Where Speech Stands

Compare how the Supreme Court protects and limits First Amendment freedoms.

9-12.GOV.23 "Evaluate the Supreme Court's interpretations of the freedoms articulated in the First Amendment, including Schenck v. United States, New York Times v. United States, Engel v. Vitale, Miller v. California, Tinker v. Des Moines, Texas v..."

NAME _____ DATE _____

1 READ AND MARK

Read it twice

YOUR JOB As you read, underline what the Court protected or restricted in each case. Circle the reason for each decision so you can compare how the Court drew the line.

Seven Cases, Different Lines

1. When the United States entered World War I, Charles Schenck mailed leaflets urging resistance to the military draft. In Schenck v. United States (1919), the Supreme Court upheld his conviction, reasoning that speech posing a "clear and present danger" could be punished. That test does not state today's full rule for incitement. Later decisions gave political advocacy stronger protection. Decades later, the government tried to stop newspapers from publishing classified documents about the Vietnam War. In New York Times v. United States (1971), the Court refused this prior restraint because the government had not met its heavy burden for stopping publication.

2. At a public school, who chooses whether to pray? In Engel v. Vitale (1962), the Court struck down a state-written prayer recited in classrooms, even though students could opt out. Government sponsorship, not simply the presence of religion at school, was the problem. In Kennedy v. Bremerton School District (2022), the Court ruled for a public school football coach who prayed at midfield after games. The majority viewed his prayer as personal religious expression rather than government speech and held that his free exercise and free speech rights were protected. These decisions distinguish an official school prayer from an individual's religious expression.

3. In Tinker v. Des Moines (1969), students wore black armbands against the Vietnam War. The Court protected their protest because officials had not shown substantial disruption or interference with others' rights. In Texas v. Johnson (1989), the Court protected flag burning as political expression, despite public offense. Yet not every expression receives protection. In Miller v. California (1973), the Court held that obscenity can be restricted. Its test asks whether a work appeals to prurient interests by community standards, depicts state-defined sexual conduct in a patently offensive way, and lacks serious literary, artistic, political, or scientific value. Offense alone is not the test.

2 ANSWER WITH EVIDENCE

Use the passage

1. How did the Court treat the government's claimed need to restrict expression differently in Schenck and New York Times?

2. Why could the Court reject the prayer in Engel but protect the prayer in Kennedy?

3. What reasons did the Court give for protecting the expression in both Tinker and Texas, despite objections to each act?

4. Why does the decision in Miller not mean that officials can restrict the flag burning protected in Texas simply because people find it offensive?

3 YOUR TURN

Your own words

A student quietly holds a "Cut Military Spending" sign during lunch at a public school. The principal orders it removed solely because some classmates dislike the message, but lunch continues without disruption. In four sentences, predict whether the order fits Tinker, compare Texas, and identify one fact that could change your judgment.

ANSWER KEY

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HIGH SCHOOL · 9-12.GOV.23

PART 1 · READ AND MARK

As you read, underline what the Court protected or restricted in each case. Circle the reason for each decision so you can compare how the Court drew the line. Accept any marking that follows this job and points at the right text.

PART 2 · ANSWERS

#	QUESTION	ANSWER
1	How did the Court treat the government's claimed need to restrict expression differently in Schenck and New York Times?	**The Court upheld punishment of Schenck's draft-resistance leaflets under a clear and present danger test. It refused to stop the newspapers' publication because the government had not met its heavy burden for prior restraint.**
2	Why could the Court reject the prayer in Engel but protect the prayer in Kennedy?	**Engel involved a state-written classroom prayer, which the Court treated as government-sponsored religion. In Kennedy, the majority treated the coach's prayer as personal expression protected by free exercise and free speech.**
3	What reasons did the Court give for protecting the expression in both Tinker and Texas, despite objections to each act?	**In Tinker, officials had not shown substantial disruption or interference with others' rights. In Texas, public offense did not remove protection from political expression.**
4	Why does the decision in Miller not mean that officials can restrict the flag burning protected in Texas simply because people find it offensive?	**Miller permits restrictions on obscenity under a specific three-part test. The flag burning in Texas was political expression, and public offense alone was not enough to remove its protection.**

PART 3 · YOUR TURN (SAMPLE ANSWER)

The order does not appear to fit Tinker because the sign has caused no substantial disruption or interference with others' rights. Disliking the student's political message is not enough on its own. Texas also shows that public offense does not remove protection from political expression, although this sign is at school rather than in a public protest. My judgment might change if students began fighting over the sign and lunch could not continue normally.

Accept answers that distinguish a school's need to address substantial disruption from a desire to suppress an unpopular viewpoint. For Schenck, do not treat the clear and present danger test as the current full rule for incitement.