



*Package for Teachers Institutes*

## First Amendment in Schools

### Warm-Up: Media Literacy -- News Blurbs and First Impressions

#### Time

35 Minutes

#### Lesson Outcome

Students will be able to compare the impact of three landmark Supreme Court cases on students' free expression at school today. Students will use civil discourse skills to explore the tensions between students' interests in free speech and expression on campus and their schools' interests in maintaining an orderly learning environment.

#### Essential Question

To what extent should schools be able to restrict students' freedom of expression on campus?

#### Instructions

**Preparation:** For every student, make two copies of each of the three case summaries (*Tinker v. Des Moines*, *Hazelwood v. Kuhlmeier*, and *Morse v. Frederick*).

- One copy should delete the Supreme Court's decision.
  - One copy should keep the Supreme Court's decision on the page.
1. **First Impressions/Opinions Worksheet.** (10 minutes) As students enter, give each a copy of the [Free Speech Scenarios Worksheet](#). Also give each student the one-page summary of each case – the version that **deletes the Supreme Court's decision**.
  2. Have students discuss and fill out the worksheet with a partner. Point out that the case descriptions on the worksheet contain about as much information as a typical news media mention that they base their opinions on every day. The form asks students to jot down their own **opinion** about whether students' First Amendment rights have been violated at school in each case.
  3. **Reading and Analysis.** (10 minutes) When the worksheets are complete, have students read out loud the one-page summaries of each case. As students follow along with the readings, they put a star \* next to points that support the students and a pound sign # next to points that support the school in each scenario.
  4. **Comparison and Discussion.** (15 minutes) Now, distribute the second version of each case summary that **includes the Supreme Court's decision**. Lead students in a discussion comparing their first impressions to the Supreme Court rulings. Explore the differences.



## First Amendment in Schools

### Media Literacy: News Blurbs and First Impressions Worksheet

<b>News Blurb</b>	<b>Violates students' First Amendment rights? Why?</b>	<b>Does not violate students' First Amendment rights? Why?</b>
<b>#1:</b> Protesting the Vietnam War, students wear black armbands at school and are suspended by the principal for potentially disrupting the learning environment.		
<b>#2:</b> A student newspaper publishes articles about teen pregnancy and divorce. The principal removes the articles before they are published. The students protest the move as a violation of their free press rights.		
<b>#3:</b> During a school field trip to watch a U.S. Olympics parade, a student displays a banner that reads: "Bong Hits 4 Jesus." When he refuses to surrender it, the principal takes the banner and suspends him.		
<b>Notes</b>		



## First Amendment in Schools

### Main Lesson: Student Speech v. School Order

#### Time

90 Minutes

#### Lesson Outcome

Students will be able to compare the impact of three landmark Supreme Court cases on students' free expression at school today. Students will use civil discourse skills to explore the tensions between students' interests in free speech and expression on campus and their schools' interests in maintaining an orderly learning environment.

#### Essential Question

To what extent should schools be able to restrict students' freedom of expression on campus?

#### Instructions for Collaborative Learning/Jigsaw Activity

Read this [how-to information on jigsaw activities](#), then follow the instructions (that have some slight variations) here. Participants work with three cases on students' rights to free expression in school.

1. **Case Handouts.** Distribute to each student a copy of the [facts and case summary](#) for each of the following cases. Each case is copied on a different color of paper.  
**Document A:** [Tinker v. Des Moines](#)  
**Document B:** [Hazelwood v. Kuhlmeier](#)  
**Document C:** [Morse v. Frederick](#)
2. **Set the Stage.** Explain that students will look at these three cases to identify the Supreme Court's position on permissible and/or impermissible expression at school.

#### Lesson Plan Part 1/Class Period 1 –Jigsaw Activity (45 minutes)

1. **Expert Groups.** (5 minutes) Organize the students into three expert groups. Assign one case to each group. **Option:** If the groups are too large, create even smaller groups to increase the level of engagement.
2. **Group Analysis.** (10 minutes) Instruct the expert groups to use the [Case Briefs: Worksheet](#) to analyze the facts and the Supreme Court's decision and reasoning in their assigned case.
3. **Teaching Groups.** (20 minutes) Upon completing their small-group analysis, the expert groups break apart and become teaching groups. Students form their own, new teaching groups with one representative from each case.
4. **Group Teaching.** (10 minutes) Students, in their newly formed groups, take turns teaching their respective cases until all three have been explained. Working together, they use the [Case Briefs: Worksheet](#) to record similarities and differences among the three cases.

Lesson Plan Part 2/Class Period 2 – Precedents, Comparisons, Perspectives (45 minutes)

1. **Precedents.** (10 minutes) Upon completion of the worksheets, the students stay in their teaching groups. They receive and take turns reading out loud the [fictional scenario](#). Working together, they identify and match the appropriate case precedent(s) -- (Supreme Court decisions) -- to the school walkout scenario.
  
2. **Comparisons.** (15 minutes) Designate each of three corners of the room for one case. Assign about the same number of students to each case/corner. Ask the listed questions. After each question, direct students to move to the corner whose case best answers the question. Select one or two students from each case/corner to explain their reasons.
  - Which decision gives the broadest free expression rights to students at school? Explain.
  - Which decision is most restrictive of students' free expression rights at school? Explain.
  - Which case precedent(s) are most relevant to the fictional scenario? Explain.
  - What points in that case is most relevant to the fictional scenario? Explain.
  
