

Teach for Inquiry: Can I Say That? (First Amendment)

Grades 4/5

Social Studies Standard(s):

- **5.1.15** Making the United States Constitution and Establishing the Federal Republic: 1783 to 1800. Describe the origins and drafting of the Bill of Rights, ratified in 1791. (Core Standard)
- **5.2.4** Foundations of Government: Identify and explain key ideas about government as noted in the Declaration of Independence, Articles of Confederation, Northwest Ordinance, United States Constitution and the Bill of Rights. (Core Standard)
- **5.2.5** Foundations of Government: Describe and give examples of individual rights guaranteed by the Bill of Rights. (Core Standard)
- **National Curriculum Standards for Social Studies Theme 6** Power, Authority, and Governance
 - Learners will understand rights are guaranteed in the U.S. Constitution, the supreme law of the land
 - Learners will understand fundamental values of constitutional democracy
 - Learners will be able to examine persistent issues involving the rights of individuals and groups in relation to the general welfare

Objectives:

- Students will be able to give examples of speech protected by the First Amendment.
- Students will be able to recognize speech that is not protected by the First Amendment.

Materials Needed:

- Whiteboard and markers
- Image of the Bill of Rights
- Text of the First Amendment
- Image of the Preamble to the Constitution
- Text of the Preamble to the Constitution
- List of speech that is not protected
- Description of speech that a school can limit
- Article on elementary students' free speech rights
- Article on several free speech topics
- Access to chalkboard in the hall and chalk
- (optional) Laptops or iPads to view the Bill of Rights and Constitution in color images

Engage/Linkage:

- In previous discussions, you have talked about what it means to be an American, including some of the rights and responsibilities of living in our society. Several students brought up the First Amendment, part of the Bill of Rights. Today we are going to try to find out what limits there are, if any, to our right of free speech.

Essential Question:

- What speech is protected by the First Amendment and what is not?

Process:

Opening: The group will make a list on the whiteboard of the kinds of speech, or examples of speech, they think are protected under the First Amendment and another list of speech they think is not protected.

Evidence (Data sets are printed in full at the end of this lesson plan):

- Data Set #1: Text of the First Amendment and of the Preamble to the Constitution
- Data Set #1 Discussion: What do all the things listed in the First Amendment mean? How does this affect our lists of what we can and cannot say? Do any of the promises made in the Preamble limit our free speech? How might keeping those promises change what we think of as acceptable free speech? (Update the list.)
- Data Set #2: A list of speech not protected by the First Amendment and descriptions of how schools can limit children's free speech published by the First Amendment Center.
- Data Set #2 Discussion: Does anything on our list also appear on the list of things that are not protected by the First Amendment? (Update the list.)
- Data Set #3: Articles about elementary students' free speech rights and a more generic article about free speech rights.
- Data Set #3 Discussion: So, does any of this information change some of our ideas? In what ways? (Update the list.)

Assessment:

- Students will create an area for free speech on the large hallway chalkboard after this lesson. Only speech protected by the First Amendment should appear. The class will periodically be given the opportunity to review what appears on the board to verify that protected speech is the only kind that appears and to make any necessary changes to unprotected speech that may appear, demonstrating that they can differentiate between speech that is protected and speech that is not.

Additional Scholarly Knowledge:

- Text of 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.
- Text from the Constitution: We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.
- Not all speech is protected by the First Amendment. The following are generally considered unprotected speech: obscenity, fighting words, defamation (including libel and slander), child pornography, perjury, blackmail, incitement to imminent lawless action, true threats, solicitations to commit crimes, treason, plagiarism.
- **"Fighting words"** — In its leading case on the subject, [*Chaplinsky v. New Hampshire*](#), the U.S. Supreme Court defined fighting words as those words "which by their very utterance inflict injury or tend to incite an immediate breach of the peace." The court later used the terms

“epithets” and “personal abuse” in discussing fighting words.” (First Amendment Center, 2011)

- **“True threat** — A real threat to a person’s safety made by another person. The Supreme Court in *Watts v. United States* (1969) said threats to personal safety are not protected by the Constitution.” (First Amendment Center, 2011)
- **Defamation** – False or unjustified injury of the good reputation of another
- **Slander** – Defamation by oral speech
- **Libel** – Defamation by anything other than oral speech
- Schools may limit speech that disrupts a school or classroom or invades the rights of others.

