



**FLORIDA JOINT CENTER  
FOR CITIZENSHIP**

**THE U.S. CONSTITUTION AND INDIVIDUAL RIGHTS**

**SS.7.C.2.5 Distinguish how the Constitution safeguards and limits individual rights.**

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## *Lesson Summary*

### ***Essential Question***

How does the U.S. Constitution safeguard and limit individual rights?

### ***NGSSS Benchmark***

SS.7.C.2.5 Distinguish how the Constitution safeguards and limits individual rights.

### ***Florida Standards***

LAFS.68.RH.1.1	LAFS.68.RH.1.2	LAFS.68.RH.2.4	LAFS.68.WHST.1.1
LAFS.68.WHST.1.2	LAFS.68.WHST.4.10	LAFS.7.SL.1.1	LAFS.7.SL.1.2
LAFS.7.SL.1.3	MAFS.K12.MP.3.1		

### ***Overview***

In this lesson, students will understand how the U.S. Constitution limits and safeguards individual rights.

### ***Learning Goals/Benchmark Clarifications***

- Students will recognize that rights are protected, but not unlimited.
- Students will examine rationales for limited individual rights.
- Students will use scenarios to examine the impact of limits on individual rights on social behavior.
- Students will examine the role of the judicial branch of government in protecting individual rights.

### ***Benchmark Content Limits***

- Items will not require students to cite specific court cases or specific amendments to the U.S. Constitution.

### ***Civics EOC Reporting Category***

Reporting Category 2 – Roles, Rights, and Responsibilities of Citizens

### ***Suggested Time Frame***

- Three 45-50 minute class periods

### ***Civics Content Vocabulary***

- appellate process, *ex post facto*, *ex post facto* law, *habeas corpus*, independent judiciary, public interest, precedent, privacy, safeguard, summary judgment, writ

### ***Instructional Strategies***

Guided reading      Defining terms in context      Audio as text      Directed note taking

### ***Materials***

Projector to display documents and websites

Highlighters for all students

Student activity sheets and reading materials:

- The United States Constitution: Limiting and Safeguarding Individual Rights
- *Hazelwood School District v. Kuhlmeier 1987* Reading
- *Tinker v. Des Moines 1968* Reading

### ***Lesson Activities and Daily Schedule***

Please use the chart below to track activity completion.

Day	Task #	Steps in Lesson	Description	Completed? Yes/No
<b>Day One</b>	Task 1	1-4	Hook Activity	
	Task 2	5-12	Limiting and Safeguarding Individual Rights Reading	
	Task 3	13 & 14	Scenario Activity	
<b>Day Two</b>	Task 4	15-18	Summary Judgment Discussion	
	Task 5	19-28	<i>Tinker v. Des Moines</i> Case Study	
	Task 6	29-36	<i>Hazelwood School District v. Kuhlmeier</i> Case Study	
<b>Day Three</b>	Task 7	37-44	<i>Morse v. Frederick</i> Case Study	
	Task 8	45	Checking for Understanding	

### *Suggested Student Activity Sequence*

1. To begin this lesson, place students into pairs and project the First Amendment:  
*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.*
2. Ask students to summarize the meaning of the First Amendment independently.
3. Have students share out.
4. Pose the following questions for discussion: “Do you think the rights outlined in the First Amendment are important? Why? Do you think that they are unlimited or are there situations where rights should be limited?”
5. Pass out the “The United States Constitution: Limiting and Safeguarding Individual Rights” reading and student activity sheet.
6. Explain to students that they will read about how rights are safeguarded or protected and limited.
7. Read the introductory paragraph aloud to the whole class.
8. Instruct students to read the second paragraph and then answer Questions 1 and 2.
9. Project the “Rights Listed in Amendments” handout and review the rights listed in the Bill of Rights and other amendments provided. Teacher note: If this lesson is done after you have taught the lessons for SS.7.C.2.4 and SS.7.C.3.7, this can be a quick review. If additional support is needed, see the lesson plan for both of the benchmarks.
10. Instruct students to answer Question 3 on their activity sheet. Have students share out.
11. Instruct students to read the rest of the reading and complete the questions on their activity sheet.
12. Have students share out their answers for Questions 7 and 8. Call on enough students so that all of the different criteria are shared. Instruct students to take notes on their activity sheet on the criteria they did not choose.
13. Place students into groups of 3-4 and instruct students to use the criteria from Questions 7 and 8 to create two scenarios where rights might be limited. For each scenario they must explain how this limit impacts social behavior. Provide students with the example of yelling “fire!” into a crowded theatre. Explain that this impacts social behavior because people don’t generally yell things into crowds that will cause a panic or injury. Free speech is limited in this manner because it is in the public interest to have a safe environment.
14. Provide time for students to create their scenarios and then have them share out.
15. Ask a student to identify the amendment that has to do with jury trials. (Seventh Amendment)
16. Share with students the following information about summary judgments and instruct students to take notes.
  - Explain to students that a summary judgment occurs when a judge determines a verdict on a case instead of a case going to trial.
  - In every legal case there is a disagreement. The disagreement may be about what the facts are, or about what the law is, or about both.
  - When everyone agrees about the facts, the only decision to be made is about the law. The judge’s decision about the law is called a “summary judgment.”
  - Summary judgments only apply to civil cases, not criminal.
17. Pose the following question for discussion: “Based on your knowledge of the Seventh Amendment, do you think that summary judgments limit Seventh Amendment rights?”
18. Guide students to the understanding that a summary judgment does not limit the Seventh Amendment right to a trial by jury because juries decide what the facts are, not what the law is. If there is no disagreement about what the facts are, there is nothing for a jury to decide. So, there is no limitation on the right to a jury.
19. Pose the following questions for discussion: “Based on what we have read, we know that rights can be limited. Do you think this is the case at school? Are different criteria used in a school setting regarding limiting rights?”

