



The Taft Institute
FOR GOVERNMENT & CIVIC EDUCATION

The Constitution in Practice: Free Speech in the Classroom

Meg Mott PhD, [Constitution Wrangler](#)

Ana Voci, Ishbel Productions

Introduction for Teachers:

The Content:

Welcome to a dynamic curriculum that explores the right to free speech through Supreme Court cases involving real public school students. Your students will learn how to reason like a Supreme Court Justice, how to understand the best arguments on both sides of an issue, and how to think for themselves. Living under a constitutional democracy requires both the capacity to imagine the conditions of greater freedom and a willingness to live by the rules, whatever the outcome. By the end of the unit, your students will have developed the emotional and intellectual muscles needed to defend their right to free speech while recognizing that all freedoms are limited by responsibilities to the public order.

At the heart of the curriculum are five Supreme Court decisions:

1. *Minersville School District v. Gobitis* (1940);
2. *West Virginia State Board of Education v. Barnette* (1943);
3. *Tinker v. Des Moines Independent Community School District* (1969);
4. *Hazelwood School District v. Kuhlmeier* (1988);
5. *Morse v. Frederick* (2007).

In the first case, the Court upheld a Pennsylvania law that compelled public school students to recite the Pledge of Allegiance while saluting the flag. Jehovah Witnesses had argued that the statute violated their right to free speech, but the Court disagreed. Three years later, the Court reversed itself: the right to free speech precluded the government from compelling students to recite the pledge. In 1969, the Court overturned a school's ban on wearing armbands to protest the Vietnam War. As long as the protest did not disrupt the lessons in the classroom, said a majority of Justices, the students had the right to wear black armbands. These two victories, however, did not give students unlimited free speech rights in public school. In 1988, the Court upheld the censorship of articles in a school-sponsored paper and, in 2007, it upheld the confiscation of a banner at a school-sponsored event.

With such different opinions coming from the Court, how do your students make sense of this?

Were we just to focus on the rulings, the messages from the Court might be confusing. But our approach balances the words of Supreme Court Justices with the experience of learning in a public school classroom. Just as soccer players improve their game by studying world-class matches, so students will learn the game of constitutional democracy by studying the reasoning of the Justices. But first they need to understand what questions the Court was trying to resolve. When do students have the right to free speech?

The Approach

The curriculum uses three activities to ground constitutional reasoning in real-world conflict:

Role-Plays: Each of the cases deals with the question of how much freedom students have in public schools. Before they tackle the Court's decision, your students get a chance to enact the

actual controversy. Should a student be able to refuse to salute the flag or wear an armband or publish an article or wave a banner at a school event? We provide the roles of key players within the court cases, and then let them decide. These dramatic exercises give students a chance to empathize with different positions and to reflect on their earlier judgments.

For students who wish to improvise, we provide the basic arguments for each position. For students who need more structure, we offer detailed scripts. Once they have explored the various positions, they will see that there is no easy answer. At that point, most students are eager to see what the Court will decide.

Following a structured discussion on excerpts from the Court's decision, we return to the classroom with a follow-up role-play. The post-decision roleplays are designed to give equal dignity to both sides of the controversy and to imagine ways for the two sides to move forward.

Learning Journal: The learning journal is a place where students can discover their own thoughts and opinions about free speech. Since each of the cases raises questions that are not easily resolved, each of your students will have their own conflicts and consternations about the debate. Most of the lessons conclude with a period of reflection, when students are given an opportunity to privately express their thoughts and feelings on the controversy. We also challenge them to consider counter-arguments that upend their prior convictions and encourage them to consider an argument from a different point of view.

It is important that the learning journal be respected as a private place where students can express their quieter thoughts and feelings. For this reason, we recommend not collecting them.

Free Speech Zine: Beginning in Lesson 5, students will be given a chance to share their evolving expertise through the co-creation of the Free Speech Zine. Written for fellow students, the zine will provide the facts and some of the legal reasoning for each of the five cases. It also provides some of the takeaways on free speech and school censorship. The collective decision-making required in producing a zine gives students a chance to put their free speech muscles to work as they deliberate on and revise content for the final draft.

All three of these activities are designed to hold the tensions between the free speech rights of students and their responsibilities to the mission of the public school. All three reinforce the central point of this curriculum: not to “solve” the problem of free speech but to live more fully with the question.

HAVE FAITH IN THE QUESTIONS!

As the lessons progress and the students gain more familiarity with arguments from the Court, they will be asked to incorporate those arguments in their own positions. By Lesson 9, students will be able to cite multiple Supreme Court arguments for both sides of an issue. Not only will they be practiced defenders of a student's right to free speech, they will also be skilled at defending the claims of school administrators to curb certain speech.

Giving students a chance to bring their full imaginations and intellects to the rights of free speech brings certain risks. When Middle Schoolers discover that a thirteen-year-old successfully challenged the school board, they may want to push the boundaries of permissible speech. The first constraint on those impulses cannot be censorship but reasoned argument.

For instance, should a student make a case that the First Amendment allows them to disregard a school policy, the response might be, “Which Supreme Court Justice supports your position?” Followed by “Which Supreme Court Justice disagrees with your position?” The point of the lessons is not to end debate on the rights of students but to teach all students how to disagree more effectively.

Through this curriculum, students learn how to reason using constitutional principles, how to embody different points of view, and how to collaborate to share their expertise with other students. The right to free speech gives them a chance to take their own thoughts and opinions seriously. We believe that the habits developed in this curriculum offer a way to exercise that fundamental right with responsibility and intelligence, leading them to become more energetic and empathetic citizens.

NYS Social Studies Standards:

- 7.5 The Constitution In Practice: The United States Constitution serves as the foundation of the United States government and outlines the rights of citizens. The Constitution is considered a living document that can respond to political and social changes.
- 8.9e Constitutional issues involving the violation of civil liberties and the role of the federal government are a source of debate in American society.

Format:

There are 10 lessons divided as follows:

- Lesson 1: The Tension Between The Constitution And The Classroom
 - *Minersville School District v. Gobitis*
- Lesson 2: The Controversy Of The Pledge Of Allegiance
 - *West Virginia State Board of Education v. Barnette*
- Lesson 3: Living Under A Supreme Court Ruling
 - *West Virginia State Board of Education v. Barnette*
- Lesson 4: The Controversy Of The Armbands
 - *Tinker v. Des Moines Independent Community School District*
- Lesson 5: Living Under A Supreme Court Ruling
 - *Tinker v. Des Moines Independent Community School District*
- Lesson 6: Free Speech in Student Newspapers
 - *Hazelwood School District v. Kuhlmeier*
- Lesson 7: Living Under a Supreme Court Ruling
 - *Hazelwood School District v. Kuhlmeier*
- Lesson 8: The Controversy of Illegal Drugs
 - *Morse v. Frederick*

The Constitution in Practice: Free Speech in the Classroom - Introduction

- Lesson 9: Living Under a Supreme Court Ruling
 - *Morse v. Frederick*
- Lesson 10: Putting It All Together
 - Conclusion

Each lesson consists of the following sections:

- Learning Objectives
- Next Generation Learning Standards
- Materials
- Key Vocabulary
- Historical Background/Context (when applicable)
- Lesson Introduction
- Activity
- Final Reflection/Freewrite
- Handouts

LESSON 1: THE TENSION BETWEEN THE CONSTITUTION AND THE CLASSROOM

Learning Objectives:

- Clarify the authority of schools with respect to free speech.
- Respectfully disagree with other viewpoints.
- Identify constitutional arguments.
- Apply judicial reasoning to classroom controversies.

Next Generation Learning Standards:

- Determine the central ideas or information of a primary or secondary source; provide an accurate summary of the source distinct from prior knowledge or opinions.
- Identify aspects of a text that reveal an author's point of view or purpose.
- Write arguments focused on discipline-specific content.
- Draw evidence from informational texts to support analysis, reflection, and research.
- Prepare for and participate effectively in a range of conversations and collaborations with diverse partners, building on others' ideas and expressing their own clearly and persuasively.
- Evaluate a speaker's point of view, reasoning, and use of evidence and rhetoric.
- Present information, findings, and supporting evidence such that listeners can follow the line of reasoning, and the organization, development, and style are appropriate to task, purpose, and audience.

Materials:

- *First Amendment & Pledge of Allegiance* Handout
- *Facts of the Case* Handout
- *The Supreme Court Decides!* Handout
- *My Opinions Worksheet* Handout

Key Vocabulary¹:

- Abridging (*verb*): reducing in scope.
- Conviction (*noun*): a strong persuasion or belief.
- Elicit (*verb*): to call forth or draw out.
- Establishment (*noun*): something officially recognized and accepted by the government of a country, such as a government-supported religion.
- Grievance (*noun*): a cause of distress felt to afford reason for complaint or resistance.
- Indivisible (*adjective*): not divisible (capable of being divided).
- Jehovah's Witnesses (*noun*): A branch (or sect) of Christianity founded in the United States in the 1870s that strictly prohibits worshipping man-made images, including the flag.

¹ Many Key Vocabulary definitions throughout this curriculum are provided by Merriam-Webster.

Lesson 1: Minersville School District v. Gobitis

- Mandatory (*adjective*): required by a law or rule.
- Principles (*noun*): a fundamental truth or proposition that serves as the foundation of a system of belief or behavior or for a chain of reasoning.
- Redress (*verb*): to set right: remedy.
- Transcending (*verb*): to rise above or go beyond the limits of.

Lesson Introduction:

The Primacy of the First Amendment

- Distribute the *First Amendment & Pledge of Allegiance* Handout to the class. Focus on the language of the First Amendment. If the students are sitting in a circle, ask one person to read up until the first punctuation mark, then have the next person continue up to the next punctuation mark, and the next until the last person reads through to the period.
 - Adjust the instructions if the students are sitting in rows.
- As each right is read, list it on the white board:
 - Freedom of religion;
 - Freedom of speech;
 - Freedom of the press;
 - Freedom of assembly;
 - Freedom to petition the government.
- Explain that each of the five freedoms in the First Amendment allows citizens to make their own choices about what to believe, what to think, what to decide with others, and how to join together with others for a political purpose. Write the explanations next to each right on the white board:
 - Freedom of Religion: allows each person to pray and celebrate in their own way.
 - Freedom of Speech: allows everyone to speak so that thoughts can be debated.
 - Freedom of the Press: allows citizens to consider the facts from multiple news sources in order to reach better judgements.
 - Freedom of Assembly: allows Americans to organize and to protest so that others will better understand their concerns.
 - Freedom to Petition the Government: allows citizens to challenge the policies of their elected officials and the judgments of the courts.
- Ask the class as a whole the following questions, based on their prior knowledge, recording their various answers on the white board:
 - Does the right to free speech allow students to interrupt the teacher? Why or why not?
 - Does freedom of speech allow students to make fun of other students? Why or why not?
 - Does free speech allow individual students to recuse themselves from a class activity? Why or why not?
- Explain that the multiple perspectives on free speech are true not just in your classroom but across the nation. When the differences in opinion are so great that schools in different districts reach very different conclusions, the Supreme Court needs to step in to resolve the dispute.

Lesson 1: *Minersville School District v. Gobitis*

- Reassure them that balancing the rights of students with the needs of the classroom is very difficult. Even the justices on the Supreme Court cannot agree. Explain that they will use the Court's opinions to research arguments on both sides of this debate.

The Principles in the Pledge of Allegiance

- Ask the class to read aloud the Pledge of Allegiance from the *First Amendment & Pledge of Allegiance* Handout. (Note: the language in the handout is the version of the pledge that school children recited from 1924 to 1954.)
- Review the answers to what the class thinks free speech allows on the Board. Do the principles ("one nation ... with liberty and justice for all") in the Pledge of Allegiance help students answer the three questions ?

Supreme Court Case #1:

Minersville School District v. Gobitis (1940)

- Distribute *Facts of the Case* Handout to students. Explain to the class that the Supreme Court first took up the question of the Pledge of Allegiance in 1940, after a controversy that took place in 1935 in a Pennsylvania Public School.
- On the white board, write down the question that was before the Court
 - **"Does a mandatory flag salute violate the First Amendment?"**
- Divide the class into four groups, and distribute *The Supreme Court Decides!* Handout, assigning one excerpt to each group.
- Instructions for each group:
 - Elect a Notetaker who will report back to the class.
 - Elect a Curiosity Captain who will note parts of the case or excerpts that the group is having difficulty comprehending, or has more questions on from their initial read.
 - Read the excerpt aloud.
 - Summarize the argument in your own words.
 - Decide whether the Justice supports or opposes the pledge mandate.
- Reconvene the class.
 - Ask each Notetaker to summarize the argument and explain their decision about the Justice's final vote.
 - Ask each Curiosity Captain what comprehension questions bubbled up in their groups.
 - If there's a specific phrase or excerpt students are struggling with, you can ask other groups to review the excerpt and ask if they can help provide clarification.
 - If students need further help, you can prompt with probing questions ("Why do you think that?" "Where does the Justice say that?").
- Explain to students that they will engage in their own debate about the Pledge of Allegiance before discovering what the Supreme Court decided.

Four Square Debate:

- Post four different signs in each corner of the room.
 - STRONGLY AGREE
 - AGREE
 - DISAGREE
 - STRONGLY DISAGREE
- Ask students to consider the proposition:
 - **The Pledge of Allegiance should be recited in school each day.**
- Give students five minutes to think about the statement and to jot down some thoughts in their learning journal.
- Direct students to move to the corner that most accurately describes their response to the proposition. If one corner is empty, that's okay. If one side is not represented, encourage some students to consider the arguments of that position. ("You might see what it feels like to argue from that position.")
- Ask each group to elect a Notetaker and then to come up with four arguments (using at least one of the Justices' excerpts) that support their position.
- After 5 minutes, ask the notetakers to share 1-2 of the arguments of their group.
- Once each group has spoken, let students know that if they felt a group made a particularly compelling case, they are welcome to move to that corner.
- Resume the corner discussions. Prompt students to see if hearing the arguments from other positions has sparked new ideas for their own positions.
- Once each student has discussed their position and found arguments to support that position, give them five minutes to use the *My Opinion* Handout to write a strong claim, using three arguments to support the claim.
- Reveal that the Court ruled 8 to 1 in favor of the school district. Only Justice Stone disagreed with the Court majority.

Final Reflections/Individual Freewrite:

- Ask each student to respond to the following prompt in their learning journals:
 - How did the final outcome of this case compare to the argument you wrote?
 - How does this affect your perspective of free speech in school?

First Amendment & Pledge of Allegiance

The United States Constitution's 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.”

Pledge of Allegiance (1924-1954)

“I pledge allegiance to the Flag of the United States of America and to the Republic for which it stands, one nation, indivisible, with liberty and justice for all.”

Facts of the Case

(In legal terms, a fact means “a thing done.” Even though the two parties may disagree on the interpretation of the First Amendment, they both agree on the following facts.)

1. The Minersville School District required all school children to salute the flag while reciting the Pledge of Allegiance.
2. Two children, Lillian Gobitis (age 12) and William Gobitis (age 10), were expelled for refusing to salute the flag.
3. The Gobitis family were Jehovah’s Witnesses, who believed that the pledge of allegiance went against their religious beliefs. Witnesses were only allowed to pledge their allegiance to God, not to anything man-made, including the flag.
4. The Gobitis family sued the school district claiming that the words in the pledge violated their religious freedom and that the mandate violated their freedom of speech.

The Supreme Court Decides!

The following are excerpts from the decision:

Justice Felix Frankfurter:

1. The mere possession of religious convictions... does not relieve the citizen from the discharge of political responsibilities.
2. National unity is the basis of national security.... The flag is a symbol of our national unity, transcending all internal differences, however large, within the framework of the Constitution.

