



Constitution in the Classroom

Lesson Plan

The First Amendment & Free Speech

High School

Description: This unit introduces students to the Supreme Court's decision in *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969), which established that school officials could not punish or prohibit student speech unless that speech will result in a substantial disruption of school activities or invades the rights of others.

Objectives: (1) Use this significant case to help students understand their freedom of speech; and (2) Teach young people appreciation and respect for the Constitution and Bill of Rights.

Lesson Length: 30-60 minutes

Supplies: Lesson Plan, Handouts (enough for each student)

Age Group: 9th Grade – 12th Grade

About Constitution in the Classroom

Lawyers, law students, and educators have a valuable resource to share with students: knowledge and appreciation of the Constitution. Constitution in the Classroom brings ACS members into high school, middle school or elementary classrooms to raise awareness of fundamental constitutional principles and excite young minds about their constitutional rights and responsibilities.

About the American Constitution Society for Law and Policy

The American Constitution Society (ACS) believes that law should be a force to improve the lives of all people. ACS works for positive change by shaping debate on vitally important legal and constitutional issues through development and promotion of high-impact ideas to opinion leaders and the media; by building networks of lawyers, law students, judges and policymakers dedicated to those ideas; and by countering the activist conservative legal movement that has sought to erode our enduring constitutional values. By bringing together powerful, relevant ideas and passionate, talented people, ACS makes a difference in the constitutional, legal and public policy debates that shape our democracy.

I. Icebreaker

The League of Women Voters of Alameda County, in partnership with ACS, has created an online trivia game with general questions about the Constitution, VerifyIt!. This is a great, interactive way to start a virtual CITC lesson. You can either send the link to the students and they can play a round on their own or you can screen share and allow students to answer questions either out loud or by writing answers down and sharing their results at the end of the round.

The game is easily played on mobile phones, computers, or tablets using - **Individual Player** (on your own) or **Multi-Player** (in the classroom - virtual or online). These instructions for Multi-Player games will help you set up a game that all your students can play on their computers at one time - with you tracking their progress and knowledge as the "game runner." You will also be able to use the Leaderboard to make it fun to play - and you can choose whether to show students' names or give them anonymous numbers to keep names private.

Instructions for using a Game with your class:

1. On your computer, go to VerifyIt! Game URL: <https://verifyit.buzz>.
2. Click on the "**I'm a Game Runner**" link. It's near the bottom, under the "Play Multiplayer" button.
3. Select the game you want to play: "**U.S. Constitution-1st Amendment - 8 questions**" is recommended for this lesson plan. like "U.S. Constitution-Civics" and click on it. (note the Game Code in the box)
4. Find the "**Start a new game**" button at the bottom of the list and click on it. Note that the next screen shows the questions selected for this Game
5. Follow the instructions listed on this screen to **distribute the Game** to your students - you have two different ways to do this: 1) click on the clipboard icon on the top of the screen to copy the Game number and email or text it to your students, or, if you are conducting class via Zoom, put it in the Chat; or 2) give the students [this URL](#) with the game code and they can enter the game themselves.
6. Students will enter their "handle" (name) and sign into the Game. You will see their names on your screen when they successfully sign in - and you can track their progress!

II. The Tinker Case: Students Taking a Stand

During the United States war with North Vietnam in the 1960s, three Iowa public school students—John Tinker, Mary Beth Tinker, and Chris Eckhardt—decided to express their support for ending the war by wearing black arm-bands to school. The school district found out about the students' plan and passed a no arm-bands rule to stop them, but the students went ahead, knowing they were risking being written up for violating school rules. A few other students asked them why they were wearing the arm-bands, and some of those students did not agree with the anti-war opinion, but nobody got into any fights. The school told John, Mary Beth, and Chris to go home until they agreed to take off the arm-bands, and they were suspended for several weeks.

The students' families thought that it was wrong to punish people for having strong political views, so they went to court. The case went all the way up to the United States Supreme Court. On February 24, 1969, the Supreme Court decided that John, Mary Beth, and Chris were right – they shouldn't have been suspended because all they did was peacefully express their opinions, and their right to express themselves in a non-disruptive way was protected by the First Amendment to the United States Constitution.

Justice Abe Fortas was the author of the decision that the Supreme Court issued. Here is part of what he said:

“It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate. . . . 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.”

HANDOUT: Have the students read the EXCERPT of the majority opinion in *Tinker v. Des Moines*, located in the HANDOUT.

Do you agree with the Supreme Court's decision? Why or why not?

Q: How can what the students in the *Tinker* case be considered “speech” when they did not say anything out loud? What are some other ways people can “speak” without saying anything? *Speech has been held to cover all expressive conduct.*

Other examples of ways you can be “expressive” besides speaking include: painting a picture, putting a sticker on your car, putting a sign in your yard, writing a letter to the newspaper, or making a movie.