20. Explain to students that they will look at some U.S. Supreme Court cases as scenarios of how rights can be limited or protected in the school environment.
21. Remind students that most cases reach the U.S. Supreme Court through the appellate process.
22. Pass out the “*Tinker v. Des Moines*” reading and instruct students to work in their small groups to number the paragraphs and review the guiding questions. Teacher note: If this lesson is done after you have taught the lesson for SS.7.C.3.12, this reading will reinforce knowledge learned from that lesson.
23. Have students take turns reading the passage aloud to the class.
24. Provide time for student groups to work together and answer the guiding questions on their own notebook paper.
25. Pose the following questions for discussion: “How do you think the Supreme Court ruled on this case?” Encourage students to share their opinions and cite the appropriate text that helped them come to their decision. Teacher note: If this lesson is done after you have taught the lesson for SS.7.C.3.12, pose the following question for discussion: “Do you think that the U.S. Supreme Court ruled fairly in this case?” Encourage students to share their opinion and cite appropriate text to support their view.
26. Share the following information about the U.S. Supreme Court’s decision for this case from Landmark Cases:
  - In a 7-2 decision, the U.S. Supreme Court ruled in favor of the Tinkers. Justice Fortas wrote the majority opinion, ruling that students retain their constitutional right of freedom of speech while in public school.
  - The justices reasoned that neither “students (n)or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.” Because student expression is protected by the First Amendment even while in school, school officials must provide constitutionally valid reasons for regulating student expression.
  - School officials must show that the expression would cause a “material and substantial disruption” with the discipline and educational function of the school.
  - The Court decided that allowing the Tinkers to wear their armbands protesting the Vietnam conflict would not “substantially interfere with the work of the school or impinge upon the rights of other students.” Wearing the armbands was a “silent, passive expression of opinion” that did not involve any “disorder or disturbance,” and was unlikely to cause a “material and substantial disruption” in the school.
27. Pose the following question for discussion: “What was the Supreme Court’s rationale for protecting the students’ First Amendment rights?”
28. Emphasize to students that this case is an example of a situation where rights are protected.
29. Pass out the “*Hazelwood School District v. Kuhlmeier*” reading. Teacher note: If this lesson is done after you have taught the lesson for SS.7.C.3.12, this reading will reinforce knowledge learned from that lesson.
30. Have students work in their groups to number the paragraphs, review the guiding questions, read, and then answer the questions in their own notes. Instruct students to highlight the text from the passage that helps them answer each question.
31. Ask students to share their answers for Question 2. Emphasize with students that the issue of privacy was a concern with the divorce article.
32. Ask students to define the term privacy and brainstorm why the article was a privacy concern.
33. Pose the following question for discussion: “How do you think the U.S. Supreme Court ruled on this case?” Encourage students to share their opinions and cite the appropriate text that helped them come to their decision. Teacher note: If this lesson is done after you have taught the lesson for SS.7.C.3.12, pose the following question for discussion: “Do you think that the U.S. Supreme Court ruled fairly in this case?” Encourage students to share their opinion and cite appropriate text to support their view
34. Share the following information about the U.S. Supreme Court’s decision for this case from Landmark Cases:
  - The Supreme Court ruled against the students in a 5-3 decision.

