

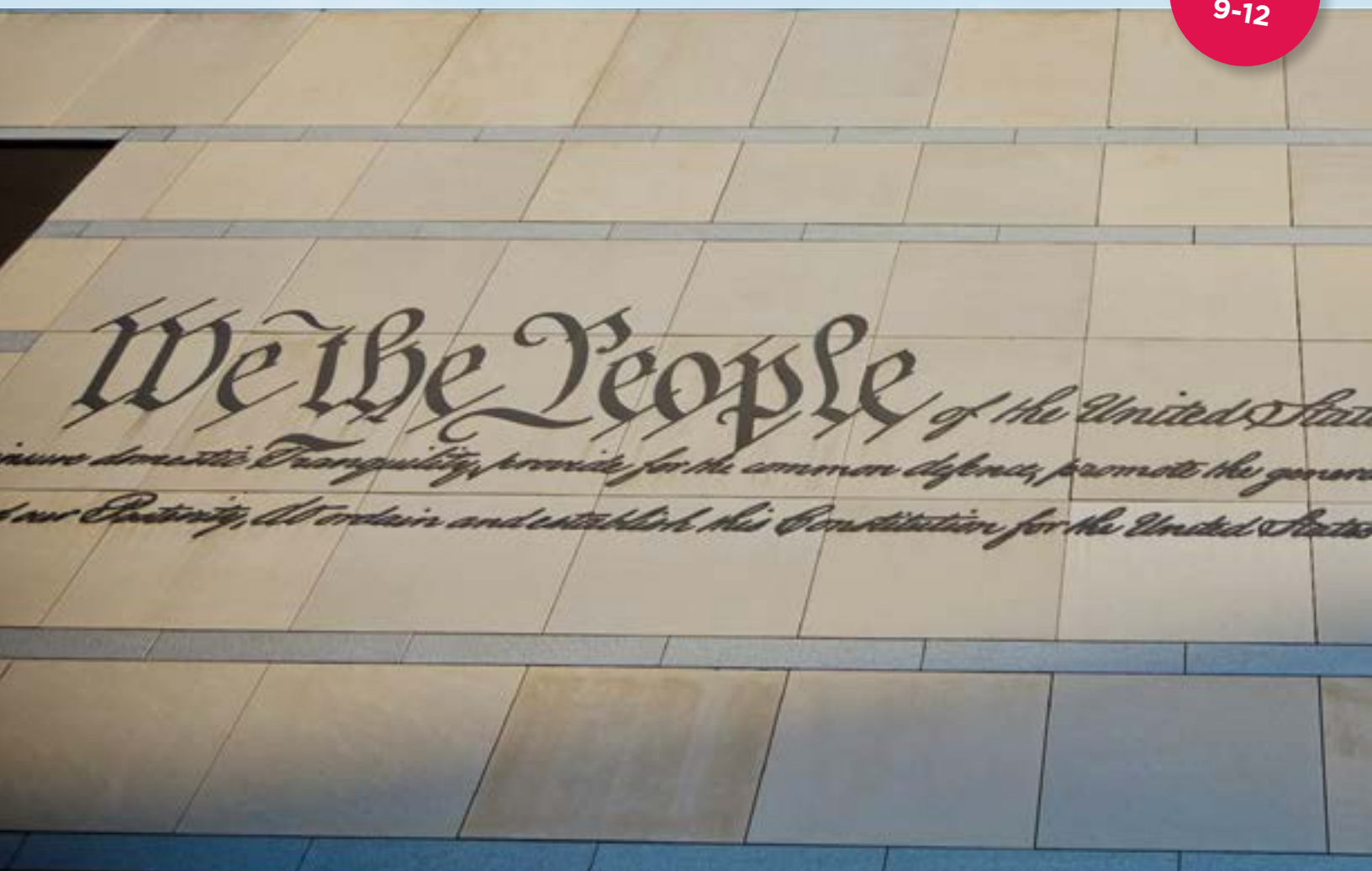


WHAT CAN I SAY IN SCHOOL?