Justice Harlan Stone:

3. The Constitution may well elicit expressions of loyalty to it and to the government which it created, but it does not command such expressions ... as to override the constitutional protection of freedom of speech and religion.
4. Where there are competing demands of the interests of government and of liberty under the Constitution,... there must ... be reasonable accommodation between them so as to preserve the essentials of both.

My Opinion Worksheet

In the case of *Minersville School District v. Gobitis*, I would argue that

One reason for my perspective is...

Additionally, my perspective is supported by my belief that...

Lastly, in this case, I feel strongly that...

In conclusion, because....

I believe that the Supreme Court should side with ____.

LESSON 2: THE CONTROVERSY OF THE PLEDGE OF ALLEGIANCE (TAKE TWO)

Supreme Court Case #2:

[West Virginia State Board of Education v. Barnette](#) (1943)

Learning Objectives:

- Clarify the rights of free speech in the classroom;
- Demonstrate an understanding for the rights of others;
- Respectfully disagree with other viewpoints;
- Identify constitutional arguments.

Next Generation Learning Standards:

- Cite specific textual evidence to support analysis of primary and secondary sources.
- Determine the central ideas or information of a primary or secondary source; provide an accurate summary of the source distinct from prior knowledge or opinions.
- Identify aspects of a text that reveal an author's point of view or purpose
- Write arguments focused on discipline-specific content
- Evaluate a speaker's point of view, reasoning, and use of evidence and rhetoric.
- Present information, findings, and supporting evidence such that listeners can follow the line of reasoning, and the organization, development, and style are appropriate to task, purpose, and audience

Materials:

- *Facts of the Case* handout
- *Key Players & Role-Play Scripts* handout
- *Supreme Court Decides!* handout

Key Vocabulary:

- Abdication (*noun*): an act of abdicating (to give up formally).
- Coerce (*verb*): to compel to an act or choice.
- Compulsory (*adjective*): mandatory (required by a law or rule) or enforced.
- Dissent (*noun*): a justice's opinion that explains their disagreement with the majority.
- Enjoin (*verb*): forbid or prohibit.
- Insubordination (*noun*): disobedience to authority.
- Jehovah's Witnesses (*noun*): A branch (or sect) of Christianity founded in the United States in the 1870s that strictly prohibits worshiping man-made images, including the flag.
- Machinery (*noun*): the means or system by which something is kept in action or a desired result is obtained.

Lesson 2: West Virginia State Board of Education v. Barnette

- Orthodoxy (*noun*): the quality or state of being orthodox (conforming to an established doctrine; conventional).
- Precedent (*noun*): something done or said that may serve as an example or rule to authorize or justify a subsequent act of the same kind.
- Predecessor (*noun*): a person who has previously occupied a position or office to which another person has succeeded.

Historical Background/Context:

After the Court's decision in *Gobitis*, hundreds of Jehovah's Witnesses were physically attacked. Public officials threatened to remove Witnesses' children from their homes and send them to reform schools. Witnesses' meeting places were burned and their leaders driven out of town.

Newspapers were by and large against the decision, with over 170 publications condemning the opinion. Many newspaper editors saw the decision as a direct attack on the First Amendment.

In 1941, the United States entered World War II. Many people enlisted in the war effort, and citizens at home were encouraged to limit their use of certain food and materials to meet the growing needs of the armed forces. The Pledge of Allegiance provided citizens an opportunity to show their patriotism. The Witnesses continued to resist. Eventually, a second case made its way to the Supreme Court.

By that time, Justice Stone, the lone dissenter in *Gobitis*, had become the Chief Justice. There were also new members of the Court. Many Americans saw the attacks on Witnesses as similar to the attacks on Jews in Europe. As the country became more aware of the evils of facism in Europe, Americans needed reassurance that liberty was a higher principle than loyalty to the state. By accepting the Barnette's case, the Court signaled that it was ready to reconsider their previous decision.

According to the rule of precedent, prior Supreme Court decisions govern subsequent cases. The decision in *Gobitis* gave schools the authority to compel students to salute the flag, reducing their right to freedom of speech. The rule of precedent, however, does not stop the Court from changing its mind should it determine that a prior decision was in error. As Justice William O. Douglas wrote in 1949, "It is the Constitution which [a Justice] swore to support and defend, not the [interpretation] which his predecessors may have put on it" (William O. Douglas "Stare Decisis," *Columbia Law Review* 49: 735, 736.) Just because the Court ruled one way doesn't mean it can't change its mind.

Lesson Introduction:

- Read aloud the Historical Context with the class as a whole to help set the scene and prepare students for the role-play.
- Divide class into small groups of 3 students.
- Distribute *Facts of the Case* handout to groups.
- Ask each group to consider the purpose behind the West Virginia statute (Fact No. 1).
 - What do you think "Americanism" means?

Lesson 2: West Virginia State Board of Education v. Barnette

- If you were in charge, how would you foster and perpetuate “the ideals, principles and spirit” of the First Amendment?
- What have you already learned about “the organization and machinery of government”?
- Given the decision in *Gobitis*, how do you think the Court will rule in *Barnette*?
- Report back. Capture the various answers on the board.
- Ask each group to consider the mandate to salute the flag (Fact No. 2) and to come up with an equal number of arguments for and against the mandate.
- Report back. Have each group choose and share their strongest arguments for and against the pledge mandate. Record the arguments on the board.
- Keep the Fact 1 and Fact 2 answers on the board for the role-play.

Role-Play Part 1: The Debate within the Classroom

- Keep students in their small groups of three.
- Begin by taking on the role of the teacher. You are charged by the School Board to fulfill state standards, including the Pledge of Allegiance. At first, you permitted the Barnette sisters to stand but not recite the pledge. Eventually other children complained to the principal. The principal insists that you remove the Barnettes from the classroom.
- Ask the students what they think you should do. Then randomly assign the following roles within each small group :
 - **Marie Barnette**
 - Note: if you have a group of 4 due to class size, add in **Gathie Barnette** as well and have students split the script.
 - **Patriotic Student**
 - **Member of West Virginia Board of Education**
- Students should review the character background information on the *Key Players & Role-Play Scripts* handout.
- If students need prompting to engage in role-play, distribute the optional Role-Play Scripts handout to each of the assigned actors. Suggestions for scaffolding scripts based on learners’ needs:
 - Option 1: Student reads the script aloud.
 - Option 2: Student reads script to self, and then rephrases argument in their own words
 - Option 3: Student reads script to self, then uses it as a springboard for coming up with their own ideas and related arguments.
 - Option 4: Student does not use script, but uses facts of the case, prompts below and perspective-taking abilities to improvise an argument.
- Give actors a few minutes to read the scripts and/or prepare their arguments.
- Ask **Marie Barnette** and **Patriotic Student** to present their arguments
 - **Marie Barnette:** Explain to the rest of the group why you should be able to sit out the pledge.
 - **Patriotic Student:** Explain to the rest of the group why it is necessary for the Barnettes to follow the rules.

Lesson 2: West Virginia State Board of Education v. Barnette

- Ask each of the groups to work together to summarize the disagreement between the students and report out to the class.
- Record the summaries on the white board.

Role-Play Part 2: The Debate within the School District

- Continuing in the role of the teacher, ask the class as a whole:
 - What do they think you should do to resolve the tension between the Barnettes and the patriotic students?
- Record the answers on the white board. If one side is ignored, ask questions to elicit more empathy for the neglected position.
- Continuing in the role of the teacher, remind the class that the West Virginia Board of Education also plays a role in the conflict.
- Ask **Member of West Virginia State Board of Education** to present their argument to their group.
- Ask each group to summarize the conflict between the government and the Barnettes.
- Report back the summaries and record them on the white board.
- End role-play.

Discussion:

- Explain that citizens who wish to challenge state policy on constitutional grounds must file a petition in a Federal Court. When the Barnettes brought their case to a Federal Court, they lost. They appealed to the Supreme Court.
- Ask the class to vote on how the Supreme Court will decide. Will they side with the Barnettes or with the State of West Virginia? Record the votes on the white board.
- Ask for reasons for a Barnette vote.
- Ask for reasons for a West Virginia vote.

Court Decision:

The Opinion of the Court:

- Distribute *The Supreme Court Decides!* Handout with excerpts to class. Reveal to class that the Supreme Court struck down the pledge mandate in a 6-3 decision.
- Divide students into at least 8 small groups, if they aren't still in them.
- Randomly assign one excerpt from a Justice to each group so that each group has its own excerpt and that all excerpts are covered by at least one group. (Four groups will have a quote from Justice Robert Jackson, and four will have a quote from Justice Felix Frankfurter.)
- Ask each group to elect a Notetaker and to then answer the following questions within their group:
 - Restate the excerpt in your own words.
 - If you are the Barnettes, what aspect of this argument is most helpful for you? Why?
 - If you are a school administrator, what aspect of this argument is most difficult for you? Why?
- Once the groups have finished, ask each Note Taker to report back from their group.

Lesson 2: West Virginia State Board of Education v. Barnette

- As each group reports, review the Fact 1 and Fact 2 answers on the board. Are there new arguments emerging?

Final Reflection/Freewrite:

- Ask students to answer the following questions in their learning journals.
 - Which of the arguments did you find most compelling? (Feel free to mix and match arguments from the Opinion and the Dissent.)
 - Which did you find least compelling?
 - Why did you find some of the arguments more compelling than others?
 - What do you think will happen in the West Virginia classroom after this decision?

Facts of the Case

(In legal terms, a fact means “a thing done.” Even though the two parties may disagree on the interpretation of the First Amendment, they both agree on the following facts.)

1. The State of West Virginia required all schools to conduct courses in history, civics, and the Constitutions of the United States and of the State “for the purpose of teaching, fostering and perpetuating the ideals, principles and spirit of Americanism, and increasing the knowledge of the organization and machinery of the government.”
2. In 1942, WV Board of Ed required public schools to include salutes to the flag with specific instructions on how to pledge allegiance.
3. Two children from a Jehovah’s Witness family in Charleston, West Virginia, Marie and Gathie Barnette, refused to salute the flag. Their religious beliefs prohibit bowing down to any man-made object.
4. For their refusal, the girls were charged with insubordination and sent home.
5. The Barnettes sued, claiming that the West Virginia statute violated their First Amendment rights.

Key Players Background & Role-Play Scripts

Marie and Gathie Barnette:

You come from a caring family with strong religious beliefs but few understand your faith. You know you will be expelled if you don't pledge allegiance to the flag. Your parents tell you that the school is not honoring the Constitution, but no one seems to agree. *Explain to the teacher why you should be able to sit out the pledge.*

Optional Script: We are Jehovah's Witnesses, and our faith is very important to us. Our father taught us that we only worship God and not any images. He said that bowing down or saluting the American flag was like treating it as an idol, and that our faith told us not to worship idols.

The Constitution says we have the freedom to practice our religion and that we have the freedom of speech. We believe that this means we shouldn't be forced to say the Pledge of Allegiance or salute the flag. We want everyone to have the freedom to follow their religious beliefs without risking expulsion from school.

We still respect the flag and what it stands for, so we just want to be able to stand respectfully during the pledge. That way we can honor the American flag without violating our faith. We want to be in school and don't want to be expelled for refusing to go against our religion.

Patriotic Student:

You come from a Church-going family, where the men work hard in the coal mines. An uncle went off to France to fight and was killed when his plane went down. You understand the sacrifices your family makes as necessary for freedom. You are angry that the Barnette girls refuse to honor the flag. *Explain to the teacher why it is necessary for the Barnettes to follow the rules.*

Optional Script: These girls are disrespecting the flag and America. My uncle went to war for this country, for this flag, and he was killed protecting us. The Barnettes talk about freedom, but my uncle is the one who died protecting their freedom.

The girls say that saluting the flag and saying the Pledge of Allegiance is against their religion, but I go to Church too, and my parents and my church say it's respectful and right to salute and repeat the Pledge. They say that the American flag represents our freedom of religion and our freedom of speech, so I think the Barnettes should respect the flag by saluting it and saying the Pledge.

The Barnettes say that their faith comes above their country, but I think they live in America, and America lets them practice their religion and they should be thankful for that. I don't understand how saying the Pledge and saluting the flag is such a big deal in their religion! It's not worshipping a false idol or whatever they said, it's an American flag. It's an important gesture to respect the flag and what it stands for, why can't they just do it? Everyone is making sacrifices for the war effort right now, and this is the least they could do to support our troops and America.

Member of WV State Board:

Drawing on the discussion of Fact No. 1 and the arguments for the pledge, explain why it is necessary for the students to follow the rules.

Optional Script: As a member of the West Virginia State Board, it's my responsibility to make sure the schools are a place for learning and developing the next generations of citizens. Students must learn about the history of our country and the importance of the national and state Constitutions. Especially during this time of war, everyone must learn to work together and make sacrifices for the greater good.

The State Board exists to help create rules for all the schools across the state. These rules are important to create a safe and educational space for all. There are many students across the state, with many different religious beliefs. and not all of them agree with all the rules. But it's important to have these rules in place to create order and maintain an environment that's conducive to learning.

As Justice Frankfurter said in *Gobitis*, "The mere possession of religious convictions ... does not relieve the citizen from the discharge of political responsibilities." Citizens have a responsibility to their country. The pledge teaches students what that responsibility is.

Students who refuse to pledge are breaking the rules, which is clearly a case of insubordination. They should be punished for not honoring the flag, and it is within the rights of the school and the State Board to send home students who refuse to pledge and expel students who repeatedly refuse.

The Supreme Court Decides!

In a 6-3 decision, the Supreme Court struck down the pledge mandate. The following are excerpts from the decision.

Justice Robert Jackson wrote the opinion:

1. "To sustain the compulsory flag salute, we are required to say that a Bill of Rights which guards the individual's right to speak his own mind left it open to public authorities to compel him to utter what is not in his mind."
2. "One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections."
3. "Struggles to coerce uniformity of sentiment in support of some end thought essential to their time and country have been waged by many good, as well as by evil, men. ... Those who begin coercive elimination of dissent soon find themselves exterminating dissenters."
4. "If 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."

NOT ALL THE JUSTICES AGREE!

Justice Felix Frankfurter (dissent)

1. "[I]t must be remembered that legislatures are ultimate guardians of the liberties and welfare of the people in quite as great a degree as the courts."
2. "Law is concerned with external behavior and not with the inner life of man. It rests in large measure upon compulsion."
3. "The State of West Virginia requires all pupils to share in the salute to the flag as part of school training in citizenship.... All that is in question is the right of the State to compel participation in this exercise by those who choose to attend the public schools."
4. The attitude of judicial humility which these considerations enjoin is not an abdication of the judicial function. It is a due observance of its limits."

LESSON 3: LIVING UNDER A SUPREME COURT RULING

Supreme Court Case #1:

[West Virginia State Board of Education v. Barnette](#) (1943)

Learning Objectives:

- Clarify the rights of free speech in the classroom;
- Clarify the responsibilities of school administrators;
- Practice the skills of deliberation and persuasion;
- Respectfully disagree with other viewpoints.

Next Generation Learning Standards:

- Cite specific textual evidence to support analysis of primary and secondary sources.
- Identify aspects of a text that reveal an author's point of view or purpose
- Write arguments focused on discipline-specific content
- Prepare for and participate effectively in a range of conversations and collaborations with diverse partners, building on others' ideas and expressing their own clearly and persuasively.
- Evaluate a speaker's point of view, reasoning, and use of evidence and rhetoric
- Present information, findings, and supporting evidence such that listeners can follow the line of reasoning, and the organization, development, and style are appropriate to task, purpose, and audience.