- Justice White wrote the majority opinion, concluding that the First Amendment does not prevent school officials from exercising reasonable control over the content of school-sponsored publications.
  - Due to the fact that this newspaper was done as part of a journalism class and not open for any students in the whole school to submit articles, the primary function of the paper was for educational purposes.
  - The First Amendment rights of students in public schools are not necessarily equal to those of adults outside of schools. “A school need not tolerate student speech that is inconsistent with its ‘basic educational mission, even though the government could not censor similar speech outside the school.”
35. Pose the following question for discussion: “What was the Supreme Court’s rationale for limiting the students’ First Amendment rights?”
36. Emphasize to students that this case is an example of a situation where rights are protected, but limited.
37. Project the definition of precedent and instruct students to add this term to their notes.
38. Ask students to explain this concept in their own words.
39. Explain to the students that both of the U.S. Supreme Court cases they have read about during this lesson have set precedents for students’ rights in schools and they will look at a third U.S. Supreme Court case to see the impact of this precedent.
40. Project the following questions on the board and instruct students to write them in their notes, allowing for space in between each question so that they can add notes and the answers.
- What steps did this case take through the appeals process to get to the U.S. Supreme Court?
  - What precedent did the Tinker and Hazelwood cases set regarding First Amendment rights in schools?
  - How did the Supreme Court rule in this case?
41. Explain to students that they will listen to the Opinion Announcement from *Morse v. Frederick* read by Chief Justice John Roberts. Teacher note: A hard copy of the transcript is included in this lesson. Hard copies of the transcript are not required, but might be helpful for some students to follow along.
42. Instruct students to take notes on the three questions while they are listening.
43. Play the Opinion Announcement from Oyez.org: [http://www.oyez.org/cases/2000-2009/2006/2006\\_06\\_278](http://www.oyez.org/cases/2000-2009/2006/2006_06_278). Pause the recording at 1:16 and ask a student to summarize the background of the case.  
Teacher note: To assist with student note taking, consider pausing after the answer to each question is read: Question 1 (1:41), Question 2 (3:36), and Question 3 (4:54).
44. Share with students that the U.S. Supreme Court voted 5-4 in this case. Pose the following question for discussion: “Why do you think there was a variety of opinions on this case?”
45. Checking for Understanding (Formative Assessment):  
Instruct students to write a well-crafted response to one of the following prompts:
- Prompt 1  
Explain how the U.S. Constitution protects rights and explain how rights can be limited. Cite specific examples from the lesson activities to support your explanation.
- Prompt 2  
Explain the role of the judicial branch in protecting or limiting individual rights. Does the role of the judicial branch in protecting or limiting individual rights emphasize the need for an independent judiciary? Explain your answer.

Extension Suggestion:

Keep students in their pairs and have them play “Supreme Decision” from iCivics: <http://www.icivics.org/games/supreme-decision> (Flash player required as of 17 July 2020). Monitor student understanding while game is being played. Instruct students to print their majority opinion and certificate upon completion.

## The United States Constitution: Limiting and Safeguarding Individual Rights

The Framers of the U.S. Constitution wanted to create a federal government that was effective and powerful, but one that did not step on the rights of the individual or the powers of the states. By ensuring that the rights of individuals and the powers of states would be protected, this created a system where the powers of the federal government also became limited.

In Article 1, Section 9 of the U.S. Constitution, there are three key individual rights that are protected, or safeguarded:

The first is contained in this statement:

*"The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it."*

Habeas corpus is an important individual right. This statement in Article I, Section 9 means that an authority has to prove to a court why it is holding someone. If the government cannot show why a person is being held in jail, that person must be released.

The second and third are in this statement:

*"No Bill of Attainder or ex post facto Law shall be passed."*

A bill of attainder is a bill written to punish only one person or one group of people. An ex post facto law is one that makes an act a crime after it has been committed.

**1. Using complete sentences, define the terms *habeas corpus* and *ex post facto*. Highlight the text that helps you define these terms.**

**2. Why do you think the Framers determined that these were important rights to include in the U.S. Constitution?**

**3. Summarize why you think the Framers decided to protect the individual rights listed in Article I, Section 9 and in the amendments listed in "Rights Listed in Amendments."**

### The Role of the Judicial Branch

The judicial branch plays an important role in how the U.S. Constitution is interpreted and the ways in which individual rights are safeguarded (protected) and limited. The Framers of the U.S. Constitution designed an independent judiciary where the judicial branch would have freedom from the executive and legislative branches. The U.S. Constitution guaranteed that judges would serve "during good behavior" and would be protected from any decrease in their salaries. Both of these features prevent the other two branches from removing judges or decreasing their salaries if they don't like a judge's opinion or decision in a case. This gave the judicial branch the freedom to make decisions based on the law and not based on pressure from the other two branches.