AN EXAMINATION OF STUDENTS' FREEDOM OF SPEECH

★★ Lesson Plan ★★

GRADES
9-12



ABOUT THIS LESSON

Students will investigate the legal language defining their freedom of speech rights. Participants will analyze landmark Supreme Court cases that define students' freedom of speech, and then examine a recent challenge, *Hawk and McDonald-Martinez v. Easton Areas School District* (2013)—otherwise known as the I Heart Boobies case. To guide thinking, students will apply the IRAC case analysis technique and then will write majority and dissenting opinions as Supreme Court Justices.

AUTHOR

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BACKGROUND

Since *Tinker* (1969), the Supreme Court has taken important steps to define the rights of public school students. School attendance is compulsory, and is designed to prepare each new generation to become informed, responsible citizens. Educators must maintain order in school facilities, while also respecting the individual freedoms of students as guaranteed by the U.S. Constitution. Courts have established legal precedents and standards that help school administrators create policies that provide a safe learning environment, but also allow students to retain significant freedom. They must consider the following questions: What is the nature of the speech (social vs. political)? Does the speech undermine the school's learning environment? Did the speech occur in or out of school? Does the school have jurisdiction? For example, an administrator may censor a student's speech if it is likely to cause "a substantial disruption of or material interference with school activities" (*Tinker*, p. 514). As a result, students' free speech is sometimes limited if the content or context of that speech endangers school safety or disrupts the learning process. Changes in technology and social values affect what students think and say, as well as the methods available for them to express themselves, so the question of what students can express in and out of school continues to evolve in the American justice system. The cases presented in this lesson will further students' understanding of these issues and help them prepare to engage in public discourse.

GRADE LEVEL(S)

9-12

CLASSROOM TIME

- Two 45-minute class periods

HANDOUTS

- Warm-up activity handout
- IRAC Handout
- IRAC Worksheet
- Condensed Court Cases Handout (found [here](#))

CONSTITUTIONAL CONNECTIONS

First Amendment

OBJECTIVES

Students will:

- Identify, apply, and analyze students' freedom of speech using legal precedent;
- Identify and apply the IRAC (Issue, Rule, Analysis and Conclusion) case analysis technique; and
- Write majority and/or dissenting opinions for *Hawk and McDonald-Martinez v. Easton Area School District (2013)*, colloquially known as the *I Heart Boobies* case.

STANDARDS

Common Core: Determine the meaning of words and phrases as they are used in a text, including analyzing how an author uses and refines the meaning of a key term over the course of a text; Determine the central ideas or information of a primary or secondary source; provide an accurate summary that makes clear the relationships among the key details and ideas.

NCSS Standard: Power, Authority, and Governance: Students will develop an understanding of the principles, processes, structures, and institutions of government, and how people attempt to cooperate and resolve conflicts in order to establish order and security, and seeking social justice.

WARM UP ACTIVITY

i Heart Boobies - a case that could happen in your school.

Students will be introduced to an adaptation of the *Hawk; McDonald-Martinez v. Easton Area School District (2012)* case on the **Warm-Up Activity Handout**.

Hawk; McDonald-Martinez v. Easton Area School District (2012) is a case concerning two middle school students who wore bracelets that read “I <3 Boobies” to school in support of breast cancer awareness. The school district administrators believed the bracelets were a disruption to the school environment and banned the bracelets from being worn citing their school dress code policy that prohibited lewd or vulgar language on clothing. Despite the ban two students (B.H. and K.M.) wore their bracelets to school and were suspended for breaking this policy.

This case presents the argument that by prohibiting the students’ from wearing the “I <3 Boobies” bracelets in school, the school administration violated the students’ First Amendment freedom of speech rights. The school district cites two prominent Supreme Court cases on student speech in school (*Tinker v. De Moines School District*, *Bethel School District v. Fraser*) to support the ban on the bracelets and the suspension of the two students who refused to stop wearing them while at school.

Students will work independently to answer the questions about the adaptation on the **Warm-Up Activity Handout**.

Questions:

- What would your reaction be if this happened here at your school?
- Should Josephine have been reprimanded for wearing this bracelet?
- Do you think the First Amendment freedom of speech protects Josephine’s actions? Why or why not?

Technology Connection: Use **The Interactive Constitution** to help students identify important constitutional language to be defined. For example, where is it stated in the U.S. Constitution that students have the right to say and wear anything they want?

- When can First Amendment freedom of speech be limited? Why?