Materials:

- *Key Players & Role-Play Scripts* handout

Key Vocabulary:

- Conscience (*noun*): the sense of the moral goodness of one's own conduct, intentions, or character together with a feeling of obligation to do right or be good.
- Moderator (*noun*): someone who presides over an assembly, meeting or discussion.

Historical Background/Context:

The Court's decision in favor of the Barnette family reduced the power of state governments to compel speech. Students around the country could now argue that the Supreme Court gave them the right to sit out the pledge. But just because the Supreme Court issues an opinion, doesn't mean that the debate is over.

School districts across the country were faced with a challenge. On the one hand, many believed that the Pledge of Allegiance was necessary to show national unity. On the other hand,

Lesson 3: West Virginia State Board of Education v. Barnette

many agreed with the Court that the Constitution's protection of individual liberties prevented schools from mandating the pledge.

Lesson Introduction:

- Share Historical Background with the class in your own words.
- Introduce the Mock Town Meeting

Mock Town Meeting:

A Town Meeting is a moderated public forum, focused on a specific issue/issues, that encourages different points of view. In this Mock Town Meeting, the Teacher plays the role of the Moderator and volunteers play the roles of the key players in the case.

- Ask for volunteers to play the following roles:
 - **Barnette Girls**
 - **Patriotic Student**
 - **Mr. and Mrs. Barnette**
 - **West Virginia School Board member**
- Volunteers should review the character background information on the *Key Players & Role-Play Scripts* handout.
- If students need prompting to engage in role-play, distribute the optional Role-Play Scripts handout to each of the assigned actors. Suggestions for scaffolding scripts based on learners' needs:
 - Option 1: Student reads the script aloud.
 - Option 2: Student reads script to self, and then rephrases argument in their own words
 - Option 3: Student reads script to self, then uses it as a springboard for coming up with their own ideas and related arguments.
 - Option 4: Student does not use script, but uses facts of the case, prompts below and perspective-taking abilities to improvise an argument.
- Give actors a few minutes to read the scripts and/or prepare their arguments.

Let the Mock Town Meeting Begin!

- Begin by explaining the Rules of the Town Meeting:
 - All comments must be addressed to the Moderator;
 - Only one person may speak at a time;
 - All comments must pertain to the issue under discussion.
- Describe the Issue: The Supreme Court has prohibited schools from mandating the Pledge. Schools are charged with teaching civics. How can our school follow both demands?
- Ask **Mr. and Mrs. Barnette** to present their arguments
 - **Mr and Mrs Barnette:** Make a case why the Court's decision is in everyone's interests. (Remember to address your comments to the Moderator. "Moderator, ...")
- Thank the Barnettes.
- Ask **Patriotic Student** to present their argument

Lesson 3: West Virginia State Board of Education v. Barnette

- **Patriotic Student:** Make a case why the Pledge is an important part of the classroom experience.
- Thank the Patriotic Student.
- Ask **Member of WV State Board** to present their argument
 - **Member of WV State Board:** Explain your obligations to the people of West Virginia to teach civics to all public school students. Make a case for the importance of creating national unity.
- Open the discussion to the floor (all students) after reminding everyone to address the Moderator.
- Finally, ask the assembled for ideas on how the principles in the Pledge of Allegiance can be incorporated into a civics lesson. Record ideas on the board.
- Thank everyone for attending and adjourn the Town Meeting.

Final Reflection/Freewrite:

- Ask students to answer the following questions in their learning journals:
 - Which of the arguments in the Town Meeting did you find most compelling? Why? (Feel free to mix and match across the divide.)
 - Which of the arguments in the Town Meeting did you find least compelling? Why? (Feel free to mix and match across the divide.)
 - If you were designing a civics lesson that focused on national unity, what would you do?

Key Players Background & Role-Play Scripts

Mr. and Mrs. Barnette:

Now that you have won, many people are angry with you and your children. The school has allowed you to return but many of the students are hostile.

Re-read the excerpts from Jackson. Make a case why the Court's decision is in everyone's interests. Show the Town Meeting that you understand the difficulty of the situation.

Optional Script: Moderator, people say we are being un-American, but this case proves that we are only trying to practice the most American ideal, our freedom to follow our conscience. Forcing our children to repeat the Pledge and salute the American flag is not just a violation of the First Amendment but an example of the government going too far. In a free country, citizens are allowed to say what they believe. They can't be forced to say things they don't believe.

The State of West Virginia wants students to learn about the 'principles and spirit of Americanism.' We encourage teaching the First Amendment in the civics curriculum. We see this as an opportunity to teach students about their rights.

Look at what is happening in Germany. Citizens are being forced to do or say things that they don't agree with. If they don't conform they are beaten by the mobs and then sent to concentration camps. After the *Gobitis* decision, Witnesses were attacked for following their beliefs. The mob in the United States was like the mob in Germany.

Luckily the Supreme Court recognized their error. The Constitution protects the individual and their freedoms.

We know that many families here are upset, but we believe this decision is in everyone's best interests. After this decision, no citizen can be forced to say things that go against their beliefs. This freedom is for everyone, for every single person in this room. It is our right as Americans. We hope that everyone assembled here can appreciate that.

Patriotic Student:

You haven't read the case but you know from your parents that the Supreme Court was wrong. You are angry that the Barnettes will be able to sit out the pledge. You don't understand how a federal court can tell people in West Virginia how to think.

Make a case why the Town Meeting should disregard the Court's ruling.

Optional Script: Moderator, this is ridiculous! The Barnettes get to sit out the pledge because they don't want to do it? Our school has so many rules. If I come to school late, I get in trouble. But when the Barnettes break the rules, they don't get in any trouble at all? It's not fair!

Lesson 3: West Virginia State Board of Education v. Barnette

My family and many families here are making sacrifices to support the war effort. The Barnettes are doing nothing for their country. They say that this court ruling is good for everyone and means freedom for everyone. But what have they done for this country? I think they are anti-American. They care more about their religion than the country that is fighting for their freedom.

How can the Supreme Court make a decision about our town, our school, our classroom? How do they know what happens here? They don't know us and they don't know anything about teaching. How can they decide that my principal was wrong? I like saying the Pledge of Allegiance and saluting the flag. All my friends did too. The Supreme Court didn't ask us what we thought, so why do the Barnettes matter?

Member of WV State Board:

You are conflicted about the decision. On the one hand, one of the main goals of the curriculum is to increase understanding of the Constitution. The Supreme Court's decision increased individual freedoms under the First Amendment. On the other hand, the will of the people of West Virginia was struck down by a federal court.

Tell the Town Meeting that you still have obligations to the people of West Virginia, regardless of the Court's decision. You don't want the school to get in trouble with the law but you also want them to know what West Virginians have to say about a federal judge telling them what to do.

Optional Script: Moderator, I'm disappointed by the Supreme Court's decision. I don't think the federal government has any right meddling in the affairs of our school system. I agree with Justice Frankfurter--the legislatures are supposed to deal with these sorts of things, not the courts!

Reciting the pledge every morning is an important step towards educating our students on the importance of the American flag and what it stands for. If we can't even make our students do that, how are we supposed to convince them to care about civics? It seems like the Barnettes only care about themselves and their own beliefs. If everyone only fights for their individual rights, how can we address common concerns? Being a citizen is more than being an individual with free will. Sometimes we need to pull together as a country and make sacrifices for our freedom.

That said, the Supreme Court has made their decision, and while I don't agree with it, I don't want this town and school system getting in trouble for violating their decision. If the Barnettes or any other Jehovah's Witnesses refuse to salute the flag or say the Pledge of Allegiance, we will respect their judgements. As long as the students are quiet and respectful during the Pledge, they may remain in our public schools. I'm encouraged that the Barnettes want more teaching on the Constitution. Maybe there are other ways that we can support the principles and spirit of the United States without falling afoul of the Supreme Court.

LESSON 4: THE CONTROVERSY OF THE ARMBANDS

Supreme Court Case #3:

[Tinker v. Des Moines Independent Community School District](#) (1969)

Learning Objectives:

- Clarify the principles of free speech;
- Respectfully disagree with other viewpoints;
- Identify constitutional arguments;
- Consider the obligations of school administrators.

Next Generation Learning Standards:

- Cite specific textual evidence to support analysis of primary and secondary sources.
- Determine the central ideas or information of a primary or secondary source; provide an accurate summary of the source distinct from prior knowledge or opinions.
- Identify aspects of a text that reveal an author's point of view or purpose
- Distinguish between fact, opinion, and reasoned judgment in a text.
- Write arguments focused on discipline-specific content.
- Evaluate a speaker's point of view, reasoning, and use of evidence and rhetoric.
- Present information, findings, and supporting evidence such that listeners can follow the line of reasoning, and the organization, development, and style are appropriate to task, purpose, and audience.

Materials:

- *Facts of the Case* handout
- *Key Players Background & Role-Play Scripts* handout
- *The Supreme Court Decides!* handout

Key Vocabulary:

- *Compel (verb)*: to cause to do or occur by overwhelming pressure
- *Conscience (noun)*: sensitive regard for fairness or justice
- *Deviates (verb)*: to depart from an established course or norm
- *Flout (verb)*: to treat with contemptuous disregard: scorn
- *Orthodox (adjective)*: conventional
- *Prescribe (verb)*: to lay down as a rule: dictate

Historical Context:

In 1965, President Lyndon B. Johnson dramatically increased the United States' involvement in the Vietnam War, sending a significant number of troops into the region. Although initially a majority of Americans supported the war, as the number of American casualties increased, many had begun to question their commitment. In November of 1965, the first large scale battle occurred, with almost 300 Americans killed.

Lesson 4: *Tinker v. Des Moines Independent Community School District*

The Vietnam War was the first major conflict to be televised. Every night on the news, households around the country witnessed footage of the battlefields. Americans were seeing not just the violence inflicted by the enemy, but the carnage caused by Americans as well. It didn't take long for an anti-war social movement to emerge both in the United States and around the world.

Lesson Introduction:

- Read aloud the Historical Context with the class as a whole to help set the scene and prepare students for the role-play.
- Divide the class into small groups of 2-3 students
- Distribute *Facts of the Case* handout to the groups
- Ask each group to elect a Notetaker
- Ask each group to imagine the concerns of the anti-war families (Fact No. 1).
 - How did the anti-war families understand the right to free speech?
 - What conversations did they hope the armbands would provoke?
- Report back. Capture the various answers on the board, or utilizing an interactive whiteboard tool.
- Ask each group to imagine the concerns of the principals (Facts No. 2 & 3).
 - How did the principals understand the right to free speech?
 - What difficulties were they hoping to avoid with the ban on armbands?
- Ask each group to come up with at least 2 arguments for and against the ban. They must come up with an equal number of arguments for each side.
- Ask a representative from each group to share one argument for and one against the ban and record the arguments on the board.
- Keep the two sets of answers on the board for the role-play.
- Students return to their original seats.

Role-Play:

- Begin by taking on the role of the teacher. Explain to the students that you are charged by the principals to enforce the ban on armbands. At first you ignore the armbands and stick with your lesson plan. You don't want to get involved in a political dispute. However, your principal insists that you must send any student wearing an armband to his office.
- Ask the students what they think you should do. Then ask for volunteers to play the following roles:
 - **Mary Beth Tinker, John Tinker & Christopher Eckhardt**
 - *Note: only Mary Beth Tinker has a script, but John & Christopher can be cast to weigh in on prompts later in role-play.*
 - **Friend of Fallen Soldier**
 - **Principal**
- Students should review the character background information on the *Key Players & Role-Play Scripts* handout.
 - If students need prompting to engage in role-play, have them read the optional Scripts. Suggestions for scaffolding scripts based on learners' needs:

Lesson 4: *Tinker v. Des Moines Independent Community School District*

- Scaffold 1: Student reads the script aloud.
- Scaffold 2: Student reads script to self, and then rephrases argument in their own words.
- Scaffold 3: Student reads script to self, then uses it as a springboard for coming up with their own ideas and related arguments.
- Scaffold 4: Student does not use script, but uses facts of the case, prompts below and perspective-taking abilities to improvise an argument.
- Give role-play actors a few minutes to read the scripts and/or prepare their arguments.
- Ask **Mary Beth Tinker** and **Friend of Fallen Soldier** to present their arguments:
 - **Mary Beth Tinker:** Explain to the class why you should be allowed to wear the armbands to school.
 - **Friend of Fallen Soldier:** Explain to the teacher why the protesters should be suspended for wearing black armbands.
- Continuing in the role of the teacher, ask the students who don't have an assigned role: What do they think you should do?
- Once the students in the role-play have had a chance to make their case, return to the Fact 1 answers on the board.
 - Is there anything in the Fact 1 discussion that might help resolve this issue?
 - Does the ruling in *Barnette* provide any guidance?
- Review the arguments for the ban. Ask Mary Beth Tinker what they think about the merits of the ban.
- Continuing in the role of the teacher, ask the Principal to weigh in on the issue.
 - **Principal:** Explain to the Teacher why you created this policy and why it's important to follow the policy for the benefit of the school.
- Ask the protestors for their thoughts on the position of the Principal. Record their answers on the board.
- End the role-play.

Post-Role-Play Discussion:

- Reflect on the various positions:
 - What do the student protestors care about? (Compare with answers on the board)
 - What do the principals care about? (Compare with answers on the board)
 - Ask for suggestions on how to resolve the issue.
- Remind the class about how the Justices voted in *Barnette* (6-3 decision in favor of the *Barnettes*).
 - Ask the class to predict how the Supreme Court will rule. Will it be unanimous? 7-2? 6-3?

Court Decision:

- Distribute *The Supreme Court Decides!* Handout with excerpts to class. Reveal to the class that the Supreme Court struck down the ban on armbands in a 7-2 decision.
- Divide students into 6 equal groups.
- Randomly assign one quote to each of the groups, so that each of the six quotes on *The Supreme Court Decides!* handout are reviewed by one group. (Three groups will review

one of the quotes from Justice Fortas, and three will review one of the quotes from Justice Black).

- Ask each group to read the quote together. Tell them they are to become ‘experts’ at this quote.
 - Each student should write down their own summary of the excerpt in their own words.
 - Each student should write down what they think the student protestors will say about the quote.
 - Each student should write down what they think the principal will say about the quote.
 - Each group should then share their summaries and compare them. Students can use this opportunity to ask questions and ask for support from their group members if they’re struggling with comprehension. The groups should then work together to synthesize their understandings into a new summary of the excerpt.
- Now rearrange groups into a jigsaw format, so that each group now consists of one expert from each excerpt. (I.e. 1 student who studied excerpt 1, 1 student who studied excerpt 2, etc) All groups should have at least 6 students, so that each excerpt can be represented in these new groups.
- Ask students to do the following in their new jigsaw groups:
 - Read aloud their assigned excerpt
 - Read aloud the groups’ summary of the excerpt
- Once all quotes and summaries have been read aloud within groups, ask students to answer the following questions within their group:
 - Imagine that you are the students, what would you say to Justice Black?
 - Imagine that you are the principal, what would you say to Justice Fortas?

Final Reflection (Individual Freewrite):

- Ask the students to answer the following questions in their learning journals:
 - Which of the arguments did you find most compelling? Why?
 - Which did you find least compelling? Why? Feel free to mix and match from the Opinion AND the Dissent.
 - Given this decision, what do you think students should know about the free speech clause?

Facts of the Case

(In legal terms, a fact means “a thing done.” Even though the two parties may disagree on the interpretation of the First Amendment, they both agree on the following facts.)

