

**LIBERTY, ONCE IT BEGINS TO TAKE  
ROOT, IS A PLANT OF RAPID GROWTH.**

**—GEORGE WASHINGTON**

*Conflict and Continuity: The Story of American Freedom* explores the ideas that established the foundations of freedom that continue to challenge American society today. This curriculum uses primary source documents and content-rich background essays to demonstrate how the United States has struggled to reconcile competing rights.

Written at a 10.5 reading level, this 12-lesson curriculum will strengthen your students' understanding and appreciation of First Amendment rights that involve constitutional conflicts as well as continuities. Students will be able to examine and analyze:

- Historical foundations and interpretations of the First Amendment
- First Amendment freedoms and the Internet
- The balance of liberty and security
- Historical narratives highlighting celebrated individuals

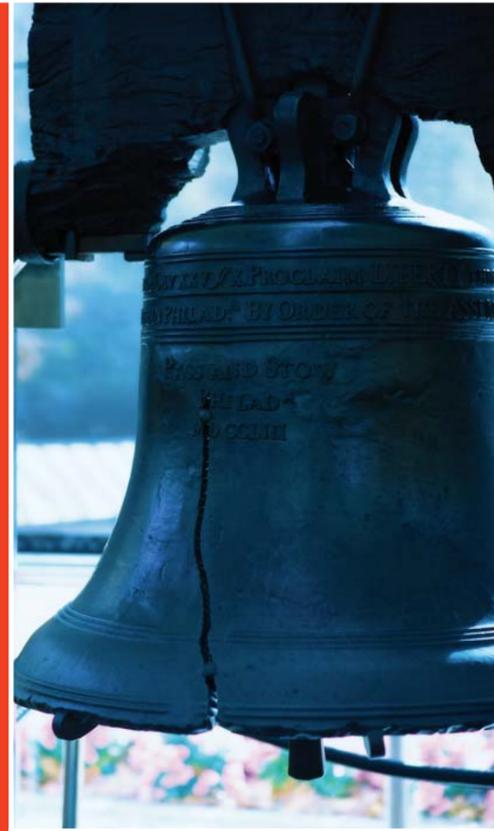
*Conflict and Continuity* also includes resources such as a list of First Amendment landmark Supreme Court cases, and a complete answer key.

Inspired by detailed submissions written by members of the Freedom Museum's Teacher Advisory Committee, *Conflict and Continuity* is an essential supplement to your social studies curriculum.

*Conflict and Continuity: The Story of American Freedom* is a joint project of the McCormick Tribune Freedom Museum and The Bill of Rights Institute.



**CONFLICT AND CONTINUITY: THE STORY OF AMERICAN FREEDOM**



# **CONFLICT AND CONTINUITY**

## **THE STORY OF AMERICAN FREEDOM**



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# CONFLICT AND CONTINUITY

## THE STORY OF AMERICAN FREEDOM

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*The Conflict and Continuity: The Story of American Freedom curriculum is part of a collaboration between The McCormick Tribune Freedom Museum and The Bill of Rights Institute.*

The McCormick Tribune Freedom Museum ([www.FreedomMuseum.us](http://www.FreedomMuseum.us)), created and funded by the McCormick Tribune Foundation, is the nation's first museum dedicated to freedom and the First Amendment. Through interactive exploration, visitors gain a greater understanding of the struggle for freedom in the United States and the role the First Amendment plays in historic and contemporary rights movements, as well as in everyday life. Children and adults are encouraged to question, challenge, and debate the limits of freedom and arrive at their own conclusions. It is the Museum's intent that through education, visitors become inspired to value America's hard-earned freedom and make civic engagement a life-long priority.

The Bill of Rights Institute ([www.BillofRightsInstitute.org](http://www.BillofRightsInstitute.org)) created the *Conflict and Continuity: The Story of American Freedom* curriculum to complement the Museum's exhibits. Founded in 1999, the Bill of Rights Institute pursues its mission to educate students and teachers about our country's Founding principles through classroom materials and programs that teach the words and ideas of the Founders; the liberties and freedoms guaranteed in our Founding documents; and how America's Founding principles affect and shape a free society. The Bill of Rights Institute is an educational nonprofit organization, classified by the Internal Revenue Service as a 501(c)(3) organization, a public charity supported by 3,000 individual, corporate, and foundation donors.

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This curriculum was made possible by the McCormick Tribune Freedom Museum in collaboration with the Bill of Rights Institute. The McCormick Tribune Freedom Museum would like to extend its gratitude and appreciation to the Teacher Advisory Committee whose guidance and expertise were crucial in the development of this curriculum.

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*The following educators provided detailed narratives and activities that formed the basis of many of the lessons in this publication.*

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*\*Member of the McCormick Tribune Freedom Museum Teacher Advisory Committee*

Thomas Jefferson once remarked that “A democracy cannot be both ignorant and free.” As Americans, it is critical that we have a firm and greater understanding of our nation’s hard-earned freedoms in order to preserve and protect those freedoms.

Guided and driven by that thinking, the McCormick Tribune Freedom Museum in collaboration with the Bill of Rights Institute is proud to bring you *Conflict and Continuity: The Story of American Freedom*. This curriculum serves as an educational tool for teachers to provide students with the opportunity to question, challenge, and debate the application and the cost of freedom. It is also our hope that this greater understanding of freedom will in turn, inspire student civic engagement.

*Conflict and Continuity: The Story of American Freedom* was developed by teachers for teachers. Their expertise and insight were instrumental in shaping the current curriculum. In addition, all the lesson plans were reviewed by leading academic experts, and were piloted in a number of classrooms across the nation with great success.

We understand how experiences beyond the classroom help enhance student learning. That’s why *Conflict and Continuity: The Story of American Freedom* can serve as either a stand-alone teaching tool or as a supplement to the exhibits in the McCormick Tribune Freedom Museum in Chicago. The McCormick Tribune Freedom Museum was created to encourage generations to understand, value and protect our First Amendment freedoms. The Museum delivers an excellent hands-on, interactive experience that helps clarify and reinforce lessons learned in the classroom, as well as provide fertile ground for deeper thinking on these issues.

*Conflict and Continuity: The Story of American Freedom* was made possible by the McCormick Tribune Freedom Museum. This curriculum is a result of a deep commitment to preserving freedom and democracy through the McCormick Tribune Foundation which inspired and currently funds the McCormick Tribune Freedom Museum. The foundation is a charitable organization that invests in children, communities and our country. Robert R. McCormick, the foundation’s benefactor, was an ardent supporter of First Amendment rights. Throughout his life, McCormick (1880-1955) strongly believed in the responsibility of citizens to participate in and contribute to our democratic way of life.

It is our goal that the lessons in *Conflict and Continuity: The Story of American Freedom* will encourage, foster and guide discussions on First Amendment issues. Ultimately, we hope to help teachers encourage students to understand that each and every person has something meaningful to contribute to American democracy. We are honored to provide you with an educational resource that will help your students grow into informed and engaged citizens, which are intrinsic to our American democracy.

David Anderson  
Executive Director  
McCormick Tribune Freedom Museum

The Bill of Rights Institute is proud to bring you *Conflict and Continuity: The Story of Freedom in American History*. Developed in collaboration with the McCormick Tribune Freedom Museum, this curriculum will help your students understand the ideas that have formed the foundation of American freedom for centuries. With a special focus on the Bill of Rights and the First Amendment, students will appreciate their freedoms and the ideas that underpin them.

James Madison called free speech the “guardian of every other right.” Indeed, all five freedoms protected by the First Amendment—the so-called “crown jewel” of the Bill of Rights—provide citizens with not only the freedom to speak, publish, worship, gather, and petition government, but also some of the vital tools to ensure that their other freedoms continue to be protected.

As Thomas Paine said, “Those who expect to reap the blessings of freedom must, like men, undergo the fatigue of supporting it.” Studies show that people are most willing to defend the rights they best understand. Unfortunately, those same studies tell us that students lack even basic knowledge about their liberties. Fewer than 20% of high school seniors can name the First Amendment’s five freedoms. Only half of students said newspapers should be allowed to publish freely without government approval of stories.

Each of the lessons in *Conflict and Continuity: The Story of American Freedom* contains all the materials you will need for two forty-five minute classes or one ninety-minute block. Each lesson contains an informative essay to help your students with the necessary background knowledge for the lesson. Also included with each lesson is an optional historical narrative, highlighting an individual or event to bring depth and perspective to the issue being explored. In the back of the book you will also find a complete answer key and a listing of landmark First Amendment Supreme Court cases.

Many of the lessons in *Conflict and Continuity: The Story of Freedom in American History* were inspired by detailed submissions written by members of the Freedom Museum’s Teacher Advisory Committee. This committee played a key role in advising the Freedom Museum about content as well as practical matters of concern to visiting teachers.

It is our hope that this curriculum will help your students gain a deeper understanding of constitutional conflicts as well as continuities, and come to appreciate that while citizenship in a free society can be challenging, the blessings of liberty are well worth it.

Victoria Hughes  
President  
The Bill of Rights Institute

The Conventions of a number of the States having, at the time of adopting the Constitution, expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added, and as extending the ground of public confidence in the Government will best insure the beneficent ends of its institution;

Resolved, by the Senate and House of Representatives of the United States of America, in Congress assembled, two-thirds of both Houses concurring, that the following articles be proposed to the Legislatures of the several States, as amendments to the Constitution of the United States; all or any of which articles, when ratified by three-fourths of the said Legislatures, to be valid to all intents and purposes as part of the said Constitution, namely:

#### **Amendment I**

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.

#### **Amendment II**

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.

#### **Amendment III**

No soldier shall, in time of peace be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

#### **Amendment IV**

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.

#### **Amendment V**

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.

#### **Amendment VI**

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

#### **Amendment VII**

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.

#### **Amendment VIII**

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

#### **Amendment IX**

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

#### **Amendment X**

The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

# THE SEEDS OF LIBERTY

## CRITICAL ENGAGEMENT QUESTION

How did the English roots of the Founders influence our freedoms as Americans?

## OVERVIEW

The American colonists fought a revolution to preserve the individual liberties they saw as their birthright as Englishmen. Natural rights theory, the philosophy that all people possess an equality of rights by virtue of their humanity, also influenced the Founders' beliefs and writings. This lesson will explore the English origins of our American freedoms: the *Magna Carta*, the Petition of Right, the Toleration Acts/Declaration of Right, and *Two Treatises of Government*.

*The natural liberty of man is to be free from any superior power on earth and not to be under the will or legislative authority of man, but to have only the law of nature for his rule.*

–JOHN LOCKE

*A free people [claim] their rights as derived from the laws of nature, and not as the gift of their chief magistrate.*

–THOMAS JEFFERSON



## MUSEUM CONNECTION

Help your students learn more about the traditions and documents that influenced American freedom. Take your class to the **Influences on American Freedom** section and view the multimedia “Windows on History” at the McCormick Tribune Freedom Museum ([www.FreedomMuseum.us](http://www.FreedomMuseum.us)).

## OBJECTIVES

Students will:

- identify the basic concepts and principles of the United States Constitution.
- explain natural rights theory.
- understand the *Magna Carta*, the Petition of Right, the Toleration Acts/Declaration of Right, and *Two Treatises of Government* as origins of American freedoms.
- appreciate freedom as a complex relationship between the individual and society.

## STANDARDS

NCHS: Era 2, Standard 3

CCE: IB1, IIA1, IIC1

NCSS: Strands 2, 6, and 10

## STUDENT MATERIALS

## The Bill of Rights

Handout A: The Seeds of Liberty Background Essay

Handout B: Rights Survey

Handout C: Document Guide

Handout D: Document

Excerpts

Freedom's Touchstones:

William and Mary of Orange  
(optional)

## TEACHER MATERIALS

Poster board

Multi-colored markers

Answer Key

## GRADE LEVEL / TIME

Two 45-minute high school classes or one 90-minute block

## BACKGROUND/HOMEWORK

[10 minutes the day before]

- Have students read **Handout A: The Seeds of Liberty Background Essay**
- Distribute **Handout B: Rights Survey** and have students administer the questionnaire to at least three people.

## WARM-UP

[10-15 minutes]

- Divide the class into trios. Give each group a piece of poster board and multi-colored markers to use throughout the activity.
- Have students write "*Basic Concepts of the Constitution*" in the middle of the poster board. Ask students to brainstorm the ideas or concepts that are embodied in the United States Constitution, using what they learned from **Handouts A and B**.
- Have students post their concept-webs throughout the room and give students a few moments to view them all.

## ACTIVITY I

[20-30 minutes]

- Distribute the **Bill of Rights**, **Handout C: Document Guide**, and **Handout D: Document Excerpts**.
- Have students skim over the document excerpts and underline words or passages that refer to rights and ideas they noted on their concept webs.
- Have students work in their trios from the warm-up activity to complete **Handout C**.
- Go over the answers to the chart and the five questions on **Handout C** as a large group. (See *Answer Key*)

## ACTIVITY II

[20-30 minutes]

- Have students revisit their original concept webs. Have the students connect rights and ideas back to their English origins by referencing the specific document(s) where they are mentioned.
- Reconvene the class and conduct a large group discussion to answer the following questions:
  - How does the concept of "rights of Englishmen" differ from "natural rights"?
  - If the American colonists were fighting to preserve rights, does that mean that the American Revolution was any less revolutionary?
  - How does natural rights theory inform modern discussions of freedom?



## THE SEEDS OF LIBERTY

Some might say that the American Revolution was not all that revolutionary. This is because when the colonists took up arms against England, they were not doing so to create new rights, but rather to preserve the established rights they saw as their inheritance as Englishmen.

### ***Magna Carta* (1215)**

With the *Magna Carta*, King John placed himself and all future kings and queens of England within the rule of law. Abuses by King John caused a rebellion by barons who forced him to agree to this recognition of rights for both noblemen and ordinary Englishmen. It established the principle that no one, including the king or a lawmaker, is above the law.

The *Magna Carta* defined the relationship between the king and barons, and established a set of rights guaranteed “to all freemen,” similar to many clauses in the Bill of Rights. (Relevant amendments are in parentheses.) King John agreed not to seize land to pay for debts (Fourth); not to take life or liberty without due process or compensation (Fifth); not to delay court proceedings or punish without testimony from witnesses (Sixth); and not to issue excessive punishments (Eighth). The king also agreed to preserve the liberty of the church and to hear petitions from the barons (First); to remove foreign armies from England (Third); to restore property taken unjustly (Fifth); and to repay unjust fines (Eighth). *Magna Carta* protections became part of English common law, which governed contracts, property, and due process.

### **The Petition of Right (1628)**

Over many centuries, the *Magna Carta* protected the rights of Englishmen. However, in 1628, King Charles I directly challenged the rights of Englishmen. He disbanded Parliament and asserted that no one could question his power because

it came from God. He also believed the rights of Englishmen came from the king, who could take them away whenever he wanted to.

Sir Edward Coke, a member of the House of Commons, informed Charles I that Englishmen received their rights from the law, not the king. Furthermore, the king was subject to the law. Coke’s petition focused on Charles’ violation of the protection of the law: denying Englishmen due process (Fifth); protection from unjust seizure of property or imprisonment (Fourth, Fifth); the right to trial by fellow Englishmen (Sixth); and protection from unjust punishments or excessive fines (Eighth). While he temporarily accepted the Petition of Right, Charles quickly broke his word and resumed the violations. His actions resulted in a civil war. Charles lost: he was beheaded in 1649.

### **Toleration Acts/Declaration of Right (1689)**

After years of violence and upheaval, Parliament offered the throne to William and Mary of Orange if they agreed to uphold certain rights of the English people. This change in power was known as the “Glorious Revolution.” The English Bill of Rights, drawn up by Parliament, forms the foundation for many of the concepts and principles found in the United States Constitution.

As a condition of their rule, William and Mary accepted the Toleration Acts/Declaration of Right in 1689, which reaffirmed and even expanded the rights of Englishmen. The Toleration Acts granted Protestants who did not attend the Church of England, known as Nonconformists, the right to freely exercise religion (First), though it withheld that right from Catholics and non-believers. The Declaration gave Parliament total freedom of speech during debate (First); the right to assemble peacefully and to petition (First); the right to keep arms (Second); protections of property and liberty

## THE SEEDS OF LIBERTY (CONT.)

(Fourth, Fifth); rights of the accused (Sixth); and rights of criminals (Eighth).

### *Two Treatises of Government (1689)*

As Englishmen, British subjects saw their freedoms as their birthright because of their legal legacy of freedoms. Philosopher John Locke took his theory of the origins of rights further, and argued that rights came from nature or from God. He said that all people of all nationalities are born with the same rights.

Locke argued that people are by nature free and equal. They own their “persons [bodies] and possessions.” Without laws, people cannot

preserve these natural rights, so they “unite into a community for their comfortable, safe, and peaceable living.” It is the people’s right, however, to dissolve a government that repeatedly fails to protect them.

The American Founders were influenced both by their legal heritage of rights as Englishmen, as well as the liberal ideas of John Locke. In fact, much of colonial law was based on the rights the colonists had as Englishmen. Locke’s ideas also influenced the beliefs and writings of the Founders, as evidenced by the Declaration of Independence, other Founding documents, and the ultimately the United States Constitution and Bill of Rights.

## RIGHTS SURVEY

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**Directions:** *Ask at least three people to respond to the question below and record their answers. Bring your answers back to class tomorrow.*

---

Friend: \_\_\_\_\_

What are at least five rights, ideas, or concepts that the United States Constitution protects?

- 1.
- 2.
- 3.
- 4.
- 5.

Parent/Guardian: \_\_\_\_\_

What are at least five rights, ideas, or concepts that the United States Constitution protects?

- 1.
- 2.
- 3.
- 4.
- 5.

Other Adult: \_\_\_\_\_

What are at least five rights, ideas, or concepts that the United States Constitution protects?

- 1.
- 2.
- 3.
- 4.
- 5.

## DOCUMENT GUIDE

**Directions:** Refer to *Handouts A and D* to complete the chart, placing checkmarks where rights were protected by each document. Then answer the questions below about *Two Treatises of Government* (1689).

	United States Bill of Rights (1791)	<i>Magna Carta</i> (1215)	Petition of Right (1621)	Toleration Acts/ Declaration of Right (1689)
RIGHT	<b>First:</b> Religion, Speech, Press, Assembly, Petition			
	<b>Second:</b> Keep and Bear Arms			
	<b>Third:</b> Freedom From Quartering Troops			
	<b>Fourth:</b> Search and Seizure Rights			
	<b>Fifth:</b> Due Process and Property Rights			
	<b>Sixth:</b> Fair Trial Rights			
	<b>Eighth:</b> Freedom from Cruel and Unusual Punishment			

1. What was the purpose of John Locke's *Two Treatises of Government*?
2. What do people give up when they enter into a society together?
3. What is the purpose of government, according to Locke?
4. How does Locke define liberty versus license?
5. How does Locke define freedom under government?

## DOCUMENT EXCERPTS

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**Directions:** Read the document excerpts and complete *Handout C*.

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**Magna Carta (1215)**

Of [the King's] mere and free will, have given and granted to all Archbishops, Bishops, Abbots, Priors, Earls, Barons, and to all freemen of this our realm, these liberties following, to be kept in our kingdom of England for ever....

The city of London shall have all the old liberties and customs, which it hath been used to have. Moreover we will and grant, that all other Cities, Boroughs, Towns, and the Barons of the Five Ports, and all other Ports, shall have all their liberties and free customs....

No Constable, nor his Bailiff, shall take corn or other chattels of any man, if the man be not of the Town where the Castle is, but he shall forthwith pay for the same, unless that the will of the seller was to respite the payment; and if he be of the same Town, the price shall be paid unto him within forty days....

No Freeman shall be taken, or imprisoned, or be disseised of his Freehold, or Liberties, or free Customs, or be outlawed, or exiled, or any otherwise destroyed; nor will we pass upon him, nor condemn him, but by lawful Judgment of his Peers, or by the Law of the Land. We will sell to no man, we will not deny or defer to any man either Justice or Right....

All Merchants shall have their safe and sure Conduct to depart out of England, to come into England, to tarry in, and go through England, as well by Land as by Water, to buy and sell...

**The Petition of Right (1628)**

The Petition exhibited to his Majesty...

...And whereas also by the statute called 'The Great Charter of the Liberties of England,' it is declared and enacted, that no freeman may be taken or imprisoned or be disseized of his freehold or liberties, or his free customs, or be outlawed or exiled, or in any manner destroyed, but by the lawful judgment of his peers, or by the law of the land...

And in the eight-and-twentieth year of the reign of King Edward III, it was declared and enacted by authority of parliament, that no man, of what estate or condition that he be, should be put out of his land or tenements, nor taken, nor imprisoned, nor disinherited nor put to death without being brought to answer by due process of law....

Nevertheless, ...your subjects have of late been imprisoned without any cause showed; and when for their deliverance they were brought before your justices by your Majesty's writs of *habeas corpus*, there to undergo and receive as the court should order, and their keepers commanded to certify the causes of their detainer, no cause was certified, but that they were detained by your Majesty's special command, signified by the lords of your Privy Council, and yet were returned back to several prisons, without being charged with anything....

And whereas of late great companies of soldiers and mariners have been dispersed into divers counties of the realm, and the inhabitants against their wills have been compelled to receive them into their houses, and there to suffer them to sojourn against the laws and customs of this realm, and to the great grievance and vexation of the people....

## DOCUMENT EXCERPTS (CONT.)

**Toleration Acts/Declaration of Right (1689)**

Whereas the late King James II, by the assistance of diverse evil counselors, judges, and ministers employed by him, did endeavor to subvert and extirpate the Protestant religion and the laws and liberties of this kingdom:

- By assuming and exercising a power of dispensing with and suspending of laws, and the execution of laws, without consent of Parliament....
- By levying money for and to the use of the crown, by pretense of prerogative, for other time and in other manner than the same was granted by Parliament.
- By raising and keeping a standing army within this kingdom in time of peace, without consent of Parliament, and quartering soldiers contrary to law.
- By causing several good subjects, being Protestants, to be disarmed, at the same time when papists were both armed and employed contrary to law.
- By violating the freedom of election of members to serve in Parliament....
- And excessive bail hath been required of persons committed in criminal cases, to elude the benefit of laws made for the liberty of the subjects.
- And excessive fines have been imposed; and illegal and cruel punishments inflicted....

All which are utterly and directly contrary to the known laws and statutes and freedom of this realm....

And whereas, it hath been found by experience that it is inconsistent with the safety and welfare of this Protestant kingdom to be governed by a popish prince or by any king or queen marrying a papist, the said lords spiritual and temporal, and commons, do further pray that it may be enacted that all and every person and persons that is, are, or shall be reconciled to, or shall hold communion with, the see or Church of Rome, or shall profess the popish religion, or shall marry a papist, shall be excluded and be forever incapable to inherit, possess, or enjoy the crown and government of this realm....

## DOCUMENT EXCERPTS (CONT.)

*Two Treatises of Government (1689)*

To understand political power right, and derive it from its original, we must consider what state all men are naturally in, and that is, a state of perfect freedom to order their actions, and dispose of their possessions and persons as they think fit, within the bounds of the law of nature, without asking leave, or depending upon the will of any other man....

But though this be a state of liberty, yet it is not a state of licence. Though man in that state have an uncontrollable liberty to dispose of his person or possessions, yet he has not liberty to destroy himself, or so much as any creature in his possession, but where some nobler use than its bare preservation calls for it....

The state of nature has a law of nature to govern it, which obliges everyone; and reason, which is that law, teaches all mankind, who will but consult it, that being all equal and independent, no one

ought to harm another in his life, health, liberty or possessions.

The natural liberty of man is to be free from any superior power on earth and not to be under the will or legislative authority of man, but to have only the law of nature for his rule. The liberty of man, in society, is to be under no other legislative power but that established by consent in the commonwealth, nor under the dominion of any will, or restraint of any law, but what the legislative shall enact, according to the trust put in it.

Freedom then is not ...a liberty for everyone to do what he likes, to live as he pleases and not to be tied by any laws: but freedom of men under government is to have a standing rule to live by, common to everyone of that society, and made by the legislative power erected in it; a liberty to follow my own will in all things where the rule prescribes not; and not to be subject to the inconstant, uncertain, unknown, arbitrary will of another man.

## WILLIAM AND MARY OF ORANGE

*The Bishop walked through Westminster Abbey, smelling the incense and listening to the bells ring. The throngs of Londoners were gathering outside in anticipation of the historic coronation ceremony. For the first time in 200 years, dual-monarchs would reign. Even more significantly, the coronation he was about to perform would challenge traditional rights of succession to the throne, and even the divine right of kings itself.*

In the view of many in England, James II had been an abusive King. He had refused to work with Parliament and had violated election laws, property rights, and other traditional rights of Englishmen. He arrested several bishops for refusing to profess Catholicism, and he formed an alliance with Catholic France that was very unpopular with the people.

Though King James II was not well liked, many were willing to tolerate him because they believed that his Protestant daughter, Mary, would eventually become Queen. But James II soon announced that his second (and Catholic) wife was pregnant. The English people feared that she might have a son, who would then be the next in line for the throne. England would then be ruled by a Catholic dynasty. Their fears were confirmed when his wife gave birth to a boy.

To ensure that England remained Protestant, Parliament approached Mary's husband, Prince William of Orange. William, a Dutch aristocrat, agreed to invade England and remove King James from power. He gathered his army of more than 15,000 men in November 1688. Many influential Englishmen and even some officers of King James II's army publicly stated their support for William. The king was alarmed by the warm reception William's troops received, and fled for France.



In February of 1689, Parliament drafted the Declaration of Right. This document did two things. It listed King James II's violations of the rights of Englishmen and explained that the throne was now vacant. The Declaration of Right then offered the crown to William and Mary, provided they promised to protect the rights of Englishmen. They also had to swear an oath to preserve the Protestant religion in England.

*Having therefore an entire confidence that his said Highness the prince of Orange will perfect the deliverance so far advanced by him, and will still preserve them [Englishmen] from the violation of their rights, which they have here asserted, and from all other attempts upon their religion, rights, and liberties, the said lords spiritual and temporal, and commons assembled at Westminster, do resolve that William and Mary, prince and princess of Orange, be and be declared king and queen of England, France, and Ireland, and the dominions thereunto belonging. . . .*

The coronation of William and Mary launched England on its journey as a constitutional monarchy—the form of government that is still in place today. The “Glorious Revolution,” as it came to be called, was complete.

Much of the Declaration of Right was soon incorporated into the English Bill of Rights. The English Bill of Rights brought Parliament to the forefront of English political life, protected individual rights and greatly limited the power of the monarch. Among other rights, freedom of speech and petition received some protection. The King was forbidden

to create a standing army, establish his own courts, impose excessive bail or fines, or inflict cruel and unusual punishments. Parliament also had control of the monarch's spending.

The English Bill of Rights served to remind the King and Queen that they were not above the law. It declared more than a dozen of these "rights and liberties of the subject," and asserted that all Englishmen "claim, demand and insist upon all and singular the premises as their undoubted rights and liberties..."

In one sense, however, the Glorious Revolution represented a step backward for individual rights. The Declaration of Right explained it had "been found by experience that it is inconsistent with the safety and welfare of this protestant kingdom to be governed by a papist [Catholic] prince." King James II's policy had attempted to offer freedom of conscience for people of all faiths. Parliament voided this law and passed the Toleration Act of 1689. Under this law, all places of worship had to be certified by the government.

The Toleration Act protected freedom of worship for Protestants, but not for Catholics, non-Christians, or those unwilling to sign loyalty oaths. The Act was very clear about who was being granted religious freedom. The Act stated that it should not "be construed to extend, to give any ease, benefit, or advantage to any Papist or popish [Catholic] whatsoever, or any person that shall deny, in his preaching or writing, the doctrine of the blessed Trinity." A decade later, a new English law declared that no Catholic, nor anyone married to a Catholic, could ever assume the throne. This is still in force today.

Though the overthrow of James II was in large part prompted by religious intolerance, the resulting English Bill of Rights constituted an important part of the English legacy of rights. The American Revolution was fought to preserve and expand upon this legacy. Americans in the eighteenth century looked back to the glorious revolution as the example of citizens' rights to fight for their own liberties and achieve a "government of laws, not of men."



### CRITICAL THINKING QUESTIONS

1. What was the Declaration of Right?
2. What were two conditions of William and Mary's ascension to the throne?
3. What did the English Bill of Rights accomplish?
4. Was the Glorious Revolution a true "revolution" or a *coup d'etat* [sudden overthrow of government by a small group]?
5. How did the U.S. Constitution and Bill of Rights expand on the freedoms protected in the English Bill of Rights and Toleration Act?

# EARLY CHALLENGES TO LIBERTY

## CRITICAL ENGAGEMENT QUESTION

Why is free political speech essential in a democracy?

## OVERVIEW

Americans cherish “freedom of speech,” and indeed, political debate has been a part of the American way since the Founding. But the degree to which free political speech should be protected, and the implications for society when all points of view compete in a marketplace of ideas, have also been the subject of debate since the Founding. In this lesson, students will understand the reasons the Founders afforded political speech the highest protection, and they will confront their own assumptions about the origins of this First Amendment freedom.

*If the freedom of speech is taken away then dumb and silent we may be led, like sheep to the slaughter.*

—GEORGE WASHINGTON

*Wherever the relevance of speech is at stake, matters become political by definition, for speech is what makes man a political being.*

—HANNAH ARENDT



## MUSEUM CONNECTION

Help your students learn more about political speech in the Founding Era. Take your class to the **Founding Generation** kiosks and analyze the statements of individuals who helped frame the Founding documents. You may also take your class to the **U.S. Censorship, Then and Now** alcove and view the engraving of Matthew Lyon and Roger Griswold fighting on the House floor in 1798 at the McCormick Tribune Freedom Museum ([www.FreedomMuseum.us](http://www.FreedomMuseum.us)).

## OBJECTIVES

Students will:

- define free political speech.
- explain the importance of political speech in American society.
- understand the ways the Founders viewed political speech.
- analyze statements about free speech.
- challenge preconceived notions about history.

## STANDARDS

NCHS: Era 3, Standard 3

CCE: IIA1, IIA2, IIC1, IID3, VB2

NCSS: Strands 2, 4, 5, and 10

## STUDENT MATERIALS

**Handout A:** Political Speech in the Founding Era Background Essay

**Handout B:** Free Speech Focus Questions

**Freedom's Touchstones:** Matthew Lyon (*optional*)

## TEACHER MATERIALS

**Handout C:** Spectrum Signs

**Handout D:** Founders Cards

**Handout E:** Quote Cards

**Answer Key**

## GRADE LEVEL/TIME

One 45-minute high school class

## HOMEWORK/BACKGROUND

[10 minutes the day before]

Have students read **Handout A: Political Speech in the Founding Era Background Essay**.

## WARM-UP

[10 minutes]

- Have students complete **Handout B: Free Speech Focus Questions**.
- Ask students to share their responses to **Handout B**. Emphasize to students the importance of political speech in a democracy and that the Founders had a variety of opinions on how this right was to be protected.

## ACTIVITY

[35 minutes]

- Divide the class into groups of three or four. Place the **Handout C: Spectrum Signs** on opposite sides of the blackboard and draw a dotted line between them.
- Give each group one card from **Handout D: Founders Cards**. Tell them their goal is to decide as a group where this person fits in this spectrum. (They should base their decision on their present knowledge of the individual.)
- Once each group has placed their person on the spectrum, discuss with the class whether or not they agree with where each Founder was placed. Ask for reasons why or how they would change the placement.
- Next, hand each group a card from **Handout E: Quote Cards**. Have groups read and discuss their quotes briefly. Then ask them to decide in their groups where to place the quote on the spectrum.
- Working one group at a time, have one member from each group read his or her quote aloud, and have another group member come up to place it on the spectrum. Once all have been placed, ask the class if they agree with the placements or if changes should be made.
- Go through each **Founder Card** and match the person with his quote, placing the individual next to their quote on the spectrum. With each move, ask the class: Why the difference? Did their perception of the person influence their placement? Was this something they did not expect that person to say? Do this with each Founder until the spectrum has been finally arranged.
- Conduct a large group discussion about the First Amendment's protection of freedom of speech. What did this activity show about the complexity of protecting free political speech?

## HOMEWORK

- A. Have students read **Freedom's Touchstones: Matthew Lyon** and answer the critical thinking questions.
- B. Ask students to select a modern political figure and find a statement they made regarding free political speech. Have them write out the quote on one side of a piece of paper. On the back, have them write one paragraph explaining where on the spectrum the quote would go, and why. Next class, have students read their quotes and add them to the spectrum.

## EXTENSIONS

- A. Have students investigate how free speech has been defined and debated over time by tracing the major Supreme Court cases that have defined free speech in America. Have them create an annotated timeline to present to the class. Students can begin their research at [www.BillofRightsInstitute.org](http://www.BillofRightsInstitute.org).
- B. The Founders wrote the First Amendment to protect political speech. Do you believe they would say the First Amendment should apply to the following types of speech?
- A student wears an armband to school to protest a war.
  - A video game includes graphic depictions of violence.
  - A war veteran burns an American flag at a non-violent demonstration.
  - An Internet site displays adult pornographic images.

**REAL LIFE PORTAL**

Have students locate and analyze examples of political speech. They could investigate their representatives' congressional record, read op-ed pieces about government, and/or write their own letter to the editor about a political issue important to them.

## POLITICAL SPEECH IN THE FOUNDING ERA

Words or “speech” can serve as a powerful catalyst for action. Because of its power, the Founders protected speech in the Bill of Rights.

