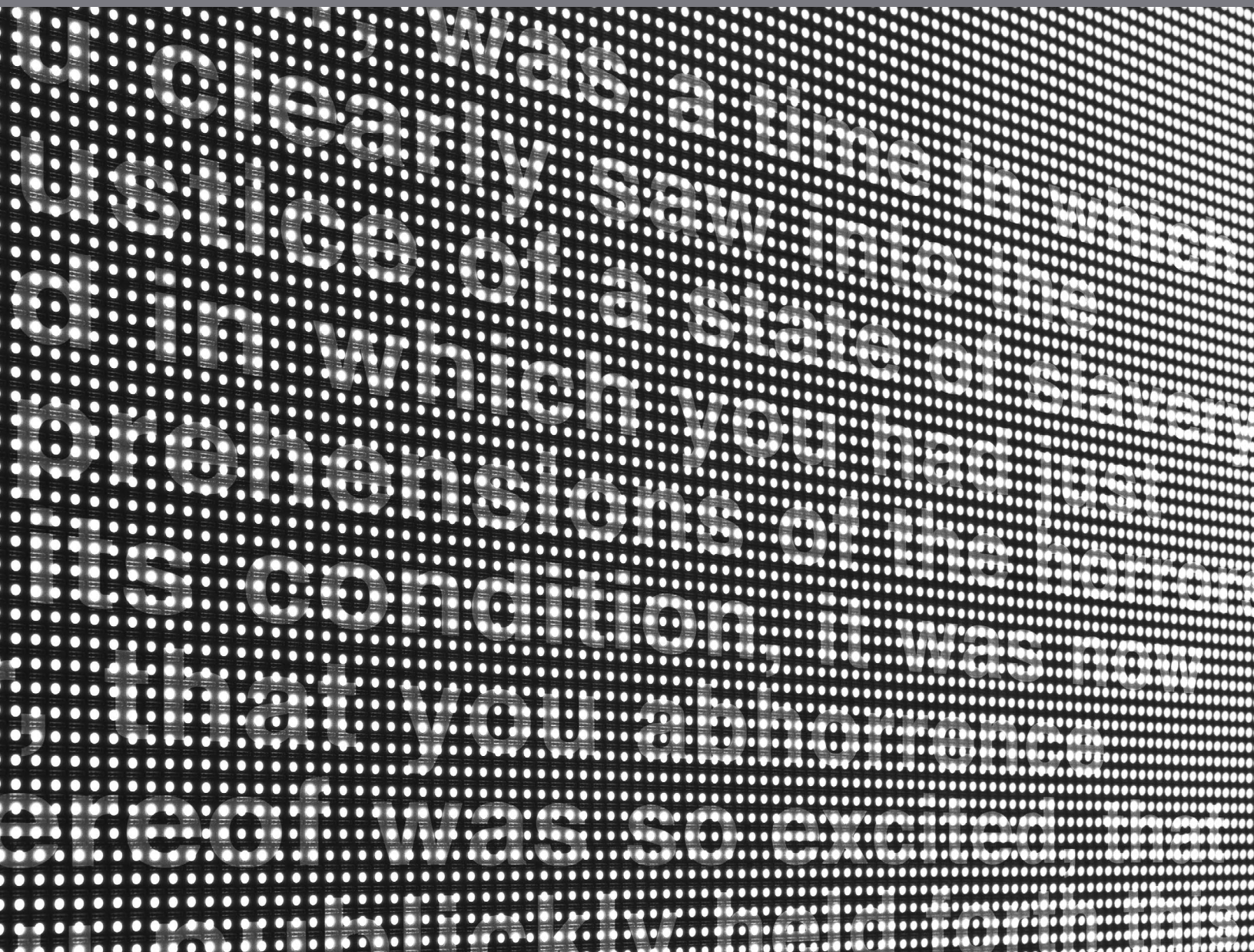




The U. S. Constitution Series
In Partnership with the National Constitution Center

AP® English Language

Argument



Argument

Handouts

About the College Board

The College Board is a mission-driven not-for-profit organization that connects students to college success and opportunity. Founded in 1900, the College Board was created to expand access to higher education. Today, the membership association is made up of over 6,000 of the world's leading educational institutions and is dedicated to promoting excellence and equity in education. Each year, the College Board helps more than seven million students prepare for a successful transition to college through programs and services in college readiness and college success — including the SAT® and the Advanced Placement Program®. The organization also serves the education community through research and advocacy on behalf of students, educators, and schools.

For further information, visit www.collegeboard.org.

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The First Amendment to the US Constitution:

Congress shall make no law respecting¹ an establishment of religion, or prohibiting the free exercise thereof; or abridging² the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition³ the Government for a redress⁴ of grievances.

