
Should Schools Be Able To Censor All Types of Expression?



Supporting Questions

Why are the rights protected by the first amendment important in democracy?

How are students' first amendment rights different in a school setting?

Why has the Supreme Court chosen to defend or limit the rights of students in the past?

NORTHERN MICHIGAN INQUIRY HUB

HS Civics Inquiry

Compelling Question	
Michigan Content Expectations:	<p>C – 4.3.1 Identify and explain personal rights, political rights, and economic rights as well as how these rights might conflict.</p> <p>C – 4.3.2 Describe considerations, criteria, and examples that have been used to deny, limit, or extend protection of individual rights</p>
Staging the Compelling Question:	Watch: Can You Name the 5 Rights in the First Amendment? Lead discussion about the first amendment and what censorship means.

Supporting Question 1
Why are the rights protected by the first amendment important in democracy?
Formative Performance Task
Create a brainstorm bubble map that visually narrates the first amendment and its importance.
Featured Sources
Washington Times article Ted Talk - Trevor Timm

Supporting Question 2
How are students' first amendment rights different in a school setting?
Formative Performance Task
Create a T chart where you compare the rights under the first amendment and how they differ for a student while in school.
Featured Sources
What are your rights in school? video Rights of students article

Supporting Question 3
Why has the Supreme Court chosen to defend or limit the rights of students in the past?
Formative Performance Task
Have students split up into 10 teams and cut the 10 cases apart. Give each twosome a case and then each presents their case. (You may have them research other facts about each one. Then Students will write a paragraph that explains one case we learned about and if you agree or disagree with the Court's ruling. Why or why not?)
Featured Sources
Morse v Frederick Summary NYTimes Article ABC News Article

Summative Performance Task	Argument: Should schools be able to censor all types of expression? Construct an argument supported with evidence that answers the compelling question?
	Extension: Complete collaboratively a short documentary/narrative/ animation project that highlights first amendment rights and how they are limited in school.
Taking Informed Action	Hold a debate, inviting senior class (past civics students) to sit in on the debate.



Overview

If Civics teachers hear one thing over and over, it's the question: Do I really drop all my rights at the school-house door? each day, and this high school inquiry places a magnifying glass on the related question: Should schools be able to censor all types of expression? Students will explore the specific protections named in the First Amendment and begin to study more about what exactly it means for them while they attend school each day.

Staging the Compelling Question

To stage this inquiry, Watch: Can You Name the 5 Rights in the First Amendment? <https://www.youtube.com/watch?v=5uhIuBgkXK8>. Students should try to identify and articulate their first amendment rights, and why it's important for those rights not be censored. Lead a discussion after students have talked in pairs about their thoughts and views.

Supporting Question 1 Overview

The first supporting question --Why are the rights protected by the first amendment important in a democracy? —leads students to discover their first amendment rights and why those rights are important to democracy. The featured source for this question is an article from the Washington Post: Why the First Amendment is 'first in importance'. After reading the article, and watching the TED talk, students will create a bubble brainstorm chart in pairs to show their understanding of the first amendment and the need for these rights.

Supporting Question 2 Overview

The second supporting question --How students' first amendment right different in a school setting?-- introduces new sources for students to consider as they attempt to answer the compelling question.

Supporting Question 3 Overview

The third supporting question --Why has the Supreme Court of the United States chosen to defend or limit the rights of students in the past?-- introduces new sources for students to consider as they attempt to answer the compelling question.

Summative Performance Task

Should schools be able to censor all types of expression? Construct an argument supported with evidence that answers the compelling question? Then have a debate, inviting senior class (past civics students) to sit in on the debate.

As an extension, students will complete collaboratively a short documentary/narrative/podcast or animation project that highlights first amendment rights and how they are limited in school. The goal of the extension is to pass their new knowledge on to the other students of the school community.

