



Constitution in the Classroom

Lesson Plan

The First Amendment & Free Speech

Middle School

- Description:** This unit introduces students to the Supreme Court's decision in *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969), which established that school officials could not punish or prohibit student speech unless that speech will result in a substantial disruption of school activities or invades the rights of others.
- Objectives:** (1) Use this significant case to help students understand their freedom of speech; and (2) Teach young people appreciation and respect for the Constitution and Bill of Rights.
- Lesson Length:** 30-60 minutes
- Supplies:** Lesson Plan, Handouts (located at the end of this lesson plan)
- Age Group:** 6th Grade – 8th Grade

About Constitution in the Classroom

Lawyers, law students, and educators have a valuable resource to share with students: knowledge and appreciation of the Constitution. Constitution in the Classroom brings ACS members into high school, middle school or elementary classrooms to raise awareness of fundamental constitutional principles and excite young minds about their constitutional rights and responsibilities.

About the American Constitution Society for Law and Policy

The American Constitution Society (ACS) believes that law should be a force to improve the lives of all people. ACS works for positive change by shaping debate on vitally important legal and constitutional issues through development and promotion of high-impact ideas to opinion leaders and the media; by building networks of lawyers, law students, judges and policymakers dedicated to those ideas; and by countering the activist conservative legal movement that has sought to erode our enduring constitutional values. By bringing together powerful, relevant ideas and passionate, talented people, ACS makes a difference in the constitutional, legal and public policy debates that shape our democracy.

I. Icebreaker

The League of Women Voters of Alameda County, in partnership with ACS, has created an online trivia game with general questions about the Constitution, VerifyIt!. This is a great, interactive way to start a virtual CITC lesson. You can either send the link to the students and they can play a round on their own or you can screen share and allow students to answer questions either out loud or by writing answers down and sharing their results at the end of the round.

The game is easily played on mobile phones, computers, or tablets using - **Individual Player** (on your own) or **Multi-Player** (in the classroom - virtual or online). These instructions for Multi-Player games will help you set up a game that all your students can play on their computers at one time - with you tracking their progress and knowledge as the "game runner." You will also be able to use the Leaderboard to make it fun to play - and you can choose whether to show students' names or give them anonymous numbers to keep names private.

Instructions for using a Game with your class:

1. On your computer, go to VerifyIt! Game URL: <https://verifyit.buzz>.
2. Click on the "**I'm a Game Runner**" link. It's near the bottom, under the "Play Multiplayer" button.
3. Select the game you want to play: "**U.S. Constitution-1st Amendment - 8 questions**" is recommended for this lesson plan. like "U.S. Constitution-Civics" and click on it. (note the Game Code in the box)
4. Find the "**Start a new game**" button at the bottom of the list and click on it. Note that the next screen shows the questions selected for this Game
5. Follow the instructions listed on this screen to **distribute the Game** to your students - you have two different ways to do this: 1) click on the clipboard icon on the top of the screen to copy the Game number and email or text it to your students, or, if you are conducting class via Zoom, put it in the Chat; or 2) give the students [this URL](#) with the game code and they can enter the game themselves.
6. Students will enter their "handle" (name) and sign into the Game. You will see their names on your screen when they successfully sign in - and you can track their progress!

II. The Tinker Case: Students Taking a Stand

During the United States war with North Vietnam in the 1960s, three Iowa public school students—John Tinker, Mary Beth Tinker, and Chris Eckhardt—decided to express their support for ending the war by wearing black arm-bands to school. The school district found out about the students' plan and passed a no arm-bands rule to stop them, but the students went ahead, knowing they were risking being written up for violating school rules. A few other students asked them why they were wearing the arm-bands, and some of those students did not agree with the anti-war opinion, but nobody got into any fights. The school told John, Mary Beth, and Chris to go home until they agreed to take off the arm-bands, and they were suspended for several weeks.

The students' families thought that it was wrong to punish people for having strong political views, so they went to court. The case went all the way up to the United States Supreme Court. On February 24, 1969, the Supreme Court decided that John, Mary Beth, and Chris were right – they shouldn't have been suspended because all they did was peacefully express their opinions, and their right to express themselves in a non-disruptive way was protected by the First Amendment to the United States Constitution.

