

*The Bill of Rights and You*  
**RIGHTS AND  
RESPONSIBILITIES**

A program of  
**The Bill of Rights Institute**

200 North Glebe Road  
Arlington, Virginia 22203  
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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.

# *The Bill of Rights and You* RIGHTS AND RESPONSIBILITIES

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# *The Bill of Rights and You* RIGHTS AND RESPONSIBILITIES

## **Preface**

*The Bill of Rights and You: Rights and Responsibilities* is designed to give students an understanding of their rights under the first ten amendments to the Constitution, as well as the responsibilities of citizenship that go along with those rights.

*The Bill of Rights and You: Rights and Responsibilities* will connect with students and help them see the relationship between the exercise of their rights and their responsibilities in a free society. They will understand, as the Founders would have put it, the relationship between the exercise of private virtue and public happiness.

Divided into ten units with strong connections to national history, civics, and social studies standards, this curriculum uses research-based teaching strategies to encourage students to explore the philosophical roots of their liberties, the historical traditions of their rights, and the legal roots of their fundamental freedoms. In exploring the responsibilities of citizenship, your students will understand the role that civic values, the law, and the courts play in their daily lives.

Each unit contains two lessons designed by master teachers. All the lessons contain solid content in the form of background essays. You can decide which essays will work best with your students by choosing from essays written at a grade twelve reading level (indicated by two stars in the header) or at a grade ten reading level (indicated by one star in the header). Both reading levels contain the same content. Students will explore the history and foundations of each theme, and then apply this knowledge by examining contemporary connections. Building on the content from the essays are the lessons, each designed for a 45-minute high school class.

The accompanying DVD set features 8–10-minute segments that provide historical background information, news footage on Supreme Court cases, as well as commentary from legal experts and scholars who present various perspectives on Bill of Rights issues.

Following the ten units is a complete answer key for student handouts. You will also find optional reading quizzes, DVD viewing guides, a glossary of key terms from background essays, a listing of landmark Supreme Court cases, and additional educational resources.

Thomas Jefferson said, “It is the manners and spirit of a people which preserve a republic in vigor.” Thomas Paine warned his countrymen, “Those who expect to reap the blessings of freedom, must, like men, undergo the fatigue of supporting it.” It is our hope that *The Bill of Rights and You: Rights and Responsibilities* will help your students understand and appreciate the ways their responsible citizenship will ensure meaningful and enduring self-government, and the continued flourishing of our democratic republic.

—Victoria Hughes, *President, the Bill of Rights Institute*

# *The Bill of Rights and You* RIGHTS AND RESPONSIBILITIES

## ***The Bill of Rights***

### **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**

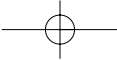
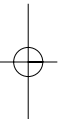
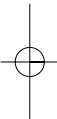
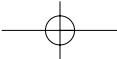
Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

### **AMENDMENT IX**

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

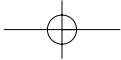
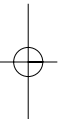
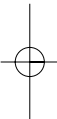
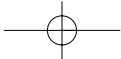
### **AMENDMENT X**

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 Bill of Rights and* **THE FOUNDERS**





*The Bill of Rights and* **THE FOUNDERS****UNIT OVERVIEW**

*Government is, or ought to be instituted for the common benefit, protection, and security of the people, nation, or community; of all the various modes and forms of government, that is best which is capable of producing the greatest degree of happiness and safety, and is most effectually secured against the danger of maladministration.*

—GEORGE MASON, 1776

*All, too, will bear in mind this sacred principle, that though the will of the majority is in all cases to prevail, that will, to be rightful, must be reasonable; that the minority possess their equal rights, which equal laws must protect, and to violate which would be oppression.*

—THOMAS JEFFERSON, 1801

**Synopsis of Lessons and DVD****Lesson One:**

Students examine the English roots of American freedoms.

**Lesson Two:**

Students explore the debate over the Bill of Rights, including Federalist and Anti-Federalist positions.

## TEACHER'S GUIDE

*The Bill of Rights and* **THE FOUNDERS****Critical Engagement Question***How revolutionary was the American Revolution?***LESSON 1**  
**Origins of the  
Bill of Rights****Overview**

The Founders saw themselves as the inheritors of a legacy of increasing freedom dating back to the *Magna Carta*. They also understood the history of monarchs challenging the rights of Englishmen. The events and philosophies from British and colonial history shaped the Founders' ideas about the nature of rights and the purpose of government.