Technology Connection: Students can investigate the history of the freedom of speech at Interactive Constitution Timeline. In addition, students can investigate cyber speech rights.

- Does your school have a rule governing inappropriate speech?

Students will share their written views and opinions with the group. Facilitate short discussion using the questions from the warm-up activity, then have the group create a list of examples of symbolic speech on board.

PART I: STUDENTS' FIRST AMENDMENT RIGHTS BACKGROUND

To more fully understand if wearing the I Heart Boobies wristband is permissible in schools, students need a background on their First Amendment speech rights and the IRAC case analysis technique. Provide each student **IRAC Worksheet** and **Tinker Handout**. Then, have students read about *Tinker v. Des Moines School District* (1969) and complete the **IRAC Worksheet** together. Below is an application of IRAC case analysis technique for Tinker.

ISSUE

A group of students planned to protest the Vietnam War at school by wearing black armbands. School administrators, fearful of the disruption the armbands may cause due to the highly emotional topic, banned the armbands from being worn at school. Several students wore them despite the ban and were punished as a result of their actions. Two students, Mary Beth and John Tinker (plaintiff) chose to petition for their First Amendment right to wear the armbands, citing that the freedom of speech included symbolic speech. Des Moines School District (defendant) cited the school ban on armbands because the expression was seen as a possible disruption to the environment and purpose of the school.

RULE

Does a prohibition against the wearing of armbands in public school, as a form of symbolic protest, violate the students' freedom of speech protections guaranteed by the First Amendment? Students were prohibited from wearing the armbands at school because they were viewed as a possible disruption to the school environment. Students broke this rule and cited symbolic speech as stated in the First Amendment. The First Amendment is a key component in the ruling. The word "speech" is interpreted to include symbolic speech (such as an armband).

ANALYSIS

The Plaintiff (Tinker) argued that the banning of the armbands was unjust and thus their punishment for wearing them was wrong. They believed the armbands were an example of symbolic political speech that should have been protected under the First Amendment. The majority opinion supported this argument with claims such as "students or teachers [do not] shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." They cited previous cases such as *Terminiello v. Chicago* and *West Virginia State Board of Education v. Barnette*, both of which also discussed freedom of speech issues both within and outside of school. The defendant (school district) put a policy in place that banned students from wearing the armbands citing that students wearing them could cause a disruption to the mission and purpose of school to educate its students. Although the action to wear the armbands was passive in nature, the school district cited examples of the armbands stopping learning time or disrupting the objective of school. Dissenting opinions felt strongly that the school rule banning the armbands was put in place with the intent to maintain the proper school environment and that freedom of speech does not mean unlimited speech whenever and wherever one chooses. Dissenting judges cite a constitutional test of reasonableness used in previous cases such as *Meyer v. Nebraska* and *Bartles v. Iowa*.

CONCLUSION

This decision laid the foundation for student speech in the modern era. The extension of freedom of speech to symbolic acts or words that are controversial or questionable should be protected within the environment of education so long as it does not take away the rights of other individuals or disrupt the mission of schools. When censoring a students' speech, an administrator must prove that a particular student's action was a "substantial disruption of or material interference with school activities." If those requirements are not met the speech cannot be guaranteed protection. This case made freedom of expression a key component of the school environment and promoted public discourse as a practice of students while at school. However, other issues of student speech have since come up and the interpretation of student speech in schools has changed based on the context in which the speech is made.

PART I: STUDENTS' FIRST AMENDMENT RIGHTS

After evaluating *Tinker*, students will then review landmark Supreme Court of the United States (SCOTUS) cases using **Condensed Court Cases Handout**, **IRAC Handout** and **IRAC Worksheet**. The Condensed Court Cases Handout (available here) includes primary source excerpts from landmark cases and the **IRAC Handout** explains a case analysis technique used in many law schools, which will help students read and discuss legal precedent. Organize students into small *home groups* using the jigsaw method (See <http://www.jigsaw.org/steps.htm> for more information on cooperative learning strategy). Group students in a way that ensures that each case can be represented in a *home group*, and then assign each student one of the following (**Condensed Court Cases Handout**):

- *Bethel School District v. Fraser* (1986)
- *Hazelwood School District v. Kuhlmeier* (1988)
- *Morse v. Frederick* (2007)
- *Snyder v. Blue Mountain School District* (2009) (Note: This case was only heard by the Third Circuit Court of Appeals.)