3. **Perspectives.** (20 minutes) In this activity, students apply the appropriate precedent(s) to the fictional scenario. Organize students into groups of three. In each group is a student attorney for the school, a student attorney for the students, and a student judge. Students take turns in each role during three rounds of civil discourse. In each round, students deal with a different question.
  - During each round, each student attorney has two minutes to make an argument for his/her client – the school or the students. Arguments must be based on precedent(s) (Supreme Court decisions) from any of the three cases. After both attorneys present, the judge rules which student used the case precedent(s) most effectively to make the argument. After each round, the students rotate to a new role for the next question.
  - **Questions for each round:**
    - Round 1:** Do school officials violate students' free speech rights when they restrict speech and expression on campus based on a concern that it *might* disrupt an orderly learning environment?
    - Round 2:** Do school officials violate students' free speech rights when they stop or punish student expression they deem inappropriate and do not want to appear to endorse?
    - Round 3:** Do school officials violate students' free speech rights when they prohibit non-political speech that has a message they consider disruptive and/or in violation of school policy?
  - **Wrap Up** Ask students what they learned from playing each role.



## First Amendment in Schools Facts and Case Summary

### Document A: *Tinker v. Des Moines* Facts and Case Summary

**Decision Date:** February 24, 1969

#### **Background**

At a public school in Des Moines, Iowa, students planned to wear black armbands at school as a silent protest against the Vietnam War.

When the principal became aware of the plan, he warned the students that they would be suspended if they wore the armbands to school because the protest might cause a disruption in the learning environment. Despite the warning, some students wore the armbands and were suspended.

During their suspension, the students' parents sued the school for violating their children's right to free speech. The U.S. District Court for the Southern District of Iowa sided with the school's position, ruling that wearing the armbands could disrupt learning.

The students appealed the ruling to the U.S. Court of Appeals for the Eighth Circuit but lost and took the case to the Supreme Court of the United States.



#### **Decision and Reasoning**

In a 7-2 decision, the Supreme Court's majority ruled that neither students nor teachers "shed their constitutional rights to freedom of speech and expression at the schoolhouse gate." The Court took the position that school officials could not prohibit only on the suspicion that the speech might disrupt the learning environment.

The dissent argued that the First Amendment does not grant the right to express any opinion at any time. Students attend school to learn, not teach. The armbands were a distraction. School officials, acting on a legitimate interest in school order, should have broad authority to maintain a productive learning environment.



## First Amendment in Schools Facts and Case Summary

### Document B: *Hazelwood v. Kuhlmeier* Facts and Case Summary

**Decision Date:** January 13, 1988

#### **Background**

Students in the Journalism II class at Hazelwood East High School in St. Louis, Missouri wrote stories about their peers' experiences with teen pregnancy and the impact of divorce. When they published the articles in the school-sponsored and funded newspaper *The Spectrum*, the principal deleted the pages that contained the stories prior to publication without telling the students.

Claiming that the school violated their First Amendment rights, the students took their case to the U.S. District Court for the Eastern District of Missouri in St. Louis. The trial court ruled that the school had the authority to remove articles that were written as part of a class.

The students appealed to the U.S. Court of Appeals for the Eighth Circuit, which reversed the lower court, finding that the paper was a "public forum" that extended beyond the walls of the school. It decided that school officials could censor the content only under extreme circumstances. The school appealed to the Supreme Court of the United States.

#### **Decision and Reasoning**

In a 5-3 ruling, the U.S. Supreme Court held that the principal's actions did not violate the students' free speech rights. The Court noted that the paper was sponsored by the school and, as such, the school had a legitimate interest in preventing the publication of articles that it deemed inappropriate and that might appear to have the imprimatur of the school.

Specifically, the Court noted that the paper was not intended as a public forum in which everyone could share views; rather, it was a limited forum for journalism students to write articles, subject to school editing, that met the requirements of their Journalism II class.



## First Amendment in Schools Facts and Case Summary

### Document C: *Morse v. Frederick* Facts and Case Summary

**Decision Date:** June 25, 2007

#### **Background**

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

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

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

#### **Decision and Reasoning**

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

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

In *Morse v. Frederick*, the majority acknowledged that the Constitution affords lesser protections to certain types of student speech at school or at school-supervised events. It found that Frederick message was, by his own admission, not political, as was the case in *Tinker*. The Court said the phrase "Bong Hits 4 Jesus" reasonably could be viewed as promoting illegal drug use.

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



First Amendment in Schools  
Case Briefs: Worksheet

Case	<i>Tinker v. Des Moines</i>	<i>Hazelwood v. Kuhlmeier</i>	<i>Morse v. Frederick</i>	Notes
Facts				
Decision				
Reasoning				
What is permissible and impermissible expression at school?				





## First Amendment in Schools

### *Tinker v. Des Moines* Fictional Scenario

#### Time

50 Minutes

#### Lesson Outcome

Students will be able to apply the Supreme Court precedent set in *Tinker v. Des Moines* to a fictional, contemporary scenario. They will practice civil discourse skills to explore the tensions between students' interests in free speech and expression on campus and their school's interests in maintaining an orderly learning environment. They will have the opportunity to find common ground and come up with compromises.

#### Essential Question

To what extent should schools be able to restrict students' freedom of expression on campus?

**Civil Discourse: Setting Ground Rules** (10 minutes) Lead the students through a brief [ground rules-setting activity](#). Before launching a discussion of the behaviors listed on the page, start by asking students to name their pet peeves when it comes to how people act during difficult conversations. Using the list of behaviors in the activity, ask students to change or fine-tune the list and add their own recommendations for establishing and maintaining civility.