*Liberty must at all hazards be supported. We have a right to it, derived from our Maker. But if we had not, our fathers have earned and bought it for us, at the expense of their ease, their estates, their pleasure, and their blood.*

—JOHN ADAMS, 1765

*The Framers of the Bill of Rights did not purport to 'create' rights. Rather, they designed the Bill of Rights to prohibit our Government from infringing rights and liberties presumed to be preexisting.*

—WILLIAM BRENNAN, 1990

**Materials**

Background Essay: Origins of the Bill of Rights (✱✱ indicates grade twelve reading level; ✱ indicates grade ten reading level.)

Handout A: The *Magna Carta*

Handout B: The Petition of Right

Handout C: The English Bill of Rights

Handout D: John Locke's *Second Treatise of Civil Government*

Handout E: Focus Quotations

Founders DVD and Viewing Guide

Handout F: Our Legacy of Rights  
Answer Key

**Objectives**

Students will:

- understand the concept of the rights of Englishmen.
- distinguish between the rights of Englishmen and natural rights theory.
- analyze the *Magna Carta*, the Petition of Right, the English Bill of Rights, and *Second Treatise of Civil Government*.
- evaluate the influence of English charters of liberty on the United States Bill of Rights.

**Standards**

NCHS: Era 3, Standard 3

CCE: IIA1, IID1, IID2, IID3, IID4

NCSS: Strands 2, 5, and 6

**Background/Homework**

A. Have students read **Background Essay: Origins of the Bill of Rights**.

B. Give each student one of the following: **Handout A: The Magna Carta**; **Handout B: The Petition of Right**; **Handout C: The English Bill of Rights**; or **Handout D: John Locke's *Second Treatise of Civil Government***. As they read, have students underline sections of their documents that refer to protections in the United States Bill of Rights.

**Anticipatory Activity  
[10 minutes]**

A. Distribute or put up an overhead of **Handout E: Focus Quotations**.

B. Have students read the quotations, select the one that best reflects their own point of view, and rewrite it in their own words. Have students share their paraphrases with the class and come to consensus on how the Founders viewed the source of rights and the purpose of government.

**Activity [20 minutes]**

A. Show the first segment of the **Founders DVD** and have students complete the **Viewing Guide**.

B. Divide the class into groups of four so that each group contains one student who read each document for homework.

C. Give one copy of **Handout F: Our Legacy of Rights** to each group and have students complete the chart and discuss the questions together, using their reading handouts as guides.

D. Have students share their responses to questions 1-5.



## The Bill of Rights and THE FOUNDERS

### Wrap-Up [15 minutes]

A. Have four students come to the front of the class (one who has read each document) and assign the following identities: English Baron (1215), Sir Edward Coke (1628), Member of Parliament (1689), and John Locke (1689).

B. Have each student give a brief statement in which they summarize their accomplishments in establishing or expanding the “rights of Englishmen.”

C. Have the class ask questions of the four individuals up front. If time permits, rotate students at the front of the class. You may wish to prompt students with questions such as:

- To Baron of 1215: What do you think was the boldest thing about the *Magna Carta*?
- To Sir Edward Coke: Why do you think Charles I needed “reminding” about the rights of Englishmen?
- To 1689 Parliament Member: What do you see as your place in the British legacy of rights?
- John Locke: You didn’t write a governing document. Why do you belong in this group?
- To any/all: Make a case for why your document most influenced the United States Bill of Rights.

*You may also wish to assign class “audience” members identities, such as King John, King Charles I, Queen Mary, King William, British Catholic (1689), King George III, Thomas Jefferson, George Mason, New Jersey Quaker, Thomas Jefferson, James*

*Madison. Students should ask questions from the point of view of their individual.*

### Homework

A. Have students select a passage from each document studied in class that protects a similar right. Have them write one paragraph explaining the evolution in the language through history.

B. Have students draw a jigsaw puzzle representing the Bill of Rights, with five “pieces:” one each representing the *Magna Carta*, the Petition of Right, the English Bill of Rights, John Locke’s *Second Treatise of Civil Government*, and colonial experiences. Have them write several key terms on each piece and draw an illustration symbolizing the impact each had on the Bill of Rights.

