

Freedom of Speech: Finding the Limits

A Lesson by Linda Weber for
Sunnylands Seminars 2009



The Annenberg Foundation Trust at
SUNNYLANDS

★ ★ ★
Leonore Annenberg
Institute for Civics
★ ★ ★

www.annenbergclassroom.org

SUMMARY

“Congress shall make no law . . . abridging the freedom of speech. . .” – First Amendment, U.S. Constitution

As part of the Bill of Rights, freedom of speech is guaranteed by the Constitution, but it is not defined by it. That task is left up to the people through a representative government that makes the laws and a judicial system that interprets and applies the laws to resolve disputes.

When people bring their First Amendment challenges into the court system and decisions are made, principles get established that help define the boundaries of free speech for everyone.

While most Americans believe there should be some limits to free expression, there is much disagreement about what constitutes speech and where those limits should be. Consequently, freedom of speech ends up being our most contested right.

In this lesson, students gain insight into the many challenges involved in defining and protecting free speech. They also learn about principles that come from Supreme Court decisions and case law that are applied to define the limits for us today.

NOTES AND CONSIDERATIONS

- This lesson presumes that students are familiar with free speech issues and have some experience reviewing Supreme Court cases.
- Technology is relied on in this lesson to enhance learning by facilitating information access, and information gathering.
- This is a self-contained lesson with a variety of resources and activities that can be adapted to different lengths of classes and levels of students.

Snapshot of Lesson

Grades: Middle School; High School (Focus)

Subject Focus: Civics/Government

Estimated Time: 3-4 days

Alignment to National Standards for Civics and Government: Grades 5-8; Grades 9-12

Materials/Equipment Needed:

A Conversation on the Constitution with Justices Stephen G. Breyer, Sandra Day O’Connon, and Anthony M. Kennedy: Freedom of Speech, video available at:

<http://www.annenbergclassroom.org/page/a-conversation-on-the-constitution-freedom-of-speech>

Computer with internet connection and projector for class viewing.

Materials Included:

Readings and Resources

- Chapter 6: “The Right to Freedom of Speech” from *Our Rights* by David J. Bodenhamer
- U.S. Constitution: First Amendment
- Synopsis of Cases Referenced in Video

Student Materials

- Video Follow-Up: “Ten Questions”
- Jigsaw Activity: “A Collection of Supreme Court Cases: Free Speech”
- Activity: “Matters of Interpretation”
- Activity: “Free Speech Scenarios to Decide”

Teacher Materials

- Supplement for jigsaw activity
- Answer Key: Ten Questions

National Standards for Civics & Government

- Standards level detail for grades 5-8, 9-12

TOPICS

- Constitutional foundations
- Freedom of speech
- Rights and responsibilities
- Role of government
- U.S. Supreme Court
- Democratic principles

NATIONAL STANDARDS

Document: National Standards for Civics and Government (1994) Center for Civic Education
<http://www.civiced.org/index.php?page=stds>

Grades 5-8 Organizing Questions

The national content standards for civics and government are organized under five significant questions. The following outline lists the high-level organizing questions supported by this lesson.

- I. What are civic life, politics, and government?
 - A. What is civic life? What is politics? What is government? Why are government and politics necessary? What purposes should government serve?
 - B. What are the essential characteristics of limited and unlimited government?
 - C. What are the nature and purposes of constitutions?

- II. What are the foundations of the American political system?
 - A. What is the American idea of constitutional government?
 - C. What is American political culture?
 - D. What values and principles are basic to American constitutional democracy?

- III. How does the government established by the Constitution embody the purposes, values, and principles of American democracy?
 - E. What is the place of law in the American constitutional system?

- V. What are the roles of the citizen in American democracy?
 - B. What are the rights of citizens?
 - C. What are the responsibilities of citizens?
 - D. What dispositions or traits of character are important to the preservation and improvement of American constitutional democracy?
 - E. How can citizens take part in civic life?

Grades 9-12 Organizing Questions

The national content standards for civics and government are organized under five significant questions. The following outline lists the high-level organizing questions supported by this lesson.

- I. What are civic life, politics, and government?
 - A. What is civic life? What is politics? What is government? Why are government and politics necessary? What purposes should government serve?
 - B. What are the essential characteristics of limited and unlimited government?

- II. What are the foundations of the American political system?
 - C. What is American political culture?
 - D. What values and principles are basic to American constitutional democracy?

- III. How does the government established by the Constitution embody the purposes, values, and principles of American democracy?
 - B. How is the national government organized, and what does it do?
 - D. What is the place of law in the American constitutional system?

- V. What are the roles of the citizen in American democracy?
 - B. What are the rights of citizens?
 - C. What are the responsibilities of citizens?
 - D. What civic dispositions or traits of private and public character are important to the preservation and improvement of American constitutional democracy?
 - E. How can citizens take part in civic life?

Note: A more detailed standards-level alignment related to these questions can be found in the “Standards” section at end of this lesson plan.

STUDENT OUTCOMES

Knowledge, skills, and dispositions

Students will . . .

1. State the constitutional basis for freedom of speech.
2. Explain the importance of free speech in a democratic society.
3. Explain events that prompted courts to define principles for deciding free speech issues.
4. Develop an appreciation for the complexities involved in finding the limits to free speech.
5. Draw conclusions about the role of citizens in defining free speech for all Americans.
6. Use sound reasoning to defend a position.

Integrated Skills

1. Information literacy skills

Students will . . .

- Analyze primary and secondary sources to gather information
- Organize and analyze information
- Use skimming and search skills.
- Make informed decisions.
- Use technology as a tool for learning.
- Analyze information for trends and patterns.

2. Media literacy skills

Students will . . .

- Read, view, and listen to information delivered via different media formats in order to make inferences and gain meaning

3. Communication skills

Students will . . .

- Write and speak clearly to contribute ideas, information, and express own point of view.
- Listen for understanding
- Collaborate with others to deepen understanding

4. Study skills

Students will...

- Manage time and materials
- Organize work effectively

5. Thinking skills

Students will . . .

- Describe and recall information
- Explain ideas or concepts
- Make connections between concepts and principles
- Draw conclusions
- Synthesize information
- Use sound reasoning and logic
- Discern the facts

6. Problem-solving skills

Students will . . .

- Ask meaningful questions
- Consider diverse perspectives
- Support decisions with the facts
- Explore alternative solutions

7. Participation skills

Students will . . .

- Contribute to small and large group discussion
- Work responsibly both individually and with diverse people.
- Express own beliefs, feelings, and convictions.
- Show initiative and self-direction.

ASSESSMENT

Evidence of understanding may be gathered from student performance related to the following:

1. Student activities
2. Participation in small and large group discussions

VOCABULARY

- **abridge**—to diminish or reduce in scope.
- **case law**—law established by judicial decisions as distinguished from law created by legislation.
- **freedom**—the quality or state of being free: as the absence of necessity, coercion, or constraint in choice or action.
- **freedom of speech**—the right to express information, ideas, and opinions free of government restrictions based on content and subject only to reasonable limitations.
- **liberty**—freedom from external (as governmental) restraint, compulsion, or interference in engaging in the pursuits or conduct of one's choice to the extent that they are lawful and not harmful to others.
- **rights**—a person's justifiable claim, protected by law, to act or be treated in a certain way.
- **rule of law**—the rule of law exists when a state's constitution functions as the supreme law of the land, when the statutes enacted and enforced by the government invariably conform to the constitution.
- **speech**—forms of expression used to communicate an idea or a thought, not just in words.

Sources for Definitions

FindLaw—Law Dictionary

<http://dictionary.lp.findlaw.com/>

Annenberg Classroom Glossary

<http://www.annenbergclassroom.org/terms>

LESSON OVERVIEW

DAY 1:

Simple and Complicated

Video Day: In the video, Supreme Court Justices engage a group of high school students in a dialogue on free speech to challenge their thinking about the complexity of the First Amendment right and provide insight into the work of a Court concerned with protecting it.

DAY 2 & 3

Matters for Interpretation

In jigsaw fashion, students work to review a collection of U.S. Supreme Court cases related to free speech in order to identify and classify principles established by the Court that help define the limits for us today.

DAY 4

You Decide

Students analyze four free speech scenarios to decide what matters in light of the principles studied and have an opportunity to express their own points of view.

TEACHING ACTIVITIES

DAY 1: Simple and Complicated

Overview:

Students view a video from *Sunnylands Seminars 2009* in which Supreme Court Justices Stephen Breyer, Anthony Kennedy and Sandra Day O'Connor engage high school students in a dialogue about free speech to challenge their thinking about the complexity of the First Amendment right and provide insight into the work of a Court responsible for protecting it.

Goal: Experience the challenges involved in defining free speech by considering whether different factors matter.

Materials/Equipment Needed:

- *A Conversation on the Constitution with Justices Stephen G. Breyer, Sandra Day O'Connor, and Anthony M. Kennedy: Freedom of Speech*, video available at:
<http://www.annenbergclassroom.org/page/a-conversation-on-the-constitution-freedom-of-speech>
- Computer with Internet connection and projector for class viewing

Student materials (Included):

- “Ten Questions” (1 per student)
- “U.S. Supreme Court Cases Named in A Conversation on the Constitution: Free Speech”
- Chapter 6: “Right to Freedom of Speech” from *Our Rights* by David J. Bodenhamer
Also available online at
http://www.annenbergclassroom.org/files/documents/books/our%20rights/chapter_6_our_rights.pdf

Teacher materials

- “Synopsis of Cases Referenced in Video”

Before Viewing

1. Review the wording in the First Amendment:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.— U.S. Constitution, First Amendment

2. Review the definitions. Compare and contrast definitions of freedom and liberty.

3. Review:

- Responsibilities of the 3 branches of government (legislative branch makes the laws; judicial branch interprets the law; executive branch carries out the law)
- Define “democracy” as government by the people. The people get to decide.
- Review the structure of the U.S. court system, the role of the U.S. Supreme Court, and how cases get to the Supreme Court. (see chart included)
- Briefly review how the Supreme Court has interpreted the right to free speech:

The U.S. Supreme Court as the ultimate protector and interpreter of the Constitution has ruled that the government may sometimes be allowed to limit speech. For example, the government may limit or ban libel (the communication of false statements about a person that may injure his or her reputation), obscenity, fighting words, and words that present a clear and present danger of causing violence. In other words, freedom of speech is not absolute.

The government also may regulate speech by limiting the time, place or manner in which it is made. For example, the government may require activists to obtain a permit before holding a large protest rally on a public street.

When the Supreme Court issues a decision in a free speech case, that decision helps “define” the parameters of free speech in this country...one case at a time. Supreme Court cases and cases from other courts form a collective body of cases known as case law. From case law we have a better sense of free speech boundaries. Cases brought to a court by ordinary people concerned that their right to free speech has been denied helps define the boundaries of free expression and ensures its protection for everyone.

4. Briefly discuss the following cases as they are referred to in the video:

- *Tinker v. Des Moines* (1969) (Tinker case referred to by Justice O’Connor)
- *Texas v. Johnson* (1989) (Flag burning case referred to by Justice Kennedy)
- *Morse v. Frederick* (2007) (Mentioned by Justice O’Connor)
- *Bethel School District No. 403 v. Fraser* (1986) (Speech at a high school assembly featured)
- *Lee v. Weisman* (1992) (High school commencement case featured)

5. Distribute the “Ten Questions” and discuss expectations for answers.

During and After Viewing:

Students take notes and respond to questions on the handout: “Ten Questions.” Students may need time to view the video again at home so they can write more complete responses.

Homework:

- Finish the “Ten Questions.”
- Read: Chapter 6: “Right to Freedom of Speech” from *Our Rights* by David J. Bodenhamer Highlight any principles or factors that were used to evaluate or decide free speech cases.

TEACHING ACTIVITIES

DAYS 2-3: Simple and Complicated

Overview: In jigsaw fashion, students work to review a collection of U.S. Supreme Court cases related to free speech in order to identify and classify principles established by the Court that help define the limits for us today.

Goal: Identify principles set forth in U.S. Supreme Court decisions on free speech cases.

Materials/Equipment Needed:

- *A Conversation on the Constitution with Justices Stephen G. Breyer, Sandra Day O’Connon, and Anthony M. Kennedy: Freedom of Speech*, 30-minute video available at:

<http://www.annenbergclassroom.org/page/a-conversation-on-the-constitution-freedom-of-speech>

- Computer lab
- 62-3x5 cards or squares of paper (1 per Supreme Court case)
- highlighters

Student materials

- Jigsaw Activity: “A Collection of Supreme Court Cases: Free Speech”
- Activity: “Matters of Interpretation”

Teacher materials

- Teacher Guide: “A Collection of Supreme Court Cases: Free Speech” (Companion sections add background information to help with discussions related to the student activity.)

Procedure:

1. Go over the homework assignment from Day 1 and ask the students to share the principles they highlighted.
2. Distribute the jigsaw activity and go over the instructions.
3. Determine the best way to divide up the 62 Supreme Court cases. Students will research assigned cases to complete the columns on the chart.
4. Distribute one 3x5 card per case.
5. Ask students to write the case name, date, and the free speech principle it established or upheld.
6. Allow enough time for all work to be completed.
7. Conclude the activity with a large group discussion that that compiles all the responses for analysis. Draw and label a big chart on the board that allows space for the cards to be taped as used. An example follows: (Text in red font is for teacher reference during this time.)

Primary Consideration	Forum (public/private)	Protected Speech	Unprotected (Limited) Speech
Nature of content criteria	Public	<p>After student cases are taped, group under headers such as:</p> <ul style="list-style-type: none"> • political speech • ideological speech • personal beliefs • symbolic speech • expressive conduct • commercial speech 	<p>After student cases are taped, group under headers such as:</p> <ul style="list-style-type: none"> • true threats • fighting words • obscene language • clear and present danger • libel with malices
Time, place, manner	Public		
Nature of content criteria	Private		<ul style="list-style-type: none"> • defamation • invasion of privacy
Time, place, manner	Private		<ul style="list-style-type: none"> • on private property

8. When the class reconvenes, ask for a volunteer to share a case as a starting point. Tape the case to the board where it belongs.
9. Important: Students should be adding information to their own charts as others present.
10. Ask if there are any similar cases. If so, students share.
11. Discuss and correct any misinterpretations. Refer to the “Teacher’s Chart” for supporting information.
12. Tape like cases together in columns and group within columns if possible. Allow students to name the groups.
13. When everyone has shared, review the cards on the board and the categories of protected speech they represent. Use markers to highlight the cards and distinguish the sub groups.
14. Discuss what qualifies as unprotected speech.
15. Assign Homework: Students complete the activity “Matters of Interpretation” using the information gained from the jigsaw activity.

TEACHING ACTIVITIES

DAY 4: You Decide

Overview: Students analyze four free speech scenarios to decide what matters in light of the principles studied and have an opportunity to express their own points of view.

Goal: Use sound reasoning to make decisions and support opinions related to free speech matters.

Materials/Equipment Needed:

Student materials

- Completed “Matters of Interpretation”
- Completed Jigsaw Activity: “A Collection of Supreme Court Cases: Free Speech”
- Activity: “Free Speech Scenarios to Decide”

Procedure:

1. Divide the class into discussion groups.
2. Distribute the page with the scenarios to each student.
3. Allow enough time for the groups to discuss each scenario. Monitor the time and prompt groups to move to each topic so they don’t get stuck.

Ground Rules

- There are no right or wrong answers as court rulings vary, too.
 - All viewpoints are welcome as long as they are based on sound reasoning.
 - Apply principles used in other court cases to support conclusions. (Students may use their earlier work for reference.)
4. Reconvene for a large group discussion.

Note: Scenarios 2 and 3 are drawn from descriptions of the following real cases:

BLOGGER CASE:

In *Bivens v. Albuquerque Public Schools*, the judge questioned whether sagging pants conveyed any particular message: “Sagging is not necessarily associated with any single racial or cultural group, and sagging is seen by some merely as a fashion trend followed by many adolescents all over the United States.” The judge said that even if sagging somehow constituted a message, the student failed to establish that reasonable observers would understand any message coming from the wearing of sagging pants.

<http://www.firstamendmentschools.org/freedoms/faq.aspx?id=13002>

DRESS CODE CASE: In 2008, the 2nd Circuit Court ruled for the school officials in *Doninger v. Niehoff* 527 F.3d 41 (2nd Cir. 2008) School officials could punish a student for blogging critical comments about a school administrator. “We have determined, however, that a student may be disciplined for expressive conduct, even conduct occurring off school grounds, when this conduct ‘would foreseeably create a risk of substantial disruption within the school environment,’ or at least when it was similarly foreseeable that the off-campus expression might also reach campus,” the court concluded.

<http://www.citmedialaw.org/threats/doninger-v-niehoff>

5. Conclude by asking students how they would respond to someone who made this statement:

“I have a right to free speech, so I can say whatever I want to, however I want to say it, and wherever I want to say it.”

EXTENSION ACTIVITIES

Have more time to teach?

- Debate Internet speech issues raised in this article:
Student Online Expression: What Do the Internet and MySpace Mean for Students' First Amendment Rights?
By David L. Hudson Jr., Research Attorney, First Amendment Center
<http://www.firstamendmentcenter.org/PDF/student.internet.speech.pdf>
- Summarize the findings related to freedom of speech in this survey for the First Amendment Center: *State of the First Amendment 2008*
http://www.firstamendmentcenter.org/about.aspx?item=state_first_amendment_2008&SearchString=survey

RESOURCES

Annenberg Classroom

- *Our Rights* by David J. Bodenhamer
<http://www.annenbergclassroom.org/page/our-rights>
- First Amendment timelines (interactive and PDF)
<http://www.annenbergclassroom.org/issue/first-amendment>

Other Resources

- Oyez
<http://oyez.org>
- Landmark Supreme Court Cases
<http://www.landmarkcases.org/korematsu/home.html>
- Exploring Constitutional Conflicts
<http://www.law.umkc.edu/faculty/projects/ftrials/conlaw/studentspeech.htm>
- First Amendment Center
K-12 Public School: Student Expression
<http://www.firstamendmentcenter.org/Speech/studentexpression/index.aspx>
- Student Press Law Center
<http://www.splc.org/>
- Bill of Rights Institute
<http://www.billofrightsinstitute.org/>

*To suppress free speech is a double wrong.
It violates the rights of the hearer as well as those of the speaker.*

Frederick Douglass

Readings & Resources

- Chapter 6: “The Right to Freedom of Speech” from *Our Rights* by David J. Bodenhamer
- U.S. Constitution: First Amendment
- “Synopsis of Cases Referenced in Video”

CHAPTER 6

The Right to Freedom of Speech



Free speech is our most fundamental—and our most contested—right. It is an essential freedom because it is how we protect all of our other rights and liberties. If we could not speak openly about the policies and actions of government, then we would have no effective way to participate in the democratic process or protest when we believed governmental behavior threatened our security or our freedom. Although Americans agree that free speech is central to democratic government, we disagree sharply about what we mean by speech and about where the right begins and ends. Speech clearly includes words, but does it also include conduct or symbols? Certainly, we have the right to criticize the government, but can we also advocate its overthrow? Does the right to free speech allow us to incite hate or use foul language in public?