Resources:

Constitution of the United States - Official. (n.d.). Retrieved March 4, 2011, from The Charters of Freedom: <http://www.archives.gov/exhibits/charters/constitution.html>

Dictionary.com. (n.d.). *Dictionary.com*. Retrieved March 4, 2011, from Dictionary.com: <http://www.dictionary.com>

First Amendment Center. (2011, March 4). *Speech FAQs*. Retrieved March 4, 2011, from First Amendment Center: <http://www.fac.org/Speech/faqs.aspx>

Fritz, J. (1987). *Shh! We're writing the Constitution*. New York: G.P. Putnam's Sons.

Hudson, Jr., D. L. (2010, August 19). *It's elementary, children have First Amendment rights too*. Retrieved March 2, 2011, from First Amendment Center: <http://www.firstamendmentcenter.org/commentary.aspx?id=23282>

National Endowment for the Humanities. (2010, September 8). *The first amendment: What's fair in a free country?* Retrieved March 2, 2011, from The first amendment: What's fair in a free country?: <http://edsitement.neh.gov/lesson-plan/first-amendment-whats-fair-free-country#sect-questions>

Pickerill, M. (2003, March 14). *Free Speech*. Retrieved March 1, 2011, from Time for Kids: <http://www.timeforkids.com/TFK/kids/wr/article/0,28391,431013,00.html>

Data Set #1

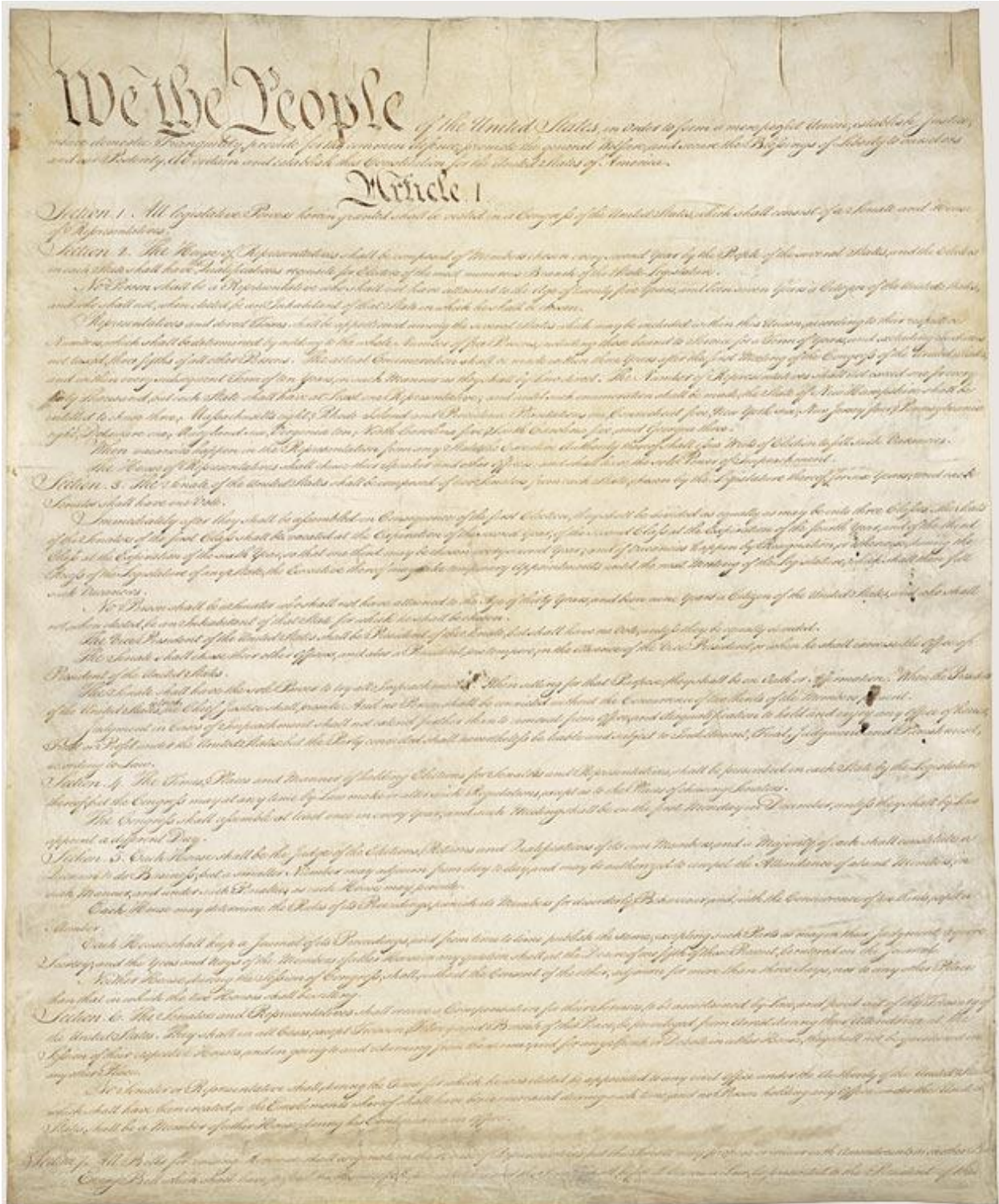
First Amendment

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.