### Extensions

A. Have students read colonial documents and evaluate the origins of their ideas of rights and the purpose

of government. To what degree were their views informed by English charters of liberty? By European philosophers? By colonial experiences? Students may choose to analyze one of the following in a one-page essay:

- James Otis’s *The Rights of the British Colonies Asserted and Proved* (1764), found at [http://press-pubs.uchicago.edu/founders/print\\_documents/v1ch13s4.html](http://press-pubs.uchicago.edu/founders/print_documents/v1ch13s4.html)
- Samuel Adams’s *The Rights of the Colonists* (1772), found at <http://history.hanover.edu/texts/adamss.html>
- Thomas Jefferson’s *Summary View of the Rights of British America* (1774), found at <http://www.yale.edu/lawweb/avalon/jeffsumm.htm>

B. Have students answer the question, “Why did the colonists believe they were justified in declaring independence from England?” in a one-page essay.

### Responsibilities Toolbox



Have students brainstorm a list of responsibilities of citizenship that go along with the new knowledge they’ve gained from this lesson on the Founders. You might prompt them with the statements, “I am responsible for knowing...” and “I am responsible for doing...”

In addition to the ideas students generate, you may want to add:

- learning about the Founders.
- knowing what the Founding documents say.
- understanding how American Founding documents were influenced by English documents.
- understanding why the Founders framed our government the way they did, and why they included the protections they did.
- appreciating the contributions of individual Founders.

## BACKGROUND ESSAY ★★

*The Bill of Rights and* THE FOUNDERS**Origins of the Bill of Rights**

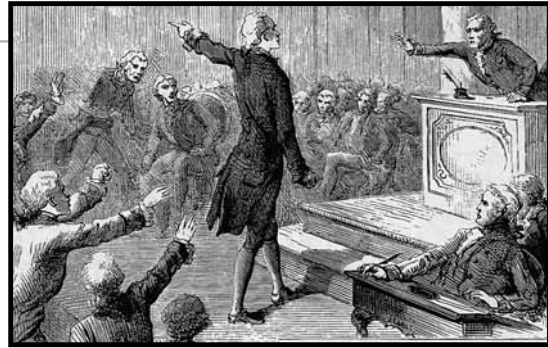
# The American Revolution: Was it really all that revolutionary?

**The Rights of Englishmen**

England had given them the “rights of Englishmen.” England also gave them the will to fight for those rights. Colonists based the rights guaranteed in the Constitution and Bill of Rights on the rights of Englishmen, natural rights philosophy, as well as their experiences as colonists. The tradition of the rights of Englishmen began with the British charters of liberty: the *Magna Carta* (1215), the Petition of Right (1628), and the English Bill of Rights (1689). The philosophy of these documents, as well as natural rights theory, shaped the colonists’ understanding of the purpose of government and eventually influenced the United States Bill of Rights.

The *Magna Carta* defined the relationship between the king and barons, and granted a set of rights “to all freemen,” similar to many clauses in the Bill of Rights (relevant amendments from the U.S. Bill of Rights are noted 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 were absorbed by English common law. These same protections, in turn, were incorporated into American colonial law.

Over many centuries, the *Magna Carta* protected the rights of Englishmen. But in 1628, King Charles I dis-



banded Parliament and ruled England by decree. He believed the rights of Englishmen came from the king, who could revoke them at will. Parliament member Sir Edward Coke informed Charles I with the Petition of Right that Englishmen received their rights from the law, and, furthermore, that the king himself was subject to the law. The Petition of Right referenced the *Magna Carta* to remind the king of those rights. Coke’s petition focused on Charles’s violation of the law: denying Englishmen due process (Fifth); failing to protect citizens from unjust seizure of property or imprisonment (Fourth, Fifth); denying the right to trial by fellow Englishmen (Sixth); and not protecting the people from unjust punishments or excessive fines (Eighth). It wasn’t long before the king resumed the violations. The civil war that followed ended with the beheading of Charles I in 1649.

Over the years, a power struggle raged between Parliament and the monarchy. In 1689, the “Glorious Revolution” placed William and Mary of Orange on the throne. As a condition of their rule, William and Mary accepted the English Bill of Rights and the Toleration Acts in 1689, which reaffirmed and even expanded the rights of Englishmen. The Toleration Acts granted Protestants who did not attend the Church of England the right to freely exercise religion (First). The English Bill of Rights gave Parliament total freedom of speech during debate (First); the right to assemble peacefully and to petition (First); Protestants’ right to keep arms (Second); protections of property and liberty (Fourth, Fifth); rights of the accused (Sixth); and rights of criminals (Eighth).