#### Fact Gathering and Analysis

1. **Read the Facts and Case Summary: *Tinker v. Des Moines*** (5 minutes) Have students read the facts and case summary to themselves. They underline key facts that support the students' side of the argument using a wavy line. They underline key facts that support the school district's side of the argument using a straight line.
2. **Read the Fictional Scenario** (5 minutes) Have students take turns reading the fictional scenario. They underline key facts that support the students' side of the issues using a wavy line. They underline key facts that support the school's side of the issues using a straight line.

**Discussion Starter Instructions** (20 minutes) Organize students into two groups. One group is the students and one group is the school district. Have each side break into smaller groups or pairs and write key talking points for each of the following questions, then facilitate a discussion requiring the students to cite facts from the scenario to back up their statements as they practice civil discourse skills.

1. Did the walkout disrupt the school's learning environment?
2. Did the administration violate students' First Amendment rights?
3. What compromise could the students have offered to ensure that there was no disruption to the learning environment as they exercised their free speech rights at school?
4. What compromise could the administration have offered to protect students' First Amendment rights while maintaining an orderly learning environment at school?

**Activity Wrap Up** (15 minutes) Using the [Civility Self-Reflection Tool](#), have students rate their own behavior during the class discussions. Ask students to volunteer to share their findings.

**50 Years After *Tinker v. Des Moines***

*The Constitution and Civil Discourse – Free Speech and School Walkouts*

In response to the newly announced mandatory school dress code at West High School, the Student Government Association (SGA) announced on social media that the first day back from spring break would be *Free Speech Day* and a walkout would be staged by the students to protest the new dress code.

The new dress code, which was authorized in a closed-door school board meeting without student input, was scheduled to go into effect the week after spring break. The policy banned apparel with messages and slogans of any kind – commercial, political, social, or humorous/ironic. The school board chair said the rationale for the message prohibition was twofold:

- 1) To maintain an orderly learning environment, and
- 2) To avoid conflict and disruption about what are inappropriate, offensive, or triggering messages to wear at school.

In an open letter to the students and the community, the school board said that, in an increasingly polarized society, the message-free policy would reduce the potential for distractions and disruptions in favor of an orderly learning environment. The letter gave examples of T-shirts that had been worn at school and sparked heated discussions that took up class time. Examples included:

- Don't Be My 13<sup>th</sup> Reason.
- We Call BS.
- Believe in Something. Even if it Means Sacrificing Everything.
- Black Lives Matter.
- Confederate Monuments Forever.
- #Me Too.

The protest was announced by SGA on Facebook and Instagram as a silent walkout scheduled during the first lunch period, when half of the student body would be released for lunch and half would be in class. Students were to wear their free speech T-shirts under their clothes so that the only time the messages would be visible was during the protest. Other students posted comments on social media that there is no place at school for the disruption caused by racist or other discriminatory messages or student walkouts.

When the school administration learned about the walkout, the principal sent out a robo-call in advance, warning that students who walk out of school would face consequences for disrupting the school's learning environment. The Honor Society put up posters condemning the walkout, claiming it would take class time away from preparation for high-stakes tests the following week.

On the day of the protest, as the students walked out of the building, administrators videotaped them in order to accurately identify the participants. Approximately 175 students – almost half of the student body -- walked out into the courtyard on school property. Students came from the cafeteria and the classrooms.

Some students carried signs that read: "Civic Action Isn't Disruptive, It **IS** my Civics Education." Many wore T-Shirts that read: "We Don't Shed Our Rights at the Schoolhouse Gate" a reference to the Supreme Court's 1969 decision in *Tinker v. Des Moines*, long considered the landmark case that broke open students' free speech rights at school. The principal suspended all students identified in the video.

Parents of some of the students who were suspended filed a lawsuit against the school district and principal, claiming that the message-free policy violated the First Amendment rights of students and that the walkout was protected speech under the Constitution.



First Amendment in Schools  
Courtroom or Classroom Activity: *Tinker v. Des Moines*  
Scripted Supreme Court Argument

*Adapted from a script written by the law clerks of U.S. Court of Appeals Judge David S. Tatel, of the District of Columbia Circuit.*

**Time**

50 Minutes

**Lesson Outcome**

In this simulation of a Supreme Court oral argument, students will gain insights into the key issues considered by the court in deciding *Tinker v. Des Moines*. They will assume the roles of attorneys and Supreme Court justices in a realistic simulation of oral arguments before the highest court in the land.

**Essential Question**

To what extent should schools be able to restrict students' freedom of expression on campus?

**Instructions**

This activity can be conducted in a federal courtroom with a judge presiding, or in a classroom with the teacher presiding. There are speaking roles for 13 students. They are eight Associate Justices and one Chief Justice; two attorneys for the petitioner (student protesters); and two attorneys for the respondent (school district).

The rest of the students are journalists who take notes and give a live television report summarizing the key points made by each side and announcing the decision.

- **Oral Arguments** (35 minutes)
- **Debriefing: Read and Discuss the Majority and Dissenting Opinions** (15 minutes)

## SCRIPTED SUPREME COURT ORAL ARGUMENTS

*Tinker v. Des Moines*

40 Minutes

**THE CHIEF JUSTICE OF THE UNITED STATES OPENS THE HEARING:** Today, we will hear oral arguments in the case of *Tinker v. Des Moines*. This is a case that was decided by the trial court in favor of the school district. On appeal, a tie vote in the Eighth Circuit Court of Appeals meant that the trial court's decision in favor of the school district would stand. The students have now brought their case to the Supreme Court of the United States.

