



CITIZEN ADVOCACY CENTER

First Amendment: Understanding the Five Freedoms

LESSON PLAN AND ACTIVITIES

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Understanding the Five Freedoms of the First Amendment Lesson Plan and Activities

Grade Level: 9, 10, 11, 12

Subject(s):

- Social Studies: Government; and
- Language Arts: Reading, Writing.

Duration: 6 class sessions

Description: This lesson provides an understanding of the content and meaning of the five freedoms of the First Amendment to the U.S. Constitution through the use of case studies. Students will learn their First Amendment rights as residents of the United States, as well as the reality that these rights can be limited and controversial.

Goals:

Illinois Learning Standards

A. Social Science: 14A, 14F; and

B. English/Language Arts: 1A, 3B, 3C; 4A, 4B.

Objectives:

1. Understand the provisions of the First Amendment to the Constitution.
2. Explain the different provisions of the First Amendment to the Constitution.
3. Distinguish between governmental and private restrictions on freedom of speech.
4. Distinguish between constitutional and societal limits on freedom of speech.
5. Evaluate the usefulness of the First Amendment in real life through evaluating case studies.
6. Analyze several constitutional law cases regarding the First Amendment.

Materials:

1. Notebook paper/pen
2. Blank overhead or chalkboard
3. Case studies (one per student)

Instruction and Activities

This unit covers the five rights involved in the First Amendment (freedom from establishment of religion, free exercise of religion, freedoms of speech and the press, freedom of association, and right to petition), explains the rights, and includes activities and cases studies for students.

Wording of the First Amendment to the United States Constitution:

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.

FREEDOM OF SPEECH

The freedom of speech is the cornerstone of a democracy – it allows the unfettered exchange of ideas that is necessary for decision-making, and it protects the minority viewpoint from domination by the majority viewpoint.

What is speech?

Speech encompasses verbal speech as well as other forms of expression (books and other writings, artwork, pictures, sculpture, music, and even the FAILURE to speak).

Examples of limitations on different types of speech and limitations on that speech:

- The paintings and photographs of an artist who incorporates nudity and sex in his artwork is considered obscene and banned by a city;
- The music of a certain classical composer is not played in Israel because the composer was anti-Semitic;
- A student is disciplined for not standing up and saying the Pledge of Allegiance in class; and
- The Harry Potter books are banned in several schools and communities for “promoting witchcraft.”

What speech is protected?

Think of speech as a bundle of sticks. Each stick represents a different type of speech: love words, work words, power words, and political speech. Most of that bundle (speech) is protected by the First Amendment, giving people the right to say just about anything. However, there are four sticks (types of speech) that are not protected, and need to be removed from the bundle. Instead of determining what speech in the big bundle is protected, it is easier to determine what is not protected/what sticks have been removed from the big bundle.

What speech is NOT protected?

- Obscene language
- Fighting words
- Defamatory statements

Obscene Language

Three elements make speech “obscene”

- An average person, going by local community standards would find that the speech appeals to a morbid or shameful interest in sex. (*This means that what the community of Springfield, Illinois believes to be a morbid or shameful interest in sex might be different than the community standards in New York City*);
- The speech shows or describes sexual conduct in a patently offensive manner. (*This means that anyone would consider the speech offensive – no matter if the speech took place in Springfield, Illinois or New York City*); **and**
- The speech lacks serious literary, artistic, political, or scientific value. (*This means that a context of the offending speech must be considered. For example, sexual intercourse depicted in National Geographic is considered different than that in Penthouse*).

Fighting Words

Three elements make speech “fighting words”

- The words are of such little social value that any value they might have is overshadowed by the government’s interest in prohibiting them (*a straight balancing test – which is more important, the value of the speech or the reason that the government wants to prohibit the speech?*);
- The very utterance inflicts injury or tends to incite an immediate breach of the peace (*yelling “Fire” in a crowded theater or yelling a racial epithet at a group of minorities*).
- The statement must be made face-to-face and directed at an individual or small group.

Defamation

- Defamation is a statement that is both factually wrong and injures another person’s reputation or good name (*a lie that hurts someone’s reputation*).
- A statement is made about a **private person or entity**, (this is an average citizen) and the injured person says the statement is defamatory:
 - The private person must prove that the statement was made carelessly or negligently.
- A statement made about a **public official or person in the public eye**, and the public person says that the statement is defamatory:
 - The speaker is only liable if the public official shows that the statement was made with malice (the speaker either knew the statement was false or did not care if the statement was true or false).
- What about comments made by either the public official or a government official in legislative or judicial proceedings (*i.e. on the floor of the Senate*)? The public official or government official CANNOT be sued for making a defamatory statement. BUT ! Comments made either before or after the legislative or judicial proceeding may not be privileged.

