

K-12 SCHOOLS, FREE SPEECH, AND THE FUNDAMENTAL, INDIVIDUAL RIGHT TO KEEP AND BEAR ARMS

A Guide to How Students Can Use Their First Amendment Rights to Defend and Promote Second Amendment Rights

Created and published by:
Firearms Policy Foundation and Firearms Policy Coalition



Firearms Policy Foundation

FPF is a 501(c)(3) grassroots, non-partisan, nonprofit public benefit organization that advocates for individual liberties and sound public policy through charitable activities and programs including research, education, and legal action. To join or make a contribution to FPF, visit firearmsfoundation.org/donate. (Donations to FPF are generally fully tax-deductible.)



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FPF and **FPC** have a common mission: To defend the Constitution of the United States, to advocate for the rights of the People, and to promote freedom and individual liberty. Both organizations actively support pro-speech and pro-gun rights legal action, including by funding and filing lawsuits, directly participating in litigation, and maintaining a Hotline for reporting possible civil rights violations.

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All the rights. All the time.

K-12 SCHOOLS, FREE SPEECH, AND THE FUNDAMENTAL, INDIVIDUAL RIGHT TO KEEP AND BEAR ARMS

Recently, students and schools across the country have been organizing and participating in “walkouts” and other demonstrations to advocate for stricter gun control laws. But not everyone agrees with those viewpoints.

Many students (or their parents) simply do not wish to participate in these events or engage in such speech at all, preferring to focus on their education while at school. And many others disagree with these anti-gun rights viewpoints – and may even want to organize and participate in speech and demonstrations that support a different or opposing viewpoint (i.e., pro-Second Amendment).

Thus, we endeavored to create and publish a Guide¹ to speech and expression at kindergarten through 12th Grade (“K-12”) public schools² that students and parents can use to help them plan out how to peacefully and lawfully engage in important issues in a manner consistent with their respective viewpoints.

In this Guide, we encourage learning about our uniquely American Constitution and your individual rights, provide relevant information and legal background, answer some of the most common questions, and include some useful tools (like sample letters) to help students and parents exercise their First Amendment rights to defend and promote the fundamental, individual Second Amendment right to keep and bear arms.

We hope this Guide serves as a valuable and informative tool for people of all viewpoints throughout the United States. If you find this guide useful and wish to help to offset production costs, or to support more work like this in the future, please consider making a small contribution at k12speech.com.

We are so concerned to flatter the majority that we lose sight of how very often it is necessary, in order to preserve freedom for the minority, let alone for the individual, to face that majority down.

— William F. Buckley Jr.

PART I: RESEARCH AND KNOW YOUR RIGHTS

The First Amendment of the U.S. Constitution guarantees freedom of speech to all people, including students in public school. Schools cannot censor or punish a student for being pro-gun or expressing an opinion in support of the Second Amendment, provided that the student’s expression of that opinion does not:

¹ This Guide and its contents are intended to provide general information only. It is not intended to provide legal advice.

² While some states might have constitutional provisions or laws that extend certain rights beyond those protected under the First Amendment, this Guide’s information is directed to students who attend public schools (where the First Amendment clearly applies). Some districts and schools that have quasi-government status or receive government funding may have some obligations to respect constitutional rights that exclusively private schools may not. Because these are complex, fact-specific issues, if you are not sure about the type of school you (or your child) attend, you should seek specific legal advice from a competent attorney experienced in speech and education matters who is licensed to practice in your area.

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- Substantially and materially interfere with classes;
- Threaten immediate harm to the welfare of the school or community;
- Encourage unlawful activity;
- Invade the rights of others; or,
- Use profanity, swear words, or vulgar language.

And the First Amendment similarly protects a student's right *not* to speak. (See *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943).) A school cannot compel students to participate in collective symbolic acts of political speech or public protests, such as anti-gun demonstrations and school walkouts.

For more information about speech and expression issues in schools, please see the summaries of selected cases in Appendix B. For a selection of federal constitutional provisions, please see some selected constitutional provisions in Appendix D.

