

Justices



UNITED STATES SUPREME COURT

GRADES 9-12

HIGH SCHOOL LESSON PLAN **FREEDOM OF SPEECH IN SCHOOLS**

First Amendment to the U.S. Constitution

Tinker v. Des Moines and *Morse v. Frederick*



Great Public Schools for Every Student



HIGH SCHOOL LESSON PLAN

Freedom of Speech in Schools

Supreme Court and the First Amendment

Tinker v. Des Moines and *Morse v. Frederick*

Grade level: 9-12

Common Core Standards

English Language Arts Standards » Reading: Informational Text » Grade 11-12 » 8

Delineate and evaluate the reasoning in seminal U.S. texts, including the application of constitutional principles and use of legal reasoning (e.g., in U.S. Supreme Court majority opinions and dissents) and the premises, purposes, and arguments in works of public advocacy (e.g., *The Federalist*, presidential addresses).

English Language Arts Standards » Reading: Informational Text » Grade 11-12 » 9

Analyze seventeenth-, eighteenth-, and nineteenth-century foundational U.S. documents of historical and literary significance (including the Declaration of Independence, the Preamble to the Constitution, the Bill of Rights, and Lincoln’s Second Inaugural Address) for their themes, purposes, and rhetorical features.

English Language Arts Standards » Writing » Grade 11-12 » 9 » b

Apply grades 11-12 Reading standards to literary nonfiction (e.g., “Delineate and evaluate the reasoning in seminal U.S. texts, including the application of constitutional principles and use of legal reasoning [e.g., in U.S. Supreme Court Case majority opinions and dissents] and the premises, purposes, and arguments in works of public advocacy [e.g., *The Federalist*, presidential addresses]”).

English Language Arts Standards » History/Social Studies » Grade 9-10

Key Ideas and Details

CCSS.ELA-LITERACY.RH.9-10.1

Cite specific textual evidence to support analysis of primary and secondary sources, attending to such features as the date and origin of the information.

CCSS.ELA-LITERACY.RH.9-10.2

Determine the central ideas or information of a primary or secondary source; provide an accurate summary of how key events or ideas develop over the course of the text.

CCSS.ELA-LITERACY.RH.9-10.3

Analyze in detail a series of events described in a text; determine whether earlier events caused later ones or simply preceded them.

Craft and Structure

CCSS.ELA-LITERACY.RH.9-10.4

Determine the meaning of words and phrases as they are used in a text, including vocabulary describing political, social, or economic aspects of history/social science.

CCSS.ELA-LITERACY.RH.9-10.5

Analyze how a text uses structure to emphasize key points or advance an explanation or analysis.

CCSS.ELA-LITERACY.RH.9-10.6

Compare the point of view of two or more authors for how they treat the same or similar topics, including which details they include and emphasize in their respective accounts.

Integration of Knowledge and Ideas

CCSS.ELA-LITERACY.RH.9-10.7

Integrate quantitative or technical analysis (e.g., charts, research data) with qualitative analysis in print or digital text.

CCSS.ELA-LITERACY.RH.9-10.8

Assess the extent to which the reasoning and evidence in a text support the author’s claims.

CCSS.ELA-LITERACY.RH.9-10.9

Compare and contrast treatments of the same topic in several primary and secondary sources.

Range of Reading and Level of Text Complexity

CCSS.ELA-LITERACY.RH.9-10.10

By the end of grade 10, read and comprehend history/social studies texts in the grades 9-10 text complexity band independently and proficiently.



Part I: Content

[This part of the lesson should be used to go over the basics of the Supreme Court. Students should learn that the Supreme Court was established by Article III of the Constitution, what the Court’s legal role is, how many justices there are, and how those justices get appointed. Where possible, the instructor should elicit the response from the students, but answers to the questions are provided in case no one in the class answers the question or if you have to supplement the answer that is given.]

- Who can tell me the names of the three branches of the U.S. Government? *Executive, legislative, and judicial.*
- Today we are going to talk about the judicial branch. Does anyone know what the highest court of the judicial branch is? *The Supreme Court. The Supreme Court is the highest court in our system.*
- Can anyone tell me how the Supreme Court was created? *The Supreme Court was created in the U.S. Constitution in Article III, Section I.*
- Does anyone know how justices are appointed to the Court? *Whenever there is a vacancy on the Supreme Court, it is the President’s job under the Constitution to appoint the next justice. Then it’s the job of the Senate to provide “advice and consent” to the nomination.*
- What do you think “advice and consent” means? *The Constitution doesn’t say what “advice and consent” means, but it has traditionally meant that the individual senators meet with the nominee, the Senate holds hearings looking into the nominee’s judgment and qualifications, and then the Senate takes an up-or-down vote on the nominee.*
- Who knows how many justices usually sit on the Supreme Court? *Nine.*
- Who knows how many justices sit on the Supreme Court today? *Eight.*
- That seems strange. Does anyone know why there are only eight justices on the Court today? *Justice Antonin Scalia passed away in February 2016. President Obama nominated Judge Merrick Garland, one of the most experienced and respected judges in the country, to replace him. So far, the Senate has refused to hold hearings or a vote on Judge Garland, so the Court is left with only eight justices.*
- Is this unusual? *Yes. This is the first time since 1875 that a nominee for the Supreme Court hasn’t received either a hearing or a vote.*



