Grade Level: High School

The First Amendment, Protests, Community Safety, and Civility

Overview
During this lesson, students will explore various protests and public rallies and then review Supreme Court cases dealing with protests, civil rights, community safety and the First Amendment. Students then have an option to view a video on the power of protests for civil rights movements.

Objectives
- Review and discuss text and meaning of the First Amendment of the U.S. Constitution
- Consider the role of protests and public rallies in American history and culture
- Explore how the U.S. Supreme Court has addressed conflicts between individual rights and community safety
- Discuss relevance of current and recent protest events to Court precedence and broader U.S. history

Time Needed: 1-2 class periods

Materials
- Case study handouts (copies of each for groups)
- Image and First Amendment powerpoint slide (could be used as a handout)
- Screen/overhead to stream video (optional)

Procedure

1. **Introduction and Overview**
   Begin by introducing yourself and having students introduce themselves. Be sure to spend some time providing an overview and explaining what you will be doing for the session.

2. **Warm Up**
   If possible, display powerpoint slide with "warm up" images on a screen (handouts can also be used). Give students a few minutes to review the images and then ask:
   - What do you see in these images?
   - What are some things that are the same? What are some differences?
   - What questions do you have about these images?

   Display the text of the First Amendment. Ask students:
   - What do these words mean?
   - What are the most important phrases from this text?
   - Are there words you have questions about?

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3. **Case Studies Jigsaw**
   Split students into 6 groups and then assign each group a case from the case study packet. Allow students 10-15 minutes to review the case study and then another 10 minutes to discuss the includes questions.

   Case studies included:
   De Jonge v. Oregon (1937)
   NAACP v. Alabama (1958)
   Edwards v. South Carolina (1963)
   Lloyd Corp., LTD v. Tanner (1972)
   Village of Skokie v. National Socialist Party (1978)
   Schenck v. Pro-Choice Network of Western NY (1997)

4. **Debrief**
   Have students present on their cases in chronological order; students should review the facts of their case, the outcome, and the content of their discussions when answering the questions.

   Help students see the connections between the cases or specific differences/nuances in the Court's rulings.

5. **Power of Protest Videos**
   NOTE: Some of the footage in these videos may be upsetting. Please view the videos ahead of time and discuss with the teacher to ensure their appropriateness for the students you are working with.

   To conclude, you may want show **one** of two videos from Retro Report on the power protest within various civil rights movements. For each video, make sure you allow time for questions and debrief.

   a. **The power of sport and protest (11:14)**
      When N.F.L. players starting with Colin Kaepernick took a knee during the national anthem to protest police mistreatment of African-Americans, their actions ignited an uproar over injecting politics onto the playing field. Their protest had surprising ties to the silent black-power salute by two sprinters at the 1968 Olympics.
      https://www.retroreport.org/video/all-in-the-game-the-black-athlete-in-america/

      Discussion questions:
      - What are some ways protests may look different depending on their setting and context?
      - Do you think sport events are appropriate platforms for protesting?
      - Do you think athletes and celebrities have more power when protesting? Do you think they have a responsibility to protest certain injustices?
      - What do you think is the distinction between dissent and "disloyalty"?

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Protests for Racial Justice (5:16)
Introduces students to the findings of the Kerner Commission, a panel of experts President Lyndon Johnson convened to make policy recommendations following the protests, violence and disorder that occurred in over 150 cities in 1967. The commission recommended a series of sweeping changes, including reforms in policing tactics and efforts to reduce urban poverty. But Johnson largely ignored the findings of the study. Useful in helping students make connections between the 1960s and today, the video sets up an engaging class discussion on race, poverty and policing.
https://www.retroreport.org/education/video/protests-for-racial-justice-a-long-history/

Discussion questions:

- What about the Kerner Report stands out to you today?
- Do protests come from "pent up frustration?"
- Do you think *any* of the original Kerner Report recommendations have been put into place?
- What exactly can protests accomplish when it comes to racial injustice? What limitations exist?