1. In 1965, there was an increase in US casualties in the Vietnam War, climbing from around 200 in 1964 to over 1,900. At least one high school student from Des Moines had been killed in the Vietnam War.
2. In December of 1965, a group of parents and students decided to publicize their objections to the Vietnam War by wearing black armbands during the holiday season.
3. When the principals of the Des Moines schools heard about the protest, they adopted a policy that banned the wearing of armbands. Any student who refused to remove the armband would be suspended.
4. When Mary Beth and John Tinker and Christopher Eckhardt arrived at school with armbands they were all sent home and suspended from school. They did not return until after New Year’s Day.
5. The Tinkers sued, claiming that the ban on armbands violated their First Amendment rights.

Key Players Background & Role-Play Scripts

Mary Beth Tinker:

You know that you will be suspended if you wear an armband. Why do you choose to face that consequence? *Explain to the teacher why you think the ban on armbands is a violation of the First Amendment after the Barnette decision.*

Optional Script: Every night, I watch the evening news with my family. And every night, I see footage of terrible things happening in Vietnam. It upsets me to see such gruesome, violent acts happening to Vietnamese people, especially to kids who are the same age as me and my siblings.

My father was a minister and my family is involved in the civil rights movement. In my family, we were taught to put our faith into action. My faith believes in non-violence and that war is never justified. The war in Vietnam is not only contrary to my religious beliefs; we believe it is an unjust war and that young Americans should not be forced to fight in an unjust war. We also know that people from Des Moines are being sent into this war and then coming home in coffins.

By wearing these armbands, we are letting others know our message of peace and of mourning the deaths of both American and Vietnamese people. We are not condemning anyone, nor do we wish to disrupt the classroom. We are merely signaling our opposition to the war and that, for us, it is a matter of conscience. We are open to discussing the war with those who feel differently.

We want to continue in school while being true to our own beliefs. We promise to follow the instructions in the classroom, to participate fully in class discussions, and to help create a good learning environment. We believe that it is not just our right to wear these armbands that's at stake, but that everyone benefits when different points of view are considered. We become a stronger nation when we can debate.

Friend of Fallen Soldier:

Your older brother played on the football team with the fallen soldier. You are upset that protestors are dishonoring his sacrifice. *Explain to the teacher why it is necessary for the Tinkers and Eckhardt to be sent home.*

Optional Script: I find the armbands completely disrespectful. My brother was best friends with someone who died in Vietnam. These students should show more respect for the sacrifices that others in this town are making for the country.

They act as if only they have a conscience! I have my own moral compass, and in my family, sacrificing for one's country is a sign of patriotism.

Lesson 4: *Tinker v. Des Moines Independent Community School District*

Okay, I'll be honest. The armbands make me so mad I just can't concentrate on the lessons. It's hard enough to concentrate in school without these students stirring things up!

Besides, there's a lot of things I can't wear to school. I can't come in my pajamas. I can't come in barefoot, even when it's hot outside. So why should these kids be able to wear a stupid armband? What makes them so special?

Principal:

You believe that school is a place to learn self-discipline and self-regulation. The ban helps in this regard. Students can't just wear what they want. The school requires that students wear appropriate clothing to the school. Girls must wear skirts that hang below the knees and boys must wear button-down shirts. *Explain why it is necessary for the students to follow the rules.*

Optional Script: This town is deeply divided about the Vietnam War. Some families have lost their sons in the jungles and some are anti-war. There is no way these people will ever agree on the war. So what's a school to do?

The anti-war families want to use the school to protest the war. That's not fair. If we say yes to the armbands, will we have to say yes to posters that promote the draft? It's true that we allow the military to set up recruitment tables from time to time, but that's a government operation. The government has certain authority. The protestors are private citizens. We don't want the debate over the Vietnam War to disrupt our math classes!

I understand that the First Amendment is an important right. The whole reason we're in Vietnam is to make the world more free, less subject to the Communists. But students can't say whatever they want, whenever they want in the classroom. We must set appropriate rules so that all students can learn.

The Supreme Court Decides!

In a 7-2 decision, the Supreme Court struck down the ban on armbands. The following are excerpts from the decision.

Justice Abe Fortas wrote the Opinion:

1. "First Amendment rights are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."
2. " [A student] may express his opinions, even on controversial subjects like the conflict in Vietnam, if he does so without ...interfer[ing] with the requirements of appropriate discipline in the operation of the school" and without colliding with the rights of others."
3. "In our system, ... [a]ny variation from the majority's opinion may inspire fear. Any word spoken, in class, in the lunchroom, or on the campus, that deviates from the views of another person may start an argument or cause a disturbance. But our Constitution says we must take this risk."

NOT ALL JUSTICES AGREE!

Justice Hugo Black wrote the Dissent:

4. If the time has come when pupils of state-supported schools, kindergartens, grammar schools, or high schools, can defy and flout orders of school officials to keep their minds on their own schoolwork, it is the beginning of a new revolutionary era of permissiveness in this country fostered by the judiciary.
5. The truth is that a teacher of kindergarten, grammar school, or high school pupils no more carries into a school with him a complete right to freedom of speech and expression than an anti-Catholic or anti-Semite carries with him a complete freedom of speech and religion into a Catholic church or Jewish synagogue.
6. School discipline, like parental discipline, is an integral and important part of training our children to be good citizens – to be better citizens.

LESSON 5: LIVING UNDER A SUPREME COURT RULING

Supreme Court Case #3:

[Tinker v. Des Moines Independent Community School District](#) (1969)

Learning Objectives:

- Explore the rights of free expression in the classroom.
- Apply the principles of a Supreme Court decision to a different set of facts;
- Respectfully disagree with other viewpoints;
- Identify constitutional arguments.

Next Generation Learning Standards:

- Determine the meanings of words and phrases as they are used in a text, including vocabulary specific to domains related to history/social studies.
- Write arguments focused on discipline-specific content.
- Draw evidence from informational texts to support analysis, reflection, and research.
- Prepare for and participate effectively in a range of conversations and collaborations with diverse partners, building on others' ideas and expressing their own clearly and persuasively.
- Present information, findings, and supporting evidence such that listeners can follow the line of reasoning, and the organization, development, and style are appropriate to task, purpose, and audience.

Vocabulary:

- Censor (*verb*): to limit or remove information that is objectionable
- Demean (*verb*): to lower in character, status or reputation
- Derogatory (*adjective*): intended to make a person or thing seem of little importance or value

Materials:

- *What Can You Wear on a T-Shirt?* handout
- Copies of your school's dress code
- Poster Boards
- Markers

Historical Background/Context:

The Court's decision in favor of the protestors reduced the power of schools to ban speech. Students around the country could now argue that the Supreme Court gave them the right to express their political beliefs through armbands and other forms of dress. Students and teachers could now say that they did not "shed their rights at the schoolhouse gate."

Lesson 5: *Tinker v. Des Moines Independent Community School District*

At the same time, that freedom came with certain restrictions. The right to express one's political beliefs could not interfere with school discipline. Any speech that "interfered with the requirements of appropriate discipline in the operation of the school" was not protected under the First Amendment. As we'll see in this lesson, what constitutes appropriate discipline is still an open question.

Schools have always been able to regulate what students wear to class. Some of these restrictions have to do with prohibiting shirts that do not cover the midriff or wearing pajamas to class. But dress codes can also prohibit clothing that expresses a hostile attitude towards certain groups. With a rise in concern about hate speech in the classroom, schools regularly ban clothing that contains derogatory messages attacking others on the basis of sex, race, religion, nationality, or sexual orientation. The First Amendment does not allow a student to harass others through a message on a T-shirt.

But *Tinker* does allow for the expression of *political* speech. According to that decision, clothing that expresses a deeply-held belief should be allowed as long as it doesn't interfere with the educational mission of the school. But what if the political belief expressed on one student's shirt causes another student to feel attacked? How does one distinguish the difference between political speech and expressions that discriminate?

The next activity explores two recent cases involving Middle Schoolers, T-shirts, and dress codes.

Free Speech and Dress Codes:

- Read aloud the Historical Context with the class as a whole to help set the scene.
- Provide the class with copies of your school's dress code.
- Ask students to give examples of the following and copy the answers to the white board:
 - What clothing items are prohibited in your school's dress code?
 - Why do you think those items are prohibited? How could they 'interfere with the requirements of appropriate discipline in the operation of school'?
- Distribute *What Can You Wear on a T-shirt?* handout.
 - Ask for a volunteer to read the facts of Case No. 1 (a/k/a The Gender Case).
 - Ask for a volunteer to read the facts of Case No. 2 (a/k/a The Gun Case).
- Ask the class as a whole, "if you were defending *both* of the students, what arguments would you use?" Copy the answers on the white board.
- Ask students to answer the following in their learning journal
 - Which of the two cases they would like to defend and why?
 - Which of the two cases they would not like to defend and why?
- Ask the class as a whole, if you were defending *both* school districts, what arguments would you use?" Copy the answers on the white board.
- Review the standard in *Tinker*: "Only speech that 'materially and substantially interferes with the requirements of appropriate discipline' can be found unacceptable and therefore prohibited."

Lesson 5: *Tinker v. Des Moines Independent Community School District*

- Ask students to note in their learning journal how the t-shirt in the gender case interfered with the learning environment.
- Ask students to note in their learning journal how the t-shirt in the gun case interfered with the learning environment.
- Divide the class into groups of 2 to 3 students. Randomly assign each group the gender case or the gun case.
 - Review the dress code in each case.
 - Provide examples of attire that would violate the school's dress code.
 - Provide examples of attire that would conform to the school's dress code.
- Ask the gender groups to share their examples.
- Ask the gun groups to share their examples.
- Let the class know that only one of the students won in Federal Court. Ask the class to guess which of the two cases upheld the student's First Amendment claim.
- Tally the votes on the white board.
- Ask for volunteers to explain why they voted the way they did.
- Reveal that the student in the gender case lost ([*L.M. v. Town of Middleborough*](#)) and the student in the gun case won ([*N.J. by Jacob v. Sonnabend*](#)). The decisions differed because the dress code in the gender case clearly prohibited speech that demeaned any students because of their gender identity. The dress code in the gun case did not expressly prohibit the image of guns.

Final Reflection/Poster Walk

- Divide the class into small groups of 4 to 5 students
- Give each group a poster board.
- Ask each group to elect a Notetaker
- Ask each group to use the top half of their poster to share their answers to the following question;
 - What do students need to know about free speech in general?
- Ask each group to use the bottom half of the poster to answer the following question;
 - What do students need to know about the school's right to censorship?
- Arrange the posters around the classroom. Ask groups to visit each of the posters.
- The posters can stay up in the classroom through the rest of the curriculum (and beyond!)

What Can You Wear on a T-Shirt?

Case #1: The Gender Case

- A Middle Schooler (L.M.) arrived at school wearing a t-shirt with the statement “There are only two genders.”
- He was sent home for violating the following section in the school dress code. “Clothing must not state, imply or depict hate speech ... based on race, ethnicity, gender, sexual orientation, gender identity, religious affiliation or any other classification.”
- He returned the next day wearing the same t-shirt, but with a tape labeled CENSORED covering up the words. He was sent home again.
- He sued claiming that the dress code violated his First Amendment rights.

Case #2: The Gun Case

- A Middle Schooler (A.L.) arrived wearing a t-shirt with the logo of Wisconsin Carry, a gun rights organization. The logo features an image of a handgun.
- A.L. was sent to the principal’s office for violating the section in the school dress code which instructs students to “wear attire that supports actively engaging in the lessons and project based learning in the classroom” and “maintains a positive atmosphere conducive to education.”
- A.L. covered up the t-shirt with his jacket and returned to class.
- He sued claiming that the dress code violated his First Amendment rights.

LESSON 6: FREE SPEECH IN STUDENT NEWSPAPERS

Supreme Court Case #4:

[Hazelwood School District v. Kuhlmeier](#) (1988)

Learning Objectives:

- Clarify the rights of free speech in school-run publications;
- Explore the authority of schools to censor student speech;
- Respectfully disagree with other viewpoints;
- Identify constitutional arguments.

Next Generation Learning Standards:

- Cite specific textual evidence to support analysis of primary and secondary sources.
- Determine the central ideas or information of a primary or secondary source; provide an accurate summary of the source distinct from prior knowledge or opinions.
- Identify aspects of a text that reveal an author's point of view or purpose
- Distinguish between fact, opinion, and reasoned judgment in a text.
- Write arguments focused on discipline-specific content.
- Draw evidence from informational texts to support analysis, reflection, and research.
- Evaluate a speaker's point of view, reasoning, and use of evidence and rhetoric.
- Present information, findings, and supporting evidence such that listeners can follow the line of reasoning, and the organization, development, and style are appropriate to task, purpose, and audience.

Materials:

- *Facts of the Case* handout
- *Key Players Background & Role-Play Scripts* handout
- *The Supreme Court Decides!* handout

Key Vocabulary:

- Censorship (*noun*): review of publications for the purpose of prohibiting material deemed objectionable.
- Coextensive (*adjective*): having the same scope or boundaries.
- Inculcate (*verb*): to instill an attitude, idea or habit by persistent instruction.
- Insidious (*adjective*): treacherous; crafty.
- Objection (*noun*): that which is presented in opposition; an adverse reason or argument.
- Pedagogical (*adjective*): of or relating to a teacher or education.

Historical Context:

The 1980s ushered in new anxieties about the American family. The number of divorces skyrocketed and Americans became more concerned about teenage pregnancies. The AIDS epidemic increased the public's fears about sexuality and public health.

Americans were divided on the best way to handle these social stresses with some arguing that more information was better and others saying that it was important to protect students from controversial or upsetting topics. Student newspapers became a battleground for this debate.

By the time *Kuhlmeier* was heard by the Supreme Court, students were feeling empowered about their ability to fight school censorship. In a 1982 decision, the Court rejected a book ban policy from Levittown, New York. Justice Brennan explained that "local school boards may not remove books from school library shelves simply because they dislike the ideas contained in those books." The First Amendment protected the rights of students to consider ideas, even if school officials disapproved.

But what about a student newspaper? School newspapers are often the creations of journalism classes. Sometimes they are created through an after-school activity. In both cases, the school provides instruction, funding, and oversight. But what if the school does not endorse the student's message? If a principal decides to remove articles prior to publication (known as censoring) is that a violation of the First Amendment? The case of *Hazelwood School District v. Kuhlmeier* from 1988 focuses on that very question.

Lesson Introduction:

- Read aloud the Historical Context with the class as a whole to help set the scene and prepare students for the role-play.
- Divide the class into small groups of 2-3 students
- Distribute *Facts of the Case* handout to the groups
- Ask each group to elect a Notetaker
- Ask each group to imagine the concerns of the students working on the student paper.
 - What sort of skills do you think student journalists need to learn in class?
 - Why did they want to include articles on teen pregnancy and divorce?
- Report back. Capture the various answers on the board, or utilizing an app like Padlet.
- Ask each group to imagine the concerns of the principal:
 - Why would the principal be concerned about an article on divorce? Aside from students, who else does the principal need to consider when making decisions? If a parent objects, should that make a difference?
 - Why would the principal be concerned about students talking about their pregnancies in a school-run publication? What concerns would the principal have about students being identified through the details in the article?
- Ask each group to come up with arguments for and against the censorship. Encourage them to come up with an equal number of arguments for each side.
- Ask a representative from each group to share one argument for and one against the censorship; record the arguments on the board.

- Keep the two sets of answers on the board for the role-play.
- Students return to their original seats.

