

Unit: You Can't Say That in School

This unit introduces students to the power and limits of the five freedoms of the First Amendment. It includes pre- and post-visit activities designed to bracket the You Can't Say That in School NewseumED class, plus a class-specific gallery guide. Through these experiences, students see how the First Amendment plays a role in their daily lives, particularly in a school environment. Using real-life court cases, they explore how far First Amendment protections extend and why limits are sometimes placed on these freedoms.

Note: You can find additional activities, worksheets and handouts related to You Can't Say That in School by searching EDTools on NewseumED.

OBJECTIVE: Students understand the five freedoms of the First Amendment, how they play a role in their daily lives and why there are limits on these rights in school.

TARGET AUDIENCE: Middle and high school

GUIDING QUESTIONS

- What freedoms does the First Amendment guarantee?
- How do we use the five freedoms in our daily lives?
- When, why and how are limits placed on these freedoms?
- How does the First Amendment apply in a school setting?

KEY TOPICS AND SKILLS

- The First Amendment
- The role of the five freedoms in our daily lives
- The scope and limits of rights
- Civic debate and decision-making

UNIT CONTENTS

1. Before Your Visit
 - **Allowed or Not Allowed?:** Students use a series of scenarios to begin considering how far the First Amendment's protections extend.
2. During Your Visit
 - **NewseumED Class – You Can't Say That in School:** The landmark Supreme Court case of *Tinker v. Des Moines* serves as a basis to discuss how public school officials must balance students' rights to free expression with the need to provide a safe learning environment. Students then discuss and debate other real-life court cases.
 - **You Can't Say That in School Gallery Guide:** This guide takes students through the Newseum's First Amendment Gallery to see how their freedoms can be exercised daily and in school.
3. After Your Visit

- **The Case of Lee v. Weisman:** Students analyze a 1992 Supreme Court case about religion in public schools, drawing on their First Amendment knowledge to support their own conclusions about how the court should have ruled.

Before Your Visit: Allowed or Not Allowed?

Students use a series of scenarios to begin considering how far the First Amendment's protections extend.

GRADE LEVEL: Middle and high school

TIME: 60 minutes

MATERIALS: Allowed or Not Allowed worksheet (download), Allowed or Not Allowed teacher background sheet (included in this packet)

PREPARE

1. Print copies the worksheet, one per student.
2. Review the teacher background sheet.

DO

Break students into small groups and ask them to read the "Allowed or Not Allowed?" worksheet and circle yes or no for each scenario. They should attempt to agree as a group on one answer per scenario.

DISCUSS

As a class, discuss each scenario and the decision-making process. Possible prompts include:

- How did you reach a decision for each scenario? Did you think about whether the action described was illegal? (Do you know?) Whether it was annoying to others? Whether it would produce a positive or negative outcome?
- Was it hard to come to an agreement as a group for each scenario? Why or why not?
- In the world beyond the classroom, how do you think the authorities — police officers or judges in court — decide whether an action should be allowed or not?
- What if I told you that all of these actions are indeed protected by the First Amendment? Would that surprise you? Why or why not?
- In the world beyond our classroom, do you think everyone always agrees about whether actions like these should be allowed? Why happens when people disagree?
- The First Amendment freedoms are broad, but they are not unlimited. Where would you draw the line between what should be protected and what shouldn't?

Before Your Visit: Allowed or Not Allowed? Teacher Background Sheet

All of the scenarios describe actions protected by the First Amendment.

1. A student refuses to participate in the Pledge of Allegiance with the rest of his class. He says it is against his religion to say the pledge. He sits quietly in his seat while the rest of the class stands and says the pledge. (Primarily freedom of religion)

Explanation: The First Amendment protects the free exercise of religion, and schools or other public institutions must (within reason) respect individuals' beliefs and cannot do things that make it appear that they have endorsed a single religion. The 1939 Supreme Court case of *Minersville School District v. Gobitas* ruled that students cannot be compelled to recite the pledge of allegiance. Students who don't participate do not need to give an explanation, but religious beliefs are often cited. Students who do not participate cannot disrupt the rest of the class who choose to participate.