The next year, philosopher John Locke wrote *Two Treatises of Government* (1690). Locke said that people own their “persons [bodies] and possessions.” In order to protect their rights, people must “unite into a community for their comfortable, safe, peaceable living.” It is

## ★ ★ BACKGROUND ESSAY

### *The Bill of Rights and* **THE FOUNDERS**

the people's right, however, to dissolve a government that fails to protect them.

Locke went beyond the tradition of the rights of Englishmen, however, by asserting that all people, regardless of nationality, are born with the same rights. "Every man [is] naturally free, and nothing being able to put him into subjection to any earthly power." Rights are therefore not "granted" by governments, but come from nature or God. Governments exist to protect, not grant, natural rights. This revolutionary natural rights theory, as it is known, strongly influenced the Founders.

These documents affected the way the Founders saw the world and their place in it. When the British ignored the English common laws in the American colonies, the colonists were armed with a tradition of demanding those laws be followed. Their mindset as Englishmen allowed them to assert their rights as Americans.

### **The Colonial Experience**

Though they were on another continent now, the colonists believed they possessed the "rights of Englishmen." Long before the Revolution, American colonists made their rights as Englishmen part of colonial law. Massachusetts adopted its Body of Liberties in 1641, which included protection for free speech and petition (First); just compensation for property taken for public use (Fifth); protection from double jeopardy (Fifth); right to trial by jury and counsel (Sixth); and protection from cruel punishments and excessive bail (Eighth).

New Jersey's Quakers included eleven chapters of rights in their 1677 colonial charter, and William Penn listed the rights of Pennsylvanians in the 1701 Charter of Privileges. Other colonies followed suit, so the rights of Englishmen spread through Anglo North America.

Between 1763 and 1776, the British government enacted laws to which American colonists responded with protests and, eventually, revolution. Most of these acts dealt with Parliament's power to tax colonial commerce without giving the colonies representation in the House of Commons. The colonists sent petitions to the king,

but they were ignored. Other British actions added to the tension and the colonists later addressed these in the United States Bill of Rights. For example, the 1765 Quartering Act demanded colonists pay for British troops' shelter (Third), while the 1774 Coercive Acts included: restricting the right of the press, free speech, and the right of assembly (First); confiscation of colonists' weapons (Second); lifting protections of property (Fourth, Fifth); prosecuting colonial agitators in English courts, or holding them without trial (Sixth).

The conflict reached a breaking point in 1776. Americans realized they needed self-government and issued a Declaration of Independence. Thomas Jefferson followed Locke's argument that people form a government in order to protect inalienable rights. Jefferson also relied on Locke's argument that people have a right to alter or abolish governments that fail to protect them. Like the Petition of Right and English Bill of Rights, the Declaration also provided a list of grievances against the king.

The colonists established a new government, replacing British colonial charters with independent constitutions. Seven colonies added declarations of rights with protections that were eventually included in the United States Bill of Rights. James Madison, the author of the Bill of Rights, used Virginia's Declaration of Rights as a model. Authored by George Mason, the Virginia declaration protects the press, exercise of religion, arms, property, the accused, and criminals.

After the Revolution, the states united under the Articles of Confederation. This proved to be an inadequate system of government, however, so the Founders drafted a new constitution. The United States Constitution was intended to be a national system for self-government that protected rights. Opponents, however, feared a return to tyranny if the central government was too strong, so many states sought a compromise: the addition of a bill of rights.

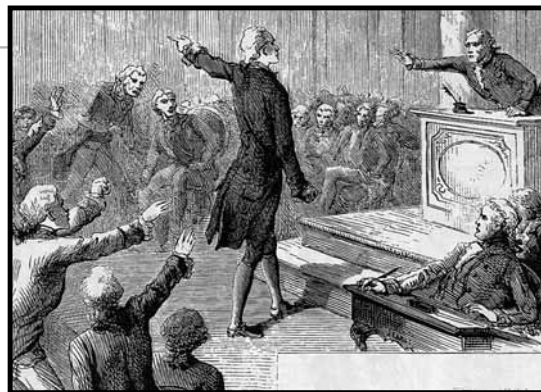
## BACKGROUND ESSAY ★

*The Bill of Rights and* **THE FOUNDERS****Origins of the Bill of Rights****The American Revolution: Was it really all that revolutionary?****The Rights of Englishmen — and Americans**

England had given them the “rights of Englishmen.” England also gave them the will to fight for those rights. The colonists watched with varying degrees of alarm as their rights were violated by the British King. The colonists were forced to house British soldiers in their homes. Their weapons were taken away, and restrictions were put on the press, speech, and their ability to assemble together. It was because of England that they knew what “rights” were. Now it was the British government that was challenging those principles.