Moreover, education can be a statutory or constitutional right in the state where the student lives. So, how the school district, school, its teachers and staff, and law enforcement officials deal with these events and issues – and impact the student's education – could implicate more than just the student's First Amendment rights.

If a student (or parent of a student) believes they were discriminated against or were disciplined for peacefully expressing their views or not participating in some event or speech and you'd like to share your experience with us, or to report a possible civil rights violation, please feel free to e-mail us at hotline@firearmspolicy.org or call our toll-free Legal Action Hotline at **(855) 252-4510**.

What should you do if you believe you or your child has been discriminated against or suffered a civil rights violation for having a pro-Second Amendment or contrary viewpoint?

Record a detailed account of the issue


If a student is forced to participate in an anti-gun event, is discriminated against, or believes their rights were violated, it should be documented in as much detail as possible as soon as possible. The student – and parent(s), if they were involved – should write down all the facts they can remember. For example, things that are very helpful to have a record of include:

“Restriction of free thought and free speech is the most dangerous of all subversions. It is the one un-American act that could most easily defeat us.

— Supreme Court Justice William O. Douglas

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- Names of all people present
- Date(s) and time(s) of the event
- Any specific issues or problems
- Who said what, and to whom
- Examples of speech/expression that were permitted
- Examples of speech/expression that were not permitted
- Any actions taken by teachers, school officials, or other students
- Any disciplinary actions taken (or not taken) against students
- Any law enforcement contacts or actions
- Names or descriptions of other people who might have witnessed events

 It is very important to write down as much as you know or remember as soon as possible. Even small, seemingly-insignificant details can be very important. Even you can't remember something completely ("A woman named Jane Doe was wearing a baseball hat and carrying a sign saying ' ____ ' by the water fountain..."), write down what you do remember ("A woman wore a baseball cap and held a sign..."). People tend to forget more details as time goes on, so write things down as you remember them.

Contact the FPF / FPC Legal Action Hotline and let us know

To report an issue or possible civil rights violation, please feel free to e-mail us at hotline@firearmspolicy.org or call our toll-free Legal Action Hotline at **(855) 252-4510**.

Seek further help or get legal advice

If a student (or the parent of a student) believes they were discriminated against, were disciplined for peacefully expressing their views, or disciplined for not participating in some event, they might want to ask an attorney for an immediate consultation.

The American Bar Association's Find Legal Help Web site (www.findlegalhelp.org) provides tools to help people find a lawyer. You can also use it to research legal issues, get state-specific legal information, and find a state or local bar association.

Attorney state bar associations can sometimes provide an attorney referral service to the public. And there may be some state and/or local organizations or support groups that help with education-related student advocacy.

Of course, you may wish to consider contacting the American Civil Liberties Union (ACLU) (aclu.org) or a local ACLU chapter. ■

“[For] if Men are to be precluded from offering their sentiments on a matter, which may involve the most serious and alarming consequences, that can invite the consideration of Mankind; reason is of no use to us—the freedom of Speech may be taken away—and, dumb & silent we may be led, like sheep, to the Slaughter.”

— George Washington


PART II: GATHER INFORMATION AND PLAN

What can a student do if they want to express a contrary viewpoint during school / class or a school function?

Some school districts, schools, and/or teachers may have curricula, materials, and/or teaching plans that include subjects of or discussions on a political or polarizing nature. Thus, you might wish to learn about these things in advance of their presentation or implementation so that you can discuss any possible problems on conflicts with the appropriate parties and plan how you wish to handle these things before they happen.

One way to do this is to send the student’s teacher, school, and school district a written letter asking the them to provide you with all of the details they have about the event and their plans for it (such as information about how non-participating students will be treated and kept safe). Some things that would be good to know are:

- Do the school curricula or teaching plans include materials or discussions of issues where the student and/or parent might have a different or contrary view?
- How will the school and teacher handle cases where the student’s viewpoint does not align with the views of the teacher or teaching materials?
- What are the student’s rights and options if the district, school, and/or teacher provides un-planned materials or discussions of an issue or topic for which the student and/or parent has a different or contrary view?
- What is the school district’s and school’s policy(s) on expressing alternative or contrary viewpoints during class or school activities?
- Will the student be punished or face any consequences for having a different viewpoint or expressing facts or materials that contradict those provided by the teacher, school, and/or district?
- How will the student be protected from bullying by other students or staff?