2. A group of college students who oppose U.S. involvement in foreign wars gather in a public park and burn an American flag as a symbol of their protest. (Primarily freedom of speech)

Explanation: Although many people find it distasteful, burning an American flag is protected by the First Amendment. Burning a flag is an example of symbolic speech (speech that gets its message across without using words). Because of the First Amendment's protections, the only way to make flag burning illegal would be to pass a constitutional amendment, something that has been proposed and attempted at various points in history, but has never succeeded.

3. A newspaper receives top-secret documents that show that the government has been lying about its involvement in an ongoing war. The newspaper publishes the documents to reveal the truth to the public. (Primarily freedom of the press)

Explanation: Barring an immediate threat to national security, the First Amendment protects the right of the press to publish even information that is critical or embarrassing for the government. The 1970 Supreme Court case of *New York Times v. United States*, popularly known as the Pentagon Papers case, ruled that since publication of secret papers about the Vietnam War would not cause an inevitable, direct and immediate event that could endanger Americans at home or abroad, the First Amendment protected their publication.

4. A group of white supremacists (people who believe descendants of white Europeans are superior to other people) gather in Washington, D.C., and march to the U.S. Capitol. They have a permit for their event and march calmly while chanting and carrying signs that harshly criticize other races. (Primarily freedom of assembly)

Explanation: Provided they are peaceful and have obtained the necessary permits to ensure public safety, all types of groups/organizations are allowed to gather in public for whatever cause/purpose they choose. Multiple white supremacist marches have taken place in Washington, including a famous gathering of 40,000 Ku Klux Klan members in 1925. More recently, in 2012 a group of 14 white supremacists belonging to the Aryan Nation marched from Lincoln Park on Capitol Hill to the U.S. Capitol reflecting pool to protest violence against white farmers in South Africa. Over 150 counter-protesters met them with anti-Nazi and pro-racial equality messages.

5. A group of people with cancer, including several teenagers, believe that marijuana could help ease their suffering. They organize a petition to gather signatures from eligible voters who believe that the state should pass a law allowing doctors to prescribe marijuana to their patients as a form of medical treatment. (Primarily freedom of petition)

Explanation: The First Amendment freedom to petition the government protects the right to complain about existing laws or policies and ask for change. It does not guarantee that those changes will be made. There is no age requirement for petitioning, but if, for example, a group is seeking to get a topic put onto the ballot on Election Day, the people who sign the petition generally must be eligible, registered voters. The issue of medical marijuana is the subject of current debate in many states, with groups petitioning for and against its legalization in many ways, including direct appeals to elected officials, general petitions, petitions to put the issue on the ballot on Election Day, rallies, etc.

More about First Amendment limits:

Religion: In very specific circumstances, the government does have the right to step in and limit the way you act upon your religious beliefs, such as when the practice of your religion could endanger a child.

Speech: Speech can be limited when it causes harm, such as endangering people or putting our national security at risk. And minors (people under 18) may have more limited freedom of speech than adults. For example, indecent speech that is sexual or vulgar in nature but does not cross the line into being obscene is protected for adults, but not necessarily for minors.

Press: In rare cases, if the government can prove that information will harm national security if it is made public, the courts may block publication of that information at the government's request. And although the press is free to print almost anything without facing criminal penalties, journalists can still face civil liabilities. This means that a news source that knowingly publishes damaging false information about a person, called libel, can be sued.

Assembly: The government can place some reasonable restrictions on when and where groups gather in order to protect the safety and well-being of those assembling and the general public, such as requiring a permit for a parade down a public street.

Petition: Individuals cannot use physical force or threats to try to coerce government action, and the First Amendment does not guarantee that the government will act in response to individuals' petitioning.

During Your Visit: Gallery Guide

This guide takes students through the Newseum's First Amendment Gallery (Level 4) to see how their freedoms can be exercised daily and in school.

GRADE LEVEL: Middle and high school

TIME: 30 minutes

MATERIALS: You Can't Say That in School Gallery Guide ([download](#))

After Your Visit: The Case of Lee v. Weisman

Students analyze a 1992 Supreme Court case about religion in public schools, drawing on their First Amendment knowledge to support their own conclusions about how the court should have ruled.