The tradition of rights began hundreds of years earlier. The *Magna Carta* (1215) was a basis for the Petition of Right (1628), which inspired the English Bill of Rights (1689). The philosophy behind these documents, as well as natural rights theory, helped shape the colonists’ view of the purpose of government and eventually influenced the United States Bill of Rights.

Written in 1215, the *Magna Carta* is the oldest document in the British heritage of rights (amendments relevant to the U.S. Bill of Rights are noted in parentheses). King John agreed to preserve the liberty of the Church of England and to hear petitions from the barons (First). He also agreed to remove foreign armies from England (Third); not to seize land to pay for debts (Fourth); and to not take life or liberty without due process or compensation (Fifth). He swore not to delay court proceedings or punish without testimony from witnesses (Sixth), as well as repay unjust fines and not to issue excessive



punishments (Eighth). *Magna Carta* protections were absorbed by English common law, which covered contracts, property, and due process. American colonial law, in turn, assumed these protections.

The *Magna Carta* protected the rights of Englishmen for hundreds of years. But in the seventeenth century, King Charles I broke up Parliament and ruled England on his own. In response, Parliament member Sir Edward Coke presented the Petition of Right in 1628. This document cited the *Magna Carta* and reminded Charles I that the law gave Englishmen their rights, not the king. The king himself was not above the law. Coke’s petition focused on Charles’s violations of the law. These included 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). The king accepted the Petition of Right, but soon broke his word and resumed the violations. This struggle resulted in a civil war and ended with the beheading of Charles I in 1649.

Parliament and the monarchy continued their power struggle. In 1689, the “Glorious Revolution” placed William and Mary of Orange on the throne. William and Mary accepted the English Bill of Rights and the Toleration Acts in 1689. These acts reaffirmed and even expanded the rights of Englishmen. The Toleration Acts granted Protestants who did not attend the Church of England the right to freely exercise religion (First). The English Bill of Rights gave Parliament total freedom of speech during debate (First). The English Bill of Rights also included: right to assemble peacefully and to petition (First); right of Protestants to keep arms (Second); protections of property and liberty (Fourth, Fifth); rights



## *The Bill of Rights and* THE FOUNDERS

of the accused (Sixth); and rights of criminals (Eighth). The next year, philosopher John Locke wrote *Two Treatises of Government* (1690). Locke argued that men are by nature free and equal, regardless of their country of birth. This is called natural rights theory. Locke theorized that “Every man [is] naturally free, and nothing being able to put him into subjection to any earthly power.”

Locke said that people own their “persons [bodies] and possessions.” In order to protect their rights, people must “unite into a community for their comfortable, safe, peaceable living.” It is the people’s right, however, to dissolve a government that fails to protect them.

When the British violated their rights, the colonists were armed with a tradition of demanding that the law be followed. Their mindset as Englishmen allowed them to assert their rights as Americans.

### Becoming America — Lessons from the Colonial Experience

The American colonists, though they were on another continent, believed they possessed the rights of Englishmen. The colonists brought their rights as Englishmen to the earliest American colonies. Massachusetts adopted the Body of Liberties in 1641. The document included protection for free speech and petition (First); just compensation for property taken for public use (Fifth); protection from double jeopardy (Fifth); right to trial by jury and counsel (Sixth); and protection from cruel punishments and excessive bail (Eighth). New Jersey’s Quakers included eleven chapters of rights in their 1677 colonial charter. Later, William Penn listed the rights of Pennsylvanians in the 1701 Charter of Privileges, and other colonies followed suit.