 Keep a copy of the letter for your records, noting the day and time it was sent, as well as how it was sent. If possible, send it to the recipients through a delivery service with tracking (like FedEx, UPS, another courier, or Certified U.S. Mail with Return Receipt). If it is sent by electronic means (i.e., e-mail, facsimile, or school-provided messaging services), be sure to print a copy of the letter and keep any receipts showing delivery; take screenshots if necessary.



Some sample letters that might be a helpful starting place for your own request for information and notice to the school are included in Appendix A.


What can a student do if they do not want to participate or engage in any speech, demonstration, protest, “walkout”, or other expressive event?


If you learn about a demonstration, protest, or walkout event, send the student’s teacher, school, and school district a written letter – as far in advance as possible – (1) letting them know that the student does not wish to participate in the event in any way, and (2) asking them to provide you with all of the details they know about it and their plans for it (like information about how non-participating students will be treated). Some things that would be good to know are:

- When and where the event is scheduled to occur, and if any part of the event will require leaving the school or potentially take place off-campus
- If the school is or is planning to help organize or sponsor an event, or if the district and/or school is incurring costs related to an event (including teachers’ salaries)³
- How and when attendance will be taken, and how the roll / attendance time will be reported to government agencies
- If the event will be considered “school time” or “class time”
- If students are or will be encouraged to participate
- If students will have any record placed in their file, or be disciplined for participating or not participating⁴
- What the school will do with students who do not wish to participate in the event
- How the school plans to help non-participating students avoid being subject to punishment or bullying for refusing to leave the classroom at the same time as other students (so that people do not mistakenly perceive them to be supportive of the viewpoint expressed through the event or by the others)
- How the school will protect the rights of students with contrary viewpoints that simply do not wish to participate in an event

³ After the event, you might further research the district/school’s involvement in an event and what that participation cost. See Part III for more information about requesting public records and information from government entities, including schools and school districts.

⁴ Schools can generally punish students for leaving or missing class for speech or expressive activities, but usually not beyond the typical punishment given for missing class.

 Keep a copy of the letter for your records, noting the day and time it was sent, as well as how it was sent. If possible, send it to the recipients through a delivery service with tracking (like FedEx, UPS, another courier, or Certified U.S. Mail with Return Receipt). If it is sent by electronic means (i.e., e-mail, facsimile, or school-provided messaging services), be sure to print a copy of the letter and keep any receipts showing delivery; take screenshots if necessary.

 Some sample letters that might be a helpful starting place for your own request for information and/or notice to the school are included in Appendix A.


What can a student do if they want to express a different or contrary viewpoint at the same time as a demonstration, protest, walkout, or other expressive event supporting views or policies that they disagree with and do not wish participate in?

If a student would like to individually or collectively express their own views through counter-speech or by counter-protesting, send the student's teacher, school, and school district a written letter – as far in advance as possible – (1) letting them know what the student would like to do, and (2) asking the them to provide you with all of the details and applicable policies and procedures. Some things that would be good to know are:

- The district's and school's policy(s) on organizing expressive events, counter-speech / counter-protests, and other forms of expressive conduct
- If counter-protests or expressive events have taken place in the past
 - If there were: How those events and participants were handled, if there any negative consequences, like punishment or law enforcement actions, or other important facts about those circumstances
 - If there were not: The grounds on which they were denied or prohibited
- If the student would like to engage in counter-speech, where the other event is scheduled to occur, and if any part of the event will require leaving the school or potentially take place off-campus
- If the school is or is planning to help organize or sponsor the other event, or if the district and/or school is incurring costs related to the event (including teachers' salaries)⁵
- How and when attendance will be taken, and how the roll / attendance time will be reported to government agencies
- If the event will be considered "school time" or "class time"
- If students are or will be encouraged to participate
- If students will have any record placed in their file or be disciplined for participating⁶
- How the school will protect the rights of students with contrary viewpoints

⁵ After the event, you might further research the district/school's involvement in an event and what that participation cost. See Part III for more information about requesting public records and information from government entities, including schools and school districts.