Justice Abe Fortas was the author of the decision that the Supreme Court issued. Here is part of what he said:

“It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate. . . . Any word spoken, in class, in the lunchroom, or on the campus, that deviates from the views of another person may start an argument or cause a disturbance. But our Constitution says we must take this risk.”

III. Constitutional Basics

When our country first began, our Founding Fathers got together and decided to write a set of rules for running the new government. They met in Philadelphia, Pennsylvania, in 1797 and wrote a set of rules about how Congress, the President, and the States should work. They called it the United States Constitution.

Q: **What are some other types of rules you know about?** *Guide the students to understand the similarity between rules for our government and the rules for games and classroom behavior.*

After the Founding Fathers wrote rules for the government, then they realized something was missing: rules for the people! So they went back to work and added 10 more rules, or amendments, to fix the Constitution. These 10 rules make up what is called the Bill of Rights and they make sure the government could not get carried away and stop people from having the freedom to live their lives. The reason the United States broke away from England and became independent was because people living in the United States back in the 1700s felt that the King of England was denying them their individual rights. They were paying taxes to England but had no say in how those taxes would be spent. When they tried to complain to the government of England, no one would listen. That is why the very first rule in the Bill of Rights is called the First Amendment.

IV. Understanding the First Amendment

HANDOUT: Distribute a copy of the handout at the end of this lesson plan to each student so that he or she may follow along as you explain the structure and intent of the First Amendment.

The text of the First Amendment of our Constitution reads:

“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.”

Q: “Congress shall make no law.” Does this mean your city council could close down all local newspapers and TV news stations by passing a city ordinance? No.

The Five Freedoms

1. Religion
2. Speech
3. Press
4. Assemble
5. Petition the Government

The Supreme Court has held that state and local governments are under the same limits as Congress. This means that if it is unconstitutional for Congress to limit one of the rights in the First Amendment, then it is unconstitutional for your city council to limit that same right.

Q: If you bring leaflets into Wal-Mart to hand out to customers, protesting a product they sell, can they kick you out of the store? Yes.

The First Amendment only limits what the government can do. A business is typically private property; therefore there is no right to free speech inside Wal-Mart and the store can ban leaflets or even have you kicked out if you violate their rules.

Q: What if you decide to protest the product in the city park, located across the street from the Wal-Mart? Does it matter how or when you convey your message when you are on government property? Yes, the government can reasonably limit how and when you exercise your right to speak.

The Supreme Court has held that the government can always put reasonable limits on the time, place, and method of speaking. This means that the city council can stop you from using loudspeakers in the park at 3:00 AM to broadcast your message or from setting up an information booth that blocks traffic on the street.

HANDOUT: Have the students complete the “First Amendment Quiz” located in their HANDOUT. A copy of the quiz is located on the next page of this Lesson Plan. You may administer the quiz as an individual or group activity. If you choose to complete the quiz as a group, consider splitting the students into two groups and having them compete to answer the most questions correctly. These two groups can then be used for the “Class Debate” ACTIVITY later in the lesson.

ACTIVITY

First Amendment Quiz

Read the questions below and decide which First Amendment right is being described:

1	Jaime does not say the pledge of allegiance with her class because her faith does not approve of the line “one nation under God.”	RELIGION
2	Kelly is an animal lover who does not believe in the sale of fur coats. She stands outside a department store with a sign that says “Love Rabbits — Don’t Wear Them.”	SPEECH
3	Tim, Dave, and Liz decide to meet at a local restaurant to talk about the recent presidential election.	ASSEMBLY
4	Frank is an advocate for peace. He organizes a letter-writing campaign to urge the President to end the war.	PETITION
5	Wendy writes an editorial in her family’s community newspaper about government corruption in her town.	PRESS
6	Ann does not like one of the political candidates running for mayor. She decides to print and distribute a pamphlet describing his voting record.	PRESS / SPEECH
7	Rachel wears a hijab to school as part of her faith.	RELIGION
8	Amber, Adam, and Angie use a room in the public library for a meeting of their “Support Our Troops” club.	ASSEMBLY
9	Candice burns an American flag during a protest.	SPEECH

v. *Tinker* & the Freedom of Speech

Now let's delve a little deeper into the part of the First Amendment that protected John, Mary Beth, and Chris from suspension in *Tinker v. Des Moines*.