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Case Summary 1: *De Jonge v. Oregon* (1937)

Facts of the case:
Dirk De Jonge was speaking at Communist Party meeting that was raided by Portland police. During his speech, De Jonge detailed conditions at a local county jail and a maritime strike. De Jonge was arrested and charged for violating the state's criminal syndicalism statute which was defined as "the doctrine which advocates crime, physical violence, sabotage or any unlawful acts or methods as a means of accomplishing or effecting industrial or political change or revolution." De Jonge appealed his conviction, challenging whether there was enough evidence in the original indictment to show that De Jonge or anyone else at the meeting advocated violence.

The Oregon appellate court upheld De Jonge's conviction, but clarified that:

> What the indictment does charge, in plain and concise language, is that the defendant presided at, conducted and assisted in conducting an assemblage of persons, organization, society and group, to-wit, the Communist party, which said assemblage of persons, organization, society and group was unlawfully teaching and advocating in Multnomah County the doctrine of criminal syndicalism and sabotage.

De Jonge next appealed through the federal courts.

Decision:
In an 8-0 vote, the U.S. Supreme Court overturned De Jonge's conviction (Justice Harlan F. Stone took no part in the consideration of the case.).

According to Chief Justice Charles Evans Hughes: "[De Jonge's] sole offense as charged, and for which he was convicted and sentenced to imprisonment for seven years, was that he had assisted in the conduct of a public meeting, albeit otherwise lawful, which was held under the auspices of the Communist Party.... Thus if the Communist Party had called a public meeting in Portland to discuss the tariff, or the foreign policy of the Government, or taxation, or relief, or candidacies for the offices of President, members of Congress, Governor, or state legislators, every speaker who assisted in the conduct of the meeting would be equally guilty" of violating the criminal syndicalism act.

Chief Justice Hughes then narrowed in on the specific rights at issue in this case, mainly the right to free speech and assembly. While walking through precedent like *Gitlow v. New York* (1925), which upheld a similar statute, Chief Justice Huges clarified that "none of our prior decisions go to the length of sustaining such a curtailment of the right of free speech and assembly as the Oregon statute demands in its present application."

Finally, Chief Justice Hughes concluded that, while some speech and assembly can be regulated in order to provide for security and safety, De Jonge's conviction violated fundamental First Amendment tenants:

> The First Amendment of the Federal Constitution expressly guarantees that right against abridgment by Congress. … For the right is one that cannot be denied without violating those fundamental principles of liberty and justice which lie at the base of all civil and political

institutions -- principles which the Fourteenth Amendment embodies in the general terms of its due process clause.

These rights may be abused by using speech or press or assembly in order to incite to violence and crime. The people, through their legislatures may protect themselves against that abuse. But the legislative intervention, can find constitutional justification only by dealing with the abuse. The rights themselves must not be curtailed. The greater the importance of safeguarding the community from incitements to the overthrow of our institutions by force and violence, the more imperative is the need to preserve inviolate the constitutional rights of free speech, free press and free assembly in order to maintain the opportunity for free political discussion, to the end that government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful means. Therein lies the security of the Republic, the very foundation of constitutional government.

It follows from these considerations that, consistently with the Federal Constitution, peaceable assembly for lawful discussion cannot be made a crime. The holding of meetings for peaceable political action cannot be proscribed. Those who assist in the conduct of such meetings cannot be branded as criminals on that score. The question, if the rights of free speech and peaceable assembly are to be preserved, is not as to the auspices under which the meeting is held, but as to its purpose; not as to the relations of the speakers, but whether their utterances transcend the bounds of the freedom of speech which the Constitution protects. If the persons assembling have committed crimes elsewhere, if they have formed or are engaged in a conspiracy against the public peace and order, they may be prosecuted for their conspiracy or other violation of valid laws. But it is a different matter when the State, instead of prosecuting them for such offenses, seizes upon mere participation in a peaceable assembly and a lawful public discussion as the basis for a criminal charge.