### How Did Free Speech in America Evolve?

By 1689, the English Bill of Rights gave Parliament total freedom to debate political matters. In America, most colonial constitutions and charters included some protection of printed and political speech. Eventually, James Madison used these documents, notably those from Virginia and Massachusetts, as models for the Bill of Rights.

During debate on the United States Constitution, James Madison sought to encourage open public discourse among the citizens of the new nation. He saw free speech and debate as a means of preventing violence in society: if people are free to advance their own political concerns through peaceful deliberation, he said, they would not resort to violence.

Open discussion and political participation help citizens influence the behavior of government officials and guard against corruption. The Founders knew that no political system could ignore the people while claiming to derive its just powers from them, a position that was outlined in the Declaration of Independence. The Founders also knew from their own revolution that no such government would survive long as a free, peaceful nation. The freedom to get a public hearing gives groups a chance to persuade others of their point of view. Without this freedom, groups have only the choice of rebellion (violence against society) or tyranny (seizing control of government and imposing their beliefs).



**Free speech is the essence of self-government.**

### What Are Modern Interpretations of Free Speech?

In 1927, Supreme Court Justice William Brandeis affirmed the Founders’ vision. He stated, “They [the Founders] believed that freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth. . . and that this should be a fundamental principle of the American government.”

Nearly two centuries after the ratification of the Bill of Rights, the Supreme Court again reaffirmed the Founders’ vision, noting in *Garrison v. Louisiana* (1964) that free speech concerning public affairs “is the essence of self-government.”

Five years later, in *Brandenburg v. Ohio* (1969), the Court ruled that the First Amendment protects even the most extreme criticism of government actions. Defending the right of a Ku Klux Klan leader to advocate violent political opposition to civil rights laws, the Court ruled that the First Amendment protected

even the advocacy of unlawful action, so long as that advocacy does not incite listeners to engage in “imminent lawless action.”

The *Brandenburg* decision set a standard for protected speech used by the Court to this day. Though the definition of “speech” has expanded into “expression” and now includes many nonverbal or symbolic acts, the Court continues to accord political speech the highest level of protection (it is known as “preferred speech”).

Because of the Founders’ determination to encourage political debate and the sharing of ideas, we enjoy the protection of free speech today.



## SPECTRUM SIGNS



## FOUNDERS CARDS



*Richard Henry Lee*  
1732 – 1794

Delegate to the Continental Congress  
Revolutionary War Veteran  
Anti-Federalist  
United States Senator from Virginia



*James Madison*  
1751 – 1836

“Father of the Constitution”  
Author of the Bill of Rights  
Co-author of *The Federalist Papers*  
Fourth President of the United States



*George Mason*  
1725 – 1792

American Statesman  
Author of Virginia Declaration of Rights  
Delegate to the Constitutional Convention

Virginia Museum of Fine Arts, Richmond. Gift of David K. E. Bruce  
Photo: Ron Jennings © Virginia Museum of Fine Arts



*Alexander Hamilton*  
1755 – 1804

Delegate to the Constitutional Convention  
Co-author of *The Federalist Papers*  
First Secretary of Treasury

1867.305 Collection of the New-York Historical Society

## FOUNDERS CARDS (CONT.)



*George Washington*  
1732 – 1799

Commanding general in the Revolutionary War  
President of the Constitutional Convention  
First President of the United States



*John Jay*  
1745 – 1829

Delegate to the Continental Congress  
Co-author of *The Federalist Papers*  
First Chief Justice of the United States  
Supreme Court



*Benjamin Franklin*  
1706 – 1790

Author, Inventor, and Physicist  
Delegate to the Constitutional Convention  
Ambassador to France

Joseph Wright. Benjamin Franklin, 1782. Oil on canvas, 31 x 25 in (78.74 x 63.5 cm).  
Corcoran Gallery of Art, Washington, D.C. Museum Purchase, Gallery Fund, 85.5.



*Thomas Paine*  
1737 – 1809

Patriot and Political Philosopher  
Author of the pamphlet *Common Sense*  
Author of *The American Crisis*

## FOUNDERS CARDS (CONT.)



*John Adams*  
1735 – 1826

Author of the Massachusetts Constitution  
First Vice President of the United States  
Second President of the United States

1858.6 Collection of the New-York Historical Society



*James Otis*  
1725 – 1783

Patriot lawyer who fought British tyranny  
Advocate of natural rights theory  
Author of *The Rights of the British Colonies Asserted and Proved*

Image courtesy of The Bostonian Society/Old State House



*Thomas Jefferson*  
1743 – 1826

Author of the Declaration of Independence  
and the Virginia Statute for Religious Freedom  
Third President of the United States  
Founder of the University of Virginia



*Patrick Henry*  
1736 – 1799

Delegate to the Continental Congress  
Leader of the Virginia Militia  
Anti-Federalist  
Governor of Virginia

## QUOTE CARDS

“It must never be forgotten ... that the liberties of the people are not so safe under the gracious manner of government as by the limitation of power.”

1

“They that can give up essential liberty to obtain a little temporary safety deserve neither liberty nor safety.”

4

“No free government, or the blessings of liberty, can be preserved to any people, but by a firm adherence to justice, moderation, temperance, frugality, and virtue, and by frequent recurrence to fundamental principles.”

2

“The proposition that the people are the best keepers of their own liberties is not true. They are the worst conceivable, they are no keepers at all; they can neither judge, act, think, or will, as a political body.”

5

“Government is not reason; it is not eloquence; it is force! Like fire it is a dangerous servant and a fearsome master.”

3

“The will of the people is the only legitimate foundation of any government, and to protect its free expression should be our first objective.”

6

## QUOTE CARDS (CONT.)

<p>“Liberty is to faction what air is to fire, an aliment without which it instantly expires. But it could not be less folly to abolish liberty, which is essential to political life, because it nourishes faction, than it would be to wish the annihilation of air, which is essential to animal life, because it imparts to fire its destructive agency.”</p> <p>7</p>	<p>“When men yield up the privilege of thinking, the last shadow of liberty quits the horizon.”</p> <p>10</p>
<p>“When men exercise their reason coolly and freely on a variety of distinct questions, they fall into different opinions on some of them. When they are governed by a common passion, their opinions, if they are to be called, will be the same.”</p> <p>8</p>	<p>“It is a clear truth that those who every day barter away other men’s liberty will soon care little for their own.”</p> <p>11</p>
<p>“As to the position that ‘the people always mean well,’ that they always mean to say and do what they believe to be right and just – it may be popular, but it cannot be true. ... Pure democracy, like pure rum, easily produces intoxication and with it a thousand pranks and fooleries.”</p> <p>9</p>	<p>“Guard with jealous attention the public liberty. Suspect everyone who approaches that jewel. Unfortunately, nothing will preserve it but downright force. Whenever you give up that force, you are ruined.”</p> <p>12</p>



## MATTHEW LYON

*“Spitting Lyon, the Wild Irishman from Vermont” saw something out of the corner of his eye. It was a cane being raised at him by fellow a Congressman. The next thing he knew, he was being pummeled by it. He broke free and ran across the Congressional floor to the fireplace, grabbed a poker, and started hitting back.*

Matthew Lyon was born near Dublin, Ireland in 1749 and arrived in Connecticut when he was fifteen. He settled in what is now Vermont when he was twenty-five, and a year later fought in the Revolutionary War. He supported the revolutionary cause because of his opposition to monarchy and his strong belief in the peoples’ power to govern themselves.

After the war he was involved in the formation of the state of Vermont and helped write the state constitution, which was the first state constitution to outlaw slavery and provide for universal male suffrage. He served in the Vermont legislature and in 1796, he was elected to the United States House of Representatives.

Lyon created many opportunities to engage in political speech. Throughout the 1790s he published a weekly newspaper, the *New Haven Gazette*, in which he expressed his opinion about political matters. He also published a bi-weekly pamphlet, *The Scourge of Aristocracy and Repository of Important Political Truth*.

Lyon found that there was no shortage of political matters to discuss. The nation soon turned its attention to the French Revolution. France was at war with Britain, and the United States would have to decide which side, if either, to support.

Republicans were sympathetic to the revolutionaries in France, who had overthrown their monarchy and established a republic. Federalists, on the other hand, strongly disapproved of the bloody means by which the French achieved and sustained their revolution.

A “Quasi-War,” or undeclared naval war, was already in progress in 1797 as the French seized over 300 American ships. Federalists were calling for a formal declaration of war with France. Republicans were urging support for France against the British and did not want the United States to be involved. President John Adams, against the wishes of many within his Federalist party, wanted to avoid a formal declaration of war.

The nation’s uncertainty about the war was mirrored in the halls of government. In one famous incident on the floor of Congress, Lyon had talked casually but loudly—loud enough to ensure others would hear him. He carried on about the “malign influence of Connecticut politicians” and claimed the Federalists were silencing opposition to their party by unjustly controlling the press.

In response, Roger Griswold of Connecticut, a Federalist, called Lyon a “coward” and insulted his Irish heritage. Lyon responded by spitting straight in Griswold’s face, which earned him the nickname “Spitting Lyon, the Wild Irishman from Vermont.”

Two weeks later, the feud was still on. Apparently without warning, Griswold strode across the chambers towards Lyon on the morning of February 15, 1798, and struck Lyon several times with his walking stick. Lyon ran quickly to the fireplace, grabbed a poker, and landed several blows of his own. The fracas ended with Lyon throwing Griswold to the floor.

The fight between the two Congressmen was emblematic of a larger battle in Congress, and perhaps indeed the entire country, between the

nation's first two political parties: the Democratic-Republicans and the Federalists. In the midst of this battle, the First Amendment, ratified only seven years prior, would face its first real test.

The Alien and Sedition Acts were passed in 1798 and were said to be in the interest of national security. They restricted free political speech and dissent, making it a crime to “write, print, utter or publish ...any false, scandalous and malicious writing or writings against the government of the United States.”

Matthew Lyon, who strongly opposed the law, soon became among the first to test the new Sedition Act. In a published letter, he criticized President Adams for having “a continual grasp for power [and] unbounded thirst for ridiculous pomp, foolish adulation and selfish avarice.” He went on to accuse President Adams of removing people from office who thought differently from him. Lyon said that under Adams, “men of real merit [are] daily turned out of office for no cause other than independence of sentiment.”

Lyon did not limit his criticism to the President. In the *Gazette*, he published a letter accusing the

Senate of “more servility than ever George III experienced from either House of Parliament.”

The first person arrested under the Sedition Act was none other than Matthew Lyon. At his trial, Lyon challenged the law as unconstitutional, arguing that it violated the First Amendment's protections of free speech and press. The court rejected his argument and found his speech seditious. He was fined \$1,000 (the rough equivalent of \$20,000 today) and sentenced to four months in jail. His Federalist-appointed judge told him, perhaps referring to his clashes with Griswold, “You must be well acquainted with the mischiefs which flow from an unlicensed abuse of government.”

Twenty-four editors, writers and others—all Republicans—were arrested and ten were convicted under the Sedition Act. The United States was able to avoid war with France, which had been Adams's goal. While serving his jail sentence, Lyon was reelected to Congress in a landslide election. Because public opinion had turned sharply against the Federalists, due in large part to the Alien and Sedition Acts, many Federalists were voted out of office and replaced with Republicans. The Republican-controlled Congress allowed the laws to expire in 1801.



## CRITICAL THINKING QUESTIONS

1. What kinds of speech did the Alien and Sedition Act criminalize?
2. Why was Matthew Lyon arrested and jailed?
3. Does the fact that the United States was able to avoid war with France—one of John Adams's goals—mean that the Alien and Sedition Acts were a justifiable wartime measure?
4. James Madison referred to freedom of the press as “one of the great bulwarks of liberty” and said it “shall be inviolable.” Why is press freedom vital to liberty?
5. Is it ever wrong to publicly criticize the government? If so, what should be the consequence?

# THE INFORMATION AGE

## FREE TO SURF?

### CRITICAL ENGAGEMENT QUESTION

To what extent should government regulate on-line publications to which children may have access?

### OVERVIEW

A snapshot of our information-saturated society now includes networked computers, camera cell phones, Blackberries, fax machines, twenty-four hour cable news networks, and blogs. The glut of information and the variety of materials pose challenges: How can government protect children from harmful materials (an almost universally accepted compelling interest of government) without abridging the First Amendment rights of others?

*If our American way of life fails the child, it fails us all.*

—PEARL BUCK

*Free speech is intended to protect the controversial and even outrageous word; and not just comforting platitudes too mundane to need protection.*

—COLIN POWELL



### MUSEUM CONNECTION

Help your students understand more about limitations on free speech and the free exchange of information. Take your class to the First Amendment Freedoms section and experience “Does Freedom of Speech Mean You Can...” You may also take them to the Marketplace of Ideas area and experience the “Freedom to Know” media presentation at the McCormick Tribune Freedom Museum ([www.FreedomMuseum.us](http://www.FreedomMuseum.us)).

**OBJECTIVES**

Students will:

- examine historical developments in U.S. Supreme Court handling of free speech issues.
- understand Congress’s attempts to regulate Internet materials.
- analyze arguments for and against government regulation of Internet materials with the purpose of protecting children.
- assess their own beliefs about how best to balance First Amendment rights with the need to protect children from harm.

**STANDARDS**

NCHS: Era 9, Standard 4; Era 10 Standard 1  
 CCE: IIB1, IID1, VB2, VB3, VC2, VC3  
 NCSS: Strands 2, 6, 8, and 10

**STUDENT MATERIALS**

**Handout A:** The Information Age Background Essay  
**Handout B:** Statements on Free Speech  
**Handout C:** *U.S. v. American Library Association* Briefs  
**Freedom’s Touchstones:** Geraldo Rivera (*optional*)

**GRADE LEVEL/TIME**

Two 45-minute high school classes or one 90-minute block

BACKGROUND/HOMEWORK

[10 minutes the day before]

Have students read **Handout A: The Information Age Background Essay**.

WARM-UP

[10-15 minutes]

- A. Distribute **Handout B: Statements on Free Speech**. Have students choose two quotations and write a one-paragraph response to each.
- B. Discuss as a large group the questions: “What limits, if any, should we have on free speech? Should those limits change when the speech has the potential to be heard/seen by children?”

ACTIVITY I

[30-40 minutes]

- A. Distribute **Handout C: U.S. v. American Library Association Briefs**. Students should refer to **Handout A** for background information about CIPA legislation.
- B. Explain to students that both sides of the case agreed that protecting children from pornography on the Internet was a compelling government interest. Lawyers for the U.S. government tried to convince the Court that Congress had not overstepped constitutional limits in crafting CIPA’s methods of carrying out that goal. Lawyers for the American Library Association tried to convince the Court that Congress had in fact exceeded constitutional limits.
- C. Have students read the arguments from both sides on **Handout C**. As they read, have students underline passages they agree with and jot down reactions they have in the margins.
- D. As a large group, discuss the main ideas of each side’s arguments.

ACTIVITY II

[30-40 minutes]

- A. Tell students that they will be holding a conference just as the real Supreme Court does when it decides cases.
- B. Explain to students that the Supreme Court Conference is a private meeting of the justices, to screen and to deliberate current cases. No clerks, secretaries, or visitors are permitted in the conference room once a conference has begun, and there are no formal records. The Chief Justice presides and sets the pace. A typical agenda is as follows:
  - 1. All Justices have read the briefs submitted by both sides of the case before the conference begins.
  - 2. The Chief Justice summarizes the facts of the case and the main arguments on both sides.

3. In descending order of seniority, each Justice expresses his/her views on the case.
  4. After everyone has spoken, the Chief Justice announces the vote tally.
  5. Over the next weeks and months, the Justices communicate orally and by memo. Sometimes a Justice may even change his/her vote before the final announcement of the Court's ruling.
- C. Select nine students to come to the front of the room to play the role of Supreme Court justices. From the nine, select one to be the Chief Justice and use birthday order to assign seniority of Associate Justices. Have the remaining students take notes on what is said.
- D. Have the nine students proceed with the Supreme Court conference until all have expressed their views and the vote has been tallied.
- E. Ask the class if they agree with the mock court's decision, and if they have any comments to add. Then reveal the actual Supreme Court decision in the case and ask students for their reactions. If CIPA applied only to public school libraries, would the Court have been more likely to have found it constitutional?

*In U.S. v. American Library Association (2003) the Supreme Court determined by a 6-3 vote that CIPA was constitutional and could go into effect. As a result, libraries must install Internet filters, or they will not receive federal funds.*

## HOMework

- A. Have students read **Freedom's Touchstones: Geraldo Rivera** and answer the critical thinking questions.
- B. Have students make a list of resources/technology for finding information available to them that were not available to their parents' generation. Then have them interview two adults from their parents' and grandparents' generations to learn what resources they used to meet the same information needs. Have them create a T-chart illustrating the differences.

## EXTENSIONS

- A. Ask students to reflect on the decision-making process they role-played in the Supreme Court conference. Do students think the procedures used by the Supreme Court are likely to result in adequate application of Constitutional principles? Have students list both strengths and weaknesses of the decision-making process.
- B. Have a "Kids and the Information Age Day." Students should identify and bring in current news articles featuring issues related to children and the Internet, technology, or other aspects of the information age. Have each student present a summary of his or her article and the issues it raises. Then have the class vote on the most important challenges of the information age.



## REAL LIFE PORTAL

Have students interview librarians from their school as well as from local public libraries with the goal to learn what benefits and problems the librarians have identified in the area of Internet filters. Work with library staff to design a policy and seating arrangement that will both provide privacy for patrons researching sensitive topics, and allow for library staff monitoring of computers used by minors.

## THE INFORMATION AGE

*Life* magazine recently labeled the invention of the printing press as the “Greatest Event of the Millennium,” recognizing the power of information to transform the world. Johannes Gutenberg developed the idea of moveable type to produce a printing press in the 1440s, revolutionizing communications and helping to fuel such movements as the Renaissance, the Reformation, the Enlightenment, and the scientific revolution. Some say that the Internet will prove to be as significant a development as the printing press. We are only beginning to see the effects of such information innovations as networked computers, file-sharing programs, wireless Blackberry devices, interactive television shows, and blogs.

The First Amendment says “Congress shall make no law...abridging the freedom of speech, or of the press....” Further, the Supreme Court has ruled that free speech is protected on the Internet just as it is in newspapers, magazines, and other public forms of expression. But one challenge that has come out of the Internet’s capacity to bring seemingly unlimited information to an unlimited audience is the delivery of pornographic materials to children.

### CDA (1996)

Congress’ first attempt to provide protection for children accessing Internet material was the Communications Decency Act (CDA) of 1996. This law criminalized the display or transmission to a minor of material that was violent or pornographic.

**While most people acknowledge that pornography should be off-limits to children, critics of the Communications Decency Act argued that it would even restrict the availability of medical information online to anyone.**

It used what some believed were vague terms, like “indecent” and “patently offensive,” to define materials that would be illegal.

In *Reno v. ACLU* (1997) the Supreme Court overturned CDA. The Court held the law was unconstitutional because it was “a content-based regulation of speech. The vagueness of such a regulation raises special First Amendment concerns because of its obvious chilling effect on free speech.”

The Court acknowledged that the law would restrict the availability of medical information online to anyone. The Court continued, “In order to deny minors access to potentially harmful speech, the CDA effectively suppresses a large amount of speech that adults have a constitutional right to receive and to address to one another.”

### COPA (1998)

Congress’ next attempt to protect minors from Internet pornography was the Child Online Protection Act (COPA) of 1998. Lawmakers responded to objections to CDA by narrowing the scope of speech that would be criminalized. Commercial distributors of “material harmful to minors” were required to protect their sites from access by minors. The harmful material was to be defined by “contemporary community standards.”

Federal courts blocked the enforcement of COPA, objecting that “contemporary community standards” were not feasible for the Internet.

## THE INFORMATION AGE (CONT.)

Again, adult free speech rights would have been restricted. In *Ashcroft v. ACLU* (2004), the Supreme Court upheld the block on enforcement, finding that the law was likely to be a violation of the First Amendment and sending the law back to the district court for reexamination. The Supreme Court instructed the lower court to investigate whether the use of Internet filters may be a preferable way to block access to pornography by minors.

### CIPA

In a third attempt, Congress wrote the Children's Internet Protection Act (CIPA) of 2000. This law required that public schools and public libraries receiving federal funds install Internet filtering programs to prevent patrons from viewing

pornography. If they did not install the filters, they would lose the federal money. An adult patron could ask library staff to disable the filtering program.

The American Library Association challenged the constitutionality of CIPA as it applied to libraries, believing that the law infringed upon the First Amendment rights of adult patrons of the library. The libraries maintained that current blocking software is ineffective because it does not block all pornographic sites and it "overblocks" some sites that are not pornographic. For example, some software could block a library patron's attempt to access medical information about breast or testicular cancer.

## STATEMENTS ON FREE SPEECH

**Directions:** Read the following quotations. Then choose two and write a one-paragraph response to each.

The interest in encouraging freedom of expression in a democratic society outweighs any theoretical but unproven benefit of censorship.

–JOHN PAUL STEVENS,  
SUPREME COURT JUSTICE

While schools and libraries certainly must be depositories of knowledge and information, they need not be cesspools catering to sexual predators or depravity.

–STEVE CRAMPTON,  
ATTORNEY

The First Amendment is often inconvenient. But that is beside the point. Inconvenience does not absolve the government of its obligation to tolerate speech.

–ANTHONY KENNEDY,  
SUPREME COURT JUSTICE

The First Amendment is not an altar on which we must sacrifice our children, families, and community standards. Obscene material that is not protected by the First Amendment can and must be prohibited.

–ORRIN HATCH,  
U.S. SENATOR

But I thank God, there are no free schools nor printing, and I hope we shall not have these hundred years; for learning has brought disobedience, and heresy, and sects into the world, and libels against the best government. God keep us from both!

–SIR WILLIAM BERKELEY,  
ROYAL GOVERNOR OF  
VIRGINIA

Without freedom of thought, there can be no such thing as wisdom; and no such thing as public liberty without freedom of speech.

–BENJAMIN FRANKLIN,  
AMERICAN INVENTOR  
AND PHILOSOPHER

The only valid censorship of ideas is the right of people not to listen.

–TOMMY SMOTHERS, AMERICAN COMEDIAN

## U.S. v. AMERICAN LIBRARY ASSOCIATION BRIEFS

**Directions:** Read the briefs from both sides of the Supreme Court case *U.S. v. American Library Association (2003)*. As you read, underline passages you agree with, and jot down brief reactions to those with which you disagree.

### QUESTION BEFORE THE COURT:

Does CIPA's requirement that public libraries install filtering software as a condition of federal funding violate the First Amendment?

Briefs from those **in favor** of CIPA included these arguments:

1. Library patrons, including minors, regularly search the Internet for pornography and expose others to pornographic images by leaving them displayed on Internet terminals or printed at library printers.
2. Congress has wide latitude to attach conditions to the receipt of federal assistance to further its policy objectives... When the Government appropriates public funds to establish a program, it is entitled to broadly define that program's limits.
3. Libraries review many items and choose only certain ones to add to their collections. Most libraries routinely exclude pornography from their print collections; it is only reasonable for libraries to reject online pornography as well.
4. Concerns over filtering software's tendency to erroneously "overblock" access to constitutionally protected speech...are dispelled by the ease with which patrons may have the filtering software disabled.
5. A public library does not acquire Internet terminals in order to create a public forum for Web publishers to express themselves, any more than it collects books in order to provide a public forum for the authors of books to speak. It provides Internet access, not to "encourage a diversity of views from private speakers," ...but for the same reasons it offers other library resources: to facilitate research, learning, and recreational pursuits by furnishing materials of requisite and appropriate quality.
6. CIPA does not "penalize" libraries that choose not to install such software, or deny them the right to provide their patrons with unfiltered Internet access. Rather, CIPA simply reflects Congress' decision not to subsidize their doing so. To the extent that libraries wish to offer unfiltered access, they are free to do so without federal assistance.
7. If...a librarian will unblock filtered material or disable the Internet software filter without significant delay on an adult user's request, there is little to this case.
8. No clearly superior or better fitting alternative to Internet software filters has been presented.

*U.S. v. AMERICAN LIBRARY ASSOCIATION BRIEFS (CONT.)*

## QUESTION BEFORE THE COURT:

Does CIPA's requirement that public libraries install filtering software as a condition of federal funding violate the First Amendment?

Briefs from those **opposed** to CIPA included these arguments:

1. CIPA's conditions will necessarily violate the First Amendment, because the CIPA filtering software constitutes a content-based restriction on access to a public forum. ...[A]lthough the Government has a compelling interest in preventing the dissemination of obscenity, child pornography, or material harmful to minors, the use of software filters is not narrowly tailored to further that interest.
2. Rather than allowing local decision makers to tailor their responses to local problems, the Children's Internet Protection Act (CIPA) operates as a blunt nationwide restraint on adult access to "an enormous amount of valuable information" that individual librarians cannot possibly review. Most of that information is constitutionally protected speech.
3. Because the software relies on key words or phrases to block undesirable sites, it does not have the capacity to exclude a precisely defined category of images.... A web page with sexually explicit images and no text [would not be blocked].
4. [T]he statute will provide parents with a false sense of security without really solving the problem that motivated its enactment.
5. [O]ptional filtering, privacy screens, recessed monitors, and placement of unfiltered Internet terminals outside of sight-lines provide less restrictive alternatives for libraries to prevent patrons from being unwillingly exposed to sexually explicit content on the Internet.
6. The statute could [protect] children without blocking access for adults or subjecting adults to anything more than minimal inconvenience, just the way (the record shows) many librarians had been dealing with obscenity and indecency before imposition of the federal conditions [such as a "by request only" section].
7. A library that chose to block an adult's Internet access to material harmful to children (and whatever else the indiscriminating filter might interrupt) would be imposing a content-based restriction on communication of material in the library's control that an adult could otherwise lawfully see. This would simply be censorship.
8. [CIPA is like] buying an encyclopedia and then cutting out pages with anything thought to be unsuitable for all adults.

## GERALDO RIVERA

*The reporter brushed the grains of Iraqi desert sand out of his moustache before telling his cameraperson to point the camera toward the ground. Kneeling, he drew a two-foot square map of the country in the sand with his finger. He explained where he was in relation to the major Iraqi cities. Continuing to use the map for more than three minutes, he then showed his live TV audience where the army unit he was with would be going next.*

The Defense Department first allowed embedded reporters—journalists living with and reporting from military units—in the 2003 Iraq War. The presence of embedded reporters gave Americans the most close-up vision of a war zone they'd ever had. The practice also led to some clashes between the press and government that would not have been possible had it not been for information age technology.

When the Founders were debating the First Amendment, they might not have imagined the information age we now live in. Today, people receive news from newspapers, twenty-four-hour news networks, Internet news services, and blogs. But in the end, the medium is not as important as the individual's right to write and publish.

Another difference in the information age is the speed with which news can be delivered. If information can be delivered instantaneously to viewers around the world, prior restraints (orders that publication be stopped in advance) can be almost impossible to obtain.

Historically, prior restraints have been ruled unconstitutional and regarded as the most serious and questionable form of censorship. However, the Supreme Court has noted that some prior restraints in wartime could be necessary. In the landmark case *Near v. Minnesota* (1931), the Court noted, "No one would question but that a government might prevent... the publication

of the sailing dates of transports or the number and location of troops."

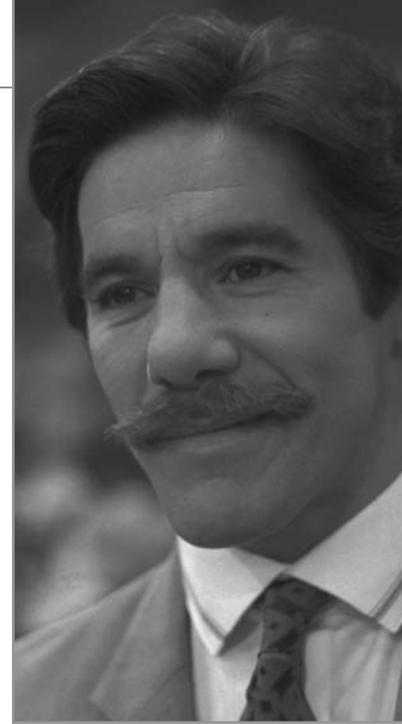
Some claim this is exactly the information Geraldo Rivera revealed when he drew his now infamous map in the sand. Another network reported on Rivera's April 2003 Fox News report: "In a live broadcast from the Iraqi desert... Rivera outlined a map of Iraq, and showed the relative location of Baghdad and his location with the Army's 101st Airborne unit. He then continued with his diagram to illustrate where the 101st would be going next."

Some Pentagon officials believed that Rivera's report was just what the Supreme Court had stated would not be protected by the First Amendment. "He gave away the big picture stuff," a senior military official said. "He went down in the sand and drew where the forces are going."

Embedded reporters had signed an agreement not to disclose their locations on the air. Therefore, the Pentagon demanded that Rivera be expelled from Iraq. A Pentagon spokesperson said he was being ejected because, "He gave real-time information about a unit's location, their mission and their pending activity, which would clearly aid the enemy."

Rivera acknowledged that his drawing was an "inadvertent technical violation of the Pentagon's embedment policies."

In response to the controversy, Rivera issued an official statement: "...Last weekend, after my reports from Iraq with the men and women of the 101st airborne, I was told I violated one of the rules set up by the Pentagon for reporters embedded with the military. My network and I



decided it would be best to voluntarily withdraw to Kuwait to review the situation. The review showed that I did, indeed, break one of the rules related to embedment. I am sorry that happened and, I assure you, it was inadvertent. Nobody was hurt by what I said...no mission was compromised, but I should have been more careful....”

The Pentagon agreed to allow him to return, “as long as it is clear to him and to [Fox News] what was wrong the first time and that it not happen again.”

The practice of allowing reporters to travel with military units remains controversial. On the whole, reporters did not disturb operations. Less than half a dozen out of 600 embedded reporters have been pulled from Iraq for national security reasons. Additionally, a 2004 Defense Department study concluded that reporting done by embedded journalists was “of reasonably high quality.” The

report’s author called embedded reporters “the best solution to date at balancing the needs of...the press, the military, and the public.”

On the other hand, the study also concluded that embedded reporters “feed the trend toward constant live and unfiltered news on cable television, with all its shortcomings and confusion, and it is unclear if such live coverage best serves the public interest.” The report noted that many networks sent inexperienced reporters, and that the public was provided with a view of a war zone that they might have believed was complete, but was in fact incomplete.

As technology makes information access easier and faster, and press innovations such as embedded reporters continue to push the envelope, citizens will need to determine how best to balance the First Amendment’s prohibition against government censorship with the government’s need to keep certain information from being made public.



## CRITICAL THINKING QUESTIONS

1. What are embedded reporters?
2. What is prior restraint?
3. Why did the Pentagon order Geraldo Rivera to leave Iraq?
4. Was Rivera’s expulsion from Iraq justified? Was it too harsh? Or was it too lenient of a punishment?
5. List three advantages and three disadvantages to embedding reporters with military units. Then choose the argument you agree with most strongly and write a paragraph defending your view.

# BANNED BOOKS

## FREE TO READ?

### CRITICAL ENGAGEMENT QUESTIONS

Should certain books ever be banned from school libraries? If so, why? And by whom?

### OVERVIEW

Most would agree it is unconstitutional for the government to outlaw publication of a certain book because it does not agree with the author's message. But what about a public school board banning a book from its shelves because they believe it encourages witchcraft? Or a public school teacher being fired for assigning a banned book? In this lesson, students will examine book banning in history and explore the relationship between authors' First Amendment rights, students' rights to receive information, and community concerns about the suitability of certain materials for a young audience.

*If the school can set curriculum, select teachers, and determine what books to purchase for the school library, it surely can decide which books to discontinue or remove from the school library.*

—WARREN BURGER

*What scares me is, these people are trying to protect children from their own imagination.*

—J.K. ROWLING



### MUSEUM CONNECTION

Help your students learn more about banned books. Take your class to the **U.S. Censorship Then and Now** section and participate in the interactive experience “Is it Censorship?” You may also take them to the **Close to Home** alcove to participate in the interactive experience “Public Library” at the McCormick Tribune Freedom Museum ([www.FreedomMuseum.us](http://www.FreedomMuseum.us)).

## OBJECTIVES

Students will:

- identify books that have been banned throughout world history.
- understand how the First Amendment has been applied to cases of book banning or restricting in school libraries.
- understand trends in book banning.
- appraise their own beliefs about censorship.

## STANDARDS

NCHS: Era 3, Standard 3; Era 10, Standard 2

CCE: IA2, IA3, IB1, IB4, IIA2, IIB4, IIC2, IID1, IID3, IID4, IIIA1, IIID2, IIIE1, VB1, VB2, VB5, VD1

NCSS: Strands 1, 2, 4, and 6

## STUDENT MATERIALS

**Handout A:** Banned Books Background Essay

**Handout B:** Attitude Inventory

**Handout C:** Statements on Banning Books

**Freedom's Touchstones:** Dakota Counts (*optional*)

## TEACHER MATERIALS

Banned Books Cards

## GRADE LEVEL/TIME

Two 45-minute high school classes or one 90-minute block

## BACKGROUND/HOMEWORK

[10 minutes the day before]

Have students read **Handout A: Banned Books Background Essay**.

## WARM-UP

[15 minutes]

- Have students complete **Handout B: Attitude Inventory** individually.
- Have students share their responses with a partner and discuss any they feel strongly about, as well as any they disagreed on. Give each pair **Handout C: Statements on Banning Books** and have them choose the quotation(s) that best represents their views.