Part II: Reinforcement

[This section of the lesson is designed to get students thinking about the role of the Court and how it might impact their lives. Through class discussion, try to get the students in the room to start thinking about the way that the Court might affect them, even before they graduate from high school or become adults. Where possible, the instructor should elicit the response from the students, but answers to the questions are provided in case no one in the class answers the question or if you have to supplement the answer that is given.]

- So now that we've gone over some of the basics, can anyone tell me what the Supreme Court's job is? *The Supreme Court's job is to decide disputes between the states and, most importantly, to decide important questions of federal law.*
- Who can tell me what federal law is? Where does it come from? *Federal law mostly comes from two places: laws passed by Congress and the U.S. Constitution.*
- What are some of the rights we have under our Constitution? *Speech, assembly, religion, petition, freedom from unlawful searches and seizures, right to a lawyer, etc.*
- Can anyone think of some ways that the Supreme Court impacts your life right now, as students and teenagers? *Allow for a few minutes of discussion.*



Part III: Freedom of Speech

[This section of the lesson should be used to introduce and reinforce the concept of freedom of speech under the First Amendment of the U.S. Constitution, in preparation for discussing *Tinker* and *Morse*.]

- Let's talk about one of our constitutional rights in particular. Can anyone tell me what freedom of speech is? *The right to speak or express yourself without government interference.*
- Can anyone tell me where our right to freedom of speech comes from? *The First Amendment of the U.S. Constitution.*
- Does freedom of speech mean that we can say anything we want? *No, the government can put restrictions on speech provided it has a legitimate interest in doing so.*
- What are some examples of times when the government can restrict your freedom of speech? *You can't yell "fire" in a movie theater if there actually isn't a fire; you aren't allowed to threaten or harass someone; you can't protest at an airport or inside the White House; corporations aren't allowed to lie about the products they sell.*
- When do you think a school would be allowed to restrict students' speech?
- Why would a school want to restrict students' speech?
- Are there legitimate reasons for a school to restrict students' speech?
- Do you think it's acceptable for a school to restrict expression just because other students disagree with it? For example, would it be acceptable for a school to prohibit students from wearing t-shirts of presidential candidates because other students might disagree?
- When might it be OK for a school to restrict that type of speech?



Part IV: *Tinker v. Des Moines*

In 1965, the United States had just entered the ground war in Vietnam after years of operating on the edges of the conflict. U.S. ground troops were deployed in Vietnam with the goal of overthrowing the Communist North Vietnamese government, which was supported by the Soviet Union and Communist China. The war would eventually claim the lives of more than 3 million people. Some 58,220 American soldiers would die over the course of the fighting. While most of those casualties occurred in the latter part of the 1960s, the American public began to turn against the war in 1965.



In December 1965, a few students in Des Moines, Iowa, decided that they wanted to protest the war in school. John Tinker, who was 15 years old, Mary Beth Tinker, who was 13, and Christopher Eckhardt, who was 16 at the time, decided to wear black armbands to their schools to protest the war. The school board learned about their planned protest and passed a rule stating that any student wearing an armband would be asked to remove it and would be punished for refusing to do so. The students wore the armbands anyway, and were suspended and not allowed to return to school until they complied with the school policy. The students challenged the school's decision, and their case made it all the way up to the Supreme Court.

- What do you think the Supreme Court had to consider in this case?
- Why do you think the school made the policy?
- Why do you think the students wore the armbands anyway?
- Can you think of anything that would make that happen today?



The Supreme Court decided by a 7-2 vote that the armbands were speech and therefore protected under the First Amendment. The Court held that students in public schools do not lose their right to free speech under the First Amendment just because they go to school. It held that in order for a school to ban student speech, it first must show that the speech it is trying to ban would “materially and substantially interfere” with the operation of the school. [Have a different student read each of the paragraphs.]

But, in our system, undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression. Any departure from absolute regimentation may cause trouble. Any variation from the majority's opinion may inspire fear. Any word spoken, in class, in the lunchroom, or on the campus, that deviates from the views of another person may start an argument or cause a disturbance. But our Constitution says we must take this risk ... 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 disputatious, society.

In order for the State in the person of school officials to justify prohibition of a particular expression of opinion, it must be able to show that its action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint. Certainly where there is no finding and no showing that engaging in the forbidden conduct would “materially and substantially interfere with the requirements of appropriate discipline in the operation of the school,” the prohibition cannot be sustained ...