Opinion link: https://supreme.justia.com/cases/federal/us/299/353/#tab-opinion-1935233

Discussion Questions

1. Does anything about the Court's ruling surprise you?
2. How important do you think it was that the Oregon court narrowed the indictment in the way it did? How might the Supreme Court's ruling have been different if the Oregon court had not made such an announcement?
3. Which do you think the Supreme Court is prioritizing: individual freedoms or community safety and security? What are the factors the Court is considering in making a decision here?
4. In the various cases being examined for this jigsaw activity, the Court mentions both the freedom of speech and the freedom of assembly and association– using your assigned case as evidence, how are these two rights the same? How are they different? Do you think the Court should (or even could) separate these two rights?

Case Summary 2: *NAACP v. Alabama* (1958)

Facts of the case:
Alabama attempted to prevent the NAACP from doing business within the state. Alabama relied on its foreign corporation statute, which gave state authorities the power to probe unincorporated organizations or organizations that were not officially registered with the state. The NAACP had an office in Alabama, but was officially incorporated in New York state, and wrongly thought it was exempt from certain Alabama registration requirements. In response, a federal circuit court issued a restraining order preventing the organization from doing business in the state. While the organization was making various filings in response and was preparing to potentially dissolve within Alabama, but before any additional hearings had occurred, the state issued a subpoena for the organizations records, including membership lists.

The NAACP turned over some documents, its charter and organizational staff and leadership lists, but refused to turn over its lists of rank-and-file members. According to the organization, it was worried that disclosing membership lists would invite reprisals against members and dissuade current and potential members from joining the association – violation of rights to associate and assemble.

Decision:
In a landmark unanimous decision, the U.S. Supreme Court ruled in favor the NAACP, holding that the First Amendment right to associate applies to the actions of states such that the Alabama requests violated the NAACP's First Amendment rights. According to Justice John Marshall Harlan, "Immunity from state scrutiny of petitioner's membership lists is here so related to the right of petitioner's members to pursue their lawful private interests privately and to associate freely with others in doing so as to come within the protection of the Fourteenth Amendment." The Court weighed the interests expressed by the state to justify its actions, finding that "whatever interest the State may have in obtaining names of ordinary members has not been shown to be sufficient to overcome petitioner's constitutional objections to the production order."

From the opinion by Justice Harlan:

> We think that the production order, in the respects here drawn in question, must be regarded as entailing the likelihood of a substantial restraint upon the exercise by petitioner's members of their right to freedom of association. Petitioner has made an uncontroverted showing that on past occasions revelation of the identity of its rank-and-file members has exposed these members to economic reprisal, loss of employment, threat of physical coercion, and other manifestations of public hostility. Under these circumstances, we think it apparent that compelled disclosure of petitioner's Alabama membership is likely to affect adversely the ability of petitioner and its members to pursue their collective effort to foster beliefs which they admittedly have the right to advocate, in that it may induce members to withdraw from the Association and dissuade others from joining it because of fear of exposure of their beliefs shown through their associations and of the consequences of this exposure.
>
> It is not sufficient to answer, as the State does here, that whatever repressive effect compulsory disclosure of names of petitioner's members may have upon participation by Alabama citizens in petitioner's activities follows not from state action but from private community pressures. The crucial factor is the interplay of governmental and private action, for

it is only after the initial exertion of state power represented by the production order that private action takes hold.

Opinion Link - https://supreme.justia.com/cases/federal/us/357/449/

Discussion Questions

1. Does anything about the Court's ruling surprise you?
2. Do you think the state of Alabama to would ever be able to satisfy the Court's standard "to be sufficient to overcome petitioner's constitutional objections to the production order?" What sort of showing would the state need to make?
3. Which do you think the Supreme Court is prioritizing: individual freedoms or community safety and security? What are the factors the Court is considering in making a decision here?
4. In the various cases being examined for this jigsaw activity, the Court mentions both the freedom of speech and the freedom of assembly and association– using your assigned case as evidence, how are these two rights the same? How are they different? Do you think the Court should (or even could) separate these two rights?