## ACTIVITY I

[20 minutes]

- Before class, make a "timeline" template on the board or on large paper on a classroom wall. Using 100-year increments, mark time from 400 B.C. to the present day.
- Give each student a **Banned Book Card**. Have each student read his or her book title, author, and publication date to the class and then place the card on the timeline based on when it was banned. *Note: the listings of bannings for each work are not exhaustive. If more than one instance of banning is listed, students should put the earliest example on the timeline.*
- Make a list of reasons why and by whom the books listed on the timeline were banned. Is there a pattern? (*Suggested responses: political and religious reasons; books perceived as a threat to prevailing beliefs and values; could pose a threat to the power of those in authority. Monarchs, national government, religious institutions, local governments, and other bodies have banned books.*)
- Conduct a large group discussion: Did any of the books on the timeline surprise students? What can be learned from looking at book banning in a historical context?

## ACTIVITY II

[30 minutes]

- Present the class with current data on challenged and banned books, using an overhead or handouts of the most challenged books from 1990-2004. These data can be found at [www.ala.org](http://www.ala.org).
  - List of 10 most challenged books 2004
  - List of 10 most challenged authors of 2004
  - List of 10 most challenged authors 1990-2004
  - List of challenges by year 1990-2000; 2000-2003
  - List of challenges by type 1990-2000; 2000-2003
  - List of institutions being challenged 1990-2000; 2000-2003
  - List of initiators of challenges 1990-2000; 2000-2003

- B. Ask the class if they notice any trends or patterns.

*Students may suggest: challenges in 2004 were primarily for sex and language; challenged authors wrote many books for children and teen readers; the number of challenges peaked in the mid 1990's and has been decreasing since then; types of challenges for 1990-2004 were generally for sex, language, occult/Satanism and violence; most frequently challenged institutions were schools, school libraries and public libraries; most frequent initiators of challenges from 1990-2004 were parents, patrons, and other groups.*

- C. Ask the class to compare and contrast reasons for restricting books listed on the timeline with reasons for restricting books in the past ten to thirteen years.

*Earlier books were restricted more for religious and political reasons and today there is more emphasis on language and sex.*

- D. Ask students what types of books they believe might be challenged in the near future.

*Students may suggest that books will still be challenged for morals and values but new challenges may arise in the wake of terrorism and global events, especially in light of perceived threats to national security (e.g., books like The Anarchist's Cookbook). There may also be a rise in the number of challenges about scientific thought such as stem cell research, human cloning, or end-of-life issues.*

- E. Conduct a large group discussion to answer the questions: What is the role of freedom of speech in a democracy? Does the right to speak freely imply the right to read freely?

*Students may say that the intent of the First Amendment's protection of speech and press was to ensure the availability of information including unpopular points of view. Some students may say the right to read goes hand in hand with rights to free speech. Individuals and groups can express their messages to society, leading to an informed citizenry and a government that is more accountable to the people. If there were no right to read implied by the First Amendment, it would be rendered meaningless. Others may say that children do not have the right to read anything they want, and that parents, teachers, and communities should be able to prevent children from reading certain books.*

HOMWORK

- A. Have students read **Freedom's Touchstones: Dakota Counts** and answer the critical thinking questions.
- B. Have students read the *Library Bill of Rights* and write a paragraph answering the question: Do you generally agree or disagree with the provisions and the spirit of the *Library Bill of Rights*? Explain. The document can be found at: <http://www.ala.org/ala/oif/statementspols/statementsif/librarybillrights.htm>

## EXTENSIONS

- A. Have students research the following cases on banned books and write a one-page summary of the facts of the case along with an analysis of the decision. Students can begin their research on the American Library Association website [www.ala.org](http://www.ala.org).

*Rosenberg v. Board of Education of City of New York*, (Kings County, 1949)

*Todd v. Rochester Community School* (Michigan Court of Appeals, 1972)

*Minarcini v. Strongsville (Ohio) City School District* (6th Cir., 1976)

*Salvail v. Nashua Board of Education* (New Hampshire, 1979)

*Case v. Unified School District No. 233* (Kansas, 1995)

*Campbell v. St. Tammany Parish School Board* (5th Cir., 1995)

*Sund v. City of Wichita Falls, Texas* (Texas, 2000)

- B. Have students create a Venn Diagram and fill in one side with arguments they would make for or against the removal of books on one side; then have them listen to the oral arguments of *Board Of Education, Island Trees Union Free School District v. Pico* (1982) and fill in the other side of the Venn diagram. Finally have them fill in the middle with arguments that were the same. The oral arguments can be found at: <http://www.oyez.org/oyez/resource/case/1060/audioresources>



## REAL LIFE PORTAL

Divide the class into two groups: a high school library group and a public library group. Within each group, assign roles of librarians, young people, parents, and other community members. Have them work together to formulate standards for access to resources at each type of library. Have each group present their policy to the rest of the class, and after both groups have presented, conduct a large group discussion to answer the questions:

- Should there be different standards for access to information at a public library than there are at a high school library? Explain.
- In general, should children and adults have the same access to information? If so, why? If not, who should control the access?
- Is it reasonable to expect different regions of the country to have different attitudes and policies about banning books and restricting access to information, or does that violate the First Amendment?

## BANNED BOOKS

The First Amendment does not specifically protect a right to read. However, many believe, and the Supreme Court has held, that the First Amendment implies that right. The First Amendment ensures that individuals can have access to varying points of view—even those the current government does not agree with. However, books have been banned by governments for various reasons throughout history: to protect children, to prevent controversy, or to prevent revolution.

### Banned Books in History

From the fourth century B.C., those in authority have tried to prevent people from reading certain materials. Because books had to be written and copied by hand, it was difficult to distribute information on a large scale. The invention of the printing press in 1450 made it possible to spread information and ideas much more widely. This invention probably led to innovations including the Renaissance and the Reformation. But it also gave rise to official censorship.

England's King Henry VIII required printers to submit all books to church authorities for approval. All books from other countries were outlawed in 1529. Other European countries, including France and Germany, also banned books. In 1559 the Roman Catholic Church issued the *Index Librorum Prohibitorum*, a list of forbidden books. The Church discontinued publication of the *Index* in 1966.

A common way of condemning certain ideas was book burning. The first book burning in America was in 1650, when Puritan authorities burned a religious pamphlet. Throughout American history, some groups of private citizens have held their

own book burnings. They have violently disposed of the writings they objected to by authors including ancient Greek playwrights, Chaucer, and J.K. Rowling. This practice does not amount to censorship, however, if it is not by government.

### Censorship in the U.S.

In 1793, the United States Congress passed the Alien and Sedition Acts, which made it a crime to criticize the government. During the Civil War,

postal authorities would censor the content of mail and other papers. In these cases, censorship by government was said to be on national security grounds.

Censorship for moral reasons began in the nineteenth century with the Comstock Laws. "Morals, not art and literature," was the slogan of the New York Society for the Suppression of Vice. This

group was founded by Anthony Comstock in 1872. After writing a statute banning obscene literature in New York, Comstock turned his attention to Congress. He was successful in lobbying for censorship laws. These would later be called the Comstock Laws.

The Comstock Laws created stricter postal standards regarding what he deemed "obscene" materials. (These included pornographic material, as well as many books considered literary classics by authors including Chaucer, James Joyce, John Steinbeck, and F. Scott Fitzgerald.) Comstock soon began work as a special, unpaid agent of the U.S. Post Office and destroyed more than 100 tons of literary works. Many of the Comstock Law provisions were repealed or overturned in the twentieth century. The last was repealed in 1971.

**Who should be able to remove books—and for what reasons—from school reading lists or libraries?**

## BANNED BOOKS (CONT.)

### **Banning Books in Schools**

Several Supreme Court cases have established that students in public schools do not have the same rights as adults. They have fewer rights to free speech, privacy, and other liberties. Balancing children's rights to receive information with educators' and parents' concern about the suitability of certain materials continues to challenge communities. A difficult question is: Who should be able to remove books—and for what reasons—from school reading lists or libraries?

#### ***Board of Education, Island Trees School District v. Pico (1982)***

In 1976, a New York school board decided to pull eleven books from library shelves in response to a complaint by community group, Parents of New

York United. The books included Kurt Vonnegut's *Slaughterhouse-Five* and Langston Hughes's *Best Short Stories of Negro Writers*. The group said the books were “anti-American, anti-Christian, anti-Semitic and just plain filthy.”

Senior Steven Pico joined with four other students to challenge the school board's decision to remove the books. A dozen library and free speech organizations filed briefs on the students' behalf. The Supreme Court ruled in their favor on First Amendment grounds, holding that the right to read is implied by the First Amendment. The government—in this case, a public school—cannot restrict speech because it does not agree with the content of that speech. The decisions called libraries places for “voluntary inquiry” and concluded that the school board's “absolute discretion” over the classroom did not extend to the library for that reason.

## ATTITUDE INVENTORY

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**Directions:** *Mark each statement with an “A” for agree or “D” for disagree.*

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- \_\_\_\_\_ 1. Young people need to be protected from controversial ideas.
- \_\_\_\_\_ 2. Being exposed to new ideas—even controversial ones—is important for young people.
- \_\_\_\_\_ 3. Just as schools make choices about which books to teach, they should be able to make choices about which books to include or restrict in their libraries.
- \_\_\_\_\_ 4. Libraries should provide materials and information presenting all points of view on current and historical issues.
- \_\_\_\_\_ 5. If several students are offended by the contents of a book, that is a good reason to ban it from a school library.
- \_\_\_\_\_ 6. If several parents are offended by the contents of a book, that is a good reason to ban it from a school library.
- \_\_\_\_\_ 7. If a majority of school board members are offended by the contents of a book, that is a good reason to ban it from a school library.
- \_\_\_\_\_ 8. People don't give young people enough credit when it comes to understanding literature.
- \_\_\_\_\_ 9. Requiring parental permission to check out certain books because of foul language used within them is acceptable.
- \_\_\_\_\_ 10. Requiring parental permission to check out certain books based on the points of view they promote is acceptable.
- \_\_\_\_\_ 11. Just as movies with an “R” rating should not be shown in schools, books with foul language should not be on school library shelves.
- \_\_\_\_\_ 12. Subtle messages in a book—a heroic character's defiance of authority, for example—can harm young people.

## STATEMENTS ON BANNING BOOKS

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**Directions:** Mark with an "X" the statement or statements that best represent your views.

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Book banning and challenging has a domino effect. If we stand by quietly and let the first book come off the shelf, we run the risk they all will come tumbling down.

–Chris Finan, *President of American Booksellers Foundation for Free Expression*

If the school can set curriculum, select teachers, and determine what books to purchase for the school library, it surely can decide which books to discontinue or remove from the school library.

–Chief Justice Warren Burger, *dissenting opinion*, Board of Education, Island Trees Union Free School District v. Pico (1982)

First Amendment freedoms are most in danger when the government seeks to control thought.... The right to think is the beginning of freedom and speech must be protected from the government because speech is the beginning of thought.

–Justice Anthony M. Kennedy, *majority opinion*, Ashcroft v. Free Speech Coalition (2002)

But it is not the books under fire now that worry me. It is the books that will never be written. The books that will never be read. ...As always, young readers will be the real losers.

–Judy Blume, *American author*

The student who discovers the magic of the library is on the way to a life-long experience of self-education and enrichment. That student learns that a library is a place to test or expand upon ideas presented to him, in or out of the classroom. ...There is no danger from such exposure. The danger is mind control.

–Joseph L. Tauro, *U.S. District Court Judge*

The next generation of leaders become what they are taught.

–Mel Gabler, *Educational Research Analyst*

## BANNED BOOKS CARDS

<p><b>THE BIBLE</b> TRANSLATED INTO ENGLISH BY WILLIAM TYNDALE (1525)</p>	<p><b>DIALOGUE CONCERNING THE TWO CHIEF SYSTEMS OF THE WORLD</b> BY GALILEO (1632)</p>
<p>Banned in Europe in the 16<sup>th</sup> century by the Catholic Church, the Church of England, and King Henry VIII because it contradicted their religious teachings.</p>	<p>Banned in 1633 by the Catholic Church because the scientific ideas challenged religious beliefs.</p>
<p><b>ON THE ORIGIN OF THE SPECIES</b> BY C. DARWIN (1859)</p>	<p><b>LYSISTRATA</b> BY ARISTOPHANES (400 B.C.)</p>
<p>Banned in the 19<sup>th</sup> century by Cambridge University and by Tennessee public schools from 1925-1967 because the theory of evolution contradicted prevailing religious beliefs.</p>	<p>Banned until 1932 by U.S. Customs because of sexuality, atheism, and depictions of anti-war rebellion.</p>
<p><b>ANALECTS OF CONFUCIUS</b> (200 B.C.)</p>	<p><b>THE UNITED STATES CONSTITUTION</b> (1787)</p>
<p>Banned in 3<sup>rd</sup> century B.C., China on the order of the Emperor Shi Huang Ti because of political tone.</p>	<p>Banned in 2003 by Cuban government as “subversive.”</p>

## BANNED BOOKS CARDS (CONT.)

<p><b>THE TALMUD</b></p>	<p><b>THE KORAN</b> (750)</p>
<p>Banned in 12<sup>th</sup> century Egypt, 13<sup>th</sup> century France, 15<sup>th</sup> century Spain, and by the Catholic Church from the 13<sup>th</sup> to the 16<sup>th</sup> centuries because it contradicted Christian teaching.</p>	<p>Banned in the 18<sup>th</sup> century by the King of Spain for expressing religious views contrary to prevailing religious beliefs.</p>
<p><b>GULLIVER'S TRAVELS</b> BY JONATHAN SWIFT (1727)</p>	<p><b>THE ODYSSEY</b> BY HOMER (800 B.C.)</p>
<p>Banned in the early 18<sup>th</sup> century by King George II in Great Britain because it was deemed obscene and offensive to the monarchy.</p>	<p>Banned in 35 A.D. by the Roman Emperor Caligula for promoting Greek ideals of freedom.</p>
<p><b>THE ADVENTURES OF TOM SAWYER</b> BY MARK TWAIN</p>	<p><b>AMERICAN HERITAGE DICTIONARY</b> (1969)</p>
<p>Banned from children's libraries in 1876 by local governments in Brooklyn and Denver because of language. Also removed from shelves by a Pennsylvania school in 1994 due to parent complaints about depictions of racist language.</p>	<p>Banned in 1978 by local government in Eldon, Missouri, due to thirty-nine "objectionable" words. Also banned in Anchorage, Alaska, by the School Board for similar reasons in 1987.</p>

## BANNED BOOKS CARDS (CONT.)

<p><b>CATCHER IN THE RYE</b> BY J.D. SALINGER (1951)</p>	<p><b>LEAVES OF GRASS</b> BY WALT WHITMAN (1855)</p>
<p>Banned numerous times since its publication by school officials throughout the U.S; consistently on most-challenged book lists.</p>	<p>Declared illegal by the Boston, Massachusetts, District Attorney for sexual themes, from 1855-1882.</p>
<p><b>STATE AND REVOLUTION</b> BY VLADIMIR LENIN (1917)</p>	<p><b>THE BIBLE</b></p>
<p>Delivery blocked by the Providence, Rhode Island, Post Office in 1954 for “subversive” content.</p>	<p>Banned today by the Saudi Arabia monarchy (along with all non-Muslim proselytizing).</p>
<p><b>JERUSALEM DELIVERED</b> BY TASSO (1581)</p>	<p><b>TWELFTH NIGHT</b> BY WILLIAM SHAKESPEARE (1601)</p>
<p>Banned in France in the 16<sup>th</sup> century for ideas questioning the authority of kings.</p>	<p>Banned in 1996 by the Merrimack, New Hampshire, school board because of depictions of cross-dressing.</p>

## BANNED BOOKS CARDS (CONT.)

<p><b>CONFESSIONS, THE AUTOBIOGRAPHY OF JEAN JACQUES-ROUSSEAU</b> (1781)</p>	<p><b>LITTLE RED RIDING HOOD</b></p>
<p>Banned in 1925 by U.S. Customs officials as harmful to public morality.</p>	<p>Banned in 1989 in two California school districts because of depictions of alcohol use: the heroine brings her grandmother wine.</p>
<p><b>ARS AMATORIA (THE ART OF LOVE)</b> BY OVID (23 B.C.)</p>	<p><b>JAMES AND THE GIANT PEACH</b> BY ROALD DAHL (1961)</p>
<p>Burned in 1497 by religious authorities in Florence as obscene. Also banned by U.S. Customs in 1928.</p>	<p>Banned in 1995 by the Stafford, Virginia, school board for language and encouraging disobedience.</p>
<p><b>THE SATANIC VERSES</b> BY SALMAN RUSHDIE (1988)</p>	<p><b>WHERE'S WALDO?</b> BY MARTIN HANDFORD (1987)</p>
<p>Banned in 1988 by Islamic authorities in India and many Muslim countries because of criticism of Islam. Iran's Ayatollah Khomeini also sentenced the author to death; however, before his execution took place, Rushdie was able to flee to the United States.</p>	<p>Banned in 1993 at an East Hampton, New York, school library because of a small drawing of a topless woman in one of the pictures.</p>

## BANNED BOOKS CARDS (CONT.)

<p><b>A SUMMARY VIEW OF THE RIGHTS OF BRITISH AMERICA</b> BY THOMAS JEFFERSON (1774)</p>	<p><b>SCHINDLER'S LIST (FILM)</b> DIRECTED BY STEVEN SPEILBERG (1993)</p>
<p>Banned in 1833 by Tsar Nicholas I in Russia for political reasons.</p>	<p>Banned in 1994 by government censors in the Philippines for nudity and depictions of sexuality.</p>
<p><b>SLAUGHTERHOUSE-FIVE</b> BY KURT VONNEGUT (1969)</p>	<p><b>ULYSSES</b> BY JAMES JOYCE (1922)</p>
<p>Banned in 1973 by a North Dakota school board because they believed it was "pornographic."</p>	<p>Seized and burned from 1918-1930 by the U.S. Post Office due to sexual themes.</p>



## DAKOTA COUNTS

*Dakota Counts, a fourth-grader in Arkansas's Cedarville School District, didn't want to be the last one at her school to read Harry Potter and the Sorcerer's Stone. All her friends were talking about the characters, the plot, and the fantastical themes of courage against great odds, good and evil. Dakota decided to read the book too.*

*Dakota's lawyer, Brian Meadors.*

*But when she got to the school library, she could not find any of the Harry Potter books on the shelves. She soon discovered they were being kept in the librarian's office—the only books in there—and that she would need special parental permission to check out the books. This permission was not required for the rest of the books in the library. Though she knew her parents would not object to her reading the book, she had to leave without it.*

This new library policy was the result of the school district's determination that the books' fantasy themes of wizards and spells would harm young schoolchildren.

A local parent had complained to the school district about the content of the *Potter* books. She questioned the books' educational value and expressed concern that the books glorified wizards and witches. She believed they would encourage children to attempt to practice real "witchcraft." The parent explained, "It demeaned everything I was trying to teach my kids. I do not want them taught witchcraft and the occult. That's not permissible in my house."

Further, she argued that *Harry Potter and the Sorcerer's Stone* "repeatedly portrays parents and teachers as the enemy." She wrote in a report to the district: "It depicts bad behavior with little or

no consequences for wrongdoing." She claimed the book also glorified wizardry, depicting "'good witches' and 'good magic.'"

The Cedarville Library Committee read the parent's letter and discussed the issue. In the end, though, they voted unanimously to keep the *Harry Potter* series on library shelves without restriction. (Dakota's father was on that committee.) The next month, however, the Cedarville School Board overruled the Library Committee's recommendation and voted 3-2 to restrict access to the series. They based their decision on the belief that the *Harry Potter* books "promote a particular religion." (The pastor of the complaining parent was on that board.)

Dakota and her parents were upset by the school board's decision to restrict the *Harry Potter* books. To Dakota and her parents, the school district's policy sounded like censorship. Her parents sued the board in 2003, objecting to the possibility that their daughter be perceived as someone who read "evil" books.

In their lawsuit, they explained, "Children carrying the book with them in the school will be known to be carrying the bad book." The suit continued, "The actual motivation of the school board was to limit children's access to literature that, in the school board's opinion, conflicts with its members' own personal religious views."

Over thirty individuals and organizations filed briefs in support of Dakota. These included author Judy Blume, the American Booksellers Foundation for Free Expression, Americans United for Separation of Church and State, the Association of Booksellers for Children, the Center for First Amendment Rights, the Children's Book Council, the Freedom to Read Foundation, the National Coalition Against Censorship, People for the American Way Foundation, and the Student Press Law Center.

The U.S. District Court found in Dakota's favor and overturned the Cedarville School Board decision. The judge ordered the books put back into general circulation, saying, "Regardless of the personal distaste with which these individuals regard 'witchcraft,' it is not properly within their power and authority as members of defendant's school board to prevent the students at Cedarville from reading about it."

The judge ordered that the books be returned to the shelves so that they could "be accessed without any restrictions other than those administrative restrictions that apply to all works of fiction in the libraries of the district." Brian Meadors, the Counts' lawyer, expressed satisfaction with the ruling, "Everybody is just thrilled with the decision," he said. The school district's lawyer did not comment publicly on the outcome of the case.

Author J.K. Rowling has commented on the attempt to ban or restrict her *Harry Potter* series. "It's a short-sighted thing. It is very hard to portray goodness without showing what the reverse is. That's always been my feeling about literature... You find magic, witchcraft and all those things throughout children's literature. Are you going to stop *The Wizard of Oz*? Are you going to stop C.S. Lewis? At what point are you going to say these are dangerous and damaging?"

In response to the charge that her books would encourage children to turn to evil, Rowling says, "I ask myself first of all how they actually read the books. Can they read? And if they read the books I am truly mystified that they could say that about them."

The controversy continues, but may be simmering down. In 2005, for the first time in five years, no *Harry Potter* book appeared on the American Library Association's list of most challenged books.



## CRITICAL THINKING QUESTIONS

1. Why did the Cedarville school board put the *Harry Potter* books on restricted access?
2. Why did a parent complain about the *Harry Potter* series?
3. Why did Dakota Counts and her family object to the restricted access policy?
4. What are the effects of restricting or removing certain books from school libraries?
5. In a similar case, *Board of Education, Island Trees Union Free School District v. Pico* (1982), the dissenting justices argued, "If the school can set curriculum, select teachers, and determine what books to purchase for the school library, it surely can decide which books to discontinue or remove from the school library so long as it does not also interfere with the right of students to read the material and to discuss it. . . ." Do you agree? Why or why not?



# CAMERAS IN THE COURTROOM

## FREE TO WATCH?

### CRITICAL ENGAGEMENT QUESTION

How can constitutional principles be balanced when a defendant's right to a fair trial is in potential conflict with the activity of free press?

### OVERVIEW

Tension between the Constitution's guarantee of a fair trial (Sixth Amendment) and its guarantee of a free press (First Amendment) is a natural development in a system where government's power must be balanced against the rights of the accused and the public's right to be informed. The combination of a free press with a public court system provides a powerful apparatus for preserving both liberty and justice.

*The right of freely examining public characters and measures, and of free communication among the people thereon ...has ever been justly deemed the only effectual guardian of every other right.*

—JAMES MADISON

*Whatever disagreement there may be as to the scope of the phrase "due process of law" there can be no doubt that it embraces the fundamental conception of a fair trial, with opportunity to be heard.*

—OLIVER WENDELL HOLMES



### MUSEUM CONNECTION

Help your students understand how press freedom and the public's right to know can conflict with other individual rights. Take your class to the **Bill of Rights** exhibit and have them read the text of the amendments protecting the rights to free speech along with the right to trial by an impartial jury at the McCormick Tribune Freedom Museum ([www.FreedomMuseum.us](http://www.FreedomMuseum.us)).

## OBJECTIVES

Students will:

- explain significant cases involving cameras in the courtroom.
- analyze reasoning from significant court cases in history and apply them to modern trials.
- evaluate the tension between a free press versus a fair trial.
- appreciate the First and Sixth Amendment's protections of free speech and press.

## STANDARDS

NCHS: Era 9, Standard 4; Era 10, Standard 1

CCE: IIB1, IID2, VC1, VC2, VD1, VD2

NCSS: Strands 6 and 10

## STUDENT MATERIALS

**Handout A:** Cameras in the Courtroom Background Essay

**Handout B:** Camera in the Jury Room?

**Handout C:** Special Access for the Press in Jail?

**Handout D:** Closed Circuit TV Testimony?

**Handout E:** Court TV for New York?

**Handout F:** TV for Terry Nichols's Oklahoma Trial?

**Handout G:** Case Analysis Sheet  
**Freedom's Touchstones:** Sam Sheppard (*optional*)

## TEACHER MATERIALS

Transparency Master A:  
Case Updates

## GRADE LEVEL / TIME

Two 45-minute high school classes or one 90-minute block

## BACKGROUND/HOMEWORK

[10 minutes the day before]

Have students read **Handout A: Cameras in the Courtroom Background Essay**.

## WARM-UP

[10-15 minutes]

- A. Before class, write the quotation below on the board. Have students think about the quotation, and then make a list of what they believe to be the best reasons to allow cameras in court and a list of the best reasons to ban cameras in court. Are there any kinds of trials where the use of cameras would always be a good idea? List and explain. Are there any kinds of trials where the use of cameras would always be a bad idea? List and explain.

*"The bases for denying cameras access to courtrooms have not changed much since 1965. The Judicial Conference and the federal courts still believe live television coverage distracts trial participants, unfairly affects the outcome of trials and diminishes the dignity of the courts. Broadcasters, meanwhile, continue to argue that coverage no longer is distracting or disruptive and that both the judiciary and the public benefit when court proceedings are televised."*  
—Attorney Douglas Lee

- B. Have students share their responses and discuss them as a large group.

## ACTIVITY I

[20-30 minutes]

- A. Distribute **Handout B: Camera in the Jury Room?** Using a transparency of **Handout B**, read the case description aloud and conduct a large group discussion of the questions.
- B. Use the first section of **Transparency Master A: Case Updates**, to share the outcome of the case with the class and ask students for their reactions.

## ACTIVITY II

[30-40 minutes]

- A. Divide the class into groups of four or five and give each group one case from **Handouts C-F**.
- B. Have students read and discuss the scenario, and complete **Handout G: Case Analysis Sheet**.
- C. Reconvene the class and have each group summarize the case they studied. Then have them share their decision and explain their reasoning. Using **Transparency Master A**, share the outcomes of each case with the class and ask students for their reactions.



## CAMERAS IN THE COURTROOM

People accused of crimes have the constitutional right to a public trial by an impartial jury. The public also has the right to be kept informed about public proceedings, including criminal trials.

The combination of a free press—expressed today through such devices as television, radio, and the Internet—with a public court system provides a powerful way to preserve both liberty and justice.

However, when the right of a fair trial (Sixth Amendment) comes into conflict with the guarantee of a free press (First Amendment), competing rights must be balanced.

### Pretrial Publicity

When a trial is in the news continuously, it makes it harder to find an unbiased jury. The Supreme Court first ruled that pretrial publicity had denied the defendant a fair trial in the 1961 case, *Irvin v. Dowd*.

Pretrial publicity continues to be a challenge to a fair trial, as illustrated in the 1997 trials of Oklahoma City bombing defendants Timothy McVeigh and Terry Nichols. The same issue was raised in the 1998 trial of Unabomber Ted Kaczynski, and in the 2004 murder trial of Scott Peterson.

### Cameras at Trial

In addition to complications raised by pretrial publicity, media coverage of trials themselves may interfere with a fair verdict. In *Estes v. Texas* (1965) the Supreme Court considered the issue of criminal trials on television. The Court ruled that the presence of TV cameras, microphones,

and photographers had resulted in an unfair trial, and overturned the conviction of Billy Sol Estes. Although it overturned Estes's conviction, the Court did not ban television cameras in courtrooms. The Court had reservations about the effect of cameras in the courtroom, but was even more concerned about upholding the First Amendment's protections of a free press.

**Media coverage of trials themselves may interfere with a fair verdict, but the Supreme Court has stopped short of setting down any specific rules for balancing free press with fair trials.**

In 1966, the Supreme Court ruled in another case where the First Amendment came into conflict with the Sixth Amendment. A Cleveland doctor, Samuel Sheppard, was convicted of murdering his pregnant wife. Massive pretrial publicity combined with coverage during the trial to create what the Court called a "Roman holiday" atmosphere. In *Sheppard v. Maxwell*, the Court overturned the conviction of Dr. Sheppard, saying that "bedlam reigned" during the trial.

In *Chandler v. Florida* (1981), two former Miami police officers were convicted of conspiracy to commit burglary and grand larceny. Over the defendants' objections, the judge had permitted television coverage of the trial. The defendants appealed their convictions, maintaining that the television coverage had deprived them of due process. The Supreme Court upheld their convictions, ruling 7-2 that media coverage for public broadcast does not automatically deprive the defendant of a fair trial.

In 1980, *Richmond Newspapers, Inc. v. Virginia* (1980) concerned the public's right to access criminal trials. Richmond Newspapers, Inc., had been turned away from covering a trial. The corporation

## CAMERAS IN THE COURTROOM (CONT.)

appealed to the Supreme Court, requesting a definitive ruling on the right of reporters to access trials. The Supreme Court ruled that the Sixth Amendment required that “absent an overriding interest,” formal trials must be open to the public. The Court noted, “The administration of justice cannot function in the dark.”

**Other Factors**

The Supreme Court has stopped short of setting down any specific rules for balancing free press with fair trials, instead relying on state courts to minimize the chances of prejudicial media coverage. Steps that judges might take include:

- change of venue to a neutral setting
- delay of the trial until public frenzy abates
- limiting the number of reporters covering the trial
- restrictions on photographs in the courtroom

Supreme Court Justice Thomas Clark said, “What transpires in the courtroom is public property.” The press, he noted, “does not simply publish information about trials but guards against the miscarriage of justice by subjecting the police, prosecutors, and judicial processes to extensive public scrutiny and criticism.”

The Supreme Court itself has never allowed television cameras within its own chambers. Reporters and other members of the media may enter, and live audio is sometimes released. But television cameras are not allowed. Several Justices have been quite outspoken in their opposition to them. Justice David Souter told Congress there would be cameras in the Supreme Court “over my dead body.” Some media groups have asked Chief Justice John Roberts to reconsider the high court’s prohibition on cameras. Roberts told Congress he has no “set view” on a camera policy.

## CAMERA IN THE JURY ROOM?

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**Directions:** Read the following scenario and then discuss the questions below.

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Seventeen year-old Cedric Harrison was charged with murdering a man during a carjacking in June, 2002. The judge in the case, Ted Poe of Houston, Texas, issued a rule that would allow placement of an unmanned camera for the television show *Frontline* in the jury room to film deliberations. Harrison's defense team favored use of the camera; the State of Texas opposed it. Traditionally, jury deliberations have been private, though jurors may give interviews after the conclusion of a case.

Harrison's defense team favored the use of the camera. His mother said, "The state of Texas is attempting to kill my 17-year-old son. I think the whole world ought to be watching." The prosecution opposed the use of the camera. Prosecutor Warren Diepraam said filming deliberations would cause "great harm" and could even endanger the jury members later. "The process is supposed to be secret," he said. "The defendant or his family could use the deliberation process [for retaliation] after it is published."

Judge Poe stated in an interview for the *Houston Chronicle*, "If I thought [cameras] would affect anybody's decision, I wouldn't do it. I would never do anything in a trial to jeopardize justice. I believe we have the best system there ever has been. We shouldn't be ashamed of how it works. Let's show it off." Judge Poe believed the documentary would have great educational value.

During *voir dire* (jury selection) some potential jurors were excluded because they objected to the use of the camera.

Documentaries that included jury deliberations had already been made in Arizona and Wisconsin courts. This would have been the first time for a jury to be filmed during deliberations in a death penalty case. It was also the first time that a court considered using a camera over the state's objections.

### Discussion Questions:

1. The Sixth Amendment reads in part, "*In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed....*" In this case, how could the right to a public trial conflict with the right to an impartial jury?
2. What are the arguments pro and con for allowing cameras in the jury room during deliberations?
3. Judge Tom Price commented, "I fear we're going to reduce jury deliberations to reality TV, like *Survivor...*" Do you agree or disagree? Explain.

## CASE UPDATES

**Handout B:** Texas's highest criminal appeals court barred the use of the camera in the jury room. The court held that the use of the camera would violate the "ancient and centuries-old rule that jury deliberations should be private and confidential." The court cited reasons including outside influence and the pressure on the jury of knowing that millions of people would be watching their deliberations. The court also based its decision on a Texas law that only jury members may be in the jury room during deliberations.

**Handout C:** The Supreme Court ruled in *Houchins v. KQED Inc.* (1977) that the press had no special right of access to government-controlled sources of information under the First Amendment. The Court reasoned that the importance of acceptable prison conditions and the media's role of providing information to the public afforded "no basis for reading into the Constitution a right of the public or the media to enter these institutions. . .and take moving and still pictures of inmates for broadcast purposes."

**Handout D:** The Supreme Court ruled in *Maryland v. Craig* (1990) that the Confrontation Clause of the Sixth Amendment, which guarantees criminal defendants face-to-face meetings with witnesses against them at trial, was not absolute. The Court found that "in certain narrow circumstances, competing interests, if closely examined, may warrant dispensing with confrontation at trial." The state's interest in protecting children's well-being could outweigh the rights of defendants to face their accusers in court.

**Handout E:** In *Courtroom Television Network v. State of New York*, New York's Court of Appeals ruled in 2005 that keeping television cameras out of the courtroom does not violate anyone's rights. Judge George Bundy Smith's opinion held that it is the legislature's job to decide whether trials may be televised: "Civil rights law does not prevent the press, including television journalists, from attending trials and reporting on the proceedings. What they cannot do under the statute is bring cameras into the courtroom. This is not a restriction on the openness of court proceedings but rather on what means can be used in order to gather news."