Students will break from their home groups and meet in case-specific *expert groups*. In *expert groups* have students complete an **IRAC Case Analysis Worksheet**. Afterwards, reconvene the *home groups* and have each student report out the facts, rule, analysis and conclusion of their assigned case.

After reviewing each assigned case, have students return to the list of examples of symbolic speech from the warm-up, now with a deeper understanding of precedent, and discuss which examples can and cannot be censored by school officials. This exercise should help clarify if students understand previous cases prior to conducting a final analysis of *Hawk and McDonald-Martinez v. Easton Area School District* (2013). To bring closure to this stage of the lesson, ask the following questions to the entire class:

- Are the boundaries of political speech clear?
- What types of speech, according to the courts, undermine the school's learning environment? Do you agree?
- Where does the school's jurisdiction begin and end? Are those lines clear?

PART II: I HEART BOOBIES CASE

Now that students have a deeper understanding of their First Amendment rights while in school, return to the “I Heart Boobies” case and examine its legal arguments. Because SCOTUS never heard the case, students will have an opportunity to take on the role as justices and write majority and minority opinions. Break students into two larger groups: majority and dissent. Have students then complete another **IRAC Worksheet** using the **Condensed Court Case handout**.

After students have reviewed the case, further break down into smaller groups (3-4 students per group) and write a majority or dissenting opinion. By organizing students into smaller groups, writing an opinion becomes more manageable and allows for different strains of legal reasoning to emerge. Use the following questions to help guide writing as well as the **Case Presentation Rubric**:

- Who are the judges? (students)
- What are the facts of the case?
- What is the constitutional question?
- Is the “I Heart Boobies” wristband protected speech? Was the school’s learning environment inappropriately disrupted?
- What previous cases help to inform an analysis of this current case?
- How is this current case similar or different to previous ones?
- What now should be the ruling? Is this panel reversing the previous ruling?

WRAP UP

Hold a full class discussion to determine if the Federal ruling against *Easton Area School District* continues to hold merit. Return to the following questions to help bring closure to the lesson.

- Are the boundaries of political speech clear?
- What types of speech, according to the courts, undermine the school's learning environment? Do you agree?
- Where does the school's jurisdiction begin and end? Are those lines clear?

ALTERNATE ASSESSMENT OPTIONS

Create a Town Hall Poster illustrating students' arguments. Here are some examples from similar lessons:
<http://constitutioncenter.org/the-exchange/exchange-educational-resources/past-topics>.

Students can poll the school and assess the student body's understanding of Freedom of Speech issues within school versus other public settings.

FURTHER RESOURCES

Lesson Plan: Are the Principles of the U.S. Constitution reflected in your school?

http://constitutioncenter.org/exchange/files/THW_SchoolConstitution_4.pdf

Lesson Plan: Should students' cyber speech be protected under the First Amendment?

http://constitutioncenter.org/exchange/files/Exchange_SocialNetwork_2.pdf

Further Analysis of the “i Heart Boobies” Case

<http://blog.constitutioncenter.org/2014/03/constitution-check-how-free-are-students-to-comment-on-public-policy-issues/>

WARM UP ACTIVITY HAND OUT

“I Heart Boobies”

Josephine is a thirteen-year-old girl who attends your school. She wore a bracelet that read “I <3 Boobies” to school in support of breast cancer awareness. The school district administrators believed the bracelet was a disruption to the school environment and banned all students from wearing the bracelets, citing their school dress code policy that prohibited lewd or vulgar language on clothing. Despite the ban, Josephine wore her bracelet to school and was suspended for breaking this policy.

1. What would your reaction be if this happened here at our school?
2. Should Josephine have been reprimanded for wearing this bracelet?
3. Do you think the First Amendment freedom of speech protects Josephine’s actions? Why or why not?
5. When can First Amendment freedom of speech be limited? Why?

