

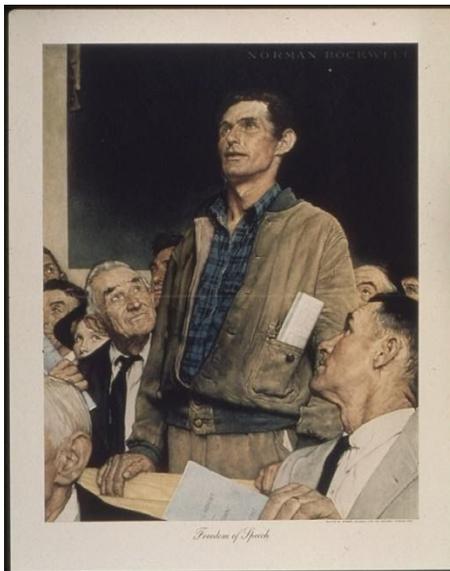
Justice & Punishment
Lesson 13: Be a Supreme Court Justice – Free Speech & Press
Student Worksheet

[Click here for the lesson overview video](#)

Activate Your Knowledge:

Which of these scenarios (if any) do you think are protected under the First Amendment which grants freedom of speech?

- A person burns an American flag in protest of government policies.
- A person writes and publishes an essay about the superiority of his or her race.
- A public school student criticizes the principal and teachers on social media.



"Freedom of Speech" is a painting by Norman Rockwell. It was created in 1943 to depict one of the Four Freedoms outlined by President Roosevelt during World War II. *Source: US National Archives and Records Administration*

Rockwell's famous painting was recreated in 2018 to reflect the diversity of Americans who cherish freedom of speech.



In some countries, you can be jailed for saying something against the government. This can't happen in America. You can thank the First Amendment for that. It's foundational to American democracy, identity and culture.

Read the entire First Amendment closely:

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.

Passed by Congress September 25, 1789. Ratified December 15, 1791.

If we isolate the words that relate to free speech, we are left with:

Congress shall make no law ... abridging the freedom of speech, or of the press...

These 14 words mean the government cannot limit the freedom to talk, write, print, post online, or express yourself in other ways like wearing certain clothing or displaying flags. Though this right is central to Americans' identity, it isn't always easy to determine what speech is protected and what speech is not. Sometimes speech can be dangerous and offensive. Other times, speech can be used to spread lies that harm others. Are those types of speech protected?

Question 1

Which word could replace "abridging" **without** changing the meaning of the First Amendment? (highlight the correct choice)

- Defining
- Expanding
- Inhibiting
- Publishing

Today, you will take on the job of Supreme Court Justice as you respond to questions that simulate¹ Supreme Court cases. First, you will interpret the 14 words related to free speech and make decisions on real examples of historical Supreme Court cases. After you share your opinion, the article will explain what the Supreme Court decided historically.



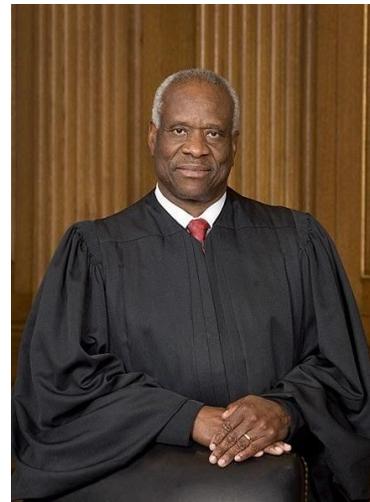
As you take on the challenge of interpreting the First Amendment, remember that even Supreme Court Justices disagree on how to vote. Interpretation of this amendment has also changed over time and previous decisions from the Supreme Court have been overturned. There are multiple ways to interpret these words, so even if your opinion does not match what the Supreme Court decided, it doesn't mean you're *wrong*.

Now, time to pick up that gavel and don² your black robes.

Hey, you can't say that!

Words are really powerful. They can be used to lift people up, tear people down, and even to start a war. These two Supreme Court cases will make you consider there is some speech that should be illegal.

Congress shall make no law ... abridging the freedom of speech, or of the press...



if

Supreme Court Justice Clarence Thomas wears the traditional black robes of a judge

□ Read the 2 cases below and select the answer that you most strongly agree with.

