

Name: _____

Analyzing the First Five Amendments

Amendment 1 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.	In your own words
Amendment 2 A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.	In your own words
Amendment 3 No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.	In your own words
Amendment 4 The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.	In your own words
Amendment 5 No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.	In your own words

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Analyzing Amendments Six to Ten

Amendment 6 In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed; which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.	In your own words
Amendment 7 In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.	In your own words
Amendment 8 Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.	In your own words
Amendment 9 The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.	In your own words
Amendment 10 The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.	In your own words

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?



GRADES 9-12

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."



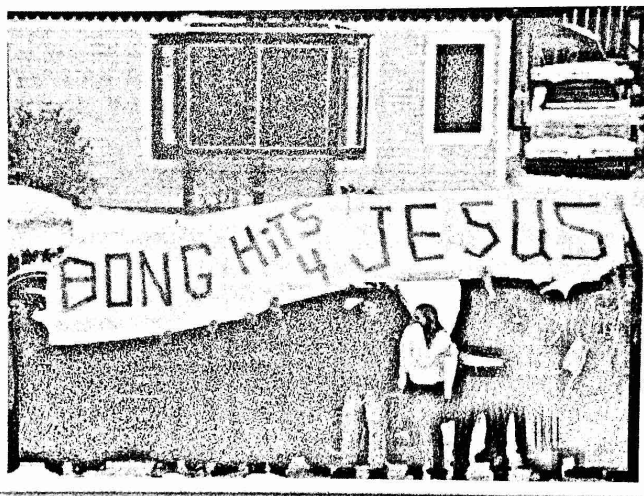
Discussion questions for *Tinker*

- 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