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“Should students’ cyber speech be protected under the First Amendment?”

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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.

— First Amendment to the U.S. Constitution

"In our system, students may not be regarded as closed-circuit recipients of only that which the State chooses to communicate. They may not be confined to the expression of those sentiments that are officially approved. In the absence of a specific showing of constitutionally valid reasons to regulate their speech, students are entitled to freedom of expression of their views."

— Justice Abe Fortas *Tinker v. Des Moines Independent Community School District* (1969)

What is the right balance between freedom of expression and censorship in schools? The First Amendment to the U.S. Constitution protects a citizen's right to speech, thought, and conscience against state control. For students, however, speech has been limited in order to ensure a safe learning environment. The U.S. Supreme Court in *New Jersey v. T.L.O.* held that "the rights of students in public school are not automatically coextensive with the rights of adults in other settings." Yet, Justice Abe Fortas reminds the public in *Tinker* that neither students nor teachers "shed their constitutional right to freedom of speech or expression at the schoolhouse gate." How does this same general standard apply to students' speech in cyberspace?

Social networking sites like Facebook, Myspace, Twitter and YouTube have made it simple for users to immediately publish content to connect and communicate with people all over the world. A recent report published by Pew Research Center reported that over 93% of teenagers go online and 73% of online teens use social networking sites. But the public is struggling to balance this newfound freedom of expression with the necessity to keep students safe. There is a growing plethora of cases regarding students' use of social networking sites to bully others, publicly express their grievances about a particular teacher and/or grade, coordinate fights, set up accounts in order to pose as someone else, and publish lewd photos of themselves and others. These issues and others have lead to the disruption of the school environment and, in some cases, teenage suicide.

On the other hand, social networking sites have led to a series of important developments for education. Social networking sites have become an avenue for connecting students from all over the globe, building relationships and communities faster and more effectively than any other medium. Social networking sites have been extremely useful for keeping students informed about current events and politics as well as encouraging and facilitating civic and political activism. Social networking sites have also become a channel for personal expression, making it possible to create positive self-images—a challenge for many teenagers.



The nature of online speech has refocused the debate over students' protected speech at school, raising the question of whether school officials may discipline students for online speech published off-campus. In this new electronic world in which geographic boundaries are unclear, what is the difference between inside and outside the "schoolhouse gates?" The general rule that many courts have upheld in practice is that students can be disciplined for activities that happen outside of school if the school can prove the activities were disruptive or posed a

danger, and that it was foreseeable the activities would find their way to campus. Some civil rights advocates worry about instances when out-of-school, online student behavior does not disrupt the learning environment and yet students are still censored, even reprimanded. What is the line between censoring disruptive behavior and protecting students' fundamental right to freedom of expression? Do your school's cyberspace policies strike the right balance between censorship and expression?

What do you think?

Arguments in favor of censorship/consequences.

Arguments in favor of freedom of expression.

INTRODUCTION

Grades:

8-12

Classroom Time:

Two 45-min classes or
one 90-min class

Constitution Connections:

- Preamble
- First Amendment
- Fourteenth Amendment

Materials:

- Student Handouts
- Student Worksheets

NCSS Standards:

- VI
Power, Authority and Governance
- VIII
Science, Technology and Society
- X
Civic Ideals and Practices

National Standards for Civics and Government:

- NSS-C.9-12.2
Foundations of the Political System
- NSS-C.9-12.3
Principles of Democracy
- NSS-C.9-12.5
Roles of the Citizen in American Democracy

National Standards for History:

- NSS-US.5-12.10
Contemporary United States

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About this Lesson

This deliberation activity encourages students to review school's jurisdiction to reprimand students for off-campus behavior. Using landmark U.S. Supreme Court cases as a guide, students will gain a deeper understanding of the debate surrounding schools' ability to discipline students over issues of freedom of expression for on- and off-campus behavior. As in most discussions regarding school policy, students will apply legal precedents to current dilemmas as they deliberate over the issues of censorship and free expression in their schools and communities.