The framers of the Bill of Rights understood the importance of free expression and protected it under the First Amendment: “Congress shall make no law . . . abridging the freedom of speech.” Both English history and their own colonial past had taught them to value this right, but their definition of free speech was much more limited than ours. Less than a decade after the amendment’s ratification, Congress passed the Sedition Act of 1798, making it a crime to criticize the government. Many citizens believed government could forbid speech that threatened public order, as witnessed by numerous early nineteenth-century laws restricting speech against slavery. During the Civil War, thousands of antiwar protestors were arrested on the theory that the First Amendment did not protect disloyal speech. Labor unrest in the 1800s and 1890s brought similar restraints on the right of politically unpopular groups, such as socialists, to criticize government’s failure to protect working people from the ills of industrialization and economic depression.

Freedom of speech did not become a subject of important court cases until the twentieth century when the Supreme Court announced one of the most famous principles in constitutional law, the clear and present danger test. The test was straightforward: government could not restrict speech unless it posed a known, immediate threat to public safety. The standard sought to balance the need for order with the right to speak freely. At its heart was the question of proximity, or closeness, and degree. If speech brought about an action that was dangerous under the immediate circumstances, such as falsely yelling “fire” in a crowded theater, then it did not enjoy First Amendment protection. With this case, *Schenck v. United States* (1919), the Court began a decades-long process of seeking the right balance between free speech and public safety.

The balance, at first, was almost always on the side of order and security. Another case decided in 1919, *Debs v. United States*, illustrates how restrictive the test could be. Eugene Debs was a labor leader from Indiana who had run for President four times as the candidate of the Socialist Party of America, once

“The free communication of thoughts and opinions is one of the invaluable rights of man; and every citizen may freely speak, write and print on any subject, being responsible for the abuse of that liberty.”

—Pennsylvania Constitution
(1790)

“The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic. . . . The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree.”

—Justice Oliver Wendell Holmes, Jr., *Schenck v. United States* (1919)

polling more than one million votes. At a June 1918 rally in Chicago, while U.S. troops were fighting in World War I, he told the working-class crowd, “You need to know you are fit for something better than slavery and cannon fodder.” He was sentenced under an existing federal statute to twenty years in prison for inciting disloyalty and obstruction of military recruitment, which the Supreme Court upheld.

For the next five decades, the Court wrestled with the right balance between speech and order. Much of what defined freedom of speech emerged from challenges to the government’s ability to regulate or punish political protest. Each case brought a new set of circumstances that allowed the justices an opportunity to modify or extend the clear and present danger test. Many decisions recognized the abstract right of individuals to speak freely, but each one hedged this right in important ways. Always in the background were conditions that pointed to disorder, dissension, and danger—the Great Depression, World War II, and the Cold War, among them—so the justices were cautious in expanding a right that would expose America to greater threats. These cases, however, gradually introduced a new perspective on the value of free speech in a democracy, namely, the belief that truth is best reached by the free trade in ideas.

The belief that society is best served by a marketplace of ideas open to all opinions, no matter how radical, ultimately prevailed. In 1927, the Court had endorsed what came to be called the bad tendency test: if officials believed speech was likely to lead to a bad result, such as urging people to commit a violent act, it was not protected under the First Amendment even if no violence occurred. By 1969, however, similar facts produced a different outcome. Ku Klux Klan members in Ohio invited a television station to film their rally. Waving firearms, they shouted racist and anti-Semitic slurs and threatened to march on Congress before their leader was arrested and later convicted under a state law banning speech that had a tendency to incite violence. The Supreme Court overturned his conviction in *Brandenburg v. Ohio* and established the rule still in effect today: the First Amendment protects the right to advocate the use of force or violence, but it does not safeguard speech likely to incite or produce an immediate unlawful act. The Brandenburg test has allowed Nazis to march, Klan members to hold rallies, and other extremist groups to promote views far outside the mainstream of public opinion. With few exceptions—fighting words and obscenity, for example—government today cannot regulate the content of speech.

Even as society was coming to accept a wide range of political ideas, opposition to an unpopular war raised other questions about the limits and forms of free speech. By the mid- to late 1960s, the Vietnam War divided Americans.

Although many citizens supported the use of U.S. troops to stop communism in Asia, a growing minority, including many draft-age young people, took to the streets to oppose the war. The protestors did not limit their efforts to antiwar speeches; they also wore shirts with obscene slogans, burned draft cards, and desecrated American flags. Using these symbols to protest, they argued, was a form of free speech. Soon, the Supreme Court faced the question squarely in a case involving a youthful protestor from the nation's heartland: is symbolic speech—messages using symbols or signs, not words—protected by the First Amendment?

The first large-scale American demonstration against the Vietnam War occurred in November 1965 when more than 25,000 protestors converged on the nation's capital. Fifty Iowans made the long bus ride, and on the way home they decided to make their opposition known locally by wearing black armbands to work and school. One member of the peace contingent was Lorena Tinker, the wife of a Des Moines Methodist minister and mother of five children. Mary Beth Tinker, a thirteen-year-old eighth grader, followed her mother's suggestion and became one of a handful of local public school students who wore this symbol of protest to school. This act placed her in the middle of a national controversy about student rights and freedom of expression.

In many ways, Mary Beth was a normal eighth grader. She was a good student who enjoyed singing, spending time with her friends, and taking part in church activities. What made her different was a commitment to social justice, a passion encouraged by her parents, both of whom were known for their activism. Her parents wanted their children to share their moral and social values, and Mary Beth responded eagerly to their invitation to participate with them. By the time she became a teenager, she already had attended her first protest, accompanying her father to a rally about fair housing.

Mary Beth Tinker, her brother, John, and a handful of Des Moines students planned their demonstration for December 16, 1965. The students' aim was not to protest the war but to mourn its casualties, Vietnamese and American, and to show support for proposed peace talks. School officials, however, promised to suspend anyone who came to school wearing the armbands, and the school principal suspended Mary Beth and sent her home. She was one of five students suspended that day for wearing the offending cloth. Significantly, the school ban applied only to armbands, in other words, to students who opposed the Vietnam War; a number of students that day wore an array of other symbols, including the Iron Cross, a Nazi medal.

When the school board upheld the suspensions, the Tinkers persuaded the Iowa Civil Liberties Union to take the case to federal court. Two lower federal courts agreed with the school's action, rebuffing the argument that the policy violated the First Amendment guarantee of free speech. The Supreme Court decided otherwise. In its 7-to-2 decision, announced in February 1969, the justices held that the wearing of armbands is a symbolic act akin to "pure speech" and protected by the right to free expression. The protesting students posed no threat to the order required for effective instruction, nor did the wearing of armbands interfere with the school's educational mission. In this instance, the balance between order and liberty was weighted on the side of the First Amendment. Students and teachers, the Court concluded, do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."

Symbolic speech has been the focus of some of our greatest constitutional drama. Words may be powerful and provocative, but symbols are often more

“Restriction of free thought and free speech is the most dangerous of all subversions. It is the one un-American act that could most easily defeat us.”

—Justice William O. Douglas,
“The One Un-American Act”
(1953)

inflammatory because they are visual and evoke an emotional response. We live in an age when we use pictures and symbols to convey important messages, whether in politics or the marketplace. For these reasons, the Supreme Court’s recognition of symbolic speech as a right protected by the First Amendment has been a significant development. Twenty-five years after Mary Beth Tinker put on her armband in remembrance of the war dead, *Life* magazine featured a handful of civil liberties cases to celebrate the bicentennial of the Bill of Rights. Mary Beth’s case was included, even though the rights of students remained, and still are, more limited than those of adult citizens. But her actions as an eighth grader expanded our conception of constitutionally protected speech to include the symbols we use to express our convictions.

More than most other recent decisions, cases involving symbolic speech have revealed how contentious the right of free speech remains in our society. In 1989, the Supreme Court ruled that the First Amendment protected individuals who burned the American flag in protest. This decision was highly controversial, and it has resulted in numerous attempts to amend the Constitution to protect the flag and, in effect, limit speech in this circumstance. The outcome of this effort is uncertain, but the debate raises important questions: What role does this right play in our democracy? How does it contribute to our liberty as Americans?

The right to speak freely, without restraint, is essential to democratic government because it helps us develop better laws and policies through challenge, rebuttal, and debate. When we all have the ability to speak in the public forum, offensive opinions can be combated with an opposing argument, a more inclusive approach, a more effective idea. We tolerate offensive speech and protect the right to speak even for people who would deny it to us because we believe that exposing their thoughts and opinions to open debate will result in the discovery of truth. This principle is an old one in Western thought. U.S. Supreme Court Justice Oliver Wendell Holmes’s dissent in *Abrams v. United States*, a 1919 case suppressing free speech, is a classic statement of this view: “The best test of truth is the power of thought to get itself accepted in the competition of the market, and that truth is the only ground upon which [the public’s] wishes safely can be carried out.”

Governmental actions to deny differing points of view, even distasteful or unpopular opinions, rob us of the range of ideas that might serve the interests of society more effectively. In a case decided almost a decade before *Tinker v. Des Moines*, the Supreme Court found this rationale especially applicable to the classroom. “The Nation’s future,” the justices wrote, “depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth out of a multitude of tongues.” As a nation, we are willing to live with the often bitter conflict over ideas because we believe it will lead to truth and to improved lives for all citizens. We recognize that freedom of speech is the first freedom of democracy, as the English poet John Milton argued during his own seventeenth-century struggle to gain this right: “Give me the liberty to know, to utter, and to argue freely according to conscience, above all liberties.” The ability to speak freely allows us to pursue truth, to challenge falsehoods, to correct mistakes—all are necessary for a healthy society.

Free speech also reflects a commitment to individual freedom and autonomy, the right to decide for ourselves and to pursue our own destiny. Throughout our history, we have been so committed to individual choice that many foreign observers believe it is our most characteristic trait. We see it reflected daily in everything from advertising slogans—“Have It Your Way”—to fashion state-

ments, but fail to recognize how closely freedom is tied to the right to speak freely. Free speech guarantees us an individual voice, no matter how far removed our opinions and beliefs are from mainstream society. With this voice we are free to contribute as individuals to the marketplace of ideas or a marketplace of goods, as well as to decide how and under what circumstances we will join with others to decide social and governmental policies.

A commitment to free speech, of course, will not resolve all conflict, not if our history is any guide. The debate is most contentious during times of war or other moments when national security is at stake. Even then—perhaps especially then—we will continue to fight over words and symbols because they express our deepest hopes and our most worrisome fears. This contest over what speech is acceptable and what is not has been a constant theme of our past. Rarely do these struggles produce a neat consensus. More often, intemperate rhetoric and bitter division have been their legacy, and this angry clamor is one of the basic noises of our history. What makes the struggle to protect free speech worthwhile is its ability to serve as a lever for change. When we practice our right to speak openly, we are defining the contours of our democracy. It is messy work, but through it, we keep the Constitution alive and, with it, our dreams of a just society.

“Free Trade in Ideas”

Jacob Abrams was a Russian immigrant and anarchist convicted of violating the Sedition Act of 1918, which made it a crime to advocate anything that would impede the war effort during World War I. In 1917 Justice Oliver Wendell Holmes, Jr., had written the Court’s opinion in Schenck v. United States, upholding similar convictions because Congress had a right to regulate speech that posed a “clear and present danger” to public safety. But by the time Abrams’s appeal reached the Court in 1919, Holmes had modified his views. Disturbed by antiradical hysteria, he dissented from the majority’s decision upholding Abrams’s conviction in Abrams v. United States. His eloquent discussion of the connection between freedom of speech and the search for truth soon became the standard used by the Supreme Court to judge free speech cases until Brandenburg v. Ohio in 1972. The First Amendment, Holmes reasoned, protected the expression of all opinions “unless they so imminently threaten immediate interference with the lawful and pressing purposes of the law that an immediate check is required to save the country.”

But as against dangers peculiar to war, as against others, the principle of the right to free speech is always the same. It is only the present danger of immediate evil or an intent to bring it about that warrants Congress in setting a limit to the expression of opinion where private rights are not concerned. Congress certainly cannot forbid all effort to change the mind of the country. Now nobody can suppose that the surreptitious publishing of a silly leaflet by an unknown man, without more, would present any immediate danger that its opinions would hinder the success of the government arms or have any appreciable tendency to do so. . . .

Persecution for the expression of opinions seems to me perfectly logical. If you have no doubt of your premises or your power and want a certain result with all your heart you naturally express your wishes in law and sweep away all opposition. To allow opposition by speech seems to indicate that you think the speech impotent, as when a man says that he has squared the circle, or that you do not care whole heartedly for the result, or that you doubt either your power or your premises. But when men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade

in ideas—that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out. That at any rate is the theory of our Constitution. It is an experiment, as all life is an experiment. Every year if not every day we have to wager our salvation upon some prophecy based upon imperfect knowledge. While that experiment is part of our system I think that we should be eternally vigilant against attempts to check the expression of opinions that we loathe and believe to be fraught with death, unless they so imminently threaten immediate interference with the lawful and pressing purposes of the law that an immediate check is required to save the country. . . . Only the emergency that makes it immediately dangerous to leave the correction of evil counsels to time warrants making any exception to the sweeping command, “Congress shall make no law abridging the freedom of speech.” Of course I am speaking only of expressions of opinion and exhortations, which were all that were uttered here, but I regret that I cannot put into more impressive words my belief that in their conviction upon this indictment the defendants were deprived of their rights under the Constitution of the United States.

“Malicious Words” versus “Free Communication”

In response to fears about imminent wars with France in 1798, the Federalist-controlled Congress passed a series of four acts known collectively as the Alien and Sedition Acts. Section 2 of the Sedition Act made it a crime to make defamatory statements about the government or President. (Sedition is an action inciting resistance to lawful authority and tending to lead to the overthrow of the government.) The act was designed to suppress political opposition. Its passage by Congress reveals how limited the definition of the right of free speech was for some Americans only a few years after the ratification of the First Amendment.

Sec. 2. . . . That if any person shall write, print, utter, or publish, or shall cause or procure to be written, printed, uttered or published, or shall knowingly and willingly assist or aid in writing, printing, uttering or publishing any false, scandalous and malicious writing or writings against the government of the United States, or either house of the Congress of the United States, or the President of the United States, with intent to defame the said government, or either house of the said Congress, or the said President, or to bring them, or either of them, into contempt or disrepute; or to excite against them, or either or any of them, the hatred of the good people of the United States, or to stir up sedition within the United States,

or to excite any unlawful combinations therein, for opposing or resisting any law of the United States, or any act of the President of the United States, done in pursuance of any such law, or of the powers in him vested by the constitution of the United States, or to resist, oppose, or defeat any such law or act, or to aid, encourage or abet any hostile designs of any foreign nation against the United States, their people or government, then such person, being thereof convicted before any court of the United States having jurisdiction thereof, shall be punished by a fine not exceeding two thousand dollars, and by imprisonment not exceeding two years.

James Madison, congressman from Virginia, and Thomas Jefferson, the sitting Vice President, secretly drafted resolutions protesting the Sedition Act as unconstitutional. The Virginia and Kentucky legislatures passed these resolutions in 1798. Both resolutions especially pointed to the act’s violation of First Amendment protections, as seen in the Virginia Resolution here.

Resolved, . . . That the General Assembly doth particularly protest against the palpable and alarming infractions of the Constitution in the two late cases of the “Alien and Sedition Acts” passed at the last session of Congress; the first of which exercises a power no where delegated to the federal government, and which by uniting legislative and judicial powers to those of executive, subverts the general principles of free government; as well as the particular organization, and positive provisions of the

federal constitution; and the other of which acts, exercises in like manner, a power not delegated by the constitution, but on the contrary, expressly and positively forbidden by one of the amendments thereto; a power, which more than any other, ought to produce universal alarm, because it is levelled against that right of freely examining public characters and measures, and of free communication among the people thereon, which has ever been justly deemed, the only effectual guardian of every other right.

That this state having by its Convention, which ratified the federal Constitution, expressly declared, that among other essential rights, “the Liberty of Conscience and of the Press cannot be cancelled, abridged, restrained, or modified by any authority of the United States,” and from its extreme anxiety to guard these rights from every possible attack of sophistry or ambition, having with other states, rec-

ommended an amendment for that purpose, which amendment was, in due time, annexed to the Constitution; it would mark a reproachable inconsistency, and criminal degeneracy, if an indifference were now shewn, to the most palpable violation of one of the Rights, thus declared and secured; and to the establishment of a precedent which may be fatal to the other.

The Sedition Act expired in 1801 but not until a number of the Federalists’ opponents, including Congressman Matthew Lyon of Vermont, had been convicted of violating the law. Today, historians consider the Sedition Act to have been a gross misuse of government power. In 1798, the Kentucky Resolutions focused on the rights of states to determine the limits of free speech.

Resolved, that it is true as a general principle, and is also expressly declared by one of the amendments to the Constitution, that “the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people;” and that no power over the freedom of religion, freedom of speech, or freedom of the press being delegated to the United States by the Constitution, nor prohibited by it to the

States, all lawful powers respecting the same did of right remain, and were reserved to the States or the people: that thus was manifested their determination to retain to themselves the right of judging how far the licentiousness of speech and of the press may be abridged without lessening their useful freedom, and how far those abuses which cannot be separated from their use should be tolerated, rather than the use be destroyed.

The Constitution of the United States: First Amendment

First Amendment - The Text

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.

On September 25, 1789, Congress transmitted to the states twelve proposed amendments. Two of these, which involved congressional representation and pay, were not adopted. The remaining ten amendments, known as the Bill of Rights, were ratified on December 15, 1791.

First Amendment - The Meaning

Freedom of Speech and of the Press: The First Amendment allows citizens to express and to be exposed to a wide range of opinions and views. It was intended to ensure a free exchange of ideas even if the ideas are unpopular.

Freedom of speech encompasses not only the spoken and written word, but also all kinds of expression (including non-verbal communications, such as sit-ins, art, photographs, films and advertisements). Under its provisions, the media — including television, radio and the Internet — is free to distribute a wide range of news, facts, opinions and pictures. The amendment protects not only the speaker, but also the person who receives the information. The right to read, hear, see and obtain different points of view is a First Amendment right as well.

But the right to free speech is not absolute. The U.S. Supreme Court has ruled that the government sometimes may be allowed to limit speech. For example, the government may limit or ban libel (the communication of false statements about a person that may injure his or her reputation), obscenity, fighting words, and words that present a clear and present danger of inciting violence. The government also may regulate speech by limiting the time, place or manner in which it is made. For example the government may require activists to obtain a permit before holding a large protest rally on a public street.

Freedom of Assembly and Right to Petition the Government: The First Amendment also protects the freedom of assembly, which can mean physically gathering with a group of people to picket or protest; or associating with one another in groups for economic, political or religious purposes.

The First Amendment also protects the right not to associate, which means that the government cannot force people to join a group they do not wish to join. A related right is the right to petition the government, including everything from signing a petition to filing a lawsuit.

Freedom of Religion: The First Amendment's free exercise clause allows a person to hold whatever religious beliefs he or she wants, and to exercise that belief by attending religious services, praying in public or in private, proselytizing or wearing religious clothing, such as yarmulkes or headscarves. Also included in the free exercise clause is the right not to believe in any religion, and the right not to participate in religious activities.

Second, the establishment clause prevents the government from creating a church, endorsing religion in general, or favoring one set of religious beliefs over another. As the U.S. Supreme Court decided in 1947 in *Everson v. Board of Education of Ewing Township*, the establishment clause was intended to erect "a wall of separation between church and state," although the degree to which government should accommodate religion in public life has been debated in numerous Supreme Court decisions since then.