Supporting Question 1 - Featured Source A

Article available at: <https://www.washingtontimes.com/news/2016/dec/12/why-the-first-amendment-is-first-in-importance/>

HOME \ ADVOCACY

Why the First Amendment is 'first in importan



Print

By Dr. Owen Anderson - Monday, December 12, 2016

The First Amendment is first, not simply because it falls at the beginning of a list of amendments, but because it articulates the first freedom and the nature of that freedom. It guarantees the freedom essential to humans as rational beings.

Supporting Question 1 - Featured Source B (Video)

Available online at: https://www.ted.com/talks/trevor_timm_how_free_is_our_freedom_of_the_press



Supporting Question 2 - Featured Source A (Video)

<https://www.youtube.com/watch?v=HFZgce7TZRI>



Supporting Question 2 - Featured Source B

By Philip A. Dynia (Updated September 2017 by David L. Hudson Jr.)

The first major Supreme Court decision protecting the First Amendment rights of children in a public elementary school was *West Virginia State Board of Education v. Barnette* (1943). A group of Jehovah's Witnesses challenged the state's law requiring all public school students to salute the flag and recite the Pledge of Allegiance. The Supreme Court overturned the law, 6-3. In this photo a sixth grade class in P.S. 116 in Manhattan, salutes the flag, Oct. 11, 1957. (AP Photo, used with permission from the Associated Press)

Public school students enjoy First Amendment protection depending on the type of expression and their age. The Supreme Court clarified in *Tinker v. Des Moines Independent Community School District* (1969) that public students do not "shed" their First Amendment rights "at the schoolhouse gate."

Constitutional provisions safeguarding individual rights place limits on the government and its agents, but not on private institutions or individuals. Thus, to speak of the First Amendment rights of students is to speak of students in public elementary, secondary, and higher education institutions. Private schools are not government actors and thus there is no state action trigger.

Another important distinction that has emerged from Supreme Court decisions is the difference between students in public elementary and secondary schools and those in public colleges and universities. The latter group of students, presumably more mature, do not present the kind of disciplinary problems that educators encounter in grade school and high school, so the courts have deemed it reasonable to treat the two groups differently.

The court has protected K-12 students

The first major Supreme Court decision protecting the First Amendment rights of children in a public elementary school was *West Virginia State Board of Education v. Barnette* (1943). A group of Jehovah's Witnesses challenged the state's law requiring all public school students to salute the flag and recite the Pledge of Allegiance. Students who did not participate faced expulsion.

The Jehovah's Witnesses argued that saluting the flag was incompatible with their religious beliefs barring the worship of idols or graven images and thus constituted a violation of their free exercise of religion and freedom of speech rights. The Supreme Court agreed, 6-3. Its decision overturned an earlier case, *Minersville School District v. Gobitis* (1940), in which the Court had rejected a challenge by Jehovah's Witnesses to a similar Pennsylvania law.

In *Barnette*, the Court relied primarily on the free speech clause rather than the free exercise clause. Justice Robert H. Jackson wrote the Court's opinion, widely considered one of the most eloquent expressions by any American jurist on the importance of freedom of speech in the U.S. system of government. Treating the flag salute as a form of speech, Jackson argued that the government cannot compel citizens to express belief without violating the First Amendment. "If there is any fixed star in our constitutional constellation," Jackson concluded, "it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein."

Biology teacher Susan Epperson, who challenged Arkansas' ban on the teaching of the theory of evolution, is shown at her desk at Little Rock Central High School, Little Rock, Arkansas, Aug. 13, 1966. Mrs. Epperson has become the vanguard of the Arkansas Education Association's legal assault on the state's banning of the

NORTHERN MICHIGAN INQUIRY HUB

teaching of evolution in public schools. The Supreme Court in *Epperson v. Arkansas* (1968) found an Arkansas law banning the teaching of evolution in public schools to be an unconstitutional violation of the establishment clause. (AP Photo, used with permission from the Associated Press)

In the early 1960s, the Court in several cases—most notably *Engel v. Vitale* (1962) and *Abington School District v. Schempp* (1963)—overturned state laws mandating prayer or Bible reading in public schools. Later in that same decade, the Court in *Epperson v. Arkansas* (1968) found an Arkansas law banning the teaching of evolution in public schools to be an unconstitutional violation of the establishment clause.