Q: The Court says this case is not about the length of skirts or hairstyle. What do you think they meant? Should the style of someone's appearance get less First Amendment protection than handing out leaflets? *It depends on whom you ask.*

The Supreme Court has held that clothing may be protected by the First Amendment if it has a point of view; that is, if it communicates a “particularized,” or specific, message. Clothing or hairstyle trends that come and go might express one's individuality, but it is not a specific message, such as arm-bands protesting a war.

Q: Justice Black disagreed with the outcome of *Tinker* and said that students are sent to “school on the premise that at their age they need to learn, not teach.” Do you think that students have meaningful opinions and views that should be protected by the First Amendment?

Q: John *Tinker's* younger brother, Paul, was also suspended. Paul was only in the second grade. Should all students have the same level of First Amendment protection no matter how young they are? *Courts have said that there is what's called a “sliding scale” when it comes to students' First Amendment rights.*

This means that, on a scale from elementary school to high school, students have the most freedom of speech when they are older and better equipped to exercise their rights. In other words, the younger a student is, the more a school can censor his or her speech. This is because a school's interests in maintaining order and achieving educational goals are greater than the younger student's speech interest.

For example, a first grader may want to throw a tantrum over recess ending. But that student's expression of anger over the end of play-time is clearly less important than the need for her teacher to continue his lessons for the day. On the other hand, if a high school sophomore wants to start a school club for LGBT students and allies, then the school will have a much harder time telling the student she cannot form the group.

Q: Look back at what Justice Fortas said about “hazardous freedom.” What do you think Justice Fortas meant when he wrote in the *Tinker* decision that “our Constitution says we must take this risk?”

Q: School officials may not limit or punish student speech unless they can clearly demonstrate that it will cause a substantial disruption of normal school activities. What do you think would be a “substantial disruption?” In order for a school to stop a student from speaking their mind (otherwise known as censorship), the student's speech has to significantly interfere with the operation of the school.

Some examples of disruptive conduct have included encouraging students to commit pranks or vandalism, taunting other people to incite violence, or wearing gang symbols at schools with gang problems.

Q: Would it make a difference if there had been fist-fights in the hallways over the Vietnam War throughout the week before John, Mary Beth, and Chris showed up in school with their arm-bands? Courts have said that specific evidence that speech is reasonably likely to provoke violence is probably enough to justify censorship even under *Tinker*.

If John, Mary Beth, and Chris showed up to school with anti-war arm-bands the week after violence broke out in the school over that same issue, then it would be reasonably likely that at least some students would respond violently to the arm-bands. Therefore, the school would have the right to censor their speech.

In your opinion, when *should* school administrators limit, or even punish, student speech?

III. Understanding the First Amendment

The text of the First Amendment of our Constitution reads:

“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.”

The Five Freedoms

1. Religion
2. Speech
3. Press
4. Assemble
5. Petition the Government

HANDOUT: Have the students read the descriptions of each of the “Five Freedoms” located on page 3 of the accompanying HANDOUT. When they have finished, discuss the questions below.

Q: “Congress shall make no law.” Does this mean your city council could close down all local newspapers and TV news stations by passing a city ordinance? No.

The Supreme Court has held that state and local governments are under the same limits as Congress. This means that if it is unconstitutional for Congress to limit one of the rights in the First Amendment, then it is unconstitutional for your city council to limit that same right.

Q: If you bring leaflets into Wal-Mart to hand out to customers, protesting a product they sell, can they kick you out of the store? Yes.

The First Amendment only limits what the government can do. A business is typically private property; therefore there is no right to free speech inside Wal-Mart and the store can ban leaflets or even have you kicked out if you violate their rules.

Q: What if you decide to protest the product in the city park, located across the street from the Wal-Mart? Does it matter how or when you convey your message when you are on government property? Yes, the government can reasonably limit how and when you exercise your right to speak.

The Supreme Court has held that the government can always put reasonable limits on the time, place, and method of speaking. This means that the city council can stop you from using loudspeakers in the park at 3:00 AM to broadcast your message or from setting up an information booth that blocks traffic on the street.

HANDOUT: Have the students complete the “First Amendment Quiz” located in their HANDOUT. A copy of the quiz is located on the next page of this Lesson Plan. You may administer the quiz as an individual or group activity. If you choose to complete the quiz as a group, consider splitting the students into two groups and having them compete to answer the most questions correctly. These two groups can then be used for the “Class Debate” ACTIVITY later in the lesson.

ACTIVITY

First Amendment Quiz

Read the questions below and decide which First Amendment right is being described:

1	Jaime does not say the pledge of allegiance with her class because her faith does not approve of the line “one nation under God.”	RELIGION
2	Kelly is an animal lover who does not believe in the sale of fur coats. She stands outside a department store with a sign that says “Love Rabbits — Don’t Wear Them.”	SPEECH
3	Tim, Dave, and Liz decide to meet at a local restaurant to talk about the recent presidential election.	ASSEMBLY
4	Frank is an advocate for peace. He organizes a letter-writing campaign to urge the President to end the war.	PETITION
5	Wendy writes an editorial in her family’s community newspaper about government corruption in her town.	PRESS
6	Ann does not like one of the political candidates running for mayor. She decides to print and distribute a pamphlet describing his voting record.	PRESS / SPEECH
7	Rachel wears a hijab to school as part of her faith.	RELIGION
8	Amber, Adam, and Angie use a room in the public library for a meeting of their “Support Our Troops” club.	ASSEMBLY
9	Candice burns an American flag during a protest.	SPEECH

ACTIVITY

Class Debate

Jamie Madison v. Jackson Community School District

Divide the class in half, labeling one group the “Madison Team” and the other the “Jackson Team.” Read the following set of facts aloud to both teams.