Role-play:

- Begin by taking on the role of the journalism teacher. Explain that students will learn two things in journalism class: how to improve their writing and interviewing skills; and how the First Amendment protects journalists. Before assigning the roles in the controversy, ask the class what they understand to be the rights and responsibilities of journalists under the First Amendment. Capture their answers on the board (or on an app).
- Tell the class that you are under pressure not to include the articles that deal with controversial issues about the family. Schools are charged with providing content that the school community won't find objectionable. You have heard that some parents don't want their private matters to be aired in a school publication. You have read the article on teen pregnancy and acknowledge that it is well-written and engaging. You have some doubts that the principal will agree.
- Ask for volunteers to play the following roles:
 - **Cathy Kuhlmeier and two student journalists**
 - *Note: only Cathy Kuhlmeier has a script, the student journalists can be cast to weigh in on prompts later in role-play.*
 - **Pregnant Interviewee**
 - **Principal Reynolds**
- Students should review the character background information on the *Key Players & Role-play Scripts* handout.
 - If students need prompting to engage in role-play, have them read the optional Scripts. Suggestions for scaffolding scripts based on learners' needs:
 - Scaffold 1: Student reads the script aloud.
 - Scaffold 2: Student reads script to self, and then rephrases argument in their own words.
 - Scaffold 3: Student reads script to self, then uses it as a springboard for coming up with their own ideas and related arguments.
 - Scaffold 4: Student does not use script, but uses facts of the case, prompts below and perspective-taking abilities to improvise an argument.
- Give role-play actors a few minutes to read the scripts and/or prepare their arguments.
 - While actors are preparing, ask the remaining students to freewrite the principal's perspective in their learning journal.
- Ask **Cathy Kuhlmeier** and **Student Journalists** to present their arguments:
 - **Cathy Kuhlmeier:** Explain to the teacher why the articles should be published.
 - **Pregnant Interviewee:** Explain to the teacher why you believe the article in which you are quoted should be published.
- Continuing in the role of the teacher, ask the students who don't have an assigned role: What do they think you should do?
- Allow Kuhlmeier and the Pregnant Interviewee to respond to the advice from the other students. Once they are finished:

- o Review the pros and cons of censorship arguments on the board. Is there any other argument that needs to be considered?
- o Review the rights and responsibilities under the First Amendment on the board. Is there any other argument that needs to be considered?
- Continuing in the role of the teacher, ask the Principal to weigh in on the issue.
 - o **Principal Reynolds:** Explain to the Teacher why you removed the pages from the school newspaper.
- Ask the student journalists for their thoughts on the position of the Principal. Record their answers on the board.
- End the role-play.

Post-Role-Play Discussion:

- Return to the original small groups and ask for a note taker. Ask each group to answer the following questions:
 - o What do the students care about?
 - o What does the principal care about?
 - o Ask for suggestions on how to resolve the issue.
- Remind the class that the Justices voted in favor of the students in *Tinker*. (7-2)
 - o Ask the class to predict how the Supreme Court will rule in *Kuhlmeier*? (Note that for this case there are only 8 justices on the bench. At the time, there was one seat vacant because the Senate had not yet confirmed a justice nominated by the President.)

Court Decision:

- Distribute *The Supreme Court Decides!* Handout with excerpts to class. Reveal to the class that the Supreme Court upheld the censorship of the articles in a 5 to 3 decision.
- Divide students into 6 equal groups.
- Randomly assign one quote to each of the groups, so that each of the six quotes on *The Supreme Court Decides!* handout are reviewed by one group. (Three groups will each review one of the quotes from Justice White, and three will each review one of the quotes from Justice Brennan).
- Ask each group to read the quote together. Tell them they are to become 'experts' at this quote.
 - o Each student should write down their own summary of the excerpt in their own words.
 - o For students who wish a higher challenge, ask them to write down:
 - what they think Cathy Kuhlmeier will say about the quote.
 - what they think Principal Reynolds will say about the quote.
 - o Each student should then share their summaries with their group and compare them. Students can use this opportunity to ask questions and ask for support from their group members if they're struggling with comprehension. The groups should then work together to synthesize their understandings into a new summary of the excerpt.

Lesson 6: Hazelwood School District v. Kuhlmeier

- Now rearrange groups into a jigsaw format, so that each group now consists of one expert from each excerpt. (I.e. 1 student who studied excerpt 1, 1 student who studied excerpt 2, etc.) All groups should have at least 6 students, so that each excerpt can be represented in these new groups.
- Ask students to do the following in their new jigsaw groups:
 - Read aloud their assigned excerpt
 - Read aloud the groups' summary of the excerpt
- Once all quotes and summaries have been read aloud within groups, ask students to answer the following questions within their group:
 - Imagine that you are Cathy Kuhlmeier, what would you say to Justice White?
 - Imagine that you are Principal Reynolds, what would you say to Justice Brennan?

Final Reflection (Individual Freewrite):

- Ask the students to answer the following questions in their learning journals:
 - Which of the arguments did you find most compelling? Why?
 - Which did you find least compelling? Why? Feel free to mix and match from the Opinion AND the Dissent.
 - Given this decision, what do you think students should know about the free speech clause?

Facts of the Case

(In legal terms, a fact means “a thing done.” Even though the two parties may disagree on the interpretation of the First Amendment, they both agree on the following facts.)

1. Cathy Kuhlmeier was the student editor of Hazelwood East High School’s newspaper, *Spectrum*, which was written and edited by students under the supervision of a teacher.
2. Cathy Kuhlmeier brought a copy of the issue to the journalism teacher for approval. The journalism teacher approved the content and then delivered a copy to the principal for final review before publication.
3. The principal, Robert Eugene Reynolds, removed two pages: one contained interviews with students of divorced parents; the other was on teen pregnancy and included anonymous interviews with current students.
4. Cathy Kuhlmeier and two other student journalists sued the Missouri School District, claiming that the school censored their speech, a violation of the First Amendment.
5. The District Court ruled against the students. The Eighth Circuit Court of Appeals ruled in favor of the students. The School District appealed to the Supreme Court.

Key Players Background & Role-Play Scripts

Cathy Kuhlmeier:

You've been working hard to make *Spectrum* more relevant to high school students. Instead of just reporting on football games and the debate club, you want a newspaper that addresses a student's concerns. Your parents are divorced, and you know how stressful and isolating the experience can be. You also have seen how many teen pregnancies are at the school. Explain to your teacher why the class should pursue these two stories.

Optional Script: We were trying to make a change with the school paper and not just write about prom and football games. We wanted to write meaningful stories that were relevant to students and used them as sources. The newspaper was part of our Journalism class, and we were learning how to be good journalists.

My parents are divorced, and I know how hard and stressful it can be to see your parents go through a divorce and have your family break up. There are many more adults that are getting divorced now and I don't think people see how much it can impact their kids. We wanted to give students the opportunity to speak for themselves and say their side of the story and how they've been affected.

Teen pregnancy is also a problem at our school. We weren't writing about how to get pregnant -- we wanted to shine a light on what kind of impact pregnancy and parenthood can have. We heard from pregnant students how they didn't realize how easy it was to get pregnant, and how hard pregnancy and parenting can be. Our goal was to give greater awareness to the difficulties of teen pregnancy in an effort to get more students to stop and think about the consequences of sex.

The staff of the *Spectrum* are upset that Principal Reynolds censored the articles. We take our assignments for the school newspaper seriously, and we followed regular journalistic practices! Most of the students who were quoted were anonymous. In the teen pregnancy story, all the names had been changed. We also asked students who were in the story to sign off on the story, to make sure they approved of what we wrote. The principal says the stories are too mature for students, but if you're old enough to get pregnant, shouldn't you be old enough to read about it? *Tinker v Des Moines* says that we don't shed our constitutional rights at the schoolhouse gate. We're being unconstitutionally censored!

Pregnant Teenager:

You just found out that you are pregnant. Only a couple of friends know that you are expecting. You don't know what to do about the pregnancy but you do know that other girls should know about the risks of unprotected sex. When a reporter from the *Spectrum* asks for an interview, you agree as long as your identity is not revealed.

Optional Script: Once I realized I was pregnant, I stopped being able to concentrate in class. I felt sick every morning and scared about what was coming next. My parents are having a rough time right now and are not very available. My life has totally changed since I got pregnant. I didn't realize how easy it was to get pregnant. I thought it happened to other people but never thought it could happen to me. I'm planning to keep the baby but I didn't realize how much my life would change. Everything is going to be different once the baby is born.

I wanted to do the interview because I'm tired of pretending that everything is okay. Usually, the *Spectrum* just talks about the winners, the guys who scored a touchdown or the brainy girl who won a Math Prize. It doesn't have anything to say about those of us who are facing real world challenges. Being pregnant at 16 is not an easy road. We can't just make ourselves disappear.

If students can't talk about the real stresses in their lives, then the whole student newspaper is a joke. I wanted to do the interview because, for once, the *Spectrum* seemed to care about the average student, not someone who won a game or an award. I wanted other students to learn about the risks of unprotected sex. I thought maybe I could help another girl from not making the same mistake I made. Maybe if others know about my situation they will be less judgmental. I could use more understanding.

Principal Reynolds:

You believe that certain things should not be published without parental consent. While the parents of the Pregnant Teenager were contacted, the parents in the divorce article were not. Even with the permission of the Pregnant Teenager's parents, I was concerned that the subject matter was inappropriate for younger students and especially any younger siblings who may read the paper. Because the school paper was coming out at the end of the year, you weren't able to remedy the situation. You support the First Amendment. You just don't want the school's reputation to suffer or for young readers to be exposed to mature content.

Optional Script:

When schools put their money and resources towards something, such as a school newspaper, that item must align with the school's values. I was concerned that the articles on teen pregnancy were inappropriate for our younger students. We don't support teen pregnancy. We want our students to be focused on learning rather than personal and family issues. School is an opportunity to wrestle with big ideas and to learn skills for a changing workplace. Taking care of an infant is not in line with those goals.

Everybody is mad at me but that's because they don't know all the facts. The journalism teacher had just quit and the class was being led by a substitute. It's my responsibility to protect all students at the school, and I need to respect the privacy of vulnerable students. The divorce article also included quotes from a student making claims about what prompted their parents' divorce, but the newspaper hadn't done their responsibility of asking the parents directly for comment! We had a time crunch to publish the last full issue of the year, so I just decided to pull the pages. If there had been more time, I would have tried to work things out with the students.

If students can write whatever they want in a school publication, what's to stop them from promoting behavior that defeats their education? High school students are young, they are still emotionally immature. They need to be protected from unhealthy influences. An article that normalizes teen pregnancy is not good for these students. If that's okay, what's to stop them from speech that normalizes illegal drug use?

The Supreme Court Decides!

In a 5-3 decision the Supreme Court upheld the school's right to censor student publications. The following are excerpts from the Court's decision:

Justice Byron White wrote the Opinion:

1. "School newspapers cannot be characterized as a forum for public expression."
2. "First Amendment rights of students in the public schools are not automatically coextensive with the rights of adults in other settings. A school need not tolerate student speech that is inconsistent with its basic educational mission."
3. "We hold that educators do not offend the First Amendment by exercising editorial control over the style and content of student speech in school-sponsored activities, so long as their actions are reasonably related to legitimate pedagogical concerns."

NOT ALL THE JUSTICES AGREE!

Justice William Brennan wrote the Dissent.

4. "When the young men and women ... registered for Journalism II, they expected a civics lesson. *Spectrum*... was not just a class exercise in ... writing, it was a forum established to give students an opportunity to express their views while gaining an appreciation of their rights and responsibilities under the First Amendment."
5. "Only speech that 'materially and substantially interferes with the requirements of appropriate discipline' can be found unacceptable and therefore prohibited" (quoting *Tinker*).
6. Such unthinking contempt for individual rights is intolerable from any state official. It is particularly insidious from one to whom the public entrusts the task of inculcating in its youth an appreciation for the cherished democratic liberties that our Constitution guarantees.

LESSON 7: LIVING UNDER A SUPREME COURT RULING

Supreme Court Case #4:

[Hazelwood School District v. Kuhlmeier](#) (1988)

Learning Objectives:

- Clarify the rights of free expression in the classroom.
- Identify the grounds for censorship in school-sponsored publications.
- Present constitutional arguments to a general audience;
- Work in collaboration with others.

Next Generation Learning Standards:

- Produce clear and coherent writing in which the development, organization, and style are appropriate to task, purpose, and audience.
- Draw evidence from informational texts to support analysis, reflection, and research.
- Prepare for and participate effectively in a range of conversations and collaborations with diverse partners, building on others' ideas and expressing their own clearly and persuasively.
- Evaluate a speaker's point of view, reasoning, and use of evidence and rhetoric.
- Present information, findings, and supporting evidence such that listeners can follow the line of reasoning, and the organization, development, and style are appropriate to task, purpose, and audience.

Materials:

- blank sheets of 8 ½ x 11 paper, folded in half to make a booklet
- scissors for each group
- pencils
- pens
- erasers
- *Supreme Court Case Zine Template* handout
- *Tinker v Des Moines Sample Zine Spread*

Historical Background/Context:

The Court's decision in *Kuhlmeier* was denounced by newspapers as an attack on the First Amendment. A columnist at *The Chicago Times* wrote that the decision "tugs at an elemental thread in the nation's constitutional fabric: the grand notion of a free press." An op/ed in *The Los Angeles Times* ran with the headline: "Censorship as a Lesson." Front-page articles in *The New York Times* and *The Washington Post* described Principal Reynolds's actions as "censorship."

Lesson 7: Hazelwood School District v. Kuhlmeier

Less than two years after Principal Reynolds removed the sensitive articles, the *St. Louis Globe-Democrat* ran a multi-page spread called “Too Hot for Hazelwood,” which included all of the removed articles.

The decision in *Kuhlmeier* signaled a limit to the free speech rights of students. Students could decline to participate in the Pledge of Allegiance and they could also wear armbands that signaled their objection to a U.S. foreign policy. But that didn’t mean that public school authorities could not censor student speech.

Creating a Zine: A Student’s Guide to the First Amendment:

Note to Teacher:

The vehicle for this civic education is the production of a Free Speech Zine for the school community. Now that students have studied four Supreme Court cases – *Gobitis*, *Barnette*, *Tinker* and *Kuhlmeier* – they are ready to get to work. The final zine will consist of four 8 ½ x 11 blank pages folded in half to create a booklet. In today’s class, students will make the zine pages for the first four Supreme Court Cases. (Note: If you have not made a zine before, check with your school librarian for support.)

In the final class, students will create a two-page spread for *Frederick*, a Front Cover, a Back cover, and a Table of Contents. There will also be space for two “take away” pages in which the students lay out what others should know about free speech and permissible censorship. By the final class, students will be ready to assemble their zine for publication.

If physical materials are limited, or students struggle with visual and spatial tasks, this activity can easily be translated into creating an interactive whiteboard. This version may not require the full class period, so all students can also work on their learning journals.