Source: Justice Learning's Guide to the Constitution: What it says. What it means.

<http://www.justicelearning.org/>

Synopsis of Cases Referenced in Video

1. ***Tinker v. Des Moines Independent Community School District (1969)*** (Referred to by Justice O'Connor)
Background Facts: John Tinker, 15 years old, his sister Mary Beth Tinker, 13 years old, and Christopher Echardt, 16 years old, decided along with their parents to protest the Vietnam War by wearing black armbands to their Des Moines schools during the Christmas holiday season. Upon learning of their intentions, and fearing that the armbands would provoke disturbances, the principals of the Des Moines school district resolved that all students wearing armbands be asked to remove them or face suspension. When the Tinker siblings and Christopher wore their armbands to school, they were asked to remove them. When they refused, they were suspended until after New Year's Day.

Question: Does a prohibition against the wearing of armbands in public school, as a form of symbolic protest, violate the First Amendment's freedom of speech protections?

Conclusion: The Court decided that the wearing of armbands was "closely akin to 'pure speech'" and protected by the First Amendment. School environments imply limitations on free expression, but here the principals lacked justification for imposing any such limits. The principals had failed to show that the forbidden conduct would substantially interfere with appropriate school discipline.

2. ***Texas v. Johnson (1989)*** (Flag burning case referred to by Justice Kennedy)
Background Facts: In 1984, in front of the Dallas City Hall, Gregory Lee Johnson burned an American flag as a means of protest against Reagan administration policies. Johnson was tried and convicted under a Texas law outlawing flag desecration. He was sentenced to one year in jail and assessed a \$2,000 fine. After the Texas Court of Criminal Appeals reversed the conviction, the case went to the Supreme Court.

Question: Is the desecration of an American flag, by burning or otherwise, a form of speech that is protected under the First Amendment?

Conclusion: In a 5-to-4 decision, the Court held that Johnson's burning of a flag was protected expression under the First Amendment. The Court found that Johnson's actions fell into the category of expressive conduct and had a distinctively political nature. The fact that an audience takes offense to certain ideas or expression, the Court found, does not justify prohibitions of speech. The Court also held that state officials did not have the authority to designate symbols to be used to communicate only limited sets of messages, noting that "[i]f there is a bedrock principle underlying the First Amendment, it is that the Government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable."

3. ***Morse v. Frederick (2007)*** (Mentioned by Justice O'Connor)
Background Facts: At a school-supervised event, Joseph Frederick held up a banner with the message "Bong Hits 4 Jesus," a slang reference to marijuana smoking. Principal Deborah Morse took away the banner and suspended Frederick for ten days. She justified her actions by citing the school's policy against the display of material that promotes the use of illegal drugs. Frederick sued under 42 U.S.C. 1983, the federal civil rights statute, alleging a violation of his First Amendment right to freedom of speech.

Question: Does the First Amendment allow public schools to prohibit students from displaying messages promoting the use of illegal drugs at school-supervised events?

Conclusion: The Court ruled that school officials can prohibit students from displaying messages that promote illegal drug use. Chief Justice John Roberts' majority opinion held that although students do

Synopsis of Cases Referenced in Video

A Conversation on the Constitution: Free Speech

have some right to political speech even while in school, this right does not extend to pro-drug messages that may undermine the school's important mission to discourage drug use. The majority held that Frederick's message, though "cryptic," was reasonably interpreted as promoting marijuana use - equivalent to "[Take] bong hits" or "bong hits [are a good thing]." In ruling for Morse, the Court affirmed that the speech rights of public school students are not as extensive as those adults normally enjoy, and that the highly protective standard set by *Tinker* would not always be applied.

4. ***Bethel School District No. 403 v. Fraser (1986)*** (Speech at a high school assembly featured)

Background Facts:

At a school assembly of approximately 600 high school students, Matthew Fraser made a speech nominating a fellow student for elective office. In his speech, Fraser used what some observers believed was a graphic sexual metaphor to promote the candidacy of his friend. As part of its disciplinary code, Bethel High School enforced a rule prohibiting conduct that "substantially interferes with the educational process . . . including the use of obscene, profane language or gestures." Fraser was suspended from school for two days.

Question: Does the First Amendment prevent a school district from disciplining a high school student for giving a lewd speech at a high school assembly?

Conclusion: No. The Court found that it was appropriate for the school to prohibit the use of vulgar and offensive language. Chief Justice Warren Burger distinguished between political speech that the Court previously had protected in *Tinker v. Des Moines Independent Community School District* (1969) and the supposed sexual content of Fraser's message at the assembly. Burger concluded that the First Amendment did not prohibit schools from prohibiting vulgar and lewd speech since such discourse was inconsistent with the "fundamental values of public school education."

5. ***Lee v. Weisman (1992)*** (High school commencement case featured)

Background Facts: In keeping with the practice of several other public middle and high school principals in Providence, R.I., Robert E. Lee, a middle school principal, invited a rabbi to speak at his school's graduation ceremony. Daniel Weisman's daughter, Deborah, was among the graduates. Hoping to stop the rabbi from speaking at his daughter's graduation, Weisman sought a temporary restraining order in District Court - but was denied. After the ceremony, where prayers were recited, Weisman filed for a permanent injunction barring Lee and other Providence public school officials from inviting clergy to deliver invocations and benedictions at their schools' ceremonies. When the Court of Appeals affirmed a District Court ruling against the schools, Lee appealed to the Supreme Court and was granted certiorari.

Question: Does the inclusion of clergy who offer prayers at official public school ceremonies violate the Establishment Clause of the First Amendment?

Conclusion: Yes. In a 5-to-4 decision, the Court held that government involvement in this case creates "a state-sponsored and state-directed religious exercise in a public school." Such conduct conflicts with settled rules proscribing prayer for students. The school's rule creates subtle and indirect coercion (students must stand respectfully and silently), forcing students to act in ways that establish a state religion. The cornerstone principle of the Establishment Clause is that government may not compose official prayers to recite as part of a religious program carried on by government.

Source of information: www.oyez.org

Student Materials

- Video Follow-Up: “Ten Questions”
- Jigsaw Activity: “A Collection of Supreme Court Cases: Free Speech”
- Activity: “Matters of Interpretation”
- Activity: “Free Speech Scenarios to Decide”

Video Follow-Up: Ten Questions

1. Why do you think the framers valued freedom of speech?
2. What constitutes “speech”?
3. Why are all forms of expression important in a democracy?
4. Why do you think there are limits to free speech? In your opinion, should there be? Why?
5. Why do you think it’s so hard to define what speech is protected and what is not?
6. Cite the fundamental principle that is the starting point for all judicial decisions related to free speech.
7. List factors brought up by the justices in the video as ones that could matter when resolving free speech disputes.
8. The Constitution does not define free speech. What did Justice Breyer mean when he said, “So, that’s left up to the people to work out”? Explain how people help define freedom of speech when decisions are made by the court.
9. What did you learn from the justices about the process for deciding free speech matters?
10. According to Justice Breyer, what is “the worst thing you can do by way of abridgment”?

A Collection of U.S. Supreme Court Cases: Freedom of Speech

Instructions: Review the assigned cases at the links provided to identify the “Decision” (answer to the “Question”) and the “Free Speech Principle” it provides. Also use the information provided in the Timeline for Free Speech by Justice Learning at <http://www.justicelearning.org/ViewIssue.aspx?IssueID=4>.

	Background Facts	Question	Case	Decision	Free Speech Principle
1.	During World War I, Charles Schenck mailed circulars to draftees. The circulars suggested that the draft was a monstrous wrong motivated by the capitalist system. The circulars urged "Do not submit to intimidation" but advised only peaceful action such as petitioning to repeal the Conscription Act. Schenck was charged with conspiracy to violate the Espionage Act by attempting to cause insubordination in the military and to obstruct recruitment.	Were Schenck's actions (words, expression) protected by the free speech clause of the First Amendment?	<i>Schenck v. United States</i> , 249 U.S. 47 (1919) http://www.oyez.org/cases/1901-1939/1918/1918_437		
2.	The defendants were convicted on the basis of two leaflets they printed and threw from windows of a building. One leaflet signed "revolutionists" denounced the sending of American troops to Russia. The second leaflet, written in Yiddish, denounced the war and U.S. efforts to impede the Russian Revolution. The defendants were charged and convicted for inciting resistance to the war effort and for urging curtailment of production of essential war material. They were sentenced to 20 years in prison.	Did the amendments to the Espionage Act or the application of those amendments in this case violate the free speech clause of the First Amendment?	<i>Abrams v. United States</i> , 250 U.S. 616 (1919) http://www.oyez.org/cases/1901-1939/1919/1919_316		
3.	Benjamin Gitlow, a socialist, was arrested for distributing copies of a "left-wing manifesto" that called for the establishment of socialism through strikes and class action of any form. Gitlow was convicted under a state criminal anarchy law, which punished advocating the overthrow of the government by force. At his trial, Gitlow argued that since there was no resulting action flowing from the manifesto's publication, the statute penalized utterances without propensity to incitement of concrete action. The New York courts had decided that anyone who advocated the doctrine of violent revolution violated the law.	Was the New York law punishing the advocacy of overthrowing the government an unconstitutional violation of the free speech clause of the First Amendment?	<i>Gitlow v. New York</i> , 268 U.S. 652 (1925) http://www.oyez.org/cases/1901-1939/1922/1922_19		
4.	Charlotte Anita Whitney, a member of the Communist Labor Party of California, was prosecuted under that state's Criminal Syndicalism Act. The Act prohibited advocating, teaching, or aiding the commission of a crime, including "terrorism as a means of accomplishing a change in industrial ownership. . .or effecting any political change."	Did the Criminal Syndicalism Act violate the First or Fourteenth Amendments?	<i>Whitney v. California</i> , 274 U.S. 357 (1927) http://www.oyez.org/cases/1901-1939/1925/1925_3		

A Collection of U.S. Supreme Court Cases: Freedom of Speech

	Background Facts	Question	Case	Decision	Free Speech Principle
5.	A 19-year-old member of the Young Communist League was convicted for displaying a red flag as "an emblem of opposition to the United States government."	Did a California statute that makes the display of a red flag as a statement of "opposition to organized government" violate the First & Fourteenth Amendments?	<i>Stromberg v. People Of State Of California</i> , 283 U.S. 359 (1931) http://www.oyez.org/cases/1901-1939/1939/1939_584		
6.	Byron Thornhill joined a picket line that was protesting against his former employer. Section 3448 of Alabama state law made it an offense to picket. Pursuant to the law, Thornhill was arrested and fined \$100. Thornhill, a union president, was the only picketer to be arrested and tried under the law.	Did the Alabama law violate Thornhill's right to free expression under the First Amendment?	<i>Thornhill v. Alabama</i> , 310 U.S. 88 (1940) http://www.oyez.org/cases/1901-1939/1939/1939_514		
7.	Jesse Cantwell and his son were Jehovah's Witnesses; they were proselytizing a predominantly Catholic neighborhood in Connecticut. The Cantwells distributed religious materials by traveling door-to-door and by approaching people on the street. After voluntarily hearing an anti-Roman Catholic message on the Cantwells' portable phonograph, two pedestrians reacted angrily. The Cantwells were subsequently arrested for violating a local ordinance requiring a permit for solicitation and for inciting a breach of the peace.	Did the solicitation statute or the "breach of the peace" ordinance violate the Cantwells' First Amendment free speech or free exercise rights?	<i>Cantwell v. State of Connecticut</i> , 310 U.S. 296 (1940) http://www.oyez.org/cases/1901-1939/1939/1939_632		
8.	Lillian and William Gobitis were expelled from the public schools of Minersville, Pennsylvania, for refusing to salute the flag as part of a daily school exercise. The Gobitis children were Jehovah's Witnesses; they believed that such a gesture of respect for the flag was forbidden by biblical commands.	Did the mandatory flag salute infringe upon liberties protected by the First and Fourteenth Amendments?	<i>Minersville School District v. Gobitis</i> , 310 U.S. 586 (1940) http://www.oyez.org/cases/1901-1939/1939/1939_690		
9.	Walter Chaplinsky, a Jehovah's Witness, called a city marshal a "God-damned racketeer" and "a damned fascist" in a public place. He was arrested and convicted under a state law for violating a breach of the peace.	Did the application of the statute violate Chaplinsky's freedom of speech protected by the First Amendment?	<i>Chaplinsky v. State of New Hampshire</i> , 315 U.S. 568 (1942) http://www.oyez.org/cases/1940-1949/1941/1941_255		

A Collection of U.S. Supreme Court Cases: Freedom of Speech

	Background Facts	Question	Case	Decision	Free Speech Principle
10.	The West Virginia Board of Education required that the flag salute be part of the program of activities in all public schools. All teachers and pupils were required to honor the flag; refusal to salute was treated as "insubordination" and was punishable by expulsion and charges of delinquency.	Did the compulsory flag salute for public schoolchildren violate the First Amendment?	<i>West Virginia State Board of Ed. v. Barnette</i> , 319 U.S. 624 (1943) http://www.oyez.org/cases/1940-1949/1942/1942_591		
11.	Father Arthur Terminiello, in an auditorium in Chicago, delivered a vitriolic speech in which he criticized various political and racial groups and viciously condemned the protesting crowd that had gathered outside the auditorium. Policemen assigned to the event were unable to prevent several disturbances by the "angry and turbulent" crowd. The police arrested Terminiello for "breach of the peace." He was then tried and convicted for his central role in inciting a riot.	Did the Chicago ordinance violate Terminiello's right of free expression guaranteed by the First Amendment?	<i>Terminiello v. Chicago</i> , 337 U.S. 1 (1949) http://www.oyez.org/cases/1940-1949/1948/1948_272		
12	In 1948, the leaders of the Communist Party of America were arrested and charged with violating provisions of the Smith Act. The Act made it unlawful to knowingly conspire to teach and advocate the overthrow or destruction of the U.S. government. Party leaders were found guilty and lower courts upheld the conviction.	Did the Smith Act's restrictions on speech violate the First Amendment?	<i>Dennis v. United States</i> , 341 U.S. 494 (1951) http://www.oyez.org/cases/1950-1959/1950/1950_336		
13.	Joseph Beauharnais, president of White Circle League, Inc., was arrested on January 7, 1950, for distributing leaflets on Chicago street corners. The leaflets called in part upon the mayor and aldermen of Chicago "to halt the further encroachment, harassment and invasion of white people...by the Negro." Beauharnais was charged with violating an Illinois law making it illegal to distribute any publication that "exposes the citizens of any race, color, creed or religion to contempt, derision, or obloquy." A jury found him guilty, and he was fined \$200. The Illinois Supreme Court affirmed his conviction.	Did Beauharnais' conviction under the Illinois statute violate his constitutional right to free speech under the First and Fourteenth Amendments?	<i>Beauharnais v. Illinois</i> , 343 U.S. 250 (1952) http://www.oyez.org/cases/1950-1959/1951/1951_118		

A Collection of U.S. Supreme Court Cases: Freedom of Speech

	Background Facts	Question	Case	Decision	Free Speech Principle
14.	Samuel Roth operated a book-selling business in New York and was convicted of mailing obscene circulars and an obscene book in violation of a federal obscenity statute. Roth's case was combined with <i>Alberts v. California</i> , in which a California obscenity law was challenged by Alberts after his similar conviction for selling lewd and obscene books in addition to composing and publishing obscene advertisements for his products.	Did either the federal or California's obscenity restrictions, prohibiting the sale or transfer of obscene materials through the mail, impinge upon the freedom of expression as guaranteed by the First Amendment?	<i>Roth v. United States</i> , 354 U.S. 476 (1957) http://www.oyez.org/cases/1950-1959/1956/1956_582		
15.	Five African Americans staged a peaceful sit-in at a Louisiana restaurant that catered to both white and black patrons. When the demonstrators sat at the counters where only white persons were customarily served, they were asked to leave by police officers. When they refused, they were arrested charged with "disturbing the peace" and convicted.	Were the free speech rights of the demonstrators denied?	<i>Garner v. Louisiana</i> , 368 U.S. 157 (1961) http://www.oyez.org/cases/1960-1969/1961/1961_26		
16.	Decided together with <i>Abernathy v. Sullivan</i> , this case concerns a full-page ad in the New York Times that alleged that the arrest of the Rev. Martin Luther King Jr. for perjury in Alabama was part of a campaign to destroy King's efforts to integrate public facilities and encourage blacks to vote. L. B. Sullivan, the Montgomery city commissioner, filed a libel action against the newspaper and four black ministers who were listed as endorsers of the ad, claiming that the allegations against the Montgomery police defamed him personally. Under Alabama law, Sullivan did not have to prove that he had been harmed; and a defense claiming that the ad was truthful was unavailable since the ad contained factual errors. Sullivan won a \$500,000 judgment.	Did Alabama's libel law, by not requiring Sullivan to prove that an advertisement personally harmed him and dismissing the same as untruthful due to factual errors, unconstitutionally infringe on the First Amendment's freedom of speech and freedom of press protections?	<i>New York Times v. Sullivan</i> , 376 U.S. 254 (1964) http://www.oyez.org/cases/1960-1969/1963/1963_39		

Jigsaw Activity
A Collection of U.S. Supreme Court Cases: Freedom of Speech

	Background Facts	Question	Case	Decision	Free Speech Principle
17.	In 1952, three escaped convicts took James Hill, his wife, and their five children hostage in their Whitemarsh, Pennsylvania, home. After nineteen hours, the family was released unharmed. The convicts were later apprehended in a violent clash with police during which two of them were killed. In 1953, Joseph Hays published a novel based on the Hill family's ordeal. When the novel was subsequently made into a play, Life Magazine ("Life") printed an article about the play that mirrored many of its inaccuracies concerning the Hill family's experience. Alleging that it deliberately misrepresented his story, Hill sought damages against Life. On appeal from an adverse ruling, the Appellate Division of the New York Supreme Court remanded for a new trial where a reduced adverse ruling was imposed on Life. Following an unsuccessful appeal in the New York Court of Appeals, the Supreme Court granted Life's owner, Time Inc. ("Time") certiorari.	Is a publication, containing misrepresentations about the subject of its coverage, protected under the First Amendment's freedom of speech guarantees?	<i>Time Inc. v. Hill</i> , 385 U.S. 374 (1967) http://www.oyez.org/Cases/1960-1969/1965/1965_22		
18.	David O'Brien burned his draft card at a Boston courthouse. He said he was expressing his opposition to war. He was convicted under a federal law that made the destruction or mutilation of draft cards a crime.	Is the law an unconstitutional infringement of O'Brien's freedom of speech?	<i>United States v. O'Brien</i> , 391 U.S. 367 (1968) http://www.oyez.org/Cases/1960-1969/1967/1967_232		
19.	A teacher was fired for writing a letter to the newspaper criticizing how money was divided between athletics and academics.	Was the teacher's right to free speech violated?	<i>Pickering v. Board of Education</i> , 391 U.S. 563 (1968) http://www.oyez.org/Cases/1960-1969/1967/1967_510		
20.	John Tinker, 15 years old, his sister Mary Beth Tinker, 13 years old, and Christopher Eckhardt, 16 years old, decided along with their parents to protest the Vietnam War by wearing black armbands to their Des Moines schools during the Christmas holiday season. Upon learning of their intentions, and fearing that the armbands would provoke disturbances, the principals of the Des Moines school district resolved that all students wearing armbands be asked to remove them or face suspension. When the Tinker siblings and Christopher wore their armbands to school, they were asked to remove them. When they refused, they were suspended until after New Year's Day.	Did a prohibition against the wearing of armbands in public school, as a form of symbolic protest, violate the First Amendment's freedom of speech protections?	<i>Tinker v. Des Moines Ind. Comm. School Dist.</i> , 393 U.S. 503 (1969) http://www.oyez.org/Cases/1960-1969/1968/1968_21		