In *Tinker*, resulting in the Court's most important student speech decision, authorities had banned students from wearing black armbands after learning that some of them planned to do so as a means of protesting the deaths caused by the Vietnam War. Other symbols, including the Iron Cross, were allowed. In a 7-2 vote, the Court found a violation of the First Amendment speech rights of students and teachers because school officials had failed to show that the student expression caused a substantial disruption of school activities or invaded the rights of others.

In later cases—*Bethel School District No. 403 v. Fraser* (1986) and *Hazelwood School District v. Kuhlmeier* (1988) and *Morse v. Frederick* (2007)—the Court rejected student claims by stressing the important role of public schools in inculcating values and promoting civic virtues. The Court instead gave school officials considerable leeway to regulate with respect to curricular matters or where student expression takes place in a school-sponsored setting, such as a school newspaper (*Kuhlmeier*) or an assembly (*Fraser*). Years later, in *Morse v. Frederick* (2007), the Court created another exception to *Tinker*, ruling that public school officials can prohibit student speech that officials reasonably believe promotes illegal drug use.

The different level of protection accorded to students in institutions of higher education, who are generally eighteen years or older and thus legally adults, is evident from several cases. Students on college and university campuses enjoy more academic freedom than secondary school students. The Court has said that, “the mere dissemination of ideas—no matter how offensive to good taste—on a state university campus may not be shut off in the name alone of ‘conventions of decency.’” In this photo, Karilyn Barker, editor of the campus newspaper at the Berkeley campus of the University of California, is seated, with editorial page editor Susan Werbe at Berkeley, Calif., Feb. 13, 1968. (AP Photo/Robert W. Klein, used with permission from the Associated Press)

College and university level students receive different levels of protection

The different level of protection accorded to students in institutions of higher education, who are generally eighteen years or older and thus legally adults, is evident from several cases. Students on college and university campuses enjoy more academic freedom than secondary school students.

In *Healy v. James* (1972), the Court found a First Amendment violation when a Connecticut public college refused to recognize a radical student group as an official student organization, commenting that “[t]he college classroom with its surrounding environs is peculiarly the ‘marketplace of ideas.’”

In *Papish v. Board of Curators of the University of Missouri* (1973), a graduate journalism student was expelled for distributing on campus an “underground” newspaper containing material that the university considered “indecent.” The Court relied on *Healy* for its conclusion that “the mere dissemination of ideas—no matter how offensive to good taste—on a state university campus may not be shut off in the name alone of ‘conventions of decency.’”

In this photo taken Tuesday, Aug. 27, 2013, Mary Beth Tinker, 61, shows one of her collection of arm bands during an interview with the Associated Press in Washington. Tinker was 13 years old in 1965 when she wore

NORTHERN MICHIGAN INQUIRY HUB

a black armband to school to protest the Vietnam War. School officials suspended her, leading to a lawsuit that went to the U.S. Supreme Court. Now, almost 50 years later, Tinker has resigned her job as a nurse to spend six months traveling around the country to colleges and high schools to talk about free speech. (AP Photo/Manuel Balce Ceneta, used with permission from The Associated Press.)

However, in recent years, courts have applied principles and standards from K-12 cases to college and university students. For example, in *Hosty v. Carter* (7th Cir. 2005), the 7th U.S. Circuit Court of Appeals ruled that college officials did not violate the First Amendment and applied reasoning from the high school *Hazelwood* decision. More recent lower court decisions also have applied the *Hazelwood* standard in cases involving curricular disputes, professionalism concerns, and even the online speech of college and university students.

Students in private universities—which are not subject to the requirements of the First Amendment—may rely on state laws to ensure certain basic freedoms. For example, many state cases have established that school policies, student handbooks, and other relevant documents represent a contract between the college or university and the student. Schools that promise to respect and foster academic freedom, open expression, and freedom of conscience on their campus must deliver the rights they promise.