**Handout F:** On January 28, 2004, District Judge Steven Taylor ruled to prohibit television and still cameras from the courtroom as well as from the lobby outside. He based his decision on a very clear principle: "state law prohibits televising of state court proceedings when the defendant objects." The trial proceeded without cameras and Nichols was convicted on 160 counts of first-degree murder on May 26, 2004. The jury was deadlocked on the question of punishment: life imprisonment or execution? The jury's inability to agree meant that Nichols received the sentence of life imprisonment, and he is serving his term in near-solitary confinement in a super-maximum-security prison in Florence, Colorado.

## SPECIAL ACCESS FOR THE PRESS IN JAIL?

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**Directions:** Read the scenario below and then complete *Handout G*.

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In 1975, a prisoner in the Greystone section of Alameda County Jail committed suicide. KQED, a television and radio company in the San Francisco Bay area reported the suicide and the fact that a psychiatrist who worked with the prisoners had stated that jail conditions were responsible for illnesses of his patients. KQED requested permission to inspect and film the Greystone facility. Sheriff Houchins, who controlled all access to the jails, denied the request. He stated that jail conditions were not the cause of prisoners' problems. However, he began a new program of regular monthly tours of parts of the jail (not including Greystone) open to the public and the media. No cameras, tape recorders, or interviews with inmates were allowed on these tours.

KQED maintained that they had a First Amendment right of access to a county jail to interview inmates and photograph conditions there. KQED cited the public's need for information so there could be public debate on jail conditions. Greystone was said to be the scene of alleged rapes, beatings, and brutal physical conditions.

Sheriff Houchins pointed out that media access such as that requested would pose problems for inmate privacy and jail security, and would disrupt jail operations. He also pointed out that there were many ways to inform the public about jail conditions, including prison mail, visitation, and phone call provisions. Inmates could send an unlimited number of uncensored letters to judges, attorneys, elected officials, and others. Social services officers assisted inmates with making family contacts, and even maximum-security inmates were allowed to make unmonitored collect phone calls from designated areas of the jail.

The case was appealed to the Supreme Court.

## CLOSED CIRCUIT TV TESTIMONY?

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**Directions:** *Read the scenario below and then complete Handout G.*

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Sandra Craig was charged with sexual abuse of a six-year-old child. Although the Sixth Amendment requires that a defendant have the opportunity to confront his/her accuser, Maryland law permitted the testimony of a child in a sex abuse case to be taken through one-way, closed-circuit television in another room to minimize emotional distress to the child.

The judge, jury, and defendant remained in the courtroom, while the child, defense lawyer, and prosecutor moved to another room where lawyers from both sides of the case asked the child questions. The child did not see the defendant, but the defendant and the jury were able to watch as the testimony was given. The defendant remained in electronic contact with her lawyer, and objections could be raised and ruled on as usual.

Craig was against the use of a one-way, closed circuit TV to get the child's testimony. She stated that the procedure denied her Sixth Amendment right of confrontation. The prosecution maintained that the essential elements of the right of confrontation were preserved (cross-examination), and that testimony in open court would have been so upsetting that the child would be unable to communicate.

The trial court convicted Craig, but Maryland's high court overturned her conviction, since Craig had not directly faced her accuser in open court. The case was appealed to the Supreme Court.

## COURT TV FOR NEW YORK?

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**Directions:** *Read the scenario below and then complete Handout G.*

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Seven states, including New York, ban television cameras from courtrooms. In 2001, Court TV sued New York officials, including Governor George Pataki, Attorney General Eliot Spitzer, and Manhattan District Attorney Robert Morgenthau to reverse the ban. (Court TV is a cable television network dedicated to legal affairs.) Court TV's lawyer argued that since most people get their news from television, the ban is an infringement on protected freedoms. The state constitution's guarantee that the public and the press can attend trials and publish reports on the proceedings, he maintained, required that television cameras be permitted in court.

The judge dismissed the Court TV petition, stating that the decision about whether to allow televised trials is a decision for the state legislature to make, not for a judge. The New York legislature banned cameras in court in 1952, but allowed televised court proceedings in the 1990s. The lawmakers allowed the experiment to end in June 1997. The judge also cited research that indicated most New Yorkers believe that TV coverage of trials is a bad idea because the process might harm the fairness of the proceedings. Furthermore, "eight federal circuit courts have found no constitutional right for television coverage of courts."

The case went to a New York appeals court.

## TV FOR TERRY NICHOLS'S OKLAHOMA TRIAL?

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**Directions:** *Read the scenario below and then complete Handout G.*

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On April 19, 1995, a truck bomb destroyed the Alfred P. Murrah Federal Building in Oklahoma City, Oklahoma, resulting in the deaths of 168 people, injuries to hundreds more, and destruction or serious damage to several hundred buildings in the area. Timothy McVeigh was convicted for the attack, and he was executed in 2001. Terry Nichols was accused as an accomplice in the bombing, and he was tried and convicted in federal court for manslaughter in the deaths of eight federal law enforcement agents. On the federal charges, Nichols was sentenced to life in prison. However, the state of Oklahoma sought the death penalty when Nichols was tried in March, 2004 on 161 counts of murder. The trial was moved from Oklahoma City to McAlester in southeastern Oklahoma due to pretrial publicity.

Oklahoma law states that television cameras are banned from courtrooms unless the defendant permits them. Court TV requested permission to televise the murder trial, even though Nichols opposed the idea. Court TV's lawyer stated that televising the trial would give the public, including families of victims, better access to the proceedings. In such a high-interest case, he argued, the public has a right to timely and complete information. Court TV had covered more than 700 cases, he argued, and not one had been reversed because of the presence of cameras.

Nichols's defense attorney explained why Nichols did not want the trial to be televised. He expressed doubt about being able to get a fair trial since he believed that most Oklahomans already thought Nichols to be guilty. He believed that televising the proceedings would make it even less likely that the trial would be fair. Furthermore, prosecutors and the state's witnesses also opposed cameras in the courtroom.

## CASE ANALYSIS SHEET

**Directions:** *Fill in the information below for your scenario.*

**What is the constitutional question?**

**Arguments for the individual  
or organization complaining**

Plaintiff:

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Arguments:

**Arguments for the individual,  
government official, or agency  
whose policy is being challenged**

Individual/government official/agency:

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Arguments:

**If you were judging this case, how would you decide it and why?  
(Use case information in Handout A to support your argument where possible.)**

## SAM SHEPPARD

*As he entered the courtroom, the doctor instinctively blocked his face with his hands as the dozens of flashbulbs popped and stung his eyes. He could feel the heat from the lights of the video cameras trained on him as he made his way to the table.*

*Finding his usual seat on the defendant's side, the doctor sat down and tried to ignore the barrage of questions and comments from the reporters to his left and right, and sitting three rows deep behind him in the courtroom. He was surrounded.*

It was the fall of 1954, and Dr. Sam Sheppard stood accused of murdering his wife, Marilyn, on July 4 at their Ohio home. He had told police that a "large, powerfully built man with ... bushy hair" had attacked him and killed his wife, but there were inconsistencies in his story, and questions remained about why an attacker would kill his wife but only slightly injure him.

Despite his account of events and the injuries to his face and neck, police suspicion had been focused on him. The community's attention had also been fixed on Sheppard, as the media's role in shaping public opinion reached unprecedented levels.

In the weeks after the murder, newspapers in the Cleveland area ran news stories playing up his refusal to take a lie-detector test, to be injected with "truth serum," and other ways he did not cooperate with police requests. One story asserted that Sheppard must be guilty because he had hired a prominent defense attorney.

Much of the trial coverage was factual and ethical. However, many stories introduced "facts" that were never proven or introduced at trial. One story quoted a detective asserting that a "trail of blood" pointed to Sheppard as the killer, but no such evidence was ever introduced at trial.

Editorials seemed to drive police action. An editorial with the headline "Why No Inquest? Do It Now..." appeared. That same day, the coroner did call an inquest which was performed in view of hundreds. A July 30, 1954, editorial was headlined "Quit Stalling – Bring Him In." That evening, Sheppard was arrested, and the next month a grand jury indicted him.

During jury selection, every juror except one testified to reading about the case or watching television reports about it.

Through the trial, the jurors became celebrities in their own right. All three Cleveland newspapers published the names and addresses of the potential jurors. The jurors all reported receiving anonymous calls and letters, in addition to advice from friends and family, about the case.

The court installed a table directly behind the single counsel table, and assigned twenty reporters seats there. The table stretched across the courtroom and came within three feet of the jury box. The court also assigned the first three of the four rows of seats in the courtroom to the media. (Sheppard and Marilyn's families had to sit in the last row.) A broadcasting station was set up next to the jury room.

Once the trial began, the media attention intensified. Many journalists acted responsibly by checking the accuracy of their reports, but not all the coverage was factual. A story with the headline, "Sam Called a 'Jekyll-Hyde' by Marilyn, Cousin to Testify" appeared, but no such testimony was given at trial. Finally, a photograph of Mrs.



Sheppard's bloodstained pillow was altered to make it look like a surgical instrument had been used to kill her.

Sheppard's lawyers called for the judge to ask the jurors if they'd heard or read these reports. The judge replied, "We can't stop people, in any event, listening to [the trial coverage]. It is a matter of free speech, and the court can't control everybody."

The judge instructed the jury to "pay no attention whatsoever" to the reports, but did not order them to be sequestered (to live in a hotel, away from the influence of family, friends, and the media). He then denied defense motions for a change of venue (change the location of the trial), for a continuance (delay) and for a mistrial (a declaration that the proceedings were invalid). The case went to the jury after almost two months of testimony.

The day before they reached a verdict, the jurors—who were by then sequestered for their deliberations—stopped their discussions to

pose for photographs which appeared in the newspapers. The next day they found Sheppard guilty of second-degree murder, and he was sentenced to life in prison.

Sheppard appealed his conviction on the grounds that he had been denied a fair trial. The Supreme Court heard his case, *Sheppard v. Maxwell*, in 1966. The Court held that the media had created a "carnival atmosphere" at the trial and that the "massive, pervasive and prejudicial publicity" about the case had prevented Sheppard from receiving a fair trial as consistent with the due process clause of the Fourteenth Amendment. The Court reasoned, "Though freedom of discussion should be given the widest range compatible with the fair and orderly administration of justice," that courts must be able to administer justice "based on evidence received only in open court." The Court ordered that Sheppard receive a new trial.

Sam Sheppard was retried and found not guilty. The murder of Marilyn Sheppard remains unsolved.



## CRITICAL THINKING QUESTIONS

1. How did the media appear to influence the trial of Sam Sheppard?
2. On what basis did the Supreme Court order a new trial for Sheppard?
3. How do the following measures potentially affect a defendant's right to a fair trial?
  - Banning/allowing cameras in the courtroom
  - Moving the trial to a different location
  - Gag orders (orders forbidding public comment)
  - Shielding juror identities
  - Sequestering jurors for the duration of the trial (ordering jurors to live in a hotel without access to media)
4. The Court asserted that "a responsible press has always been regarded as the handmaiden of effective judicial administration." How does the press do this?
5. The First Amendment protects freedom of speech and of the press, and the Sixth Amendment protects the right to a trial by an "impartial jury." How can judges and reporters best balance these rights?

# RELIGION IN SCHOOLS

## FREE TO PRAY?

### CRITICAL ENGAGEMENT QUESTION

What religious freedoms do individuals have in public school?

### OVERVIEW

At the time of the Founding, most states had official state churches and until the twentieth century, about half of public schools began the day with a prayer (usually a reading from the King James, or Protestant, Bible). The growth of public schools in the twentieth century, combined with the Fourteenth Amendment doctrine of incorporation, led to the determination that requiring a recited prayer is a violation of the Establishment Clause. This lesson will explore the current debate over the impact of the Establishment Clause in public school, and the freedoms students have to freely exercise their religion.

*Religion is the only solid basis of good morals; therefore education should teach the precepts of religion and the duties of man towards God.*

–GOUVERNEUR MORRIS

*Ultimately, America's answer to the intolerant man is diversity, the very diversity which our heritage of religious freedom has inspired.*

–ROBERT F. KENNEDY



### MUSEUM CONNECTION

Help your students understand how the role of religion in public school has evolved over the years. Take your class to the **First Amendment** exhibit section and experience the interactive “Does Freedom of Religion Mean...?” stations and the computer interactive on *Westside Community School v. Mergens* (1990) at the McCormick Tribune Freedom Museum ([www.FreedomMuseum.us](http://www.FreedomMuseum.us)).

## OBJECTIVES

Students will:

- examine the Establishment and Free Exercise Clauses of the First Amendment.
- synthesize various Supreme Court rulings to analyze the constitutionality of government actions.
- evaluate their own school's policy concerning religious practices in school.
- appreciate the complexity of balancing individual students' rights to free religious exercise with their rights to freedom from government-established religion.

## STANDARDS

NCHS: Era 2, Standard 2; Era 10, Standard 2  
 CCE: IB1, IID2, VB1, VB2, VD1, VD2  
 NCSS: Strands 2, 9, and 10

## STUDENT MATERIALS

**Handout A:** School Prayer Then and Now Background Essay

**Handout B:** Prayer in Public Schools Activity

**Freedom's Touchstones:** Bridget Mergens (*optional*)

## TEACHER MATERIALS

**Religion Quote Cards:** Then or Now?

Answer Key

## GRADE LEVEL/TIME

Two 45-minute high school classes or one 90-minute block

## BACKGROUND/HOMEWORK

[10 minutes the day before]

Have students read **Handout A: School Prayer Then and Now Background Essay**.

## WARM UP

[10 minutes]

- As students enter, give ten students a card from **Religion Quote Cards: Then or Now?**
- Have students read their quotations aloud, one at a time. As each quotation is read, ask the class whether it reflects a statement that would be in support of required school prayer, or against it.
- Ask students if they believe attitudes towards required prayer in school have changed since the Founding of America, and if so, how?

## ACTIVITY I

[25-30 minutes]

- Write "THEN" on one side of the blackboard and "NOW" on the far opposite side.
- Ask the ten students with **Religion Quote Cards** to come to the front of the room.
- Have one student read his or her quote aloud. Then have the rest of the class discuss whether they believe the quotation reflects a point of view from "Then" or "Now." Have students vote on where to place them: on the "Then" side of the room, or the "Now" side. Once a decision has been made, have the student who read the quotation take a place next to the corresponding word. Continue until all students have read their quotations.
- Reveal the authors and time periods of the quote cards (*see Answer Key*) and give students a moment to assemble on the correct sides of the room, if needed.
- Ask students if they were surprised by any of the quotations. Conduct a large group discussion on the varying opinions, "then" as well as "now," on the role of religion in government as well as government in religion.

## ACTIVITY II

[20-30 minutes]

- Distribute **Handout B: Prayer in Public Schools Activity** and have students complete it individually.
- Divide the class into groups of four. Have students discuss their responses and, if appropriate, revise their opinions to arrive at group verdicts on each scenario.



## SCHOOL PRAYER THEN AND NOW

*“Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessings upon us, our parents, our teachers and our Country.”*

If a public school student were to say this prayer quietly to herself, there would be no constitutional conflict. If a group of students were to assemble before school and say this prayer out loud together, again, there would be no constitutional conflict. But what if all students were required by their public school to recite this prayer every day? Known as the “Regents Prayer” this invocation was used to open the school day in New York public schools for much of our nation’s history.

### The Establishment Clause

The First Amendment says “Congress shall make no law respecting an establishment of religion.” This was originally added to the Constitution to keep the federal government from establishing a national religion. Today, the amendment is often used to keep religion out of the government or things provided for by the government: public schools, libraries, courtrooms, and other public spaces.

The growth of public schools in the twentieth century, combined with the Supreme Court’s use of the Fourteenth Amendment to apply First Amendment limitations to the states, led to the determination that public schools requiring the recitation of prayer violated the Establishment Clause.

### *Engel v. Vitale*

Mandated prayer in public schools was ruled unconstitutional in 1962. In the Supreme Court case, *Engel v. Vitale* (1962), Justice Hugo Black wrote:

**The Establishment Clause was originally added to the Constitution to keep the federal government from establishing a national religion.**

*“We think that by using its public school system to encourage recitation of the Regents’ prayer, the State of New York has adopted a practice wholly inconsistent with the Establishment Clause....[W]e think that the constitutional prohibition against laws respecting an establishment of religion must at least mean that in this country it is no part of the business of government to compose official prayers for any group of the American people to recite as a part of a religious program carried on by government....It is a matter of history that this very practice of establishing governmentally composed*

*prayers for religious services was one of the reasons which caused many of our early colonists to leave England and seek religious freedom in America...”*

Some people wrongly believe this decision outlawed all prayer in public schools, but this is not true. It did prohibit schools from writing or choosing a specific prayer and requiring all students to say it.

### *Santa Fe Independent School District v. Doe*

So what if students are the ones who read and choose the prayer? This issue was addressed in *Santa Fe Independent School District v. Doe* (2000), which concerned a Texas district’s policy of holding an election to choose a student who would choose and read a non-sectarian prayer before football games. Some Mormon and Catholic students, in the minority at the school, objected to this policy and filed suit.

The school claimed that the prayer was a product of student choice, and therefore no one was being forced to participate in a religious exercise. Furthermore, the school pointed out, attendance at football games is not required, so again there could be no religious coercion.

## SCHOOL PRAYER THEN AND NOW (CONT.)

The Court responded that for many students, including football players, cheerleaders and band members, attendance at games was in fact mandatory. The Court also explained that this situation differed from an individual student praying, which would be considered “*private speech*,” because of the “*official setting*” in which the prayer was delivered. The prayer amounted to a school endorsement of the prayer and was therefore unconstitutional.

Furthermore, the voting process behind the prayer did not make it constitutionally permissible. “*The majoritarian [voting] process implemented by the District guarantees, by definition, that minority candidates will never prevail [win] and that their views will be effectively silenced.*” The Court went on to conclude, “*Through its election scheme, the District has established a governmental mechanism that...empowers the student body majority to subject students of minority views to constitutionally improper messages.*”

**School Prayer in the Future**

There have been many cases involving religion in schools since the *Engel* and *Santa Fe* decisions. People continue to debate the role of religion in public school. The First Amendment of the United States Constitution protects the individual free exercise of religion, but prohibits the establishment of religion by the state. While the First Amendment guards against the establishment of a national church, it goes on to protect individual free exercise of religion, ensuring an absolute freedom of belief.

The old saying goes, “As long as there are tests, there will be prayer in school.” And certainly, the First Amendment’s Free Exercise Clause protects that reality. The challenge comes when balancing individuals’ rights to freely exercise their religion in any number of forms, with their rights to freedom from a government-established religion.

## RELIGION QUOTE CARDS: THEN OR NOW?

*Note to teacher: some quotes have been modernized.*

When a religion is good...it will support itself; and when it does not support itself, and God does not take care to support it so that its professors [need] to call for help of the civil power, [it] is a sign...of its being a bad one.

1

I contemplate with sovereign reverence the act of the whole American people which declared that their legislature should “make no law respecting an establishment of religion, or prohibiting the free exercise thereof,” thus building a wall of separation between church and state.

6

When government...allies itself with one particular form of religion, the inevitable result is that it incurs the hatred, disrespect and even contempt of those who hold contrary beliefs.

2

Nothing in the First Amendment converts our public schools into religion-free zones, or requires all religious expression to be left behind at the schoolhouse door.

7

The only useful foundation for a useful education in a republic is to be laid in religion. Without this there can be no virtue, and without virtue there can be no liberty.

3

Religion is necessary to correct the effects of learning. Without religion I believe learning does real mischief to the morals and principles of mankind.

8

Our nation is a religiously diverse society where the government welcomes various religious expressions but officially endorses none.

4

It [doesn't hurt me] for my neighbor to say there are twenty gods or no God.

9

[T]he Government of the United States of America is not in any sense founded on the Christian religion.

5

Religion and government will both exist in greater purity, the less they are mixed together.

10

## PRAYER IN PUBLIC SCHOOLS ACTIVITY

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**Directions:** *Read each scenario below and decide if the public school activity described violates the First Amendment. Then write one sentence explaining your answer.*

---

- \_\_\_\_\_ 1. A student is passing out religious pamphlets on school grounds before first period.  
\_\_\_\_\_
- \_\_\_\_\_ 2. The school day begins with a required moment of silence during class.  
\_\_\_\_\_
- \_\_\_\_\_ 3. A student who arrived in class early is sitting quietly, reading his Bible.  
\_\_\_\_\_
- \_\_\_\_\_ 4. A teacher wears a small cross pendant to school.  
\_\_\_\_\_
- \_\_\_\_\_ 5. A group of students prays together in the lunchroom before eating.  
\_\_\_\_\_
- \_\_\_\_\_ 6. The school does not offer an alternative lunch for students whose religious beliefs prohibit certain foods, e.g. no pork, or kosher foods only.  
\_\_\_\_\_
- \_\_\_\_\_ 7. Students hanging out in the hallway are discussing their religious beliefs so that others can hear them.  
\_\_\_\_\_
- \_\_\_\_\_ 8. A teacher lets students choose their research paper topics for world history class, and one student chooses to study Taoism.  
\_\_\_\_\_
- \_\_\_\_\_ 9. The school principal is also a Baptist minister.  
\_\_\_\_\_
- \_\_\_\_\_ 10. The choir sings Christmas carols in school during the holiday program.  
\_\_\_\_\_



## BRIDGET MERGENS

*“Hey Fundy!” Bridget turned and smiled when she heard the good-natured call from a friend as she walked through her high school’s social studies corridor. She’d gotten the nickname—short for “fundamentalist”—from some of her friends and teachers who supported her quest to start an after-school Bible club at school. Together, they walked into their government class where Bridget’s teacher would be conducting a lesson on freedom of religion and the First Amendment, featuring none other than Bridget herself.*

*Reprinted with permission from the Omaha World-Herald.*

Bridget Mergens was a student at Westside High School, a public school in Omaha, Nebraska. She was in honors classes, sang in the choir, and was active in the drama club. Bridget also saw much in society she wanted to change. She felt drugs and violence were real threats to children, and believed she had a way to help teens through their adolescent years: an after-school Bible club.

She talked to her homeroom teacher—who was also the school principal—about starting such a club. She told him that the club’s purpose would be to read and discuss the Bible, to have fellowship, and to pray together. Like all extracurricular clubs, attendance would be voluntary, and all students would be welcome, no matter what their faith.

The principal told her that though he liked the idea personally, such a club could never meet on school grounds. “I was shocked,” she would later recall. The principal and superintendent said that such a club would violate the First Amendment’s prohibition of an “establishment of religion.” If

students were meeting with a teacher on school grounds to pray, that would amount to the public school endorsing a religious message.

Bridget disagreed. She thought a voluntary Bible club was completely different from required praying. “Our Bible club wasn’t going to be adults telling students they had to pray or read the Bible,” Bridget said later. “It was just students joining because they wanted to exchange ideas with each other.”

Bridget believed that by refusing to permit her proposed club, Westside had denied her First Amendment rights to freedom of speech, association, and the free exercise of religion.

Further, Bridget believed that the school’s actions violated the Equal Access Act. This act, passed in 1984, prevents schools that receive federal money from discriminating against clubs because of the content of their message. The Equal Access Act was passed mainly to assist religious organizations, and also protects the rights of students to form other potentially controversial clubs.

As long as schools provide an “open forum” for student clubs (meaning that they permit clubs that are not tied to school curriculum), then they must allow religious clubs the same access as non-religious ones.

Bridget believed that on the basis of her First Amendment rights, along with the Equal Access Act, she had a case. Bridget soon found that most of her peers and teachers supported her pursuit. Over two appeals in five years, the case made it to the Supreme Court in 1990.

Westside High School argued that the Equal Access Act did not apply to their school because there was no open forum. Though the school had such organizations as a scuba diving club and a chess club, they said that the scuba diving club

complemented physical education courses, and the chess club was related to math curriculum.

The school also argued that the Equal Access Act violated the Establishment Clause of the First Amendment and was therefore unconstitutional. If the school allowed a religious club to meet on school grounds, that amounted to endorsing their religious message.

The Court ruled in Bridget's favor in *Westside Community Schools v. Mergens* (1990). It held that Westside did indeed have an open forum for student clubs, and therefore had to provide religious clubs equal access. The Court also rejected the argument that the Equal Access Act violated the Establishment Clause. "Congress' avowed purpose—to prevent discrimination against religious and other types of speech—is undeniably secular," the Court wrote. "[W]e think it clear that the Act's purpose was not to endorse or disapprove of religion."

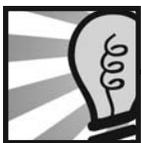
Justice Sandra Day O'Connor explained that the First Amendment protects freedom from government-established religion, as well as the individual right to practice one's faith: "There is a crucial difference between government speech

endorsing religion, which the Establishment Clause forbids, and private speech endorsing religion."

In his dissent, Justice John Paul Stevens wondered if there were now no limits to the kinds of clubs schools had to tolerate. "[T]he existence of a French club, for example, would create a constitutional obligation to allow student [clubs] of the Ku Klux Klan or the Communist Party..." He also cited cases in which the Court held that schools need not tolerate speech that contradicts their education mission.

Many praised the court's decision. One lawyer familiar with freedom of religion cases remarked, "The EAA [Equal Access Act] is necessary to allow Christianity to be heard in the marketplace of ideas." Though not particularly controversial, the decision was not universally well received. One critic predicted, "Christian missionary groups are set to invade our public high schools."

Bridget's struggle ensured the right of students to participate in public school religious clubs, securing both freedom from government-established religion and freedom to individually practice one's faith.



### CRITICAL THINKING QUESTIONS

1. How did Bridget Mergens describe her proposed Bible club?
2. Why did Bridget's principal refuse to allow her proposed club?
3. On what basis did Bridget appeal her case to the Supreme Court?
4. How does the First Amendment protect freedom from government-established religion at the same time that it protects individual free exercise?
5. Do you believe the Equal Access Act violates the Establishment Clause? Why or why not?



# THE TEN COMMANDMENTS

## FREE TO POST?

### CRITICAL ENGAGEMENT QUESTION

Does posting the Ten Commandments in government spaces violate the First Amendment?

### OVERVIEW

After the Fourteenth Amendment applied Bill of Rights limitations to state governments, and as the government has taken on a greater role in life, the Establishment Clause is invoked to prevent the government from endorsing one religion over any others. In this lesson, students will analyze the Establishment Clause with respect to Ten Commandment displays on public property.

*The foundations of our national policy will be laid in the pure and immutable principles of private morality, and the preeminence of free government be exemplified by all the attributes which can win the affections of its citizens, and command the respect of the world.*

—GEORGE WASHINGTON

*Those who would renegotiate the boundaries of church and state must therefore answer a difficult question: why would we trade a system that has served us so well for one that has served others so poorly?*

—SANDRA DAY O'CONNOR



### MUSEUM CONNECTION

Help your students understand the significance of the Establishment Clause. Take your class to the **First Amendment** exhibit and experience the interactive “Does freedom of religion mean...” stations at the McCormick Tribune Freedom Museum ([www.FreedomMuseum.us](http://www.FreedomMuseum.us)). You may also take them to the **Close to Home** section and read the information in the “Town Square” kiosk to help them understand current debate on the topic.

**OBJECTIVES**

Students will:

- examine the Lemon Test and the Endorsement Test as tests of constitutionality.
- understand various opinions about the purposes of the Establishment Clause.
- analyze the Establishment Clause of the First Amendment and selected Supreme Court decisions related to the Ten Commandments.

**STANDARDS**

NCCHS: Era 3, Standard 3

CCE: IA1, IB1, VB1, VB2, VC1, VC2, VD1, VD2

NCSS: Strands 2, 6, and 10

**STUDENT MATERIALS**

**Handout A:** The Establishment Clause and the Ten Commandments Background Essay

**Handout B:** An Establishment of Religion?

**Handout C:** Litigating the Ten Commandments

**Freedom's Touchstones:** Thomas Jefferson (*optional*)

**TEACHER MATERIALS**

Poster board and markers

Computers with Internet access

Answer Key

**GRADE LEVEL/TIME**

Two 45-minute high school classes or one 90-minute block

**BACKGROUND/HOMEWORK**

[10 minutes the day before]

Have students read **Handout A: The Establishment Clause and the Ten Commandments Background Essay**.

**WARM-UP**

[10-15 minutes]

- Have students complete **Handout B: An Establishment of Religion?** with a partner.
- Have students share their responses, and then reveal the answers. Discuss each as a large group.

**ACTIVITY I**

[30-40 minutes]

- Before class, put up several pieces of poster board around the room.
- Ask students to brainstorm a list of public and private spaces (schools, courtrooms, private homes or businesses) and a list of religious-themed and secular items (the Ten Commandments, menorah, Islamic star and crescent, government charters or patriotic song lyrics). Make a list on the board.
- Divide the class into groups of four. Ask students to draw two scenes using spaces and items from the list—one that would be constitutional in the group's view, and one that would be unconstitutional. Have students write two or three sentences next to each scene explaining why it would or would not be constitutional.
- Give students a few minutes to view the displays, and discuss them as a large group. Do students disagree with any of them?

**ACTIVITY II**

[30-40 minutes]

- Have students work in pairs at a computer with Internet access. Assign each pair to research a case on **Handout C: Litigating the Ten Commandments**.
- After filling in the first two columns for their case on **Handout C**, have students regroup with other pairs who researched the same case and discuss their opinions about the judgment. Then have them complete the third column.
- Reconvene the class and have a student summarize the facts and decision for each case for the class. Students should complete their charts on **Handout C** as students report on the cases they did not research themselves.
- Conduct a large group discussion on the Ten Commandment display litigation. Some are rulings by federal Circuit Courts and some are rulings by the Supreme Court. How significant are these rulings?

## HOMEWORK

- A. Have students read **Freedom's Touchstones: Thomas Jefferson** and answer the critical thinking questions.
- B. Have students compose a learning log in response to the class activity, in which they summarize their new knowledge and answer the questions:
- Are rulings on the Ten Commandments important for purely symbolic purposes, or are they significant for other reasons?
  - What is the difference between Circuit Court rulings and Supreme Court rulings in terms of their significance?

## EXTENSIONS

- A. Have students write a one- to two-page essay for or against the constitutionality of displays of the Ten Commandments on public property. Students should reference and analyze the Constitution, historical information and/or writings of the Founders to support their case.
- B. President James Madison vetoed two bills in 1811 because he believed they violated the Establishment Clause. In a one- to two-page essay, have students research the two proposed laws, Madison's reasons for the vetoes, and Congress's response. Finally, have students explain whether they believe Madison was correct to veto the bills.
- C. Have students research the 2005 case *Kitzmiller, et al v. Dover Area School District* and write a two-page analysis of the federal court's application of the Lemon and Endorsement Tests to the required teaching of Intelligent Design in public schools.

**REAL LIFE PORTAL**

Have students assume the persona of a Supreme Court justice and write their own "test" for determining the constitutionality of Ten Commandment or other religious displays. Have students name their tests and mail brief explanations of them to the Chief Justice of the United States.

## THE ESTABLISHMENT CLAUSE AND THE TEN COMMANDMENTS

Most of the debate concerning posting the Ten Commandments in government spaces such as courtrooms, public schools, or parks centers on the First Amendment. The First Amendment says in part: “Congress shall make no law respecting an establishment of religion.” This phrase is known as the Establishment Clause. At minimum, the Establishment Clause prevents Congress from establishing a national religion or national church. The other limits on government action that the Establishment Clause sets are often debated.

### The Establishment Clause in the Early Republic: Washington, Madison, and Story

The same Congress that approved the First Amendment also elected chaplains for both houses and began each legislative session with an invocation—a practice that continues today. In his first administration, Congress asked President George Washington to declare a national day of thanksgiving. Washington agreed and began the proclamation with the words, “Whereas it is the duty of all nations to acknowledge the providence of Almighty God, to obey His will, to be grateful for His benefits, and humbly to implore His protection and favor...”

James Madison, the chief author of the Bill of Rights, believed these practices to be unconstitutional. Madison objected to both acts because they “seem to imply and certainly nourish the erroneous idea of a *national* religion.” [emphasis original] He explained, “The establishment of the chaplainship to Congress is a palpable violation of equal rights, as well as of Constitutional principles: The tenets of

the chaplains elected [by the majority] shut the door of worship against the members whose creeds and consciences forbid a participation in that of the majority.” Madison said of the day of thanksgiving, “Religious proclamations by the Executive recommending thanksgivings and fasts are shoots from the same root with the legislative acts reviewed.” As president, Madison also vetoed two laws because he believed they violated the First Amendment’s Establishment Clause.

### Supreme Court Justice Joseph Story argued that the First Amendment was meant to subdue competition between Christian sects.

Supreme Court Justice Joseph Story, who was appointed to the Court by Madison, argued that the First Amendment was meant to subdue competition between Christian sects. Writing in 1833, Story explained, “In some of the states, Episcopalians constituted the predominant sect; in others, Presbyterians; in others, Congregationalists; in others, Quakers...It was

impossible, that there should not arise perpetual strife and perpetual jealousy...if the national government were left free to create a religious establishment. ...Thus, the whole power over the subject of religion is left exclusively to the state governments.” At the time the Bill of Rights was ratified, all but three states had official churches, though the last ones were disestablished by the early 1800s.

### The Establishment Clause in the Twentieth Century

As Story explained, the First Amendment was written to apply only to the federal government. The Fourteenth Amendment, however, has been interpreted to apply some Bill of Rights limitations to state governments. It reads in part, “No state

## THE ESTABLISHMENT CLAUSE AND THE TEN COMMANDMENTS (CONT.)

shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States...” When the Supreme Court applies a portion of the Bill of Rights to a state action, it is said to have incorporated that amendment.