Objectives

Through the use of court cases and school policy, students will be able to define student expression rights and then evaluate the necessity and constitutionality of censoring and reprimanding students' online social networking behavior.

What Is Deliberation?

The Framers of the Constitution envisioned deliberation among a diverse citizenry who disagreed on issues because they felt that, through compromise, Americans could find ways to promote the common good.

Deliberation is often confused with debate, but the two are different. **Debate** creates a dichotomy while deliberation allows for careful consideration of multiple points of view, so the best choice can be made. Essentially, debate is competitive, focusing on who is right and who is wrong, while the Town Hall Wall **deliberation** method allows for compromise and consensus by encouraging a conversation about the pros and cons of each perspective in an atmosphere of mutual respect.

Point of View and Call to Action

Your students will work to craft a personal **Point of View** statement based on the questions presented in the handouts. After developing a point of view, your students will rank their school and develop a **Plan of Action** to continue the discussion by participating in the online poll and posting their views on the National Constitution Center's new blog, *Constitution Daily* at <http://blog.constitutioncenter.org>.

Teacher Resources

Links to the documents used in this lesson and extension readings are available at the National Constitution Center's website at:
www.constitutioncenter.org/exchange

Searchable U.S. Constitution and annotated guide available at:
www.constitutioncenter.org/constitution

Landmark court cases available at:

<http://www.uscourts.gov/EducationalResources/ConstitutionResources/LegalLandmarks.aspx>
<http://www.oyez.org/>

LESSONS AND ACTIVITIES

OPENING: TOWN HALL WALL

1. Distribute the **Town Hall Wall** handout to your students. Next, have them read the question and description on the poster. Have students complete **Student Worksheet 1 – Censorship in Schools**, which provides examples of scenarios in which students censorship becomes a question. After discussing these possible scenarios, have students use post-it notes to fill in the circles on the poster.

RESEARCH AND ASSESS: Identify the Constitutional Principles that Apply

2. Have students read the First Amendment and select language that needs to be further defined in order to gain a better understanding of when schools may censor expression. Discuss as a class words or phrases they selected. The language for the First Amendment can be found at www.constitutioncenter.org/constitution.

POINTS OF VIEW

3. Using **Student Handout 1 – Court Cases**, students will review relevant U.S. Supreme Court and federal district court cases regarding student censorship. The class can also use the National Constitution Center's *Constitution Hall Pass: Freedom of Expression* as an informative starting point for instruction. This video summarizes the Bill of Rights and explores many of the student expression landmark court cases. The teacher is encouraged to have students conduct deeper research on these cases using the websites provided.

Constitution Hall Pass video clip: http://constitutioncenter.org/ncc_progs_constitution_day.aspx

4. Use **Student Worksheet 2 – Developing a Point of View** to have your students answer the following questions: Why is there a difference between citizens' and students' right to expression? What is different about a school setting? When is it reasonable to censor student's speech in schools? Do schools have unlimited authority to censor a student's speech in school? Explain. Should a school official be allowed to reprimand a student for off-campus expression in cyberspace? What consequences does your school have for violations of on- and off-campus cyber speech? How does your school educate students on the benefits and consequences of cyber speech? In your view, should students' cyber speech be protected under the First Amendment in your school? Explain your answer.

PLAN OF ACTION: Take the Next Steps

5. Consider the question: Is our school preparing us to become effective citizens in cyberspace? Evaluate the school's technology usage policy and determine if changes are necessary. This evaluation could consist of acquiring the number of serious incidents that occurred in relation to social networking, conducting a survey regarding the ways in which students use cyberspace to express their views and establish networks, and review the constitutionality of current school policies. Present the findings to the principal or at the next school board meeting.
6. Let the nation know what you think! Visit the National Constitution Center's blog, *Constitution Daily*, at <http://blog.constitutioncenter.org/> and have your students take our poll and post their comments.

STUDENT WORKSHEET 1 Censorship in Schools

Directions: Take a look at the following scenarios in which students are exercising their freedom of expression. Describe whether or not you think schools can censor each act of expression and be sure to explain why.