A Collection of U.S. Supreme Court Cases: Freedom of Speech

	Background Facts	Question	Case	Decision	Free Speech Principle
21.	Law enforcement officers, under the authority of a warrant, searched Robert Stanley's home pursuant to an investigation of his alleged bookmaking activities. During the search, the officers found three reels of eight-millimeter film. The officers viewed the films, concluded they were obscene, and seized them. Stanley was then tried and convicted under a Georgia law prohibiting the possession of obscene materials.	Did the Georgia statute infringe upon the freedom of expression protected by the First Amendment?	<i>Stanley v. Georgia</i> , 394 U.S. 557 (1969) https://www.oyez.org/cases/1960-1969/1968/1968_293		
22.	Clarence Brandenburg, a leader in the Ku Klux Klan, made a speech at a Klan rally and was later convicted under an Ohio criminal syndicalism law. The law made illegal advocating "crime, sabotage, violence, or unlawful methods of terrorism as a means of accomplishing industrial or political reform," as well as assembling "with any society, group, or assemblage of persons formed to teach or advocate the doctrines of criminal syndicalism."	Did Ohio's criminal syndicalism law, prohibiting public speech that advocates various illegal activities, violate Brandenburg's right to free speech as protected by the First and Fourteenth Amendments?	<i>Brandenburg v. Ohio</i> , 395 U.S. 444 (1969) http://www.oyez.org/cases/1960-1969/1968/1968_492		
23.	A 19-year-old department store worker expressed his opposition to the Vietnam War by wearing a jacket emblazoned with an antiwar message that included a four-letter expletive. The young man, Paul Cohen, was charged under a California statute that prohibits "maliciously and willfully disturb[ing] the peace and quiet of any neighborhood or person [by] offensive conduct." Cohen was found guilty and sentenced to 30 days in jail	Did California's statute, prohibiting the display of offensive messages such as Cohen's, violate freedom of expression as protected by the First Amendment?	<i>Cohen v. California</i> , 403 U.S. 15 (1971) http://law.iitk.edu/~pages/12820/Cohen-v-California.html		
24.	Individuals sought to distribute handbills in the interior mall area of a large privately owned shopping center. The owner of the mall had a strict no-handbill rule. Security guards asked them to stop, under threat of arrest, and suggested they could resume their activities on the public streets and sidewalks adjacent to but outside the center, which they did.	By preventing the distribution of handbills in the mall, did the owner of the mall deny the free speech rights of those distributing the handbills?	<i>Lloyd Corp. v. Tanner</i> , 407 U.S. 551 (1972) https://www.oyez.org/cases/1970-1979/1971/1971_71_492		

Jigsaw Activity
A Collection of U.S. Supreme Court Cases: Freedom of Speech

	Background Facts	Question	Case	Decision	Free Speech Principle
25.	State officials in Georgia sought to enjoin the showing of allegedly obscene films at the Paris Adult Theatre. The Theatre clearly warned potential viewers of the sexual nature of the films and required that patrons be at least 21 years of age. The Georgia Supreme Court held that the films were "hard core" pornography unprotected by the Constitution.	Did the Georgia injunction against the films violate the First Amendment's guarantee of freedom of expression?	<i>Paris Adult Theatre v. Slaton</i> , 413 U.S. 49 (1973) http://www.oyez.org/cases/1970-1979/1972/1972_71_105_1		
26.	Marvin Miller, after conducting a mass mailing campaign to advertise the sale of "adult" material, was convicted of violating a California statute prohibiting the distribution of obscene material. Some unwilling recipients of Miller's brochures complained to the police, initiating the legal proceedings.	Are the sale and distribution of obscene materials by mail protected under the First Amendment's freedom of speech guarantee?	<i>Miller v. California</i> , 413 U.S. 15 (1973) http://www.oyez.org/cases/1970-1979/1971/1971_70_73		
27.	Elmer Gertz was an attorney hired by a family to sue a police officer who had killed the family's son. In a magazine called American Opinion, the John Birch Society accused Gertz of being a "Leninist" and a "Communist-fronter" because he chose to represent clients who were suing a law enforcement officer. Gertz lost his libel suit because a lower court found that the magazine had not violated the actual malice test for libel that the Supreme Court had established in <i>New York Times v. Sullivan</i> (1964).	Does the First Amendment allow a newspaper or broadcaster to assert defamatory falsehoods about an individual who is neither a public official nor a public figure?	<i>Gertz v. Robert Welch Inc.</i> , 418 U.S. 323 (1974) http://www.oyez.org/cases/1970-1979/1973/1973_72_617		

A Collection of U.S. Supreme Court Cases: Freedom of Speech

	Background Facts	Question	Case	Decision	Free Speech Principle
28.	In the wake of the Watergate affair, Congress attempted to ferret out corruption in political campaigns by restricting financial contributions to candidates. Among other things, the law set limits on the amount of money an individual could contribute to a single campaign and it required reporting of contributions above a certain threshold amount. The Federal Election Commission was created to enforce the statute.	Did the limits placed on electoral expenditures by the Federal Election Campaign Act of 1971, and related provisions of the Internal Revenue Code of 1954 violate the First Amendment's freedom of speech and association clauses?	<i>Buckley v. Valeo</i> , 424 U.S. 1 (1976) http://www.oyez.org/Cases/1970-1979/1975/1975_75_436		
29.	Acting on behalf of prescription drug consumers, the Virginia Citizens Consumer Council challenged a Virginia statute that declared it unprofessional conduct for licensed pharmacists to advertise their prescription drug prices. On appeal from an adverse ruling by a three-judge District Court panel, the Supreme Court granted the Virginia State Board of Pharmacy review.	Is a statutory ban on advertising prescription drug prices by licensed pharmacists a violation of "commercial speech" under the First Amendment?	<i>Virginia Pharmacy Bd. v. Virginia Consumer Council</i> , 425 U.S. 748 (1976) http://www.oyez.org/Cases/1970-1979/1975/1975_74_895		
30.	When striking members of a union picketed in front of their employer's leased store located in a private shopping center, the shopping center's general manager threatened them with arrest for criminal trespass if they did not depart, and they left.	Were the picketers denied their First Amendment rights?	<i>Hudgens v. NLRB</i> , 424 U.S. 507 (1976) http://www.oyez.org/Cases/1970-1979/1975/1975_74_773		
31.	A New Hampshire law required all noncommercial vehicles to bear license plates containing the state motto "Live Free or Die." George Maynard, a Jehovah's Witness, found the motto to be contrary to his religious and political beliefs and cut the words "or Die" off his plate. Maynard was convicted of violating the state law and was subsequently fined and given a jail sentence.	Did the New Hampshire law unconstitutionally interfere with the freedom of speech guaranteed by the First Amendment?	<i>Wooley v. Maynard</i> , 430 U.S. 705 (1977) http://www.oyez.org/Cases/1970-1979/1976/1976_75_145 3		

Jigsaw Activity
A Collection of U.S. Supreme Court Cases: Freedom of Speech

	Background Facts	Question	Case	Decision	Free Speech Principle
32.	During a mid-afternoon weekly broadcast, a New York radio station aired George Carlin's monologue "Filthy Words." Carlin spoke of the words that could not be said on the public airwaves. The station warned listeners that the monologue included "sensitive language which might be regarded as offensive to some." The FCC received a complaint from a man who stated that he had heard the broadcast while driving with his young son.	Does the First Amendment deny government any power to restrict the public broadcast of indecent language under any circumstances?	<i>FCC v. Pacifica Foundation</i> , 438 U.S. 726 (1978) http://law.irank.org/page/s/12652/Federal-Communications-Commission-v-Pacifica-Foundation.html		
33.	The Public Service Commission of New York (PSC), in the interest of conserving energy, enacted a regulation that prohibited electric utilities from promoting electricity use. The PSC's regulation distinguished promotional advertising from informational advertising, which was permitted. Central Hudson Gas and Electric challenged the regulation in a New York State Supreme Court, which upheld the regulation. The Appellate Division of the New York State Supreme Court affirmed the decision, as did the New York Court of Appeals.	Did the PSC's ban on advertising violate the freedom of speech protected by the First and Fourteenth Amendments?	<i>Central Hudson Gas & Electric Corp. v. Public Service Commission of New York</i> , 447 U.S. 557 (1980) http://www.oyez.org/cases/1970-1979/1979/1979_79_565		
34.	High school students seeking support for their opposition to a United Nations resolution against Zionism set up a table in PruneYard to distribute literature and solicit signatures for a petition. A security guard told them to leave because their actions violated the shopping center's regulations against "publicly expressive" activities.	Did PruneYard's regulations violate the students' free speech rights?	<i>PruneYard Shopping Center v. Robins</i> , 447 U.S. 74 (1980) http://www.oyez.org/cases/1970-1979/1979/1979_79_289		
35.	After a series of mistrials in a murder case in the state of Virginia, a trial judge closed the trial to the public and the media. Defense counsel brought the closure motion; the prosecution did not object. Two reporters of Richmond Newspapers, Inc. challenged the judge's action.	Did the closure of the trial to the press and public violate the First Amendment or the Sixth Amendment?	<i>Richmond Newspapers Inc. v. Virginia</i> , 448 U.S. 555 (1980) http://www.oyez.org/cases/1970-1979/1979/1979_79_243		

A Collection of U.S. Supreme Court Cases: Freedom of Speech

	Background Facts	Question	Case	Decision	Free Speech Principle
36.	A New York child pornography law prohibited persons from knowingly promoting sexual performances by children under the age of sixteen by distributing material that depicts such performances.	Did the law violate the First and Fourteenth Amendments?	<i>New York v. Ferber</i> , 458 U.S. 747 (1982) http://www.oyez.org/cases/1980-1989/1981/1981_81_55		
37.	The Island Trees Union Free School District's Board of Education (the "Board"), acting contrary to the recommendations of a committee of parents and school staff, ordered that certain books be removed from its district's junior high and high school libraries. In support of its actions, the Board said such books were: "anti-American, anti-Christian, anti-Semitic, and just plain filthy." Acting through his friend Francis Pico, and on behalf of several other students, Steven Pico brought suit in federal district court challenging the Board's decision to remove the books. The Board won; the U.S. Court of Appeals for the Second Circuit reversed. The Board petitioned the U.S. Supreme Court, which granted certiorari.	Did the Board of Education's decision to ban certain books from its junior high and high school libraries, based on their content, violate the First Amendment's freedom of speech protections?	<i>Board Of Education v. Pico</i> , 457 U.S. 853 (1982) http://www.oyez.org/cases/1980-1989/1981/1981_80_204 3		
38.	An assistant district attorney in New Orleans strongly opposed internal office procedures and expressed her view to several of her supervisors. Shortly thereafter, she prepared and distributed a questionnaire to other assistant district attorneys in the office concerning office transfer policy, office morale, the need for a grievance committee, the level of confidence in supervisors, and whether employees felt pressured to work in political campaigns. She was terminated for refusal to accept the transfer, and was told her that her distribution of the questionnaire was considered an act of insubordination.	Were the First Amendment rights denied the assistant district attorney when she was fired under these circumstances?	<i>Connick v. Myers</i> , 461 U.S. 138 (1983) http://www.oyez.org/cases/1980-1989/1982/1982_81_125 1		
39.	In 1982, the National Park Service issued a renewable permit to the Community for Creative Non-Violence to conduct a demonstration in Lafayette Park and the Mall in Washington, D.C. The C.C.N.V. demonstration was intended to represent the plight of the homeless, and the demonstrators wished to sleep in tent cities set up in the park. Citing anti-camping regulations, the Park Service denied the request.	Did the National Park Service regulations violate the First Amendment by curtailing symbolic speech?	<i>Clark v. C.C.N.V.</i> , 468 U.S. 288 (1984) http://www.oyez.org/cases/1980-1989/1983/1983_82_199 8		

Jigsaw Activity
A Collection of U.S. Supreme Court Cases: Freedom of Speech

	Background Facts	Question	Case	Decision	Free Speech Principle
40.	At a school assembly of approximately 600 high school students, Matthew Fraser made a speech nominating a fellow student for elective office. In his speech, Fraser used what some observers believed was a graphic sexual metaphor to promote the candidacy of his friend. As part of its disciplinary code, Bethel High School enforced a rule prohibiting conduct that "substantially interferes with the educational process . . . including the use of obscene, profane language or gestures." Fraser was suspended from school for two days.	Does the First Amendment prevent a school district from disciplining a high school student for giving a lewd speech at a high school assembly?	<i>Bethel School District No. 403 v. Fraser</i> , 478 U.S. 675 (1986) http://oyez.org/cases/1980-1989/1985/1985_84_166 7		
41.	The Spectrum, the school-sponsored newspaper of Hazelwood East High School, was written and edited by students. In May 1983, Robert E. Reynolds, the school principal, received the page proofs for the May 13 issue. Reynolds found two of the articles in the issue to be inappropriate, and ordered that the pages on which the articles appeared be withheld from publication. Cathy Kuhmeier and two other former Hazelwood East students brought the case to court.	Did the principal's deletion of the articles violate the students' rights under the First Amendment?	<i>Hazelwood School District v. Kuhlmeier</i> , 484 U.S. 260 (1988) http://oyez.org/cases/1980-1989/1987/1987_86_836		
42.	In 1984, in front of the Dallas City Hall, Gregory Lee Johnson burned an American flag as a means of protest against Reagan administration policies. Johnson was tried and convicted under a Texas law outlawing flag desecration. He was sentenced to one year in jail and assessed a \$2,000 fine. After the Texas Court of Criminal Appeals reversed the conviction, the case went to the Supreme Court.	Is the desecration of an American flag, by burning or otherwise, a form of speech that is protected under the First Amendment?	<i>Texas v. Johnson</i> , 491 U.S. 397 (1989) http://www.oyez.org/cases/1980-1989/1988/1988_88_155		
43.	In 1989, Congress passed the Flag Protection Act, which made it a crime to destroy an American flag or any likeness of an American flag that may be "commonly displayed." The law did, however, allow proper disposal of a worn or soiled flag. Several prosecutions resulted from the Act. Eichman set a flag ablaze on the steps of the U.S. Capitol while protesting the government's domestic and foreign policy. Another prosecution (<i>United States v. Haggerty</i>) resulted from a flag-burning in Seattle protesting the passage of the Flag Protection Act. The cases (<i>Eichman's</i> and <i>Haggerty's</i>) were argued together.	Did the Act violate freedom of expression protected by the First Amendment?	<i>United States v. Eichman</i> , 496 U.S. 310 (1990) http://www.oyez.org/cases/1980-1989/1989/1989_89_143 3		

A Collection of U.S. Supreme Court Cases: Freedom of Speech

	Background Facts	Question	Case	Decision	Free Speech Principle
44.	After Jeffrey Masson was fired from his position at the Sigmund Freud Archives, Janet Malcolm interviewed him for an article in the New Yorker magazine. Malcolm's article included many long direct quotations from Masson. The article presented Masson as extremely arrogant and condescending; at one point, he was quoted as calling himself "the greatest analyst who ever lived." However, Malcolm fabricated many of the more distasteful quotations. Masson sued for libel. The District Court dismissed the case on First Amendment free speech grounds because Masson was a public figure.	Does the First Amendment give the New Yorker a right to publish fabricated quotations attributed to a public figure?	<i>Masson v. New Yorker Magazine, Inc.</i> , 501 U.S. 496 (1991) http://www.oyez.org/cases/1990-1999/1990/1990_89_179_9		
45.	To keep criminals from profiting from crimes by selling their stories, New York State's 1977 "Son of Sam" law ordered that proceeds from such deals be turned over to the New York State Crime Victims Board. The Board was to deposit the money into escrow accounts that victims could later claim through civil suits. In 1987, the Board ordered Henry Hill, a former gangster who sold his story to Simon & Schuster, to turn over his payments from a book deal.	Did the Son of Sam law violate the free speech clause of the First Amendment?	<i>Simon & Schuster v. NY Crime Victims Board</i> , 502 U.S. 105 (1991) http://www.oyez.org/cases/1990-1999/1991/1991_90_105_9		
46.	Several teenagers allegedly burned a crudely fashioned cross on a black family's lawn. The police charged one of the teens under a local bias-motivated criminal ordinance that prohibits the display of a symbol that "arouses anger, alarm or resentment in others on the basis of race, color, creed, religion or gender." The trial court dismissed this charge. The state Supreme Court reversed. R.A.V. appealed to the U.S. Supreme Court.	Is the ordinance overly broad and impermissibly content-based in violation of the First Amendment free speech clause?	<i>R.A.V. v. St. Paul</i> , 505 U.S. 377 (1992) http://law.irank.org/pages/12681/R-V-v-City-St-Paul.html		
47.	A New York law authorized schools to regulate the after-hour use of school property and facilities. The Center Moriches School District, acting under the statute, prohibited the use of its property by any religious group. The District refused repeated requests by Lamb's Chapel to use the school's facilities for an after-hours religious-oriented film series on family values and child rearing. The Chapel brought suit against the school district in federal court.	Did the district violate the First Amendment's freedom of speech clause when it denied Lamb's Chapel the use of school premises to show religious-oriented films?	<i>Lamb's Chapel v. Center Moriches School District</i> , 508 U.S. 384 (1993) http://www.oyez.org/cases/1990-1999/1992/1992_91_202_4		

A Collection of U.S. Supreme Court Cases: Freedom of Speech

	Background Facts	Question	Case	Decision	Free Speech Principle
48.	This action was filed by the Pro-Choice Network of Western New York (PCN), on behalf of health care providers, to enjoin Paul Schenck and others from continuously staging blockades and other disruptive illegal activities in front of abortion clinics. After its restraining order proved ineffective, a District Court issued a preliminary injunction creating "fixed buffer zones," which prohibited demonstrations within fifteen feet of entrances to abortion clinics, parking lots, or driveways. The court also created "floating buffer zones" prohibiting protesters from coming within 15 feet of people or vehicles seeking access to the clinics. After the Appellate Court's decision to uphold the District Court's ruling that the "buffer zones" were constitutional, the Supreme Court granted Schenck certiorari.	Did either or both types of "buffer zones" violate Schenck's First Amendment right to freedom of speech?	<i>Schenck v. Pro-Choice Network of Western New York</i> , 519 U.S. 357 (1997) http://www.oyez.org/Cases/1990-1999/1996/1996_95_106_5		
49.	Several litigants challenged the constitutionality of two provisions in the 1996 Communications Decency Act. Intended to protect minors from unsuitable Internet material, the Act criminalized the intentional transmission of "obscene or indecent" messages as well as the transmission of information that depicts or describes "sexual or excretory activities or organs" in a manner deemed "offensive" by community standards. After being enjoined by a District Court from enforcing the above provisions, except for the one concerning obscenity and its inherent protection against child pornography, Attorney General Janet Reno appealed directly to the Supreme Court as provided for by the Act's special review provisions.	Did certain provisions of the 1996 Communications Decency Act violate the First and Fifth Amendments by being overly broad and vague in their definitions of the types of Internet communications that they criminalized?	<i>Reno v. ACLU</i> , 521 U.S. 844 (1997) http://www.oyez.org/Cases/1990-1999/1996/1996_96_511		
50.	The National Foundation on the Arts and Humanities Act entrusts the National Endowment for the Arts (NEA) with discretion to award financial grants to the arts. The NEA's broad decision guidelines are: "artistic and cultural significance," with emphasis on "creativity and cultural diversity professional excellence," and the encouragement of "public education and appreciation of the arts." In 1990, Congress amended the criteria by requiring the NEA to consider "artistic excellence and artistic merit taking into consideration general standards of decency and respect for the diverse beliefs and values of the American public." After suffering a funding rejection, Karen Finley, along with three other performance artists and the National Association of Artists' Organizations, challenged the NEA's amended statutory review proceedings as unconstitutionally vague and discriminatory. After consecutive district and appellate court rulings in favor of Finley, the Supreme Court granted the NEA certiorari	Were the statutory funding guidelines requiring the NEA to consider artistic excellence, merit, and general standards of "decency and respect" overly vague and conducive of viewpoint discrimination in violation of the First Amendment's freedom of expression guarantees?	<i>National Endowment for the Arts v. Finley</i> , 524 U.S. 569 (1998) http://www.oyez.org/Cases/1990-1999/1997/1997_97_371		