**4. In a complete sentence, define the term independent judiciary. Highlight the text that helps you define this term.**

How can individual rights be limited?

In the Supreme Court case *Schenck v. U.S.* in 1919, the court created the “balancing test.” The balancing test focuses on individual rights and the public interest and allows rights to be restricted, or limited, when the public interest is threatened. The public interest is something that has common benefit to the community or public. Justice Oliver Wendell Holmes stated in his opinion that “the most stringent [strict] protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic. [...]”

**5. What do you think was Justice Holmes’ rationale for stating that shouting “fire!” in a theatre would not be covered by the First Amendment?**

**6. How does this limit on individual rights impact social behavior?**

The U.S. Supreme Court has ruled that the government sometimes may be allowed to limit individual rights, specifically freedom of speech and freedom of the press. In general, there must be a balance of individual rights, the rights of others, and the common good.

Listed below are additional criteria used to limit freedom of speech and freedom of the press.

- ✓ Clear and Present Danger – Will this act of speech create a dangerous situation?
- ✓ Fighting Words – Will this act of speech create a violent situation?
- ✓ Libel – Is this information false or does it put true information in a context that makes it look misleading?
- ✓ Obscene Material – Is this material inappropriate for adults and children to see in public?
- ✓ Conflict with Government Interests – During times of war the government may limit speech due to national security.

**7. Choose two of the above criteria. What is the rationale for limiting rights in the situation?**

**8. What is the impact of limiting these rights on social behavior?**

Sources: [http://www.usconstitution.net/consttop\\_resp.html](http://www.usconstitution.net/consttop_resp.html), [http://www.firstamendmentcenter.org/madison/wp-content/uploads/2011/03/Your.First\\_.Freedoms.pdf](http://www.firstamendmentcenter.org/madison/wp-content/uploads/2011/03/Your.First_.Freedoms.pdf), Accessed March 2013, [http://www.fjc.gov/history/home.nsf/page/talking\\_ji\\_tp.html](http://www.fjc.gov/history/home.nsf/page/talking_ji_tp.html), <http://www.freedomforum.org/packages/first/curricula/educationforfreedom/supportpages/L04-LimitsFreedomSpeech.htm>, Accessed March 2013 and <http://www.firstamendmentschools.org/resources/handout1a.aspx?id=14081>, Accessed March 2013

## Rights Listed in Amendments

The Bill of Rights, the first ten amendments to the U.S. Constitution, also lists many individual rights. The Bill of Rights guarantees that the government will not interfere with these rights of the people.

1st Amendment	Freedom of (or from) religion. Freedom of speech. Freedom to assemble. Freedom to petition the government. Freedom of the press.
2 <sup>nd</sup> Amendment	Right to bear arms for a well regulated militia
3 <sup>rd</sup> Amendment	Freedom from quartering (housing) soldiers
4 <sup>th</sup> Amendment	Freedom from unreasonable searches and seizures. Warrants must only be issued upon probable cause, and shall be specific
5 <sup>th</sup> Amendment	Criminal indictments must be by grand jury. Freedom from double jeopardy. Freedom from testifying against oneself. Right to face accusers. Right to due process. Right of just compensation for takings
6 <sup>th</sup> Amendment	Right to speedy trial. Right to impartial jury. Right to be informed of the charges upon which the accused is held. Right to face accusers. Right to produce witnesses for the accused. Right to legal counsel
7 <sup>th</sup> Amendment	Right to jury trial in civil cases. Facts found by a jury cannot be reexamined by another court.
8 <sup>th</sup> Amendment	Freedom from excessive bail or fines. Freedom from cruel or unusual punishment
9 <sup>th</sup> Amendment	This amendment outlines that individuals have rights in addition to the rights listed in these amendments. Supreme Court decisions have found a handful of important rights that fall under the 9th Amendment, such as the right to privacy
10 <sup>th</sup> Amendment	The federal government has only those powers specifically granted by the Constitution, any power not listed is left to the states or the people.

Over time, other amendments have been added to the Constitution to reflect additional rights that must be guaranteed to the people.