¹ Respecting: *prep.* – regarding; with reference or regard to

² Abridge: *verb* – to deprive, reduce, or restrict

³ Petition: *verb* – to make or present a formal request to (an authority) with respect to a particular cause

⁴ Redress: *noun* – remedy or compensation for a wrong or grievance

The Fourth Amendment to the US Constitution:

The right of the people to be secure in their persons, houses, papers, and effects¹, against unreasonable searches and seizures², shall not be violated, and no warrants³ shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

¹ **Effects:** *noun* – personal belongings; anything that belongs to a person

² **Seizure:** *noun* – the action of capturing someone or something using force

³ **Warrant:** *noun* – a document issued by a legal or government official authorizing the police or some other body to make an arrest, search premises, or carry out some other action relating to the administration of justice

CASE #1

***Tinker v. Des Moines Independent School District* (1969)**

Issue: Freedom of Speech at School

Bottom Line: You Have the Right To Express Yourself — Up to a Point

Background

In December 1965, John and Mary Beth Tinker and their friend Chris Eckhardt wore black armbands to school in Des Moines, Iowa, to protest the war in Vietnam. School officials told them to remove the armbands, and when they refused they were suspended (John, 15, from North High; Mary Beth, 13, from Warren Harding Junior High; and Chris, 16, from Roosevelt High). With their parents, they sued the school district, claiming a violation of their First Amendment right of freedom of speech.

Ruling

The Supreme Court sided with the students. Students and teachers don't "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate," the court said.

The court did not, however, grant students an unlimited right to self-expression. It said First Amendment guarantees must be balanced against a school's need to keep order; as long as an act of expression doesn't disrupt classwork or school activities or invade the rights of others, it's acceptable. Regarding the students in this case, "Their deviation consisted only in wearing on their sleeve a band of black cloth," the court said. "They caused discussion outside of the classrooms, but no interference with work and no disorder."

Impact

In 1986, applying the "disruption test" from the *Tinker* case, the Supreme Court upheld the suspension of Matthew Fraser, a 17-year-old senior at Bethel High School in Tacoma, Washington, who gave a school speech containing sexual innuendos (*Bethel School District v. Fraser*). The court said, "It is a highly appropriate function of public school education to prohibit the use of vulgar and offensive terms in public discourse."

Lower courts have relied on *Tinker* in rulings on school attire, allowing nose rings and dyed hair, for example, but disallowing a T-shirt displaying a Confederate flag.

In June 2007, the Supreme Court weighed in on another student expression case, *Frederick v. Morse*, ruling that schools can limit student speech that seems to advocate illegal drug use. The case concerned Joseph Frederick, an 18-year-old senior at Juneau-Douglas High School in Alaska, who was suspended in 2002 for holding a banner that said "Bong Hits 4 Jesus" while standing across the street from the school during the Olympic torch relay.

CASE #2

New Jersey v. T.L.O. (1985)

Issue: Privacy Rights at School

Bottom Line: Your Belongings Can Be Searched, but Not Arbitrarily

Background

T.L.O. (Terry), a 14-year-old freshman at Piscataway High School in New Jersey, was caught smoking in a school bathroom by a teacher. The principal questioned her and asked to see her purse. Inside was a pack of cigarettes, rolling papers, and a small amount of marijuana. The police were called and Terry admitted selling drugs at school.

Her case went to trial and she was found guilty of possession of marijuana and placed on probation. Terry appealed her conviction, claiming that the search of her purse violated her Fourth Amendment protection against “unreasonable searches and seizures.”

Ruling

The Supreme Court ruled in favor of the school. Students have “legitimate expectations of privacy,” the court said, but that must be balanced with the school’s responsibility for “maintaining an environment in which learning can take place.” The initial search of Terry’s purse for cigarettes was reasonable, the court said, based on the teacher’s report that she’d been smoking in the bathroom. The discovery of rolling papers near the cigarettes in her purse created a reasonable suspicion that she possessed marijuana, the court said, which justified further exploration.

Impact

T.L.O. is the landmark case on search and seizure at school. Basically, school officials may search a student’s property if they have a “reasonable suspicion” that a school rule has been broken, or a student has committed or is in the process of committing a crime. These are called “suspicion-based” searches. There are also “suspicionless searches” in which everyone in a certain group is subject to a search at school. [See *Vernonia v. Acton* in part 2 of this article in the next issue of *Upfront*.]

CASE #3

West Side Community Schools v. Mergens (1990)

Issue: Student Clubs

Bottom Line: Public Schools that Allow Student-Interest Clubs Cannot Exclude Religious or Political Ones

Background

Bridget Mergens was a senior at Westside High School in Omaha, Nebraska. She asked her homeroom teacher, who was also the school's principal, for permission to start an after-school Christian club. Westside High already had about 30 clubs, including a chess club and a scuba-diving club. The principal denied Bridget's request, telling her that a religious club would be illegal in a public school.