In the 1947 case *Everson v. Board of Education*, the Supreme Court held that the Establishment Clause of the First Amendment “means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another....” Generally, the Court has found religious displays to be constitutional if they have a secular, or non-religious, purpose.

### The Lemon Test and the Endorsement Test

The 1971 Supreme Court decision of *Lemon v. Kurtzman* struck down Rhode Island and Pennsylvania programs that paid part of religious schoolteacher’s salaries. With this case, the Court established a test to determine the constitutionality of government action with respect to religion: First, the statute must have a secular purpose; second, its primary effect must neither advance nor hurt religion; finally, government and religion must not be excessively entangled. These criteria make up the Lemon Test.

The Endorsement Test is from *Lynch v. Donnelly* (1984) in which the Court upheld a nativity display among other symbols in a public park. This test says that if a reasonable observer would conclude that a government action either endorses or disapproves of a certain religion, then the action is unconstitutional.

### The Ten Commandments

Most recently, the Supreme Court tackled the issue of Ten Commandment displays in 2005. In *McCreary County v. ACLU*, the Court found that Kentucky violated the Establishment Clause when it hung two framed copies of the King James Version of the Ten Commandments, accompanied by secular symbols and historical documents, in two courthouses. The justices found that the displays were intended to “promote religion.” The majority opinion asserted that the Establishment Clause “require[s] the government to stay neutral on religious belief, which is reserved for the conscience of the individual.”

Also in 2005, the Supreme Court held that a Ten Commandments monument on the grounds of the Texas Capitol was constitutionally permissible. The majority opinion in *Van Orden v. Perry* explained that because the monument had been there for forty years, and because it was surrounded by more than a dozen other monuments and markers, that “the public visiting the capitol grounds is more likely to have considered the religious aspect of the tablets’ message as part of what is a broader moral and historical message.”

Some who support the posting of the Ten Commandments in government buildings argue that the Ten Commandments is a foundation of American law. Some opponents of Ten Commandment displays argue that posting the Old Testament document amounts to endorsing Judeo-Christian religion. The Supreme Court itself is decorated with a tablet of Moses carrying the Ten Commandments tablet, though the text of the tablet is not visible. Moses is shown alongside other historical and religious figures including Mohammad and Confucius.

## AN ESTABLISHMENT OF RELIGION?

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**Directions:** For each of the following, explain whether you believe the action would constitute a violation of the Establishment Clause.

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1. Congress passes a law that all Americans must belong to and support the same church.
2. A sitting United States president asserts that “it is the duty of all nations to acknowledge the providence of Almighty God, to obey His will, to be grateful for His benefits, and humbly to implore His protection and favor...”
3. Taxpayer money goes to pay for books and teacher salaries at a private religious school.
4. In order to discourage employee theft, a fast-food restaurant puts signs on the cash registers. The signs say, “Remember your Commandments, *Thou shalt not steal.*”
5. A framed copy of the Ten Commandments is posted among several other documents in a state courtroom.
6. A six-foot stone monument stands alone on the grounds of the state capitol.

## LITIGATING THE TEN COMMANDMENTS

**Directions:** Research your assigned case and fill in the first two columns. Then, after discussing with your classmates, fill in the last column.

Facts of the Case	Decision / Reasoning	Your Opinion
<i>Stone v. Graham</i> (1980)		
<i>Adland v. Russ</i> (Sixth Circuit, 2002)		
<i>Freethought Society v. Chester County</i> (Third Circuit, 2003)		
<i>Glassroth v. Moore</i> (Third Circuit, 2003)		
<i>ACLU of Ohio Foundation, Inc. v. Ashbrook</i> (Sixth Circuit, 2004)		
<i>King v. Richmond County</i> (Eleventh Circuit, 2003)		



## THOMAS JEFFERSON

*The President adjusted his kerosene lamp, dipped his quill in his inkwell and continued his letter to the church leaders: "...Believing with you that religion is a matter which lies solely between Man & his God...that the legitimate powers of government reach actions only, & not opinions, I contemplate with sovereign reverence that act of the whole American people which declared*

*that their legislature should 'make no law respecting an establishment of religion, or prohibiting the free exercise thereof,' thus building a wall of separation between Church & State...."*

Securing religious liberty in the new republic was one of Thomas Jefferson's most important goals. His papers, including this letter to the Danbury Baptists Association, as well as the Virginia Statute for Religion Freedom, reveal a statesman who recognized the civic utility of religion, but believed that government had no business regulating belief.

### Virginia Statute for Religion Freedom (1786)

Jefferson's 1786 Virginia Statute for Religion Freedom brought about the end of the Episcopal Church as the official religion of the state. The statute's wording uses religion itself to argue against government involvement in religion, arguing that state-mandated worship is contrary to God's plan: "...Almighty God hath created the mind free... all attempts to influence it by temporal punishments...are a departure from the plan of the holy author of our religion."

While Jefferson recognized religion's civic utility as a foundation for private morality and public behavior,

he felt very strongly that the state had no right to compel worship or support of a religious institution. "[T]o compel a man to furnish contributions of money for the propagation of opinions which he disbelieves and abhors, is sinful and tyrannical [and] is depriving him injuriously of...natural right[s]." The Virginia Statute for Religion Freedom is still part of Virginia law.

### The First Amendment (1791)

Understanding the Founders' intent for writing the First Amendment is a complex task. Many Founders were influenced by their Puritan roots and a variety of Deist and Christian faiths. They saw the potential for tyranny and strife if the federal government established a national church. The Founders were also influenced by natural rights theory. This philosophy holds that rights come from nature or from God, and that all people everywhere are born with the same rights. As Jefferson wrote in the Declaration of Independence, "All men...are endowed by their Creator with certain rights..." One of those rights, Jefferson believed, was the right to choose and practice religion freely.

As Jefferson notes in his letter, the First Amendment reads: "Congress shall make no law respecting an establishment of religion." This is called the Establishment Clause. The Founders understood this clause to mean that there can be no national church or national faith. A more broad interpretation is that the government cannot endorse one religion over another, as doing so would mean that it has "established" a religion.

The U.S. Constitution protects religious liberty from the federal government through the First Amendment, and also in its promise that no religious test can be required of public officials (Article VI). States, however, could and did have their own official religions. All but three of the

original thirteen colonies had official churches. (Delaware, Rhode Island and Pennsylvania did not.) Those state churches soon disestablished, starting with Virginia in 1786, while Connecticut retained a church until 1818.

### The “Separation of Church and State” (1802)

Thomas Jefferson wrote his famous letter to the Danbury Baptists Association to assure them that the federal government would not interfere with their church. Though often referenced, the words “separation of church and state” do not appear in the Constitution or in the Bill of Rights. Many believe, and the Supreme Court has held in many cases, that the First Amendment requires such a separation. Others believe this phrase is not a useful way of understanding the First Amendment, and call it, as one Chief Justice did, a “misleading metaphor.”

The Supreme Court first referenced Jefferson’s letter in *Reynolds v. United States* (1878). (This unanimous decision upheld a federal law banning polygamy.) The ruling referred to Jefferson’s letter as “almost an authoritative declaration” of the scope of the First Amendment because Jefferson was a leading advocate of the First Amendment.

In 1947, Supreme Court Justice Hugo Black again referenced Jefferson’s letter as evidence that the First Amendment “was intended to erect ‘a wall of separation between church and state.’”

Others, however, point out that Jefferson himself played no part in writing the First Amendment or in its debate in Congress, as he was overseas serving as minister to France at the time. Chief Justice William Rehnquist referred to the phrase “separation of church and state” as Jefferson’s “misleading metaphor.” Some also note that Presidents George Washington and John Adams regularly invoked the name of God and declared national days of fasting and thanksgiving. This implies some of the Founders did not believe government should be free from religious influence.

Whatever controversy his famous phrase may cause, there is little doubt that Jefferson considered the Virginia Statute for Religion Freedom one of his proudest achievements. He wrote his epitaph: “Here was buried Thomas Jefferson, Author of the Declaration of American Independence, of the Statute of Virginia for Religious Freedom, And Father of the University of Virginia.”



## CRITICAL THINKING QUESTIONS

1. Why did Thomas Jefferson write to the Danbury Baptists?
2. What law, authored by Jefferson, led to the disestablishment of the state church of Virginia?
3. One historian has called Jefferson the “American Sphinx” because his intentions are often hard to understand. How might the wording of Virginia’s Statute for Religion Freedom fit this description?
4. What did Jefferson mean when he said “the legitimate powers of government reach actions only, and not opinions”?



# SENSATIONAL REPORTING

FREE TO PRINT?

## CRITICAL ENGAGEMENT QUESTION

Does the press have too much freedom?

## OVERVIEW

The Founders saw freedom of the press as a natural right and an indispensable means of promoting good government. Free newspapers keep leaders honest and the citizenry engaged. The First Amendment forbids prior restraints, and in order to ensure the unfettered flow of information, newspapers are insulated from penalties even when they print falsehoods, as long as they do not act recklessly or maliciously. In this lesson, students will understand how a press free from government interference is best able to educate and inform.

*[W]e trust...that man may be governed by reason and truth. Our first object should therefore be, to leave open to him all avenues of the truth.*

–THOMAS JEFFERSON

*Put it before them briefly so they will read it, ...picturesquely so they will remember it, and above all, accurately so they will be guided by its light.*

–JOSEPH PULITZER



## MUSEUM CONNECTION

Help your students learn more about the ways a free press protects freedom. Take your class to the **What Are the Limits** exhibit and engage your students in the interactive “Where Do You Draw the Line?” kiosks at the McCormick Tribune Freedom Museum ([www.FreedomMuseum.us](http://www.FreedomMuseum.us)).

## OBJECTIVES

Students will:

- explain Thomas Jefferson's beliefs about the importance of a free press.
- analyze examples of "yellow" or sensational journalism.
- analyze situations where press freedom may have negative consequences for society.
- evaluate the need for press freedom in a democratic republic.
- appreciate that the press enjoys substantial freedom in the United States.

## STANDARDS

NCHS: Era 7, Standard 1  
 CCE: IID3, IID4, VB2, VD4  
 NCSS: Strands 2 and 10

## STUDENT MATERIALS

**Handout A:** A Free Press Background Essay

**Handout B:** Making the News

**Handout C:** "The Good Sense of the People"

**Handout D:** Should the First Amendment Apply?

**Freedom's Touchstones:**  
 William Randolph Hearst  
*(optional)*

## TEACHER MATERIALS

Newspaper images found at  
<http://www.pbs.org/crucible/headlines.html>

Answer Key

## GRADE LEVEL/TIME

Two 45-minute high school classes or one 90-minute block

## BACKGROUND/HOMEWORK

[10 minutes the day before]

Have students read **Handout A: A Free Press Background Essay**.

## WARM-UP

[20 minutes]

- If Internet access is available, have students view reproductions of newspaper pages at <http://www.pbs.org/crucible/headlines.html>. If Internet access is not available, print out the newspaper reproductions ahead of time, enlarge them, and post them around the classroom, giving students time to view them all.
- Discuss the concept of "sensational" news with students. *Sensational news is meant to arouse intense emotions in the audience by providing lurid details.*
- Distribute **Handout B: Making the News**. Lead the class through analysis of the first headline, and have students complete the rest individually or in pairs.
- Have students share their responses to the newspaper headlines. Ask students: Do you see headlines like this today? Where? What kinds of media most often use these kinds of tactics? Do they deserve First Amendment protection?

## ACTIVITY I

[20-30 minutes]

- Distribute **Handout C: "The Good Sense of the People"**. Ask a strong reader to read Jefferson's letter and the First Amendment aloud, and then ask students to jot down some of their initial responses to the questions and share them with the class.

*According to Jefferson, the only safeguard of liberty is the "good sense of the people." Students should recognize Jefferson's argument that since the government derives its power from the people, the government should not have the power to censor the information about itself that goes to inform the "opinion of the people." Students may say that Jefferson would believe that all three examples are opportunities for citizens to determine, on their own, the quality of news delivered to them.*

- Explain to students about the "Marketplace of Ideas." This is the concept that if ideas, like goods, can compete with each other, the truth will emerge out of that competition and the best ideas will succeed. Supreme Court Justice Oliver Wendell Holmes explained in *Abrams v. U.S.* (1919) that the marketplace of ideas means "free trade in ideas – that the best test of truth is the power of the thought to get itself accepted in the competition of the market... That at any rate is the theory of our Constitution."
- Conduct a large group discussion to answer the questions: Upon whom does the First Amendment place responsibility for the content and quality of news?

*Students should recognize that individuals, rather than the government, have the task of deciding the quality of news. Rather than government imposing censorship on news it deems unfit or dangerous, the people are able to hear competing voices in a free and open society.*

## ACTIVITY II

[30-40 minutes]

- A. Have students work in pairs to complete **Handout D: Should the First Amendment Apply?**
- B. Going over one scenario at a time, conduct a large group discussion asking students to share their responses to the right-hand column.
- C. Ask students to consider the examples of “yellow journalism” they observe today. Conduct a large group discussion to answer the questions:
  - Should government have the power to censor sensationalized, biased, or false news?
  - How do alternative media, including blogs, add to the competing voices in the media?
  - Whose responsibility is it to discriminate among news sources? How does this ensure the future of self-government in America?

## HOMEWORK

- A. Have students read **Freedom’s Touchstones: William Randolph Hearst** and answer the critical thinking questions.
- B. Have students choose one scenario from **Handout D** and write a two-paragraph explanation of why the government should or should not be able to censor the kind of publication described.

## EXTENSIONS

- A. Have students imagine they are Thomas Jefferson and write a one-page letter responding to someone who believes that journalists should have to get government approval before publishing.
- B. Have students choose one of the following and write a two- to three-page exposition paper explaining the facts and outcome and analyzing the consequences for freedom of the press and American self-government.
  - Newspaper coverage of the Spanish-American war (1898)
  - *Near v. Minnesota* (1931)
  - *New York Times v. Sullivan* (1964)
  - *New York Times v. United States* (1971)
  - Geraldo Rivera expelled from Iraq (2003)

**REAL LIFE PORTAL**

Have students research the facts; pros and cons; and consequences of:

- tabloids such as the *National Enquirer*
- government limitation of press coverage of the Iraq War (for example, preventing the publication or broadcast of soldier coffins)
- publication or broadcast of information about Iraq War soldiers and their families.

## A FREE PRESS

The press freedom Americans cherish today was protected in early America as a natural right of humanity. Unlike a press controlled by the state, a free press can make sure officials are honest by writing about their practices and policies. Reporters do not fear imprisonment or torture for writing unflattering articles. During the debate over the Bill of Rights, James Madison famously said, “The people shall not be deprived or abridged of their right to speak, or write, or to publish their sentiments; and the freedom of the press, as one of the great bulwarks of liberty, shall be inviolable.”

People can freely exercise their right to publish their ideas when government is not allowed to interfere with this right in advance. Government cannot put conditions on the right to communicate opinions by requiring people to get a government license before printing or to censor writings ahead of time. The media can be punished after the fact, however, if they knowingly publish false information recklessly or maliciously (*New York Times v. Sullivan*, 1964).

### “Yellow Journalism”

“Yellow Journalism,” refers to sensational and melodramatic journalism. This term was first applied to the newspapers of William Randolph Hearst and Joseph Pulitzer in the late 1800s. The two publishers of rival New York papers competed intensely for readers. They tried to boost circulation with innovative journalistic practices. (The term “Yellow Journalism” referred to a color comic strip called “The Yellow Kid.” The ink would often smear, prompting some to say that Hearst not only colored the comics, he also colored the news.)

**A free press puts the responsibility on the citizen to determine for him or herself what is accurate, what is worth reading, and what is worth watching.**

Hearst and Pulitzer were particularly interested in the Spanish-American War. Cuba wanted independence from Spain, and the U.S. was sympathetic to the Cubans. Hearst and Pulitzer saw the war as the perfect subject to cover to gain readers. They ran stories about Spanish brutality. There were many real instances of Spanish abuses. But many photographs were manipulated, and articles made exaggerated charges of “Spanish cannibalism” and “inhuman torture.”

The American battleship *U.S.S. Maine* was sent to Cuba to protect American citizens on the island. Less than a month later, the *Maine* exploded, killing 266 sailors and marines. Hearst’s and Pulitzer’s papers immediately placed blame on the Spanish, though there was no proof for this charge. The public responded with demands for retribution against Spain.

Historians point to the Spanish-American War as the first press-driven conflict. The constant sensational headlines and photographs fueled the public’s demands for action.

The government did not attempt to censor the newspapers or punish the publishers for their practices. In a society with a free press, journalists who have the power to shape public opinion and even drive foreign policy may test citizens’ commitment to the First Amendment.

### *Near v. Minnesota* (1931)

Jay Near published a “scandal sheet” in 1920’s Minneapolis. This paper was devoted to sensational news and “exposé” reports on corruption. Near regularly criticized elected

## A FREE PRESS (CONT.)

officials and accused them of dishonesty. He asserted that Jews were “practically ruling” the city, that the chief of police was taking bribes, and that the governor was incompetent. (At least one of his stories was proven true when a gangster he named was convicted.)

Near was eventually stopped from publishing his newspaper in 1925 on the basis of a Minnesota law that made it a crime to publish “malicious, scandalous and defamatory” materials. Colonel Robert McCormick, the owner of the *Chicago Tribune* newspaper, believed the prior restraint was a violation of the First Amendment. Colonel McCormick lent his assistance to help Near take his case to the Supreme Court. In *Near v. Minnesota* (1931), the Court found the policy of prior restraint unconstitutional.

However, the Court cautioned that prior restraint may be constitutional during wartime: “No one would question but that a government might prevent actual obstruction to its recruiting service or the publication of the sailing dates of transports or the number and location of troops.”

### Geraldo Rivera and the Iraq War

The Internet and 24-hour news channels have made it possible to broadcast news very quickly.

This ability has fueled recent controversial situations, including a 2003 FOX News report by correspondent Geraldo Rivera. During the Iraq war, Rivera was embedded (living and reporting among) with U.S. troops. During one report, Rivera drew a map in the sand, revealing troop locations and future movements.

Because embedded reporters had signed an agreement not to disclose their locations on the air, the Pentagon expelled Rivera from Iraq. A Pentagon spokesperson said Rivera was being expelled because, “He gave real-time information about a unit’s location, their mission and their pending activity, which would clearly aid the enemy.” Rivera acknowledged that his drawing was an “inadvertent technical violation of the Pentagon’s embedment policies.” The Pentagon agreed to allow him to return to Iraq, “as long as it is clear to him and to [FOX News] what was wrong the first time and that it not happen again.”

The risk of sensationalism, inaccuracy, and threats to national security sometimes go along with freedom of the press. Ultimately, a free press puts the responsibility on the citizen—rather than the government—to determine for him or herself what is accurate, what is worth reading, and what is worth watching.

## MAKING THE NEWS

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**Directions:** *Below are newspaper headlines leading up to and during the Spanish-American War. For each headline, underline words or phrases that contribute to sensationalism. Then brainstorm several adjectives to describe the response the headline seems to be trying to generate in readers.*

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1. “Blood on the roadsides, blood in the villages, blood, blood, blood!”
2. “CRISIS IS AT HAND. Cabinet is in session. Growing belief in SPANISH TREACHERY.”
3. “\$50,000 REWARD! For the detection of the perpetrator of the Maine Outrage!”
4. “GREAT SEA VICTORY FOR AMERICA! VENGEANCE FOR THE MAINE BEGUN! SPAIN’S ASIATIC FLEET BURNED AND SUNK!”
5. “DEWEY SMASHES SPAIN’S FLEET...the damage done to the American boats engaged only nominal –hundreds of enemy slain in the encounter.”
6. “AWFUL SLAUGHTER. Our troops at Manila killed the Filipinos by the thousands—40 Americans killed.”

## “THE GOOD SENSE OF THE PEOPLE”

**Directions:** Read the documents below and answer the following questions.

### Thomas Jefferson to Edward Carrington, 1787

...I am persuaded myself that the good sense of the people will always be found to be the best army. They may be led astray for a moment, but will soon correct themselves. The people are the only censors of their governors: and even their errors will tend to keep these to the true principles of their institution. To punish these errors too severely would be to suppress the only safeguard of the public liberty. ...The basis of our governments being the opinion of the people, the very first object should be to keep that right; and were it left to me to decide whether we should have a government without newspapers, or newspapers without a government, I should not hesitate a moment to prefer the latter. But I should mean that every man should receive those papers and be capable of reading them.

### The First Amendment, 1791

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.

Source: "Thomas Jefferson to Edward Carrington." The Founders' Constitution.  
[http://press-pubs.uchicago.edu/founders/documents/amend1\\_speeches8.html](http://press-pubs.uchicago.edu/founders/documents/amend1_speeches8.html)

1. According to Jefferson, what is the only safeguard of liberty? Why?
2. What do you think Jefferson might have said about “yellow journalism,” “scandal sheets,” and the actions of Geraldo Rivera?

## SHOULD THE FIRST AMENDMENT APPLY?

**Directions:** Read each scenario and decide if the First Amendment applies. Then complete the chart.

SITUATION	Did government get involved?	Should government be able to stop/prevent? Explain.
Privately-owned newspapers publish exaggerated reports and a fabricated photograph. (Hearst and Pulitzer, 1898)	NO. (See <i>Handout A</i> )	
A state law says anyone publishing “malicious, scandalous and defamatory” material can be stopped from future publishing. ( <i>Near v. Minnesota</i> , 1931)	YES. (See <i>Handout A</i> )	
A newspaper runs an ad in support of Civil Rights Movement. The ad gets facts wrong, but the newspaper does not notice. ( <i>New York Times v. Sullivan</i> , 1964)	YES. (See <i>Handout A</i> )	
The Justice Department gets a court order to stop a newspaper from publishing classified documents revealing government lies about the Vietnam War. ( <i>New York Times v. United States</i> , 1971)	YES. ( <i>The Court found no threat to national security and held that exposing deceit in government was a key reason for the First Amendment.</i> )	
While the nation is at war, a reporter draws a map in the sands of Iraq to illustrate troop locations and future movements. (Geraldo Rivera, 2003)	YES. (See <i>Handout A</i> )	

## WILLIAM RANDOLPH HEARST

*The people in the crowd looked over one another's shoulders, clamoring to get a clear look at the front page of a one-cent newspaper on this day in 1898. The illustration—which many took to be an actual photograph—showed an American battleship exploding, and bodies of American sailors and marines flying through the air. Up until now, there had been little or no support for going to war with Spain. That would now change.*

William Randolph Hearst was born in San Francisco in 1863 to wealthy parents. His father was a miner-turned-U.S. Senator, and his mother a former teacher. As a young boy, he toured Europe and studied at private New England schools, including Harvard University. After three years at Harvard, however, he was expelled.

Two years later in 1887, Hearst took over his father's newspaper, *The San Francisco Examiner*. He added forcefully-written editorials and dramatic illustrations to its pages. His paper was soon the most popular one in the city.

Hearst decided he was ready to take on a bigger market. He bought the *New York Journal*, determined to make it the number one newspaper in the city. He hired prominent writers and illustrators. He dropped the price of his newspaper to one cent, and filled the pages with headlines, images, and stories designed to sell—even if some were exaggerated or false. This earned his newspaper the label of “Yellow Journalism.” (The term “Yellow Journalism” referred to a comic strip in Hearst's publication called “The Yellow Kid.” The comic strip ink would often smear onto other parts of the page, prompting some to say that Hearst not only colored the comics, he also colored the news.)

In 1898, the *New York Journal* turned its attention to the brewing conflict between Cuba and Spain. Cubans were calling for independence from Spain, while Spain was sending Cuban rebels

to concentration camps. However, when one *Journal* correspondent arrived in Cuba, he was reported to have told Hearst that there was, in fact, no war for him to cover. Hearst reportedly replied, “You furnish the pictures; I'll furnish the war.”

There were indeed many instances of Spanish abuses. But the *Journal* reported on exaggerated incidents of “inhuman torture” and “Spanish cannibalism.” Headlines told of male Spanish officers strip-searching and assaulting American women, though these charges later proved false.

Several newspapers played a large role in shaping public opinion of these events. The Spanish-American War has been called the first “War of the Correspondents.” It was the first American war that was covered—and even encouraged—by the press. Sensational headlines and shocking images sold newspapers and generated support for America's involvement in the conflict.

While the sensational coverage saturated the country, the American battleship *U.S.S. Maine* was sent to Cuba to provide support for American citizens on the island. What would happen next would bring “Yellow Journalism” to a new level and clinch American entrance into the war.

The conflict between Spain and Cuba appeared to be ending. But on the night of February 15, 1898, the *U.S.S. Maine* mysteriously exploded. Many American sailors and marines were killed. The captain of the *Maine*, who survived the blast, noted that the Spanish were helpful in the aftermath of the tragedy. He wrote that crews from Spanish ships came to the aid of the *Maine*. He



explained, “The Spanish officers and crews did all that humanity and gallantry could compass.” The Captain’s account seems to contradict theories that the Spanish themselves caused the blast.

The Navy conducted an investigation into the cause of the disaster, but it never discovered who was responsible for the explosion. The *New York Journal*, however, did not believe proof was necessary. In its judgment, the Spanish were clearly responsible. The paper focused on the incident constantly, devoting up to eight pages a day on the subject. President McKinley asked Congress for authorization to intervene in Cuba on April 11, 1898. On the 17<sup>th</sup>, the headline of the *Journal* read, “*War? Sure!*” The following day, Congress voted to declare war.

Hearst went on to own a media empire. His journalistic practices, designed to boost circulation, did so. More Americans were reading the newspaper than ever before.

Some have argued that the practice of yellow journalism means that the press has “too much freedom” in the United States. The Founders saw a free press as one of the “bulwarks of liberty,” or a way to make sure government does not infringe on peoples’ rights. The First Amendment has been interpreted to mean that government cannot require newspapers and other media to obtain official approval for stories. This means that the press is responsible only to readers when it comes time to write and broadcast news.



## CRITICAL THINKING QUESTIONS

1. What is “Yellow Journalism”?
2. What happened to the *U.S.S. Maine*?
3. How did Hearst influence American involvement in the Spanish-American War?
4. The Supreme Court held in *New York Times v. Sullivan* (1964) that journalists cannot be punished for printing falsehoods unless they printed them knowing they were false, or if they acted with “reckless disregard” for the truth. With this standard in mind, do you believe Hearst’s newspaper accounts were, in fact, protected by the First Amendment?
5. Does the success of “Yellow Journalism” mean the press has too much freedom? Explain.

# LINCOLN AND THE CIVIL WAR

## TO FREE THE SLAVES

### CRITICAL ENGAGEMENT QUESTION

What was Lincoln's position on slavery during the Civil War?

### OVERVIEW

Historians continue to disagree about the proximate causes of the Civil War. No one, however, doubts that the existence and expansion of slavery played a key role in the secession movement and the resulting war between North and South. Though slavery was not central to Lincoln's publicly stated reasons for going to war, the significance of the slavery issue grew in importance as the conflict progressed. In this lesson, students will explore Lincoln's evolving official position on freedom and slavery during the Civil War.

*We hold these truths to be self-evident: that all men are created equal, that they are endowed by their creator with certain unalienable rights...*

—THOMAS JEFFERSON

*Fourscore and seven years ago our fathers brought forth on this continent a new nation, conceived in liberty and dedicated to the proposition that all men are created equal.*

—ABRAHAM LINCOLN



### MUSEUM CONNECTION

Help your students understand the ways Lincoln both expanded and limited freedom. Take your classes to the **What Are the Limits** exhibit and view the “Wartime” case study on Abraham Lincoln at the McCormick Tribune Freedom Museum ([www.FreedomMuseum.us](http://www.FreedomMuseum.us)).

**OBJECTIVES**

Students will:

- understand Lincoln's stated positions on slavery.
- analyze primary source documents for what they reveal about Lincoln's reasons for entering and continuing the Civil War.
- synthesize Lincoln's evolving position on the reasons for the Civil War.

**STANDARDS**

NCHS: Era 5, Standards 1 and 2

CCE: IID1, IIIA2, IIIB1, IIID1

NCSS: Strands 2, 3, 5, and 6

**STUDENT MATERIALS**

**Handout A:** Lincoln and the Civil War Background Essay

**Handout B:** Slavery Spectrum

**Handout C:** Document Excerpts

**Handout D:** Lincoln, Slavery, and the Civil War

**Freedom's Touchstones:** Clement Vallandigham (*optional*)

**TEACHER MATERIALS**

Answer Key

**GRADE LEVEL/TIME**

Two 45-minute high school classes or one 90-minute block

**BACKGROUND/HOMEWORK**

[10 minutes the day before]

Have students read **Handout A: Lincoln and the Civil War Background Essay**.

**WARM-UP**

[10-15 minutes]

- As students enter, distribute **Handout B: Slavery Spectrum**. Have students refer to **Handout A** to plot out Lincoln's position on a continuum between the two positions for each year between 1860 and 1865. Then have them connect the dots. Use an overhead of **Handout A** and ask for volunteer(s) to complete it.
- Go over answers as a large group, and conduct a large group discussion, asking students:
  - Why did Lincoln's position on slavery appear to change?
  - What factors may have influenced his position?
  - Do you think Lincoln's personal views ever changed? Why or why not?

**ACTIVITY I**

[30-40 minutes]

- Choose five students who are good readers and give them a copy of one of the documents from **Handout C: Document Excerpts**. Let them know their job will be to read the speech when they are called on.
- Call on the student with the Coopers Union Address to read it aloud. (Encourage students to read their speeches dramatically.) After the speech is presented, give students a few moments to complete only the first column on **Handout D: Lincoln, Slavery, and the Civil War**.
- Continue with the remaining speeches in chronological order, and have students complete their charts. Then go over responses as a large group.

**ACTIVITY II**

[30-40 minutes]

- Distribute **Handout B** so students can now read the speeches and documents they heard in the last activity. Have students work in pairs to complete the last three columns of **Handout D**.
- Using an overhead of **Handout D**, go over responses as a large group. Ask students to compare and contrast the documents:
  - What adjectives would they use to describe the various documents?
  - Which document was the most inspiring?



## LINCOLN AND THE CIVIL WAR

Throughout his career, Abraham Lincoln explained his beliefs about slavery in speeches and writings. From the time before his candidacy to his second inaugural address, Lincoln consistently expressed his personal disgust for slavery as well as his primary goal of preserving the Union.

### The Coopers Union Address (1860)

Abraham Lincoln had decided to run for president, but hadn't yet made those plans known to the public when he took the stage in front of 1500 people at the New York church. It was the most important speech of his career to that point. The speech was the Cooper's Union Address, and the year was 1860.

In this speech, Lincoln justified the Republican view of slavery—that Congress had the power to control slavery in new territories—as the view of the majority of the signers of the Constitution. Therefore, he concluded, the Republican Party's view was not new, but actually in agreement with the Founding Fathers' beliefs. Lincoln's speech excited the crowd and won him many supporters.

Immediately after Lincoln was elected President, seven southern states seceded from the Union. At his inaugural address, Lincoln explained that he had no plans to end slavery where it already existed, but that the southern states' secession was not acceptable. He hoped to preserve the Union while avoiding war. Just weeks later, however, shots were fired on Fort Sumter, marking the beginning of the Civil War. Over the next two months, four more states seceded from the Union.



**The Emancipation Proclamation declared the slaves within the rebellious states were “forever free.”**

### Lincoln's Letter to Horace Greeley (1862)

Many of Lincoln's critics in the north believed he was not doing enough to end slavery. One critic, Horace Greeley, owned a newspaper. Greeley wrote an open letter to Lincoln in his paper, saying he felt “sorely disappointed and deeply pained” by the president's policies, and charged that Lincoln was “strangely and disastrously remiss in the discharge of [his] official and imperative duty” of executing the law.

In the September 6, 1862 edition of *Harper's Weekly* magazine, President Lincoln answered Greeley and his critics and attempted to state his position

and intentions. His letter read in part, “My paramount object in this struggle is to save the Union, and is not either to save or to destroy slavery....[though] I intend no modification of my oft-expressed personal wish that all men every where could be free.”

### The Emancipation Proclamation and Gettysburg Address (1863)

As the War continued, President Lincoln issued the Emancipation Proclamation. Lincoln wrote this document in September of 1862—at the same time as the letter to Greeley—but did not issue it until January of 1863, as the nation entered the third year of Civil War. The Emancipation Proclamation declared the slaves within the rebellious states were “forever free.” The proclamation itself did not free any slaves, but with each military victory for the North, free territory was expanded. The Emancipation Proclamation as a war measure was also intended to keep England

## LINCOLN AND THE CIVIL WAR (CONT.)

from joining the war on the Confederate side. Historians note that it added moral force to the Union cause and transformed the war into a war for freedom.

The war continued, and Lincoln traveled to Gettysburg, Pennsylvania, for the dedication of a military ceremony. That November 1863 speech Lincoln gave in Gettysburg has become one of the most famous and beloved speeches in all of American history. In the short speech, known as the Gettysburg Address, Lincoln defined the war as a way of securing the Declaration of Independence's promise of equality of all people. Victory for the North, Lincoln said, was a way of making the country's founding ideals a reality. The speech transformed the meaning of the war and even the meaning of the nation's founding documents.

**Second Inaugural Address (1865)**

When Lincoln stood to address the nation in his second inaugural address on March 4, 1865, it was clear the Confederacy had begun to fall. In this speech, Lincoln named slavery as the cause of the war. He described the Civil War as God's punishment to a people—both North and South—who tolerated slavery: “wringing their bread from the sweat of other men’s faces.” An American journalist described the “roar of applause...like a sweeping wave upon the shore.” International observers said the speech had “a sacred and almost prophetic character” and called the speech “the noblest political document known to history.”