Because this is an appellate hearing, there is no witness testimony, and no evidence is presented. All of that happened in the trial court. We have reviewed all of that in the court records. Our job now is to review the record and make sure that everything was done properly, then we will make the final determination on what the Constitution says and means in this case.

Here is the procedure we will follow today. We will start with the petitioners, they are the students who asked the Court for review. They are Christopher Eckhardt, John Tinker, and Mary Beth Tinker. Then we will hear from the respondent, which is the school district. The petitioner will then have the opportunity for rebuttal. For our educational purposes today, we will read our decision at the end of the arguments.

**The petitioner may begin.**

### **Petitioners' (Students') Argument**

**PETITIONER/STUDENTS' ATTORNEY #1:** Ms. Chief Justice and Associate Justices. May it please the court. This case is here on appeal from the United States Court of Appeals for the Eighth Circuit. The case involves balancing students' First Amendment rights of free speech and expression against the school's obligation to maintain an orderly learning environment at school. The question is: To what extent should schools be able to restrict students' freedom of expression on campus?

**JUSTICE 1:** Who are the students filing this lawsuit?

**PETITIONER/STUDENTS' ATTORNEY #1** There are three: Christopher Eckhardt, who was 16 and in 10th grade; John Tinker, who was 15 and in 11th grade; and Mary Beth Tinker, who was 13 and in 8th grade.

**JUSTICE 2:** And what happened to these three students?

**PETITIONER/STUDENTS' ATTORNEY #1** These students decided that, despite their schools' announced ban on wearing armbands to protest the Vietnam War, they would wear them as a matter of conscience. In accordance with the policy, each student was then suspended. But, as you can see from the evidence presented to the trial court, the students did not cause a disruption at school. We, therefore, believe that the school's enforcement of the armband policy violated their First Amendment rights of free speech and expression.

**JUSTICE 3:** Why do you say that there wasn't a disruption with the armbands? Didn't the students wear the armbands so that other students and the teachers would see the armbands and, perhaps, have an educational discussion about Vietnam during class time?

**PETITIONER/STUDENTS' ATTORNEY #1** The purpose of the armbands was for others to notice them, Your Honor, but in a silent way that would not disrupt classes.

**JUSTICE 4:** But how is that not disruptive? The students were studying English or math, and then they're also supposed to be thinking about the Vietnam War, according to the Tinkers. Isn't that going to be an impediment and a detour from learning English or math?

**PETITIONER/STUDENTS' ATTORNEY #1** No. I do not think so. I believe that the method that the students chose was designed in a way that would not cause that kind of disruption.

**JUSTICE 5:** So, it was an ineffective message and the students intended it to be ineffective?

**PETITIONER/STUDENTS' ATTORNEY #1** No, Your Honor, they certainly intended their message to be effective. But they sought to convey it in a way that would not attract their peers' attention for more than a few moments, just as many other things do in the classroom, which are allowed from time to time.

**JUSTICE 6:** If the school was simply trying to prevent distraction and disruption in classrooms, why did the school prohibit the students from wearing the armbands in the gym, in the cafeteria, and in the halls. In fact, they prohibited the students from wearing the armbands at any time in the school, right?

**PETITIONER/STUDENTS' ATTORNEY #1** Yes, that's right.

**JUSTICE 7:** What if, instead of armbands, the students wore big buttons on their shirts that called for stopping the bombing in Vietnam?

**PETITIONER/STUDENTS' ATTORNEY #1** I think the school could not ban that either because the buttons wouldn't be a disruption. As a matter of fact, some students in Des Moines schools wore political buttons, some supporting different presidential candidates.

**JUSTICE 8:** In your view, then, the school policy wasn't really about preventing distractions because the school allowed students to do other things, like wear political buttons, that would be distracting in the same way that the armbands were? Am I summarizing your view correctly?

**PETITIONER/STUDENTS' ATTORNEY #1** Yes, exactly, Your Honor. The policy was directed at one specific kind of conduct, wearing black armbands, when there were many other things students were doing that were very similar, such as wearing buttons that said: "Vote for Nixon," and things like that. The school didn't attempt to ban any of those other things. The school simply singled out this one type of message and conduct without a valid reason. Thank you, Your Honor, at this point, I'm going to turn the podium over to my co-counsel.

**JUSTICE 1:** Well, Mr./Ms. (co-counsel's name) would it be okay then if the school said no political messages by the students? No buttons. No signs. No armbands. What if they did that?

**PETITIONER/STUDENTS' ATTORNEY #2** We still think that would not be allowed because the schools would be banning speech that is not disruptive.

**JUSTICE 2:** What if the school had a policy that said no political messages in class? Let's say the students were allowed to wear the armbands at lunch and in the hallways but not in class?

**PETITIONER/STUDENTS' ATTORNEY #2** Your Honor, I don't think the Constitution allows that policy either. In my view, the Constitution requires that students be allowed to express themselves, even in classrooms, if they are not disruptive.

**JUSTICE 2:** What would qualify as disruptive in the classroom? If you don't think wearing an armband or a button is disruptive, what would be?

**PETITIONER/STUDENTS' ATTORNEY #2** I think you'd have to look at it on a case-by-case basis, but generally, the students' conduct would have to do more than simply get other students to look away from the teacher for a moment.

**JUSTICE 3:** What if a student wore a T-shirt with a very provocative message on it that might trigger some students and make them afraid or angry and cause them to lose focus for five to 10 minutes in class, would that be enough of a distraction for a school to ban the T-shirt?