The year before, in 1984, Congress had addressed this issue in the Equal Access Act, which required public schools to allow religious and political clubs if they let students form other kinds of student-interest clubs. When Bridget challenged the principal's decision, her lawsuit became the Supreme Court's test case for deciding whether the Equal Access Act was constitutional under what is known as the Establishment Clause of the First Amendment: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

Ruling

The Supreme Court ruled in favor of Bridget. Allowing students to meet on campus to discuss religion after school did not amount to state sponsorship of religion. The court said: "We think that secondary-school students are mature enough and are likely to understand that a school does not endorse or support student speech that it merely permits."

Impact

If a public school allows only clubs tied to the school curriculum — a French club related to French classes, for instance — it can exclude clubs that don't connect to its educational mission. But once a school allows student-interest clubs — such as a scuba-diving club, environmental club, or jazz club — it cannot exclude religious clubs, political clubs, gay-lesbian clubs, or other groups.

If the club is religious in nature, however, the school must refrain from active involvement or sponsorship, so that it doesn't run afoul of the Establishment Clause, the court said.

CASE #4

Hazelwood School District v. Kuhlmeier (1988)

Issue: Student Journalism and the First Amendment

Bottom Line: Schools Can Censor Student Newspapers

Background

Cathy Kuhlmeier, Leslie Smart, and Leanne Tippett, juniors at Hazelwood East High School in St. Louis, Missouri, helped write and edit the school paper, the Spectrum, as part of a journalism class. An issue of the paper was to include articles about the impact of divorce on students and teen pregnancy. The school's principal refused to publish the two stories, saying they were too sensitive for younger students and contained too many personal details. The girls went to court claiming their First Amendment right to freedom of expression had been violated.

Ruling

The Supreme Court ruled against the girls. A school newspaper isn't a public forum in which anyone can voice an opinion, the court said, but rather a supervised learning experience for students interested in journalism. "Educators do not offend the First Amendment by exercising editorial control over the style and content of student speech in school-sponsored expressive activities," the court said, "so long as their actions are reasonably related to legitimate [educational] concerns."

Impact

Schools may censor newspapers and restrict other forms of student expression, including theatrical productions, yearbooks, creative writing assignments, and campaign and graduation speeches. But the Court's ruling in Hazelwood encourages schools to look closely at a student activity before imposing any restrictions and to balance the goal of maintaining high standards for student speech with students' right to free expression.

CASE #5

Vernonia School District v. Acton (1995)

Issue: Student Athletes and Drug Testing

Bottom Line: Schools Can Require It

Background

James Acton, a 12-year-old seventh-grader at Washington Grade School in Vernonia, Oregon, wanted to try out for the football team. His school required all student athletes to take drug tests at the beginning of the season and on a random basis during the school year. James's parents refused to let him be tested because, they said, there was no evidence that he used drugs or alcohol. The school suspended James from sports for the season. He and his parents sued the school district, arguing that mandatory drug testing without suspicion of illegal activity constituted an unreasonable search under the Fourth Amendment.

Ruling

The Supreme Court ruled in favor of the school district. Schools must balance students' right to privacy against the need to make school campuses safe and keep student athletes away from drugs, the court said. The drug-testing policy, which required students to provide a urine sample, involved only a limited invasion of privacy, according to the Justices: "Students who voluntarily participate in school athletics have reason to expect intrusions upon normal rights and privileges, including privacy."

The court noted that all students surrender some privacy rights while at school; they must follow school rules and submit to school discipline. But student athletes have even fewer privacy rights, the justices said, and must follow rules that don't apply to other students. Joining a team usually requires getting a physical exam, obtaining insurance coverage, and maintaining a minimum grade point average. And athletes must be willing to shower and change in locker rooms, further reducing their privacy. "School sports are not for the bashful," the court said.

Impact

More recently, the Supreme Court has ruled in favor of school policies requiring random drug testing for all extracurricular activities (*Board of Education v. Earls*, 2002).

The preceding case summaries were all published as part of an article in the September 2007 edition of The New York Times Upfront, a news magazine for teens published through a partnership between Scholastic and The New York Times.

Jacobs, Tom. 2007. "10 Supreme Court Cases Every Teen Should Know." *The New York Times on the Web Learning Network*. The New York Times and Scholastic. September. Accessed January 15, 2016. <http://learning.blogs.nytimes.com>.

Lesson 1 Organizer: Comparing Texts and Examining Revisions

Drafted Text**HOUSE AMENDMENT #4**

The freedom of speech, and of the press, and the right of the people to peaceably assemble and consult for their common good, and to apply to the government for redress of grievances, shall not be infringed.