Q: How can what the students in the *Tinker* case be considered “speech” when they did not say anything out loud? *Speech has been held to cover all expressive conduct.*

Other examples of ways you can be “expressive” besides speaking include: painting a picture, putting a sticker on your car, putting a sign in your yard, writing a letter to the newspaper, or making a movie.

Q: The Court's ruling in *Tinker* says that students can express their viewpoints as long as there is no “substantial disruption” of school. What do you think a substantial disruption would be? *In order for a school to stop a student from speaking their mind (otherwise known as censorship), the student's speech has to significantly interfere with the operation of the school.*

Some examples of disruptive conduct have included encouraging students to commit pranks or vandalism, taunting other people to incite violence, or wearing gang symbols at schools with gang problems.

Q: Would it make a difference if there had been fist-fights in the hallways over the Vietnam War throughout the week before John, Mary Beth, and Chris showed up in school with their arm-bands? *Courts have said that specific evidence that speech is reasonably likely to provoke violence is probably enough to justify censorship even under *Tinker*.*

If John, Mary Beth, and Chris showed up to school with anti-war arm-bands the week after violence broke out in the school over that same issue, then it would be reasonably likely that at least some students would respond violently to the arm-bands. Therefore, the school would have the right to censor their speech.

Q: John Tinker's younger brother, Paul, was also suspended. Paul was only in the second grade. Should all students have the same level of First Amendment protection no matter how young they are? *Courts have said that there is what's called a “sliding scale” when it comes to students' First Amendment rights.*

This means that, on a scale from elementary school to high school, students have the most freedom of speech when they are older and better equipped to exercise their rights. In other words, the younger a student is, the more a school can censor his or her speech. This is because a school's interests in maintaining order and achieving educational goals are greater than the younger student's speech interest.

For example, a first grader may want to throw a tantrum over recess ending. But that student's expression of anger over the end of play-time is clearly less important than the need for her teacher to continue his lessons for the day. On the other hand, if a high school sophomore wants to start a school club for LGBT students and allies, then the school will have a much harder time telling the student she cannot form the group.

Q: What do you think Justice Fortas meant when he wrote in the *Tinker* decision that “our Constitution says we must take this risk?”

**Do you agree with the Supreme Court's decision?
Why or why not?**

ACTIVITY

Class Debate

Divide the class in half, labeling one group the “Student Team” and the other the “Government Team.” Read the the following set of facts aloud to both teams.

At this school, John, Mary Beth, and Chris want to campaign in favor of starting school two hours later so students can get more sleep. So they decide that to make their point, they will do three things: First, they all come to school on Monday morning wearing pajamas. Second, they write up a petition and pass it around from table to table at the cafeteria at lunchtime for people to sign. Third, during lunch, they bring out a microphone and an amplifier and they sing a protest song over and over: “All we are saying, is give sleep a chance.” All three of them are suspended for their behavior.

Next, explain to the teams that they must prepare the following arguments for their clients:

Student Team	Argue why the First Amendment should protect all three things the student did: (1) wearing pajamas; (2) the petition drive; and (3) the song.
Government Team	Argue why none of these things are protected by the First Amendment and why what these students did is different from what the students did in the <i>Tinker</i> case.

Allow the teams a few minutes to organize their arguments and assign a representative (“Counsel”) to argue on their behalf.

At the end of the allotted preparation time, have opposing counsel stand and deliver their arguments in the following order. Try to limit arguments to 1 minute each.

1. **Student Team**
2. **Government Team**
3. **Student Team (Rebuttal)**

Additional Discussion Questions

- **Would it make a difference if the singing took place after school on the front steps of the school?** *It might—there would be no captive audience and listeners who disagreed would be free to leave.*
- **Would it make a difference if someone who read the petition and disagreed with the students’ opinion went to the principal and said she was offended by having to read opinions that disagreed with hers?** *It shouldn’t—this is the concept of the “heckler’s veto.” An offended listener does not get to prevent others from hearing lawful speech.*