Also available online with pictures at: <https://www.mtsu.edu/first-amendment/article/931/rights-of-students>

Supporting Question 3 - Featured Source A

Facts and Case Summary - *Morse v. Frederick*

Morse v. Frederick, 551 U.S. ___, 127 S. Ct. 2618 (2007)

School authorities do not violate the First Amendment when they stop students from expressing views that may be interpreted as promoting illegal drug use.

Decision Date: June 25, 2007

Background

Joseph Frederick, a senior at Juneau-Douglas High School, held up a banner saying: "Bong Hits 4 Jesus" during the Olympic Torch Relay through Juneau, Alaska on January 24, 2002. Frederick's attendance at the event was part of a school-supervised activity.

School principal Deborah Morse told Frederick to put away the banner because it could be interpreted as advocating illegal drug activity. When Frederick refused, she took the banner. Frederick was suspended for 10 days for violating a school policy forbidding advocacy for the use of illegal drugs.

The U.S. District Court for the District of Alaska in Juneau ruled for the principal, saying that Frederick's action was not protected by the First Amendment. The U.S. Court of Appeals for the Ninth Circuit reversed and held that Frederick's banner was constitutionally protected. The principal appealed, and the U.S. Supreme Court granted certiorari (agreed to hear the case).

Decision and Reasoning

In a 5-4 decision, the U.S. Supreme Court ruled that the First Amendment does not prevent school administrators from restricting student expression that reasonably is viewed as promoting the use of illegal drugs. The majority opinion cited *Tinker v. Des Moines* (1969), in which the Court stated that the anti-Vietnam War armbands that students wore at school were considered political speech that could only be prohibited if it "substantially disrupts" the educational process.

The majority cited two other cases – *Bethel v. Fraser* (1986) in which the Supreme Court ruled that students do not have a First Amendment right to make provocatively obscene speeches at school; and *Hazelwood v. Kuhlmeier* (1988) in which the Supreme Court ruled that administrators can restrict student speech in school-sponsored newspapers.

In *Morse v. Frederick*, the majority acknowledged that the Constitution affords lesser protections to certain types of student speech at school or at school-supervised events. It found that Frederick message was, by his own ad-



NORTHERN MICHIGAN INQUIRY HUB

mission, not political, as was the case in *Tinker*. The Court said the phrase "Bong Hits 4 Jesus" reasonably could be viewed as promoting illegal drug use.

As such, the state had an "important" if not "compelling" interest in prohibiting/punishing such student speech. The Court held that schools may "take steps to safeguard those entrusted to their care from speech that can reasonably be regarded as encouraging illegal drug use" without violating a student's First Amendment rights.

From: <https://www.uscourts.gov/educational-resources/educational-activities/facts-and-case-summary-morse-v-frederick>

Supporting Question 3 - Featured Source B

Available online at: https://archive.nytimes.com/www.nytimes.com/learning/teachers/featured_articles/20080915monday.html?mabReward=relbias%253Ar%252C%257B%2522%2522%253A%2522RI%253A16%2522%257D&module=Search

The New York Times LearningNetwork
September 15, 2008

Teacher CONNECTIONS

[Back to Main](#)

[Daily Lesson Plan](#)

[Lesson Plan Archive](#)

[News Snapshot](#)

[Issues in Depth](#)

[On This Day in History](#)

[Crossword Puzzle](#)

[Campus Weblines](#)

[Education News](#)

[Newspaper in Education \(NIE\)](#)

[Teacher Resources](#)

[Classroom Subscriptions](#)

Student CONNECTIONS

10 Supreme Court Cases Every Teen Should Know

By TOM JACOBS

GO TO LESSON PLAN

Knowledge Tools

Turn Vocabulary On: Link words to the Merriam-Webster Collegiate® Dictionary.