⁶ Schools can generally punish students for leaving or missing class for speech or expressive activities, but usually not beyond the typical punishment given for missing class.

 Keep a copy of the letter for your records, noting the day and time it was sent, as well as how it was sent. If possible, send it to the recipients through a delivery service with tracking (like FedEx, UPS, another courier, or Certified U.S. Mail with Return Receipt). If it is sent by electronic means (i.e., e-mail, facsimile, or school-provided messaging services), be sure to print a copy of the letter and keep any receipts showing delivery; take screenshots if necessary.



Some sample letters that might be a helpful starting place for your own request for information and/or notice to the school are included in Appendix A.


What can a student do if they want to express their viewpoint by organizing their own demonstration, protest, walkout, or other expressive event?

If a student would like to individually or collectively express their own views by organizing their own demonstration, protest, walkout, or other expressive event, send the student's teacher, school, and school district a written letter – as far in advance as possible – (1) letting them know what the student would like to do, and (2) asking the them to provide you with all of the details and applicable policies and procedures. Some things that would be good to know are:

- The district's and school's policy(s) on organizing expressive events, counter-speech / counter-protests, and other forms of expressive conduct
- If any expressive events have taken place at the school or within the district in the past
 - If there were: How those events and participants were handled, if there any negative consequences, like punishment or law enforcement actions, how participants representing different views were kept safely separated, and any other important or notable facts about those circumstances
 - If there were not: The grounds on which they were denied or prohibited
- If the school would help organize or sponsor the event, and if the district and/or school is willing to incur costs related to the event (including teachers' salaries)⁷
- How and when attendance would be taken, and how the roll / attendance time will be reported to government agencies
- If the event would be considered "school time" or "class time"
- If students would be encouraged to participate
- If students would have any record placed in their file or be disciplined for participating⁸
- How the school would protect the rights of students with contrary viewpoints

⁷ After the event, you might further research the district/school's involvement in an event and what that participation cost. See Part III for more information about requesting public records and information from government entities, including schools and school districts.

⁸ Schools can generally punish students for leaving or missing class for speech or expressive activities, but usually not beyond the typical punishment given for missing class.

 Keep a copy of the letter for your records, noting the day and time it was sent, as well as how it was sent. If possible, send it to the recipients through a delivery service with tracking (like FedEx, UPS, another courier, or Certified U.S. Mail with Return Receipt). If it is sent by electronic means (i.e., e-mail, facsimile, or school-provided messaging services), be sure to print a copy of the letter and keep any receipts showing delivery; take screenshots if necessary.




Some sample letters that might be a helpful starting place for your own request for information and/or notice to the school are included in Appendix A.


What can a student or parents do if they are threatened, punished, or prosecuted for their speech (especially speech expressed in a non-school forum, like social media)?

Record a detailed account of the issue

If a student is subjected to threats, punishment, or prosecution for a speech issue, it should be documented in as much detail, and as soon, as possible. The student – and parent(s), if they were involved – should write down all the facts they can remember. For example, things that are very helpful to have a record of include:

- Names of all people present
- Date(s) and time(s) of the event
- Any specific issues or problems
- Who said what, and to whom
- Examples of speech/expression that were permitted
- Examples of speech/expression that were not permitted
- Any actions taken by teachers, school officials, or other students
- Any disciplinary actions taken (or not taken) against students
- Any law enforcement actions or contacts
- Other people who were present who might have witnessed events

 It is more important to write down as much as you know or remember as soon as possible than to not document things because you cannot remember it all, don't know someone's full name, or simply forget as time goes on. Even small, seemingly-insignificant details can be very important! A sample log can be found in Appendix C.

 Determining what constitutes actionable or punishable prohibited speech, a “true threat,” or other crime-facilitating speech is a complicated and fact-specific matter that requires specific legal advice from a competent attorney.

Contact the FPF / FPC Legal Action Hotline and let us know

If a student (or parent of a student) believes they are being threatened, punished, or prosecuted for their speech and you'd like to share your experience with us, or to report a possible civil rights violation, please feel free to e-mail us at hotline@firearmspolicy.org or call our toll-free Legal Action Hotline at **(855) 252-4510**.