13 <sup>th</sup> Amendment	Right to not be a slave
14 <sup>th</sup> Amendment	Right to citizenship of any person born or naturalized in the United States. Right to equal protection of the national and state laws. Right to be free of any law that abridges the privileges or immunities of a citizen. Right to be free of any law that deprives a person of life, liberty, or property without due process.
15 <sup>th</sup> Amendment	Right to vote extended to racial and ethnic minorities
17 <sup>th</sup> Amendment	Right to vote for Senators
19 <sup>th</sup> Amendment	Right to vote extended to women
23 <sup>rd</sup> Amendment	Right to vote for presidential electors if a resident of Washington, D.C.
24 <sup>th</sup> Amendment	Right to vote even if a poll tax or any other tax is unpaid.
26 <sup>th</sup> Amendment	Right to vote guaranteed for any person at least 18 years old

## *Hazelwood School District v. Kuhlmeier | 1987*

The journalism class at Hazelwood East High School wrote articles and put them together for the school paper. They gave the newspaper to their teacher, Howard Emerson. Mr. Emerson showed the newspaper to the principal. He asked the principal if it was okay to make copies and hand them out to students at the school.

Principal Reynolds did not like what he read. First, there was an article about pregnant students. It described the students, but it did not give their names. Principal Reynolds was afraid that students would be able to figure out who the pregnant students were.

There was another article that Principal Reynolds did not like. This one talked about divorce. In it, one student said things about her father. For example, she said that her father went out too much. She also said that her father didn't spend enough time with his family. The father did not get a chance to tell his side of the story. Principal Reynolds thought this was unfair.

Principal Reynolds thought the paper needed to be changed. But it was almost the end of the school year. He was afraid that it would take the class a long time to change it. If it took too long, the school year would be over and the other students would not get the paper. So he told Mr. Emerson to remove the pages that had the articles about pregnancy and divorce. He said to make copies of the rest of the paper.

The students were very angry. They had spent a lot of time writing the articles. They could have fixed them if Principal Reynolds had given them a chance. Instead, he deleted two pages that also contained other articles. They felt that this was a violation of their First Amendment rights. They went to the U.S. District Court. The court did not agree with them. It said that school officials may limit students' speech in the school newspaper if their decision has "a substantial and reasonable basis." In other words, if he has a good reason, it is okay for a principal to limit students' speech.

The students appealed the decision. The Court of Appeals reversed the decision of the U.S. District Court. This court said that the school paper was a "public forum," or place where students could express their views. The judges said that the school could not censor the paper except "to avoid . . . substantial interference with school work or discipline . . . or the rights of others." They did not think that the articles about pregnancy would have interfered with schoolwork. They thought the articles should have been printed.

The school appealed the decision of the Court of Appeals. The Supreme Court of the United States thought that this was an important case. It dealt with the rights of students. It agreed to hear arguments from both sides.

Source: [http://www.streetlaw.org/en/Page/646/Background\\_Summary\\_Questions](http://www.streetlaw.org/en/Page/646/Background_Summary_Questions) . Accessed March 2013

### **Guiding Questions:**

1. In the article about the pregnant students, what was Principal Reynolds worried about?
2. What did Principal Reynolds say was wrong with the article about divorce?
3. What did Principal Reynolds do to fix the problem? Did he have any other choices?
4. What rights did the students say had been violated?
5. Do you think a principal should be allowed to limit what is said in a school newspaper? Why or why not?

## *Tinker v. Des Moines Independent Community School District | 1968*

John and Mary Beth Tinker attended school in Des Moines, Iowa in 1965. Their school did not allow students to wear armbands to protest the Vietnam War. However, the Tinkers wear armbands to school anyway. The officials asked the Tinkers to remove their armbands, but the Tinkers refused. John and Mary Beth Tinker were suspended from school until they agreed to remove the armbands.



public school did not allow students to wear armbands to protest the Vietnam War. However, the Tinkers wear armbands to school anyway. The officials asked the Tinkers to remove their armbands, but the Tinkers refused. John and Mary Beth Tinker were suspended from school until they agreed to remove the armbands.

The Tinkers sued the school district in the District Court. The Tinkers believed that the Moines school district violated their right to free speech under the First Amendment to the U.S. Constitution. Even though the students were not speaking with their voices, they believed that wearing armbands was like speaking. This is called symbolic speech.

U.S. District Court.

The District Court sided with the school officials. The Court said that wearing the armbands could disrupt learning at the school. Learning without disruption was more important than the free speech of the students.

The Tinkers appealed their case to the next level of courts, U.S. Court of Appeals for the Eighth Circuit: But the Circuit Court agreed with the District Court. The Tinkers then appealed their case to the Supreme Court of the United States. The Court had to answer this basic question: Does the constitutional right of free speech protect the symbolic speech of public school students?

In 1968, the Supreme Court of the United States agreed to hear the case of *Tinker v. Des Moines*. They issued their decision in 1969.