Lesson Introduction:

- Read aloud the Historical Context with the class as a whole to help set the scene and prepare students for the role-play.
- Explain to students that they are becoming experts in free speech rights in the public school. By studying the four court cases (*Gobitis*, *Barnette*, *Tinker*, *Kuhlmeier*), they know the arguments for and against the rights of students to say what they believe. When other students ask, “What does the Constitution say about free speech for students?” They have some answers.
- Remind the students that while many of the answers come from the Supreme Court, the Justices never fully resolve the controversy. Schools can still argue that a student’s speech is contrary to the mission of the school. They can argue that a rule is necessary to maintain discipline, regardless of how individual students feel about the exercise. Free speech, then, is not a get out jail free card. It is an argument that needs to persuade not just a majority of Justices on the Supreme Court but a majority in the school community.
- Tell them that it is their responsibility to teach their peers about the complicated business of free speech rights in the public school.
- Divide the class into four groups:

Lesson 7: Hazelwood School District v. Kuhlmeier

- Group 1 focuses on *Gobitis*
- Group 2 focuses on *Barnette*
- Group 3 focuses on *Tinker*
- Group 4 focuses on *Kuhlmeier*
- Each group is tasked with creating a two-page spread for their case. Pass out one piece of paper to each group to act as the template for the two-page spread.
- Ask for one student in each group to act as the Editor. Provide each Editor with a *Supreme Court Case Zine Template* handout. Editors are allowed to change the format with the consent of the group as long as they include all of the components within the two-page spread.
- Pass out additional paper, pencils, pens, glue sticks, and an eraser to each group. Review the necessary components with the class:
 - The Title of the Case and the Year it Was Heard
 - Facts of the Case
 - Excerpt from the Court
 - Excerpt from the Dissent
 - The vote on the Court
 - Illustration of the case
 - Doodles and over-all graphic design
- Show students the *Tinker v Des Moines Sample Zine Spread* as inspiration.
- Ask the Editors to assign the components to the members of the groups (The Creators). The Creators will begin their work using pencils, making sure to keep their component within their allotted box/space. Allow 10 to 15 minutes for the Creators to generate work on their individual component.
- Students not engaged in zine production may use this time to work in their learning journal. Have them reflect and write on the following prompts. There will be room at the end of the final zine for Takeaways:
 - What sort of free speech policy would they want to see in the classroom?
 - How will they persuade critics of their policy?
 - Per *Tinker* and *Kuhlmeier*, any speech that “presents a substantial disruption to school discipline or that materially affects the learning environment may be censored.” With this in mind, what kind of speech would not be allowed in the *Free Speech Zine*?
 - Ask them to share their reflections in small groups (2-3 students)
- While the Creators are working, ask the Editors to set up their template. They should begin by folding the paper in half and marking off the margins of each page around the edge of the paper (The width of a pencil makes for a good margin). Editors should consult with Creators to make sure that each component leaves room for the others.
- **Intragroup feedback session:**
 - Each Creator shows their penciled component to the others in the group and gets feedback. Is the writing legible? Are there any misspelled words? Is there information missing? Allow 10 minutes for feedback.
- After incorporating any changes, the Creators first copy over their work in ink and then erase any remaining pencil marks.

- Once the components are inked and erased, they are passed to the Editor who will cut out each component and arrange it on the template using a glue stick. (Note: you may use a photocopy machine to reduce any over-sized components after class.)
- **Intergroup feedback session:**
 - Each group presents their two-page spread to the other two groups for feedback. If a component needs to be redone, gently remove from the page and create a new component, going through the pencil-ink-eraser sequence. Collect the pages and save them in a class folder.

Final Reflection:

- The *Free Speech Zine* is a school-sponsored activity, which means the Principal will be able to remove anything that's inconsistent with the school's mission.
- Ask the students to answer the following question in their learning journals:
 - Imagine that a group of students wants to include a controversial topic in the Free Speech zine. How would you determine whether or not the Principal would approve?

TITLE OF CASE (date)
[e.g., *West Virginia State Board of Education v. Barnette* (1946)]

Facts of the Case

Illustration of the Case

The Vote
(e.g. 7-2, 5-4, etc.)

Excerpt from the Court

Excerpt from the Dissent

Tinker v Des Moines Sample Zine Spread

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

FACTS

- In December 1965, a group of families decided to protest the Vietnam War by wearing black armbands.
- Des Moines school principals banned the wearing of armbands during school.
- Mary Beth Tinker, John Tinker, and Christopher Eckhart were sent home for wearing armbands.
- They sued claiming the ban violated their right to free speech.

Justice Abe Fortas

OPINION

" First Amendment rights are available to teachers and students. [They do not] shed their constitutional rights to freedom of speech or expression at the schoolhouse gate. "

Dissent

" School discipline ... is an integral and important part of training our children to be good citizens - to be better citizens. "

Justice Hugo Black

The Vote: 7 to 2

LESSON 8: THE CONTROVERSY OF ILLEGAL DRUGS

Supreme Court Case #5:

[Morse v. Frederick](#) (2007)

Learning Objectives:

- Demonstrate respect for the rights of others;
- Respectfully disagree with other viewpoints;
- Identify constitutional arguments;
- Consider the obligations of school administrators.

Next Generation Learning Standards:

- Cite specific textual evidence to support analysis of primary and secondary sources.
- Determine the central ideas or information of a primary or secondary source; provide an accurate summary of the source distinct from prior knowledge or opinions.
- Identify aspects of a text that reveal an author's point of view or purpose
- Distinguish between fact, opinion, and reasoned judgment in a text.
- Write arguments focused on discipline-specific content.
- Evaluate a speaker's point of view, reasoning, and use of evidence and rhetoric.
- Present information, findings, and supporting evidence such that listeners can follow the line of reasoning, and the organization, development, and style are appropriate to task, purpose, and audience.

Materials:

- *Facts of the Case* handout
- *Key Players Background & Role-Play Scripts* handout
- *The Supreme Court Decides!* handout

Key Vocabulary:

- Bong (*noun*): an elaborate pipe used to smoke marijuana or hashish.
- Countervailing (*adjective*): having equal force but opposite effect
- Gibberish (*noun*): unintelligible or meaningless speech; nonsense.
- Intoxicating (*verb*): to excite or stupefy by alcohol or a drug especially to the point where physical and mental control is markedly diminished.
- Lauding (*verb*): praising.

Historical Context:

Starting in the 1980s, Americans grew increasingly concerned about illegal drug use. President Ronald Reagan launched the War on Drugs, which increased penalties for the possession and distribution of marijuana, heroin, cocaine, and other intoxicating substances. Schools provided programs to deter students from using drugs, one of which was called "Just Say No." The

Lesson 8: *Morse v. Frederick*

curriculum encouraged refraining from drug use, highlighting the long term risks to a young person's mental and emotional development.

But with increased enforcement of drug laws, more and more people were sent to prison. Individuals from low-income minority communities were sentenced more often and with greater severity than individuals from middle-class white communities. Tax payers questioned the amount of money going to law enforcement at the expense of social services. Critics argued that the Just Say No approach didn't take into account the needs of people living with addiction.

The debate on the War on Drugs continued through the George W. Bush Administration, with some people calling for a relaxation of drug laws while others pushed for stricter enforcement. For the most part, schools took a zero-tolerance approach to drug use. The question considered in the next and final Supreme Court decision is whether the First Amendment protects a student's right to advocate against the War on Drugs while at a school-sanctioned event. That's how one side understands this case. The other side sees it as an attack on a principal's ability to maintain the appropriate discipline in the learning environment.

Lesson Introduction:

- Read aloud the Historical Context with the class as a whole to help set the scene and prepare students for the role-play.
- Divide the class into small groups of 2-3 students
- Distribute *Facts of the Case* handout to the groups
- Ask each group to elect a Notetaker
- Ask each group to imagine the motives of Joseph Frederick (Facts No. 1-3).
 - What do you think Joseph Frederick was trying to say with the banner?
 - What did Frederick understand his First Amendment rights to be?
- Report back. Capture the various answers on the board, or utilizing an interactive whiteboard tool.
- Ask each group to imagine the concerns of the principals (Fact No. 4).
 - Why would she confiscate the banner?
 - What did the principal believe were restrictions on free speech?
- Ask each group to come up with at least 2 arguments for and against the principal's actions. They must come up with an equal number of arguments for each side.
- Ask a representative from each group to share one argument for and one against the suspension and record the arguments on the board.
- Keep the two sets of answers on the board for the role-play.
- Students return to their original seats.

Role-Play:

- Begin by taking on the role of the AP high school civics teacher. Explain to the students that you are responsible for teaching students about the First Amendment. You were at the Olympic Torch Rally and saw that the banner was confiscated by the Principal. You are unclear about what the First Amendment protects.
- Ask for volunteers to play the following roles:

Lesson 8: *Morse v. Frederick*

- **Joseph Frederick**
- **Leader of Sober Student Association**
- **Principal**
- Students should review the character background information on the *Key Players & Role-Play Scripts* handout.
 - If students need prompting to engage in role-play, have them read the optional Scripts. Suggestions for scaffolding scripts based on learners' needs:
 - Scaffold 1: Student reads the script aloud.
 - Scaffold 2: Student reads script to self, and then rephrases argument in their own words.
 - Scaffold 3: Student reads script to self, then uses it as a springboard for coming up with their own ideas and related arguments.
 - Scaffold 4: Student does not use script, but uses facts of the case, prompts below and perspective-taking abilities to improvise an argument.
- Give role-play actors a few minutes to read the scripts and/or prepare their arguments.
- While the role-play actors are preparing, divide the remaining students into three groups; *Barnette*, *Tinker*, and *Kuhlmeier*. Ask each group to discuss how their assigned case relates to this case.
 - Based on the ruling in your case, do you think the First Amendment protects Frederick? Or does your ruling better support the principal? Why?
 - If role-play students need more time to prepare, have groups re-pair off in a jigsaw format (new groups with 1 representative from each of the three cases) and share out to their new group how they think their case sets precedent for *Morse v Frederick*.
- Ask **Joseph Frederick** and the **Leader of Sober Students Association** to present their arguments:
 - **Joseph Frederick:** Explain to the class why your banner was protected under the First Amendment.
 - **Leader of Sober Students Association:** Explain to the teacher why Frederick should be suspended for carrying a banner that trivialized marijuana use.
- Record their arguments on the board.
- Continuing in the role of the teacher, ask the Principal to weigh in on the issue.
 - **Principal:** Explain to the Teacher your responsibility to discourage unhealthy behavior and why it's important to follow the policy for the benefit of the school.
- Ask **Joseph Frederick** and the **Leader of the Sober Student Association** for their thoughts on the position of the Principal.
- Record their arguments on the board.
- Ask the class with a show of hands whether they think the Supreme Court will rule in favor of Morse or Frederick.
 - Record the votes on the Board.
 - Ask for arguments to support their vote. (Note: if no one votes for one side, ask for arguments that would support that position.)
- End the role-play.

Court Decision:

- Distribute *The Supreme Court Decides!* Handout with excerpts to class. Reveal to the class that the Supreme Court upheld the censorship of the banner in a 5 to 4 decision.
- Divide students into 6 equal groups.
- Randomly assign one quote to each of the groups, so that each of the six quotes on *The Supreme Court Decides!* handout is reviewed by one group. (Three groups will review one of the quotes from Justice Roberts, and three will review one of the quotes from Justice Stevens).
- Ask each group to read the quote together. Tell them they are to become ‘experts’ at this quote.
 - Each student should write down their own summary of the excerpt in their own words.
 - Each student should write down what they think Joseph Frederick will say about the quote.
 - Each student should write down what they think Principal Morse will say about the quote.
 - Each student should then share their summaries with their group and compare them. Students can use this opportunity to ask questions and ask for support from their group members if they’re struggling with comprehension. The groups should then work together to synthesize their understandings into a new summary of the excerpt.
- Now rearrange groups into a jigsaw format, so that each group now consists of one expert from each excerpt. (I.e. 1 student who studied excerpt 1, 1 student who studied excerpt 2, etc.) All groups should have at least 6 students, so that each excerpt can be represented in these new groups.
- Ask students to do the following in their new jigsaw groups:
 - Read aloud their assigned excerpt
 - Read aloud the group’s summary of the excerpt
- Once all quotes and summaries have been read aloud within groups, ask students to discuss the following questions within their group:
 - Imagine that you are Joseph Frederick, what would you say to Justice Roberts?
 - Imagine that you are Principal Reynolds, what would you say to Justice Stevens?
- Ask each of the groups to report back what they would argue to the two justices.

Final Reflection (Individual Freewrite):

- Ask the students to answer the following questions in their learning journals:
 - Which of the arguments did you find most compelling? Why?
 - Which did you find least compelling? Why? Feel free to mix and match from the Opinion AND the Dissent.
 - Given this decision, what do you think students should know about the free speech clause?

Facts of the Case

(In legal terms, a fact means “a thing done.” Even though the two parties may disagree on the interpretation of the First Amendment, they both agree on the following facts.)

1. On January 24, 2002, the Olympic torch passed through Juneau, Alaska on its way to the winter games in Salt Lake City.
2. Principal Deborah Morse of the Juneau-Douglas High School excused staff and students from class to observe the torch relay as it went through the streets of Juneau as part of the school day. Senior Joseph Frederick, who had not gone to school before the torch relay, joined his friends across the street from the school.
3. As the torchbearers and TV camera crews passed by Frederick and his friends unfurled a 14-foot banner bearing the phrase: BONG HiTS 4 JESUS.
4. Principal Morse told Frederick to put the banner away because it advocated the use of marijuana. When Frederick refused, claiming his protected First Amendment right to off-campus speech, she confiscated the banner and suspended Frederick for 10 days.
5. Frederick sued, claiming that the suspension violated his right to free speech.

Key Players Background & Role-Play Scripts

Joseph Frederick:

You know your constitution! You explain that the banner was protected speech because it occurred during a public event, in a public space, off of school grounds. You unfurled the banner because you wanted to show the nation what free speech looks like. You do not have a political agenda but merely want young people to know their rights.

Optional Script: You want to know why I did this? Because I thought I might get on television. It was a silly message that didn't make any sense, but I knew the reporters would love it! I would go down in history as the kid from Juneau, Alaska who got on the evening news.

I also created the banner as an experiment in free speech. I know that the Court has ruled that students "do not shed their constitutional rights at the schoolhouse gate." I have the right to speak and not be punished. If the kids in *Tinker* can wear an armband to class protesting the Vietnam War, I should be able to wave a silly banner that doesn't interfere with any classroom activity. To me, the banner says "I have the right to free speech, and I'm asserting it!"

Besides, this happened off campus. We weren't in the classroom, we were out on the streets of Juneau. All sorts of speech was happening and the principal had no grounds to shut any of it down. She went after me because she doesn't like any mention of bongs. She took it all too seriously. In my opinion, she's suppressing our rights to free speech and needs to lighten up. As I told Principal Morse when she grabbed the banner, Thomas Jefferson said "speech limited is speech lost."

Leader of Sober Student Association:

You did not appreciate the banner's message. You want your peers to see the harm in drug use and that promoting illegal behavior to students is dangerous. You also thought the banner was a publicity stunt and served no purpose.

Optional Script: I thought the banner wasn't just stupid; I thought it was downright dangerous. A lot of students are getting high instead of focusing on school. They aren't just dragging down the classes, they are pretending that marijuana isn't a serious drug. Addiction is real and it affects a lot of people in Juneau. Being addicted isn't funny.

I know because I'm in recovery. My mother was an addict and I grew up in foster homes. I found the 12-step program when I was sixteen. It got me off drugs. I'm thankful for my sobriety. I'm also thankful for the Sober Student Association. I need the support of my peers to stay on track.

When students trivialize the dangers of drug use they trivialize how hard it is to stay in recovery. I don't mind if people make different decisions but I do mind it when I feel like I'm the target of some stupid joke. What could Bong Hits 4 Jesus mean but that Bong Hits are as good for the soul as religion? What if it had said, Bong Hits 4 Guns? What would Joseph have to say about that?

Principal Deborah Morse:

You encourage students to be part of Juneau's public life and were happy to grant permission for Frederick's class to participate in the Olympic torch run. You believe that the banner served no educational purpose and made the city look silly. It also violated the school's ban on illicit drugs. Tell the students why you believe a suspension is in order.

Optional Script: It's a very special event for the Olympic Torch to come through Juneau. While it takes a lot of coordination to excuse the whole school from a class period, I thought it was worth it for the students to be a part of this historic event. While we were outside of the school grounds, we were still responsible for the students. Everyone knew that watching the torch relay was a school-sponsored field trip!