**PETITIONER/STUDENTS' ATTORNEY #2** Again, I think it would depend on the circumstances. As I said before, there are many things that distract students in class. A message that distracts a few students' attention for a few minutes hardly seems disruptive.

**JUSTICE 1:** I suppose you would concede that if the armbands started fistfights or violence of some kind, a principal could prohibit students from wearing them?

**PETITIONER/STUDENTS' ATTORNEY #2** Your Honor, I am hesitant to explore that possibility because it is very different from the case here. There is no evidence in this case that the armbands caused a disruption.

**JUSTICE 5:** Counsel, we know what the evidence is here. I am asking you a hypothetical question. I do not see why that is so hard for you to answer. If a student wears a shirt or a button or something that sparks fistfights, it's clearly disruptive. Schools can ban whatever item caused the fight, right?

**PETIONER/STUDENTS' ATTORNEY #2** I am hesitant, Your Honor, because I can imagine a situation in which a student wants to wear a shirt with a relatively harmless message, but another student overreacts and starts a fight. I don't think that the Constitution allows schools to ban relatively harmless, non-political messages simply because another student doesn't like the message.

**JUSTICE 8:** But something can also be disruptive without actually causing fighting or violence, correct?

**PETIONER/STUDENTS' ATTORNEY #2** Yes, of course.

**JUSTICE 3:** For example, a student shouting in class would be disruptive, even if it didn't cause any fighting, correct?

**PETIONER/STUDENTS' ATTORNEY #2** Generally speaking, I agree, Your Honor.

**JUSTICE 7:** And it wouldn't have to instigate violence, right? It could even be a very funny comment that made all the students break into hysterical and prolonged laughter.

**PETIONER/STUDENTS' ATTORNEY #2** Yes, laughter, I suppose, could be considered disruptive in a different way that might even be positive.

**JUSTICE 6:** Well, is there any evidence of disruption of classroom teaching – negative or positive -- in this case?

**PETIONER/STUDENTS' ATTORNEY #2** Your Honor, there's none. There was a discussion about Vietnam in the cafeteria at lunch. There was some discussion in the halls. John Tinker wore the armband in the first hour of class, which allots time for free discussion. The teacher was outside of the classroom when some students asked Mr. Tinker about the armband and he told his classmates why he was wearing it.

**CHIEF JUSTICE:** If the evidence showed that wearing armbands significantly or substantially or materially interfered with the business of the classroom – the learning environment -- then you would say that disciplinary action would be justified, correct?

**PETIONER/STUDENTS' ATTORNEY #2** There was no disruption in this situation, Your Honor, so the school clearly could not punish the students for wearing the armbands.

**JUSTICE 1:** Doesn't this case require the Supreme Court in Washington to become hands-on in managing schools? Shouldn't we leave local education matters to local school boards?

**PETIONER/STUDENTS' ATTORNEY #2** I agree that school boards have a difficult task when trying to address these issues. But school boards cannot violate the First Amendment. And this Court must be clear on that point. **If I may, Ms. Chief Justice, I would like to reserve the remainder of my time for rebuttal.**

## **Respondent's (School District's) Argument**

**RESPONDENT/SCHOOLDISTRICT'S ATTORNEY #1:** Ms. Chief Justice and Associate Justices. May it please the court. We believe that there are two basic questions in this case. First, must schools wait for disruption and disorder before they act, or can they act when they, reasonably and in good faith, believe that student expression will lead to disruption? Second, does this Court want to have to review every decision of every school district made in good faith by school administrators using reasonable judgment?

**JUSTICE 8:** Counsel, how many students were involved here?

**RESPONDENT/SCHOOLDISTRICT'S ATTORNEY #1:** Seven wore arm bands.

**JUSTICE 1:** Seven out of 18,000 students in the Des Moines school district and the school board was afraid that those seven students wearing armbands would disrupt 18,000?

**RESPONDENT/SCHOOLDISTRICT'S ATTORNEY #1:** I think if the Court...

**JUSTICE 8:** Am I correct?

**RESPONDENT/SCHOOLDISTRICT'S ATTORNEY #1:** That, that doesn't give us the entire context of the environment in the Des Moines, Iowa schools at the time the armbands were worn. As we view it, the right of free speech on school premises must be weighed against the obligation of the school administrators to exercise reasonable judgment to avoid disruptions in schools.

**JUSTICE 8:** Petitioner's counsel just told us that there was no disruption.

**RESPONDENT/SCHOOLDISTRICT'S ATTORNEY #1:** Well, Your Honor, although the school board didn't point it out, one of the students did say when he was interviewed that two boys wearing armbands were punched.

**JUSTICE 7:** Is that unusual? How many boys are normally punched each day in the Des Moines school system?

**RESPONDENT/SCHOOLDISTRICT'S ATTORNEY #1:** I couldn't say, Your Honor. But, I think, that gets back to the first issue I brought up. If a community is upset and divided about an issue, and students want to express their views, does the school district have to wait until there is a disruption or should it be allowed to take steps to prevent disruptions?

**JUSTICE 7:** Was the atmosphere in the community divisive and tense?



**RESPONDENT/SCHOOLDISTRICT'S ATTORNEY #1:** Yes, Your Honor. There had been marches in Washington protesting the Vietnam War. Many young men across the country had burned their draft cards. The armband situation was in the local newspapers, and 200 people attended the meeting where the school board decided to ban the armbands.