Source: [http://www.streetlaw.org/en/Page/228/Background\\_summary\\_questions](http://www.streetlaw.org/en/Page/228/Background_summary_questions) . Accessed March 2013 and <https://www.landmarkcases.org/cases/tinker-v-des-moines>

### **Guiding Questions:**

1. Do you think that the school policy banning armbands was fair? Why or why not?
2. The Tinkers knew they would be suspended if they wore armbands to school. They decided to wear the armbands anyway. Why did they do this?
3. The First Amendment says "Congress shall make no law . . . abridging the freedom of speech." Do you think that actions, like wearing an armband to protest, are the same as speech? Why or why not?

## **Morse v. Frederick | 2006 | Opinion Announcement of Chief Justice Roberts**

Mr. Roberts: I have the opinion of the court in case 06-278, Morse versus Fredrick.

On January 24, 2002 the Olympic Torch Relay was scheduled pass through Juneau, Alaska.

The torchbearers were to proceed along the street in front of Juneau Douglas High School while school was in session.

The principal decided to allow students to leave class to observe the relay as an official school event.

Teachers and school administrators were on hand monitor the event.

Respondent Joseph Fredrick the senior was late to school that day when he arrived he joined his friends across the street from the school to watch the event.

As the torchbearers and camera crews passed by Fredrick and his friends unfurl a 14 foot banner bearing the phrase “Bong Hits 4 Jesus.”

Their goal, they later said, was to get on television.

The large banner was easily readable by the students on the other side of the street.

Deborah Morse the high school principal saw the sign and immediately crossed the street and demanded that it be taken down.

Everyone but Fredrick complied, Morse confiscated the banner and told Fredrick to report to her office where she suspended him for 10 days.

Fredrick sued the principal and the school board claiming a violation of his First Amendment rights.

The District Court found no First Amendment violation but the Court of Appeals for the Ninth Circuit reversed.

It held that the principal’s actions violated the First Amendment and that Fredrick could sue the principal for damages and injunctive relief.

We granted certiorari to review that decision.

We began with two preliminary matters.

First, we conclude that the viewing of the relay by the students was a school event and that our school-speech precedents therefore applied.

The relay occurred during normal school hours, it was sanctioned by Morse as an approved event and the district’s student conduct rules expressly applied.

Teachers and administrators were among the students and were charged with supervising them.

Under these circumstances Fredrick cannot claim that he was not at school.

Second, we agree with Morse that those who view the banner would understand it to be advocating and promoting illegal drug use.

The words on the banner could be taken as an invitation to smoke marijuana or as a celebration of drug use.

The words bear no political or religious meaning and Fredrick does not claim that they do.

But to some of the words might mean nothing at all, Principal Morse was not required to ignore the banners undeniable reference to illegal drugs.

The question before us then is whether a principal can restrict student’s speech at a school event when that speech is reasonably viewed as promoting illegal drug use.

We hold that she may.

Over the past four decades we have decided three leading student-speech cases.

In the first, the Tinker case we held that the students had the right to wear black arm bands to school in non-disruptive protest of the Vietnam War.

In the other two cases Fraser and Kuhlmeier, we ruled against the students.

But each of these cases recognized two things.

First, students do not shed their First Amendments rights at the school-house gate.

Second, the nature of those rights has to be assessed in light of the special characteristics of the school environment.

The rights of students at school are not the same as the rights of adults in the community at large.

In another line of cases we have repeatedly held that deterring drug use by school children is an extremely important interest one recognized by all branches of government not to mention thousands of school boards across the country.

In this case the Juneau School District had an express policy prohibiting expression advocating the use of substances illegal for minors.

Based on the special characteristics of the school environment and the government interest in stopping student drug abuse we conclude that schools may restrict student's expression promoting such abuse.

School principals have a difficult job and a vitally important one.

When Fredrick 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 the established school policy and that failing to act would send a powerful message to the students entrusted to her care including Fredrick about how serious the school really 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.

The judgment of the United States Court of Appeals for the Ninth Circuit is reversed.

Source: [http://www.oyez.org/cases/2000-2009/2006/2006\\_06\\_278](http://www.oyez.org/cases/2000-2009/2006/2006_06_278)

## **Sources**

The U.S. Constitution: Limiting & Safeguarding Individual Rights:

[http://www.usconstitution.net/consttop\\_resp.html](http://www.usconstitution.net/consttop_resp.html), <http://www.firstamendmentcenter.org/madison/wp-content/uploads/2011/03/Your.First.Freedoms.pdf>, Accessed March 2013

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## The United States Constitution: Limiting and Safeguarding Individual Rights

### Sample Answers

The Framers of the U.S. Constitution wanted to create a federal government that was effective and powerful, but one that did not step on the rights of the individual or the powers of the states. By ensuring that the rights of individuals and the powers of states would be protected, this created a system where the powers of the federal government also became limited.