The same American journalist looked back on Lincoln's second inaugural address and noted that even as Lincoln inspired the crowd on a brilliant March day, he “was already standing in the shadow of death” Abraham Lincoln died just over a month later, on April 15, 1865, after being shot by a Confederate sympathizer.

## SLAVERY SPECTRUM

**Directions:** Using *Handout A*, plot out and graph how you believe Lincoln's position on slavery changed over time from 1860 to 1865 for both his personal opinions and official positions.

### LINCOLN'S PERSONAL VIEWS

1860

1863

1865

*My wish is to end slavery*

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**Neutral**

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*My wish is not to end slavery*

---



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### LINCOLN'S OFFICIAL POSITIONS

1860

1863

1865

*My goal is to end slavery*

---



---

**Neutral**

---



---

*My goal is not to end slavery*

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## DOCUMENT EXCERPTS

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**Directions:** Read the documents and complete the chart on *Handout D*.

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**Cooper's Union Address (1860)**

The sum of the whole is, that of our thirty-nine fathers who framed the original Constitution, twenty-one - a clear majority of the whole - certainly understood that no proper division of local from federal authority, nor any part of the Constitution, forbade the Federal Government to control slavery in the federal territories; while all the rest probably had the same understanding. Such, unquestionably, was the understanding of our fathers who framed the original Constitution...

Wrong as we think slavery is, we can yet afford to let it alone where it is, because that much is due to the necessity arising from its actual presence in the nation; but can we, while our votes will prevent it, allow it to spread into the National Territories, and to overrun us here in these Free States? If our sense of duty forbids this, then let us stand by our duty, fearlessly and effectively. Let us be diverted by none of those sophistical contrivances...such as groping for some middle ground between the right and the wrong...such as a policy of "don't care" on a question about which all true men do care...

Neither let us be slandered from our duty by false accusations against us, nor frightened from it by menaces of destruction to the Government nor of dungeons to ourselves. Let us have faith that right makes might, and in that faith, let us, to the end, dare to do our duty as we understand it.

**Open Letter to Horace Greeley (1862)**

Dear Sir,—I have just read your [letter] of the 19th, addressed to myself, through the New York *Tribune*. ... As to the policy I "seem to be pursuing," as you say, I have not meant to leave any one in doubt. I would save the Union. I would save it the shortest way under the Constitution. The sooner the national authority can be restored, the nearer the Union will be "the Union as it was."

If there be those who would not save the Union unless they could at the same time save slavery, I do not agree with them. If there be those who would not save the Union unless they could at the same time destroy slavery, I do not agree with them. My paramount object in this struggle is to save the Union, and is not either to save or to destroy slavery. If I could save the Union without freeing any slave I would do it, and if I could save it by freeing all the slaves I would do it. And if I could save it by freeing some and leaving others alone, I would also do that. What I do about slavery and the colored race I do because I believe it helps to save this Union. And what I forbear [leave alone], I forbear because I do not believe it would help to save the Union. I shall do less whenever I shall believe what I am doing hurts the cause; and I shall do more whenever I shall believe doing more will help the cause. I shall try to correct errors when shown to be errors, and I shall adopt new views so fast as they shall appear to be true views.

I have here stated my purpose according to my view of official duty; and I intend no modification of my oft-expressed personal wish that all men everywhere could be free.

## DOCUMENT EXCERPTS (CONT.)

**The Emancipation Proclamation (written September 1862, issued January 1863)**

...That on the first day of January, in the year of our Lord one thousand eight hundred and sixty-three, all persons held as slaves within any State or designated part of a State, the people whereof shall then be in rebellion against the United States, shall be then, thenceforward, and forever free; and the Executive Government of the United States, including the military and naval authority thereof, will recognize and maintain the freedom of such persons, and will do no act or acts to repress such persons, or any of them, in any efforts they may make for their actual freedom...

...and that the Executive government of the United States, including the military and naval authorities thereof, will recognize and maintain the freedom of said persons....

And upon this act, sincerely believed to be an act of justice, warranted by the Constitution, upon military necessity, I invoke the considerate judgment of mankind, and the gracious favor of Almighty God.

**The Gettysburg Address (September 1863)**

Fourscore and seven years ago our fathers brought forth on this continent a new nation, conceived in liberty and dedicated to the proposition that all men are created equal.

Now we are engaged in a great civil war, testing whether that nation or any nation so conceived and so dedicated can long endure. We are met on a great battlefield of that war. We have come to dedicate a portion of it as a final resting place for those who died here that the nation might live. This we may, in all propriety do. But in a larger sense, we cannot dedicate, we cannot consecrate, we cannot hallow this ground. The brave men, living and dead who struggled here have hallowed it far above our poor power to add or detract. The world will little note nor long remember what we say here, but it can never forget what they did here.

It is rather for us the living, we here be dedicated to the great task remaining before us--that from these honored dead we take increased devotion to that cause for which they here gave the last full measure of devotion--that we here highly resolve that these dead shall not have died in vain, that this nation shall have a new birth of freedom, and that government of the people, by the people, for the people shall not perish from the earth.

## DOCUMENT EXCERPTS (CONT.)

**Second Inaugural Address (1865)**

...One-eighth of the whole population were colored slaves, not distributed generally over the Union, but localized in the southern part of it. These slaves constituted a peculiar and powerful interest. All knew that this interest was somehow the cause of the war. To strengthen, perpetuate, and extend this interest was the object for which the insurgents would rend the Union even by war, while the Government claimed no right to do more than to restrict the territorial enlargement of it. Neither party expected for the war the magnitude or the duration which it has already attained. Neither anticipated that the cause of the conflict might cease with or even before the conflict itself should cease. Each looked for an easier triumph, and a result less fundamental and astounding. Both read the same Bible and pray to the same God, and each invokes His aid against the other. It may seem strange that any men should dare to ask a just God's assistance in wringing their bread from the sweat of other men's faces, but let us judge not, that we be not judged. The prayers of both could not be answered. That of neither has been answered fully. The Almighty has His own purposes. "Woe unto the world because of offenses; for it must needs be that offenses come, but woe to that man by whom the offense

cometh." If we shall suppose that American slavery is one of those offenses which, in the providence of God, must needs come, but which, having continued through His appointed time, He now wills to remove, and that He gives to both North and South this terrible war as the woe due to those by whom the offense came, shall we discern therein any departure from those divine attributes which the believers in a living God always ascribe to Him? Fondly do we hope, fervently do we pray, that this mighty scourge of war may speedily pass away. Yet, if God wills that it continue until all the wealth piled by the bondsman's two hundred and fifty years of unrequited toil shall be sunk, and until every drop of blood drawn with the lash shall be paid by another drawn with the sword, as was said three thousand years ago, so still it must be said "the judgments of the Lord are true and righteous altogether."

With malice toward none, with charity for all, with firmness in the right as God gives us to see the right, let us strive on to finish the work we are in, to bind up the nation's wounds, to care for him who shall have borne the battle and for his widow and his orphan, to do all which may achieve and cherish a just and lasting peace among ourselves and with all nations.

## LINCOLN, SLAVERY, AND THE CIVIL WAR

**Directions:** *As you listen to Lincoln's speeches and writings, fill in column A of the chart. Then, after reading each speech/document, complete the chart.*

A	B	C	D
Your initial reaction to hearing the speech/document	Paraphrase of Lincoln's main idea in this speech/document	Purpose of this speech/document	How does this speech/document reveal Lincoln's views of slavery?

1. Coopers Union  
Address (1860)

2. Letter to Horace  
Greeley (1862)

3. Emancipation  
Proclamation  
(1863)

4. Gettysburg  
Address (1863)

5. Second Inaugural  
Address (1865)

## CLEMENT VALLANDINGHAM

*The former Congressman stood before his audience in Ohio and, knowing what he was about to say could get him arrested, began to speak. "The men in power are attempting to establish a despotism in this country, more cruel and more oppressive than ever existed before...."*

*He condemned the Civil War effort. He condemned the Lincoln administration. He argued that the war was not meant to save the Union. Instead, he declared, it was intended to establish a despotic government, one that would free blacks and enslave whites. The federal government was refusing to acknowledge the states' rights to rule themselves. The federal government, he argued, had become a monarchy disguised. President Lincoln was "King Lincoln." He gave a stern warning: If the people of Ohio did not pay attention, he said, the government that had overstepped its authority with the southern states would do so again, this time with individuals just like them.*

An outspoken states' rights advocate who was also in favor of slavery, Clement Vallandingham was addressing his home crowd. A native of New Lisbon, Ohio, he was a successful lawyer and former state representative. After running for Congress twice and losing, he narrowly won a democratic seat in the U.S. House of Representatives in 1858. He was popular, and was reelected in 1860.

Vallandingham continued to oppose the federal military action against the southern states after the election of Abraham Lincoln as president in 1860. Soon, he became known as a "Copperhead," the derogatory term for northern Democrats who opposed Lincoln and supported immediate peace with the South. He was not reelected in 1862, a result many attributed to district gerrymandering (intentionally drawing district lines to concentrate votes for a particular candidate or party).

When Vallandingham first decided on the theme and content of his speech, he had expected to rally public support against the war. A month earlier, there would have been little the Lincoln administration could have done in response. In the meantime, however, the military governor of Ohio had issued General Order No. 38, which declared in part:

*"...All persons within our lines who commit acts for the benefit of the enemies of our country will be tried as spies or traitors, and if convicted will suffer death...The habit of declaring sympathy for the enemy will not be allowed...Persons committing such offenses will be at once arrested ...[or] sent beyond our lines into the lines of their friends..."*

Additionally, Abraham Lincoln asked his Secretary of War to issue a nationwide suspension of *habeas corpus*. The right to a *habeas corpus* petition means that prisoners have the freedom to question the lawfulness of their arrest. The suspension was meant to silence criticism of the newly instituted military draft, but local sheriffs were now able to determine who was being loyal or disloyal, and arrest them on that basis, regardless of their interference with the draft.

These laws were in effect at the time Vallandingham was considering giving his speech. He decided to deliver it as planned. It was his freedom, he declared, under "General Order No. 1, the Constitution!"

He was arrested one week after delivering his speech in Columbus.

The night of his arrest, troops escorted Vallandingham out of his house and into military



custody. The next day, he was charged with “declaring sympathy for the enemy” and “treasonable utterance.” The military court also denied his constitutional right to a writ of *habeas corpus*.

Vallandingham forcefully argued that the military court had no jurisdiction over him. He was a United States citizen. He had committed no crime against the Constitution. He issued the following statement from his cell:

“TO THE DEMOCRACY OF OHIO: I am here, in a military bastille for no other offense than my political opinions, and the defence of them and the rights of the people, and of your constitutional liberties. ...I am a Democrat; for Constitution; for law; for Union; for liberty; this is my only crime.”

In court, Vallandingham was convicted and sentenced to two years in military prison.

The government claimed that opposition speech during times of war posed a legitimate threat to the security of the United States. To many in the Lincoln administration, Vallandingham’s speech was not political expression worthy of constitutional protection. Those officials who believed it was a call to treason did everything in their power to suppress it.

Vallandingham, on the other hand, claimed that he had the freedom to express his views. He asserted that the government should protect that right under the supreme law of the land—the United States Constitution. He appealed his case to the United States Supreme Court.

In 1864, in *Ex Parte Vallandingham*, the Court unanimously refused to hear Vallandingham’s case, saying it had no jurisdiction to do so. One of the constitutional questions—can the government arrest and try civilians in a military court—remained unanswered. To quell the controversy and curb growing public support for the prisoner, President Lincoln commuted his sentence and set him free. Vallandingham was banished from the North and sent behind Confederate lines.

When he returned to his home state in 1864, he did not shy away from speaking out against the war, though his later bid for U.S. Senate also failed. President Lincoln and military officials decided to leave him alone this time. In the years following the Civil War, Clement Laird Vallandingham remained an influential member of the Democratic Party, exercising his free speech rights in support of Reconstruction. He died in Ohio in 1871.



## CRITICAL THINKING QUESTIONS

1. Why did Vallandingham speak out against the Lincoln administration?
2. How did the Lincoln administration respond?
3. Why do you think Lincoln commuted Vallandingham’s sentence in 1864?
4. In the section listing powers of Congress, the Constitution reads, “The privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.” Was Lincoln’s suspension of this privilege constitutional?
5. Does the fact that Vallandingham was in favor of slavery and worked to return escaped slaves to their masters change the significance of his fight for free

# VOTING RIGHTS

## FREEDOM FOR ALL?

### CRITICAL ENGAGEMENT QUESTION

How has the right to vote been expanded to various people since the Founding?

### OVERVIEW

The history of the amendments to the Constitution is, in one sense, a history of the expansion of certain political freedoms, including voting. Almost a third of the amendments added to the Constitution after the Bill of Rights was ratified concern the ability to vote. In this lesson, students will focus on the suffrage amendments: the Fifteenth, Nineteenth, Twenty-third, Twenty-fourth and Twenty-sixth Amendments, and determine how each increased political freedom for a great number of individuals.

*The doctrine of representation is a large subject, and it is certain that it ought to be extended as far as wisdom and policy can allow; nor do I see that either of these forbid widows having property from voting, notwithstanding it has never been the practice either here or in England.*

—RICHARD HENRY LEE

*A vote is the best way of getting the kind of country and the kind of world you want.*

—HARRY S. TRUMAN



### MUSEUM CONNECTION

Help your students understand how political rights have been extended since the Founding. Take your class to the **Freedom for All** exhibit and view the “End to Slavery” and “Votes for Women” kiosks at the McCormick Tribune Freedom Museum ([www.FreedomMuseum.us](http://www.FreedomMuseum.us)).

**OBJECTIVES**

Students will:

- explain the Fifteenth, Nineteenth, Twenty-third, Twenty-fourth and Twenty-sixth Amendments.
- distinguish between natural rights and political rights.
- understand the expansion of the right to vote through American history.
- appreciate the contributions of Frederick Douglass, Elizabeth Cady Stanton, Sojourner Truth, and Fannie Lou Hamer to their country.

**STANDARDS**

NCHS: Era 4, Standard 3; Era 5, Standard 3; Era 7, Standard 1; Era 9, Standard 1  
 CCE: IIC1, IIID1, VB2, VD1, VE1  
 NCSS: Strands 2, 5, 6, and 10

**STUDENT MATERIALS**

**Handout A:** Voting Rights Background Essay

**Handout B:** The Suffrage Amendments

**Handout C:** Freedom for All  
**Freedom's Touchstones:** Alice Paul (*optional*)

**TEACHER MATERIALS**

Answer Key

**GRADE LEVEL/TIME**

Two 45-minute high school classes or one 90-minute block

**BACKGROUND/HOMEWORK**

[10 minutes the day before]

Have students read **Handout A: Voting Rights Background Essay**.

**WARM-UP**

[10-15 minutes]

- A. Write the following quotation on the board and have students write a one-paragraph response.

*Suffrage is the pivotal right.* –Susan B. Anthony

- B. Have students share their responses and discuss as a large group. What does Anthony mean by “pivotal”? Do students agree or disagree with the statement?

**ACTIVITY I**

[30-40 minutes]

- A. Ask students to list the groups of people who have struggled for voting rights through American history, and make a list of responses on the board.
- B. Distribute **Handout B: The Suffrage Amendments** and have students work in pairs to complete the chart using **Handout A**, their textbooks, and/or computers with Internet access.
- C. Using an overhead of **Handout B**, go over responses to the chart as a class.

**ACTIVITY II**

[30-40 minutes]

- A. Ask students to brainstorm the characteristics of each group, and to compare and contrast them. For example, what did abolitionists have in common for those working for women's rights? How has Native Americans' struggle for voting rights differed from the struggles of other groups?
- B. Distribute **Handout C: Freedom for All**. Have students complete the diagram with information from class discussion and **Handouts A and B**.
- C. Reconvene the class and conduct a large group discussion on the expansion of voting rights through history. Questions for discussion:
- How do political rights, such as voting, differ from natural rights?
  - Why have so many groups had to fight for the right to vote?
  - For each group, what was the most important success in the fight for voting rights? What actions led to those successes?



## VOTING RIGHTS

When the United States was founded, only adult males who owned property could vote. The history of the amendments to the Constitution is, in one sense, a history of the expansion of certain political rights, including voting.

The Founders saw governments as existing to protect natural (or “inalienable”) rights. Natural rights are rights people are born with, and which can be exercised without anyone else taking any action. Examples are freedom of speech and freedom of religious belief. Political rights, such as voting, require positive action on the part of others – if you have a right to vote, then someone else must have the obligation to set up a polling place, count the votes, and do other things to secure that ability.

Many believe they have a constitutional right to vote in our democratic republic, but there is actually no such right listed in the Constitution. Rather, several amendments to the Constitution list conditions that the states cannot use to stop people from voting.

The Constitution may one day be amended to guarantee the right to vote, but the current document only says what the government cannot do to “deny or abridge” your rights.

### Former Male Slaves/African American Men: The Fifteenth Amendment

Many of the individuals who fought against the institution of slavery were among those who supported voting rights for former slaves. Frederick Douglass, an influential writer and lecturer who was also a former slave, believed

that full equality could not come without the right to vote. He asked President Lincoln to fight for abolition, and he worked to recruit blacks to fight for the Union during the Civil War.

The Fourteenth Amendment was ratified after the war, and provided that no state could deny equal protection of the law to its citizens. But many former slaves were still turned away when they tried to vote. The Fifteenth Amendment was written to clearly ban the denial of voting rights to former slaves. Ratified in 1870, it barred states from stopping people from voting on the basis of “race, color, or previous condition of servitude.”

Though former slaves could not constitutionally be barred from voting, many blacks who attempted to register to vote often faced harassment and violence. Fannie Lou Hamer, an African American woman from Mississippi, worked on voter registration drives in the mid-twentieth century. Guards at Montgomery County Jail

beat her and fellow civil rights workers when she tried to register to vote in 1963. She spoke out at the Democratic presidential convention about people being illegally prevented from voting. A year later in 1965, President Johnson signed the Voting Rights Act into law, which many see as a fulfillment of the Fifteenth Amendment’s promise.

### Women and the Seneca Falls Convention: The Nineteenth Amendment

The first American women’s rights convention was held in 1848 in Seneca Fall, New York. It was organized by Elizabeth Cady Stanton, Lucretia Mott, and others. Frederick Douglass and Sojourner Truth were among the 300 people in attendance.

**Many believe they have a constitutional right to vote in our democratic republic, but there is actually no such right listed in the Constitution.**

## VOTING RIGHTS (CONT.)

The delegates signed the Declaration of Sentiments and Resolutions, which used the same wording as the Declaration of Independence, to list the ways women had been deprived of equal rights, including “the inalienable right to the elective franchise.” The Declaration of Sentiments and Resolutions was signed by 100 people, including thirty-two men.

Women suffragists continued to campaign for the vote and other rights for the next eighty years. During that time, many states approved votes for women at the state level. After the Nineteenth Amendment was ratified in 1920, states could not stop people from voting because they were female.

### Native Americans

No constitutional amendment secures the right to vote for Native Americans. Through American history, many states imposed severe restrictions on the ability of Native Americans to vote. Many states passed laws that excluded those Native Americans living in traditional American Indian culture, requiring that voters prove that they were “civilized.”

In other cases, laws that appeared fair on their face—requiring voters to be citizens, for example—had the intended result of stopping Native Americans from voting, as they were not granted citizenship rights until 1924 when

Congress passed the Indian Citizenship Act. After this law was passed, many states imposed other restrictions meant to keep Native Americans from voting. The last state to grant voting rights to Native Americans did so in 1947.

The 1965 Voting Rights Act was amended in 1975 and 1982 to include federal protections for Native Americans.

### Washington, DC, Poll Taxes, and Eighteen to Twenty-One Year Olds

When the District of Columbia was established, it was planned to serve merely as a seat of government. By the twentieth century, however, its population was greater than those of several states. The Twenty-third Amendment gave the right to vote in national elections to residents of Washington, D.C. It did not, however, make the District of Columbia into a state.

The Twenty-fourth Amendment prohibited states from stopping people who could not pay a poll tax from voting. Poll taxes had historically been used to keep poor African Americans from voting.

Finally, the Twenty-sixth Amendment lowered the voting age from twenty-one to eighteen years of age. This amendment came during the Vietnam War in response to the objection that eighteen-year-old men were being drafted into the military, yet had no right to vote.

## THE SUFFRAGE AMENDMENTS

**Directions:** Read the following amendments to the Constitution and paraphrase each.

### Amendment XV (1870)

Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude.

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President, to be electors appointed by a state; and they shall meet in the District and perform such duties as provided by the twelfth article of amendment.

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### Amendment XIX (1920)

Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of sex.

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### Amendment XXIV (1964)

Section 1. The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any state by reason of failure to pay any poll tax or other tax.

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### Amendment XXIII (1961)

Section 1. The District constituting the seat of government of the United States shall appoint in such manner as the Congress may direct:

A number of electors of President and Vice President equal to the whole number of Senators and Representatives in Congress to which the District would be entitled if it were a state, but in no event more than the least populous state; they shall be in addition to those appointed by the states, but they shall be considered, for the purposes of the election of President and Vice

### Amendment XXVI (1971)

Section 1. The right of citizens of the United States, who are 18 years of age or older, to vote, shall not be denied or abridged by the United States or any state on account of age.

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## FREEDOM FOR ALL

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Directions: *Using your textbooks or Internet resources, research each group's efforts to secure voting rights and summarize your findings on the chart.*

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**Group****Additional information from research**

1. Former male slaves/  
African American men

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2. Women

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3. District of Columbia

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4. Native Americans

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5. 18-21 year olds

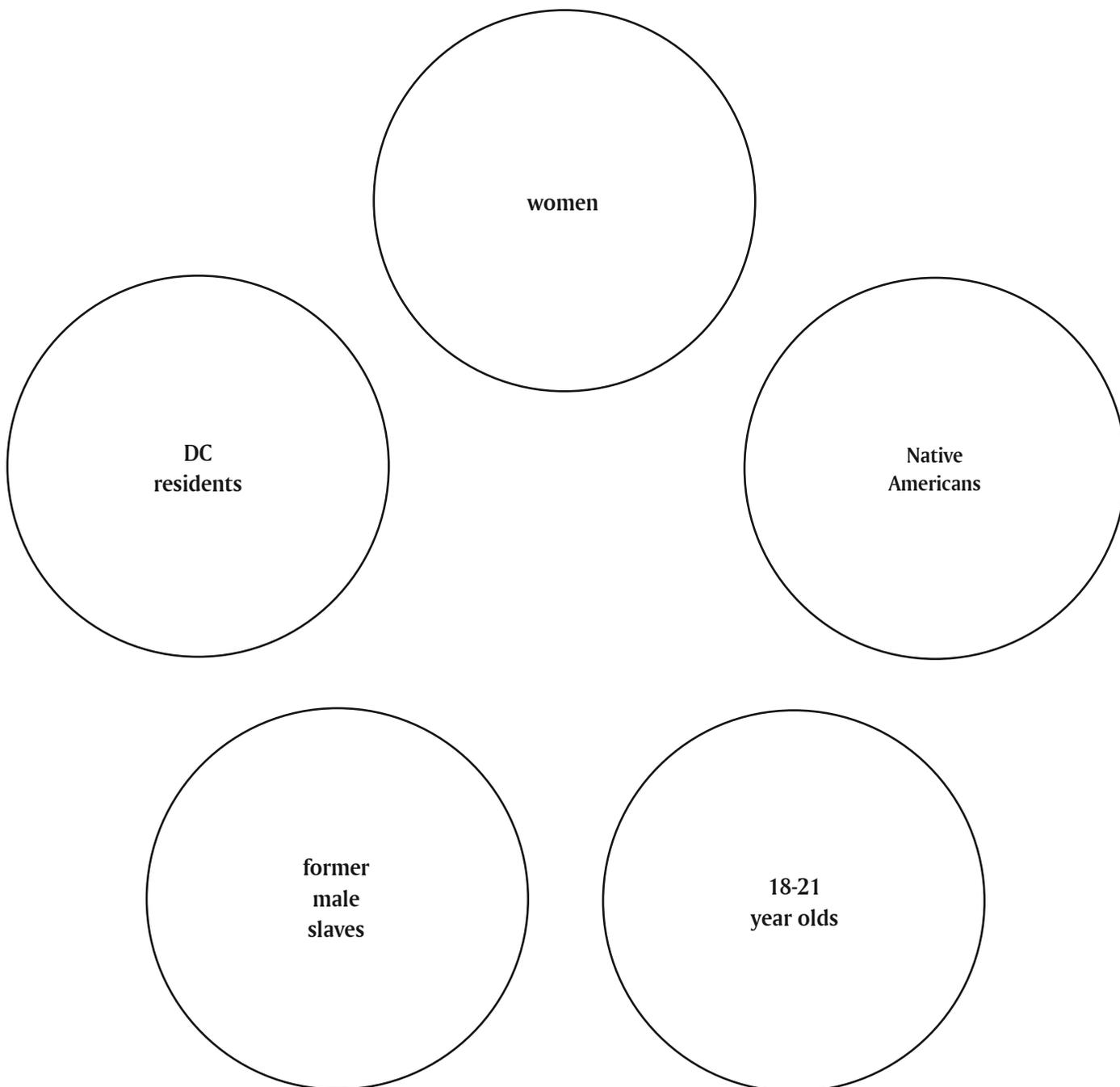
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## FREEDOM FOR ALL (CONT.)

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Directions: *Fill in each circle with information about each group. Then draw lines linking groups with common characteristics and methods. Briefly explain each connection on the line you draw.*

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## ALICE PAUL

*"I resorted to the hunger strike method twice. ...When the forcible feeding was ordered, I was taken from my bed, carried to another room and forced into a chair, bound with sheets and sat upon bodily by a fat murderer, whose duty it was to keep me still. Then the prison doctor...placed a rubber tube up my nostrils and pumped liquid food through it into the stomach. Twice a day for a month... this was done."*

*This is how Alice Paul, a women's suffragist, described her experience in a British prison.*

Alice Paul was born in 1885 on a New Jersey farm. Her parents encouraged her love of learning, and her mother often brought her along to women's suffrage meetings. Paul attended prestigious universities and earned a master's degree in sociology. In 1907, Paul moved to England where she continued her studies in economics and political science.

While in England, Paul joined a group working to win voting rights for women in Britain. She was arrested three times while attending demonstrations. In prison, Paul and her fellow activists began hunger strikes to bring attention to their imprisonment. British authorities force-fed the women by putting tubes down their through their nostrils. They would often vomit through the violent process.

When Paul came back to the U.S. in 1910, she turned her attention to the fight for women's suffrage in America. She wrote her Ph.D. dissertation on the legal position of women in Pennsylvania. She joined the National American Woman Suffrage Association (NAWSA) and chaired the committee working for a federal amendment, but by that time the NAWSA had all but given up on a federal amendment and was instead focusing efforts on the state level.

Paul saw Woodrow Wilson's upcoming presidential inauguration as an opportunity to bring national attention to the cause of voting rights for women. She organized a parade to coincide with the inaugural parade. The parade was a historic spectacle with more than twenty floats and over 5,000 marchers.

The parade was not without its challenges. Paul recalled years later: "We did hear a lot of shouted insults... the usual things about why aren't you home in the kitchen where you belong." Other men shoved and tripped the marchers, while police did little to assist. One hundred marchers were taken to the hospital.

Paul went to the White House two weeks after the parade to talk to Wilson. The President promised to give the idea of voting rights for women his "most careful consideration," but this promise did little to satisfy Paul and the suffragists.

Paul soon grew frustrated by NAWSA, finding the group's efforts to be disorganized and inadequate, and in 1913 founded her own suffrage organization. It would be called the National Woman's Party. Noting that she did not look at all like a political agitator, the *Chicago Tribune* described her as a "delicate slip of a girl." But "Miss Paul," as she preferred to be called, was in fact an agitator of the most effective kind.

Paul began to organize demonstrations and parades in support of women's suffrage. She wrote and distributed leaflets, and she organized daily pickets in front of the White House. The picket signs addressed Wilson directly and used his own



words to make their case, “Mr. President, you say liberty is the fundamental demand of the human spirit,” and “Mr. President, how long must women wait for liberty?” Demonstrators burned Wilson’s copies of his speeches, calling them “meaningless words” on democracy. They even burned an effigy of Wilson at the White House gates.

Unlike NAWSA, Paul’s party did not suspend their efforts during World War I. They believed World War I made women’s suffrage even more vital. The war was being fought “so that democracies may be safe,” as Wilson said, but the suffragists claimed the United States was itself not a democracy, as twenty million women were without the means for self-government.

Growing frustrated, police announced that picketers would be given six months in prison. The next day, October 17, 1917, Paul defiantly led a march to the White House. The marchers, including Paul, were sentenced to six months in jail.

During her sentence in Virginia, Paul was placed in solitary confinement. Her diet of bread and water weakened her so much that she was taken to the prison hospital. But instead of eating more,

Paul decided to use the strategy she’d learned in England eight years before: a hunger strike. Just as the British had done, prison officials force-fed Paul to prevent her from dying and becoming a martyr for the cause. Paul wrote to a friend of her experience during the force feeding, describing the constant “cries and shrieks and moans.” She would later explain that the form of non-violent protest was “the strongest weapon left with which to continue... our battle.”

Paul’s actions alienated some who believed the women’s suffragists were becoming too militant. On the other hand, Paul and the 500 others who were arrested for speaking, publishing, peaceably assembling, and petitioning became known as political prisoners, which mobilized their cause. Wilson eventually acknowledged public opinion and ordered the suffragists released from prison.

Paul’s efforts, coupled with NAWSA’s newly focused and effective strategy of lobbying on the local, state, and federal levels, had led the suffragists to victory. Wilson lent his support to the Women’s Suffrage Amendment in January of 1918. Congress approved it within a year and it was ratified by the states in 1920.



## CRITICAL THINKING QUESTIONS

1. Why was Alice Paul arrested in London?
2. Why do you think she decided to go on a hunger strike?
3. How did Paul’s National Woman’s Party work for women’s suffrage?
4. Paul’s militant actions alienated some people. Why do you think Paul chose to continue them?
5. If you were writing a eulogy for Alice Paul, what would you say? How should Paul’s efforts on behalf of women’s suffrage be remembered?

# BALANCING LIBERTY AND SECURITY

## CRITICAL ENGAGEMENT QUESTION

Is it ever necessary to violate the Constitution in order to preserve the Constitution?

## OVERVIEW

Since the Founding, American government has served two important purposes: protecting individual rights and protecting the safety of the people. In times of crisis, some debate whether and how government can adequately perform both of these roles simultaneously. Considering events in United States history that have provoked extraordinary security provisions, students will evaluate the constitutionality of such provisions from the early republic through the twentieth century.

*The liberty of speaking and writing guards our other liberties.*

—THOMAS JEFFERSON

*It has long been a grave question whether any government, not too strong for the liberties of its people, can be strong enough to maintain its existence in great emergencies*

—ABRAHAM LINCOLN



## MUSEUM CONNECTION

Help your students learn more about historical challenges of balancing liberty and security while maintaining freedom. Take your class to the **What Are the Limits** exhibit and learn about the “Wartime” case studies at the McCormick Tribune Freedom Museum ([www.FreedomMuseum.us](http://www.FreedomMuseum.us)).

## OBJECTIVES

Students will:

- understand constitutional provisions for times of crisis.
- understand historical periods when constitutional liberties have been suspended in times of crisis.
- analyze the Constitution and Bill of Rights as they apply to security issues.
- evaluate contradictory points of view concerning liberty and security.
- appreciate the complexity of preserving national security and freedom simultaneously.

## STANDARDS

NCHS: Era 3, Standard 3; Era 9, Standard 4  
 CCE: IA1, IIA3, VB1, VB2, VB5  
 NCSS: Strands 2, 6, and 10

## STUDENT MATERIALS

**Handout A:** Balancing Liberty and Security Background Essay  
**Handout B:** Avoiding War with France  
**Handout C:** President Lincoln and *Habeas Corpus*  
**Handout D:** Sedition during World War I  
**Handout E:** Japanese Internment Camps  
**Freedom's Touchstones:** Daniel Ellsberg (*optional*)

## TEACHER MATERIALS

**Transparency Master A:** Focus Questions  
**Answer Key**

## GRADE LEVEL/TIME

Two 45-minute high school classes or one 90-minute block

## BACKGROUND/HOMEWORK

[10 minutes the day before]

Have students read **Handout A: Balancing Liberty and Security Background Essay**.

## WARM-UP

[10-15 minutes]

- Put up an overhead of **Transparency Master A: Focus Questions** and conduct a large group discussion. *See the Answer Key for suggested responses.*
- Ask students to brainstorm instances in American history when the government has had to balance liberty and security. Make a list on the board of student responses. *In addition to the answers students generate, you may wish to add: Avoiding war with France in 1798, the Civil War, World War I, World War II, the Iraq War, and the War on Terror.*

## ACTIVITY I

[20 minutes]

- Divide students into groups of four and distribute **Handout B: Avoiding War with France**, **Handout C: President Lincoln and Habeas Corpus**, **Handout D: Sedition during World War I**, and **Handout E: Japanese Internment Camps** to students of each group. Have students read their document and answer the questions on the Handout.
- Have students pair up within their groups for a mini-debate. One pair should take the position that the security law, instruction, or order described was a constitutional measure. The other pair should argue the side that the security law, instruction, or order described was an unconstitutional infringement of liberty.
- Students should consider the questions:
  - Why did the government act to limit rights under these circumstances?
  - Does the government have the power to limit or even curtail the rights covered by the Bill of Rights?

