

Hypothetical 1: John and Christopher are both high school students at a public school in South Carolina. They have been closely following a war in which the United States is involved, but which is very controversial at home. John and Christopher decide to wear black armbands to school to show their support for a truce in the war. The principal learns of the plan and adopts a policy that “any student wearing an armband to school will be asked to remove it, and if he refuses, he will be suspended until he returns without the armband.” When the students wear the armbands to school, they refuse to remove them and are suspended. The students file a lawsuit, arguing that the school policy violated the First Amendment to the United States Constitution:

Congress shall make no law . . . abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

-U.S. CONST. amend. I. (adopted 1791)

Questions/Instructions:

- What different factors or approaches might a judge use to interpret the First Amendment or the Constitution generally?
 - Walk the students through identifying and interpreting the key words in the First Amendment. Those include:
 - Congress (technically the First Amendment says nothing about states or local government actors, but in later cases the Court will find free speech applies against state and local government as well because the 14th Amendment prohibits state and local government from interfering with liberty. And free speech is one of those liberties).
 - “make no law” (does this only protect against laws? A strict reading might say yes, but under the 14th amendment protection for liberty, the court applies it to policies, practices, etc. too)
 - “abridge” (what does abridge mean and what type of restrictions fall within that?)
 - “speech” (does it protect only spoken ideas or do we communicate or speak in more ways than orally?)
- After working through those terms, ask whether the school’s action violates the Constitution?
- What problems do you see with treating this as speech?
- What do you think the Court decided?

Important Phrases from the Supreme Court's decision to discuss:

- “[W]earing an armband for the purpose of expressing certain views is the type of symbolic act that is within the Free Speech Clause of the First Amendment.”
- Students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”
- “Students in school . . . are ‘persons’ under our Constitution. They are possessed of fundamental rights which the State must respect.”
- “If a regulation were adopted by school officials forbidding discussion of the [war] or the expression by any student of opposition to it anywhere on school property . . . it would be obvious that the regulation would violate the constitutional rights of students, at least if it could not be justified by a showing that the students’ activities would materially and substantially disrupt the work and discipline of the school.”
- Follow up questions after discussion:
 - What is the Court saying with this statement? Is there a limit on free speech?
 - What types of things do you think a Court would consider a material and substantial disruption of school?

The Court ultimately decided that the students did NOT lose their Constitutional rights to free speech at school by wearing the armbands, and the school DID violate those rights with the policy.

Hypothetical 2: Matt is a student at a local high school. During a schoolwide, mandatory assembly, he gives a speech that nominates another student for a school government office. In his speech, Matt uses sexual metaphors to describe the student candidate. The metaphors that he uses are described as something you would hear on “prime time television” or in the locker room. Some students in the assembly cheered, yelled, and made obscene gestures, while some students seemed puzzled by what he said. The school has a policy which states “conduct which materially and substantially interferes with the educational process is prohibited, including the use of obscene, profane language or gestures.” Using this policy, the principal suspends Matt. Matt files a lawsuit, arguing that the school policy violated the First Amendment to the United States Constitution:

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Questions:

- Does the school’s action violate the First Amendment?
- Does the text of the First Amendment answer the question in this case?
- What problems do you see?
- Do you have any concerns about treating this a protected speech? Do you have any concerns that a school official might use these type of rules to restrict speech that should be protected?
- What differences do you see between this case and the previous case, and are those differences important?
- Using the Court’s decision in the previous case, what do you think the Court decided?

Important Phrases from the Supreme Court’s decision to discuss:

- “[T]he constitutional rights of students in public school are not automatically coextensive with the rights of adults in other settings.”
- “It is a highly appropriate function of public school education to prohibit the use of vulgar and offensive terms in public discourse. . . . The determination of what manner of speech in the classroom or in school assembly is inappropriate properly rests with the school board.”
- “The First Amendment does not prevent the school officials from determining that to permit a vulgar and lewd speech such as [the student’s] would undermine the school’s basic educational mission.”

The Court ultimately decided that the school did NOT violate his Constitutional rights to free speech as the school has the authority to limit speech that is vulgar or lewd because of its interest in protecting minors.

Hypothetical 3: A group of staff members for a high school newspaper included two articles in their publication: an article about the impact of divorce on students at school and an article about teen pregnancy involving students at the school. The newspaper was part of the journalism class for which students received academic credit. Before the newspaper was published, the principal reviewed the paper and removed both articles because he did not think they were appropriate in the school setting. The students file a lawsuit, arguing that the school board and principal violated the First Amendment to the United States Constitution:

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Prompt (oral discussion or written):

- Did the principal violate the students' First Amendment rights to free speech?
- Is there anything distinct about these facts that might be a reason for taking a different approach to evaluating the school's actions?
- Basing your answer off the previous 2 cases discussed, decide how you think the Court will rule.

The Court ultimately decided that the school did NOT violate the students' Constitutional rights to free speech because students do not automatically have the same rights as adults in a school setting. When writing something for a class, a school is allowed to enforce academic standards. Additionally, the Court views these articles as the school's speech rather than the students' speech, and the school does not have to put its name on speech contrary to its educational position.

**Hypotheticals based on and quotations taken from Tinker v. Des Moines Independent Com. Sch. Dist., 393 U.S. 503 (1969), Bethel Sch. Dis. No. 403 v. Fraser, 478 U.S. 675 (1986), and Hazelwood Sch. Dist. V. Kuhlmeier, 484 U.S. 260 (1988).*