Case Summary 3: *Edwards v. South Carolina* (1963)

Facts of the Case:
In March 1961, a group of 187 black high school and college students took part in a peaceful protest on the grounds of the South Carolina State House. The students were protesting segregation and carried signs with statements like “Down with Segregation” while walking in a line for about 45 minutes. During the protest, a group of about 200-300 onlookers watched, with little to no interactions between the two groups. Some vehicle traffic to the State House was forced to slow down, but no vehicles were prevented from entering or exiting the grounds. The police gave the protestors a 15-minute warning to disperse, but rather than leaving, the students began to sing religious and patriotic songs.

The police then arrested the students, who were subsequently charged and convicted of “breach of peace.” The students claimed their convictions were in violation of the Fourteenth Amendment. The South Carolina Supreme Court affirmed the convictions. The state court noted that there was no set definition of “breach of peace,” but that generally:

> In general terms, a breach of the peace is a violation of public order, a disturbance of the public tranquility, by any act or conduct inciting to violence . . . , it includes any violation of any law enacted to preserve peace and good order. It may consist of an act of violence or an act likely to produce violence. It is not necessary that the peace be actually broken to lay the foundation for a prosecution for this offense. If what is done is unjustifiable and unlawful, tending with sufficient directness to break the peace, no more is required. Nor is actual personal violence an essential element in the offense. . . .

Decision:
The Supreme Court overturned the convictions by an 8-1 vote. According to the Court, “it is clear to us that, in arresting, convicting, and punishing the petitioners under the circumstances disclosed by this record, South Carolina infringed the petitioners' constitutionally protected rights of free speech, free assembly, and freedom to petition for redress of their grievances.” The Court went through its precedent dealing with similar cases, but differentiated the conduct here by noting, if “the petitioners had been convicted upon evidence that they had violated a law regulating traffic, or had disobeyed a law reasonably limiting the periods during which the State House grounds were open to the public, this would be a different case.”

From the opinion by Justice Potter Stewart:

> These petitioners were convicted of an offense so generalized as to be, in the words of the South Carolina Supreme Court, "not susceptible of exact definition." And they were convicted upon evidence which showed no more than that the opinions which they were peaceably expressing were sufficiently opposed to the views of the majority of the community to attract a crowd and necessitate police protection.
>
> The Fourteenth Amendment does not permit a State to make criminal the peaceful expression of unpopular views.

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In dissent, Justice Tom C. Clark argued:

> The question thus seems to me whether a State is constitutionally prohibited from enforcing laws to prevent breach of the peace in a situation where city officials in good faith believe, and the record shows, that disorder and violence are imminent, merely because the activities constituting that breach contain claimed elements of constitutionally protected speech and assembly. To me, the answer under our cases is clearly in the negative.

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> The gravity of the danger here surely needs no further explication. The imminence of that danger has been emphasized at every stage of this proceeding, from the complaints charging that the demonstrations "tended directly to immediate violence" to the State Supreme Court's affirmance on the authority of *Feiner, supra.* This record, then, shows no steps backward from a standard of "clear and present danger." But to say that the police may not intervene until the riot has occurred is like keeping out the doctor until the patient dies.

Opinion Link - https://supreme.justia.com/cases/federal/us/372/229/

Discussion Questions

1. Does anything about the Court's ruling surprise you?
2. Do you think a "breach of peace" statute like this could ever meet the Court's First Amendment standards? What would it need to include? What are some examples of conduct it would (constitutionally) criminalize?
3. Which do you think the Supreme Court is prioritizing: individual freedoms or community safety and security? What are the factors the Court is considering in making a decision here?
4. In the various cases being examined for this jigsaw activity, the Court mentions both the freedom of speech and the freedom of assembly and association– using your assigned case as evidence, how are these two rights the same? How are they different? Do you think the Court should (or even could) separate these two rights?