Preamble to the Constitution

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

Image of the Beginning of the Constitution



Data Set #2

Readings that go beyond one page in length will be printed double sided.

Speech Not Protected by the First Amendment

Not all speech is protected by the First Amendment. The following are generally considered unprotected speech:

- Obscenity (something that violates standards of morality)
- Fighting words (words that inflict injury or break the peace)
- Defamation (false or unjustified injury of another person's reputation)
- Child pornography
- Perjury (giving false testimony in a trial)
- Blackmail (using threats to make someone do something)
- Incitement to imminent lawless action (provoking someone to do something illegal)
- True threats (a threat to another person's safety)
- Solicitations to commit crimes (asking others to commit crimes)
- Treason (acting to overthrow the government or harm its leaders)
- Plagiarism (using someone else's work as your own without permission)

Information from the First Amendment Center

Schools have great latitude to control the speech that occurs in a classroom and, in that setting, can probably prohibit the distribution of student publications altogether. Similarly, schools may impose any reasonable constraint on student speech in a school-sponsored publication such as the school newspaper.

Public school students possess a range of free-expression rights under the First Amendment. Students can speak, write articles, assemble to form groups and even petition school officials on issues. The U.S. Supreme Court has said that students "do not shed their constitutional rights to freedom of speech and expression at the schoolhouse gate."

There is a fundamental distinction between public and private school students under the First Amendment. The First Amendment and the other provisions of the Bill of Rights limit the government from infringing on an individual's rights. Public school officials act as part of the government and are called state actors. As such, they must act according to the principles in the Bill of Rights. Private schools, however, aren't arms of the government. Therefore, the First Amendment does not provide protection for students at private schools.

Though public school students do possess First Amendment freedoms, the courts allow school officials to regulate certain types of student expression. For example, school officials may prohibit speech that substantially disrupts the school environment or that invades the rights of others. Many courts have held that school officials can restrict student speech that is lewd.

Many state constitutions contain provisions safeguarding free expression. Some state Supreme Courts have interpreted their constitutions to provide greater protection than the federal Constitution. In addition, a few states have adopted laws providing greater protection for freedom of speech.

Excerpted From:

First Amendment Center. (2011, March 4). *Speech FAQs*. Retrieved March 4, 2011, from First Amendment Center: <http://www.fac.org/Speech/faqs.aspx>

Data Set #3

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Free Speech

-BY MARTHA PICKERILL

Stephen Downs, 61, and his 31-year-old son, Roger, went shopping at a mall in Guilderland, New York, last Monday. They got a lot more than they bargained for.

The two had T-shirts printed. Roger's said, "No War with Iraq." His dad's said, "Peace on Earth." They put on the shirts over their other clothes. The antiwar messages caught the attention of a security guard, who asked the men to take off the shirts. They refused. The guard came back with a police officer, who asked them to remove the shirts or leave. Roger took his off, but his dad still said no.

"I said, 'All right then, arrest me if you have to,'" Stephen Downs recalls. "So they did. They put the handcuffs on and took me away." Two days later, about 100 protesters marched in the mall to support Downs. A trespassing charge was dropped, but both men were upset.

"I think he'd like an apology," Roger said of his father.

IT'S A FREE COUNTRY

Americans treasure free speech and expression. Our right to share our ideas--by writing them in books, shouting them at a rally or ironing them onto T-shirts--is protected by the First Amendment. The amendment is one of 10 in the Bill of Rights, added to the Constitution in 1791. Lawmakers of the day passed the Bill of Rights because they believed that some key freedoms, including speech protection, should be part of the Constitution.

But First Amendment experts say that the right to speak freely comes with an unwritten requirement to act responsibly. "Many Americans have an overdeveloped sense of rights and an underdeveloped sense of responsibility," says Sam Chaltain, coordinator of the First Amendment Schools project. "Our rights are spelled out in the First Amendment. But the amendment will work only if we guard the rights of those with whom we disagree."