**JUSTICE 7:** What if there were the same sort of commotion in the community but, instead of wearing black armbands, the students wanted to wear black ties to mourn the fallen soldiers in Vietnam?

**RESPONDENT/SCHOOLDISTRICT'S ATTORNEY #1:** I think, Your Honor, that your question gets back to the difficulty that I discussed in my opening. It's difficult to sit here in this Court and make these decisions for schools. Maybe the black ties would present the same problem, maybe they wouldn't. We should leave that up to the schools to determine.

**JUSTICE 5:** Weren't the same debates about the Vietnam War happening across the country? Is it your position that if there's controversy about a national issue, students no longer have First Amendment rights to express their views at school?

**RESPONDENT/SCHOOLDISTRICT'S ATTORNEY #1:** Well, critical thinking and intellectual discussion in the classroom is the hallmark of education. But when school administrators believe that an action might disrupt the education of students, whether they want to protest or not, that's another situation. Students cannot express themselves at every time, in every place, and in every circumstance. The petitioners argue that school officials are powerless to act until a disruption occurs. We do not believe that should be the policy or the practice. Sometimes you must act to prevent a bad thing from happening.

**JUSTICE 6:** On that theory, could school administrators ban all discussion or demonstrations about political matters or political candidates or issues of government?

**RESPONDENT/SCHOOLDISTRICT'S ATTORNEY #1:** Not at all.

**JUSTICE 6:** Could they ban it in the school?

**RESPONDENT/SCHOOLDISTRICT'S ATTORNEY #1:** Not at all. But they could set rules regarding when and where the students could discuss those issues.

**JUSTICE 7:** Suppose there is a community that finds a candidate for President highly controversial. Could the school ban buttons that showed that candidate's picture?

**RESPONDENT/SCHOOLDISTRICT'S ATTORNEY #1:** Well, if the situation were explosive, like it was in this community, I think they could.

**JUSTICE 8:** Well what evidence is there that the situation in this community was explosive? That's the thing that I haven't gotten out of this yet.

**RESPONDENT/SCHOOLDISTRICT'S ATTORNEY #1:** I'd refer first to the John Tinker situation. He said that at first no one saw his armband but, after gym class, some of the students were making fun of him for wearing it. Other students, including his friends, made cutting and sarcastic remarks.

**JUSTICE 1:** Sarcastic remarks? You think that schools are allowed to ban student speech if it leads to some sarcastic remarks? Have you ever been in a middle school? Do you have any evidence of a real disruption of the learning environment?

**RESPONDENT/SCHOOLDISTRICT'S ATTORNEY #1:** Well, Your Honor, I'd also like to point out that . . .

**JUSTICE 1:** Would you please answer the question before moving on?

**RESPONDENT/SCHOOLDISTRICT'S ATTORNEY #1:** I don't think that there has to be a disruption before the school can act. In my view, there only has to be a danger of disruption. And this point, Your Honor, I'm going to turn the podium over to my co-counsel.

**JUSTICE 1:** Yes, Mr./Ms. \_\_\_\_\_ (co-counsel's name) Was there a danger of disruption stemming from the armbands?

**SCHOOL ATTORNEY #2:** I think so, Your Honor. But I don't think the test should be whether you or I think the evidence shows there was a danger of disruption. It should be whether school administrators reasonably believed there was a danger of disruption.

**JUSTICE 2:** But we must still determine whether the school's actions were reasonable based on the evidence, right?

**RESPONDENT/SCHOOLDISTRICT'S ATTORNEY #2:** Yes, of course.

**JUSTICE 2:** What is the evidence suggesting that the administration's actions were reasonable here?

**RESPONDENT/SCHOOLDISTRICT'S ATTORNEY #2:** There is testimony from Mr. Tinker that some of the boys were subjected to physical violence because they wore armbands.

**JUSTICE 2:** The school district never pointed to any evidence of violence in defending its decision. If the school board knew about it, wouldn't they put in evidence about it?

**RESPONDENT/SCHOOLDISTRICT'S ATTORNEY #2:** That would sound reasonable, Your Honor. Yes.

**JUSTICE 2:** Do we have anything more than your assertion that the administrators reasonably believed there was a danger of disruption?

**RESPONDENT/SCHOOLDISTRICT'S ATTORNEY #2:** I think, as I've stated before, Your Honor, that there was an explosive atmosphere in the Des Moines schools at the time the armband policy was adopted.

**JUSTICE 6:** There were anti-war marches in Washington and other cities. There was violence associated with some of the marches. What is the evidence that the situation was explosive in Des Moines?

**RESPONDENT/SCHOOLDISTRICT'S ATTORNEY #2:** A former student of one of our high schools had been killed in Vietnam. Some of his friends are still in the school. It was felt that if there were any kind of demonstration about the war, it could get out of control.

**JUSTICE 6:** Do we have a city in this country that hasn't had someone killed in Vietnam?

**RESPONDENT/SCHOOLDISTRICT'S ATTORNEY #2:** Many communities have lost soldiers in Vietnam. However, what distinguishes Des Moines is students wearing armbands at school to protest the war, which could have an incendiary effect in an explosive environment.

**JUSTICE 3:** Is your position that it **could be** explosive?

**RESPONDENT/SCHOOLDISTRICT'S ATTORNEY #2:** Yes, sir. It could be.

**JUSTICE 3:** But there's no evidence that it **was**. According to you, the rule should be that as long as there could **possibly** be a disruption, the school can ban the expression?