A Collection of U.S. Supreme Court Cases: Freedom of Speech

	Background Facts	Question	Case	Decision	Free Speech Principle
51.	During the 1992 race for Arkansas' Third Congressional District, the Arkansas Educational Television Commission (AETC) – a state-owned public television broadcaster – sponsored a debate between the major party candidates. Running as an independent candidate with little popular support, Ralph Forbes sought to participate in the debate but was denied permission. After unsuccessfully challenging AETC's refusal in district court, Forbes appealed and won a reversal. AETC, then appealed and the Supreme Court granted certiorari.	Was the exclusion of a ballot-qualified candidate from a debate sponsored by a state-owned public television broadcaster a violation of the candidate's First Amendment right to freedom of speech?	<i>Arkansas Ed. Television Comm. v. Forbes</i> , 523 U.S. 666 (1998) http://www.oyez.org/cases/1990-1999/1997/1997_96_779		
52.	A Colorado statute makes it unlawful for any person within 100 feet of a health care facility's entrance to "knowingly approach" within 8 feet of another person, without that person's consent, in order to pass "a leaflet or handbill to, display a sign to, or engage in oral protest, education, or counseling with [that] person...." Leila Hill and others, sidewalk counselors who offer abortion alternatives to women entering abortion clinics, sought to enjoin the statute's enforcement in state court, claiming violations of their First Amendment free speech right and right to a free press.	Did Colorado's statutory requirement that speakers obtain consent from people within 100 feet of a health care facility's entrance before speaking, displaying signs, or distributing leaflets to such people violate the First Amendment rights of the speaker?	<i>Hill v. Colorado</i> , 530 U.S. 703 (2000) http://www.oyez.org/cases/1990-1999/1999/1999_98_185		
53.	The Boy Scouts of America revoked former Eagle Scout and assistant scoutmaster James Dale's adult membership when the organization discovered that Dale was a homosexual and a gay rights activist. In 1992, Dale filed suit against the Boy Scouts, alleging that the Boy Scouts had violated the New Jersey statute prohibiting discrimination on the basis of sexual orientation in places of public accommodation. The Boy Scouts, a private, not-for-profit organization, asserted that homosexual conduct was inconsistent with the values it was attempting to instill in young people	Did the application of New Jersey's public accommodations law violate the Boy Scouts' First Amendment right of expressive association to bar homosexuals from serving as troop leaders?	<i>Boy Scouts of America v. Dale</i> , 530 U.S. 640 (2000) http://www.oyez.org/cases/1990-1999/1999/1999_99_699		

Jigsaw Activity
A Collection of U.S. Supreme Court Cases: Freedom of Speech

	Background Facts	Question	Case	Decision	Free Speech Principle
54.	<p>The Chicago Park District is responsible for operating public parks and other public property in Chicago. Pursuant to its authority, the Park District adopted an ordinance requiring individuals to obtain a permit before conducting large-scale events in public parks. The ordinance provides that the Park District may deny a permit on any of 13 specified grounds, must process applications within 28 days, and must explain its reasons for a denial. An unsuccessful applicant may appeal, first, to the Park District's general superintendent and then to state court. The Windy City Hemp Development Board applied on several occasions for permits to hold rallies advocating the legalization of marijuana. Some permits were granted and others were denied. Ultimately, the Board filed suit, alleging that the ordinance is unconstitutional on its face. The District Court granted the Park District summary judgment. The Court of Appeals affirmed.</p>	<p>Did a municipal park ordinance requiring individuals to obtain a permit before conducting large-scale events have to contain, consistent with the First Amendment, certain procedural safeguards?</p>	<p><i>Thomas v. Chicago Park District</i>, 534 U.S. 316 (2002) http://www.oyez.org/cases/2000-2009/2001/2001_00_124_9</p>		
55.	<p>The Child Pornography Prevention Act of 1996 (CPPA) prohibits "any visual depiction, including any photograph, film, video, picture, or computer or computer-generated image or picture" that "is, or appears to be, of a minor engaging in sexually explicit conduct," and any sexually explicit image that is "advertised, promoted, presented, described, or distributed in such a manner that conveys the impression" it depicts "a minor engaging in sexually explicit conduct." The Free Speech Coalition, an adult-entertainment trade association, and others filed suit, alleging that the "appears to be" and "conveys the impression" provisions are overbroad and vague and, thus, restrain works otherwise protected by the First Amendment. Reversing the District Court, the Court of Appeals held the CPPA invalid on its face, finding it to be substantially overbroad because it bans materials that are neither obscene under <i>Miller v. California</i>, 413 U.S. 15, nor produced by the exploitation of real children as in <i>New York v. Ferber</i>, 458 U.S. 747.</p>	<p>Did the Child Pornography Prevention Act of 1996 abridge freedom of speech when it proscribes a significant universe of speech that is neither obscene under <i>Miller v. California</i> nor child pornography under <i>New York v. Ferber</i>?</p>	<p><i>Ashcroft v. Free Speech Coalition</i>, 535 U.S. 234 (2002) http://www.oyez.org/cases/2000-2009/2001/2001_00_795</p>		

A Collection of U.S. Supreme Court Cases: Freedom of Speech

	Background Facts	Question	Case	Decision	Free Speech Principle
56.	Minnesota's Constitution provides for the selection of all state judges by popular election. The announcement clause of the Minnesota Supreme Court's canon of judicial conduct prohibits a candidate from announcing his or her views on disputed legal or political issues. While running for associate justice of the Minnesota Supreme Court, Gregory Wersal filed suit, seeking a declaration that the announce clause violates the First Amendment and an injunction against its enforcement. Wersal alleged that he was forced to refrain from announcing his views on disputed issues during the 1998 campaign, to the point where he declined response to questions put to him by the press and public out of concern that he might run afoul of the announce clause. The District Court found that the announcement clause did not violate the First Amendment. The Court of Appeals affirmed.	Does the First Amendment permit the Minnesota Supreme Court to prohibit candidates for judicial election in that state from announcing their views on disputed legal and political issues?	<i>Republican Party of Minnesota v. White</i> , 536 U.S. 765 (2002) http://www.oyez.org/cas/es/2000-2009/2001/2001_01_521		
57.	Barry Black, Richard Elliott, and Jonathan O'Mara were convicted separately of violating a Virginia statute that makes it a felony "for any person..., with the intent of intimidating any person or group..., to burn...a cross on the property of another, a highway or other public place," and specifies that "any such burning...shall be prima facie evidence of an intent to intimidate a person or group." At trial, Black objected on First Amendment grounds to a jury instruction that cross burning by itself is sufficient evidence from which the required "intent to intimidate" could be inferred. He was found guilty. O'Mara pleaded guilty to charges of violating the statute, but reserved the right to challenge its constitutionality. In Elliott's trial, the judge did not give an instruction on the statute's prima facie evidence provision. Ultimately, the Virginia Supreme Court held, among other things, that the cross-burning statute is unconstitutional on its face and that the prima facie evidence provision renders the statute overbroad because the probability of prosecution under the statute chills the expression of protected speech	Did the Commonwealth of Virginia's cross-burning statute, which prohibits the burning of a cross with the intent of intimidating any person or group of persons, violate the First Amendment?	<i>Virginia v. Black</i> , 538 U.S. 343 (2003) http://www.oyez.org/cas/es/2000-2009/2002/2002_01_110 7		
58.	Congress passed the Children's Internet Protection Act (CIPA) in 2000, requiring public libraries to install Internet filtering software on their computers in order to qualify for federal funding. The American Library Association and others challenged the law, claiming that it improperly required them to restrict the First Amendment rights of their patrons. As stipulated by the law, a three-judge panel heard the case and ruled unanimously that the CIPA violated the First Amendment.	Does Congress have the authority to require libraries to censor Internet content in order to receive federal funding?	<i>United States v. American Library Association</i> , 539 U.S. 194 (2003) http://www.oyez.org/cas/es/2000-2009/2002/2002_02_361		

A Collection of U.S. Supreme Court Cases: Freedom of Speech

	Background Facts	Question	Case	Decision	Free Speech Principle
59.	<p>Congress passed the Child Online Protection Act (COPA) to prevent minors from accessing pornography online. The American Civil Liberties Union (ACLU) and online publishers sued in federal court to prevent enforcement of the Act, arguing that it violated the free speech clause of the First Amendment.</p>	<p>Is the Child Online Protection Act's requirement that online publishers prevent children from accessing "material that is harmful to minors" likely to violate the First Amendment by restricting too much protected speech and using a method that is not the least restrictive one available?</p>	<p><i>Ashcroft v. American Civil Liberties Union</i>, 542 U.S. 656 (2004) http://www.oyez.org/cases/2000-2009/2003/2003_03_218</p>		
60.	<p>The Solomon Amendment, 10 U.S.C. 983(b)(1), withholds some federal funding from colleges and universities that deny U.S. military recruiters the same access to students that other employers are given. The Forum for Academic and Institutional Rights challenged the law, arguing that it violated the schools' First Amendment right to expressive association by requiring them to assist in military recruitment.</p>	<p>Did the Solomon Amendment, which withholds certain federal funds from colleges and universities that restrict the access of military recruiters to students, violate the First Amendment?</p>	<p><i>Rumsfeld v. Forum for Academic and Institutional Rights (FAIR)</i>, 547 U.S. ____ (2006) http://www.oyez.org/cases/2000-2009/2005/2005_04_115 2</p>		

A Collection of U.S. Supreme Court Cases: Freedom of Speech

	Background Facts	Question	Case	Decision	Free Speech Principle
61.	At a school-supervised event, Joseph Frederick held up a banner with the message "Bong Hits 4 Jesus," a slang reference to marijuana smoking. Principal Deborah Morse took away the banner and suspended Frederick for ten days. She justified her actions by citing the school's policy against the display of material that promotes the use of illegal drugs. Frederick sued under 42 U.S.C. 1983, the federal civil rights statute, alleging a violation of his First Amendment right to freedom of speech.	Does the First Amendment allow public schools to prohibit students from displaying messages promoting the use of illegal drugs at school-supervised events?	<i>Morse v. Frederick</i> , 551 U.S. ____ (2007) http://www.oyez.org/cas/es/2000-2009/2006/2006_06_278		
62.	Summum, a religious organization, sent a letter to the mayor of Pleasant Grove, Utah, asking to place a monument in one of the city's parks. Although the park already housed a monument to the Ten Commandments, the mayor denied Summum's request because the monument did not "directly relate to the history of Pleasant Grove." Summum filed suit against the city in federal court citing, among other things, a violation of its First Amendment free speech right.	Did a city's refusal to place a religious organization's monument in a public park violate that organization's First Amendment free speech right when the park already contains a monument from a different religious group?	<i>Pleasant Grove City v. Summum</i> , 555 U.S. ____ (2009) http://www.oyez.org/cas/es/2000-2009/2008/2008_07_665		

Sources:

- OYEZ <http://www.oyez.org/>
- Justice Learning: Free Speech Timeline <http://www.justicelearning.org/ViewIssue.aspx?IssueID=4>
- Law Library – American Law and Legal Information <http://law.irank.org/>

Activity
Matters of Interpretation
 Finding Boundaries for Free Speech in Supreme Court Decisions

Instructions:

1. Revisit the closing words of Justice Breyer and Justice O'Connor in the video by replaying the video and reading the transcripts below.
2. Complete the jigsaw activity in assigned groups.
3. After the large-group class discussion of the cases, complete the chart on the next page to summarize what you learned.

Justice Breyer: (Start time 24:47)

Look at what we've been doing in the last half hour or so. You're getting a little insight into our job as judges. We start with a principle, and the principle is one we can pretty much agree on. The Constitution says, "Congress . . . shall not abridge the freedom of speech." That means all government, not just Congress. But it doesn't say what the freedom of speech is, does it? So that's left to people to work out.

Now we started with what I think is the easiest principle because it's the most widely accepted, that the worst thing you can do by way of abridgement is stop somebody from talking because you don't like what he says. Now that's called his viewpoint. Or it's called the content or the expression or the point of view. Now, it's easiest to say, "Well, certainly that's protected." But even there, you can find some borderline cases. And now we begin to move away from that and say, does it matter if he's in the army? Does it matter if he's in high school? Does it matter if he's in grammar school? Does it matter what the subject is? Does it matter when it's said? Does it matter why it's said? Does it matter? Does it matter? Does it matter? And these are not just asked, which we were doing, to make it difficult for you. They were asked because that's what happens in a court that's concerned with free speech. We get one variation after another and we have to decide what the principles are in these very different circumstances. And that isn't so easy because the only thing we all agree upon, is whatever the principle is in this case, it's going to be the same for all similar cases.

Justice O'Connor: (Start time: 26:44)

Well, I think we have seen—at least in this Court—that it does matter if the speech is occurring in a public school, or a school where children are under the age of becoming an adult, under 18, and that the school does act as substitute parental authority in effect while a child is in school and the school can set certain parameters of behavior for the students that include speech. I think we have seen the Court acknowledge something to that effect, but at the same time, there are different circumstances. And if all the student is saying is, "I think the legislature in this state should legalize marijuana..." we didn't have that case here, but I suspect the result might be different than a student saying, "Now, everybody go out and smoke marijuana. We know it's illegal, but you ought to do it." See, two different things, aren't they? And the Court has recognized that and probably properly so. The example that is often given is that even for an adult, it's OK to prohibit people from yelling "Fire!" in a crowded theater when it isn't true just to stimulate everybody panicking and trying to get out. That can be prohibited. It's not a form of protected speech in other words. So there are some limits, and the question for the courts always is where do we find those limits and how do we define the boundaries?

Activity
Matters of Interpretation
Finding Boundaries for Free Speech in Supreme Court Decisions

Foundational principle (starting point): “Congress shall make no law . . . abridging the freedom of speech . . .”— U.S. Constitution, First Amendment

Instructions: After the class completes the jigsaw activity for analyzing the Supreme Court cases, summarize principles used for defining the limits of free speech and provide related examples. Groupings should be easily identified.

Free-Speech Scenarios to Decide

Instructions: Reflect on the principles used by the courts to resolve free speech disputes as you discuss the following scenarios in your group.

1. Off-campus speech (A scenario described by Justice Breyer in the video)

Thinking it would be a fun thing to do, a group of students get together at someone's house to write a newspaper about the worst things their teachers said that day and distribute it amongst their friends. The newspaper contains insults and uses crude and offensive language when describing their teachers. Now the school wants to discipline them for it. Can they do it? The school thinks it's a bad idea for education to have the students meet in their houses and pass out a newspaper that criticizes all the teachers in very rude, explicitly awful, slangy ways, so they say, "This is part of our discipline."

Q: How far should the boundaries of authority for a school reach and what criteria should be used to make that decision?

2. Dress code

A student persisted in wearing sagging pants to school even though he was told it was against the high school's dress code. After repeated violations, he was given a long-term suspension. The student argued that his wearing of the sagging pants conveyed the particular message of African American heritage in the hip-hop fashion and lifestyle.

Q: Was the student's First Amendment right to free speech denied?

3. Blogger

Administrators bar a high school student from running in a student election after the student criticizes them in a blog for their handling of a student festival. In the blog, the student calls the administrators names and asks fellow students and parents to complain to the superintendent to make him mad. Inappropriate language was used in the post, which was written and sent from home.

Q: Does the student blogger have a free speech defense?

4. Cyberbullies

A student wrote derogatory and hateful comments about another student and posted them online for everyone to read. The comments caused significant emotional distress and interfered with the student's ability to participate fully in school. School officials punished the author, and the parents are suing the family. The school takes the position that it can punish student conduct if it disrupts class work or involves substantial disorder or invasion of the rights of others even if the student is not in class.

Q: When do students' online comments "cross the line" and become First Amendment concerns? Should Internet speech be regulated, and if so, what criteria should be used? Would it matter if a teacher was being defamed instead of a student?

Teacher Materials

- Teacher's Chart for jigsaw activity: "A Collection of Supreme Court Cases: Free Speech"
- Answer Key: Ten Questions

Lesson: Fr

•

•

Teacher's Chart
A Collection of U.S. Supreme Court Cases: Freedom of Speech
 (Supplement for Jigsaw Activity)

NOTE: Cases highlighted in red contain language that may be inappropriate. Be sure to review before using.