Scenario	Can the school censor this act of expression?	Explain your reasoning
A student decides to not join in the Pledge of Allegiance flag salute ritual. See: <i>West Virginia State Board of Education v. Barnette</i> (1943)	<input type="checkbox"/> Yes <input type="checkbox"/> No	
A student wears an armband in open protest to a war the U.S. is currently involved in. Many members of this community are opposed to this student's position. See: <i>Tinker v. Des Moines</i> (1969)	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Student speaker makes sexual innuendos during a speech at a student election assembly. See: <i>Bethel v. Fraser</i> (1986)	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Student displays a "BONG HiTs 4 JESUS" banner during an off-campus, school-sponsored event. See: <i>Morse v. Frederick</i> (2007)	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Principal forces the newspaper club to remove two articles that deal with sensitive issues: sex and family. See: <i>Hazelwood v. Kuhlmeier</i> (1988)	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Student makes a fake Myspace/Facebook page posing as a teacher/principal.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Student makes inappropriate comments about a teacher on Twitter after school.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
During school a student is calling another student names online.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
After school a student is calling another student names online.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Student posted highly critical comments of the school's principal and teachers on his own website.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Student used an instant messaging icon that was designed to look like a cartoon of his teacher being shot. The design was made and only used when home.	<input type="checkbox"/> Yes <input type="checkbox"/> No	

Directions: Below are landmark U.S. Supreme Court cases that have helped to define students' freedom of expression rights in schools. Students should read about these court cases and determine their implications in the space provided. Then students should return to Student Worksheet 1 and apply these cases to the scenarios.

STUDENT HANDOUT 1 Court Cases

Tinker v. Des Moines Independent Community School District (1969) http://www.oyez.org/cases/1960-1969/1968/1968_21

Court Case	Arguments in Favor of Expression	Arguments in Favor of Censorship
<p>Summary: Several students planned to wear black armbands to school to protest U.S. involvement in the Vietnam War and mourn the dead on all sides. School officials learned of the impending protest and quickly adopted a no-armband rule (even though they allowed students to wear other symbols). The students nonetheless wore the armbands to school. School officials suspended them for violating school policy. The students sued, claiming violation of their First Amendment rights. Court held that school officials cannot censor student speech unless school officials reasonably forecast that the speech will cause a material and substantial disruption of school activities or collide with the rights of others.</p> <p>Implications:</p>	<p>"In order for the State in the person of school officials to justify prohibition of a particular expression of opinion, it must be able to show that its action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint...It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."</p> <p>Student expression may not be suppressed unless school officials reasonably conclude that it will "materially and substantially disrupt the work and discipline of the school"</p> <p>"In the absence of a specific showing of constitutionally valid reasons to regulate their speech, students are entitled to freedom of expression of their views."</p> <p>Other Findings:</p>	<p>This case will help usher in "a new revolutionary era of permissiveness in this country fostered by the judiciary...I wish, therefore, wholly to disclaim any purpose on my part to hold that the Federal Constitution compels the teachers, parents, and elected school officials to surrender control of the American public school system to public school students."</p> <p>"The crucial remaining questions are whether students and teachers may use the schools at their whim as a platform for the exercise of free speech..."</p> <p>"I think the record overwhelmingly shows that the armbands did exactly what the elected school officials and principals foresaw they would, that is, took the students' minds off their classwork and diverted them to thoughts about the highly emotional subject of the Vietnam war...[D]etailed testimony by some of them shows their armbands caused comments, warnings by other students, the poking of fun at them, and a warning by an older football player that other, non-protesting students had better let them alone. There is also evidence that a teacher of mathematics had his lesson period practically "wrecked" chiefly by disputes with Mary Beth Tinker, who wore her armband for her "demonstration." Even a casual reading of the record shows that this armband did divert students' minds from their regular lessons..."</p> <p>Other Findings:</p>

Bethel School District No. 403 v. Fraser (1986) http://www.oyez.org/cases/1980-1989/1985/1985_84_1667