WHEN THE GOING GETS TOUGH

With a possible war in Iraq looming, emotions across the country are running high. Last Wednesday, tens of thousands of high school and college students all over America left their classrooms and staged large antiwar demonstrations. Other Americans feel just as strongly about expressing support for our leaders' decisions. Those groups also held rallies and spoke out. When the two points of view clash, trouble can follow.

Take Toni Smith, a basketball player for Manhattanville College in New York. Because she objects to certain U.S. policies, she does not salute the flag as the national anthem is played before her games.

Some opposing teams' fans began to boo Smith. They wore American flag pins and waved the flag to taunt her. On February 23, a Vietnam War veteran came onto the court and held a flag in front of her. He was thrown out of the arena--not for expressing his view but for disrupting the game.

"Toni Smith was being patriotic by doing what she felt she must," Chaltain told TFK. "Every person who chose to stand and put a hand over his heart during the anthem was exercising the same freedom."

The First Amendment is often amended itself. Court decisions have limited its freedoms to protect individuals' privacy or national security, among other goals. But speaking out, whether in favor of

the government's policies or against them, is among the fundamental rights--and responsibilities--of every American. It is, in fact, at the very heart of our democracy.

Excerpted from:

Pickerill, M. (2003, March 14). *Free Speech*. Retrieved March 1, 2011, from Time for Kids:
<http://www.timeforkids.com/TFK/kids/wr/article/0,28391,431013,00.html>

It's elementary, children have First Amendment rights too

By David L. Hudson Jr.

First Amendment scholar

08.19.10

The First Amendment sets no age limit. Its text says that “Congress shall make no law ... abridging the freedom of speech.” It has no “adults only” modifier. It protects the free-speech rights of students — even those in elementary schools.

Admittedly, the U.S. Supreme Court said in *Tinker v. Des Moines Independent School Dist.* (1969) that students' First Amendment rights must be applied “in light of the special characteristics of the school environment” — even in the very decision where the Court famously said students don't lose their free-speech rights at school. The Court was saying that public schools are not complete free-for-all, anything-goes zones. Schools' primary mission is to educate kids, to provide an environment conducive to learning.

Unfortunately, some act as though there is an age restriction on First Amendment freedoms — that elementary school kids are not old enough to merit the protections of the first 45 words of the Bill of Rights.

Consider that in Plano, Texas, the argument was made in 2004 that Jonathan Morgan did not have the right to hand out candy canes with religious messages in part because he was a young elementary school student. The argument was that he was too young to have First Amendment rights.

However, as many courts have recognized, the U.S. Supreme Court nearly 70 years ago in *West Virginia Board of Education v. Barnette* (1943) ruled that elementary school students had a First Amendment right not to salute the flag and recite the Pledge of Allegiance. Marie Barnette (actually Barnett — her name was misspelled by a court clerk) was 8 and her sister Gathie was 9 when they encountered resistance to their beliefs as Jehovah Witnesses in school. They were told they couldn't return to school because of their refusal to salute the flag.

In that famous case — the Supreme Court held that the First Amendment applied in public schools. Justice Robert Jackson said of school officials: “That they are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of government as mere platitudes.”

Amazingly, attorneys for the school district in the Plano case argued that *Barnette* didn't apply, in part because the Supreme Court didn't emphasize that the sisters were in elementary school. The 5th U.S. Circuit Court of Appeals in *Morgan v. Swanson* on July 1 rejected that specious argument, pointing out that “it is evident on the face of the decision itself that the plaintiffs [the Barnette sisters] were elementary school students.”

School officials would be wise to remember the history of the *Tinker* case. Yes, the litigation that led to the decision arose because John Tinker, a high school student, and Mary Beth Tinker, then in middle school, were punished for wearing black armbands in protest of the Vietnam War.

What many may not know is that their elementary-age siblings — Hope and Paul Tinker — also wore black armbands to school. They were not punished. As historian John W. Johnson relates in his book *The Struggle for Student Rights*, Hope and Paul's elementary school teachers made the armbands a teachable lesson, rather than fodder for suspension.

Age can be an important factor in First Amendment cases. Speech that is appropriate for a 17-year-old certainly may not be appropriate for a 7-year-old.

But what is even more inappropriate is arguing that elementary school students have no First Amendment rights. They most certainly do.

Source:

Hudson, Jr., D. L. (2010, August 19). *It's elementary, children have First Amendment rights too.*

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