GRADE LEVEL: Middle and high school

TIME: 60 minutes

MATERIALS: Balancing Rights: The Case of Lee v. Weisman worksheet (download) and teacher background sheet (attached)

PREPARE

1. Print copies of the Balancing Rights: The Case of Lee v. Weisman worksheet, one per student.
2. Review the Balancing Rights: The Case of Lee v. Weisman teacher background sheet.
3. If desired, additional case background for Lee v. Weisman on Oyez:
http://www.oyez.org/cases/1990-1999/1991/1991_90_1014

DO

1. Distribute the worksheet.
2. Individually or in groups, have students read the summary of the case and answer the questions.
3. Discuss their answers, then reveal and discuss the court's decision. (See the accompanying teacher background sheet for more information.) Throughout the discussion, encourage students to cite cases or facts they have learned from their First Amendment studies.

DISCUSS

Before revealing the Supreme Court's ruling:

- What rights are you balancing in this case?
- How should the principal defend the practice of hosting a clergy member to lead a prayer? How should the student's father argue against it?
- Does it matter whether attendance is required to receive a diploma? What about whether requirements to stand or kneel or otherwise observe the prayer? Why? What if the prayer were led by the principal? By a student?

After revealing the Supreme Court's ruling:

- How did the Supreme Court balance rights in this case?
- Do you agree or disagree with this ruling? Why?
- What is coercion? Why is the concept of coercion important to this case? What do you think should constitute coercion?
- Following this ruling, some public schools have chosen to have an additional graduation event where non-denominational and non-sectarian prayers led by local clergy are part of the program. What do you think about this practice?
- 1992 was more than 20 years ago. Do you think the Supreme Court would rule the same way on this case today? Why or why not?

EXTENTION ACTIVITY

Organize a class debate about the case. **Before** revealing the how the Supreme Court ruled on this case, divide the class into two; one side will argue that the Supreme Court should rule that the prayer is protected by the First Amendment; the other half will argue that the Supreme Court should rule that the prayer is not protected by the First Amendment. Break each half of the class into several small groups. Each group will present its strongest argument for or against First Amendment protection in the debate. Allow them class time to begin brainstorming arguments, or assign this as homework. In the following class period, alternate groups from each half of the class, presenting arguments for and against First Amendment protection. At the end of the debate, take a vote to see how the class would rule on the case. (You may wish to ask parents or other teachers to be a guest judge and jury.) Reveal the Supreme Court's ruling and discuss using the questions above.

The Case of Lee v. Weisman Teacher Background

Text drawn from the First Amendment Center's First Amendment Schools's website:

<http://www.firstamendmentschools.org/freedoms/case.aspx?id=476>

Facts

Rhode Island public schools frequently invited local clergy members to participate in graduation ceremonies at the middle and high school level. These clergy were provided with guidelines for non-denominational and non-sectarian prayers for invocations and benedictions. The father of a student at Nathan Bishop Middle School sued, claiming that inviting a rabbi to lead prayers at the middle school graduation was a violation of the Establishment Clause of the First Admendment.

Issue

"Whether including clerical members who offer prayers as part of the official school graduation ceremony is consistent with the Religion Clauses of the First Amendment."

Holding

By a 5-4 vote, the court held that schools may not promote religious exercises either directly or through an invited guest at graduation ceremonies.

Reasoning

The court found that the Establishment Clause forbids government from coercing people into participating in a religious activity. Forcing students to choose between attending a graduation ceremony containing religious elements with which they disagree or avoiding the offending practices by not attending their graduation ceremony was inherently coercive and unlawful. The court found that students who do attend are exposed to subtle coercion to appear as though they approve of or are participating in the prayer.

Majority

"The principle that government may accommodate the free exercise of religion does not supersede the fundamental limitations imposed by the Establishment Clause. It is beyond dispute that, at a minimum, the Constitution guarantees that government may not coerce anyone to support or participate in religion or its exercise, or otherwise act in a way which 'establishes a [state] religion or religious faith, or tends to do so.'" (Justice Anthony Kennedy)

Dissent

"Thus, while I have no quarrel with the Court's general proposition that the Establishment Clause 'guarantees that government may not coerce anyone to support or participate in religion or its exercise,' I see no warrant for expanding the concept of coercion beyond acts backed by threat of penalty — a brand of coercion that, happily, is readily discernible to those of us who have made a career of reading the disciples of Blackstone rather than of Freud." (Justice Antonin Scalia)