Case Summary 4: *Lloyd Corp., LTD v. Tanner* (1972)

Facts of case:
Lloyd Corp. owned a large shopping center in Portland, Oregon. The center, taking up about 50 acres, bounded and crossed by public streets. Within the center was a single "mall" which included shops, gardens, an auditorium, and skating rink; there were no public streets or sidewalks within the mall. Donald Tanner, a Vietnam War vet, distributed anti-war handbills within the mall with a group of other anti-war protestors. Tanner and his group were informed by mall security that distributing handbills was prohibited by Lloyd Corp. and they had to stop, or they could be arrested. Tanner and the other protesters stopped distribution, left the mall, and subsequently filed suit against Lloyd Corp. Tanner's suit alleged that Lloyd Corp. had violated his First Amendment rights.

The lower federal courts found that Tanner's First Amendment rights had been violated and issued an injunction prevent Lloyd Corp. from interfering with such rights. On appeal to the U.S. Supreme Court, Lloyd Corp. challenged the lower courts' rulings and injunction as a violation of its Fifth and Fourteenth Amendment rights as a private property owner.

Decision:
In a split 5-4 decision, the U.S. Supreme Court held that Lloyd Corp.'s actions did not violate Tanner's First Amendment rights.

The Court addressed its prior relevant precedent in this area, including most directly, *Amalgamated Food Employee Union v. Logan Valley Plaza* (1968). In *Logan Valley,* the Court found the First Amendment was violated when a non-union grocery store prohibited the Union from picketing on its premises to challenge labor practices. The *Lloyd Corp.* Court was careful to draw a distinction between the Union's focus and the content of Tanner's handbills, noting that Lloyd had no connection to the conduct Tanner was protesting.

From the opinion by Justice Lewis F. Powell, Jr.:

> Respondents' argument, even if otherwise meritorious, misapprehends the scope of the invitation extended to the public. The invitation is to come to the Center to do business with the tenants. It is true that facilities at the Center are used for certain meetings and for various promotional activities. The obvious purpose, recognized widely as legitimate and responsible business activity, is to bring potential shoppers to the Center, to create a favorable impression, and to generate goodwill. There is no open-ended invitation to the public to use the Center for any and all purposes, however incompatible with the interests of both the stores and the shoppers whom they serve.
>
> …
>
> The situation at Lloyd Center was notably different. The central building complex was surrounded by public sidewalks, totaling 66 linear blocks. All persons who enter or leave the private areas within the complex must cross public streets and sidewalks, either on foot or in automobiles. When moving to and from the privately owned parking lots, automobiles are required by law to come to a complete stop. Handbills may be distributed conveniently to pedestrians, and also to occupants of automobiles, from these public sidewalks and streets. Indeed, respondents moved to these public areas and continued distribution of their handbills

> after being requested to leave the interior malls. It would be an unwarranted infringement of property rights to require them to yield to the exercise of First Amendment rights under circumstances where adequate alternative avenues of communication exist. Such an accommodation would diminish property rights without significantly enhancing the asserted right of free speech.

According to Justice Thurgood Marshall:

> It would not be surprising in the future to see cities rely more and more on private businesses to perform functions once performed by governmental agencies. The advantage of reduced expenses and an increased tax base cannot be overstated. As governments rely on private enterprise, public property decreases in favor of privately owned property. It becomes harder and harder for citizens to find means to communicate with other citizens. Only the wealthy may find effective communication possible unless we adhere to Marsh v. Alabama and continue to hold that '(t)he more an owner, for his advantage, opens up his property for use by the public in general, the more do his rights become circumscribed by the statutory and constitutional rights of those who use it,' 326 U.S. 276, at 506, 66 S.Ct. 276, at 278. When there are no effective means of communication, free speech is a mere shibboleth. I believe that the First Amendment requires it to be a reality.

Opinion Link - https://www.law.cornell.edu/supremecourt/text/407/551

Quimbee Case Brief Video - https://www.youtube.com/watch?v=L5G2tq1DJs0

Discussion Questions

1. Does anything about the Court's ruling surprise you?
2. How does the Court value private property rights in this case as compared to the First Amendment? Do you see any larger potential implications from this ruling as it relates to property owners' rights?
3. Which do you think the Supreme Court is prioritizing: individual freedoms or community safety and security? What are the factors the Court is considering in making a decision here?
4. In the various cases being examined for this jigsaw activity, the Court mentions both the freedom of speech and the freedom of assembly and association– using your assigned case as evidence, how are these two rights the same? How are they different? Do you think the Court should (or even could) separate these two rights?

