

The 1st Amendment and Student Speech

We created the United States, in the name of liberty
With rights inalienable to guarantee we'd be free
At that point in history, for the very first time
Individual rights came to the forefront of the governments mind (1)

You can say what you want and pray what you want, relay what you want
You can write what you want, unite when you want and feel what you want
These rights are not always clear, (2) but hey what a novel idea

The First Amendment gives us freedom of thought, speech, and peaceful
assembly (3)
But just like other laws, these have evolved throughout our history
You can call someone names or criticize the government
But as we will learn, you may not be protected by the First Amendment.

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In the case of *Tinker v. Des Moines*, the Court ruled against student speech (4).
Student's words cannot disrupt the teacher's right to teach.
Hazelwood v. Kuhlmeier a more recent case heard by the Court (5)
Schools can uphold their curricular mission and students must give their support.

You can make noise in class, and say it's your constitutional right,
But the principal can remove you and can call your parents that night

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Notes

(1) **Individual Rights:** Although England had taken steps toward the recognition of individual liberties before the U.S. Constitution (1787), the Bill of Rights, which are the first ten amendments of the Constitution, was the first systematic guarantee of personal liberties in the modern world. The Bill of Rights was born out of the disagreements between Federalists (pro-Constitution) and Anti-Federalists (anti-Constitution) during the Constitutional Convention and ratification period that followed. Some Anti-Federalists agreed to support the Constitution only if there were specific protections of individual liberties. The Bill of Rights was inserted as a compromise to get key Anti-Federalists to vote in favor of the Constitution.

(2) **Unclear Rights:** Although our rights appear to be clear as they are spelled out in the Bill of Rights, in practice, there is often ambiguity. There are “gray areas” where the exact meaning of our rights is contested. For example, just how much free speech do we have? Is “hate speech” protected? Sometimes rights conflict and then it becomes necessary to determine which right is more important in a particular case. It is the job of the U.S. court system to resolve those conflicts. The Supreme Court decides the toughest and the most important cases.

(3) **1st Amendment:** Freedom of speech is the right to express oneself in public. There have been numerous Supreme Court rulings on freedom of speech and its limits. Many hinge on the 1919 decision in *Schenck v. the United States*, where the Court stated that individuals have the right to freedom of speech unless that speech is a “clear and present danger” to society. In its decision, the Court decision presented an analogy: “shouting ‘Fire!’ in a crowded theater when there is no fire. This is clearly an expression of speech, but in a crowded theater it may lead to panic and injury. According to the Court, the First Amendment does not protect such speech because it is an immediate danger to others.

Freedom of speech also means that a citizen cannot be forced by the government to say something against their will. Therefore, students do not have to recite the pledge of allegiance, if they choose not to do so.

The language of the First Amendment also guarantees freedom of the press. Although the word “press” suggests print media, the 18th Century framers of the Constitution could not have envisioned current forms of electronic media such as radio, television, and the internet. Accordingly, the “free press” clause in the First Amendment has been loosely interpreted to include all forms of mass media communication.

Freedom of assembly, also protected by the First Amendment, refers to the right to gather as a group and to demonstrate in public, as long as the gathering is peaceful.

(4) **Student Speech:** Students do not have the same First Amendment rights as adult members of society.

The Supreme Court's landmark *Tinker v. Des Moines* decision in 1969 did not grant students the same speech rights as adults, but was a relatively permissive ruling compared to how student rights would change in the years to follow. In 1969, during a period of national demonstrations against the Vietnam War, a 15 year old student named John F. Tinker wore a black armband in school as an act of protest against the War. School authorities told him to take it off. He refused, leading to the lawsuit. The Supreme Court ruled that Tinker's armband was protected "symbolic speech" and he should not have been forced to remove it. While students "did not leave their Constitutional rights at the schoolhouse gate," the Supreme Court ruled that school authorities could legally restrict student speech when it threatened to "materially and substantially" disrupt classes or the educational climate. The Supreme Court's standard was relatively permissive because most forms of student speech would not rise to the level of being a "material or substantial disruption." The 1988 Hazelwood decision gave students considerably less freedom.

(5) ***Hazelwood v. Kuhlmeier*** (1988): The Hazelwood case involved a school newspaper, which printed information about birth control. The school's crackdown on the newspaper brought the question of student First Amendment rights back to the Supreme Court. In its ruling, the Court narrowed the 1968 Tinker decision, allowing school officials to restrict student speech if they saw it as contrary to the educational mission of the school. Currently school officials can ban student speech by labeling it educationally inappropriate. Because it is much easier to claim that student speech is "inappropriate" (Hazelwood) as opposed to "material and substantial interference" (Tinker), the Hazelwood decision restricted freedom of speech for students. The Hazelwood standard is still in effect today, though the Supreme Court has clarified the ruling in several more recent cases.

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