How can a person protect him/herself when talking in public or making a public statement?

- If speaker has a valid reason to believe that the statement is true, it is not defamation.

- TRUTH is always a defense to a defamation charge.

What regulations can the government place on protected speech?

We just discussed the four sticks that are outside of the bundle of protected speech, and are considered unprotected speech. Remember the other bundle of sticks/speech that we have the right to say? Even though the speech in the bundle of sticks is protected, the government still has a right to regulate that speech as to **time, place, and manner**.

- **Time:** A public body can limit how long a person speaks, that a music concert cannot go until 2 a.m., or how long people can gather for a parade.
- **Place:** A public body can limit where people lawfully gather. Picketing can be limited to the sidewalk, and not to the street as to interfere with traffic, entrance to buildings cannot be blocked, etc.
- **Manner:** Government can prohibit posting of signs or advertisements on public property to prevent visual pollution, prohibit the use of a bullhorn late at night, etc.

What types of time, place, and manner regulations are acceptable?

- The regulation **must further an important government interest; and**
- That government interest cannot be to limit free expression; **and**
- The regulation **does not burden speech unreasonably** more than is necessary to further the government interest (*ex: the regulation cannot eliminate ALL speech in a public park when a regulation against using a bullhorn will do*).
- Regulation **must be content neutral** – speech cannot be restricted based on **what** is said or based on the content or the viewpoint expressed (e.g. the government cannot allow everyone to have protest/parade permits except the KKK);
- Even if the time, place, and manner restriction is neutral on its face, it can still be struck down if it results in discrimination against a particular group. A governmental authority cannot arbitrarily decide who is governed by the regulation and who is not (e.g. again, town can require a parade permit, but cannot arbitrarily decide who gets a permit and who does not based on undefined criteria. Another example: any religious group who wants to can put up a holiday display at the courthouse EXCEPT for displays involving candles or depictions of fire – this regulation looks neutral, but will clearly lead to discrimination against Jewish menorahs).

Even though the government has the right to limit speech with restrictions on time, place, and manner, it cannot do so haphazardly.

When can the government regulate the content of protected speech – meaning even if we say things that are perfectly within our bundle of sticks, when can the government actually limit what is said with restrictions on time, place, and manner?

Government actions to prohibit speech are only valid if:

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- the action furthers a compelling state interest (defined below) unrelated to the suppression of expression; **and**
- the action must be narrowly tailored to further that interest (*the regulation cannot be too broad to encompass too much speech*).

Compelling State Interest: A clear and present danger of a serious evil that rises far above public inconvenience, annoyance or unrest. *A compelling state interest means the immediate danger of a serious evil that would result in more than just something annoying or slightly inconvenient.*

Example: A person says something intended to incite an audience to imminent violence, **and** imminent violence is likely to result. (*A speech at a volatile picket line where the speaker tells the strikers to “take over” the trucks and cars entering the plant, and the strikers violently jump on entering cars and trucks injuring the drivers.*) The government can limit speeches that incite the audience to riot. This type of speech is something that is more serious than a mere inconvenience because rioting by nature can be violent harming both people and material possessions. However, the government must narrowly tailor the speech restriction. It cannot prohibit ALL speeches to union members, only speeches inciting riots.

First Amendment Free Speech Activity:

- Read articles on and debate use of school uniforms (See Case Study #1)
 - Is what you wear a form of speech?
 - Can the school regulate what you wear?
 - Why would the school district be interested in what you wear to school?
 - How far can a public school go to regulate clothing (i.e. dress code v. uniforms)
- Have different students take different views on each issue.
- Follow the school board or city council meetings for a month and ask students to make a public comment at the meetings stating an opinion.

FREEDOM OF THE PRESS

- Allows differing viewpoints to be heard;
- Protects public’s “watchdog” that monitors government activities;
- Discourages government from operating in secrecy;
- Related issues:
 - Individual privacy
 - Libel
 - “Fighting words”
 - Product Advertising
 - Obscenity
 - Endangering national security
 - Rights of the press vs. rights of the accused to a fair trial

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- School Journalism

First Amendment Freedom of the Press Activity:

- Read articles and debate issue of administrator censoring of school newspaper [See Case Study #2 and the Student Press Law Coalition website: www.splc.org].
 - What sections of the 1st Amendment are affected in regulations of school newspapers? (*Freedom of Speech, Freedom of Press*)
 - When would it be appropriate for a school administrator to censor a school newspaper?
 - When would it be inappropriate for a school administrator to censor a school newspaper?
 - Is there a difference between school newspapers and underground/independent newspapers?

FREEDOM OF RELIGION

The Freedom of Religion encompasses two clauses:

Establishment Clause: “Congress shall make no law respecting an establishment of religion.”