Case Summary 5: *Village of Skokie v. National Socialist Party* (1978)

Facts of the case:
In the mid-1970s, the Village of Skokie, Illinois had an overall population of about 70,000 people and of that, more than 40,000 residents were Jewish. In March 1977, Frank Collin, the leader of the National Socialist Party of America (or Nazi), informed the Skokie police chief that the National Socialists intended to march on the village's sidewalks on May 1, 1977. According to Collin, the march was to protest a bond requirement before a park permit could be issued and that there would be 30-50 demonstrators, walking single file, and wearing uniforms similar to those traditionally worn by Nazis. The march become public knowledge after Party members allegedly called residents with "Jewish names" to alert them.

The Village filed a motion for an injunction with the district court. At the injunction hearing, the court heard testimony from residents and the mayor about fears of violence and the possibility of 12,000-15,000 counter-protestors. The court issued an injunction preventing the National Socialists from marching. The village also passed a number of ordinances banning any marchers from wearing military styled uniforms and distributing material containing hate speech.

The National Socialists, with the help of the ACLU, filed appeals with the Illinois Appellate and Supreme Courts asking the courts to expediate review or stay the injunction (given the time for a normal appeal process, it was likely that that courts would not have time to rule before the May 1 date). Both courts refused to expedite or stay the injunction. The National Socialists then appealed to the U.S. Supreme Court.

Decision:
The Supreme Court, in a 5-4 *per curiam* opinion announced that the Illinois courts could not categorically prevent the Nazis from marching without following strict procedural safeguards. To do so, the Court ruled, violated the First Amendment. (A *per curiam* decision is one issued on behalf of the Court, but without attributing it to a single justice.) "If a State seeks to impose a restraint on First Amendment rights, it must provide strict procedural safeguards, including immediate appellate review. ... Absent such review, the State must instead allow a stay. The order of the Illinois Supreme Court constituted a denial of that right.

In dissent, Justice William Rehnquist, joined by Chief Justice Warren Burger and Justice Potter Stewart, took issue with the Court's finding that the Illinois Supreme Court's refusal to stay the injunction was a *final* judgment such that the Supreme Court could hear an appeal. "Here all the Supreme Court of Illinois has done is, in the exercise of the discretion possessed by every appellate court, to deny a stay of a lower court ruling pending appeal. No Illinois appellate court has heard or decided the merits of applicants' federal claim."

In subsequent court proceedings, the Illinois Supreme Court reviewed the First Amendment values associated with the swastika and other Nazi symbols. The state court found that these symbols were entitled to First Amendment protections and their display did not rise to the level of "fighting words" – the effect of this ruling gave a greenlight to the National Socialists. Ultimately, the march did not go forward in Skokie, but instead, the National Socialists marched in nearby Chicago where they had received permission.

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Opinion Link - https://www.law.cornell.edu/supremecourt/text/432/43

Annenberg Classroom Video - https://www.annenbergclassroom.org/resource/freedom-of-assembly-national-socialist-party-v-skokie/

Discussion Questions

1. Does anything about the Court's ruling surprise you?
2. How important do you think procedural safeguards are when potentially abridging First Amendment rights? What are some specific safeguards you think would satisfy the Supreme Court?
3. Which do you think the Supreme Court is prioritizing: individual freedoms or community safety and security? What are the factors the Court is considering in making a decision here?
4. In the various cases being examined for this jigsaw activity, the Court mentions both the freedom of speech and the freedom of assembly and association– using your assigned case as evidence, how are these two rights the same? How are they different? Do you think the Court should (or even could) separate these two rights?