Case #1 Texas v. Johnson (1984)

A man burned an American flag in front of his city hall. He was arrested, charged with a crime, and fined. Were his first Amendment Rights violated? (highlight your opinion)

- Yes, Americans are free to express themselves even if it includes burning the national flag.
- No, the First Amendment does not protect flag burning.

¹ Simulate - imitate

² Don – put on

Case #2 Brandenburg v. Ohio (1969)

A leader of the Klu Klux Klan (KKK) made a speech in which he called for "revengeance" against Jews and African Americans. He was arrested, fined and jailed by the state of Ohio.

Did the state of Ohio violate the KKK leader's right to free speech? (highlight your opinion)

- Yes, the First Amendment protects all Americans' free speech, even hateful or violent speech.
- No, the First Amendment does not protect speech that advocates for violence, especially race-based violence.

The Verdicts³

In 1919, Justices Oliver Wendell Holmes and Louis D. Brandeis helped define free speech by establishing the 'clear and present danger' test. They said speech could only be punished if it presented "a clear and present danger" of imminent harm. This is largely still used today to determine what speech is protected and what speech is not.

In both cases that you voted on, the Supreme Court found that the speech did not present a 'clear and present danger,' so their free speech rights had been violated.

In *Texas v. Johnson*, the court voted 5-to-4 that the man had the right to burn the American flag. In the court's decision, they explained, "If there is a bedrock principle underlying the First Amendment, it is that the Government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable." Similarly, the Supreme Court decided the KKK leader had the right to make racist remarks, use hate speech, and even generally promote violence.

In other cases, the court has found that planning to overthrow the government, directly calling for violence, and threatening violence are **not** protected by the First Amendment. These instances show 'clear and present danger.'

³ Verdict – Ruling or decision

Liar, liar, pants on fire

Is it ever against the law to lie? Consider the First Amendment carefully and weigh in on another Supreme Court case.

Congress shall make no law ... abridging the freedom of speech, or of the press...

□ Read the case below and select the answer that you most strongly agree with.

New York Times vs. Sullivan (1964)

A man contacts a newspaper and says there are inaccurate statements in an advertisement that make him look bad. The newspaper does not take the advertisement down.

Does the newspaper have the right to keep the advertisement even though it contains lies? (highlight your opinion)

- Yes, the First Amendment protects the right to free speech, including lying.
- No, the newspaper should be punished for printing lies.

The Verdict

Generally speaking, the First Amendment protects Americans' constitutional right to lie. There are a few exceptions to this. For example, it is against the law to lie when you are under oath in court.

In the case of the newspaper that printed lies and refused to take them down, it's a little trickier. In *New York Times v. Sullivan*, the Supreme Court protected the New York Times, saying that the false information was not printed intentionally. Since the New York Times did not ruin Sullivan's reputation with lies on purpose, it was protected speech.

The case didn't work out too well for Sullivan, but it did establish protections for others whose reputations are ruined by lies. His case helped the Supreme Court establish a standard for when lying in the press is illegal. Justice Brennan used the term "actual malice" to describe the rule. It meant that the person filing the lawsuit has to show that

the journalist(s) knowingly published lies or recklessly published information without fact-checking.

So, does this mean I can say anything I want in math class?

Not so fast there. Students and teachers, especially those at public school, are treated differently under the law. Consider the following court cases. How do you think the First Amendment applies to students?

Congress shall make no law ... abridging the freedom of speech, or of the press...

□ Read the 2 cases below and select the answer that you most strongly agree with

Case #1 *Tinker v. Des Moines Independent Community School District* (1969)

Students planned to wear black arm bands to school to protest the Vietnam War. School officials learned of this and banned the armbands.

Did the school violate the students' rights? (highlight your opinion)

- Yes, school officials cannot restrict students' free expression.
- No, school officials can restrict students' free expression around controversial topics.

Case #2 *Hazelwood School District, et al. v. Kuhlmeier, et al* (1988)

School officials censored a student-run newspaper by removing two articles (one on teen pregnancy another on abortion). The officials said the articles were inappropriate for school.

Did the school officials violate the students' right to freedom of speech and press? (highlight your opinion)

- Yes, school officials cannot restrict what students say, especially in student newspapers.
- No, school officials are allowed to censor student writing to ensure it is school-appropriate.

