

ANSWER KEY

Handout C: Speech Scenarios

1. Yes/protected. The group has a political message and is calling people to exercise their right to vote.
2. No/not protected. The man's call for people to throw rocks at the corporate headquarters is a call to imminent lawless action or immediate illegal behavior.
3. Yes/protected. While the group is calling for the overthrow of the government, they are not inciting people to imminent lawless action. Their goal of overthrow is "eventual," not immediate.
4. Yes/protected. While the students may be in violation of the new dress code, both their message and their method of convincing others is peaceful, non-disruptive, and poses no threat to the safety of others.
5. No/not protected. When one of the students called in a bomb threat as a method of drawing attention to their protest, he posed a threat to the safety of others, maliciously putting the assembled students in harm's way.
6. Yes/protected. While his speech may be offensive to others, it is political speech (preferred speech) that does not promote imminent lawless action or put others in harm's way, and does not qualify as obscene.

LESSON 2: HOW HAS SPEECH BEEN BOTH LIMITED AND EXPANDED, AND HOW DOES IT APPLY TO YOU AND YOUR SCHOOL?

Handout A: Background Essay- How Has Speech Been Both Limited and Expanded, and How Does it Apply to You and Your School?

1. The "marketplace of ideas" is the idea that the widest possible range of speech must be allowed and that citizens must be left free to choose a voice among many to believe. This concept broadens liberty in that it expands Americans' ability to express themselves and leaves us "free to think for ourselves."
2. Government can pass laws restricting speech if:
 - the law is clearly defined
 - the law limits only unprotected speech
 - the law limits speech as little as possible
 - the law limits speech for reasons other than its content
3. The First Amendment now protects things such as: materials that have serious literary, artistic, political or scientific value; "indecent" photos on the internet; computer-generated child pornography; campaign spending by individuals and corporations on political causes or candidates; symbolic speech, such as burning a flag or cross, as a method of communicating a message.
4. The Supreme Court has said that students DO have speech rights in school, but that this right may be limited in ways that would not be acceptable in general society. Schools may limit speech that disrupts the educational environment, contains vulgar or offensive language, or promotes illegal drug use.

ANSWER KEY

- Answers will vary. Some students might say that the first Amendment demands that citizens accept a nearly unlimited range of ways people speak, and the things they wish to express. Others might argue that while the First Amendment requires citizens to accept a wide range of speech, it does not necessarily require that we accept ALL messages and methods people may employ to express themselves. Students should not lose sight of the Amendment's initial purpose—protecting political speech to enable self-government.

Handout B: What Do I Believe About the Freedom of Expression?

Answers will vary.

Handout C: Student Code of Conduct

- Students should cite the following cases: *Tinker v. Des Moines* (students have constitutional protections of expression at school, symbolic speech through armbands/clothing, restrictions based on "substantial disruption" only); *Bethel v. Fraser* ("appropriate conduct," restrictions based on "substantial disruption" only); *Morse v. Frederick* ("expression constitutes a health or safety hazard"); *West Virginia v. Barnette* ("the right to refrain from expressing themselves").
- Students should reference the following forms/reasons of expression: speaking, writing, distributing, wearing or displaying symbols (buttons, badges, emblems, armbands); modes of dress or grooming; expressing ethnic, cultural or political values.
- Students should reference the following administrative reasons for regulating expression: involves a legitimate educational concern; has a factual basis for believing the expression is causing,

or will cause, a substantial disruption of school activities; the expression poses a health or safety hazard.

- Answers will vary. Accept all reasoned answers.

Handout D: Schools and the Marketplace of Ideas – 4 Scenarios

Scenario 1:

Context: Scenario one is entirely based on the facts of *Tinker v. Des Moines* (1969). It is anticipated that students will recognize the fact pattern, as described in **Handout A**.

- Students should reference the following instance(s) of speech/expression: the wearing of an armband, as a method of symbolic expression, to communicate a political message. Students may point to specific portions of **Handout B: Student Code of Conduct**. Students are likely to answer that the speech in question is directly protected in both the First Amendment and the Conduct Code.
- Answers will vary. Students will likely state that the speech in question posed no substantial disruption to school activities, and was not likely to, and that the principal was not justified in limiting the expression or the method by which it was expressed.
- See answers to Questions 1 & 2 above for potential summary arguments in support of the student speech. It is highly likely that the Supreme Court would agree with your students' summary arguments supporting the speech. The Supreme Court ruled in favor of the students and their speech in *Tinker v. Des Moines* (1969), stating that "students... [do not] shed their...rights to freedom of speech or expression at the schoolhouse gate," and that schools may not restrict students speech unless there is a factual basis

ANSWER KEY

for believing it will cause a substantial disruption.