Seek further help or legal advice

If someone is being threatened, punished, or prosecuted for their speech, they should ask an attorney for an immediate consultation. The American Bar Association's Find Legal Help Web site (www.findlegalhelp.org) provides tools to help people find a lawyer. You can also use it to research legal issues, get state-specific legal information, and find a state or local bar association. Attorney state bar associations can sometimes provide an attorney referral service to the public. And there may be some state and/or local organizations or support groups that help with education-related student advocacy. Of course, you may wish to consider contacting the American Civil Liberties Union (ACLU) (aclu.org) or a local ACLU chapter. ■

PART III: RESEARCHING AN ISSUE OR EVENT THROUGH PUBLIC RECORDS

Under many states' laws, and in some cases local ordinances or school district policies, you can ask for and get copies of public records and information. In some states, public records can also mean things like messages, e-mails, and documents sent to or from privately-owned phones, computers, or servers. A sample letter requesting public records and information is included in Appendix A.

Some records and public information that might be useful to acquire are:

- All communications about an event or subject, including, but not limited to, e-mails, letters, phone calls, and meetings
- Copies of school district and school administrators', teachers, and staff calendars
- The costs and expenditures of a school/school district relating to a particular event, including, but not limited to: salaries and overtime; contractors and service providers (e.g., law firms, security firms, public relations firms); printing and copying; and other direct and indirect costs

Once you have received the records you requested, you should evaluate them carefully. Look for improper or wasteful expenditures, communications between school officials and other school officials, as well as third parties (e.g., event organizers, advocacy groups, other activists), and see if you can infer from them something that may be worth following up or doing further research on.

Once you have received a response to your request, if you believe that you have found a possible civil rights issue, government abuse or bias, or evidence of taxpayer waste, please contact The FPF / FPC Legal Action Hotline at hotline@firearmspolicy.org or call our toll-free Legal Action Hotline at (855) 252-4510 and let us know.

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Be especially mindful of statements by school or government officials that could be an unlawful or unconstitutional policy or practice on the regulation of free speech and peaceful expressive conduct. But remember that what you find – even if you disagree with it or believe it to be wrong or improper – is not necessarily evidence of something illegal or unconstitutional.

⚠ Some people mistakenly consider requests for public records or information as a “Freedom of Information Act” (FOIA) request – which is the federal government’s statutory process for making requests. But the federal FOIA law does not apply to state and local governments. Moreover, public records and information laws – and how they are referred to or titled – vary considerably from state to state. It can be legally important to make a request under the specific laws or statutes that are applicable to the government agency, and in some cases it can be important to follow the specific government agency’s policy and process for making such requests. If you are not sure how to make a proper request in the jurisdiction from which you wish to acquire public records, you should consider contacting an attorney for a consultation. ■

If liberty means anything at all, it means the right to tell people what they do not want to hear..

— George Orwell

APPENDIX A: SAMPLE LETTERS

Date: _____

Teacher's name _____

School name _____

School district name _____

I write to inform you that my child _____ does not wish to participate in the _____ event scheduled to take place on or about _____.

I request that she / he / they be allowed to remain in his/her classroom during the event so that they do not associate with the other student who have and are expressing a viewpoint with which we disagree.

If remaining in the classroom is not possible, I ask that reasonable accommodations be made so that she / he / they can avoid harassment or ridicule from participating students and teachers.

I further request that she / he / they not be forced to express a position, or be made to appear to express a position, on the issues being advocated at the event.

Therefore, please contact me in writing immediately (prior to the event) to confirm:

1. That she / he / they will not be forced to participate in the event, walk out of the classroom, or otherwise be required to collectively participate in any protest, demonstration, or other symbolic or expressive act;
2. That she / he / they will not be "called out" in front of other students by a teacher for not participating;
3. That she / he / they may remain in their usual class during the event, or that, if remaining in the classroom is not possible, where she / he / they will be required to go, when, and under what conditions;
4. Who will be supervising them during the event; and,
5. How the school plans to ensure she / he / they will not be harassed, ridiculed, or bullied by participants in the event.