Case Summary 6: *Schenck v. Pro-Choice Network of Western NY* (1997)

Facts:
A group of abortion-providing doctors and clinics in upstate New York filed for an injunction seeking to prevent petitioners, a group of protestors and organizations, from setting up blockades at the clinics. Protestors had begun physically blocking the entrance to abortion clinics throughout the country, preventing patients and in some cases, doctors and nurses, from entering the clinics.

The federal district court granted the injunction request, creating a 15-feet "buffer zone" around the clinics. At first, the protestors largely followed the order, but when protests and blockades picked up again, the court held a series of contempt hearings and as a result, expanded the buffers to a "floating" zone. This scheme prevented any demonstrations with 15 feet of a person or vehicle entering or leaving a clinic.

On appeal to the U.S. Supreme Court, the parties and the justices focused on *Madsen v. Women's Health Center, Inc.* (1994), a case dealing with similar facts where the Court held that injunctions protecting access to abortion clinics passed constitutional muster if the injunctions "burden no more speech than necessary to serve a significant government interest."

Decision:
The Court reviewed the two different buffers separately. With a six-justice majority opinion written by Chief Justice William Rehnquist, the Court ruled that the fixed buffer zone was constitutional because it was "necessary to ensure that people and vehicles trying to enter or exit the clinic property or clinic parking lots can do so." The Court detailed the ways in which less restrictive means were not enough, based on the facts on the record, to protect ensure clinic access. According to the Court:

> Based on this conduct… the District Court was entitled to conclude that the only way to ensure access was to move back the demonstrations away from the driveways and parking lot entrances. Similarly, sidewalk counselors… followed and crowded people right up to the doorways of the clinics (and sometimes beyond) and then tended to stay in the doorways, shouting at the individuals who had managed to get inside. In addition, as the District Court found, defendants' harassment of the local police made it far from certain that the police would be able to quickly and effectively counteract protesters who blocked doorways or threatened the safety of entering patients and employees. Based on this conduct, the District Court was entitled to conclude that protesters who were allowed close to the entrances would continue right up to the entrance, and that the only way to ensure access was to move all protesters away from the doorways. Although one might quibble about whether 15 feet is too great or too small a distance if the goal is to ensure access, we defer to the District Court's reasonable assessment of the number of feet necessary to keep the entrances clear.

As to the floating buffers, eight justices concluded that the floating nature of them created enough uncertainty to unconstitutionally burden the protestors' speech more than is necessary to ensure the government's interest.

> [I]t would be quite difficult for a protester who wishes to engage in peaceful expressive activities to know how to remain in compliance with the injunction. This lack of certainty leads to a substantial risk that much more speech will be burdened than the injunction by its terms

> prohibits. That is, attempts to stand 15 feet from someone entering or leaving a clinic and to communicate a message—certainly protected on the face of the injunction—will be hazardous if one wishes to remain in compliance with the injunction. Since there may well be other ways to both effect such separation and yet provide certainty (so that speech protected by the injunction's terms is not burdened), we conclude that the floating buffer zones burden more speech than necessary to serve the relevant governmental interests.

Justice Breyer agreed with the Court but wrote separately to state that, in his view, the lower court never intended to create a floating zone and he would have upheld the lower court decision in its entirety.

On the other hand, in a separate opinion, Justice Scalia, joined by Justices Kennedy and Thomas, wrote to express that even the fixed buffer zones represent unconstitutional restrictions on speech and that there had been no sufficient cause for state action provided.

Opinion Link - https://www.law.cornell.edu/supremecourt/text/432/43

Discussion Questions

1. Does anything about the Court's ruling surprise you?
2. How important do you think it is for there to be clear limits and expectations in the enforcement or limitation of First Amendment rights?
3. Which do you think the Supreme Court is prioritizing: individual freedoms or community safety and security? What are the factors the Court is considering in making a decision here?
4. In the various cases being examined for this jigsaw activity, the Court mentions both the freedom of speech and the freedom of assembly and association– using your assigned case as evidence, how are these two rights the same? How are they different? Do you think the Court should (or even could) separate these two rights?