It's important to remember that students and teachers at public schools are participating in a government institution. This limits their rights. For example, public school teachers do not have the right to tell students to do something dangerous. Similarly, the Court found that school officials can censor student newspapers and other forms of student speech, especially if it is explicit or vulgar. The student reporters who had their stories censored lost their court case.

However, in the case of the students who wore black armbands to protest the Vietnam War, the Supreme Court explained that students did not entirely lose their right to free speech when they walk on campus. In *Tinker v. Des Moines Independent Community School District*, the Court established that school officials must be able to prove that the conduct in question would "materially and substantially interfere" with the operation of the school. They found that the students' right to free expression had been violated when they were sent home for wearing black armbands.



In the image above, Mary Beth Tinker (now an adult) holds her original detention slip and a replica of the black armband she wore in protest.

Question 2

The First Amendment says that the government cannot limit free speech, but there are some exceptions.

- If the speech presents a "clear and present danger."
- If the speech shows "actual malice" and intentionally publishes false information.
- If...

According to the article, which option completes the list? (highlight the best choice)

- If the speech contains "lies and falsehoods"
- If the speech spreads "hatred and racist ideas"
- If the speech goes against "American national interest"
- If the speech "materially and substantially interferes" with a public school

Not free from consequence or social control

It's important to remember that although the First Amendment prevents the government from limiting Americans' free speech, speech is often controlled in other ways.

Communities often establish social norms about what is acceptable to say or not to say. For example, lying might not land you in jail, but you might face other social consequences like losing friends or even your job. Similarly, "hate speech" is protected

speech under the First Amendment, even using racial slurs, but that does not mean that type of speech is free from consequence. People lose respect, jobs, friends, and social status when they say hurtful and offensive things.

Companies can also control free speech. They can require employees or customers to speak in a certain way in order to work at the company or use its services. For this reason, the National Football League does not violate the players' First Amendment rights if it requires them to stand during the national anthem during a game. Companies like Facebook and Twitter can also enforce terms of use that restrict users' speech, and can even ban customers from the platform for violations. In both of these cases, companies are restricting individuals' speech, not the government. The First Amendment does not apply in these instances.

The First Amendment protects Americans from the government controlling what people can and cannot say. The responsibility, therefore, lands on individuals, communities and companies for using that free speech responsibly.

Challenges to the First Amendment in Recent Events

Questions regarding First Amendment violations have made the news recently. President Trump is alleging that Twitter violated his constitutional right to free speech when they tagged a tweet about mail in ballots prompting readers to fact check what he said. On Friday, Twitter went a step further with one of his tweets about police violence protests in Minneapolis by including a warning label stating the tweet glorified violence and essentially blocking readers from immediately viewing it. This is the first time that Twitter has taken such measures on one of President Trump's tweets, but not the first time they have done this on other tweets that may potentially violate their policies. In response to Twitter's actions, Trump issued an Executive Order that could potentially limit the protection social media sites have under a law that allows technology companies to set their own rules for their platforms. In return, a lawsuit was filed against President Trump claiming that his Executive Order was a violation of the First Amendment because he was using presidential authority to limit a private platform's right to free speech.

Question 3

Do you think Twitter violated the First Amendment by flagging his tweets? Why or why not?

Do you think President Trump violated Twitter's First Amendment rights with his Executive Order? Why or Why not?

Question 4

For this question you will write an opinion essay based on one of the Supreme Court cases previewed above. Write your essay in the space provided below. Your essay should:

- Present and develop a central idea
- Provide sound and logical reasoning
- Provide evidence from the [First Amendment](#)
- Use proper grammar, spelling and punctuation.

Based on the verdict of one of the Supreme Court cases examined today ([Texas v Johnson \(1984\)](#), [Brandenburg v. Ohio \(1969\)](#), [New York Times v. Sullivan \(1964\)](#), [Tinker v. Des Moines Independent Community School District \(1969\)](#), [Hazelwood School District, et al. v. Kuhlmeier, et el \(1988\)](#)) write an essay explaining whether you agree or disagree with the Supreme Court decision*. Be sure to explain by using logical reasoning and referring to the text of the First Amendment.

**Remember the Supreme Court decision can be found in the verdict section under each case.*

Write your response below ([use this rubric](#) to guide your response):