In our system, state-operated schools may not be enclaves of totalitarianism. School officials do not possess absolute authority over their students. Students in school, as well as out of school, are “persons” under our Constitution. They are possessed of fundamental rights which the State must respect, just as they themselves must respect their obligations to the State. In our system, students may not be regarded as closed-circuit recipients of only that which the State chooses to communicate. They may not be confined to the expression of those sentiments that are officially approved. In the absence of a specific showing of constitutionally valid reasons to regulate their speech, students are entitled to freedom of expression of their views. As Judge Gewin, speaking for the Fifth Circuit, said, school officials cannot suppress “expressions of feelings with which they do not wish to contend.”



Discussion questions for *Tinker*

- Do you agree with the Court’s decision?
- What other kinds of speech do you think this decision would protect?
- The Court decided in this case that wearing a black armband was speech. Why do you think that is? Can you think of other nonverbal kinds of speech?
- Do you think it’s a problem that the school only banned one kind of armband? Would it be different if it had banned all armbands?
- What did the Court mean when it said “our Constitution says we must take the risk”? What risk is it talking about? What are some examples of “taking the risk”?
- Why is it important that students be allowed to have these kinds of rights in schools?
- When is disruptive speech good for education?



Part V: *Morse v. Frederick*

[For this section, divide the students into small groups. Determine beforehand the best way to do this. Have students read the facts of the case, discuss the case, and come to a conclusion. Tell them to think about what they just read in *Tinker* and try to apply it to the facts of the case. Ask them to think about how the cases are the same and how the cases are different.]

In 2002, the United States was getting ready to host the Winter Olympics in Salt Lake City. As part of the lead-up to the games, the Olympic Torch was carried throughout the country on its way to the games. When the torch came through Juneau, Alaska, students at the school were allowed to go outside and watch. Joseph Frederick, a high school student from Alaska, along with several friends, stood across the street from the school. When the torch passed by the school—and the television cameras started broadcasting live—Frederick and his friends unraveled a large banner that read “BONG HITS 4 JESUS.” The school principal seized the sign and suspended Frederick for 10 days. Frederick challenged his suspension in court and the case made it to the Supreme Court.



How do you think this case should come out? Some questions to consider: How is this case similar and different to *Tinker*? Should the content of the message matter? What do you think the school’s reason was for suspending Frederick?



The Court held, by a 5-4 vote, that Frederick’s banner was not protected by the First Amendment:

The message on Frederick’s banner is cryptic. It is no doubt offensive to some, perhaps amusing to others. To still others, it probably means nothing at all. Frederick himself claimed “that the words were just nonsense meant to attract television cameras.” But Principal Morse thought the banner would be interpreted by those viewing it as promoting illegal drug use, and that interpretation is plainly a reasonable one.

As Morse later explained in a declaration, when she saw the sign, she thought that “the reference to a ‘bong hit’ would be widely understood by high school students and others as referring to smoking marijuana.” She further believed that “display of the banner would be construed by students, District personnel, parents and others witnessing the display of the banner, as advocating or promoting illegal drug use”—in violation of school policy ...

School principals have a difficult job, and a vitally important one. When Frederick suddenly and unexpectedly unfurled his banner, Morse had to decide to act—or not act—on the spot. It was reasonable for her to conclude that the banner promoted illegal drug use—in violation of established school policy—and that failing to act would send a powerful message to the students in her charge, including Frederick, about how serious the school was about the dangers of illegal drug use. The First Amendment does not require schools to tolerate at school events student expression that contributes to those dangers.

Discussion questions for *Frederick*

- How do you think this case should have been decided?
- Does it matter that what the student said was offensive? Does it matter that it was against school policy?
- Should students have the right to say offensive things in school?
- Can you think of something today that might be treated in the same way?
- Who decides whether or not something is offensive?
- Would the sign have received protection from the Supreme Court if it was nonsensical, if, for example, it had read “BONG NACHO CHEESE HITS”? What if the sign said something different, like a religious message?



Part VI: Conclusion

[To conclude, try to emphasize that the composition of the Court matters, and that rights are decided by who sits on the Court.]

- *Morse v. Frederick* was decided by a 5-4 vote. If one justice had decided the case differently, the case would have come out the other way.
 - What does a 5-4 vote tell you about our legal rights in this country?
 - Is it possible that there really aren't that many differences between *Tinker* and *Morse*? What if the outcome depends on who is on the Court?
 - What would happen if the Court today divides 4-4? Can you think of any bad consequences? *A 4-4 decision affirms the ruling of the lower court that heard the case before it was appealed to the Supreme Court. A tied decision does not set binding, nationwide precedent. One result could be that federal law takes on different meanings depending on how the law is interpreted by federal courts in each state or region.*
- What kind of people do you think should serve on the Supreme Court?
- What should the President take into account before appointing a justice?
- What should the Senate consider before confirming a justice?

Resources

National Constitution Center: www.constitutioncenter.org

U.S. Constitution and related documents:
www.archives.gov/exhibits/charters/charters_downloads.html

National Education Association: www.nea.org/lac