

# Freedom of Speech: Finding the Limits

A Lesson by Linda Weber for  
*Sunnylands Seminars 2009*



The Annenberg Foundation Trust at  
**SUNNYLANDS**

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## SUMMARY

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

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

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

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

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

## NOTES AND CONSIDERATIONS

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

## Snapshot of Lesson

**Grades:** Middle School; High School (Focus)

**Subject Focus:** Civics/Government

**Estimated Time:** 3-4 days

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

### Materials/Equipment Needed:

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

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

Computer with internet connection and projector for class viewing.

### Materials Included:

#### Readings and Resources

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

#### Student Materials

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

#### Teacher Materials

- Supplement for jigsaw activity
- Answer Key: Ten Questions

### National Standards for Civics & Government

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

## TOPICS

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

## NATIONAL STANDARDS

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

### Grades 5-8 Organizing Questions

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

- I. What are civic life, politics, and government?
  - A. What is civic life? What is politics? What is government? Why are government and politics necessary? What purposes should government serve?
  - B. What are the essential characteristics of limited and unlimited government?
  - C. What are the nature and purposes of constitutions?
  
- II. What are the foundations of the American political system?
  - A. What is the American idea of constitutional government?
  - C. What is American political culture?
  - D. What values and principles are basic to American constitutional democracy?
  
- III. How does the government established by the Constitution embody the purposes, values, and principles of American democracy?
  - E. What is the place of law in the American constitutional system?
  
- V. What are the roles of the citizen in American democracy?
  - B. What are the rights of citizens?
  - C. What are the responsibilities of citizens?
  - D. What dispositions or traits of character are important to the preservation and improvement of American constitutional democracy?
  - E. How can citizens take part in civic life?

### Grades 9-12 Organizing Questions

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

- I. What are civic life, politics, and government?
  - A. What is civic life? What is politics? What is government? Why are government and politics necessary? What purposes should government serve?
  - B. What are the essential characteristics of limited and unlimited government?
  
- II. What are the foundations of the American political system?
  - C. What is American political culture?
  - D. What values and principles are basic to American constitutional democracy?
  
- III. How does the government established by the Constitution embody the purposes, values, and principles of American democracy?
  - B. How is the national government organized, and what does it do?
  - D. What is the place of law in the American constitutional system?
  
- V. What are the roles of the citizen in American democracy?
  - B. What are the rights of citizens?
  - C. What are the responsibilities of citizens?
  - D. What civic dispositions or traits of private and public character are important to the preservation and improvement of American constitutional democracy?
  - E. How can citizens take part in civic life?

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

# STUDENT OUTCOMES

## Knowledge, skills, and dispositions

Students will . . .

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

## Integrated Skills

### 1. Information literacy skills

Students will . . .

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

### 2. Media literacy skills

Students will . . .

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

### 3. Communication skills

Students will . . .

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

### 4. Study skills

Students will...

- Manage time and materials
- Organize work effectively

### 5. Thinking skills

Students will . . .

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

### 6. Problem-solving skills

Students will . . .

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

### 7. Participation skills

Students will . . .

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

## ASSESSMENT

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

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

## VOCABULARY

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

### Sources for Definitions

FindLaw—Law Dictionary

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

Annenberg Classroom Glossary

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

## LESSON OVERVIEW

### DAY 1:

#### Simple and Complicated

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

### DAY 2 & 3

#### Matters for Interpretation

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

### DAY 4

#### You Decide

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

## TEACHING ACTIVITIES

### DAY 1: Simple and Complicated

#### Overview:

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

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

#### Materials/Equipment Needed:

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

#### Student materials (Included):

- “Ten Questions” (1 per student)
- “U.S. Supreme Court Cases Named in A Conversation on the Constitution: Free Speech”
- Chapter 6: “Right to Freedom of Speech” from *Our Rights* by David J. Bodenhamer  
Also available online at  
[http://www.annenbergclassroom.org/files/documents/books/our%20rights/chapter\\_6\\_our\\_rights.pdf](http://www.annenbergclassroom.org/files/documents/books/our%20rights/chapter_6_our_rights.pdf)

#### Teacher materials

- “Synopsis of Cases Referenced in Video”

## Before Viewing

1. Review the wording in the First Amendment:

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

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

3. Review:

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

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

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

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

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

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

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

## During and After Viewing:

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

## Homework:

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

## TEACHING ACTIVITIES

### DAYS 2-3: Simple and Complicated

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

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

#### Materials/Equipment Needed:

- *A Conversation on the Constitution with Justices Stephen G. Breyer, Sandra Day O’Connon, and Anthony M. Kennedy: Freedom of Speech*, 30-minute video available at:  
<http://www.annenbergclassroom.org/page/a-conversation-on-the-constitution-freedom-of-speech>