I'm all for the First Amendment. I believe in free speech and that students have a right to express their political views. But this banner wasn't even political! It was just a silly prank so that Joseph could make the evening news.

The Supreme Court decided in *Kuhlmeier* that principals can sanction speech that does not align with the values of the school. No public school in America encourages illegal drug use. Not only is smoking marijuana against federal regulations, it's also bad for our students. There is no First Amendment protection for speech that violates the mission of the school. I knew I was within my authority when I grabbed the banner from Joseph. I'm the principal of this school and it's my responsibility and right to oversee the school and ensure it's a safe and educational space for students.

The Supreme Court Decides!

In a 5-4 decision, the Supreme Court upheld Frederick's suspension. The First Amendment does not prevent school administrators from restricting student expression that promotes drug use.

Chief Justice John Roberts wrote the Opinion:

1. "Gibberish is surely a possible interpretation of the words on the banner, but it is not the only one, and dismissing the banner as meaningless ignores its undeniable reference to illegal drugs."
2. "Drug abuse can cause severe and permanent damage to the health and well-being of young people. [T]he effects of a drug-infested school are visited not just upon the users, but upon the entire student body and faculty, as the educational process is disrupted."
3. "Student speech celebrating illegal drug use at a school event, in the presence of school administrators and teachers, thus poses a particular challenge for school officials working to protect those entrusted to their care from the dangers of drug abuse."

NOT ALL JUSTICES AGREE!

Justice Stevens wrote the dissent:

4. "The First Amendment protects student speech if the message itself neither violates a permissible rule nor expressly advocates conduct that is illegal and harmful to students. This nonsense banner does neither, and the Court does serious violence to the First Amendment in upholding – indeed, lauding – a school's decision to punish Frederick expressing a view with which it disagreed."
5. "Because the school officials had insufficient reason to believe that those disturbances would 'materially and substantially interfere with the requirements of discipline in the operation of the school,' we found the justification for the rule to lack any foundation and therefore held that the censorship violated the First Amendment" (citing *Tinker v. Des Moines* 1969).
6. "Even in high school, a rule that permits only one point of view to be expressed is less likely to produce correct answers than the open discussion of countervailing views. ... Whatever the better policy may be, a full and frank discussion of the costs and benefits of the attempt to prohibit the use of marijuana is far wiser than suppression of speech because it is unpopular."

LESSON 9: LIVING UNDER A SUPREME COURT RULING

Supreme Court Case #5:

[Morse v. Frederick](#) (2007)

Learning Objectives:

- Clarify the rights of free expression at school-sponsored events.
- Identify the grounds for censorship at school-sponsored events.
- Apply the principles in a Supreme Court decision to a different set of facts;
- Defend the principles of free speech.

Next Generation Learning Standards:

- Cite specific textual evidence to support analysis of primary and secondary sources.
- Write arguments focused on discipline-specific content
- Produce clear and coherent writing in which the development, organization, and style are appropriate to task, purpose, and audience.
- Draw evidence from informational texts to support analysis, reflection, and research.
- Evaluate a speaker's point of view, reasoning, and use of evidence and rhetoric.
- Present information, findings, and supporting evidence such that listeners can follow the line of reasoning, and the organization, development, and style are appropriate to task, purpose, and audience.

Materials:

- *The Case of Amy Gilbert's Banner* handout
- *Supreme Court Decides - Gobitis* handout (From Lesson 1)
- *Supreme Court Decides - Barnette* handout (From Lesson 2)
- *Supreme Court Decides - Tinker* handout (From Lesson 4)
- *Supreme Court Decides - Kuhlmeier* handout (From Lesson 6)
- *Preparing for Oral Arguments* handout

Key Vocabulary:

- Cross-Examination (*noun*): a period of time after a speech for asking questions, intended to expose the weakness in the speaker's argument. Oblique (*adjective*): not straightforward: indirect: obscure
- Mangling (*verb*): spoiling, injuring, or making incoherent
- Procedural (*adjective*): of or relating to procedure
- Steel-Man Argument (*noun*): a presentation of the other side of a debate in its *most* persuasive form.
- Straw-Man Argument (*noun*): a presentation of the other side of the argument in its *least* persuasive form.
- Zeal (*noun*): eagerness and ardent interest in pursuit of something

Historical Background/Context:

The Court's decision in *Frederick* was denounced by pundits across the political spectrum. An editorial in the *New York Times* claimed that Frederick's "oblique reference to drugs hardly justifies such mangling of sound precedent and the First Amendment." David French, a conservative lawyer, warned that "[a]ll the justifications that Justice Roberts applied to limiting speech regarding drug use could be used by school administrators to silence dissent on controversial issues regarding, for example, homosexual behavior, religion, and gender politics." The Cato Institute also denounced the ruling: "[I]n its zeal to give the government a win in the "War on Drugs," the Court upheld censorship of speech that posed little risk of causing drug use, and decided the case in a way that showed inadequate respect for procedural safeguards mandated by federal court rules."

But while defenders of the First Amendment criticized the ruling, schools continued to restrict speech that encouraged illegal drug use. Just as *Kuhlmeier* gave principals the authority to remove articles in a school newspaper that did not conform to the school's values, *Frederick* gave principals the authority to confiscate a banner at a school-sponsored event that violated the school's rules. Students continue to have the free speech rights enshrined in *Barnette* and *Tinker* but those rights do not permit them to advocate for behavior that is illegal.

The question remains: When is speech advocating illegal behavior and when is it expressing a dissenting opinion? Justice Roberts looked at the banner and saw something that encouraged students to do drugs. Justice Stevens looked at the banner and saw a political argument that challenged school policy. How will we decide what constitutes encouragement of illegal behavior and what constitutes a legitimate argument against public policy? We'll wrestle with these questions in today's lesson.

Lesson Introduction:

- Read aloud the Historical Context with the class.
- Divide the class into four groups of students
- Distribute *The Case of Amy Gilbert's Banner* handout to the groups.
- Ask each group to elect a notetaker.
- Ask for a volunteer to read *The Case of Amy Gilbert's Banner* within each group.
- Ask each group to discuss whether the principal was justified to remove the banner.
 - What could Gilbert use in the *Frederick* decision to support her right to display the banner?
 - What could the principal use in the *Frederick* decision to support her authority to confiscate the banner?
- Report back. Capture the answers on the board or utilizing an app like Padlet.

Building A Case to Defend and Challenge Free Speech:

- Assign each group one of the four precedents (*Gobitis*, *Barnette*, *Tinker*, *Kuhlmeier*).
- Distribute the appropriate *Supreme Court Decides* handouts from the previous lesson plans to each group.
- Ask each group to read over the handout and to mark which arguments will help Amy Gilbert to defend her right to free speech.

- Ask each group to appoint an attorney for Gilbert.
 - Explain that the team of attorneys will have a total of 10 minutes to present their arguments for Gilbert, using the precedents to defend her right to free speech. They may decide to appoint one attorney as the Lead Attorney, with others playing a supportive role, or they can all take turns presenting
 - Explain that the attorneys will be cross-examined by the remaining students after they have presented their case. The attorneys may also assign one or two of them to handle questions during cross-examination.
- Distribute *Preparing for Oral Arguments* handout to the attorneys. Let them know they have 15 minutes to prepare their arguments.
- While the attorneys are preparing their case, ask the remaining students, who are still in their groups, to prepare for cross-examination (C-X). Each group should prepare at least three questions that will challenge Gilbert's right to free speech. Explain that the point of cross-examination is to expose the weaknesses in the attorneys' arguments. Share the following pointers for the C-X.
 - Keep the questions short and respectful.
 - Reference Supreme Court decisions in their questions. ("Justice Stevens wrote that...")
 - Do not hide an opinion in your question (Don't begin, "Don't you agree that ...")
- If the attorneys need more time, ask the cross-examining students to write in their learning journals what they think the attorneys will say.

Making a Case for Free Speech:

- Bring four chairs to the front of the room, one for each attorney.
- Explain that you are acting as the Judge.
- Ask the attorneys if they are ready to defend Amy Gilbert's right to free speech.
- Remind them that they only have 10 minutes total to present their Opening Argument.
- Request that while they are speaking, if they are able, they should stand in front of the class.
- After the attorneys have presented their Opening Argument, ask the *Gobitis* group for one cross-examination question. Remind them that it must be framed as a question.
- Ask the attorney from the *Gobitis* group to answer the question.
- Give the attorney 2-3 minutes to answer the question.
- Proceed until each of the groups has had a chance to ask a question and each attorney from those groups to answer.
- Once the cross-examination is complete, ask the attorneys to come up with a brief closing argument that summarizes Amy Gilbert's right to free speech.
 - Remind them that the closing argument should summarize the opening argument and address some of the C-X questions.
 - Allow them 5 minutes to prepare the Closing Argument.
- While the attorneys are preparing their closing argument, ask the students to write in their learning journals their own independent closing statements.
- After the attorneys give their closing argument, ask the students to provide some constructive feedback:

Lesson 9: Morse v. Frederick

- What point was most compelling? Why?
- What point was most confusing? Why?

Final Reflection/Free Write:

- Ask all students to write in their learning journals which cross-examination question was most challenging to the attorneys.
- Ask all students to write in their learning journals a paragraph that defends a student's right to free speech.

The Case of Amy Gilbert's Banner

(A fictional scenario)

A Middle School near the Adirondacks is celebrating its local history with a school-sponsored event that celebrates the local tradition of hunting. Hunters are invited to a school assembly to talk about their experiences in the woods and to explain the safety measures necessary to be a responsible hunter.

Amy Gilbert is opposed to hunting. She is also opposed to guns. She sits at the back of the auditorium holding a banner under her poncho. When a hunter begins to explain how the safety lock works, she unfurls a banner that reads "Get High, Not Loaded" The hunter stops talking and the students start laughing.

The principal confiscates the banner. Gilbert complains saying that her First Amendment rights were denied. She has a right to protest the speaker. She opposes any celebration of guns in public schools.

The question for the class is: Is Gilbert's banner advocating illegal behavior, in which case it may be suppressed, OR is it political speech, protected under the First Amendment?

Preparing for Oral Arguments

As attorneys for Amy Gilbert, it is your job to argue for your client and to address the concerns from the opposition.

Opening Argument (10 minutes):

Here are some guidelines to help you with your Opening Argument:

- Describe the event through Gilbert's point of view
 - What was her motivation in displaying the banner?
 - What type of conversation did she want her banner to provoke?
- Using the precedents laid out in the *Supreme Court Decides!* handouts, find two or three sentences that support Gilbert's right to free speech.
- Explain that in this case the banner was protected under the First Amendment.

If you wish to challenge yourself, summarize the Principal's argument in the best light possible. This is known as a "steel-man argument."

- A steel-man argument demonstrates that you understand the basic reasoning of your opponent. (Were you to present the principal's case in a flimsy or misleading way, you would be accused of making a "straw-man argument.")
- Demonstrate how the facts in Gilbert's case are different from the facts in *Frederick*. Be specific. Your job is to show that you understand the principles in *Frederick* (schools have the right to censor speech that advocates illegal behavior) but that the facts in Gilbert's case should lead to a different outcome.

Cross-Examination (C-X):

After the Opening Argument, you will be cross-examined by each of the groups. Each attorney will respond to the question posed by their original group (*Gobitis*, *Barnette*, etc.).

Here are the rules the cross-examiners received:

- Keep the questions short and respectful.
- Reference Supreme Court decisions in their questions.
- Do not hide an opinion in your question (Don't begin, "Don't you agree that ...")

Here are some pointers for your response:

- Keep the answers short and respectful.
- Do not respond to anything outside of the question. (If someone asks you about one Supreme Court case, do not reference another Supreme Court case).
- If you don't have an answer to a specific question, that's okay! It's better to admit uncertainty or even ignorance than pretend you know something you don't.
- Feel free to refer back to your *Supreme Court Decides!* handouts and see if there's a contrasting quote from the Opinion or Dissent that will counter the cross-examiner!

Closing Arguments (5 minutes):

- Summarize your strongest points from the Opening Argument.
- Address any of the C-X questions that help you build your case.
- Identify any C-X questions that challenge your position. It is never a bad idea to admit that some questions may not be resolved in this case.
- Reaffirm the importance of free speech for students.

LESSON 10: PUTTING IT ALL TOGETHER

Learning Objectives:

- Apply constitutional principles to real world dilemmas;
- Work in collaboration with others;
- Present course material in a way that appeals to other Middle Schoolers;
- Synthesize earlier lessons in ordinary language.

Next Generation Learning Standards:

- Determine the central ideas or information of a primary or secondary source; provide an accurate summary of the source distinct from prior knowledge or opinions.
- Produce clear and coherent writing in which the development, organization, and style are appropriate to task, purpose and audience.
- Draw evidence from informational texts to support analysis, reflection and research.
- Write arguments focused on discipline-specific content.
- Prepare for and participate effectively in a range of conversations and collaborations with diverse partners, building on others' ideas and expressing their own clearly and persuasively.
- Present information, findings, and supporting evidence such that listeners can follow the line of reasoning, and the organization, development, and style are appropriate to task, purpose, and audience.

Materials:

- Zine pages from Lesson 7 on *Gobitis*, *Barnette*, *Tinker*, and *Kuhlmeier*
- Posters from Lesson 5.
- 4 blank sheets of 8 ½ x 11 paper, folded in half to make a booklet
- Paper
- Scissors
- Pencils
- Pens
- Erasers
- *Supreme Court Case Zine Template* handout from Lesson 7
- *Tinker v Des Moines* Sample Zine Spread from Lesson 7
- *Free Speech Zine Example Spreads* handout

Lesson Introduction:

- Without looking at the text, ask the class to list as many rights as they can from the First Amendment. As each one is identified, write it on the board.
 - (Note: here is the full list: Freedom of religion, of speech, of the press, of assembly and the right to petition the government.)
- Fill out the list with any missing rights.
- Let the class know that in a [2023 survey on the First Amendment](#).
 - 33% of the respondents could not name a single right;

Lesson 10: Conclusion

- 40% could only name one;
- 3% could name all five.
- Remind the class that each of the five freedoms in the First Amendment allows citizens to make their own choices about what to believe, what to think, with whom to associate, and to even question the decisions of government.
 - Freedom of Religion: allows each person to pray and celebrate in their own way.
 - Freedom of Speech: allows for everyone to speak so that thoughts can be debated.
 - Freedom of the Press: allows for citizens to consider the facts from multiple news sources in order to reach better judgements.
 - Freedom of Assembly: allows Americans to organize with others around shared concerns.
 - Freedom to Seek Redress: allows citizens to challenge the policies of their elected officials and the judgments of the courts.
- Ask the class to rank each of the rights in their learning journal from first to fifth, based on what they feel is most important.
 - Go through each right, asking for a show of hands if they ranked it first or second.
 - Ask for arguments to support the importance of the particular right.
- Remind the class of Justice Robert Jackson's argument in *Barnette*: "If 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."
- Ask the class which freedoms in the First Amendment were most important for Justice Jackson? (There are two: freedom of speech and freedom of religion.)
- Ask the class to reflect in their learning journals on the importance of free speech. What do they know now that they didn't know before this curriculum?