Parent / guardian's name _____

Mailing address _____

E-mail address _____

Date: _____

Teacher's name _____

School name _____

School district name _____

I write to inform you that my child _____ disagrees with the position that will be advocated at the _____ event scheduled for _____.

So, instead of participating in that event, **she / he / they** would like to peacefully express a contrary viewpoint separately during the event.

Therefore, please contact me in writing immediately (prior to the event) to confirm:

1. That **she / he / they** will not be required to carry posters, wear any apparel, or otherwise take any expressive or symbolic action that would support the message advocated by the other event's organizers and participants; and,
2. That **she / he / they** will equally be permitted to exercise their freedom of speech and expression (e.g., leave the classroom; carry signs or posters; wear apparel expressing his/her opinion) as will be afforded to other students participating in the other event.

Parent / guardian's name _____

Mailing address _____

E-mail address _____

Date: _____

Teacher's name _____

School name _____

School district name _____

I write to inform you that my child _____ would like to organize and participate in an event that represents their views about _____.

Therefore, please contact me in writing immediately to provide all applicable rules and regulations and confirm that she / he / they will be permitted to exercise their freedom of expression as has been, is, or will be afforded to other students participating in other events (e.g., leave the classroom; carry posters; wear apparel expressing their opinion).

Parent / guardian's name _____

Mailing address _____

E-mail address _____

Date: _____

Teacher's name _____

School name _____

School district name _____

This letter is a request for public records and information under all of the applicable state and local laws and policies. I wish to acquire a copy of records and information responsive to the below request items in their native format or a true and correct copy, wherever and however they are kept.

Item	Description
1	[Describe the record or type of information you would like]
2	[Describe the record or type of information you would like]
3	[Describe the record or type of information you would like]
4	[Describe the record or type of information you would like]
5	[Describe the record or type of information you would like]

Because these issues are so important to me, my family, and the public, I request that you (1) assist me in accessing responsive records and information, (2) to consider providing the responsive records and information to be even if they may be subject to a discretionary exemption, and (3) provide the records and information to me on a rolling production or weekly basis if all of the records and information responsive to my request will take more than 30 days to copy and deliver to me. Though I respectfully request that you consider waiving any costs or fees, if necessary, I am willing to pay up to \$_____ for this request; if you estimate that the total cost to find, copy, and deliver all responsive records and information will exceed this amount, please provide me with an estimate prior to proceeding with this request so that I can consider it.

Note that this request potentially requires the production of records that exist or are maintained in electronic form, including but not limited to e-mails. For all electronic records, please take all steps necessary to prevent the intentional or accidental destruction/loss of these records during the pendency of this request. And records are often subject to "retention policies" that require their automatic deletion after a certain period of time (e.g., 30, 60, or 90 days). If any records that are potentially responsive to this request are subject to such a retention or destruction policy, please prevent their destruction or deletion before you can locate, review and provide me with copies.

Please inform me immediately in writing if there is anything else I must do or comply with in order to acquire the responsive records and information I seek in this request. I request that you contact me in writing at the below if you have any questions or if I can help to clarify my request.

Thank you for your time and assistance.

Parent / guardian's name _____

Mailing address _____

E-mail address _____

APPENDIX B: CASES OF INTEREST

Morse v. Frederick

551 US 393 (Supreme Court 2007)

Online at <http://bit.ly/morse-v-frederick>

On January 24, 2002, Coca-Cola and other private sponsors supported a “Winter Olympics Torch Relay” in Juneau, Alaska. Students were released from school so they could watch the Olympic torch pass by. Joseph Frederick, then an 18-year-old senior at Juneau-Douglas High School, never made it to school that morning because he got stuck in the snow in his driveway, but he made it to the sidewalk, across from the school, where the torch would pass by.

He and some friends waited until the television cameras would catch it, then unfurled a banner reading “Bong Hits 4 Jesus.” Deborah Morse, the school principal, crossed the street, grabbed and crumpled up the banner, and suspended Frederick for ten days. He appealed the suspension administratively, but it was sustained. He then filed a federal civil rights lawsuit.

Morse and the school board petitioned the case to the U.S. Supreme Court, which granted certiorari (review). The Court ultimately held that, because the speech at issue was about illegal drug use and not true political speech – importantly, the message Frederick displayed was by his own admission not political in nature – the Court upheld the speech restriction.

Notably, however, the Court reiterated that some types of speech, like pure political speech and religious speech, were generally protected – even in the context of a school setting – as long as that speech does not “materially and substantially disrupt the work and discipline of the school,” even if it might be perceived by some as an “offensive” viewpoint.

And one concurring opinion, authored by Justice Samuel Alito (joined by Justice Anthony Kennedy), noted that the Court’s opinion was understood to have clear limits: “[T]hat (1) it goes no further than to hold that a public school may restrict speech that a reasonable observer would interpret as advocating illegal drug use and (2) it provides no support for any restriction of speech that can plausibly be interpreted as commenting on any political or social issue, including speech on issues such as “the wisdom of the war on drugs or of legalizing marijuana for medicinal use.”

“Once a government is committed to the principle of silencing the voice of opposition, it has only one way to go, and that is down the path of increasingly repressive measures, until it becomes a source of terror to all its citizens and creates a country where everyone lives in fear.”

— Harry S. Truman

Newsom ex rel. Newsom v. Albemarle County

354 F. 3d 249 (4th Circuit 2003)

Online at <http://bit.ly/newsom-v-albemarle>

Jack Jouett Middle School in Albemarle County, Virginia, had a dress code that banned “messages on clothing, jewelry, and personal belongings that relate to ... weapons.” On April 29, 2002, Elizabeth Pitt, an assistant principal at the school saw Alan Newsom, at the time was a twelve-year-old student in the sixth grade, sitting at a table on the other side of the cafeteria with his back towards her. Newsom was wearing a shooting sports shirt that had, among other things, three black silhouettes of men holding firearms.

According to Pitt, she had the immediate impression that the figures were “sharpshooters” and was reminded her of the shootings at Columbine High School in Colorado and other incidents of school-related violence. Because of that impression, Pitt was concerned over the appropriateness of Newsom’s t-shirt in a school setting. Pitt believed that the t-shirt had the potential to disrupt the school and learning process since the text and images on the shirt were large and bold. According to her, she worried that the shirt would be distracting and feared that Newsom’s fellow middle school students would also associate the images with occurrences of violent crimes at school. She also believed that the images on Newsom’s t-shirt could and would be interpreted by other students to promote the use of guns.

Pitt approached Newsom and told him that the shirt was inappropriate and that he needed to do something about it, like turn it inside-out or change into a different shirt entirely. Newsom asked Pitt if he would be disciplined, further asking what would happen if he refused to change his shirt or suppress his speech. Pitt informed Newsom that discipline, potentially even suspension, was possible for defiance.

Later that year, the school revised its handbook and dress code to prohibit students from wearing “messages on clothing, jewelry, and personal belongings that relate to drugs, alcohol, tobacco, weapons, violence, sex, vulgarity, or that reflect adversely upon persons because of their race or ethnic group.” A few months later, Newsom sued the school alleging that his First Amendment rights to freedom of speech and association had been infringed.

In 2003, the federal Fourth Circuit Court of Appeals overruled the District Court, holding that the school’s dress code was overbroad and likely violated Newsom’s First Amendment rights. It then remanded the case for the lower court to issue an injunction against the school’s enforcement of the dress code provisions that banned the display of weapons in any manner or context.

So we must beware of a tyranny of opinion which tries to make only one side of a question the one which may be heard. Everyone is in favour of free speech. Hardly a day passes without its being extolled, but some people’s idea of it is that they are free to say what they like, but if anyone says anything back, that is an outrage.

— Winston Churchill

Tinker v. Des Moines Independent Community School District

393 U.S. 503 (Supreme Court 1969)

Online at <http://bit.ly/tinker-v-des-moines>

In December 1965, a group of students at a school in Des Moines, Iowa planned a public showing of their support for a truce in the Vietnam war. The students decided to wear black armbands throughout the holiday season. The principals of the school learned of the plan and implemented a school policy that stated any student wearing an armband would be asked to remove it. If students refused, they would be suspended. On December 16, Mary Beth Tinker and Christopher Eckhardt wore armbands to school and were sent home. The following day, John Tinker did the same with the same result. The students did not return to school until after New Year's Day, the planned end of the protest.

The students sued the school district for violating the students' right of expression/freedom of speech and sought an injunction to prevent the school district from disciplining the students. The case ultimately made it to the United States Supreme Court, which decided the question—does a prohibition against the wearing of armbands in public school, as a form of symbolic protest, violate a student's freedom of speech protections guaranteed by the First Amendment?

The Supreme Court held that the armbands represented pure speech that is entirely separate from the actions or conduct of those participating in it. The Court also held that the students did not lose their First Amendment rights to freedom of speech when they stepped onto school property. In order for a school to lawfully suppress speech, the Court held, school officials must be able to prove that the conduct in question would “materially and substantially interfere” with the operation of the school. In this case, the school district's actions were found to be based on a fear of *possible* disruption, rather than any actual interference. By siding with the students, the Supreme Court ensured that students had the right to free speech within schools, so long as it did not disrupt the learning process.

Freedom of speech is a principal pillar of a free government; when this support is taken away, the constitution of a free society is dissolved, and tyranny is erected on its ruins.

— From “On Freedom of Speech and the Press,”
published by The Pennsylvania Gazette, November 1737
(commonly attributed to Benjamin Franklin)

West Virginia State Board of Education v. Barnette

319 U.S. 624 (Supreme Court 1943)

Online at <http://bit.ly/westvastatebdofed-v-barnette>

In 1942, the West Virginia State Board of Education adopted a rule that forced all teachers and students to salute the U.S. flag and recite the pledge of allegiance each day. If a student refused, he or she would be expelled from school. Readmission to school would not be allowed until the student conformed and recited the pledge. During the expulsion, the student was considered to be “unlawfully absent” and his or her parents could be fined daily and even jailed.

A group of Jehovah’s Witnesses challenged the school’s rule on First Amendment grounds arguing that their religious belief conflicted with saluting the flag and the rule violated their exercise of religion and freedom of speech under the First Amendment.

The Supreme Court agreed and held that the First Amendment prohibits government officials, including public school authorities, from compelling individuals to speak or espouse beliefs that are at odds with their conscience and values. The Court found that the physical act of saluting the flag was considered a “ceremony of assent” and a “form of utterance,” even if no words were spoken and was contrary to the freedom of expression granted under the First Amendment.

The Court’s decision extended the First Amendment’s freedom of speech to cover the right *not to speak*.

Strange it is that men should admit the validity of the arguments for free speech but object to their being “pushed to an extreme”, not seeing that unless the reasons are good for an extreme case, they are not good for any case.

— John Stuart Mill, *On Liberty* (1859)

APPENDIX C: SAMPLE EVENT NOTES

Use this table to organize and write down what you see or remember as soon as possible. Even small details can be very important. Even you can't remember something completely, write down what you do remember.

Date(s) and time(s) of the event	
Name or purpose / cause of the event	
Location(s) and place(s) of the event	
Names or descriptions of people present (especially adults and teachers/school staff)	
Viewpoints and promoted ideas expressed at the event	
Any problems at the event	
Who said what, and to whom	
Examples of speech/expression that were permitted	
Examples of expression that were not permitted	
Any actions taken by teachers or school officials	
Any disciplinary actions taken (or not taken) against students	
Any law enforcement contacts or actions taken	

Other notes:

APPENDIX D: SELECTED CONSTITUTIONAL PROVISIONS

FIRST AMENDMENT TO THE U.S. CONSTITUTION

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.

SECOND AMENDMENT TO THE U.S. CONSTITUTION

A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed.

FOURTH AMENDMENT TO THE U.S. CONSTITUTION

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants 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.

FIFTH AMENDMENT TO THE U.S. CONSTITUTION

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

FOURTEENTH AMENDMENT TO THE U.S. CONSTITUTION

Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 5.

The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.