Final Text**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.**

Examination of Revised Elements

The Revision: “and consult for their common good” was dropped completely.

1. What could the unrevised original mean?
 2. Why might it have been removed/omitted from the final amendment?
 3. How is the final amendment better because of this revision?
-

Lesson 1 Independent Practice: Comparing Texts and Examining Revisions

Drafted Text

Final Text

Examination of Revised Elements

The Revision:

What was the problem with the unrevised original?

Why might it have been removed/omitted from the final amendment?

How is the final amendment better because of this revision?

Lesson 1 Assessment: Comparing and Developing Text in My Own Draft**Drafted Text**

Choose a sentence or passage that is important to the purpose of a draft that you have written. Write that here.

Final Text

Revise that text here, keeping close track of the revisions you make and how they will help make your writing more purposeful.

Examination of Revised Elements**The Revision:**

What was the problem with the unrevised original?

Why did you choose to remove/revise what you did?

How is the final text better because of this revision?

Argument Organizer: Claims, Counterclaims, and Evidence

Claim: *What am I going to assert?*

Counterclaim: *What might someone say to argue with my claim?*

Evidence: *What information from my experiences might support my claim and/or refute the counterclaim?*

Evidence #1:

Evidence #2

Evidence #3

Draft Thesis Statement: *Begin with Although, Despite, Even if, Even though, or Regardless.*

Independent Practice Prompt

The British Broadcasting Company (BBC) describes the term “*trigger warning*” as something that someone adds to a video, text, etc. “in recognition of strong writing or images which could unsettle those with mental health difficulties.” Trigger warnings have seen increasing use in the past several years as ways of notifying people of potentially offensive or troubling subject matter.

Some high schools and colleges are considering requirements that teachers and professors include trigger warnings when a class may study potentially offensive or troubling subject matter. Examples may include warnings to be used when a book in an English class includes a troubling scene or offensive language, when a lesson in a science class addresses material that may go against someone’s beliefs, or when a particularly troubling period of history is to be covered in a history class.

Consider this information about trigger warnings and their potential requirement in some high schools. Then, in a well-organized essay, develop a position regarding requirement of trigger warnings with high school courses.

You are encouraged to use your exploration of the First Amendment and the associated readings on the National Constitution Center’s website as evidence in your argument.

Argument Organizer: Claims, Counterclaims, and Evidence

Claim: *What am I going to assert?*

Counterclaim: *What might someone say to argue with my claim?*

Evidence: *What information from my experiences might support my claim and/or refute the counterclaim?*

Evidence #1:

Evidence #2

Evidence #3

Draft Thesis Statement: *Begin with Although, Despite, Even if, Even though, or Regardless.*

Extension Independent Practice

Having read the case brief from the Acton case, develop your position regarding whether or not the school's required drug test violates the student's right to protection from unreasonable search and seizure. Be certain to include material from your reading and exploration of the National Constitution Center's Interactive Constitution. Use this organizer to help you establish a claim relative to a counterclaim while also including supporting evidence.

Claim: *What am I going to assert?*

Counterclaim: *What might someone say to argue with my claim?*

Evidence: *What information from my experiences might support my claim and/or refute the counterclaim?*

Evidence #1:

Evidence #2

Evidence #3

Draft Thesis Statement: *Begin with Although, Despite, Even if, Even though, or Regardless.*

Assessment

(Suggested Time — 40 Minutes)

John Stuart Mill (1806–1873) was an English philosopher and political thinker. His ideas contributed much to our contemporary political thinking.

Regarding freedom of speech, Mill wrote in his 1859 work *On Liberty*:

“If all mankind minus one were of one opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person than he, if he had the power, would be justified in silencing mankind.”

But he also later wrote in the same work:

“The only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others.”

In a well-organized essay, take a position on the relationship between freedom of “opinion” and the responsibility to “prevent harm to others.”

You are invited to draw upon your recent examination and discussion of the First Amendment and particular Supreme Court cases in your position.

Related Free-Response Question

From the 2012 AP English Language and Composition Exam Free-Response Questions

(Suggested time — 40 minutes.)

Consider the distinct perspectives expressed in the following statements.

“If you develop the absolute sense of certainty that powerful beliefs provide, then you can get yourself to accomplish virtually anything, including those things that other people are certain are impossible.”

—*William Lyon Phelps, American educator, journalist, and professor (1865–1943)*

“I think we ought always to entertain our opinions with some measure of doubt. I shouldn’t wish people dogmatically to believe any philosophy, not even mine.”

—*Bertrand Russell, British author, mathematician, and philosopher (1872–1970)*

In a well-organized essay, take a position on the relationship between certainty and doubt. Support your argument with appropriate evidence and examples.