	Case	Majority Opinion	Free Speech Principle
1.	<p><i>Schenck v. United States</i>, 249 U.S. 47 (1919) http://www.oyez.org/cases/1901-1939/1918/1918_437</p>	<p>Justice Oliver Wendell Holmes, speaking for a unanimous Court, concluded that Schenck is not protected in this situation. The character of every act depends on the circumstances. "The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent." During wartime, utterances tolerable in peacetime can be punished.</p>	<p>Clear and present danger threshold.</p>
2.	<p><i>Abrams v. United States</i>, 250 U.S. 616 (1919) http://www.oyez.org/cases/1901-1939/1919/1919_316</p>	<p>No and no. The act's amendments are constitutional, and the defendants' convictions are affirmed. In Justice John Clarke's majority opinion, the leaflets are an appeal to violent revolution, a call for a general strike, and an attempt to curtail production of munitions. The leaflets had a tendency to encourage war resistance and to curtail war production. Justices Holmes and Brandeis dissented on narrow ground: The necessary intent had not been shown. These views were to become a classic libertarian pronouncement.</p>	<p>Marketplace concept for the value of competing ideas.</p>
3.	<p><i>Gitlow v. New York</i>, 268 U.S. 652 (1925) http://www.oyez.org/cases/1901-1939/1922/1922_19</p>	<p>Threshold issue: Does the First Amendment apply to the states? Yes, by virtue of the liberty protected by due process that no state shall deny (14th Amendment). On the merits, a state may forbid both speech and publication if they have a tendency to result in action dangerous to public security, even though such utterances create no clear and present danger. The rationale of the majority has sometimes been called the "dangerous tendency" test. The legislature may decide that an entire class of speech is so dangerous that it should be prohibited. Those legislative decisions will be upheld if not unreasonable, and the defendant will be punished even if her speech created no danger at all.</p>	<p>Free speech guarantee applies to the states, not just to federal government. Speech deemed dangerous to public security can be forbidden.</p>
4.	<p><i>Whitney v. California</i>, 274 U.S. 357 (1927) http://www.oyez.org/cases/1901-1939/1925/1925_3</p>	<p>In a unanimous decision, the Court sustained Whitney's conviction and held that the Act did not violate the Constitution. The Court found that the Act violated neither the Due Process Clause nor the Equal Protection Clause, and that freedom of speech guaranteed by the First Amendment was not an absolute right. The Court argued "that a State . . . may punish those who abuse this freedom by utterances . . . tending to . . . endanger the foundations of organized government and threaten its overthrow by unlawful means" and was not open to question. The decision is most notable for the concurring opinion written by Justice Louis Brandeis, in which he argued that only clear, present, and imminent threats of "serious evils" could justify suppression of speech.</p>	<p>Speech intending to endanger the foundations of organized government may be prevented.</p>
5.	<p><i>Stromberg v. People Of State Of California</i>, 283 U.S. 359 (1931) http://www.oyez.org/cases/1901-1939/1930/1930_584</p>	<p>The Court rules that the woman's nonverbal, symbolic expression of her antigovernment opinions is protected just as are any words that she might write or speak to express those opinions. . .</p>	<p>Symbolic speech protected.</p>
6.	<p><i>Thornhill v. Alabama</i>, 310 U.S. 88 (1940) http://www.oyez.org/cases/1901-1939/1939/1939_514</p>	<p>In an 8-to-1 decision, the Court held that Section 3448 of the Alabama State Code was facially invalid. The Court held that labor relations were "not matters of mere local or private concern," and that free discussion concerning labor conditions and industrial disputes was "indispensable to the effective and intelligent use of the processes of popular government to shape the destiny of modern industrial society." The Court found that no clear and present danger of destruction of life or property or of breach of the peace was inherent to labor picketing, and thus deserved First Amendment protection</p>	<p>Anti-picketing law held unconstitutional; no clear and present danger evident.</p>

Teacher's Chart
A Collection of U.S. Supreme Court Cases: Freedom of Speech
 (Supplement for Jigsaw Activity)

NOTE: Cases highlighted in red contain language that may be inappropriate. Be sure to review before using.

Case	Majority Opinion	Free Speech Principle
7. <i>Cantwell v. State of Connecticut</i> , 310 U.S. 296 (1940) http://www.oyez.org/cases/1901-1939/1939/1939_632	Yes. In a unanimous decision, the Court held that while general regulations on solicitation were legitimate, restrictions based on religious grounds were not. Because the statute allowed local officials to determine which causes were religious and which ones were not, it violated the First and Fourteenth Amendments. The Court also held that while the maintenance of public order was a valid state interest, it could not be used to justify the suppression of "free communication of views." The Cantwells' message, while offensive to many, did not entail any threat of "bodily harm" and was protected religious speech.	Established the time, manner, and place rule that says the state can regulate the free exercise right to ensure it is practiced in a reasonable time, manner and place.
8. <i>Minersville School District v. Gobitis</i> , 310 U.S. 586 (1940) http://www.oyez.org/cases/1901-1939/1939/1939_690	No. In an 8-to-1 decision, the Court declined to make itself "the school board for the country" and upheld the mandatory flag salute. The Court held that the state's interest in "national cohesion" was "inferior to none in the hierarchy of legal values" and that national unity was "the basis of national security." The flag, the Court found, was an important symbol of national unity and could be a part of legislative initiatives designed "to promote in the minds of children who attend the common schools an attachment to the institutions of their country."	Upholds the flag-salute law and relates it to issues of national security.
9. <i>Chaplinsky v. State of New Hampshire</i> , 315 U.S. 568 (1942) http://www.oyez.org/cases/1940-1949/1941/1941_255	No. Some forms of expression--among them obscenity and fighting words--do not convey ideas and thus are not subject to First Amendment protection. In this case, Chaplinsky uttered fighting words, i.e., words that "inflict injury or tend to incite an immediate breach of the peace."	"Fighting words" exception established.
10. <i>West Virginia State Board of Ed. v. Barnette</i> , 319 U.S. 624 (1943) http://www.oyez.org/cases/1940-1949/1942/1942_591	In a 6-to-3 decision, the Court overruled its decision in <i>Minersville School District v. Gobitis</i> and held that compelling public schoolchildren to salute the flag was unconstitutional. The Court found that such a salute was a form of utterance and was a means of communicating ideas. "Compulsory unification of opinion," the Court held, was doomed to failure and was antithetical to First Amendment values. Writing for the majority, Justice Robert Jackson argued that "[i]f there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein."	Requiring flag salute violates free speech (overturns earlier ruling). A ruling against compelled ideological speech.
11. <i>Terminiello v. Chicago</i> , 337 U.S. 1 (1949) http://www.oyez.org/cases/1940-1949/1948/1948_272	In a 5-to-4 decision, the Court held that the "breach of the peace" ordinance unconstitutionally infringed upon the freedom of speech. Noting that "[t]he vitality of civil and political institutions in our society depends on free discussion," the Court held that speech could be restricted only in the event that it was "likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance, or unrest." Justice William Douglas wrote that "a function of free speech under our system is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger."	Scope of "fighting words" limited.

Teacher's Chart

A Collection of U.S. Supreme Court Cases: Freedom of Speech

(Supplement for Jigsaw Activity)

NOTE: Cases highlighted in red contain language that may be inappropriate. Be sure to review before using.

	Case	Majority Opinion	Free Speech Principle
12.	<i>Dennis v. United States</i> , 341 U.S. 494 (1951) http://www.ovez.org/cases/1950-1959/1950/1950_336	In a 6-to-2 decision, the Court upheld the convictions of the Communist Party leaders and found that the Smith Act did not "inherently" violate the First Amendment. In the plurality opinion, the Court held that there was a distinction between the mere teaching of communist philosophies and active advocacy of those ideas. Such advocacy created a "clear and present danger" that threatened the government. Given the gravity of the consequences of an attempted putsch, the Court held that success or probability of success was not necessary to justify restrictions on the freedom of speech	Applies standard of clear and present danger.
13.	<i>Beauharnais v. Illinois</i> , 343 U.S. 250 (1952) http://www.ovez.org/cases/1950-1959/1951/1951_118	No. In a 5-4 opinion authored by Justice Felix Frankfurter, the Court concluded that Beauharnais' speech amounted to libel and was therefore beyond constitutional protection. Citing the racial tensions of the day, the Court characterized Beauharnais' speech as provocative and rejected the argument that the Illinois statute could be easily abused, stating, "Every power may be abused, but the possibility of abuse is a poor reason for denying Illinois the power to adopt measures against criminal libels sanctioned by centuries of Anglo-American law."	Upholds group libel law – Libel against groups has no place in the marketplace of ideas.
14.	<i>Roth v. United States</i> , 354 U.S. 476 (1957) http://www.ovez.org/cases/1950-1959/1956/1956_582	In a 6-to-3 decision written by Justice William J. Brennan, Jr., the Court held that obscenity was not "within the area of constitutionally protected speech or press." The Court noted that the First Amendment was not intended to protect every utterance or form of expression, such as materials that were "utterly without redeeming social importance." The Court held that the test to determine obscenity was "whether to the average person, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to prurient interest." The Court held that such a definition of obscenity gave sufficient fair warning and satisfied the demands of Due Process. Brennan later reversed his position on this issue in <i>Miller v. California</i> (1973).	Obscenity exception to First Amendment established.
15.	<i>Garner v. Louisiana</i> , 368 U.S. 157 (1961) http://www.ovez.org/cases/1960-1969/1961/1961_26	The Court overturned the convictions of five African Americans for disturbing the peace. The records contained no evidence to support a finding that the petitioners had disturbed the peace.	Symbolic speech = peaceful sit-ins.
16.	<i>New York Times v. Sullivan</i> , 376 U.S. 254 (1964) http://www.ovez.org/cases/1960-1969/1963/1963_39	The Court held that the First Amendment protects the publication of all statements, even false ones, about the conduct of public officials except when statements are made with actual malice (with knowledge that they are false or in reckless disregard of their truth or falsity). Under this new standard, Sullivan's case collapsed.	"Actual malice" standards established.
17.	<i>Time Inc. v. Hill</i> , 385 U.S. 374 (1967) http://www.ovez.org/cases/1960-1969/1965/1965_22	Yes. In a 6-to-3 opinion, the Court set aside the Appellate ruling against Time because the lower court failed to instruct the jury that Time's liability was contingent upon a showing that it knowingly and recklessly published false statements about the Hill family. The Court explained that absent a finding of such malicious intent on the part of a publisher, press statements are protected under the First Amendment even if they are otherwise false or inaccurate. The Court remanded for retrial under the new jury instruction.	Press statements are protected under the First Amendment if a finding of malicious intent is not present.

Teacher's Chart
A Collection of U.S. Supreme Court Cases: Freedom of Speech
 (Supplement for Jigsaw Activity)

NOTE: Cases highlighted in red contain language that may be inappropriate. Be sure to review before using.

	Case	Majority Opinion	Free Speech Principle
18.	<i>United States v. O'Brien</i> , 391 U.S. 367 (1968) http://www.oyez.org/cases/1960-1969/1967/1967_232	No. The 7-to-1 majority, speaking through Chief Justice Earl Warren, established a test to determine whether governmental regulation involving symbolic speech was justified. The formula examines whether the regulation is unrelated to content and narrowly tailored to achieve the government's interest. "[W]e think it clear," wrote Warren, "that a government regulation is sufficiently justified if it is within the constitutional power of the Government; if it furthers an important or substantial governmental interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedoms is not greater than is essential to the furtherance of that interest."	Limits placed on symbolic speech right.
19.	<i>Pickering v. Board Of Education</i> , 391 U.S. 563 (1968) http://www.oyez.org/cases/1960-1969/1967/1967_510	Public school teachers are entitled to some First Amendment protection and the teacher was speaking out more as a citizen than as a public employee when he wrote the letter. The court says the interests of public employees in commenting on matters of public concern as citizens must be considered with the government's interest in promoting efficient services through its employees.	Teacher's entitled to some First Amendment rights when speaking out more as a citizen than as a public employee.
20.	<i>Tinker v. Des Moines Ind. Comm. School Dist.</i> , 393 U.S. 503 (1969) http://www.oyez.org/cases/1960-1969/1968/1968_21	The Court decided that the wearing of armbands was "closely akin to 'pure speech'" and protected by the First Amendment. School environments imply limitations on free expression, but here the principals lacked justification for imposing any such limits. The principals had failed to show that the forbidden conduct would substantially interfere with appropriate school discipline.	Student's right to symbolic speech.
21.	<i>Stanley v. Georgia</i> , 394 U.S. 557 (1969) http://www.oyez.org/cases/1960-1969/1968/1968_293	The Court held that the First and Fourteenth Amendments prohibited making private possession of obscene materials a crime. In his majority opinion, Justice Thurgood Marshall noted that the rights to receive information and to personal privacy were fundamental to a free society. Marshall then found that "[i]f the First Amendment means anything, it means that a State has no business telling a man, sitting alone in his own house, what books he may read or what films he may watch. Our whole constitutional heritage rebels at the thought of giving government the power to control men's minds." The Court distinguished between the mere private possession of obscene materials and the production and distribution of such materials. The latter, the Court held, could be regulated by the states.	Ownership of obscene material protected.
22.	<i>Brandenburg v. Ohio</i> , 395 U.S. 444 (1969) http://www.oyez.org/cases/1960-1969/1968/1968_492	The Court's per curiam opinion held that the Ohio law violated Brandenburg's right to free speech. The Court used a two-pronged test to evaluate speech acts: (1) speech can be prohibited if it is "directed at inciting or producing imminent lawless action" and (2) it is "likely to incite or produce such action." The criminal syndicalism act made illegal the advocacy and teaching of doctrines while ignoring whether or not that advocacy and teaching would actually incite imminent lawless action. The failure to make this distinction rendered the law overly broad and in violation of the Constitution.	Advocacy of violence protected speech except in rare circumstances.
23.	<i>Cohen v. California</i> , 403 U.S. 15 (1971) http://law.trank.org/pages/12820/Cohen-v-California.html	Yes. In an opinion by Justice John Marshall Harlan, the Court reasoned that the expletive, while provocative, was not directed toward anyone; besides, there was no evidence that people in substantial numbers would be provoked into some kind of physical action by the words on his jacket. Harlan recognized that "one man's vulgarity is another's lyric." In doing so, the Court protected two elements of speech: the emotive (the expression of emotion) and the cognitive (the expression of ideas).	Antiwar expression is ruled protected speech.

Teacher's Chart
A Collection of U.S. Supreme Court Cases: Freedom of Speech
 (Supplement for Jigsaw Activity)

NOTE: Cases highlighted in red contain language that may be inappropriate. Be sure to review before using.

	Case	Majority Opinion	Free Speech Principle
24.	<i>Lloyd Corp. v. Tanner</i> , 407 U.S. 551 (1972) http://www.oyez.org/cases/1970-1979/1971/1971_71_492	U.S. Supreme Court rules that there are certain places where individuals do not have an unlimited right to free speech, and private property is one of them. As a result, the court decides that owners of a shopping mall may prevent antiwar activists from handing out leaflets there.	Limits free speech on private property.
25.	<i>Paris Adult Theatre v. Slaton</i> , 413 U.S. 49 (1973) http://www.oyez.org/cases/1970-1979/1972/1972_71_1051	In a 5-to-4 decision, the Court held that obscene films did not acquire constitutional protection simply because they were exhibited for consenting adults only. Conduct involving consenting adults, the Court argued, was not always beyond the scope of governmental regulation. The Court found that there were "legitimate state interests at stake in stemming the tide of commercialized obscenity," including the community's quality of life and public safety. The Court also noted that conclusive proof of a connection between antisocial behavior and obscene materials was not necessary to justify the Georgia law.	States can regulate obscene exhibits.
26.	<i>Miller v. California</i> , 413 U.S. 15 (1973) http://www.oyez.org/cases/1970-1979/1971/1971_70_73	In a 5-to-4 decision, the Court held that obscene materials did not enjoy First Amendment protection. The Court modified the test for obscenity established in <i>Roth v. United States</i> and <i>Memoirs v. Massachusetts</i> , holding that "[t]he basic guidelines for the trier of fact must be: (a) whether 'the average person, applying contemporary community standards' would find that the work, taken as a whole, appeals to the prurient interest. . . (b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and (c) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value." The Court rejected the "utterly without redeeming social value" test of the <i>Memoirs</i> decision.	Definition of obscenity is clarified.
27.	<i>Gertz v. Robert Welch Inc.</i> , 418 U.S. 323 (1974) http://www.oyez.org/cases/1970-1979/1973/1973_72_617	The Court reversed the lower court decision and held that Gertz's rights had been violated. Justice Lewis Powell argued that the application of the <i>New York Times v. Sullivan</i> standard in this case was inappropriate because Gertz was neither a public official nor a public figure. In the context of the opinion, Powell advanced many lines of reasoning to establish that ordinary citizens should be allowed more protection from libelous statements than individuals in the public eye. However, continued Powell, the actual malice standard did not lose all significance in cases involving ordinary citizens as he advised states to use it in assessing claims for punitive damages by citizens suing for libel.	Ordinary citizens should be allowed more protection from libelous statements than individuals in the public eye.
28.	<i>Buckley v. Valeo</i> , 424 U.S. 1 (1976) http://www.oyez.org/cases/1970-1979/1975/1975_75_436	In this complicated case, the Court arrived at two important conclusions. First, it held that restrictions on individual contributions to political campaigns and candidates did not violate the First Amendment since the limitations of the FECA enhance the "integrity of our system of representative democracy" by guarding against unscrupulous practices. Second, the Court found that governmental restriction of independent expenditures in campaigns, the limitation on total campaign expenditures by candidates from their own personal or family resources, and the limitation on total campaign expenditures did violate the First Amendment. Since these practices do not necessarily enhance the potential for corruption that individual contributions to candidates do, the Court found that restricting them did not serve a government interest great enough to warrant a curtailment on free speech and association.	Campaign expenditures linked to political speech.

Teacher's Chart
A Collection of U.S. Supreme Court Cases: Freedom of Speech
(Supplement for Jigsaw Activity)

NOTE: Cases highlighted in red contain language that may be inappropriate. Be sure to review before using.

	Case	Majority Opinion	Free Speech Principle
29.	<i>Virginia Pharmacy Bd. v. Virginia Consumer Council</i> , 425 U.S. 748 (1976) http://www.oyez.org/cases/1970-1979/1975/1975_74_895	Yes. In a 7-1 decision, the Court held that the First Amendment protects willing speakers and willing listeners equally. The Court noted that in cases of commercial speech, such as price advertising, freedom of speech protections apply just as they would to noncommercial speech. Even speech that is sold for profit, or involves financial solicitations, is protected. The Court concluded that although the Virginia State Board of Pharmacy has a legitimate interest in preserving professionalism among its members, it may not do so at the expense of public knowledge about lawful competitive pricing terms.	Protects commercial speech.
30.	<i>Hudgens v. NLRB</i> , 424 U.S. 507 (1976) http://www.oyez.org/cases/1970-1979/1975/1975_74_773	First Amendment rights do not extend to privately owned shopping centers. The court says that because there was no dedicated public use of the privately owned shopping center where striking workers were picketing, people did not have the same free speech right there as they would in public facilities elsewhere.	Doesn't apply to privately owned shopping centers.
31.	<i>Wooley v. Maynard</i> , 430 U.S. 705 (1977) http://www.oyez.org/cases/1970-1979/1976/1976_75_1453	In a 6-3 decision, the Court held that New Hampshire could not constitutionally require citizens to display the state motto upon their vehicle license plates. The Court found that the statute in question effectively required individuals to "use their private property as a 'mobile billboard' for the State's ideological message." The Court held that the State's interests in requiring the motto did not outweigh free speech principles under the First Amendment, including "the right of individuals to hold a point of view different from the majority and to refuse to foster...an idea they find morally objectionable."	Individuals could refuse to foster an idea they find morally objectionable.
32.	<i>FCC v. Pacifica Foundation</i> , 438 U.S. 726 (1978) http://law.irank.org/pages/12652/Federal-Communications-Commission-v-Pacifica-Foundation.html	No. The Court held that limited civil sanctions could constitutionally be invoked against a radio broadcast of patently offensive words dealing with sex and excretion. The words need not be obscene to warrant sanctions. Audience, medium, time of day, and method of transmission are relevant factors in determining whether to invoke sanctions. "[W]hen the Commission finds that a pig has entered the parlor, the exercise of its regulatory power does not depend on proof that the pig is obscene."	FCC can regulate indecent speech.
33.	<i>Central Hudson Gas & Electric Corp. v. Public Service Commission of New York</i> , 447 U.S. 557 (1980) http://www.oyez.org/cases/1970-1979/1979/1979_79_565	Yes. In an 8-1 opinion, the Court overruled the Court of Appeals of New York and held that the New York's ban violated the right to commercial speech. Writing for the majority, Justice Lewis F. Powell cited the protections for "commercial speech from unwarranted governmental regulation" set forth in <i>Virginia Pharmacy Board v. Virginia Citizens Consumer Council</i> . The Court recognized New York's interest in promoting energy conservation and accepted that the PSC's regulation would directly further that interest. However, since the regulation restricted all promotional advertising regardless of its effect on electricity use, it violated the First and Fourteenth Amendment under <i>First National Bank of Boston v. Bellotti</i> . Justices William J. Brennan, Jr., Harry A. Blackmun, and John Paul Stevens each wrote opinions concurring in part and in the judgment	Establishes commercial speech test.