**RESPONDENT/SCHOOLDISTRICT'S ATTORNEY #2:** Well, Your Honor I don't think it would be proper to ban armbands unless the school administrator had **a reasonable** fear of disruption.

**JUSTICE 4:** Do you believe that the Constitution guarantees students the right to discuss political events in schools?

**RESPONDENT/SCHOOLDISTRICT'S ATTORNEY #2:** No, I don't believe the Constitution guarantees that as an unlimited right, Your Honor. I think if the political discussion threatened the discipline and the orderly learning environment in the school, the administrators could ban it.

**JUSTICE 4:** What you're saying is that the school district has a right to run the school for the teaching of subject matter approved by the school board, but the Constitution doesn't step in and tell you that you've got to let anybody discuss any subject they want to at any time in any manner.

**RESPONDENT/SCHOOLDISTRICT'S ATTORNEY #2:** We think students can discuss controversial issues, but not in a way that risks disrupting the learning environment in schools.

**JUSTICE 4:** So, you think that the Constitution allows schools to ban discussion of particularly emotional subjects like the Vietnam War, right?

**RESPONDENT/SCHOOLDISTRICT'S ATTORNEY #2:** Yes, Your Honor. We think that, given the divisive atmosphere in the country, school authorities, who know their community better than we do, acted reasonably.

**JUSTICE 5:** But even if it's not explosive, students shouldn't be able to interrupt a history class or a math class simply because they want to talk about Vietnam or some other topic, right?

**RESPONDENT/SCHOOLDISTRICT'S ATTORNEY #2:** That's right. I believe we have schools to give children an education and anything that threatens that orderly process ought to be prohibited.

**JUSTICE 5:** Was there a disruption here?

**RESPONDENT/SCHOOLDISTRICT'S ATTORNEY #2:** Well, they spent the whole math period discussing Vietnam. The students were there to learn math so, I think, that's a sufficient disruption. The schools ought to be able to ban students from hijacking classes with their own, off-topic agendas.

**JUSTICE 6:** So what courts are supposed to do is figure out whether the school acted reasonably or unreasonably and, based on that, decide whether the students' First Amendment rights were violated?

**RESPONDENT/SCHOOLDISTRICT'S ATTORNEY #2:** I think that if the courts have to start looking at every school rule, then it becomes very difficult.

**JUSTICE 6:** Well, I agree with you. This is difficult.

**RESPONDENT/SCHOOLDISTRICT'S ATTORNEY #2:** That is why we suggest that the Court give school administrators a lot of discretion when balancing student expression against the orderly management of the school. If the court micromanages schools from Washington, it will get bogged down in administrative decisions that will make it nothing more than a super school board.

**CHIEF JUSTICE:** Thank you, counsel. We'll now hear rebuttal arguments from the petitioners' counsel.

## **Petitioners' (Students') Rebuttal**

**PETITIONER/STUDENTS' ATTORNEY #1:** To sum up, opposing counsel would have you believe that in the Vietnam era Des Moines was a tinderbox ready to explode. They claim that the “explosive situation” -- as they describe it -- justified the school’s actions in denying students their First Amendment rights. To that, I simply say there is no evidence in the record indicating that the atmosphere in Des Moines was explosive.

**JUSTICE 2:** Just a moment, please. These students broke a **valid policy**. Isn’t that enough to be explosive, especially at a time when the nation was so divided? Didn’t the school have to assert its authority to prevent the school atmosphere from spiraling out of control?

**PETITIONER/STUDENTS' ATTORNEY #1** Your Honor, our point is that the students broke an **invalid** rule that violated the Constitution by banning student expression that was not disruptive to the school environment.

**JUSTICE 2:** One last question that I think all of this boils down to. Who do you think has the right and the obligation to control the school? Is it the students? Or is it the school administration and the elected school board? Or should it be the courts?

**PETITIONER/STUDENTS' ATTORNEY #1** School officials run the schools and with that power comes a lot of responsibilities. Your Honor, they simply cannot ignore the First Amendment in the process.

Yes, school officials are authorized to manage the schools, but they are not authorized to violate the Constitution by setting school policies that infringe on students’ First Amendment rights. And, in our view, they have done so in this case.

**JUSTICE 1:** Thank you, Counsel. The case is submitted.

~~Judges depart~

## Excerpts from the Majority Opinion

### Majority

**CHIEF JUSTICE:** I will announce the judgment of the Court. The majority on this opinion is made up of seven of us, including **JUSTICE #3** \_\_\_\_\_ (insert real name), who joined us in a concurring opinion.] Two justices dissented. **Justice #4** \_\_\_\_\_ (insert real name) will read the dissent when I am finished.

Now for the majority opinion ...First Amendment rights, applied in light of the special circumstances of the school environment, are available to teachers and students. Teachers and students do not shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.

We must carefully protect the constitutional freedoms of the individual so that we do not strangle the free mind and teach youth to discount the important principles of our government. This case thus presents a tension between the First Amendment rights of students and the rights of school authorities to control students' behavior.

In this case, school officials banned and sought to punish these students for a silent and passive expression of opinion, unaccompanied by any disorder or disturbance on the part of the students. There is no evidence here that the students interfered with the schools' work or violated the rights of other students to be secure and to be let alone. Accordingly, this case does not concern speech or action that intrudes upon the work of the school or the rights of other students.

Only a few of the 18,000 students in the school system wore the black armbands. Only five students were suspended for wearing them. Outside the classrooms, a few students made hostile remarks to those wearing armbands, but there were no threats or acts of violence on school premises.