Free Speech Zine:

- Remind the students that the Free Speech Zine is a guidebook for their fellow students. Four of the five cases have already been briefed for the zine. In this final class, the students will create:
 - the two-page spread for *Frederick*,
 - the front and back covers,
 - a Table of Contents,
 - and two pages with takeaways from the court decisions.
 - We recommend placing students who may need greater scaffolding in this group, where they'll receive additional prompts/sentence starters.
- Note: As with Lesson 7, this activity can easily be continued on an interactive whiteboard. This version may not require the full class period, so all students can also work on their learning journals.
- Remind the students that:
 - a zine page is half a piece of paper with room for margins on all four sides;
 - to begin in pencil;

Lesson 10: Conclusion

- that there will be ample time to Pause and Swap;
- that after the work has been reviewed, they may ink in their creations and then erase the pencil markings.
- Let everyone know that the next 30 minutes will be devoted to zine production.

Front & Back Covers:

- Begin by asking for 4-6 volunteers to create the front and back covers. Divide this group into two: with 2-3 students generating material for the front cover and 2-3 for the back cover.
- Provide some prompts on what can be included on the front cover:
 - Make sure to create a title that can be seen from across the room;
 - Is there a picture that captures the tension between free speech rights of students and the responsibilities of school officials?
- Provide some prompts for what can be included on the back cover:
 - List the names of the students who have contributed to the Free Speech Zine, either individually or as a group;
 - Name a favorite Supreme Court justice;
 - Name a favorite plaintiff (student who filed one of the lawsuits).

Frederick Spread:

- Ask for 4-6 volunteers to create the two-page spread for *Frederick*.
- Pass out the *Supreme Court Case Zine Template* handout to this group, along with additional paper, pencils, pens, glue sticks and erasers.
- Ask one student to act as Editor. The Editor is charged with reviewing the necessary components:
 - The Title of the Case and the Year it Was Heard
 - Facts of the Case
 - Excerpt from the Court
 - Excerpt from the Dissent
 - The vote on the Court
 - Illustration of the case
 - Doodles and over-all graphic design
- Follow the same procedure as in Lesson 7:
 - The Editor sets out the margins for the two pages as the other members of the group work with pencils on their individual component.
 - As each component is completed it is shared with other members of the group.
 - The Editor uses a glue stick to adhere the component onto the zine page.

Table of Contents:

- Ask for 1 or 2 students to write out the Table of Contents with page numbers
 - Page 1: *Minersville School District v. Gobitis*,
 - Page 3: *West Virginia State Board of Education v. Barnette*
 - Page 5: *Tinker v. Des Moines Independent Community School District*
 - Page 7: *Hazelwood School District v. Kuhlmeier*

Lesson 10: Conclusion

- Page 9: *Morse v. Frederick*
- Page 11: What Do Students Need to Know About Free Speech?
- Page 12: What Do Students Need to Know about Censorship?

What Students Need to Know pages:

- While the Covers Group and the *Frederick* Group are working, divide the remaining students into two groups.
- Assign one group to complete a zine page on What Students Need To Know About Free Speech. Have them use the following sentence starters to fill out their page:
 - Students are able to express dissent as long as they _____.
 - Students may not be forced to _____.
 - Students learn how to be responsible citizens by _____.
- Assign the second group to complete a zine page on What Students Need to Know about Censorship. Have them answer use the following sentence starters to fill out their page
 - Principals are able to censor student speech when it _____.
 - Students cannot promote behavior that is _____.
 - Schools teach students how to be responsible citizens by _____.
- Tell both groups to review their learning journals.
 - Is there a Supreme Court excerpt that highlights what students need to know about free speech or censorship?
 - Is there a fact in one of the cases that feels particularly relevant?
- Give both groups 5-6 minutes to generate possible content on a blank piece of paper. Once the ideas have been shared, ask both groups to go on a Poster Walk and review the arguments on each of the posters generated in Lesson 5.
- Ask each group to decide on the content for their page and then use a pencil for the first draft.

Other Students:

- As the groups are working, you may find some students who want to work independently on a structured assignment:
 - Suggest that they create a text box of the First Amendment that will sit on the inside of the Front Cover, across from the Table of Contents.
 - Some of these students may be doodlers. Let them doodle. There may be room to include a doodle or three in the blank spaces in the zine.

From time to time, ask for a Pause and Swap.

- If a student has finished their component, ask them to share with other members of their group;
- If a group is finished with their component, ask them to share with another group.

Assembling the Zine:

- Halfway through the class, suggest that the groups move to the inking and erasing phase, if they haven't done so already.
- Ask them to give you any completed pages (pages that have been inked and erased).
- Using the booklet template (four blank 8-1/2" x 11" pages folded in half), start to assemble the Zine.
 - The Front Cover goes on top.
 - The First Amendment (if created) should go on the inside of the Front Cover.
 - The Table of Contents should go on the next page.
 - Each of the five Supreme Court cases will be glued onto a two-page spread in chronological order
 - The two pages on What Students Need to Know fill the final two pages.
 - The Back Cover goes on the last page.
- Don't worry if the zine looks a little rough around the edges, that's the point of a zine, the messy sides show. Just like a Supreme Court decision where both sides are still battling it out on the pages!

Photocopying the Zine:

(May happen outside of class time)

Once the pages have been glued on to the blank pages of the booklet, you can print out **one** double-sided copy (long-edge binding) to use as the master copy. Do not use the automatic feeder! It will eat the little squares of paper and destroy all your hard work.

After the copies have been distributed to the class, make a few copies for the school library. Your librarian may want to promote your zine in the library, making extra copies as needed.

Final Remarks for the Class:

Congratulations! Having completed these ten lessons, you have shown yourselves capable of wrestling with a key constitutional principle, the right to freedom of speech. You have weighed different arguments and considered different situations. You have argued for the right to wear armbands and exhibited empathy for those who felt disrespected by those protests. You have argued for student journalists and considered the difficulty of principals who need to maintain the values of the school. By taking into account the different sides of the argument, you have learned how to put the free speech clause into practice. These are the habits a citizen in a constitutional democracy needs.

The principles embedded in the Constitution require all of us to have a little bit of humility and a good deal of empathy. When we only know one side of the argument, we won't understand the basic principle behind the free speech clause: that we make better decisions when we consider different points of view.

These lessons have asked you to step beyond first impressions and quick answers. You have been asked to engage with arguments that you may not agree with, to consider ideas that you do not share, and to think about a controversy from the inside out. You've also shown yourself

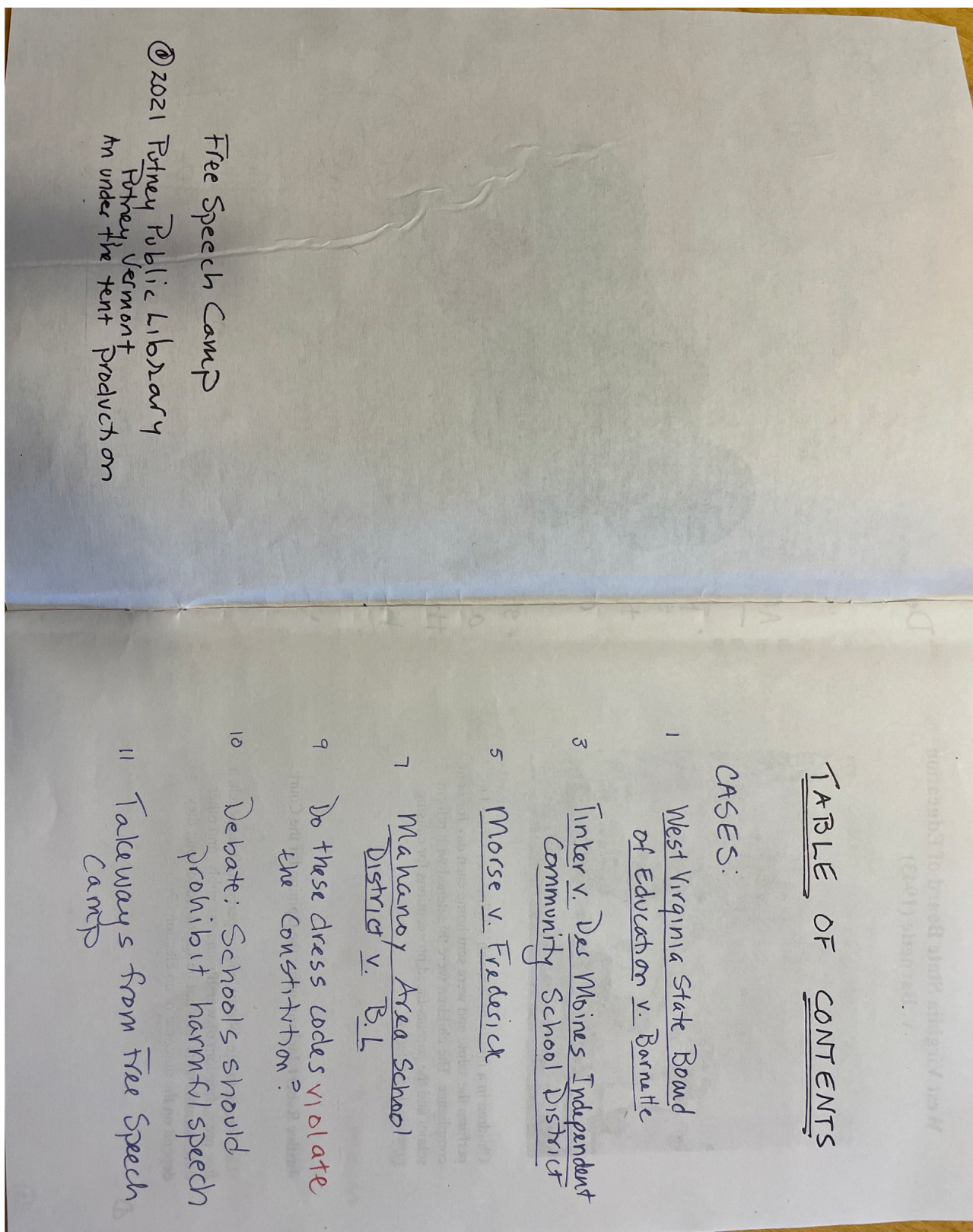
Lesson 10: Conclusion

capable of reading judicial opinions. The Supreme Court writes for the American public, but it doesn't always use the language of Middle Schoolers.

Most importantly, you've shown yourself capable of self-reflection, of wrestling with issues that Supreme Court justices continue to debate. Your learning journal contains what you think, what you feel, and what you believe to be fair. You may look back on some of your earlier comments and decide that you have a different point of view now. Or you may find that an earlier judgment was validated with a later case. In any event, the moral compass on those pages is your moral compass. You and nobody else are judging the judgments of the Court.

Through intellectual hard work, group collaboration, role-plays, and the habits of self-reflection in your learning journals, you have developed the skills necessary to be a member of a self-governing community. The Free Speech Zine means that some of these lessons will be preserved for posterity. The learning journals stay with you to remind you of your capacity to use the Constitution to argue for and against the policies of all governmental institutions, not just public schools. Having learned the many arguments around free speech in public schools, you are now in a better position to explore this important freedom with others.

Free Speech Zine Example Spreads



But Be Careful!

Morse v. Frederick (2007)

Chief Justice Roberts wrote the Opinion

"The constitutional rights of students in public school are not automatically coextensive with the rights of adults in other settings." (Bethel School District v. Fraser 1986).

Student speech celebrating illegal drug use at a school event, in the presence of school administrators and teachers, thus poses a particular challenge for school officials working to protect those entrusted to their care from the dangers of drug abuse."

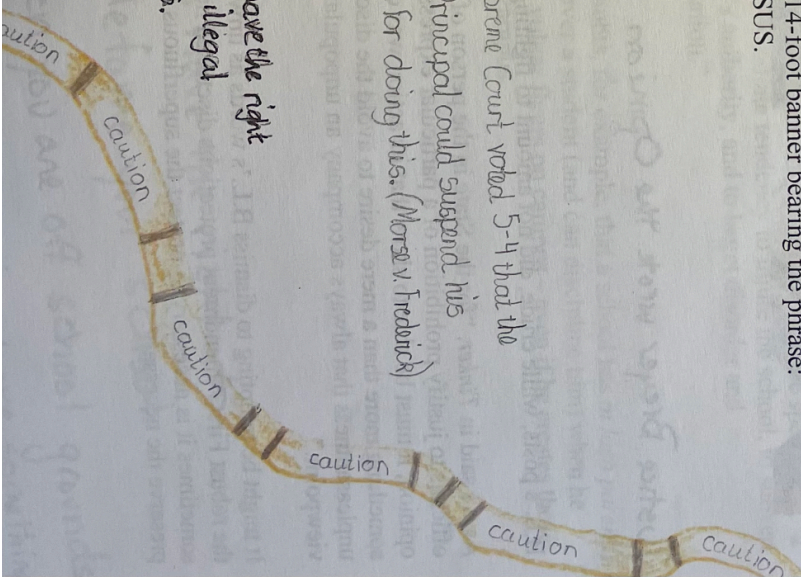


Be careful: don't do this in school.

Facts: On January 24, 2002, the Olympic torch passed through Juneau, Alaska on its way to the winter games in Salt Lake City. Principal Deborah Morse of the Juneau-Douglas High School permitted staff and students to observe the torch relay as part of the school day. When Senior Joseph Frederick joined his friends across the street from the school. As the torchbearers and TV camera crews passed by Frederick and his friends unfurled a 14-foot banner bearing the phrase: BONG HITS 4 JESUS.

The Supreme Court voted 5-4 that the School Principal could suspend his student for doing this. (Morse v. Frederick)

You don't have the right to condone illegal substances.



RESOURCES

Websites

[The National Constitution Center](#) was established by Congress “to disseminate information about the U.S. Constitution on a nonpartisan basis in order to increase awareness and understanding of the Constitution among the American people.”

- [Freedom of Speech Lesson Plan](#) (Grades 6-8)

[Free Speech Center](#) at Middle Tennessee State University is a nonpartisan, nonprofit, public policy center dedicated to building understanding of the five freedoms of the First Amendment through education, information and engagement.

- [Resources for teaching Freedom of Speech](#)

[Federal Courts of the United States](#) This government website explains the function and purpose of the judicial branch of the federal government.

- [First Amendment activities](#) provides specific activities for middle and high school students on First Amendment cases, including *Tinker*, *Kuhlmeier*, and *Frederick*.

Books

Justin Driver, *The Schoolhouse Gate: Public Education, the Supreme Court, and the Battle Over the American Mind* (Pantheon, 2018).

Oral arguments of cases:

Morse v. Frederick: <https://www.oyez.org/cases/2006/06-278>

Hazelwood School District v. Kuhlmeier: <https://www.oyez.org/cases/1987/86-836>

REFERENCES

West Virginia State Board of Education v. Barnette

[St John's Law Review | Recollections of West Virginia State Board of Education v. Barnette](#)

Tinker v. Des Moines Independent Community School District

[ACLU | A Supreme Court Milestone for Students' Free Speech Rights | ACLU](#)

[Tinker Tour | Mary Beth Tinker Bio](#)

[Rights Matter | Personal Stories - Mary Beth Tinker](#)

[Archives.GOV | Vietnam War Casualty Statistics](#)

Hazelwood School District v. Kuhlmeier

[St Louis Public Radio | Censored in 1983, Cathy Kuhlmeier is still fighting for student free speech](#)

Resources & References

[Liberty High School Today News | Kuhlmeier Shares the Inside Scoop of Hazelwood v. Kuhlmeier](#)

[Student Press Law Center - Youtube | Cathy Kuhlmeier tells her story](#)

[Edweek | Landmark Student-Press Ruling Resonates Decades Later;](#)

Morse v Frederick

[American Civil Liberties Union | Student in Supreme Court Free Speech Case Speaks About Suspension Over "Bong Hits 4 Jesus" Banner](#)

[Washington Post | Justices to Hear Landmark Free-Speech Case](#)