Teacher's Chart

A Collection of U.S. Supreme Court Cases: Freedom of Speech

(Supplement for Jigsaw Activity)

NOTE: Cases highlighted in red contain language that may be inappropriate. Be sure to review before using.

Case	Majority Opinion	Free Speech Principle
34. <i>PruneYard Shopping Center v. Robins</i> , 447 U.S. 74 (1980) http://www.ovez.org/cases/1970-1979/1979/1979_79_289	Yes. Since the California Constitution protected "speech and petitioning, reasonably exercised, in shopping centers even when the shopping centers are privately owned," PruneYard could not prevent the students from soliciting on its property. The Court argued that it was within California's power to guarantee this expansive free speech right since it did not unreasonably intrude on the rights of private property owners	State had the power to guarantee this expansive free speech right since it didn't intrude on the rights of private property owners.
35. <i>Richmond Newspapers Inc. v. Virginia</i> , 448 U.S. 555 (1980) http://www.ovez.org/cases/1970-1979/1979/1979_79_243	In a 7-to-1 decision, the Court held that the right to attend criminal trials was "implicit in the guarantees of the First Amendment." The Court held that the First Amendment encompassed not only the right to speak but also the freedom to listen and to receive information and ideas. The Court also noted that the First Amendment guaranteed the right of assembly in public places such as courthouses. The Court emphasized that "certain unarticulated rights" were implicit in enumerated guarantees and were often "indispensable to the enjoyment of rights explicitly defined."	First Amendment encompassed not only the right to speak but also the freedom to listen and to receive information and ideas.
36. <i>New York v. Ferber</i> , 458 U.S. 747 (1982) http://www.ovez.org/cases/1980-1989/1981/1981_81_55	No. In the Court's first examination of a statute specifically targeted against child pornography, it found that the state's interest in preventing sexual exploitation of minors was a compelling "government objective of surpassing importance." The law was carefully drawn to protect children from the mental, physical, and sexual abuse associated with pornography while not violating the First Amendment.	Child porn not protected.
37. <i>Board Of Education v. Pico</i> , 457 U.S. 853 (1982) http://www.ovez.org/cases/1980-1989/1981/1981_80_2043	Yes. Although school boards have a vested interest in promoting respect for social, moral, and political community values, their discretionary power is secondary to the transcendent imperatives of the First Amendment. The Court, in a 5-to-4 decision, held that as centers for voluntary inquiry and the dissemination of information and ideas, school libraries enjoy a special affinity with the rights of free speech and press. Therefore, the Board could not restrict the availability of books in its libraries simply because its members disagreed with their idea content.	School board cannot ban library books.
38. <i>Connick v. Myers</i> , 461 U.S. 138 (1983) http://www.ovez.org/cases/1980-1989/1982/1982_81_1251	The U.S. Supreme Court says that an assistant district attorney's free speech right was not violated when she was fired for distributing a questionnaire about internal office practices to fellow prosecutors. At least one of Myers' questions related to a matter of public concern: whether assistant prosecutors felt pressured to work in political campaigns. But, relying on its 1968 Pickering ruling, the Court decides that the employer's interest in a disruption-free workplace outweighs the employee's right to comment on an issue of public concern.	Public employees' free speech right defined.
39. <i>Clark v. C.C.N.V.</i> , 468 U.S. 288 (1984) http://www.ovez.org/cases/1980-1989/1983/1983_82_1998	In a 7-to-2 decision, the Court held that the regulations did not violate the First Amendment. The Court noted that expression is subject to reasonable time, place, and manner restrictions, and that the manner of the protest was at odds with the government's interest in maintaining the condition of the parks. The Court argued that the Park Service did not attempt to ban all sleeping in public parks (only in certain areas), and that the protesters had alternative means of communicating their message.	Expression is subject to reasonable time, place, and manner restrictions.

Teacher's Chart
A Collection of U.S. Supreme Court Cases: Freedom of Speech
 (Supplement for Jigsaw Activity)

NOTE: Cases highlighted in red contain language that may be inappropriate. Be sure to review before using.

	Case	Majority Opinion	Free Speech Principle
40.	<p><i>Bethel School District No. 403 v. Fraser</i>, 478 U.S. 675 (1986) http://www.ovez.org/cases/1980-1989/1985/1985_84_1667</p>	<p>No. The Court found that it was appropriate for the school to prohibit the use of vulgar and offensive language. Chief Justice Warren Burger distinguished between political speech, which the Court previously had protected in <i>Tinker v. Des Moines Independent Community School District</i> (1969), and the supposed sexual content of Fraser's message at the assembly. Burger concluded that the First Amendment did not prohibit schools from prohibiting vulgar and lewd speech since such discourse was inconsistent with the "fundamental values of public school education."</p>	<p>It was appropriate for the school to prohibit the use of vulgar and offensive language.</p>
41.	<p><i>Hazelwood School District v. Kuhlmeier</i>, 484 U.S. 260 (1988) http://www.ovez.org/cases/1980-1989/1987/1987_86_836</p>	<p>No. In a 5-to-3 decision, the Court held that the First Amendment did not require schools to affirmatively promote particular types of student speech. The Court held that schools must be able to set high standards for student speech disseminated under their auspices, and that schools retained the right to refuse to sponsor speech that was "inconsistent with the shared values of a civilized social order." Educators did not offend the First Amendment by exercising editorial control over the content of student speech so long as their actions were "reasonably related to legitimate pedagogical concerns." The actions of the principal, the Court held, met this test.</p>	<p>Allows schools to censor their publications.</p>
42.	<p><i>Texas v. Johnson</i>, 491 U.S. 397 (1989) http://www.ovez.org/cases/1980-1989/1988/1988_88_155</p>	<p>In a 5-to-4 decision, the Court held that Johnson's burning of a flag was protected expression under the First Amendment. The Court found that Johnson's actions fell into the category of expressive conduct and had a distinctively political nature. The fact that an audience takes offense to certain ideas or expression, the Court found, does not justify prohibitions of speech. The Court also held that state officials did not have the authority to designate symbols to be used to communicate only limited sets of messages, noting that "[i]f there is a bedrock principle underlying the First Amendment, it is that the Government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable."</p>	<p>Flag burning protected symbolic speech.</p>
43.	<p><i>United States v. Eichman</i>, 496 U.S. 310 (1990) http://www.ovez.org/cases/1980-1989/1989/1989_89_1433</p>	<p>In a 5-to-4 decision, coming on the heels of a similar holding in <i>Texas v. Johnson</i> (1989), the Court struck down the law because "its asserted interest is related to the suppression of free expression and concerned with the content of such expression." Allowing the flag to be burned in a disposal ceremony but prohibiting protesters from setting it ablaze at a political protest made that clear, argued Justice William Brennan in one of his final opinions.</p>	<p>Flag protection act unconstitutional – right to free expression supersedes protect of the flag as a national symbol.</p>
44.	<p><i>Masson v. New Yorker Magazine, Inc.</i>, 501 U.S. 496 (1991) http://www.ovez.org/cases/1990-1999/1990/1990_89_1799</p>	<p>No. In a 9-0 vote, the Court ruled that the First Amendment's free expression clause could not protect the distortions in Malcolm's article. Justice Anthony Kennedy's majority opinion also explained when a direct quotation can be considered false, and therefore potentially libelous. The First Amendment limits libel suits by public figures. A report about a public figure cannot be considered "false" unless it is a gross distortion of the truth. Kennedy's opinion explained that a direct quotation will qualify as such a distortion if the quoted words differ in their factual meaning from anything the public figure really said. Malcolm's fabrication qualified as a "gross distortion," and the Court granted Masson standing to sue.</p>	<p>The First Amendment's free expression clause does not protect intentional fabrications of truth by a publication.</p>

Teacher's Chart
A Collection of U.S. Supreme Court Cases: Freedom of Speech
 (Supplement for Jigsaw Activity)

NOTE: Cases highlighted in red contain language that may be inappropriate. Be sure to review before using.

	Case	Majority Opinion	Free Speech Principle
45.	<p><i>Simon & Schuster v. NY Crime Victims Board</i>, 502 U.S. 105 (1991) http://www.ovez.org/cases/1990-1999/1991/1991_90_1059</p>	<p>Yes. The Court concluded that "New York has singled out speech on a particular subject for a financial burden that it places on no other speech and no other income." This discrimination could only be justified if the state could show "that its regulation is necessary to serve a compelling state interest and is narrowly drawn to achieve that end" (<i>Arkansas Writers' Project, Inc. v. Ragland</i>, 481 U.S. 221, 231 (1987)). The Board failed to explain why victims' compensation had to come from the criminals' storytelling rather than other assets.</p>	<p>Law overturned because it showed unjustified discrimination.</p>
46.	<p><i>R.A. V. v. St. Paul</i>, 505 U.S. 377 (1992) http://law.irank.org/pages/12681/R-V-v-City-St-Paul.html</p>	<p>Yes. In a 9-to-0 vote, the justices held the ordinance invalid on its face because "it prohibits otherwise permitted speech solely on the basis of the subjects the speech addresses." The First Amendment prevents government from punishing speech and expressive conduct because it disapproves of the ideas expressed.</p>	<p>Punishing certain conduct <u>only</u> because of the ideas behind it violates the First Amendment.</p>
47.	<p><i>Lamb's Chapel v. Center Moriches School District</i>, 508 U.S. 384 (1993) http://www.ovez.org/cases/1990-1999/1992/1992_91_2024</p>	<p>Yes, by a unanimous vote. The Supreme Court's holding consisted of two parts. First, the District violated freedom of speech by refusing the Chapel's request to show movies on school premises solely because such movies were religiously oriented. While non-public schools are permitted under New York law to restrict access to their premises based on subject matter or speaker identity, such restrictions must be reasonable and "viewpoint neutral." In this case, the District's restriction was neither reasonable nor viewpoint neutral, since it allowed the presentation of all other views about family values and child rearing - except those which were presented from a religious perspective. Second, a grant of permission to the Chapel to use the District's premises would not have amounted to an establishment of religion. This is because the showing of the films would neither be school-sponsored during school hours nor closed to the public.</p>	<p>Religious views on certain topics cannot be denied presentation when other views on the same topics are allowed, thus a "viewpoint neutral" position is maintained.</p>
48.	<p><i>Schenck v. Pro-Choice Network of Western New York</i>, 519 U.S. 357 (1997) http://www.ovez.org/cases/1990-1999/1996/1996_95_1065</p>	<p>The Court held that while the "fixed buffer zones" were constitutional, the "floating buffer zones" were not. It distinguished between the two types of "buffer zones." The Court supported the "fixed buffer zones" because they protected the government's interest in public safety, by preventing protesters from engaging in unlawful conduct (i.e. spitting on and shouting in clinic users' faces, blocking doorways), while still allowing them to be heard from a short distance. "Floating buffer zones," by contrast, were struck down by the Court since they imposed a greater burden on free speech than was required to protect the government's interest in public safety and free traffic flow. The Court found that forcing demonstrators to remain at least 15 feet away from the people they wished to communicate with would create an inordinate amount of dangerous confusion and congestion.</p>	<p>"Floating" buffer zones risk silencing the protesters in a public forum.</p>

Teacher's Chart

A Collection of U.S. Supreme Court Cases: Freedom of Speech

(Supplement for Jigsaw Activity)

NOTE: Cases highlighted in red contain language that may be inappropriate. Be sure to review before using.

	Case	Majority Opinion	Free Speech Principle
49.	<i>Reno v. ACLU</i> , 521 U.S. 844 (1997) http://www.oyez.org/cases/1990-1999/1996/1996_96_511	Yes. The Court held that the Act violated the First Amendment because its regulations amounted to a content-based blanket restriction of free speech. The Act failed to clearly define "indecent" communications, limit its restrictions to particular times or individuals (by showing that it would not impact on adults), provide supportive statements from an authority on the unique nature of internet communications, or conclusively demonstrate that the transmission of "offensive" material is devoid of any social value. The Court added that since the First Amendment distinguishes between "indecent" and "obscene" sexual expressions, protecting only the former, the Act could be saved from facial overbreadth challenges if it dropped the words "or indecent" from its text. The Court refused to address any Fifth Amendment issues.	Free speech on Internet backed.
50.	<i>National Endowment for the Arts v. Finley</i> , 524 U.S. 569 (1998) http://www.oyez.org/cases/1990-1999/1997/1997_97_371	No. In an 8-to-1 decision, the Court held that, unlike direct sovereign regulation of speech, Congress enjoys wide latitude when setting spending priorities that may indirectly affect certain forms of expression. The funding of one activity believed to be in the public interest, to the exclusion of another, does not constitute viewpoint discrimination. Moreover, the statutory funding guidelines were not impermissibly vague since they involved selective subsidies rather than criminal or regulatory prohibitions. The Court noted that while the amended regulations may add some measure of imprecision to the existing guidelines, they do so to an already highly subjective selection process, made so by the inevitable nature of the subject matter with which it deals.	Decency test on arts grants upheld.
51.	<i>Arkansas Ed. Television Comm. v. Forbes</i> , 523 U.S. 666 (1998) http://www.oyez.org/cases/1990-1999/1997/1997_96_779	No. In a 6-to-3 decision, the Court held that public broadcasters could selectively exclude participants from their sponsored debates, so long as these were not designed as "public forums." The Court found that by reserving participation rights only to candidates for a particular congressional district, rather than hosting an open-microphone format, and selecting among those which were eligible to participate, based on objective indications of their popular support rather than their view points, AETC's debate was a "nonpublic forum." As such, AETC could decide who should and should not participate in its sponsored event.	Differentiates public and private forums: Public broadcasters could selectively exclude participants from their sponsored debates, so long as these were not designed as "public forums."
52.	<i>Hill v. Colorado</i> , 530 U.S. 703 (2000) http://www.oyez.org/cases/1990-1999/1999/1999_98_1856	No. In a 6-3 decision delivered by Justice John Paul Stevens, the Court held that the Colorado statute's restrictions on speech-related conduct are constitutional. The Court concluded that the statute "is not a regulation of speech. Rather, it is a regulation of the places where some speech may occur." "Although the statute prohibits speakers from approaching unwilling listeners, it does not require a standing speaker to move away from anyone passing by. Nor does it place any restriction on the content of any message that anyone may wish to communicate to anyone else, either inside or outside the regulated areas. It does, however, make it more difficult to give unwanted advice, particularly in the form of a handbill or leaflet, to persons entering or leaving medical facilities," Stevens wrote for the Court. "The unwilling listener's interest in avoiding unwanted communication has been repeatedly identified in our cases."	Due to the small size of the buffer zone, protesters can still exercise their free speech right.

Teacher's Chart

A Collection of U.S. Supreme Court Cases: Freedom of Speech

(Supplement for Jigsaw Activity)

NOTE: Cases highlighted in red contain language that may be inappropriate. Be sure to review before using.

Case	Majority Opinion	Free Speech Principle
53. <i>Boy Scouts of America v. Dale</i> , 530 U.S. 640 (2000) http://www.oyez.org/cases/1990-1999/1999/1999_99_699	Yes. In a 5-4 opinion delivered by Chief Justice William H. Rehnquist, the Court held that "applying New Jersey's public accommodations law to require the Boy Scouts to admit Dale violates the Boy Scouts' First Amendment right of expressive association." In effect, the ruling gives the Boy Scouts of America a constitutional right to bar homosexuals from serving as troop leaders. Rehnquist wrote for the Court that, "[t]he Boy Scouts asserts that homosexual conduct is inconsistent with the values it seeks to instill," and that a gay troop leader's presence "would, at the very least, force the organization to send a message, both to the young members and the world, that the Boy Scouts accepts homosexual conduct as a legitimate form of behavior."	Right to expressive association.
54. <i>Thomas v. Chicago Park District</i> , 534 U.S. 316 (2002) http://www.oyez.org/cases/2000-2009/2001/2001_00_1249	No. In a unanimous decision delivered by Justice Antonin Scalia, the Court held that the First Amendment free speech guarantee does not require the Park District to initiate litigation every time the agency denied a permit for an event or specify a deadline for judicial review of a challenge to the denial of a permit. The Court reasoned that the licensing scheme was not based on subject-matter censorship, but rather content-neutral time, place, and manner regulation of the use of a public forum thus making the ordinance constitutional. "On balance, we think the permissive nature of the ordinance furthers, rather than constricts, free speech," wrote Scalia for the Court.	The licensing scheme was based on content-neutral time, place, and manner regulation of the use of a public forum, making the ordinance constitutional.
55. <i>Ashcroft v. Free Speech Coalition</i> , 535 U.S. 234 (2002) http://www.oyez.org/cases/2000-2009/2001/2001_00_795	Yes. In a 6-3 decision delivered by Justice Anthony M. Kennedy, the Court held that the two prohibitions described above are overbroad and unconstitutional. The Court found the CPPA to be inconsistent with Miller insofar as the CPPA cannot be read to prohibit obscenity, because it lacks the required link between its prohibitions and the affront to community standards prohibited by the obscenity definition. Moreover, the Court found the CPPA to have no support in Ferber since the CPPA prohibits speech that records no crime and creates no victims by its production. Provisions of the CPPA cover "materials beyond the categories recognized in Ferber and Miller, and the reasons the Government offers in support of limiting the freedom of speech have no justification in our precedents or in the law of the First Amendment" and abridge "the freedom to engage in a substantial amount of lawful speech," wrote Kennedy.	Laws must be written so they can be interpreted clearly and precisely. Overbroad descriptions could result in bans of unintended materials.
56. <i>Republican Party of Minnesota v. White</i> , 536 U.S. 765 (2002) http://www.oyez.org/cases/2000-2009/2001/2001_01_521	No. In a 5-4 opinion delivered by Justice Antonin Scalia, the Court held that the announce clause violates the First Amendment. The Court reasoned that the announce clause prohibits speech based on its content and burdens a category of speech that is at the core of First Amendment freedoms – speech about the qualifications of candidates for public office. Moreover, the Court concluded that the clause did not serve to preserve the state judiciary's impartiality, its argued compelling state interest. "There is an obvious tension between the article of Minnesota's popularly approved Constitution which provides that judges shall be elected, and the Minnesota Supreme Court's announce clause which places most subjects of interest to the voters off limits," wrote Scalia.	Judicial candidates can express their views.

Teacher's Chart

A Collection of U.S. Supreme Court Cases: Freedom of Speech

(Supplement for Jigsaw Activity)

NOTE: Cases highlighted in red contain language that may be inappropriate. Be sure to review before using.