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

#### Student materials

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

#### Teacher materials

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

#### Procedure:

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



# TEACHING ACTIVITIES

## DAY 4: You Decide

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

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

### Materials/Equipment Needed:

#### Student materials

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

### Procedure:

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

#### Ground Rules

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

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

### BLOGGER CASE:

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

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

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

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

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

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

## EXTENSION ACTIVITIES

### Have more time to teach?

- Debate Internet speech issues raised in this article:  
*Student Online Expression: What Do the Internet and MySpace Mean for Students' First Amendment Rights?*  
By David L. Hudson Jr., Research Attorney, First Amendment Center  
<http://www.firstamendmentcenter.org/PDF/student.internet.speech.pdf>
- Summarize the findings related to freedom of speech in this survey for the First Amendment Center: *State of the First Amendment 2008*  
[http://www.firstamendmentcenter.org/about.aspx?item=state\\_first\\_amendment\\_2008&SearchString=survey](http://www.firstamendmentcenter.org/about.aspx?item=state_first_amendment_2008&SearchString=survey)

## RESOURCES

### Annenberg Classroom

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

### Other Resources

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

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

*Frederick Douglass*

# Student Materials

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

## Video Follow-Up: Ten Questions

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

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

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

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

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

	Background Facts	Question	Case	Decision	Free Speech Principle
5.	A 19-year-old member of the Young Communist League was convicted for displaying a red flag as "an emblem of opposition to the United States government."	Did a California statute that makes the display of a red flag as a statement of "opposition to organized government" violate the First & Fourteenth Amendments?	<i>Stromberg v. People Of State Of California</i> , 283 U.S. 359 (1931) <a href="http://www.oyez.org/cases/1901-1939/1930/1930_584">http://www.oyez.org/cases/1901-1939/1930/1930_584</a>		
6.	Byron Thornhill joined a picket line that was protesting against his former employer. Section 3448 of Alabama state law made it an offense to picket. Pursuant to the law, Thornhill was arrested and fined \$100. Thornhill, a union president, was the only picketer to be arrested and tried under the law.	Did the Alabama law violate Thornhill's right to free expression under the First Amendment?	<i>Thornhill v. Alabama</i> , 310 U.S. 88 (1940) <a href="http://www.oyez.org/cases/1901-1939/1939/1939_514">http://www.oyez.org/cases/1901-1939/1939/1939_514</a>		
7.	Jesse Cantwell and his son were Jehovah's Witnesses; they were proselytizing a predominantly Catholic neighborhood in Connecticut. The Cantwells distributed religious materials by traveling door-to-door and by approaching people on the street. After voluntarily hearing an anti-Roman Catholic message on the Cantwells' portable phonograph, two pedestrians reacted angrily. The Cantwells were subsequently arrested for violating a local ordinance requiring a permit for solicitation and for inciting a breach of the peace.	Did the solicitation statute or the "breach of the peace" ordinance violate the Cantwells' First Amendment free speech or free exercise rights?	<i>Cantwell v. State of Connecticut</i> , 310 U.S. 296 (1940) <a href="http://www.oyez.org/cases/1901-1939/1939/1939_632">http://www.oyez.org/cases/1901-1939/1939/1939_632</a>		
8.	Lillian and William Gobitis were expelled from the public schools of Minersville, Pennsylvania, for refusing to salute the flag as part of a daily school exercise. The Gobitis children were Jehovah's Witnesses; they believed that such a gesture of respect for the flag was forbidden by biblical commands.	Did the mandatory flag salute infringe upon liberties protected by the First and Fourteenth Amendments?	<i>Minersville School District v. Gobitis</i> , 310 U.S. 586 (1940) <a href="http://www.oyez.org/cases/1901-1939/1939/1939_690">http://www.oyez.org/cases/1901-1939/1939/1939_690</a>		
9.	Walter Chaplinsky, a Jehovah's Witness, called a city marshal a "God-damned racketeer" and "a damned fascist" in a public place. He was arrested and convicted under a state law for violating a breach of the peace.	Did the application of the statute violate Chaplinsky's freedom of speech protected by the First Amendment?	<i>Chaplinsky v. State of New Hampshire</i> , 315 U.S. 568 (1942) <a href="http://www.oyez.org/cases/1940-1949/1941/1941_255">http://www.oyez.org/cases/1940-1949/1941/1941_255</a>		

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

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

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

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



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

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

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

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

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

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



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

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



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

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

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

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

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

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

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

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

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

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

Sources:

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

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

**Instructions:**

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

**Justice Breyer:** (Start time 24:47)

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

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

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

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



Activity

### Matters of Interpretation

#### Finding Boundaries for Free Speech in Supreme Court Decisions

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

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




## Free-Speech Scenarios to Decide

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

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

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

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

### 2. Dress code

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

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

### 3. Blogger

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

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

### 4. Cyberbullies

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

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