The District Court concluded that the action of the school authorities was reasonable because the authorities feared that the armbands would be disruptive. But in our country, vague fears about disruptions are not enough to overcome the right to freedom of speech and expression. Any word spoken in class, in the lunchroom, or on school grounds that expresses disagreement with the views of another person may start an argument or cause a disruption. But our Constitution says we must take this risk, and our history says that it is this sort of hazardous freedom—this kind of openness—that is the basis of our national strength and of the independence and vigor of Americans who grow up and live in this relatively permissive, often argumentative, society.

In our country, public school officials do not possess absolute authority over students. Students, both when they are in school and when they are out of school, are "persons" under our Constitution. They have rights which the government must respect. In our country, students may not be forced to express only those views that are officially approved by school administrators. Unless the school shows that there are valid reasons to restrict student speech, students are entitled to express their views.

Because the school failed to provide a valid reason in this case, the school's ban was unlawful and violated the students' First Amendment rights. We, accordingly, reverse the lower courts' decision.

## Excerpts from the Dissenting Opinion

### Minority

**JUSTICE 5:** I am Justice \_\_\_\_\_ (insert real name). I disagree with my colleagues in the majority because I believe that the Constitution allows the school to ban the armbands. I, therefore, dissent.

While I have always believed that, under the First Amendment, a State cannot censor the content of speech, I have never believed that the First Amendment protects people's right to give speeches or engage in demonstrations wherever and whenever they please.

While the evidence does not show that any of the students wearing armbands shouted, used profane language, or were violent in any manner, their armbands led to comments, cautions by other students, sarcastic remarks by peers, and a warning by an older football player that other students had better leave him alone. There also is evidence that a math teacher had his lesson planning period interrupted because of a dispute with Mary Beth Tinker over her armband.

Even a cursory review of the evidence makes clear that the armbands diverted students' attention from their lessons. While there was no wild disorder that disrupted classwork, I think the evidence overwhelmingly shows that the armbands did exactly what the school officials and principals thought they would do. That is, the armbands took the students' attention away from classwork and diverted them to thoughts about the highly emotional issues related to the Vietnam War.

If the time has come when students in public schools, kindergartens, elementary schools, middle schools, or high schools, can defy orders of school officials, it is the beginning of a new era of lawlessness in this country.

In my view, students are not sent to the schools – at taxpayers' expense -- in order to promote their own views. The original idea of schools was that children had not yet reached a point of experience and wisdom to teach their elders. Society may have moved beyond the old-fashioned slogan that 'children are to be seen and not heard,' but one may, I hope, still be allowed to think that taxpayers send children to school because students need to learn, not teach.

We cannot close our eyes to the fact that some of the country's greatest problems are crimes committed by young people, many of them of school age. School discipline, like parental discipline, is an important part of training our children to be good citizens—to be better citizens. Here, a very small number of students have refused to obey a school order meant to give students who want to learn the opportunity to do so. One does not need special powers to see that after today's decision some students in Iowa schools and in schools across the country will be ready, willing, and able to defy their teachers' orders.

Accordingly, I dissent.



## First Amendment in Schools

### Assessment: Political Cartooning Applying Precedent

#### Connecting the Dots Between Court Precedent and a Contemporary School Walkout Scenario

#### Time

20 Minutes

#### Lesson Outcome

Students will be able to compare the impact of three landmark Supreme Court cases on students' free expression at school today. Students will use civil discourse skills to explore the tensions between students' interests in free speech and expression on campus and their schools' interests in maintaining an orderly learning environment. For the assessment of their comprehension, they will draw a political cartoon to illustrate the application of any of these precedent(s) to the fictional scenario, and they will present their drawing to the class.

#### Essential Question

To what extent should schools be able to restrict students' freedom of expression on campus?

#### Instructions

1. This assessment builds on the main lesson activity. Students select one of the three cases they learned about and create a political cartoon to answer the essential question.
2. Students' political cartoons should 1) represent one of the three cases, 2) illustrate their answer to the essential question, and 3) make a connection to the fictional walkout scenario. For example, a student could choose to illustrate *Tinker v. Des Moines* and its impact on school walkouts. If students want to convey that they approve of greater restrictions on student rights, they could draw Mary Beth Tinker wearing an armband inside a red circle with a diagonal line across it (as in a Do Not Enter sign) with a caption that reads: "Principal Says: Do Not Re-Enter If You Walk Out." This example addresses all three components of the assessment.
3. After students have drawn their political cartoon, they share it with the class.





## First Amendment in Schools

### Political Cartoon Activity

#### Time

30 Minutes

#### Lesson Outcome

To capitalize on different learning styles, this activity allows students to visually synthesize and communicate what they have learned. They demonstrate knowledge of the relevant Supreme Court decisions and the impact of precedent on a contemporary First Amendment issue – school walkouts.

#### Essential Question

To what extent should schools be able to restrict students' freedom of expression on campus?

#### Instructions

Select one of the three cases and create a political cartoon to answer the essential question.

Your political cartoon should 1) clearly represent one of the three cases, 2) illustrate your answer to the essential question, and 3) make a connection to the fictional walkout scenario.

#### Cartoon Checklist

1. Select one of the three cases:
  - *Tinker v. Des Moines*
  - *Hazelwood v. Kuhlmeier*
  - *Morse v. Frederick*
2. Decide how you will:
  - Represent the case you selected
  - Communicate your response to the essential question
  - Make a connection to the fictional walkout scenario



## First Amendment in Schools

Title of Cartoon:

