

## Exploring *Bethel School District vs. Fraser, 1986* in a Pro Se Court Activity

### Overview

Students will explore judicial review, elastic clause, individual rights of citizens, and the supremacy clause by participating in a pro se court regarding *Bethel School District vs. Fraser*.

### North Carolina Essential Standards for American History: The Founding Principles, Civics & Economics

- FP.C&G.1.4 - Analyze the principles and ideals underlying American democracy in terms of how they promote freedom (i.e. separation of powers, rule of law, limited government, democracy, consent of the governed / individual rights –life, liberty, pursuit of happiness, self-government, representative democracy, equal opportunity, equal protection under the law, diversity, patriotism, etc.
- FP.C&G.2.3 - Evaluate the U.S. Constitution as a “living Constitution” in terms of how the words in the Constitution and Bill of Rights have been interpreted and applied throughout their existence (e.g., precedents, rule of law, Stare decisis, judicial review, supremacy, equal protections, “establishment clause”, symbolic speech, due process, right to privacy, etc.)
- FP.C&G.2.6 - Evaluate the authority federal, state and local governments have over individuals’ rights and privileges (e.g., Bill of Rights, Delegated Powers, Reserved Powers, Concurrent Powers, Pardons, Writ of habeas corpus, Judicial Process, states’ rights, Patriot Act, etc.)
- FP.C&G.3.4 - Explain how individual rights are protected by varieties of law (e.g., Bill of Rights, Supreme Court Decisions, constitutional law, criminal law, civil law, Tort, Administrative law, Statutory law and International law, etc.
- FP.C&G.3.8 - Evaluate the rights of individuals in terms of how well those rights have been upheld by democratic government in the United States.
- FP.C&G.5.2 - Analyze state and federal courts by outlining their jurisdictions and the adversarial nature of the judicial process (e.g., Appellate, Exclusive, Concurrent, Original, types of federal courts, types of state courts, oral argument, courtroom rules, Supreme Court, opinions, Court Docket, Prosecutor/Prosecution, Complaint, Defendant, Plaintiff, hearing, bail, indictment, sentencing Complaint, Defendant, Plaintiff, hearing, bail, indictment, sentencing, appeal, etc.).

### Essential Questions

- What influence does the United States Constitution have on our lives?
- Summarize and evaluate the decision made in *Bethel School District vs. Fraser*.
- What limits are reasonable to be placed on the freedom of speech at school?

### Materials

- Student Handout, attached
- Teacher Handout, attached
- Resource person, such as an attorney or judge (optional)
- For additional activities and information on other landmark Supreme Court cases, see [www.landmarkcases.org](http://www.landmarkcases.org).

### Duration

60 minutes

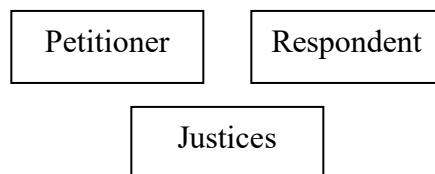
### Procedure

1. Explain to students that they are about to participate in a pro se court. A pro se court allows students to role-play a court case with the smallest possible number of participants and the basic rules of evidence. The court is organized as a group of three participants: the **judge**, who will hear the two sides and make

the final decision; the **plaintiff**, who brings the action before the judge; and the **defendant**, who is accused of wrongdoing or injury. Pro se courts give students a simplified look at judicial decision making while presenting an opportunity for all students in a class to be actively engaged in the process. (While this lesson is for examining *Bethel School District v. Fraser*, this method can be applied to any Supreme Court case.)

2. Introduce the case students will be working by distributing copies of the attached student handout on *Bethel School District No. 403 v. Fraser, 1986*. Discuss the basic facts and issues of the case, clarifying any questions students may have. (Additional information on the case can be read at [http://en.wikipedia.org/wiki/Bethel\\_School\\_District\\_v.\\_Fraser](http://en.wikipedia.org/wiki/Bethel_School_District_v._Fraser).)
3. Next, assign roles for the Pro Se Court. Have students count off from 1-3 (for smaller classes) to divide the class into three equal groups. Students in Group 1 are judges, Group 2 are plaintiffs, and Group 3 are defendants. (For a larger class, students should count off 1-6, with Groups 1 & 3 serving as judges, Groups 2 & 4 serving as plaintiffs, and Groups 3 & 6 serving as defendants.)
4. Once students have moved into their groups, explain to them that preparation at this stage is critical to successful participation in the simulation. Provide them with the following instructions:
  - The plaintiff and defendant groups will prepare an opening statement and arguments supporting their positions on the issues raised in the case.
  - While the plaintiffs and defendants are preparing their presentations, the judges will review the case and prepare questions that they would like to ask of the plaintiffs and defendants during the presentation phase of the activity. These questions should be designed to clarify positions on the issues which the judges will be called upon to decide.
    - Teachers should take some time during the preparation phase to meet with the judges and review some simple rules of procedure, such as:
      - The plaintiff should present first, without interruptions from the defense. The defense presents their case second.
      - Allow for brief rebuttals from each side in the case.
      - The judge may interrupt the presentations at any time to pose questions designed to clarify the arguments being made.

(Source: *Teacher's Guide, We the People the Citizen and the Constitution*)
5. Once students have sufficiently prepared, arrange the classroom. You will have multiple courts in session simultaneously; therefore, arrange the desks in the classroom into groups of three, one for each of the roles in the activity:



6. Conduct the court hearing:
  - Before beginning the activity, match one student from the judge's group with one student from the plaintiff and one from the defendant groups. Teachers may want to have the judges first take a desk in each of the groupings arranged around the room. Then ask one plaintiff and one defendant to join the group. Matching role-players may be more easily accomplished by providing role tags so students can quickly identify who is a judge, plaintiff, and defendant.
  - Conduct the activity using the following procedures:

- Instruct the judges that when each has a plaintiff and a defendant, he or she may begin the court session.
- The judge should first hear opening statements by the participants—first the plaintiff and then the defendant. A one to two-minute time limit should be imposed on these statements.
- The plaintiff makes arguments and is questioned by the judge.
- The defendant presents his or her defense and is questioned by the judge.
- The judge asks each side for brief rebuttal statements.
- The judge makes his or her decision and explains the reasoning which supports it.

7. Debrief the activity:

- Begin by asking individual judges to share with the class their decision and the reasoning supporting it. Discuss the facts and arguments presented in the case and evaluate the strengths and weaknesses of the positions taken.
- Use information from the *Information for the Teacher handout* (attached) to discuss how the Supreme Court actually ruled. Discuss:
  - Sexual innuendo—hints, suggestiveness—is commonly found in television and print sources. How is that situation different from seeing or hearing innuendo or vulgarity at a school assembly? What role do schools play in the development of "mature, civilized, behavior"?
  - What limits do you think are reasonable to put on the speech of students at school? Should the "common speech" of students be subject to the authority of the school in the classroom? In the halls? On the campus? At a football game?
- Also ask students to evaluate the court process itself. Conclude the debriefing by having students discuss the effectiveness of this activity as a tool for learning, including how well they performed their role in it. If a resource person assisted with the activity, that person should be included in the concluding discussion.

**STUDENT HANDOUT**  
***Bethel School District No. 403 v. Fraser, 1986***

**Circumstances of the Case**

On April 26, 1983, 17-year-old Matthew Fraser, a senior at Bethel High School in Bethel, Washington, spoke to a school assembly to nominate a classmate for vice president of the student government. Students were required either to attend the assembly or go to study hall. Prior to the assembly, Matthew consulted three teachers about a short speech he proposed to present. Two of the faculty said outright that he should not deliver the speech because it was "inappropriate." The text of the speech was filled with sexual references and innuendoes, although it contained no obscenities or vulgarities. On the day of the assembly, Fraser delivered the speech with enthusiasm and emphasis, and the "faculty and student body were stunned." The speech was greeted by his classmates with hoots, cheers, and lewd motions. Kuhlman, the candidate nominated by Matt Fraser, was elected by a wide margin.

On the day after the speech, Fraser was called to the office and told that he "had violated the school's disruptive conduct rule which prohibits 'conduct which materially and substantially interferes with the educational process...including the use of obscene, profane language or gestures.'" At that first hearing Fraser admitted that he had used sexual innuendoes in his speech.

Fraser was suspended from school for three days, and "removed from the list of students who were eligible to make graduation remarks..." because school authorities "no longer had confidence in his judgment...." He ranked second in his graduating class at the time. His parents appealed the school district's disciplinary action. The Washington Supreme Court upheld Fraser's right to free speech. The school district then appealed to the Supreme Court.

**Constitutional Issues**

The Court was asked to examine the 1st Amendment rights of students. Was Fraser within his rights to make the speech? What limits on speech are school districts permitted to make, given their role in the educational and civic development of students? Are students guaranteed the same rights as adults? Is it more offensive to hear something spoken out loud than to read it in a book?

**Arguments**

**For the School District:** Matthew Fraser's behavior was disruptive to the educational process. He made a mockery out of an exercise in citizenship, shocked the school community, and exceeded the bounds of good taste appropriate for a school setting. The use of sexual innuendo was particularly antagonistic to the educational process. Fraser was in a public high school and at a school-sponsored activity. He was under the authority of the school, not standing on a street corner. Schools must have the authority to guide young people into healthy and acceptable social forms of expression. Speech is limited even for adults, and no one can claim that high school students are adults. Therefore, schools must be provided with the means to discipline children who use offensive language. Fraser was not punished for the political nature of his speech, but rather for its sexual innuendo and obscenity.

**For Matthew Fraser:** The 1st Amendment protections of citizens were especially designed for situations in which political speeches are made. The 1st Amendment guarantees freedom of speech. The Court, in *Tinker v. Des Moines*, 1969, made clear that "students do not abandon their Constitutional rights at the schoolhouse gate." Common speech forms are changing, and school authorities are often a generation or two behind these changes. The speech was not offensive to the great majority of students, nor would it turn anyone's head if heard in a public forum. (Source: [http://www.phschool.com/atschool/supreme\\_court\\_cases/bethel.html](http://www.phschool.com/atschool/supreme_court_cases/bethel.html))

## TEACHER HANDOUT

### Decision and Rationale

The Court voted 7–2 to uphold the judgment of the school officials. The school's rules and the disciplinary action against Matthew Fraser were deemed appropriate for a public school. Fraser's freedom of speech did not extend to being permitted to make a lewd and suggestive speech in school.

Writing for the majority, Chief Justice Burger pointed to "a vast difference between the political 'message' of the armbands in *Tinker* and the sexual content of Matthew Fraser's speech.... [T]he purpose of public education in America is to teach fundamental values." Burger added, "These fundamental values must include tolerance of different or unpopular political and religious views. They must also include consideration of the personal sensibilities of other students."

Distinguishing between what the 1st Amendment guarantees to adults and to minors, Burger wrote that "the use of an offensive form of expression may not be prohibited when an adult speaker uses it to make a political point...[but] the same latitude of expression is not permitted to children in a public school...." As Burger reasoned, "The schools, as instruments of the State, may determine that the essential lessons of civil, mature conduct cannot be conveyed in a school that tolerates lewd, indecent, or offensive speech and conduct such as that indulged in by this confused boy.... The discipline rule regarding obscene language gave Fraser adequate warning that his lewd speech would be punished...."

This decision narrowed the *Tinker* rule and clarified the right of schools to place limits on lewd, obscene, or offensive speech. When coupled with *New Jersey v. T.L.O.*, 1985, and *Hazelwood v. Kuhlmeier*, 1988, the Court provided a re-examination of the status of the juvenile, and redefined the limits of juvenile civil rights.

### Questions for Discussion

1. Sexual innuendo—hints, suggestiveness—is commonly found in television and print sources. How is that situation different from seeing or hearing innuendo or vulgarity at a school assembly? What role do schools play in the development of "mature, civilized, behavior"?
2. What limits do you think are reasonable to put on the speech of students at school? Should the "common speech" of students be subject to the authority of the school in the classroom? In the halls? On the campus? At a football game?

Source: [http://www.phschool.com/atschool/supreme\\_court\\_cases/bethel.html](http://www.phschool.com/atschool/supreme_court_cases/bethel.html)

### Information on other Landmark Cases involving Students

New Jersey vs. T.L.O., 1985

Hazelwood v. Kuhlmeier, 1988

Tinker v. Des Moines, 1969

Regents of the University of California vs. Bakke, 1978

Wallace v. Jaffree

Engle v. Vitale