Turn Geography On: Link countries and states to the Merriam-Webster Atlas®

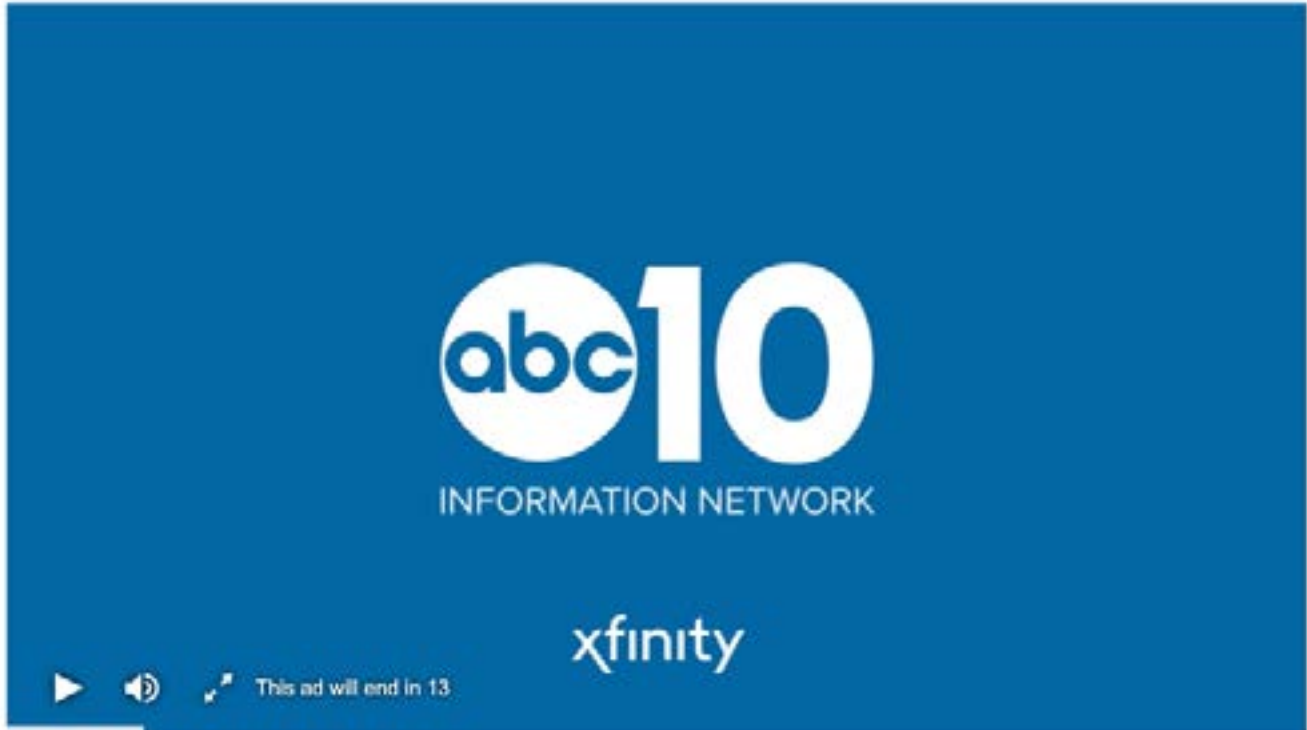
The following article was originally published in September 2007 as a two-part series in The New York Times Upfront, a news magazine for teens published by Scholastic in partnership with The New York Times.

The nation's highest court has had plenty to say about everything from free speech at school to teenagers' rights in the legal system.

For those of us on the outside, the U.S. Supreme Court can seem remote and mysterious. But the Court, whose nine Justices are appointed for life and deliberate in secret, exerts a powerful influence over the course of

Supporting Question 3 - Featured Source C

Available online at: <https://www.abc10.com/article/news/local/3-supreme-court-cases-on-student-speech-rights/103-588508913>



LOCAL

3 Supreme Court cases on student speech rights

While students have the right to free speech, there are limits to what has historically been considered acceptable by courts.

Supporting Question 3 - Featured Source D (Video)

<http://www.iptv.org/video/story/32660/50th-anniversary-tinker-v-des-moines-schools-decision>