## ACTIVITY II

[30-40 minutes]

- Arrange the classroom to feature a set of four desks facing each other at the front of the room.
- Ask for volunteers from the 1798 Alien and Sedition Acts groups to come to the front of the class and debate the constitutionality of the Act. Have students debate for about five minutes, and then open the floor to questions from the class.
- Proceed with the Civil War groups, the Sedition Act of 1918 groups, and finally the World War II groups.

- D. After all groups have presented, ask students to share their impressions on the complexities of balancing liberty and security. Conduct a large group discussion to answer the questions:
- In what cases did the president initially limit rights? (*The Civil War, World War II*)
  - In which cases did Congress limit rights? (*1798, World War I*)
  - If the federal government should have extraordinary powers during a crisis, what type of governmental system should be put in place to protect against tyranny and despotism? Explain.
  - Or, if the federal government does not have any extra powers, how can the government adequately provide security? Explain.
  - Should the government ever violate the Constitution to preserve the Constitution?

## HOMEWORK

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- A. Have students read **Freedom's Touchstones: Daniel Ellsberg** and answer the critical thinking questions.
- B. Have students write a new amendment to the Constitution, specifying what powers the government has (if any) to suspend freedom in wartime. Students should consider the War on Terror when drafting their amendments. Amendments should:
- explain what defines a national crisis: a declared war, any war, an invasion, a rebellion, a riot, a natural disaster, an environmental threat, an economic threat, etc.
  - explain the procedure of how the federal government will take emergency power.
  - specify who will make the decisions: the president, Congress, the Supreme Court, a combination of the three, etc.



EXTENSIONS

- A. Have students research the cases below and summarize the way each decision defined the balance between free speech and national security. Students can begin their research at [www.BilloRightsInstitute.org](http://www.BilloRightsInstitute.org)

*Schenck v. United States* (1919)  
*Debs v. United States* (1919)  
*Abrams v. United States* (1919)  
*Gitlow v. People of New York* (1925)

- B. Have students research the Supreme Court case *Hamdi v. Rumsfeld* (2004). In a one- to two-page essay, have them summarize the facts of the case and the Court’s decision, and then present their opinion on the ruling.
- C. Have students research individuals who were impacted by the measures and laws in this lesson. For example, students could research Matthew Lyon, John Merryman, Eugene V. Debs, and Mary Tsukamoto. Have them share what they learned with the class in a PowerPoint or other visual presentation.



**REAL LIFE PORTAL**



Have students research the USA-PATRIOT Act and write a one-page essay answering the following questions: What is the USA-PATRIOT Act? What are popular criticisms and defenses of it? Are the surveillance authorities granted to the government in sections 213, 214, 215, and 218 constitutional? Why or why not? The PATRIOT Act can be found at <http://news.findlaw.com/cnn/docs/terrorism/hr3162.pdf>



## BALANCING LIBERTY AND SECURITY

There have been times in U.S. History when the federal government has limited or suspended constitutionally protected freedoms. In wartime in particular, the government has placed limits on liberty.

**1798: Avoiding War with France**

Sedition is speech that incites disloyalty or hatred of the government. The Sedition Act of 1798 was passed by the Federalist-controlled Congress in 1798 and signed into law by President John Adams. The law made it a crime to criticize the government.

The new nation seemed on the brink of war. An undeclared naval war (or “quasi-war,” as it was called,) was already in progress in 1797 as the French seized over 300 American ships. Federalists were calling for a formal declaration of war with France. Republicans, on the other hand, were urging support for France against the British and did not want the United States to be involved.

President John Adams, against the wishes of many within his Federalist party, wanted to avoid a formal declaration of war. The Sedition Act of 1798 was designed to silence Republican critics of his administration and to quiet support for the French in their war with England. Twenty-four journalists were arrested, and ten were convicted under the Sedition Act. The United States remained out of the war between France and England, which was one of Adams’s goals. The law was allowed to expire by the Republican-controlled Congress in 1801.



**Nearly two centuries after the ratification of the Bill of Rights, the Supreme Court reaffirmed the Founders’ vision**

**1861: The Civil War**

President Lincoln, believing that the very existence of the United States was in jeopardy, suspended writs of *habeas corpus* during the Civil War. A writ of *habeas corpus* requires that the government bring the arrested person to court—literally, “you shall have the body to be subjected to examination.” (from the Latin *habeas corpus ad subjiciendum*)

John Merryman was arrested for opposing the United States government. He was also charged with communication with the Confederates and with treason. Merryman wanted to be removed from prison and charged in open civilian court, hoping to secure his freedom.

The case, *Ex Parte Merryman* (1861), came before the Supreme Court. Chief Justice Roger Taney’s strongly worded opinion asserted that by suspending writs of *habeas corpus*, Lincoln was wrongly assuming power that belonged to Congress. He believed that Lincoln was violating the Constitution’s provisions, guarantees, and checks and balances.

**1918: World War I**

As the United States entered World War I, President Wilson believed that the Central Powers and its sympathizers in the United States were spying on the United States. The Espionage Act of 1917 was passed two months after the U.S. went to war with Germany. The protections of First Amendment freedoms would be suspended due to the national emergency.

## BALANCING LIBERTY AND SECURITY (CONT.)

The Sedition Act of 1918 (which amended the Espionage Act) targeted those who interfered with the draft as well as those individuals who publicly criticized the government—including negative comments about the flag, military, or Constitution.

More than 2,000 people were prosecuted under the Sedition Act of 1918, though many were later pardoned or had their sentences commuted. The Espionage and Sedition Acts were repealed in 1921.

### 1942: World War II

On December 8, 1941, the day after Japan attacked Pearl Harbor, bringing the United States into World War II, the Treasury Department seized all Japanese banks and businesses in the United States. It gave the Federal Reserve authority over Japanese-Americans' property.

More government restrictions followed, including Executive Orders 9066 and 9102. These orders authorized “military areas” and a “war relocation authority” to round up Japanese-Americans. These people—many of them U.S. citizens—would be sent to camps within the military areas for the rest of the war. Over 100,000 were moved to the camps by the time the war was over.

The 1948 Japanese-Americans Claims Act allowed camp detainees to receive compensation for their losses. The government received \$131 million in claims, and paid \$38 million to settle them. In 1988, President Reagan signed the Civil Liberties Act, which gave \$20,000 in reparations to camp detainees, as well as an apology for their losses of liberty and property.

## FOCUS QUESTIONS

1. Consider the word “security.” What definitions and what issues come to your mind?
2. Consider the word “liberty.” What definitions and what issues come to your mind?
3. What kinds of liberty are there? Do your parents or does your school ever restrict liberty in the name of security? How?
4. Describe the amount of security that a nation needs.
5. What liberties, if any, are you willing to give up in exchange for greater security?

## AVOIDING WAR WITH FRANCE

**Directions:** Read the following documents carefully and then answer the questions below.

**The First Amendment (1791)**

Congress shall make no law...abridging the freedom of speech, or of the press...

**The Sedition Act (1798)**

*SEC. 2. And be it further enacted, That if any person shall write, print, utter or publish, or shall cause or procure to be written, printed, uttered or published, or shall knowingly and willingly assist or aid in writing, printing, uttering or publishing any false, scandalous and **malicious** writing or writings against the government of the United States, or either house of the Congress of the United States, or the President of the United States, with intent to **defame** the said government, or either house of the said Congress, or the said President, or to bring them, or either of them, into contempt or disrepute; or to excite against them, or either or any of them, the hatred of the good people of the United States, or to stir up **sedition** within the United States, or to excite any unlawful combinations therein, for opposing or resisting any law of the United States, or any act of the President...or defeat any such law or act, or to aid, encourage or abet any hostile designs of any foreign nation against United States, their people or government, then such person...shall be punished by a fine not exceeding two thousand dollars, and by imprisonment not exceeding two years....*

1. When was The Sedition Act written?
2. What was the purpose of The Sedition Act?
3. Definitions of bolded vocabulary words:
4. What individuals or groups were most affected by the provisions of this document?
5. Do the Sedition Act's provisions abridge any of the Constitution's or Bill of Rights's protections? If so, which ones?
6. How did the Sedition Act attempt to balance liberty and security? (Did it?)

PRESIDENT LINCOLN AND *HABEAS CORPUS*

**Directions:** Read the following documents carefully and then answer the questions below.

**Sections of the United States Constitution (1787)**

**Article I, Section 8.** The Congress shall have power to ...provide for the common defense and general welfare of the United States...

**Article I, Section 9.** ... The privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

**President Lincoln's instructions to the Commanding General Army of the United States: (1861)**

"You are engaged in repressing an **insurrection** against the laws of the United States. If at any point on or in the **vicinity** of the military line...you find resistance which renders it necessary to suspend the writ of *habeas corpus* for the public safety, you personally or through the officer in command at the point where resistance occurs are authorized to suspend that writ."

1. When did Lincoln give these instructions?
2. What was the purpose of these instructions?
3. Definitions of bolded vocabulary words:
4. What individuals or groups were most affected by the provisions of these instructions?
5. Do the provisions of these instructions abridge any of the Constitution's or Bill of Rights's protections? If so, which ones?
6. How did this document attempt to balance liberty and security? (Did it?)

## SEDITION DURING WORLD WAR I

**Directions:** Read the following documents carefully and then answer the questions below.

**The First Amendment (1791)**

Congress shall make no law...abridging the freedom of speech, or of the press...

**The Sedition Act (1918)**

SECTION 3. Whoever, when the United States is at war, shall willfully make or **convey** false reports or false statements with intent to interfere with the operation or success of the military or naval forces of the United States, or to promote the success of its enemies, or shall willfully make or convey false reports, or false statements, ...or **incite insubordination**, disloyalty, mutiny, or refusal of duty, in the military or naval forces of the United States, or shall willfully obstruct ...the recruiting or enlistment service of the United States, or ...shall willfully utter, print, write, or publish any disloyal, profane, **scurrilous**, or abusive language about the form of government of the United States, or the Constitution of the United States, or the military or naval forces of the United States ...or shall willfully display the flag of any foreign enemy, or shall willfully ...urge, incite, or advocate any **curtailment** of production ...or advocate, teach, defend, or suggest the doing of any of the acts or things in this section enumerated and whoever shall by word or act support or favor the cause of any country with which the United States is at war or by word or act oppose the cause of the United States therein, shall be punished by a fine of not more than \$10,000 or imprisonment for not more than 20 years, or both...

1. When was the Sedition Act written?
2. What was the purpose of the Sedition Act?
3. Definitions of bolded vocabulary words:
4. What individuals or groups were most affected by the provisions of this document?
5. Do the Sedition Act's provisions abridge any of the Constitution's or Bill of Rights's protections? If so, which ones?
6. How did the Sedition Act attempt to balance liberty and security? (Did it?)

## JAPANESE INTERNMENT CAMPS

**Directions:** Read the following documents carefully and then answer the questions below.

**The Fifth Amendment (1791)**

No person shall be ...deprived of life, liberty, or property, without due process of law...

**Executive Order No. 9102 –  
March 18, 1942**

...[I]n the interests of national security, it is ordered as follows...The Director of the War Relocation Authority is authorized and directed to **formulate** and **effectuate** a program for the removal, from areas designated from time to time by the Secretary of War or appropriate military commander under the authority of Executive Order No. 9066 of February 19, 1942, of the persons or classes of persons designated under such Executive Order, and for their relocation, maintenance, and supervision....

**Executive Order No. 9066 –  
February 19, 1942**

Whereas the successful prosecution of the war requires every possible protection against **espionage** and against **sabotage**...

...I hereby authorize and direct the Secretary of War...to **prescribe** military areas in such places and of such extent as he or the appropriate Military Commander may determine, from which any or all persons may be excluded, and with respect to which, the right of any person to enter, remain in, or leave shall be subject to whatever restrictions the Secretary of War or the appropriate Military Commander may impose in his **discretion**. The Secretary of War is hereby authorized to provide for residents of any such area who are excluded therefrom, such transportation, food, shelter, and other accommodations as may be necessary...for the conduct and control of alien enemies...

1. When were these documents written?
2. What was the purpose of these documents ?
3. Definitions of bolded vocabulary words:
4. What individuals or groups were most affected by the provisions of these documents?
5. Do the provisions of these documents abridge any of the Constitution's or Bill of Rights's protections? If so, which ones?
6. How do these documents attempt to balance liberty and security? (Did it?)



## DANIEL ELLSBERG

*It was the middle of the night in Washington, D.C. The year was 1971. Not daring to turn lights on, the government analyst stood in the darkness, listening to the rhythmic hum of the photocopier. He fed pages and pages of classified documents into the machine. These 7,000 pages Daniel Ellsberg illegally copied revealed damaging information*

*about the government's actions in the Vietnam War. They would become known as the "Pentagon Papers" and their publication in newspapers around the country would spark a clash between the powers of government and the most respected newspapers in the country. At the center of this battle was the meaning of the First Amendment.*

Daniel Ellsberg's interests as a Ph.D. student at Harvard had been economics and decision-making. He served in the Marine Corps, and did consulting work for the federal government. In 1962, the State Department hired him to study government decision-making in times of crisis. As part of his work, Ellsberg had access to top-secret documents.

In 1964, Ellsberg began to focus on the Vietnam War. He began to "immerse himself" in the telegrams and cables that were being sent constantly. He began to see signs of government deception. He even observed the substantial fabrication of a battle, the Gulf of Tonkin incident. President Johnson then used that exaggerated battle to ask Congress for official support of the war.

Ellsberg continued in his position, all the while hearing the differences between what the President was telling the public, and the truth he read in the telegrams, cables, and other documents. He explained, "The public [was]

being lied to every day by the president, by his spokespeople, by his officers."

As part of a large team, Ellsberg worked on a study totaling more than 7,000 pages of top-secret documents related to the war. They were kept in safes at the Pentagon and became the Pentagon Papers.

When Richard Nixon was elected president in 1968, Ellsberg saw the same type of gap between the reality of the war and what the president was telling the public. Ellsberg had to decide what action, if any, to take. He could go public with what he knew, convince a member of Congress to go public for him, or do nothing.

Ellsberg knew that security procedures exist to keep the nation safe. Exposing government deception during a time of crisis might decrease citizens' confidence in their leaders and make a difficult time even more unstable. Revealing past strategies might give Vietnam an advantage in the war. Further, revealing the classified information would mean breaking his oath to keep the information secret. On the other hand, the Papers revealed only the history of the war, and proved nothing about then-President Nixon's intentions or future course.

Ellsberg decided that in this case, the balance between liberty and security must turn in the peoples' favor. He gave the papers to the *New York Times*. Then he and his wife went into hiding.

The *Times* began printing excerpts from the Pentagon Papers on June 13, 1971. The federal government got a court order stopping the *Times* from printing any more of the documents. This was the first time in American history that the government had successfully ordered a prior restraint (the order that content be censored ahead of publication) on national security grounds. Historically, prior restraint has been considered the most serious and most questionable form of censorship.

Undaunted, Ellsberg released the Pentagon Papers to the *Washington Post*. The government then asked for another court order to stop the printing. Less than two weeks later, the two combined cases were before the Supreme Court.

The Court ruled in *New York Times v. United States* (1971) that the prior restraint was unconstitutional. *New York Times v. United States* is one of the most important freedom of the press cases in American history because it affirmed that prior restraint violates the First Amendment. On the day of the ruling, Ellsberg turned himself in, and was charged with theft, conspiracy, and espionage.

Ellsberg's critics charged him with compromising national security. One official called him "the most dangerous man in America." President Nixon criticized the Supreme Court decision: "[The] Supreme Court shouldn't determine what is classified. They don't know. The *New York Times* shouldn't determine it. And Ellsberg shouldn't determine it. They weren't elected to do that—we are."

In the months following Ellsberg's surrender, an investigation revealed that the White House had

gone to great lengths to discredit Ellsberg. Agents broke into Ellsberg's psychiatrist's office, hoping to find damaging information. In May of 1972, CIA agents were secretly flown to Washington with the orders to "totally incapacitate" Ellsberg. (The agents called off the plan.) Charges against Ellsberg were eventually dropped the next year in light of the gross government misconduct.

Ellsberg understands there was mixed reaction to his actions. He said in 1999 that he believes a majority of people "felt that they had had a right to that information, that it had been wrongfully withheld from them, ...A great many people clearly approved of what I had done...On the other hand, many Americans felt I had acted wrongly, especially in view of my earlier promises to keep this information secret."

He told CNN in 1999, "We live in a country, thank God, where telling the truth to Congress is not treason even though the president is determined to deceive Congress and the public. Of course, that's that marvelous difference between our country and...most countries in the world."



## CRITICAL THINKING QUESTIONS

1. What were the Pentagon Papers?
2. How did Ellsberg's actions attempt to balance liberty and security? Was he successful?
3. In order to make the Pentagon Papers public, Ellsberg had to break his promise to keep classified information secret. How does his affect the way you view his choice?
4. Does the fact that Ellsberg waited until Johnson was out of office to expose the Pentagon Papers make his crime less serious?
5. Ellsberg has said, "At that time, it was very hard to get the public to believe or to act on the possibility that a president was lying to them or deceiving them. That was not in the American consciousness, and it was a very unpopular notion even to put forward." Do you think this is the case today? Why or why not?



# BALANCING INFLUENCE AND ACCOUNTABILITY

## CRITICAL ENGAGEMENT QUESTION

Are campaign finance reform laws acceptable limitations of First Amendment rights?

## OVERVIEW

To understand the debate about campaign finance reform, one must examine the assumptions on which reform laws are based. In this lesson, students will understand the tension between the First Amendment's protection of speech—and, in particular, political speech—and the government's efforts to ensure the integrity of political campaigns.

*Liberty is to faction what air is to fire, an aliment without which it instantly expires. But it could not be less folly to abolish liberty, which is essential to political life, because it nourishes faction, than it would be to wish the annihilation of air, which is essential to animal life, because it imparts to fire its destructive agency.*

–JAMES MADISON

*Ultimately, the question of campaign contributions will be decided by the public.*

–JUSTICE STEPHEN BREYER



## MUSEUM CONNECTION

Help your students learn more about the First Amendment implications of campaign finance reform. Take your class to the **Close to Home** exhibit and read the information in the “Town Square” kiosk to help them understand the current debate on the topic at the McCormick Tribune Freedom Museum ([www.FreedomMuseum.us](http://www.FreedomMuseum.us)).

**OBJECTIVES:**

Students will:

- examine major twentieth century campaign finance reform legislation.
- understand the goals of campaign finance reform.
- analyze arguments for and against limitations on donations and advertisements.
- evaluate whether infringements on free speech are justified by the government's interest in preventing corruption.

**STANDARDS:**

NCHS: Era 4, Standards 1 and 2

CCE: IID3, IIC2, IID5

NCSS: Strands 2, 5, and 6

**STUDENT MATERIALS**

**Handout A:** Campaign Finance Reform Background Essay

**Handout B:** "The Guardian of Every Other Right"

**Handout C:** Deconstructing Arguments

**Freedom's Touchstones:** John Gardner (*optional*)

**TEACHER MATERIALS**

Answer Key

**GRADE LEVEL / TIME**

Two 45-minute high school classes or one 90-minute block

**BACKGROUND/HOMEWORK**

[10 minutes the day before]

Have students read **Handout A: Campaign Finance Reform Background Essay**.

**WARM-UP**

[15 minutes]

- A. Conduct a large group discussion to answer the questions:
- Why do people donate money to a particular candidate or political party?
  - Does money make a candidate more popular, or do more popular candidates succeed in raising money because they appeal to more people?
  - Many people believe that money wins elections. What counter examples can you think of—what wealthy individuals in history have lost their bids for office?
  - Do campaign contributions cause corruption?

**ACTIVITY I**

[30-40 minutes]

- A. Distribute **Handout B: "The Guardian of Every Other Right."** Ask students to consider both of the rights Madison refers to: i.e., "*freely examining public characters and measures,*" and "*free communication among the people thereon.*"
- B. Have students share their paraphrases and discuss the quotation's meaning and then have students answer the questions.
- C. Using **Handout A**, briefly review the Bipartisan Campaign Reform Act of 2002. Conduct a large-group discussion to answer the question: Would President James Madison have signed or vetoed this law? Why?

**ACTIVITY II**

[30-40 minutes]

- A. Distribute **Handout C: Deconstructing Arguments**. Go over the first argument as a large group, and have students work in pairs to complete the remaining arguments.
- B. Have students examine the assumptions behind campaign finance reform attempts. Conduct a large group discussion to answer the following questions:
- What has been the goal of all campaign finance reform regulations?
  - What is the cost to society of meeting these goals?
  - The Supreme Court has held that the cost to society (restrictions on free speech) is justified by the government's compelling interest in preventing corruption or the appearance of corruption. Do you agree?

## HOMEWORK

- A. Have students read **Freedom's Touchstones: John Gardner** and answer the critical thinking questions.
- B. Have students choose a national candidate and write a paragraph reporting the kinds of groups who contributed to his or her campaign. Students can begin their research at <http://www.fec.gov/finance/disclosure/norcanssea.shtml>.
- C. Have students write a letter to their Representative or Senator expressing their views on campaign finance reform.

## EXTENSIONS

- A. One goal of FECA was to level the playing field in elections. The Supreme Court upheld limits on donations but struck down limitations on candidates spending their own money. Have students do research to support their response to the question: Was one unintended consequence of FECA '74 to give an advantage to wealthy candidates?
- B. Have students research the origins of the group Common Cause, a lobbying group in support of campaign finance reform.

**REAL LIFE PORTAL**

Ask students to choose a candidate they would support (in a very recent or near future election) and then list and fully describe four ways they could show their support for that candidate. Then have them investigate whether those ways would be permitted under current campaign finance law.

## CAMPAIGN FINANCE REFORM

The Founders regarded free speech as not just an important civil right, but as among the natural rights governments are established to secure. The right to discuss political matters freely is also an important means of promoting justice in government. When the Founders wrote the First Amendment, it was with the goal of giving political speech—speech about government, law and other political matters—the highest protection. As James Madison said, free speech is the “guardian of every other right.”

Through the centuries, the term “speech” in the First Amendment has been interpreted to apply to actions and other forms of expression. (For example, the Supreme Court has held that wearing armbands in protest of a war—an action, not speech—is protected by the First Amendment.) The donation of money to political campaigns has also been held to be a form of First Amendment-protected expression.

When it comes to campaign finance, some people have worried that large donations can have a corrupting influence on government. These reformers support laws that limit donations and advertisements in political campaigns. Others, however, worry that these restrictions threaten the free political speech the First Amendment was meant to protect most forcefully.

### Early Attempts at Reform

In the seventeenth and eighteenth centuries, the only restrictions on campaign spending were bans on bribing voters. Nevertheless, in his 1757 bid

for the Virginia legislature, George Washington spent thirty-nine pounds to buy rum for each eligible voter. This was such a commonly accepted practice that James Madison claimed his lost bid for the Virginia legislature was due to his refusal to provide alcohol to the voters. In the mid-nineteenth century, some property requirements for voting were lifted and the population grew. These factors gave rise to higher spending in elections.

**In the early twentieth century, many people became concerned that corporations and wealthy individuals had too much influence in politics.**

The early twentieth century saw many attempts at reforming campaign finance. Many people became concerned that corporations and wealthy individuals had too much influence in politics. In 1905, President Theodore Roosevelt proposed: “All contributions by corporations to any political committee or for any political purpose should be forbidden by law.”

Two years later Congress heeded Roosevelt’s call and banned direct contributions to candidates from corporations and interstate banks. The law did not provide for strong means of enforcement and was ineffective. In 1910, Congress required some House candidates to disclose the contributions they received.

### Donations as Speech: *Buckley v. Valeo* (1976)

In 1971 Congress passed the Federal Election Campaign Act (FECA). This law continued the ban on corporate donations, and the requirement that candidates disclose their spending. In 1974, the limits on contributions were extended to political action committees, individual citizens, and political parties. These contribution limits were stricter than ever before. The law also limited the

## CAMPAIGN FINANCE REFORM (CONT.)

amount of money candidates could contribute to themselves or spend on their own elections.

This law was challenged on First Amendment grounds in the case *Buckley v. Valeo* (1976). The Court determined that donating money in support of parties and candidates is a form of political speech. Having said that, the Court concluded that the government's concern over "corruption or the appearance of corruption" was enough reason to justify the infringement of First Amendment rights. The Court therefore upheld limits on donations.

However, the Court struck down limits on the money that candidates could contribute to their own elections and candidate-spending limits for those candidates not accepting federal funds. These limits were an unconstitutional violation of the First Amendment.

### **Bipartisan Campaign Reform Act**

In 2002, Congress passed the Bipartisan Campaign Reform Act. This law banned "soft money," or general donations to national party committees. It also banned "issue ads" which are commercials that endorse one side of an issue (such as social security or abortion) and promote one candidate's stand on the issue. Individuals and groups are forbidden from airing political issue ads that mention a candidate for sixty days before an election.

Several groups and legislators challenged the law, stating that any limits on campaign contributions

or political advertisements were a violation of the First Amendment. In the case of *McConnell v. Federal Election Commission* (2003), the Supreme Court allowed the soft money limits and issue ad restrictions.

### **Why Have These Laws Been Challenged?**

In politics, speech very often costs money. That money can be used to purchase advertising in the newspaper, on radio or television; to rent space or pay for a permit for a public rally; to publish handbills or brochures; or it can be given directly to a candidate who can, in turn, use it to purchase advertising. If the government can regulate or limit the amount of money that can be spent to fund speech, or can limit when individuals/groups can purchase speech (as with "issue ads"), it limits the individual's or group's speech.

Reformers argue that because corporations are not individuals, they do not have the individual right of freedom of speech. Therefore, limiting corporate contributions does not violate the First Amendment.

The Supreme Court has held that some campaign finance reform laws do violate the First Amendment, but that the government's interest in avoiding corruption and the appearance of corruption justifies the violation. Finding ways to preserve the integrity of elections while also protecting the First Amendment rights of candidates and individuals continues to challenge American society today.

## “THE GUARDIAN OF EVERY OTHER RIGHT”

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**Directions:** *Read the quotation below and write a paraphrase in your own words. Then answer the following questions.*

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**[T]he right of freely examining public characters and measures, and of free communication among the people thereon, ...has ever been justly deemed the only effectual guardian of every other right.**

**—JAMES MADISON, 1798**

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1. How might someone **in favor of** campaign finance reform use this quotation to support his or her position?
  
  
  
  
  
  
  
  
  
  
2. How might someone **against** campaign finance reform use this quotation to support his or her position?

## DECONSTRUCTING ARGUMENTS

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**Directions:** Read each argument and “deconstruct” it by identifying assumptions on which it is based. Then explain whether you agree or disagree with the statement. The first one is done for you.

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- 1. Reform is needed because limits on contributions will give corporations and wealthy individuals less influence in campaigns.**

**This statement assumes that:** *Large donations will influence candidates. Donors always have selfish reasons for donating, and therefore their influence on candidates is bad. Candidates will depend on large donors, and therefore put the desires of their large donors above the common good.*

**Your opinion about these assumptions:**

- 3. Bans on issue ads are unconstitutional because they infringe on individuals’ right to free political speech.**

**This statement assumes that:**

**Your opinion about these assumptions:**

- 2. Reform is needed because contribution limits mean that more candidates, not just wealthy ones, will have access to the voters.**

**This statement assumes that:**

**Your opinion about these assumptions:**

- 4. Bans on issue ads are constitutional because they ensure that individuals and groups with more money cannot have more influence than the average voter.**

**This statement assumes that:**

**Your opinion about these assumptions:**



## JOHN GARDNER

*“Everybody’s organized but the people. Now it’s the citizen’s turn!” John Gardner said in 1972. Like many Americans, Gardner was concerned that huge campaign donations from corporations were having a corrupting influence on government. Gardner went on to found the citizens’ lobbying group Common Cause. This group was instrumental in*

*securing legislation that enforced campaign finance reform laws.*

According to the Federal Election Commission, the 2004 presidential candidates together spent more than \$1 billion on their campaigns. Candidates for United States Senate each spent between \$3 and \$10 million. By contrast, George Washington’s campaign expenses in 1757, when he first ran for the Virginia House of Burgesses, even when adjusted for inflation, came to just over \$400.

Why the huge increase? One reason was that Washington had relatively little technology to exploit, and had to appeal to fewer than 400 eligible voters. As populations grew and some states abolished property requirements for voting, campaigning began to grow in scope.

The invention of television forever changed campaigning. Between 1956 and 1968, campaign spending nearly doubled: from \$155 million to \$300 million. Some people became concerned that huge contributions from corporations were taking away the political power that was supposed to reside with the people. Though Congress passed campaign contribution limits in the 1920s, they went unenforced until the 1970s. John Gardner’s group, Common Cause, was one of the lobbying

groups that helped bring about the enforcement of campaign finance laws.

In 1965, John Gardner began serving as U.S. Secretary of Health, Education, and Welfare. He was the architect of many of President Lyndon Johnson’s Great Society programs, which had the goal of ending poverty and promoting equality. He launched the healthcare program Medicare, oversaw federal investment in education, and played a role in enforcing the Civil Rights Act of 1964. Poverty levels dropped, particularly for the elderly.

By the end of the 1960s, however, the country’s optimism began to wane as the war in Vietnam continued. Racial tension was high as riots broke out throughout the nation. Gardner resigned his position in 1968 because of his opposition to the Vietnam War. Gardner joined and led a group called the Urban Coalition to work on projects designed to renew urban areas. Race riots continued and neighborhoods that were already suffering were completely destroyed. Gardner left the Urban Coalition in 1970, supportive of its mission, but believing its efforts to be futile.

John Gardner’s experiences had shown him that corporations and well-financed interest groups had a strong voice in Washington, but there was no group expressly dedicated to the average citizen. Like many, Gardner also believed that the government was not being honest with the public about the war and other matters. He wanted government practices to be more open to the people to whom government was accountable: the citizens of the United States.

In the summer of 1970, Gardner took what he called the “biggest gamble” of his career, and founded the citizen’s lobbying group Common Cause. Founded at a time of growing mistrust of government, this group worked for “open and honest” government. The group did not try to influence policy, but rather

pushed to make decision processes themselves more open to the public. In less than six months, Common Cause had over 100,000 members. The group soon became a leading supporter of campaign finance reform.

Common Cause aggressively took on the cause of reforming campaign finance. The group sued the Democratic and Republican parties for violating campaign fundraising and spending limits. Members demanded that state and federal governments open legislative hearings and make governmental decision-making processes more accessible to the public.

In 1971 Congress passed a law requiring candidates to disclose their campaign contributions and expenditures. But like most campaign finance legislation until that point, it went largely unenforced.

Public opinion soon moved even more sharply in favor of campaign finance reform in the wake of the Watergate scandal. It was revealed that the Nixon campaign had accepted illegal corporate

contributions and had unaccounted-for cash (or “slush funds”) that were used for unethical activities. Common Cause focused its efforts and was instrumental in passing the most sweeping campaign finance reform law yet in 1974.

The 1974 law imposed more severe limits on contributions and spending, and most importantly, created the Federal Election Commission to enforce these limits as well as disclosure requirements.

Though the spending limits were struck down by the Supreme Court as an unacceptable violation of the First Amendment, the newly-enforceable disclosure requirements were a success for Common Cause, whose goal was “open and honest” government accountable to the people.

As James Madison remarked, the First Amendment’s right of “freely examining” public officials is essential in a democratic republic. The disclosure requirements for which John Gardner fought provide one way that citizens can exercise this right.



### CRITICAL THINKING QUESTIONS

1. What are two reasons that campaign expenses increased since the 1700s?
2. What was John Gardner’s role in the Great Society?
3. Why did John Gardner found Common Cause?
4. What was the most important aspect of the 1974 campaign finance law?
5. Are requirements that candidates disclose their funding sources and expenditures important in a free society? Explain.



## UNIT I

## ROOTS OF FREEDOM

## THE SEEDS OF LIBERTY

## Concept Web

**Magna Carta:** The *Magna Carta* was written to limit the absolute power of King John and future monarchs. Rights, concepts, and responsibilities include trial by jury, due process of law, no arbitrary taking of life, liberty and property; No one is above the law, not even the king.

**Petition of Right:** The Petition of Right was written to limit the king's power, and remind King Charles I that the rights come from the law, and indeed the king himself is not above the law. Rights, concepts, and responsibilities include: due process; protection from unjust seizure of property or imprisonment; the right to trial by fellow Englishmen; protection from unjust punishments or excessive fines.

**Toleration Acts/Declaration of Right:** The Declaration of Right was written to prevent the abuse of power by future monarchs. Accepting it was a condition of William and Mary's rule. The Toleration Acts were written to expand religious freedom to Protestants who did not belong to the Church of England. Rights, concepts, and responsibilities include: the right to freely exercise religion; total freedom of speech for Parliament during debate; the right to assemble peacefully and to petition; right to keep arms; protections of property and liberty; rights of the accused; and rights of criminals. The Toleration Acts denied freedom of worship to Catholics and non-believers, and prevented a Catholic from assuming the throne.

**Two Treatises of Government:** *Two Treatises of Government* was written in 1689. It is a thesis on natural rights theory and the purpose of just government. The ideals of equality of rights and the independence of man can be found in the Declaration of Independence and the Bill of Rights.

## Handout C: Document Guide

*Magna Carta:* Amendments: 1,3,4,5,6,8

Petition of Right: Amendments: 4,5,6,8

Toleration Acts/Declaration of Right: Amendments 1,2,4,5,6,8

1. This document was the expression of Locke's political philosophy.
2. They give up part of their natural liberty in exchange for the protection of society.
3. The purpose of government is to protect rights and property.