In Article 1, Section 9 of the U.S. Constitution, there are three key individual rights that are protected, or safeguarded:

The first is contained in this statement:

*"The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it."*

Habeas corpus is an important individual right. This statement in Article I, Section 9 means that **an authority has to prove to a court why it is holding someone**. If the government cannot show why a person is being held in jail, **that person must be released**.

The second and third are in this statement:

*"No Bill of Attainder or ex post facto Law shall be passed."*

A bill of attainder is a bill written to punish only one person or one group of people. **An ex post facto law is one that makes an act a crime after it has been committed**.

**1. Using complete sentences, define the terms *habeas corpus* and *ex post facto*. Highlight the text that helps you define these terms.**

*Habeas corpus* is the concept that an authority has to prove to a court why it is holding someone, otherwise that person must be released.

An *ex post facto* law is a law that makes something a crime after it has been committed.

**2. Why do you think the Framers determined that these were important rights to include in the U.S. Constitution?**

The Framers felt that these were important rights to protect, they wanted to make sure this did not happen to citizens.

**3. Summarize why you think the Framers decided to protect the individual rights listed in Article I, Section 9 and in the amendments listed in "Rights Listed in Amendments."**

They felt these were important rights to recognize so that they outlined them in the U.S. Constitution. Rights were added when violations occurred.

### The Role of the Judicial Branch

The judicial branch plays an important role in how the U.S. Constitution is interpreted and the ways in which individual rights are safeguarded (protected) and limited. The Framers of the U.S. Constitution designed an **independent judiciary** where the judicial branch would have **freedom from the executive and legislative branches**. The U.S. Constitution guaranteed that judges would serve "during good behavior" and would be protected from any decrease in their salaries. Both of these features prevent the other two branches from removing judges or decreasing their salaries if they don't like a judge's opinion or decision in a case. This gave the judicial branch the **freedom to make decisions based on the law and not based on pressure from the other two branches**.

**4. In a complete sentence, define the term independent judiciary. Highlight the text that helps you define this term.**

An independent judiciary describes the judicial branch. The judicial branch is able to make decisions based on the law and not based on pressure from the executive or legislative branches.

How can individual rights be limited?

In the Supreme Court case *Schenck v. U.S.* in 1919, the court created the “balancing test.” The balancing test focuses on individual rights and the public interest and allows rights to be restricted, or limited, when the public interest is threatened. The public interest is something that has common benefit to the community or public. Justice Oliver Wendell Holmes stated in his opinion that “the most stringent [strict] protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic. [...]”

**5. What do you think was Justice Holmes’ rationale for stating that shouting “fire!” in a theatre would not be covered by the First Amendment?**

Public interest is threatened; an unsafe environment is created if someone yells fire!

**6. How does this limit on individual rights impact social behavior?**

People cannot say whatever they want, they have to have an awareness of their surroundings.

The U.S. Supreme Court has ruled that the government sometimes may be allowed to limit individual rights, specifically freedom of speech and freedom of the press. In general, there must be a balance of individual rights, the rights of others, and the common good.

Listed below are additional criteria used to limit freedom of speech and freedom of the press.

- ✓ Clear and Present Danger – Will this act of speech create a dangerous situation?
- ✓ Fighting Words – Will this act of speech create a violent situation?
- ✓ Libel – Is this information false or does it put true information in a context that makes it look misleading?
- ✓ Obscene Material – Is this material inappropriate for adults and children to see in public?
- ✓ Conflict with Government Interests – During times of war the government may limit speech due to national security.

**7. Choose two of the above criteria. What is the rationale for limiting rights in the situation?**

Fighting words – In order to keep a safe environment you cannot say something that will create a violent situation. Libel – The press is a source of information for people, it is important that they present true information.

**8. What is the impact of limiting these rights on social behavior?**

It causes people to be careful of what they say or what they write in the press.

*Hazelwood School District v. Kuhlmeier* | 1987 – **Sample Answers**

**Guiding Questions:**

1. In the article about the pregnant students, what was Principal Reynolds worried about? Principal Reynolds was afraid that students would be able to figure out who the pregnant students were.
2. What did Principal Reynolds say was wrong with the article about divorce? The father did not get a chance to tell his side of the story. Principal Reynolds thought this was unfair.
3. What did Principal Reynolds do to fix the problem? Did he have any other choices? He told Mr. Emerson to remove the pages that had the articles about pregnancy and divorce. He said to make copies of the rest of the paper. He didn't think he had enough time to change the article because it was close to the end of the school year.
4. What rights did the students say had been violated? First Amendment rights.
5. Do you think a principal should be allowed to limit what is said in a school newspaper? Why or why not?