	Case	Majority Opinion	Free Speech Principle
57.	<p><i>Virginia v. Black</i>, 538 U.S. 343 (2003) http://www.oyez.org/cases/2000-2009/2002/2002_01_1107</p>	<p>Yes, but in a plurality opinion delivered by Justice Sandra Day O'Connor, the Court held that while a State, consistent with the First Amendment, may ban cross burning carried out with the intent to intimidate, in which four other justices joined, the provision in the Virginia statute treating any cross burning as prima facie evidence of intent to intimidate renders the statute unconstitutional in its current form, in which three other justices joined. Justice Antonin Scalia left the latter portion of the Court's conclusion to argue that the Court should vacate and remand the judgment of the Virginia Supreme Court with respect to Elliott and O'Mara, so that that court could have an opportunity to construe the cross-burning statute's prima-facie-evidence provision. Justice David H. Souter, joined by Justices Anthony M. Kennedy and Ruth Bader Ginsburg, concluded that the Virginia statute is unconstitutional and therefore concurred in the Court's judgment insofar as it affirmed the invalidation of Black's conviction. Justice Clarence Thomas dissented.</p>	<p>Language that constitutes a "true threat" – intent to intimidate—may be banned.</p>
58.	<p><i>United States v. American Library Association</i>, 539 U.S. 194 (2003) http://www.oyez.org/cases/2000-2009/2002/2002_02_361</p>	<p>Yes. In a 6-3 judgment delivered by Chief Justice William H. Rehnquist, the Court held that, because public libraries' use of Internet filtering software does not violate their patrons' First Amendment rights, CIPA does not induce libraries to violate the Constitution and is a valid exercise of Congress's spending power. Justices Sandra Day O'Connor, Antonin Scalia, and Clarence Thomas joined the Chief Justice's opinion. Justices Anthony M. Kennedy and Stephen G. Breyer filed opinions concurring in the judgment. Both noted that CIPA imposed a comparatively small burden on library Internet users that was not disproportionate to any potential speech-related harm, especially in light of the libraries' ability to unblock sites. Justices John Paul Stevens and David H. Souter dissented. Justice Ruth Bader Ginsburg joined Justice Souter's dissent.</p>	<p>Law on library Internet filters upheld.</p>
59.	<p><i>Ashcroft v. American Civil Liberties Union</i>, 542 U.S. 656 (2004) http://www.oyez.org/cases/2000-2009/2003/2003_03_218</p>	<p>Yes. In an interesting 5-to-4 vote, with Justices Kennedy, Stevens, Souter, Thomas and Ginsburg on one side and Chief Justice Rehnquist and Justices Scalia, Breyer and O'Connor on the other, the Court found that Congress had not yet met its burden to show that the COPA requirements were more effective than other methods of preventing minors. Justice Anthony Kennedy, in the majority opinion, wrote that the district court's injunction "was not an abuse of discretion, because on this record there are a number of plausible, less restrictive alternatives to the statute." The majority also emphasized that barring the statute's enforcement during the trial would be less harmful than allowing it, because allowing it would be likely to prevent online publishers from publishing certain material.</p>	<p>Overtured Child Online Protection Act.</p>
60.	<p><i>Rumsfeld v. Forum for Academic and Institutional Rights (FAIR)</i>, 547 U.S. ____ (2006) http://www.oyez.org/cases/2000-2009/2005/2005_04_1152</p>	<p>No. The Supreme Court, in a unanimous opinion written by Chief Justice John Roberts, held that the Solomon Amendment regulated conduct, not speech, and was therefore constitutional. Including military recruiters in receptions and interviews does not necessarily indicate university endorsement of the recruiters, so requiring their inclusion does not constitute compelled speech in violation of the First Amendment.</p>	<p>Differentiates between regulating conduct and regulating speech.</p>

Teacher's Chart
A Collection of U.S. Supreme Court Cases: Freedom of Speech
 (Supplement for Jigsaw Activity)

NOTE: Cases highlighted in red contain language that may be inappropriate. Be sure to review before using.

	Case	Majority Opinion	Free Speech Principle
61.	<p><i>Morse v. Frederick</i>, 551 U.S. ____ (2007) http://www.oyez.org/cases/2000-2009/2006/2006_06_278</p>	<p>The Court ruled that school officials can prohibit students from displaying messages that promote illegal drug use. Chief Justice John Roberts's majority opinion held that although students do have some right to political speech even while in school, this right does not extend to pro-drug messages that may undermine the school's important mission to discourage drug use. The majority held that Frederick's message, though "cryptic," was reasonably interpreted as promoting marijuana use - equivalent to "[Take] bong hits" or "bong hits [are a good thing]." In ruling for Morse, the Court affirmed that the speech rights of public school students are not as extensive as those adults normally enjoy, and that the highly protective standard set by <i>Tinker</i> would not always be applied.</p>	<p>School officials can prohibit students from displaying messages that promote illegal drug use. Free speech rights of students can be restricted.</p>
62.	<p><i>Pleasant Grove City v. Summum</i>, 555 U.S. ____ (2009) http://www.oyez.org/cases/2000-2009/2008/2008_07_665</p>	<p>No. The Supreme Court reversed the Tenth Circuit holding that the placement of a monument in a public park is a form of government speech and therefore not subject to scrutiny under the Free Speech Clause of the First Amendment. With Justice Samuel A. Alito writing for the majority and joined by Chief Justice John G. Roberts and Justices John Paul Stevens, Antonin G. Scalia, Anthony M. Kennedy, Clarence Thomas, Ruth Bader Ginsburg, and Stephen G. Breyer, the Court reasoned that since Pleasant Grove City had retained final authority over which monuments were displayed, the monuments represented an expression of the city's viewpoints and thus government speech.</p>	<p>Since Pleasant Grove City had retained final authority over which monuments were displayed, the monuments represented an expression of the city's viewpoints and thus government speech.</p>

Sources:

- OYEZ <http://www.oyez.org/>
- Justice Learning: Free Speech Timeline <http://www.justicelearning.org/ViewIssue.aspx?issueID=4>
- Law Library – American Law and Legal Information <http://law.irank.org/>

Ten Questions

Video: A Conversation on the Constitution: Freedom of Speech

Sunnylands Seminars, 2009

1. Why do you think the framers valued freedom of speech?
It allowed one to speak out against the government without fear of reprisal.
2. What constitutes “speech”?
Any expression of ideas, including symbolic speech
3. Why are all forms of expression important in a democracy?
Justice Kennedy: It’s who we are. We define ourselves by what we say, what we read, by what we think, what we hear, by what we sing, by what we pray. This is who we are. This is our self-definition. We define ourselves; the government does not define us.
4. Why do you think there are limits to free speech? In your opinion, should there be? Why?
Answers will vary.
5. Why do you think it’s so hard to define what speech is protected and what is not?
Answers will vary.
6. Cite the fundamental principle that is the starting point for all judicial decisions related to free speech.
Congress shall make no law. . . abridging the freedom of speech (First Amendment)
7. List factors brought up by the justices in the video as ones that could matter when resolving free speech disputes.
Examples include:

<ul style="list-style-type: none"> criticism of the government political matters personal beliefs beliefs on societal matters speech stirring up racial hatred putting people in immediate danger clear and present danger hate speech symbolic speech age—18 and over; 3-year-old place – public school, home, public or private forum public school private school 	<ul style="list-style-type: none"> government institutions public park personal locker day-care center military high school students college students student speech against the college protest at a college protest rights—college, junior high voting age school discipline speech at home
---	--
8. The Constitution does not define free speech. What did Justice Breyer mean when he said, “So, that’s left up to the people to work out”? Explain how people help define freedom of speech when decisions are made by the court.
Under the Constitution, it’s the people who have the ultimate responsibility and power to shape the government and determine its laws. By bringing free speech disputes to court for resolution, the people request the court to decide if First Amendment rights have been denied. The body of collective court decisions, known as case law, helps to define what freedom of speech means in this country. And it has changed from time to time.
9. What did you learn from the justices about the process for deciding free speech matters?
Answers will vary.
10. According to Justice Breyer, what is “the worst thing you can do by way of abridgment”?
Stop somebody from talking simply because you don’t like what he says.

National Civics and Government Standards

Source Document:

National Standards for Civics and Government (1994) Center for Civic Education

<http://www.civiced.org/index.php?page=stds>

- Grades 5-8
- Grades 9-12

National Standards for Civics and Government

Lesson: Freedom of Speech: Finding the Limits

Source: *National Standards for Civics and Government* (1994) Center for Civic Education

<http://www.civiced.org/index.php?page=stds>

Grades 5-8 Content Standards Alignment

The following chart shows a more granular alignment at the standards level.

National Standards for Civics and Government Gr. 5-8	Lesson: Freedom of Speech: Finding the Limits
Specific Content Standards	Understandings Reinforced by the Lesson
<p>I.A.1. Defining civic life, politics, and government. Students should be able to explain the meaning of the terms civic life, politics, and government.</p>	<p>Serving on juries is a very important way that ordinary citizens participate in civic life. By serving on juries, citizens help resolve disputes in the community and punish those who break the law.</p>
<p>I.A.2. Necessity and purposes of government. Students should be able to evaluate, take, and defend positions on why government is necessary and the purposes government should serve.</p>	<p>The federal courts, which make up the judicial branch of the federal government, are responsible for interpreting the law, evaluating the constitutionality of federal laws, and the peaceful resolution of legal disputes.</p>
<p>I.B.2. The rule of law. Students should be able to explain the importance of the rule of law for the protection of individual rights and the common good.</p>	<p>Adherence to the rule of law by all parties makes it possible to resolve legal disputes peacefully through the judicial process.</p> <p>Court decisions help ensure that the law is interpreted consistently and applied fairly for the protection of individual rights and the common good.</p>
<p>I.C.2. Purposes and uses of constitutions. Students should be able to explain the various purposes constitutions serve.</p>	<p>It is the Constitution that defines the judicial branch of government and gives it the power to interpret the laws and resolve disputes.</p> <p>As the supreme law of the land, the U.S. Constitution protects individual rights and promotes the common good.</p>
<p>II.A.1. The American idea of constitutional government. Students should be able to explain the essential ideas of American constitutional government.</p>	<p>The People are the ultimate source of the power in American constitutional government.</p> <p>Freedom of speech is a right described guaranteed by the Constitution in the Bill of Rights</p>
<p>II.C.1. American identity. Students should be able to explain the importance of shared political values and principles to American society.</p>	<p>The U.S. Constitution identifies basic values and principles that are American distinctives. These include respect for individual rights, justice under the law, and the right to live in peace. When Americans get involved in the judicial process they act on these shared values and principles in ways that reinforce and strengthen them.</p>

National Standards for Civics and Government

Lesson: Freedom of Speech: Finding the Limits

National Standards for Civics and Government Gr. 5-8	Lesson: Freedom of Speech: Finding the Limits
Specific Content Standards	Understandings Reinforced by the Lesson
<p>II.D.1. Fundamental values and principles. Students should be able to explain the meaning and importance of the fundamental values and principles of American constitutional democracy.</p>	<p>Fundamental values and principles expressed in the U.S. Constitution include</p> <ul style="list-style-type: none"> • individual rights (majority and minority rights) • justice • openness and free inquiry <p>Principles of American constitutional democracy include</p> <ul style="list-style-type: none"> • rule of law • individual rights
<p>III.E.1. The place of law in American society. Students should be able to explain the importance of law in the American constitutional system.</p>	<p>The courts make decisions based on the rule of law. These decisions are made to protect individual rights and promote the common good.</p>
<p>III.E.3. Judicial protection of the rights of individuals. Students should be able to evaluate, take, and defend positions on current issues regarding judicial protection of individual rights.</p>	<p>The U.S. Constitution to ensure judicial fairness and the protection of individual rights.</p>
<p>V.B.1. Personal rights. Students should be able to evaluate, take, and defend positions on issues involving personal rights.</p>	<p>The U.S. Constitution protects freedom of speech as a personal right.</p>
<p>V.B.2. Political rights. Students should be able to evaluate, take, and defend positions on issues involving political rights.</p>	<p>Freedom of speech is important as a political right which allows individuals to criticize the government without fear of punishment.</p>
<p>V.C.1. Personal responsibilities. Students should be able to evaluate, take, and defend positions on the importance of personal responsibilities to the individual and to society.</p>	<p>Everyone involved in the judicial process has personal responsibilities as a citizen to respect the rights and interests of others.</p>
<p>V.C.2. Civic responsibilities. Students should be able to evaluate, take, and defend positions on the importance of civic responsibilities to the individual and society.</p>	<p>There are civic responsibilities associated with being an American citizen involved in the judicial system. These include:</p> <ul style="list-style-type: none"> • obeying the law • respecting the rights of others
<p>V.D.1. Dispositions that enhance citizen effectiveness and promote the healthy functioning of American constitutional democracy. Students should be able to evaluate, take, and defend positions on the importance of certain dispositions or traits of character to themselves and American constitutional democracy.</p>	<p>Courts may help with problem-solving in a constitutional democracy, but the extent of their success depends on all participants exercising certain dispositions or traits of character that include respect for the rights of other individuals.</p>

National Standards for Civics and Government

Lesson: Freedom of Speech: Finding the Limits

National Standards for Civics and Government Gr. 5-8	Lesson: Freedom of Speech: Finding the Limits
Specific Content Standards	Understandings Reinforced by the Lesson
V.E.1. Participation in civic and political life and the attainment of individual and public goals. Students should be able to explain the relationship between participating in civic and political life and the attainment of individual and public goals.	Participation in the judicial process is not only a way to resolve current disputes, but a way to affect the way of life for others in the future.
V.E.5. Knowledge and participation. Students should be able to explain the importance of knowledge to competent and responsible participation in American democracy.	A constitutional democracy requires the participation of an attentive, knowledgeable, and competent citizenry

National Standards for Civics and Government

Lesson: Freedom of Speech: Finding the Limits

Source: *National Standards for Civics and Government* (1994) Center for Civic Education

<http://www.civiced.org/index.php?page=stds>

Grades 9-12 Content Standards Alignment

The following chart shows a more granular alignment at the standards level.

National Standards for Civics and Government Gr. 9-12	Lesson: Freedom of Speech: Finding the Limits
Specific Content Standards	Understandings Reinforced by the Lesson
<p>I.A.1. Defining civic life, politics, and government. Students should be able to explain the meaning of the terms civic life, politics, and government.</p>	<p>Interpreting laws and resolving legal disputes are the responsibilities of the judicial branch of government.</p>
<p>I.A.2. Necessity of politics and government. Students should be able to explain the major arguments advanced for the necessity of politics and government.</p>	<p>The form and function of the government in the U.S. as defined by the U.S. Constitution helps people work collectively to accomplish goals and solve problems they cannot achieve on their own.</p>
<p>I.B.2. The rule of law. Students should be able to evaluate, take, and defend positions on the importance of the rule of law and on the sources, purposes, and functions of law.</p>	<p>Adherence to the rule of law by all parties makes it possible to resolve legal disputes peacefully through the judicial process.</p>
<p>I.B.4 The relationship of limited government to political and economic freedom. Students should be able to explain and evaluate competing ideas regarding the relationship between political and economic freedoms.</p>	<p>Freedom of speech is a political freedom established by the Constitution.</p>
<p>II.C.1. American national identity and political culture. Students should be able to explain the importance of shared political and civic beliefs and values to the maintenance of constitutional democracy in an increasingly diverse American society.</p>	<p>The U.S. Constitution identifies basic values and principles that are American distinctives. These include respect for the law, protection of individual rights, and justice under the law.</p>
<p>II.D.3. Fundamental values and principles. Students should be able to evaluate, take, and defend positions on what the fundamental values and principles of American political life are and their importance to the maintenance of constitutional democracy.</p>	<p>The following values and principles are important for the judicial process to work effectively:</p> <ul style="list-style-type: none"> • individual rights (majority and minority rights) • openness and free inquiry • justice <p>Principles fundamental to American constitutional democracy include</p> <ul style="list-style-type: none"> • individual rights • rule of law

National Standards for Civics and Government

Lesson: Freedom of Speech: Finding the Limits

National Standards for Civics and Government Gr. 9-12	Lesson: Freedom of Speech: Finding the Limits
Specific Content Standards	Understandings Reinforced by the Lesson
<p>III.B.1. The institutions of the national government. Students should be able to evaluate, take, and defend positions on issues regarding the purposes, organization, and functions of the institutions of the national government.</p>	<p>The court system is part of the judicial branch of government.</p>
<p>III.D.1. The place of law in American society. Students should be able to evaluate, take, and defend positions on the role and importance of law in the American political system.</p>	<p>Courts make decisions based on the rule of law in order to protect the rights of citizens and promote the common good.</p>
<p>III.D.1. Judicial protection of the rights of individuals. Students should be able to evaluate, take, and defend positions on current issues regarding the judicial protection of individual rights.</p>	<p>The Constitution ensures judicial fairness and protection of individual rights.</p>
<p>V.B.1. Personal rights. Students should be able to evaluate, take, and defend positions on issues regarding personal rights.</p>	<p>Adherence to the rule of law helps secure personal rights in American constitutional democracy.</p> <p>Personal rights include</p> <ul style="list-style-type: none"> • freedom of thought and conscience • freedom of expression and association <p>A vigilant citizenry helps protect and secure these rights for others.</p>
<p>V.B.2 Political rights. Students should be able to evaluate, take, and defend positions on issues regarding political rights.</p>	<p>Freedom of speech is important as a political right which allows individuals to criticize the government without fear of punishment.</p>
<p>V.B.5. Scope and limits of rights. Students should be able to evaluate, take, and defend positions on issues regarding the proper scope and limits of rights.</p>	<p>The scope and limit of rights related to freedom of speech are defined by principles established through Supreme Court decisions and case law.</p>
<p>V.C.1. Personal responsibilities. Students should be able to evaluate, take, and defend positions on issues regarding the personal responsibilities of citizens in American constitutional democracy.</p>	<p>Everyone involved in the judicial process has personal responsibilities as a citizen to respect the rights and interests of others.</p>
<p>V.C.2. Civic responsibilities. Students should be able to evaluate, take, and defend positions on the importance of civic responsibilities to the individual and society.</p>	<p>There are civic responsibilities associated with being an American citizen involved in the judicial system that include:</p> <ul style="list-style-type: none"> • obeying the law • respecting the rights of others

National Standards for Civics and Government

Lesson: Freedom of Speech: Finding the Limits

National Standards for Civics and Government Gr. 9-12	Lesson: Freedom of Speech: Finding the Limits
Specific Content Standards	Understandings Reinforced by the Lesson
<p>V.D.2. Dispositions that foster respect for individual worth and human dignity. Students should be able to evaluate, take, and defend positions on the importance to American constitutional democracy of dispositions that foster respect for individual worth and human dignity.</p>	<p>Those with respect for individual worth and human dignity tend to have these dispositions:</p> <ul style="list-style-type: none"> • Respect for the rights and choices of individuals—holding and advocating differing ideas
<p>V.D.4. Dispositions that facilitate thoughtful and effective participation in public affairs. Students should be able to evaluate, take, and defend positions on the importance to American constitutional democracy of dispositions that facilitate thoughtful and effective participation in public affairs.</p>	<p>Traits that facilitate thoughtful and effective participation in public affairs include</p> <ul style="list-style-type: none"> • respect for the rights of other individuals • respect for law • tolerance of ambiguity
<p>V.E.1. The relationship between politics and the attainment of individual and public goals. Students should be able to evaluate, take and defend positions on the relationship between politics and the attainment of individual and public goals</p>	<p>Participation in the judicial process is not only a way to resolve current disputes, but a way to affect the way of life for others in the future.</p>
<p>V.E.3. Forms of political participation. Students should be able to evaluate, take, and defend positions about the means that citizens should use to monitor and influence the formation and implementation of public policy.</p>	<p>Students who are knowledgeable citizens can seek to promote individual rights by participating in the judicial process.</p>
<p>V.E.5. Knowledge and participation. Students should be able to explain the importance of knowledge to competent and responsible participation in American democracy.</p>	<p>A constitutional democracy requires the participation of an attentive, knowledgeable, and competent citizenry.</p>