of First Amendment Terms (Cont d)



<b>Immigration</b>	To enter and settle in a country or region to which one is not native
<b>Implied</b>	Insinuated, expressed indirectly, hinted at
<b>Intrusion</b>	Uninvited entry, infringement upon, the act of intruding or infringing on others
<b>Islam</b>	A monotheistic (belief in the existence of one God) religion characterized by the acceptance of the doctrine of submission to God and to Muhammad as the chief and last prophet of God
<b>Judaism</b>	The monotheistic (belief in the existence of one God) religion of Jews, tracing its origins to Abraham and having its spiritual and ethical principles embodied chiefly in the Hebrew Scriptures of the Talmud
<b>Libel</b>	A false publication, as in writing, print, signs, or pictures, that damages a person's reputation or the act of presenting such material to the public
<b>Lobby</b>	To try to influence legislators or other public officials in favor of a specific cause
<b>Magna Carta</b>	The charter of English political and civil liberties granted by King John at Runnymede in June 1215. It serves as a piece of legislation that guarantees basic rights.
<b>Morals</b>	Of or concerned with the judgment of the goodness or badness of human action and character
<b>Neutrality</b>	Unbiased; tolerance attributable to a lack of involvement
<b>News</b>	Information about recent events or happenings, especially as reported by newspapers, periodicals, radio or television presentation of such information, as in a newspaper or on a newscast
<b>Non-partisan</b>	Not supporting the interests or policies of any particular political party
<b>Objectivity</b>	Judgment based on observable phenomena and uninfluenced by emotions or personal prejudices
<b>Obscenity</b>	Something such as a word, act or expression that is indecent or lewd
<b>Open Meetings Act</b>	Ensures that public business is conducted in public view by prohibiting secret deliberations and actions on matters that should be discussed in a public forum
<b>Opinion</b>	A belief or conclusion held with confidence but not substantiated by positive knowledge or proof
<b>Parochial</b>	Of, relating to, supported by, or located in a parish
<b>Partisan</b>	Supporting the interests or policies of a particular political party
<b>Persecution</b>	The act or practice of persecuting on the basis of race, religion, gender, sexual orientation, or beliefs that differ from those of the persecutor
<b>Petition</b>	A solemn supplication or request to a superior authority; an entreaty or a formal written document requesting a right or benefit from a person or group in authority
<b>Picket</b>	A person or group of persons stationed outside a place of employment, usually during a strike, to express grievance or protest and discourage entry by non-striking employees and/or customers
<b>Police Power</b>	In law, the right of a government to make laws necessary for the health, morals, and welfare of the populace
<b>Political Speech</b>	Any form of speech that is directly linked to the government; in that the speech performs a valuable function as a check and balance of the government. Speaking out against government intervention or financial contributions are considered political speech because it is a method of expressing political ideologies.
<b>Prior Restraint</b>	Prohibition on expression (especially by a publication) before the expression actually takes place
<b>Protected Speech</b>	Speech that is interpreted as protected by the Supreme Court or implied by the First Amendment. The Court has never held that the Constitution establishes an "absolute" right to free speech.
<b>Puritans</b>	A member of a group of English Protestants who, in the 16th and 17th centuries, advocated strict religious discipline along with simplification of the ceremonies and creeds of the Church of England
<b>Ratification</b>	To approve and give formal sanction to; confirm
<b>Religion</b>	Belief(s) concerning the supernatural, sacred, or divine, and the practices and institutions associated with such belief. Belief in God or gods. Any system of faith or worship built around God, or ethical values, a philosophy, etc. Religion takes on an almost infinite number of forms in various cultures and individuals.

## Glossary of First Amendment Terms (Cont d)



<b>Shield Laws</b>	Laws giving journalists the ability to protect the identities of confidential sources without fear of prosecution
<b>Slander</b>	A false and malicious statement or report about someone
<b>Subjectivity</b>	Judgment not based on observable phenomena; influenced by personal opinion, emotions or personal prejudices
<b>Symbolic Speech</b>	A "message" or conduct intended to convey a particular message which is likely to be understood by those viewing it
<b>Tax-exempt</b>	Not subject to being taxed
<b>The Fourth Estate</b>	A name often given to the public press
<b>Time, Place &amp; Manner</b>	The government cannot impose speech restrictions simply because it disagrees with the message of the speaker. In other words, government regulation of speech must be "content neutral." Furthermore, a time, place, or manner regulation must advance a significant governmental interest, not restrict more speech than necessary to further that interest. An example of a "time" regulation is an ordinance banning loud noises in residential areas during the night. An example of a "place" regulation is a regulation that parades not be held on certain busy streets. An example of a "manner" regulation is a restriction on the size of signs carried by picketers
<b>Tolerance</b>	The capacity for or the practice of recognizing and respecting the beliefs or practices of others
<b>Truth</b>	Conformity to fact or actuality
<b>Unprotected Speech</b>	The nine areas of unprotected speech: Obscenity, Defamation, Expression intended and likely to incite imminent lawless action, Fighting words, Unwarranted invasion of privacy, Deceptive or misleading advertisements or those for illegal products or services, Clear and immediate threats to national security, Copyright violations, and Expression on school grounds that causes a material and substantial disruption of school activities
<b>Values</b>	Principles, standards, or qualities considered worthwhile or desirable