*Tinker v. Des Moines Independent Community School District* | 1968 – **Sample Answers**

**Guiding Questions:**

1. Do you think that the school policy banning armbands was fair? Why or why not?
2. The Tinkers knew they would be suspended if they wore armbands to school. They decided to wear the armbands anyway. Why did they do this? They felt it was a protected action under the First Amendment.

*Civics Content Vocabulary*

<b>Word/Term</b>	<b>Part of Speech</b>	<b>Definition</b>
<b>appellate process</b>	noun	the process of asking a higher court to decide whether a trial was conducted properly
<i>ex post facto</i>	noun	a Latin term meaning “after the fact”
<i>ex post facto law</i>	noun	a law that makes an act a crime after the crime has been committed
<i>habeas corpus</i>	noun	the principle that the government has to provide a cause or reason for holding a person in jail
<b>independent judiciary</b>	noun	the principle that decisions from the courts are fair and impartial and are not influenced by the other branches of government
<b>precedent</b>	noun	a court decision in an earlier case with facts and legal issues similar to those in a case currently before a court
<b>privacy</b>	noun	not in public
<b>public interest</b>	noun	common benefit, the general benefit of the public
<b>safeguard</b>	verb	to protect
<b>summary judgment</b>	noun	a judgment decided by a trial court without the case going to trial; a summary judgment is an attempt to stop a case from going to trial
<b>writ</b>	noun	law

## *Essential Teacher Content Background Information*

**This section addresses the following issues:**

1. Addressing the conflict between protecting and limiting rights
2. Balancing individual rights with the public interest

### **1. Addressing the conflict between protecting and limiting rights**

The First Amendment<sup>1</sup> to the U.S. Constitution includes five freedoms or rights; these freedoms include religious exercise, speech, press, peaceable assembly and petitioning the government for redress of grievances. That the language of the First Amendment emphasizes freedom does not guarantee absolute freedom in any of these five areas. Individuals may not exercise these freedoms to the full extent that they might like because doing so would threaten the public interest. Federal and state laws, and U.S. Supreme Court decisions, have all placed limitations on First Amendment freedoms in order to protect the public interest.

The public interest was argued and discussed at length by the Framers of the U.S. Constitution. Their debates did not result in one clear definition or set of criteria for determining its presence or absence. However, the Framers deemed the public interest worthy of attention and protection because upholding it would create and foster a stable society. Consequently, rights and freedoms have been both protected and limited; protected because they form the foundational ideals of the U.S. political system, and limited in order to insure stability of that system.

### **2. Balancing individual rights with the public interest**

The U.S. Supreme Court developed a “test” for evaluating questions that pitted individual rights, such as those guaranteed in the First Amendment, against the public interest, in 1919. In *Schenck v. U.S.* 249 U.S. 47 (1919), the U.S. Supreme Court upheld the Espionage Act of 1917 even though it limited speech. Charles Schenck was Secretary of the Socialist Party of America who printed and distributed 15,000 leaflets to potential draftees encouraging them not to abide by the draft during World War I. These leaflets told potential draftees: “If you do not assert and support your rights, you are helping to deny or disparage rights which it is the solemn duty of all citizens and residents of the United States to retain.” In essence, Schenck suggested that the draft was a form of involuntary servitude that violated the 13<sup>th</sup> Amendment.

Schenck argued that the Espionage Act of 1917 violated his free speech rights guaranteed by the First Amendment. The U.S. Supreme Court upheld Schenck’s criminal conviction because the First Amendment does not protect speech encouraging insubordination. According to U.S. Supreme Court Justice Oliver Wendell Holmes, who authored the unanimous decision,

“When a nation is at war many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight, and that no Court could regard them as protected by any constitutional right.”

Further,

“The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent.”

and

“The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic. [...]”

*Schenck v. U.S.* established that the government may limit free speech when that speech represents a “clear and present danger”. A clear and present danger is a threat to the public interest. In the present case, encouraging potential draftees to refuse to defend the nation during World War I would threaten the public interest because it would handicap the nation’s ability to defend itself and its interests. Thus, Schenck’s actions constituted a “clear and present danger” that justified limiting free speech.

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<sup>1</sup> The First Amendment is not the only enumeration of freedoms found in the U.S. Constitution or its amendments. Because Benchmark SS.7.C. 2.5 does not reference any specific freedom or right, and the Florida Department of Education Civics End-of-Course Item Specifications indicate that students will not need to know any specific components of the U.S. Constitution, including its amendments, nor do students need to know of any case or law, the First Amendment is being used as a focal point for this discussion.