Court Case	Arguments in Favor of Expression	Arguments in Favor of Censorship
<p>Summary: At a school assembly of approximately 600 high school students, Matthew Fraser made a speech nominating a fellow student for elective office. In his speech, Fraser used what some observers believed was a graphic sexual metaphor to promote the candidacy of his friend. Bethel High School enforced a rule prohibiting conduct which "substantially interferes with the educational process ... including the use of obscene, profane language or gestures." Fraser was suspended from school for two days. The Court found that it was appropriate for the school to prohibit the use of vulgar and offensive language. Chief Justice Burger distinguished between political speech which the Court previously had protected in <i>Tinker v. Des Moines</i></p> <p>Implications:</p>	<p>"It does seem to me, however, that if a student is to be punished for using offensive speech, he is entitled to fair notice of the scope of the prohibition and the consequences of its violation. The interest in free speech protected by the First Amendment and the interest in fair procedure protected by the Due Process Clause of the Fourteenth Amendment combine to require this result."</p> <p>"[The] record now before us yields no evidence that Fraser's use of a sexual innuendo in his speech materially interfered with activities at Bethel High School. While the students' reaction to Fraser's speech may fairly be characterized as boisterous, it was hardly disruptive of the educational process. In the words of Mr. McCutcheon, the school counselor whose testimony the District relies upon, the reaction of the student body 'was not atypical to a high school auditorium assembly.' In our view, a noisy response to the speech and sexually suggestive movements by three students in a crowd of 600 fail to rise to the level of a material interference with the educational process that justifies impinging upon Fraser's First Amendment right to express himself freely."</p> <p>Other Findings:</p>	<p>"Under the First Amendment, the use of an offensive form of expression may not be prohibited to adults making what the speaker considers a political point, but it does not follow that the same latitude must be permitted to children in a public school. It is a highly appropriate function of public school education to prohibit the use of vulgar and offensive terms in public discourse. ...The inculcation of these values is truly the work of the school, and the determination of what manner of speech is inappropriate properly rests with the school board."</p> <p>"The marked distinction between the political 'message' of the armbands in <i>Tinker</i> and the sexual content of respondent's speech"</p> <p>"Fraser's speech was plainly offensive to both teachers and students—indeed to any mature person. By glorifying male sexuality, and in its verbal content, the speech was acutely insulting to teenage girl students. The speech could well be seriously damaging to its less mature audience, many of whom were only 14 years old... Unlike the sanctions imposed on the students wearing armbands in <i>Tinker</i>, the penalties imposed in this case were unrelated to any political viewpoint."</p> <p>"The process of educating our youth for citizenship in public schools is not confined to books, the curriculum, and the civics class; schools must teach by example the shared values of a civilized social order."</p> <p>Other Findings:</p>

STUDENT HANDOUT 1 (cont.) Court Cases

Morse v. Frederick (2007)

http://www.oyez.org/cases/2000-2009/2006/2006_06_278

Court Case

Summary: At a school-supervised event, Joseph Frederick held up a banner with the message "BONG HiTs 4 JESUS," a slang reference to marijuana smoking. Principal Deborah Morse took away the banner and suspended Frederick for ten days. She justified her actions by citing the school's policy against the display of material that promotes the use of illegal drugs. Frederick sued under 42 U.S.C. 1983, the federal civil rights statute, alleging a violation of his First Amendment right to freedom of speech. The U.S. Supreme Court rules that officials can prohibit students from displaying messages that promote illegal drug use.

Implications:

Arguments in Favor of Expression

The majority opinion was "[...] deaf to the constitutional imperative to permit unfettered debate, even among high-school students [...]." "...this is plainly not a case about political debate over the criminalization of drug use or possession...he just wanted to get on television...can hardly be said to be advocating anything..."

Other Findings:

Arguments in Favor of Censorship

"...although students do have some right to political speech even while in school, this right does not extend to pro-drug messages that may undermine the school's important mission to discourage drug use. The majority held that Frederick's message, though "cryptic," was reasonably interpreted as promoting marijuana use - equivalent to "[Take] bong hits" or "bong hits [are a good thing].]"."

"...deterring drug use by school children is an 'important—indeed, perhaps, compelling' interest...evidence suggests that it has only grown worse."