Jamie Madison is a high school student who is in favor of Amendment 5, a proposed state constitutional amendment that would make it legal for doctors to prescribe an illegal narcotic, called Zomac, to terminally ill people for pain relief. To show her support for Amendment 5, Jamie gets some “Vote ‘Yes’ on Amendment 5” campaign buttons and pins them to her book bag and clothing for five straight days.

Several students make negative comments to Jamie when they see the buttons, but there are no incidents until the fifth day, when Jamie and another student, Tim, get into a heated debate while walking out to the parking lot after school. The principal runs out and breaks up the dispute after he sees Tim raise his arm, thinking Tim is about to hit Jamie.

The principal tells Jamie she is suspended from school and she can return when she stops wearing the pins. The school principal reminds Jamie that it is against the school dress code policy to wear pins or buttons to school. The reason for this policy is that the sharp ends of the pins could be used as a weapon.

Next, explain that there are two issues the court in *Jamie Madison v. Jackson Community School District* needs to resolve: (1) whether Jamie’s speech is protected by the First Amendment; and (2) whether Jamie’s speech caused a “substantial disruption of normal school activities.”

The students’ *HANDOUT* includes the following chart of questions to address for each issue and *CASE SUMMARIES* (next page) that they should use in addition to the *Tinker* Case and the First Amendment to support their arguments. Remind the students to designate one member of each team to serve as “Lead Counsel” and present their arguments to the class.

Issue 1	<p>The First Amendment</p> <ul style="list-style-type: none"> • Does the First Amendment apply to this case? • Does it matter if Jamie has worn other buttons to school for months and the principal is just beginning to enforce the school dress code policy? • Is it fair that one person’s angry reaction to the buttons means that Jamie cannot deliver her message as she wants to? • Would it make a difference if Jamie wore buttons that encouraged people to drink Pepsi instead of a political cause? • What if the policy banned not only metal buttons but also decals and stickers?
Issue 2	<p>Substantial Disruption of Normal School Activities</p> <ul style="list-style-type: none"> • Does an argument in the parking lot constitute a “substantial disruption of normal school activities?” • Does it matter that Tim did not actually strike Jamie? Should the principal be required to wait until the first punch is thrown? • Would the situation be different if Jamie and Tim got in a debate in the hallway during school hours?

CASE SUMMARIES

Chandler v. McMinnville School District (1992)

During a teachers' strike at a public high school, several students wear buttons to school that criticize substitutes who are replacing the striking teachers as "scabs." School officials say the insults are offensive to the substitute teachers and they punish the students who refuse to remove the buttons.

The U.S. Court of Appeals for the Ninth Circuit rules that the *Tinker* standard applies to the buttons, and the buttons could not be banned unless they substantially disrupted school. The fact that some substitute teachers found the words on the button offensive was not enough to cause a substantial disruption.

Morse v. Frederick (2007)

A high school student stands across the street from campus during a school-organized outing to watch the Olympic Torch relay pass through town. When the torch goes by, he holds up a joke sign, "Bong Hits 4 Jesus," and is suspended for his behavior.

The Supreme Court rules that the school did not violate the student's First Amendment rights. The student's sign promoted illegal drug use, and speech promoting illegal drug use is an exception to *Tinker*. A school can discipline such speech at school or at a school-sanctioned event even without showing it substantially disrupted school.

Jacobs v. Clark County School District (2008)

High school students challenge a dress code that limits students to wearing khaki-colored slacks and solid-colored tops, with no logos except the school's logo. They argue that the restrictions interfere with their First Amendment right to free expression.

The Ninth Circuit U.S. Court of Appeals rules that the dress code is not subject to the *Tinker* standard because the school in *Tinker* singled out certain viewpoints. The Clark County school regulation is constitutional because it is not aimed at any particular student's message, but instead applies to everyone, regardless of what message they want to deliver.

Hardwick ex rel. Hardwick v. Heyward (2013)

Throughout middle and high school, school officials repeatedly refuse to allow a student to wear t-shirts featuring the Confederate flag by forcing the student to change shirts, removing her from class, and even giving her in-school suspension. The student's parents sue the school district on her behalf, claiming the officials violated her right to free speech by punishing her for wearing the shirts.

The U.S. Court of appeals for the Fourth Circuit rule that schools can consider the causes of past disruptions to determine how to prevent them from recurring. Because of the school's history of racial segregation and flag-related violence, school officials were entitled to limit the student's speech in order to "ensure order, protect the rights of other students, and promote the school's education."