- This doctrine is the basis of separation between church and state

Free Exercise Clause: “Congress shall make no law . . . prohibiting the free exercise thereof . . .”

- Protects an individual’s right to believe (or not to believe) as he/she wishes.
- Particularly protects the rights of religious minorities to practice a different religion from the majority.

History:

- During American Revolution, 9 of the 13 colonies had state religions (Anglican, Dutch Reformed, and Congregationalist).
- Rhode Island, Pennsylvania, Delaware, and New Jersey did not have established religions.
- Massachusetts de-established its official religion separating church and state in 1833.
- The First Amendment to the Constitution applied to a national establishment, not a state establishment of religion (the Fourteenth Amendment to the Constitution applied the First Amendment and other rights guaranteed by the Constitution to the States).
- Effect of established religion in those states were:
 - legal restrictions on who could live where, who could vote, run for office, and be on juries
 - some people were not permitted to practice their religions at all
 - people of differing faiths were driven out, punished, and/or killed for not adopting the official state religion

Lemon v. Kurtzman – a US Supreme Court case that created a test to determine what laws or government actions relating to religion are allowable under the Establishment Clause.

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Criteria/the *Lemon* test:

1. The law or action must have a legitimate non-religious purpose.
2. The primary effects of the law or action must not advance or inhibit religion (*cannot promote a religion, and cannot limit other individuals' practice of that religion*).
3. The law or action must not result in "excessive governmental entanglement" with religion (*the government cannot be too involved in religion*).

First Amendment Freedom of Religion Activity:

1. Distribute facts of *Lynch v. Donnelly* (1984), *Board of Trustees of the Village of Scarsdale v. McCreary* (1985), and/or *County of Allegheny, Chaban, and City of Pittsburgh v. American Civil Liberties Union* (1989). (See Case Study #3) Discuss how students would rule based on *Lemon* test. Does the Court agree?
2. Research countries with established religions. How does the established religion influence the following factors?
 - Who is allowed to vote or run for public office?
 - What is taught in public schools? What is not taught?
 - What are the laws about getting married? Who, When, Where?
 - What are the nation's immigration laws – who may/may not come in?
 - What forms of entertainment are permitted? (e.g. movies, dances, concerts, television?) Which are illegal?
 - What kinds of speech are protected?
 - What magazines and newspapers are printed?
 - Who is allowed to go to college?
 - What are the best-paying jobs in this society?
 - What are the qualifications to be a lawyer or police officer?
 - What are the most common types of crimes?

FREEDOM OF ASSEMBLY

The Freedom of Assembly is:

- Bound with the Freedom of Speech;
- Guarantees the right to form or join any association or organization;
- Guarantees the right to gather together to listen to a speaker or to the right to speak to an audience; and
- Bound with Freedom to Petition. The right to band together for a common cause (A group is generally more forceful than one individual).

RIGHT TO PETITION

- An individual citizen has the right to contact the government and courts about any number of problems or issues without fear of reprisal;
- Ways for citizens to petition include:
 - Traditional petition to which names are signed, and submitted to government officials
 - Lobbying

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- Conducting various types of mass demonstrations
- Civil suits in courts

First Amendment Activity:

In order to more effectively fight the War on Terrorism, the President has decided that the general public does not need all of the five rights in the First Amendment. Discuss how and why each right is important. Whittle the First Amendment down to three rights. Decide which two rights within the First Amendment that the American public can do without.

CASE STUDIES

Case Study #1

In response to complaints by parents and teachers, Hometown High School institutes a dress code banning students from wearing tank tops, belly shirts, and short-shorts.

- What right is invoked here? Why is it important? Why should it be protected?
- What are the opposing viewpoints/social values?
- How would you decide this case?
- Would your opinion change if wearing crosses or Stars of David were banned as “gang symbols?”
- Would your opinion change if a full uniform was instituted?
- In order to preserve rights reflected in this case, do you have to give up something else?
- How could this affect you?
- How have the Courts ruled? Do you agree with the Courts?

Case Study #1 Analysis

Right Invoked: Free Expression

In Illinois, the courts have deferred to schools to create and enforce dress codes for students – as long as the school code does not limit political or religious expression by students. In *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969), a school board suspended two students for wearing black armbands to protest the war. The Court held that the school could not limit the free expression of the students unless the expression in question would cause a material and substantial disruption of school activities or an invasion of the rights of others.

Case Study #2

A high school principal reads the copy for the upcoming issue of the school-sponsored newspaper, and decides that the articles regarding teen pregnancy in the school and the effects of divorce on children cannot be published. The articles must be removed before he will permit the newspaper to go to print.

- What right is invoked here? Why is it important? Why should it be protected?

