

1Voice Teaching Resource: Improv *Anywhere*?

The following 1Voice lesson plan has been provided exclusively for Channel One by Sam Chaltain, education consultant for the Knight Foundation and Channel One

As Channel One News reported in its coverage of “Improv Anywhere,” some Americans are pushing the limit of the constitutional right to assemble peaceably.

Does the First Amendment protect the rights of groups like Improv Everywhere to burst into song, perform synchronized swimming in public fountains, or shed their pants before boarding subway cars?

The First Amendment curtails the power of the U.S. government to censor speech. But freedom of speech is not an absolute. Just how much can the government limit the private speech of its citizens? Channel One News weighs in.

The U.S. Supreme Court first recognized the importance of the right to assemble in the 1937 case *De Jonge v. State of Oregon*. “The right to peaceable assembly,” wrote the Court, “cannot be denied without violating those fundamental principles which lie at the base of all civil and political institutions.”

However, as with all freedoms, there are limits. Give your students this multimedia quiz to help them learn more about this fascinating area of the law.

NOTE: More detailed information can be found at www.firstamendmentcenter.org.

Improv *Anywhere*? Understanding Our Right to Assemble

Try this short quiz to see how well you know what the First Amendment does-- and does not-- protect when it comes to the right to peaceably assemble.

Scenarios

[The Mobile Desktop](http://improveverywhere.com/2008/02/25/mobile-desktop/): Watch as a group of people installs bulky desktop computers in a New York City Starbucks. Is this a constitutionally protected sort of activity? Why or why not? (See <http://improveverywhere.com/2008/02/25/mobile-desktop/>)

[No Pants](http://improveverywhere.com/2008/01/16/no-pants-2k8/): In this episode, nearly 2,000 people took off their pants on subways in ten cities around the world, including New York City. Does the First Amendment allow this? (See <http://improveverywhere.com/2008/01/16/no-pants-2k8/>)

[Food Court Musical](http://improveverywhere.com/2008/03/09/food-court-musical/): Watch as sixteen people stage a spontaneous musical in the food court of a Los Angeles shopping mall. Can they do this? (See <http://improveverywhere.com/2008/03/09/food-court-musical/>)

Answers

Although the Starbucks staff in this particular store chose not to make a big deal out of the stunt, they could have. Just as with any piece of private property, owners can make rules regarding that property, including what is appropriate attire; think of “No shirt, no shoes, no service.” Although New Jersey and California have amended their state constitutions to provide more freedoms than the U.S. Constitution — meaning that in these states constitutional rights to free speech can prevail over the private-property interests of store owners – most states that have addressed this issue have found in favor of property owners.

Although there’s nothing illegal about not dressing warmly enough in the wintertime, it’s unlikely that the decision to forgo pants for one’s subway ride would qualify as expressive conduct under the First Amendment. Politically- and religiously-motivated speech receives the highest amount of protection under the First Amendment. Consequently, if any of the participants in the “No Pants” improv were arrested, and then tried to claim a First Amendment defense, they would need to show that their expressive conduct rose to the level of this sort of speech.

Courts will employ a variety of tests to determine whether restrictions on dress violate First Amendment free expression rights. Some courts apply a two-part test taken from two of the Supreme Court’s flag-burning cases, *Texas v. Johnson* and *Spence v. Washington*. Under this test, a court will ask two questions: (1) Did the student intend to convey a particularized message? And (2) Is that particularized message one that a reasonable observer would understand?

A federal court in New Mexico applied this test to determine a student did not have a First Amendment right to wear sagging pants. The student argued that his wearing of the pants conveyed the particular message of African American heritage in the hip-hop fashion and lifestyle. The court rejected the student’s First Amendment claim, finding that a reasonable observer would not find a particularized message in his conduct. “Sagging is not necessarily associated with a single racial or cultural group, and sagging is seen by some merely as a fashion trend followed by many adolescents all over the United States,” the judge wrote.¹

Technically, as the answer to question #1 explains, the mall’s owners are within their legal right to prevent a group of people from turning the food court into a Broadway stage. On the other hand, it could be good for business.

¹ *Bivens v. Albuquerque Public Schools*, 899 F. Supp. 556 (D. N.M. 1995), aff’d, 1997 U.S. App. LEXIS 34008 (1997).