4. License is an abuse of freedom, including suicide or hurting anyone else for any reason other than self-defense.
5. Freedom under government means following the commonly accepted rule of law adopted by legislature, being able to do anything the law does not prohibit, and not having to follow the randomly changing will of another person.

## EARLY CHALLENGES TO LIBERTY

## Handout B: Free Speech Focus Questions

1. The ability to express ones political views to friends, neighbors, the general public in a speech or other media, as well as to government.
2. In a democracy, government derives its power from the people. Another way of saying that is, the government is the people, and the people are the government. Therefore, in a democracy, people must have the ability to express his thoughts about political matters. Free expression helps to mold and change a government making it truly one for the people.
3. Free speech can inflame passions among people and lead to violence. Constant criticism of government may lead to a loss of confidence among the people in their institutions and leaders.
4. Answers will vary
5. Some students may say that the Founding era, when our country was defining what it was and what it hoped to be, was most important. Others may also say that free political speech is always of utmost importance, from the Founding to any given day in modern times, because free speech is the lifeblood of a democracy and what sustains our republic.

## Handout E: Quote Cards

1. Richard Henry Lee
2. George Mason
3. George Washington
4. Benjamin Franklin
5. John Adams
6. Thomas Jefferson
7. James Madison
8. Alexander Hamilton
9. John Jay
10. Thomas Paine
11. James Otis
12. Patrick Henry

## UNIT II

## FIRST AMENDMENT FREEDOMS

CAMERAS IN THE COURTROOM:  
FREE TO WATCH?**Handout G: Case Analysis Sheet****Special Access for the Press in Jail?**

*Constitutional Question:* Does the First Amendment protect the right of media to access and inspect jails?

*Arguments for the individual or organization complaining:*

KQED claimed a First Amendment right of access to a county jail to interview inmates and photograph conditions. KQED cited the public's need for information so there could be public debate on jail conditions.

*Arguments for the individual or agency whose policy is being challenged:* Sheriff Houchins argued that media access would pose problems for security and disrupt operations. Adequate ways to inform the public were already in place.

**Closed Circuit TV Testimony?**

*Constitutional Question:* Does the use of one-way, closed circuit TV testimony deny a defendant the right to confront his or her accusers?

*Arguments for the individual or organization complaining:*

Sandra Craig argued that the televised testimony denied her the right to confront her accuser.

*Arguments for the individual or agency whose policy is being challenged:* The Maryland prosecutor claimed that the essential elements of confrontation were preserved, and that testimony in open court would have been too upsetting to the child accuser.

**Court TV for New York?**

*Constitutional Question:* Does a state ban on cameras in the courtroom unconstitutionally limit freedom of the press?

*Arguments for the individual or organization complaining:*

Court TV claimed that because the New York state constitution guaranteed that the press could attend trials and publish reports on the proceedings, it was required that television cameras be permitted.

*Arguments for the individual or agency whose policy is being challenged:* The judge argued that the question of cameras in court was settled by legislature, and furthermore that eight federal circuit courts had found no constitutional right for television coverage of courts.

**TV for Terry Nichols's Oklahoma Trial?**

*Constitutional Question:* Does an interstate change of venue in a highly publicized trial override a state law banning cameras?

*Arguments for the individual or organization complaining:* Court

TV argued that televising the trial would give the public, including family and friends of victims, better access to the proceedings. Court TV had covered more than 700 cases, and not one had been overturned because of the presence of cameras.

*Arguments for the individual or agency whose policy is being challenged:* Nichols's defense attorney argued that televising the trial would make it less fair, because most Oklahomans believed Nichols was guilty. Furthermore, all parties (including the prosecution) opposed the use of cameras.

RELIGION IN SCHOOLS:  
FREE TO PRAY?**Religion Quote Cards: Then or Now?**

1. Then – Ben Franklin
2. Now—*Abdington Township v. Schempp* (1963)
3. Then – James Madison
4. Now—Rev. Barry Lynn, Executive Director of Americans United for the Separation of Church and State
5. Then—Treaty of Tripoli (1796)
6. Then – Thomas Jefferson
7. Now—Bill Clinton
8. Then – Benjamin Rush
9. Then—Thomas Jefferson
10. Then—James Madison

**Handout B: Prayer in Schools Activity**

1. Action done by an individual student so it would not violate the Establishment Clause. But, various schools have their own policy about distribution of non-school materials.
2. It depends on the purpose of the silence. In *Wallace v. Jaffree* (1985), the Supreme Court said that the state could not require a moment of silence "for meditation or voluntary prayer."
3. no violation
4. no violation
5. As long as the students were not being disruptive or forcing others to participate, this student action would not violate the Establishment Clause.
6. no violation
7. As long as the students were not being disruptive or forcing others to participate, this student action would not violate the Establishment Clause.
8. no violation
9. no violation
10. Answers will vary. One lower federal court allowed the singing of Christmas carols as a part of a 'secular

observance' of Christmas, and another permitted a school choir to use as its theme song a prayer set to music. In a third case, a choir was permitted to sing Christian religious compositions. Along similar lines, in *Lynch v. Donnelly* (1984) the Court upheld a nativity display among other symbols in a public park "to celebrate the Christmas Holiday and to depict the origins of that Holiday."

11. no violation
12. According to the 2000 Supreme Court ruling in *Santa Fe Independent School District v. Doe*, this does violate the Establishment Clause because it is school-endorsed prayer, rather than a voluntary expression of religious views.
13. no violation

## THE TEN COMMANDMENTS: FREE TO POST?

### Handout B: An Establishment of Religion?

1. Violation
2. Answers will vary. (George Washington said this when declaring a national day of Thanksgiving.)
3. The Supreme Court found a violation in *Lemon v. Kurtzman* (1971)
4. No violation, as the action is by a private company.
5. Answers will vary. It may depend on the nature of the other documents. In *McCreary County v. ACLU*, the court found that Kentucky violated the Establishment Clause when it hung two framed copies of the King James Version of the Ten Commandments, accompanied by secular symbols and historical documents, in two courthouses.
6. Answers will vary. It may depend on the nature and history of the monument. In *Orden v. Perry* (2005), the Supreme Court held that a decades-old Ten Commandments monument on the grounds of the Texas Capitol was constitutionally permissible.

### Handout C: Litigating the Ten Commandments

1. *Stone v. Graham*: Sydell Stone, et. al. sued James Graham, the Kentucky State Superintendent of Public Education. The state legislature passed a law requiring posters with the Ten Commandments to be placed in all public school rooms in the state. The posters were paid for with private funds. In a 5-4 unsigned decision, the justices found the law unconstitutional in 1980. The ruling stated that a requirement of religious symbols or teachings is governmental endorsement and therefore in violation

of Establishment Clause of the First Amendment.

2. *Adland v. Russ*: Rabbi Jonathon Adland was the principal plaintiff in a suit against the state of Kentucky in this 2002 suit litigated in the Sixth Circuit Court. The decision refused to allow placement of a Ten Commandments monument on state capitol grounds.
3. *Freethought Society v. Chester County*: The Third Circuit Court in 2003 held that a plaque containing the Ten Commandments could remain on the Chester County (PA) court grounds because no reasonable person would perceive the plaque as an endorsement of religion on the part of the county.
4. *Glassroth v. Moore*: The Eleventh Circuit ruled in 2002 that the Chief Justice of the Alabama Supreme Court, Roy Moore, must remove a monument of the Ten Commandments he had installed in the Alabama State Judicial Building rotunda. The court ruled that there was no secular purpose or historical tradition with respect to the monument, therefore the monument was in violation of the Establishment Clause.
5. *ACLU of Ohio Foundation Inc. v. Ashbrook*: In 2002, an Ohio federal court ordered that a framed poster of the Ten Commandments be removed from a judge's courtroom because the court found that the poster violated the Establishment Clause.
6. *King v. Richmond County*: In 2003, the Eleventh Circuit Court of Appeals analyzed the superior court clerk's seal that included an outline of two stone tablets with Roman numerals I through X. The court did not see a violation of the Establishment Clause. The seal had been in use at least since 1872 to help people recognize the validity of documents. The court agreed that the seal helped illiterate citizens in the late Nineteenth Century recognize the authenticity of the documents because the Ten Commandments were then considered a secular symbol for the rule of law.

## SENSATIONAL REPORTING: FREE TO PRINT?

### Handout B: Making the News

1. "Blood on the roadsides, blood in the villages, blood, blood, blood!" The repetition of "blood" is designed to arouse disgust for the Spaniards and sympathy for the Cubans.
2. "CRISIS IS AT HAND. Cabinet is in session. Growing belief in SPANISH TREACHERY." The capitalized words are designed to inspire a sense of urgency in the reader, and contempt or hatred for Spaniards.

3. “\$50,000 REWARD! For the detection of the perpetrator of the Maine Outrage!” *The offering of a reward assumes that there was a perpetrator, and “outrage” also assumes that the explosion was done maliciously.*
4. “GREAT SEA VICTORY FOR AMERICA! VENGEANCE FOR THE MAINE BEGUN! SPAIN’S ASIATIC FLEET BURNED AND SUNK!” The banner headline as a whole, in all capital letters, seems to be “yelling” at the viewer. The headline inspires visceral satisfaction in the reader, at the “vengeance” against Spain and the burning and sinking of her fleet.
5. “DEWEY SMASHES SPAIN’S FLEET...the damage done to the American boats engaged only nominal—hundreds of enemy slain in the encounter.” The all-caps headline uses almost cavalier language “smashed” to describe a military battle. Probably exaggerating Spanish losses as well as American victory, the headline inspires support for the war in readers. “Enemy slain” dehumanizes the Spanish.
6. “AWFUL SLAUGHTER. Our troops at Manila killed the Filipinos by the thousands—40 Americans killed.” The headline inspires visceral satisfaction in the reader, at learning of the “slaughter” of “Filipinos.” Probably exaggerating Spanish losses as well as American victory, the headline inspires support for the war in readers.

## UNIT III

## THE STRUGGLE CONTINUES

LINCOLN AND THE CIVIL WAR:  
TO FREE THE SLAVES

## Handout D: Lincoln, Slavery, and the Civil War

1. **Coopers Union Address:** B. The people who framed our Constitution believed Congress had the power to control slavery in new federal territories. Even though it’s wrong, we can allow it to continue where it already exists. C. This was a speech in front of 1500 people, when Lincoln was an intended but unannounced presidential candidate. Therefore a purpose was to inform people of his views, and make him more of a viable candidate. D. Lincoln is clear that he believes slavery is wrong and that it is his duty to stop its spread, while not fighting to end it where it exists.
2. **Letter to Horace Greeley:** B. My only goal is to save the Union. I’ll do things that help preserve the Union and will not do things that do not help preserve the Union. C. This was an “open letter” answering

Greeley and other critics of Lincoln’s policies. D. Lincoln clearly asserts that his “paramount” official goal is to save the Union and not to end slavery. He also restates his personal wish that slavery would end.

3. **Emancipation Proclamation:** B. Slaves in the rebelling states are freed, and the United States government will secure and preserve their freedom. C. This was an official document freeing the slaves in rebellious states. It transformed the Civil War into a war for freedom. D. Lincoln wrote this document several months before releasing it, implying that his personal desires to end slavery were superseded temporarily by his official duties. It was also issued as a war measure after the Antietam victory.
4. **Gettysburg Address:** B. The best way to honor the dead is to win the war for our country’s ideals. Or: This war is a test of our country’s ideals, and to honor those who died, we must persevere. C. This speech was written for the dedication of a military ceremony. The audience for this speech were those military personnel present at the dedication ceremony, and arguably the entire army and the whole country. D. Lincoln’s first paragraph alludes to the evil and inequality of slavery as being in conflict with the nation’s Founding principles. Lincoln was now defining the Civil War in terms of its potential to end slavery and make the country true to its ideals.
5. **Second Inaugural Address:** B. Everyone has known that slavery was the cause of the Civil War. The war is a punishment from God for the evils of slavery. The nation needs to move forward with forgiveness and charity. C. This speech was given to help Americans make sense of the war and to move forward with kindness and charity. D. Lincoln acknowledges slavery as “somehow” the cause of the Civil War and identifies it as an offense against God.

## VOTING RIGHTS: FREEDOM FOR ALL?

## Handout B: The Suffrage Amendments

1. Neither the federal nor state governments can stop people from voting because of their race, or because they used to be a slave.
2. Neither the federal nor state governments can stop people from voting because they are female.
3. For presidential elections, Washington, DC will now have the same number of electors it would have if it were a state (as long as that number is not more than the state with the fewest people.)

- Neither the federal nor state governments can stop people from voting because they cannot pay a poll or other tax.
- Neither the federal nor state governments can stop people from voting because of their age, as long as they are 18 or older.

## BALANCING LIBERTY AND SECURITY

### Transparency Master A: Focus Questions

- protecting the country; airport security; preventing the use of weapons of mass destruction; stopping terrorists; preventing assassinations.
- freedom; doing what you want to do; few or no external restrictions imposed on the individual by government; the American Revolution; the Bill of Rights; the First Amendment; liberty vs. license.
- physical liberties such as freedom of movement or freedom of assembly; as well as freedom of conscience or freedom of religion; parents and schools often restrict liberties with measures such as curfews; limited time watching TV or surfing the Internet; drug tests; dress codes or other rules of conduct; as a way of ensuring safety and well-being.
- Answers will vary.
- Answers will vary.

### Handout B: Avoiding War with France

- 1798
- Its purpose was to silence criticism of the president and his policies.
- malicious: with intent to harm; defame: harm the reputation of; sedition: speech inciting disloyalty.
- people who supported war with France; people who opposed President Adams; Republican newspaper editors
- probably violated the First Amendment's protection of free speech and press
- According to its authors, a claimed threat to national security justified limitations on certain kinds of speech and press.

### Handout C: President Lincoln and *Habeas Corpus*

- 1861
- to make it easier for the North to quell the Southern rebellion
- insurrection: rebellion; vicinity: general area
- confederate soldiers or those fighting for (or appearing to fight for) the South
- Maybe. The Constitution guarantees that the

privilege of the writ of habeas corpus will not be suspended unless rebellion, invasion, or public safety requires it. The South was rebelling. However, Article I pertains to powers of Congress, not the President. Lincoln suspended *habeas corpus*. See *Ex parte Merryman* (1861)

- According to its author, the public safety required that the right to a *habeas corpus* hearing be suspended.

### Handout D: Sedition During World War I

- 1918
- to silence opposition to American involvement in World War I
- convey: deliver; incite: cause; insubordination: defying authority; scurrilous: vulgar or evil; curtailment: decrease
- people opposed to American involvement in World War I
- may have abridged First Amendment protections of free speech and press. See *Schenck v. United States* (1919) and *Gitlow v. New York* (1925).
- According to its authors, the government's interest in fighting World War I outweighed the individual's right to oppose the country's cause in "word or act."

### Handout E: Japanese Internment Camps

- 1942
- to authorize the detention of Japanese-Americans in camps during World War II
- espionage: spying; sabotage: to obstruct or hamper; prescribe: create; discretion: judgment; formulate: create; effectuate: put into practice
- Japanese Americans
- violated rights to liberty and property
- According to its authors, the government's interest in preventing sabotage during World War II was justified by the forced internment of people of Japanese descent into detention camps.

## BALANCING INFLUENCE AND ACCOUNTABILITY

### Handout B: "The Guardian of Every Other Right"

Quote paraphrase: The ability to know what your leaders are doing, and to be able to talk and write about their activities, is the best way to promoting justice in government.

- Those in favor of campaign finance reform might point to disclosure requirements as a way of "freely examining" public characters. Knowing which

individuals and groups have given money to a particular candidate may enable citizens to watch for potential corruption.

2. Those against campaign finance reform might point to free and open political speech as the best means by which citizens can ensure just government.

**Handout C: Deconstructing Arguments**

2. In absence of reform, only wealthy candidates have access to voters. All means of gaining access to voters are prohibitively expensive to all but wealthy candidates.
3. Individuals have a right to unfettered political speech, and the right to buy broadcast time to express their views. The government's interest in preventing corruption or the appearance of corruption is not constitutional justification to infringe on individuals' rights to free speech.
4. Voters will be influenced by issue ads and this influence is bad. Voters need to be shielded from political advertisements. The government must try to make sure people have an equal ability to have their voice heard.

### The Seeds of Liberty

“Documentary History of the Bill of Rights.” *Constitution.org*. <http://www.constitution.org/dhbr.htm>

“John Locke.” *Stanford Encyclopedia of Philosophy*. <http://plato.stanford.edu/entries/locke/>

“Magna Carta.” *The Avalon Project at Yale Law School*.  
<http://www.yale.edu/lawweb/avalon/medieval/magframe.htm>

“William III (r. 1689-1702) and Mary II (r. 1689-94).” *History of the Monarchy*.  
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### Early Challenges to Liberty

“An Act in Addition to the Act, Entitled ‘An Act for the Punishment of Certain Crimes Against the United States.’” *The Avalon Project at Yale Law School*. <http://www.yale.edu/lawweb/avalon/statutes/sedact.htm>

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Neff, Brian T. “Fracas in Congress: The Battle of Honor between Matthew Lyon and Roger Griswold.” *Essays in History*. (41) 1999. <http://etext.lib.virginia.edu/journals/EH/EH41/Neff41.html>

### The Information Age: Free to Surf?

“Confusion surrounds Rivera’s expulsion from Iraq” *CNN*.  
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**Religious Liberty: Establishment Clause**

*Everson v. Board of Education* (1947)

New Jersey’s reimbursement to parents of parochial and private school students for the costs of busing their children to school was upheld because the assistance went to the child, not the church. This case also applied the Establishment Clause to the actions of state governments.

*Torcaso v. Watkins* (1961)

A Maryland requirement that candidates for public office swear that they believe in God was a religious test and violated Article VI of the Constitution as well as the First and Fourteenth Amendments.

*Engel v. Vitale* (1962)

New York’s requirement of a state-composed prayer to begin the school day was declared an unconstitutional violation of the Establishment Clause.

*Abington School District v. Schempp* (1963)

A Pennsylvania law requiring that each public school day open with Bible reading was struck down as violating the Establishment Clause.

*Murray v. Curlett* (1963)

A Maryland law requiring prayer at the beginning of each public school day was declared unconstitutional as a violation of the Establishment Clause.

*Epperson v. Arkansas* (1968)

An Arkansas law prohibiting the teaching of evolution was unconstitutional, because it was based on “fundamentalist sectarian conviction” and violated the Establishment Clause.

*Lemon v. Kurtzman* (1971)

The Court struck down a Pennsylvania law reimbursing religious schools for textbooks and teacher salaries. The decision held that a program does not violate the Constitution if: (a) it has a primarily secular purpose; (b) its principal effect neither aids nor inhibits religion; and (c) government and religion are not excessively entangled.

*Stone v. Graham* (1980)

State laws mandating the display of the Ten Commandments in public school classrooms were declared unconstitutional as a violation of the Establishment Clause.

*Marsh v. Chambers* (1983)

States had the right to hire a chaplain to open legislative sessions with a prayer or invocation. The traditional practice did not violate the Establishment Clause.

*Lynch v. Donnelly* (1984)

The Court upheld a nativity display among other symbols in a public park “to celebrate the Christmas holiday and to depict the origins of that holiday.”

*Wallace v. Jaffree* (1985)

An Alabama law setting aside a moment for “voluntary prayer” and allowing public school teachers to lead “willing students” in a prayer was struck down. The law had no secular purpose and endorsed religion, violating the Establishment Clause.

*Edwards v. Aguillard* (1987)

Louisiana could not require public schools that taught evolution to teach creationism as “Creation Science.” The law had no secular purpose and endorsed religion, violating the Establishment Clause.

*Allegheny County v. Greater Pittsburgh ACLU* (1989)

A nativity scene with the words “*Gloria in Excelsis Deo*,” meaning “Glory to God in the Highest,” placed alone on the grand staircase of a courthouse endorsed religion and violated the Establishment Clause.

*Board of Education of Westside Community Schools v. Mergens* (1990)

The 1990 Equal Access Act, which required that public schools give religious groups the same access to facilities that other extracurricular groups have, was upheld. Allowing religious clubs to meet did not violate the Establishment Clause.

*Lee v. Weisman* (1992)

Officially approved, clergy-led prayer at public school graduations led to subtle religious coercion, and violated the Establishment Clause.

*Zobrest v. Catalina Foothills School District* (1993)

A school district had to provide a sign interpreter to a deaf child at a religious school. The aid was constitutional because it went to the student, not the church.

*Kiryas Joel School District v. Grumet* (1994)

A New York law creating a special school district to benefit disabled Orthodox Jewish children was struck down because it benefited a single religious group and was not neutral to religion.

*Capitol Square Review and Advisory Board v. Pinette* (1995)

A cross placed by a private group in a traditional public forum adjoining the state house did not violate the Establishment Clause, as the space was open to all on equal terms.

*Santa Fe Independent School District v. Doe* (2000)

A public school district's policy of having students vote on a prayer to be read by a student at football games violated the Establishment Clause. The voting policy resulted in religious coercion of the minority by the majority.

*Mitchell v. Helms* (2000)

The federal government could provide computer equipment to all schools—public, private and parochial—under the Elementary and Secondary Education Act. The aid was religiously neutral and did not violate the Establishment Clause.

*Good News Club v. Milford Central School* (2001)

Religious clubs were allowed to meet in public schools after class hours as other clubs were permitted to do. Allowing religious clubs to meet did not violate the Establishment Clause.

*Zelman v. Simmons-Harris* (2002)

A government program providing tuition vouchers for Cleveland schoolchildren to attend a private

school of their parents' choosing was upheld. The vouchers were neutral towards religion and did not violate the Establishment Clause.

*Elk Grove Unified School District v. Newdow* (2004)

A father challenged the constitutionality of requiring public school teachers to lead the Pledge of Allegiance, which has included the phrase "under God" since 1954. The Court determined that Mr. Newdow, as a non-custodial parent, did not have standing to bring the case to court and therefore did not answer the constitutional question.

*Van Orden v. Perry* (2005)

A six-foot monument displaying the Ten Commandments donated by a private group and placed with other monuments next to the Texas State Capitol had a secular purpose and would not lead an observer to conclude that the state endorsed the religious message, and therefore did not violate the Establishment Clause.

*McCreary County v. ACLU* (2005)

Two large, framed copies of the Ten Commandments in Kentucky courthouses lacked a secular purpose and were not religiously neutral, and therefore violated the Establishment Clause.

**Religious Liberty: Free Exercise Clause***Reynolds v. United States* (1879)

A federal law banning polygamy was upheld. The Free Exercise Clause forbids government from regulating belief, but does allow government to regulate actions such as marriage.

*Minersville v. Gobitas* (1940)

The Court upheld a Pennsylvania flag-salute law, because "religious liberty must give way to political authority." This was reversed in *West Virginia v. Barnette* (1943).

*Cantwell v. Connecticut* (1940)

States could not require special permits for religious solicitation when permits were not required for non-religious solicitation. The Court began

applying the Free Exercise Clause to the states and recognized an absolute freedom of belief.

*Braunfeld v. Brown* (1961)

The Court upheld a Pennsylvania law requiring stores to be closed on Sundays, even though Orthodox Jews claimed the law unduly burdened them since their religion required them to close their stores on Saturdays as well. The Court held that the law did not target Jews specifically as a group.

*Sherbert v. Verner* (1963)

The Court ruled that states could not deny unemployment benefits to a person for turning down a job because it required him/her to work on the Sabbath. Requiring a person to abandon their religious convictions in order to receive benefits was a violation of the Free Exercise Clause.

*Wisconsin v. Yoder* (1972)

The Court ruled that Amish adolescents could be exempt from a state law requiring school attendance for all 14- to 16-year-olds, since their religion required living apart from the world and worldly influence. The state's interest in students' attending two more years of school was not enough to outweigh the individual right to free exercise.

*McDaniel v. Paty* (1978)

A Tennessee law barring members of the clergy from public office was overturned because it directly targeted people because of their religious profession.

*Thornton v. Caldor* (1985)

Private companies are free to fire people who refuse to work on any day they claim is their Sabbath, because the First Amendment applies only to government, not to private employers.

*Goldman v. Weinberger* (1986)

Air Force penalties against a Jewish chaplain who wore a yarmulke (skull cap) on duty in defiance of regulations were upheld. The military's interest in uniformity outweighed the individual right to free exercise.

*Employment Division v. Smith* (1990)

Oregon could deny unemployment benefits to someone fired from a job for illegally smoking peyote during a religious ceremony. The Free Exercise Clause does not excuse people from obeying the law.

*Church of the Lukumi Babalu Aye v. City of Hialeah* (1993)

Laws passed by four Florida cities banning animal sacrifice were targeted at the Santeria religion, which employs animal sacrifice in prayer, and therefore the laws were unconstitutional.

### Speech: General

*Schenck v. United States* (1919)

Freedom of speech can be limited during wartime. The government can restrict expressions that "would create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent."

*Abrams v. United States* (1919)

The First Amendment did not protect printing leaflets urging to resistance to the war effort, calling for a general strike and advocating violent revolution.

*Debs v. United States* (1919)

The First Amendment did not protect an anti-war speech designed to obstruct military recruiting.

*Gitlow v. New York* (1925)

The Supreme Court applied protection of free speech to the states through the due process clause of the Fourteenth Amendment.

*Chaplinsky v. New Hampshire* (1942)

The First Amendment did not protect "fighting words" which, by being said, cause injury or an immediate breach of the peace.

*West Virginia v. Barnette* (1943)

The West Virginia Board's policy requiring students and teachers to recite the Pledge of Allegiance was unconstitutional. Reversing *Minersville v. Gobitas* (1940), the Court held government cannot "force

citizens to confess by word or act their faith” in matters of opinion.

*United States v. O'Brien* (1968)

The First Amendment did not protect burning draft cards in protest of the Vietnam War as a form of symbolic speech.

*Tinker v. Des Moines* (1969)

The Court ruled that students wearing black armbands to protest the Vietnam War was “pure speech,” or symbolic speech protected by the First Amendment.

*Brandenburg v. Ohio* (1969)

The Supreme Court held that the First and Fourteenth Amendments protected speech advocating violence at a Ku Klux Klan rally because the speech did not call for “imminent lawless action.”

*Cohen v. California* (1971)

A California statute prohibiting the display of offensive messages violated freedom of expression.

*Miller v. California* (1973)

This case set forth rules for obscenity prosecutions, but it also gave states and localities flexibility in determining what is obscene.

*Bethel School District v. Fraser* (1986)

A school could suspend a pupil for giving a student government nomination speech full of “elaborate, graphic, and explicit sexual metaphor.”

*Texas v. Johnson* (1989)

Flag burning as political protest is a form of symbolic speech protected by the First Amendment.

*R.A.V. v. St. Paul* (1992)

A criminal ordinance prohibiting the display of symbols that “arouse anger, alarm or resentment in others on the basis of race, color, creed, religion or gender” was unconstitutional. The law violated the First Amendment because it punished speech based on the ideas expressed.

*Reno v. ACLU* (1997)

The 1996 Communications Decency Act was ruled unconstitutional since it was overly broad and vague in its regulation of speech on the Internet, and since it attempted to regulate indecent speech, which the First Amendment protects.

*Watchtower Bible and Tract Society v. Stratton* (2002)

City laws requiring permits for political advocates going door to door were unconstitutional because such a mandate would have a “chilling effect” on political communication.

*United States v. American Library Association* (2003)

The federal government could require public libraries to use Internet-filtering software to prevent viewing of pornography by minors. The burden placed on adult patrons who had to request the filters be disabled was minimal.

*Virginia v. Hicks* (2003)

Richmond could ban non-residents from public housing complexes if the non-residents did not have “a legitimate business or social purpose” for being there. The trespass policy was not overbroad and did not infringe upon First Amendment rights.

*Virginia v. Black* (2003)

A blanket ban on cross-burning was an unconstitutional content-based restriction on free speech. States could ban cross burning with intent to intimidate, but the cross burning act alone was not enough evidence to infer intent.

### Speech: Campaign Finance

*Buckley v. Valeo* (1976)

“Reasonable restrictions” on individual, corporate and group contributions to candidates were allowed; limits on campaign expenditures were unconstitutional since these placed “substantial and direct restrictions” on protected political expression.

*Colorado Republican Federal Campaign Committee v. FEC* (1996)

The Court ruled that campaign spending by political parties on behalf of congressional candidates could not be limited as long as the parties work independently of the candidates.

*McConnell v. Federal Election Commission* (2003)

Limitations on “soft-money” contributions and political advertisements were acceptable infringements of free speech because of the government’s interest in preventing corruption or the appearance of corruption in elections.

**Speech: Commercial**

*Virginia Board of Pharmacy v. Virginia Citizens Consumer Council* (1976)

A pharmacy had the First Amendment right to advertise prices.

*Linmark v. Willingboro* (1977)

A town prohibition on “For Sale” and “Sold” signs was unconstitutional. The ban was an unreasonable restriction on the flow of commercial information.

*United States v. United Foods* (2001)

A law forcing cooperatives of mushroom growers to pay advertising fees was “contrary to First Amendment principles” as a form of compelled speech.

**Press**

*Near v. Minnesota* (1931)

A state law allowing prior restraint was unconstitutional. This decision also extended protection of press freedom to the states through the Fourteenth Amendment.

*New York Times v. Sullivan* (1964)

The First Amendment protected all statements about public officials unless the speaker lied with the intent to defame.

*Garrison v. Louisiana* (1964)

A Louisiana law that punished true statements made with “actual malice” was overturned. The Court ruled that unless a newspaper shows “reckless disregard for the truth,” it is protected under the First Amendment.

*Curtis Publishing Co. v. Butts* and *AP v. Walker* (1967)

A “public figure” who is not a public official may recover damages for a defamatory falsehood that harms his or her reputation, if the newspaper’s actions were an “extreme departure” of the standards of reporting.

*New York Times v. United States* (1971)

A claimed threat to national security was not justification for prior restraint on publication of classified documents (the Pentagon Papers) about the Vietnam War.

*Nebraska Press Association v. Stuart* (1976)

A judge’s order that the media not publish or broadcast statements by police in a murder trial was an unconstitutional prior restraint. The gag order violated the First Amendment rights of the press and the community.

*Zacchini v. Scripps-Howard Broadcasting* (1977)

The Court ruled that the First Amendment does not give a television station the right to broadcast the entire act of a performance without the performer’s permission.

*Hustler v. Falwell* (1988)

The First Amendment prohibits public figures from recovering damages for intentional infliction of emotional harm unless the publication contained a false statement made with actual malice.

*Hazelwood School District v. Kuhlmeier* (1988)

Public school officials can censor school-sponsored newspapers, because the newspapers are part of the school curriculum rather than a forum for public expression.

## Freedom of Assembly and Association

*Dejonge v. Oregon* (1937)

Federal protection of the right of peaceful assembly for lawful discussion was extended to the states.

*NAACP v. Alabama* (1958)

An Alabama law requiring associations to disclose their membership lists was struck down. This requirement would suppress legal association among the group's members.

*Edwards v. South Carolina* (1963)

The convictions of students arrested for peaceful demonstrations against segregation were overturned because the state could not "make criminal the peaceful expression of unpopular views."

*Lloyd Corporation v. Tanner* (1972)

Shopping mall owners may prohibit demonstrators from assembling in their private malls since the First Amendment applies to public, not private property.

*Village of Skokie vs. National Socialist Party* (1978)

The National Socialist (Nazi) Party could not be prohibited from marching peacefully because of the content of their message.

*Rotary International v. Rotary Club of Duarte* (1987)

California state law requiring Rotary Clubs to admit women was constitutional. Because women members would not prevent the group from accomplishing its goals, the Court held that the state's compelling interest in ending sexual discrimination outweighed the infringement on the group's right of association.

*Madsen v. Women's Health Clinic* (1994)

Some restrictions on protesters at a Florida abortion clinic, including limits on noise amplification and a required buffer zone, did not violate the First Amendment. The restrictions that "burden[ed] no more speech than necessary" to protect access to the clinic and ensure orderly

traffic flow on the street were upheld. The restrictions that burdened "more speech than necessary" were struck down.

*Hurley v. Irish American GLIB Association* (1995)

Forcing a privately-organized parade to include homosexual and bisexual groups would be a form of coerced speech and violated the organizers' First Amendment rights.

*Schenck v. Pro-Choice Network of Western New York* (1997)

"Fixed buffers" around abortion clinics were constitutional since they protected the government's interest in protecting private property and preventing illegal activity. A fifteen-foot "floating buffer" around patients leaving or entering an abortion clinic was struck down as an infringement of the protestors' First Amendment rights.

*Boy Scouts of America v. Dale* (2000)

Forcing the Boy Scouts to admit a gay scout leader would violate the private organization's rights to freedom of association and expressive association.

## Freedom of Petition

*NAACP v. Button* (1963)

States could not stop the NAACP from soliciting people to serve as litigants in federal court cases challenging segregation.

*Meyer v. Grant* (1988)

States could not bar groups from hiring individuals who circulate petitions in support of a ballot measure.

*Buckley v. American Constitutional Law Foundation* (1999)

The Court ruled that states could not require petition circulators to be registered voters, wear name badges, or disclose information about themselves and their salaries.

The McCormick Tribune Freedom Museum Teacher Advisory Committee played a vital role in advising the Museum about content as well as practical matters of concern to visiting teachers.

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The following national standards are referenced in this publication:

NCHS: National Council for History in the Schools

CCE: Center for Civic Education

NCSS: National Council for the Social Studies

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