Scenario 2:

Context: Scenario two is not directly the subject of a Supreme Court case, but is a real scenario that occurred in a suburban Iowa school in 2002. It is included to pose a more challenging and less obvious application of the principles applied in Court's ruling in *Tinker v. Des Moines* (1969) regarding substantial disruption. No lawsuits resulted from this scenario.

1. Students should reference the following instance(s) of speech/expression: the wearing of a shirt, as a method of symbolic expression, to communicate a cultural or political message. Students may point to specific portions of **Handout B: Student Code of Conduct**. Students are likely to answer that the speech in question is directly protected by the First Amendment, and is SEEMINGLY protected in the Conduct Code, though answers will vary on this point.
2. Answers will vary. Students will likely state that the message of the speakers is clearly protected by the First Amendment, but the method they chose to communicate it could easily pose a substantial disruption to school activities due to the reactions by other students to the graphic image used on the shirt. Some may argue that the principal is justified in limiting the expression due to the method used to communicate the message, while others may argue that the message should not be limited simply because others are bothered by the method.
3. See answers to Questions 1 & 2 above for potential summary arguments in support of the student speech. Answers will vary as to whether the Supreme Court would agree with your students. However, in

light of *Tinker's* "substantial disruption" principle, it is likely that the Court would agree with a restriction of the expression due to the likelihood that the chosen method would prove controversial enough to rise to a disruptive level.

Scenario 3:

Context: Scenario three is entirely based on the facts of *Bethel School District No. 403 v. Fraser* (1986). It is anticipated that students will recognize the fact pattern, as described in **Handout A**.

1. Students should reference the following instance(s) of speech/expression: speaking to communicate a political message regarding an election to student government. Students may point to specific portions of **Handout B: Student Code of Conduct**. Students are likely to answer that the speech in question is directly protected by the First Amendment and MAY be protected in the Conduct Code, though answers will vary on this point.
2. Answers will vary as to whether the principal is justified in limiting the expression. Some students will argue that the innuendo contained in the speech was disruptive to the assembly due to raucous crowd reaction to it; they may also add that some in the crowd exhibited discomfort, clearly finding the speech offensive and/or obscene. Others may argue that the speech did not actually disrupt the assembly, as it continued on as normal after his speech and the student in question was not spoken to and punished by administration until the day after his speech; they may also argue that they do not view the speech as obscene or offensive.
3. Answers will vary. Accept well-reasoned answers. See answers to Questions 1 & 2

ANSWER KEY

above for potential summary arguments in support of the student speech. It is highly unlikely that the Supreme Court would agree with your students' summary arguments in support of the speech. The Supreme Court ruled in favor of the school administration and the restriction of speech in *Bethel School District No. 403 v. Fraser* (1986), stating that the First Amendment did not require school officials to allow "vulgar and offensive" speech. The Supreme Court also drew a line between the type of political speech communicated in *Tinker* (Scenario 1) with other forms of speech that schools are free to prohibit.

Scenario 4:

Context: Scenario four is not directly the subject of a Supreme Court case, but is a real scenario that occurred in an urban California school in 2010. It is included to pose a more challenging and less obvious application of the principles applied in the following Court rulings: *Tinker v. Des Moines* (1969; substantial disruption), *Bethel School District No. 403 v. Fraser* (1986; substantial disruption; offensive speech or conduct), and *Morse v. Frederick* (2007; substantial disruption; student health and safety concerns). NOTE: As of 2014, a Federal District Court has reviewed the students' First Amendment challenge to the actions of the principal. The District Court upheld the principal's restriction of the students' speech, citing legitimate substantial disruption and school safety concerns. It is currently on appeal.

1. Students should reference the following instance(s) of speech/expression: the

wearing of a shirt, as a method of symbolic expression, to communicate a cultural or political message. Students may point to specific portions of **Handout B: Student Code of Conduct**. Students are likely to answer that the speech in question is directly protected by both the First Amendment the Conduct Code.

2. Answers will vary as to whether the principal is justified in limiting the expression. Some students will argue that, given past Cinco de Mayo clashes on campus and the hostility encountered by the students earlier in the morning, the speech is likely to pose a substantial disruption and/or pose a health or safety hazard and the principal is justified in limiting it. Others may argue that the speech is no more disruptive or likely to pose a health/safety hazard than the expression of those celebrating Cinco de Mayo and the principal is not justified; students may also point out that Cinco de Mayo celebrants were allowed by the principal to speak freely while detractors were not.
3. Answers will vary. Accept well-reasoned answers. See answers to Questions 1 & 2 above for potential summary arguments in support of the student speech. It is entirely unknown whether the Supreme Court would agree with your students' summary arguments. However, as noted above, a Federal District Court upheld the principal's restriction of the students' speech, citing legitimate substantial disruption and school safety concerns, and the case is, at time of writing, on appeal.

Handout A: Background Essay – Why