Other Findings:

Hermitage School District v. Layshock (2007)

<http://www.citmedialaw.org/threats/hermitage-school-district-v-layshock#description>

Court Case

Background: In December 2005, high school student Justin Layshock posted a fake MySpace page parodying his high school principal, Eric Trosch. Layshock posted a picture of Trosch and answered the questions asked by the site's profile template by riffing on the word "big" and offensive language. Layshock created the profile from a computer at his grandmother's home. School officials discovered the profile, and the school district suspended Layshock for 10 days, ordered him to finish high school in an "Alternative Education Program," and forbid him from attending graduation. The school backtracked on part of this disciplinary action, however, and Layshock was allowed to return to regular classes. He graduated in spring 2006. In July 2007, the district court granted summary judgment to Layshock on his claim that that the school's punishment violated his First Amendment rights and ordered a trial to determine whether he is entitled to compensatory

Implications:

Arguments in Favor of Expression

"It would be an unseemly and dangerous precedent to allow the state in the guise of school authorities to reach into a child's home and control his/her actions there to the same extent that they can control that child when he/she participates in school sponsored activities."

"...the District does not now challenge the district court's finding that Justin's conduct did not result in any substantial disruption. Moreover, when pressed at oral argument, counsel for the School District conceded that the District was relying solely on the fact that Justin created the profile of Trosch. We have found no authority that would support punishment for creating such a profile unless it results in foreseeable and substantial disruption of school."

Other Findings:

"it is now well established that Tinker's 'schoolhouse gate' is not constructed solely of the bricks and mortar surrounding the school yard."

"The School District did not violate the First Amendment by punishing Justin for engaging in conduct which interfered with the School District's 'highly appropriate function...to prohibit the use of vulgar and offense terms in public discourse.'"

Other Findings:

STUDENT WORKSHEET 2 Developing a Point of View

- 1.) Why is there a difference between citizens' and students' right to expression? What is different about a school setting?**

- 2.) When is it reasonable to censor student speech in schools?**

- 3.) Do schools have unlimited authority to censor a student's speech in school? Explain.**

- 4.) Should a school official be allowed to reprimand a student for off-campus expression in cyberspace?**

- 5.) What consequences does your school have for violations of on- and off-campus cyber speech?**

- 6.) How does your school educate students on the benefits and consequences of cyber speech?**

- 7.) In your view, should students' cyber speech be protected under the First Amendment in your school?
Explain your answer.**

WE THE PEOPLE

Our country faces enormous challenges both foreign and domestic. We need citizens who believe that democracy demands more than voting in November. A sustainable democracy needs citizens who believe in taking part in our nation's political, social and economic discourse. The responsibility for maintaining a democracy that protects the freedoms enshrined in our Constitution is in the hands of the people.

This is why Abraham Lincoln's words still ring true today:

“... government of the people, by the people, for the people ...”

COMING SOON: WE THE SCHOOL

Constitution High's Blueprint for a Democratic School Government:

Imagine a school government that provides students with avenues to engage meaningfully in civic discourse. Using the United States Constitution as a blueprint, *We the School* offers a model of student government that gives students a stronger voice in school affairs and encourages democratic participation. This model allows faculty and students to address issues facing the community together, and enables students to practice the skills of democratic governance. *We the School*, created by Constitution High School in Philadelphia, will give you the tools necessary to replicate this innovative form of student government in your own school. To learn more, visit www.constitutioncenter.org.

BE HEARD

The Exchange is a free dynamic way for high school students to discover how their peers in their classroom and other parts of the country view important constitutional issues facing the nation.

Past topics include:

- *Should the U.S. reduce immigration?*
- *Should the government make sure that every American has affordable health insurance?*
- *Should same-sex couples have the right to marry?*

All you need to get involved is:

- Interest in deliberating current events in your classroom
- Interest in constitutional issues
- Internet connectivity

Join the nationwide conversation by:

- Downloading the free lesson plan and educational resources we provide
- Viewing or participating in the live Internet webcast
- Taking our online nationwide poll

Join the conversation online at:

www.constitutioncenter.org/exchange