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- What are the opposing viewpoints/social values?
- How would you decide this case?
- Would your opinion change if the newspaper was an “underground newspaper” written, edited, and published off school premises by students without the assistance or support of the school?
- If it was an “underground” paper, could students distribute it at school?
- In order to preserve rights reflected in this case, do you have to give up something else?
- How could this affect you?
- Do you know what the courts have said, and do you agree with the Courts?

Case Study #2 Analysis

Rights invoked: Freedom of Speech, Freedom of the Press

Hazelwood School District v. Kuhlmeier, 108 S.Ct. 562 (1988).

In the Hazelwood case, a school principal refused to permit the publication of a school-sponsored newspaper that contained articles regarding teen pregnancy in the school, and the effects of divorce on children. The Court held that the school had a right to limit a student’s free speech rights in school-sponsored activities when the decision is “reasonably related to legitimate pedagogical concerns.” The school-sponsored newspaper was found to not be a “public forum” for students to freely express themselves.

Underground newspapers that are not in any way sponsored by the school are a different matter. School-sponsored newspapers are written in a school setting, monitored/edited by a teacher, and published/paid for by the school, but an underground newspaper is written, edited, published and paid for in full by the students independently of the school. The school has nothing to do with the production of an underground newspaper.

In *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969), a school board suspended two students for wearing black armbands at school to protest the war. The Court held that the school could not limit the free expression of the students unless the expression in question would cause a material and substantial disruption of school activities or an invasion of the rights of others. The courts have applied Tinker to underground newspaper cases because underground newspapers are a function of student expression outside of the school. Therefore, the school would have to demonstrate a material and substantial disruption of school activities or an invasion of the rights of others in order to be able to censor the underground paper.

As to the distribution of an underground newspaper at school, remember the bundle of sticks. The newspaper/speech is part of the big protected bundle. However, the school/government still has the right to regulate the speech in a content-neutral manner regarding time, place, and manner. The school could not prohibit distribution of the newspaper in its entirety, or on the basis of the content of the paper. The school could prohibit distribution in class where it would be disruptive to learning.

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Case Study #3

After recent terrorist attacks, the Illinois legislature passes a statute requiring the posting of the Ten Commandments, purchased with private contributions, on the wall of each classroom. At the base of each set of Commandments, a sentence reads, “The secular application of the Ten Commandments is clearly seen in its adoption as the fundamental legal code of Western Civilization and the Common Law of the United States.” A local businessman offers to donate enough copies of the Commandments to go in every school in Illinois “to promote patriotism, moral values, and to discourage violence as dictated in the Ten Commandments.”

- What right is invoked here? Why is it important? Why should it be protected?
- What are the opposing viewpoints/social values?
- How would you decide this case?
- Would your opinion change if the Commandments were posted outside of the school, on school property, by the school flag pole?
- Would your opinion change if teaching the Ten Commandments were part of a “World Religions” class curriculum?
- In order to preserve rights reflected in this case, do you have to give up something else?
- How could this affect you?
- Do you know what the courts have said, and do you agree with the Courts?

Case Study #3 Analysis

Rights invoked: Free Exercise, Prohibition on the Establishment of Religion

Stone v. Graham, 449 US 39 (1980).

The United States Supreme Court held that the posting of the Ten Commandments in public classrooms is a violation of the Establishment and Free Exercise Clauses of the First Amendment. The Court looked to the Lemon test to determine whether a statute allowing the posting of the Ten Commandments in a public school classroom is permissible under the Establishment Clause of the Constitution:

Lemon Test:

1. The statute must have a secular legislative purpose;
2. Its principle or primary effect must be one that neither advances nor inhibits religion;
3. It must not foster an excessive government entanglement with religion.

If a statute violates any of these principals, it must be struck down.

Court Holding: The Court held that the posting of the Ten Commandments is plainly religious in nature, no matter the “secular” purpose recited by the legislature. The Ten Commandments are sacred text in the Jewish and Christian faiths. They do not confine

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themselves to secular matters (i.e. honoring one's parents, murder, adultery, stealing, false witness, and covetousness), but they also concern purely religious duties of believers (worshipping the Lord God alone, avoiding idolatry, not using the Lord's name in vain, and observing the Sabbath Day). The Supreme Court stated that the posting of the Commandments serves no educational function, and is not part of a school curriculum in an appropriate study of history, civilization, ethics, comparative religion, or the like. The clear state objective of inducing children to read, meditate upon, venerate and obey the Commandments is not a permissible State objective under the Establishment Clause.

It is irrelevant that the posted copies are funded by voluntary, private contributions. The mere posting of the copies under the auspices of the legislature provides the "official support of the State . . . Government" that the Establishment Clause prohibits.

How does the case cited in our case study violate the Free Exercise Clause?