“I Heart Boobies”

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IRAC: HOW TO CONDUCT CASE ANALYSIS

Issue-what is the case about

Rule-what rules are implicated by the facts and the issues

Analysis-past cases, current facts

Conclusion-what is the ruling

Issue

- First step is to look at the case itself and determine the facts of what happened
- What was the incident that brought this case to court originally?
- Who are the parties? (people, organizations, local/federal governments)
- What facts are important? Unimportant?
- Is any significant information missing?
- Why did the people involved act the way they did?

Rule

Pinpoint and discuss the action and legal issues presented by the case.

- ACTION = public policy, laws and rules, programs
- LEGAL ISSUE = amendment, past court case, procedure

Example: Are locker searches in public schools unreasonable?

Example: Are school uniforms a violation of a student's freedom of speech?

Example: Is the juvenile death penalty cruel and unusual punishment?

Analysis

Develop and discuss the arguments that can be made for and against each of the various points of view.

When discussing the arguments, consider questions such as the following:

- What are the arguments in favor of and against each point of view?
- What decisions did the lower courts/past Supreme Court cases issue prior to its arrival to the Supreme Court?
- What did the majority/dissenting opinion say?
- Is the situation presented different from what was presented in prior court cases? If so, how does that change the analysis?
- Are there practical implications that should be considered?
 - What practical options are there if not? (not entirely necessary to make a good case)
 - Which arguments are most persuasive? Least Persuasive? What

Conclusion

- What will the decision mean for the parties involved in the case?
- What impact does this decision have on the definition of our rights?
 - Example: What does "unreasonable" now mean?
 - Example: Does freedom of "speech" include a policy for school uniforms?
- What impact might this decision have on society? (new actions)
 - Example: Does this give administrators power to search more than just lockers?
- Are there any alternatives? Example: Drug prevention programs. Selective drug testing.

IRAC WORKSHEET

ISSUE	What was the incident that brought this case to the courts?	
	Who are the two sides? Which side did the court rule in favor of?	
	Why did the people involved act the way they did?	
	What is the issue before the court?	
RULE	What rule/policy is being challenged?	
	What is this case's constitutional question?	
	Which amendment is associated with this case? Which right(s)?	
	Which words are being defined in the amendment?	
	How does each side define the words or the application of those words to the situation differently?	

IRAC WORKSHEET

ANALYSIS	What arguments does the appellant make? What other court cases are mentioned in this case? How do they help?	
	What arguments does the respondent make? What other court cases are mentioned in this case? How do they help?	
	What arguments do the majority opinion agree with? What other court cases are mentioned in this case? How do they help?	
	Assuming other cases are not exactly the same, do the differences dictate a different result?	
CONCLUSION	What does the decision mean for the parties involved?	
	How have our rights changed as a result of this decision?	
	Is the decision practical? Are there any other alternative ways to deal with this issue?	

CASE PRESENTATION RUBRIC

	4	3	2	1
Background Facts	Complete and accurate presentation of background that includes a discussion of the incident and prior court decisions of this case	A presentation of background that includes a discussion of the incident and previous court decisions, but there is an error or necessary missing element	A presentation of background that attempts a discussion of the incident and previous court decisions, but there are a large number of errors or missing elements	Little to no discussion of the incident and previous court decisions
Argument	The legal issue is accurately presented in the form of a question or statement; author answers the question	The legal issue is accurately presented in the form of a question or statement, yet may contain a flaw; author answers the question	The legal issue is presented in the form of a question or statement, yet may contain a flaw; author does not answer question directly or accurately	The legal issue is not presented in the form of a question or statement and author does not answer question directly
Case Analysis	Author accurately uses facts from the case and previous rulings to support argument	Author only uses facts from the case or previous rulings to support argument	Author only uses facts from the case and/or previous rulings to support argument or there are major inaccuracies	Author does not support argument with facts and previous rulings
Organization	Paper includes all required elements, transitions between ideas, and conclusion making the argument cohesive	Paper includes all required elements, but the transitions between ideas and conclusion make the argument inconsistent at times	Paper is missing some required elements necessary transitions, and conclusion does not wrap argument up	Paper is disorganized and incomplete
Mechanics	Paper is neat with no spelling or grammatical errors	Paper is neat with some spelling and grammatical errors	Paper has many spelling and grammatical errors but the reader can still understand argument	Paper has a number of spelling and grammatical errors that inhibits reader's ability to understand argument

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