The policies of the British government tested the colonists’ resolve between 1763 and 1776. The petitions they sent the king were ignored. England taxed the colonies, but refused to allow colonial representatives in Parliament. Other British actions added to the tension. For example, the 1765 Quartering Act forced colonists to

provide British troops’ shelter (Third). The 1774 Coercive Acts included: restricting the right of the press, free speech, and the right of assembly (First); taking away colonists’ weapons (Second); lifting protections of property (Fourth, Fifth); trying colonial protestors in English courts, or holding them without trial (Sixth). The colonists responded to these acts with protest and eventually revolution.

The conflict reached a breaking point in 1776 when the colonists issued a Declaration of Independence. Thomas Jefferson echoed Locke’s argument that when government takes away the people’s rights, they have a duty to “alter or abolish it, and institute new Government.” Locke had listed life, liberty, and property as natural rights, while Jefferson asserted the rights to “life, liberty, and the pursuit of happiness.” Jefferson provided a list of the king’s violations, much like that in the Petition of Right.

The colonial assemblies replaced the British colonial charters with independent constitutions. Seven colonies included a Declaration of Rights with their constitutions. The declarations included the protections that eventually would be in the United States Bill of Rights. The Virginia Declaration of Rights, written by George Mason, protected the press, exercise of religion, arms, property, the accused, and criminals. James Madison later used it as a model for the United States Bill of Rights.

After the Revolution, the states united under the Articles of Confederation. This proved to be an inadequate system of government, however, so the Founders drafted a new constitution. The United States Constitution was intended to be a national system for self-government that protected rights. Opponents, however, feared a return to tyranny if the central government was too strong, so many states sought a compromise: the addition of a bill of rights.

## STUDENT HANDOUT - A

*The Bill of Rights and* **THE FOUNDERS*****The Magna Carta (Great Charter), 1215***

**Directions:** Read the excerpt below and underline sections that refer to protections in the United States Bill of Rights.

1. The English Church shall be free, and shall have her rights entire, and her liberties inviolate...

13. [T]he city of London shall have all its ancient liberties and free customs...furthermore...all other cities, boroughs, towns, and ports shall have all their liberties and free customs...

20. A freeman shall not be amerced for a slight offense, except in accordance with the degree of the offense; and for a grave offense he shall be amerced in accordance with the gravity of the offense...

28. No constable or other bailiff of ours shall take corn or other provisions from anyone without immediately tendering money therefore, unless he can have postponement thereof by permission of the seller...

39. No freemen shall be taken or imprisoned or diseased or exiled or in any way destroyed...except by the lawful judgment of his peers or by the law of the land. ...

40. To no one will we sell, to no one will we refuse or delay, right or justice. ...

42. It shall be lawful in future for anyone (excepting always those imprisoned or outlawed in accordance with the law of the kingdom...) to leave our kingdom and to return...

**VOCABULARY**

**Inviolat**: sacred

**Amerce**: to punish with a fine

**Grave**: very serious

STUDENT HANDOUT - B

*The Bill of Rights and* **THE FOUNDERS**

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

**Directions:** Read the excerpt below and underline sections that refer to protections in the United States Bill of Rights.

To the King's Most Excellent Majesty,

... your subjects have inherited this freedom, that they should not be compelled to contribute to any tax ... or other like charge not set by common consent, in parliament.

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.

... 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.

...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*...no cause was certified, but that they were detained by your Majesty's special command... and yet were returned back to several prisons, without being charged with anything to which they might make answer according to the law.

... inhabitants against their wills have been compelled to receive [soldiers] 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.

... no man ought to be adjudged to death but by the laws established in this your realm, [with] punishments to be inflicted by the laws and statutes of this your realm...

**VOCABULARY**

**Compelled:** forced  
**Disseized:** deprived

**Sojourn:** stay

**Vexation:** harassment

## STUDENT HANDOUT - C

*The Bill of Rights and* **THE FOUNDERS*****The English Bill of Rights (1689)***

**Directions:** Read the excerpt below and underline sections that refer to protections in the United States Bill of Rights.

- The pretended power of suspending the laws or the execution of laws by regal authority without consent of Parliament is illegal...
- It is the right of the subjects to petition the king, and all commitments and prosecutions for such petitioning are illegal...
- The raising or keeping a standing army within the kingdom in time of peace, unless it be with consent of Parliament, is against law...
- The subjects which are Protestants may have arms for their defense suitable to their conditions and as allowed by law...
- Election of members of Parliament ought to be free...
- Freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament...
- Excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted...
- Jurors ought to be duly impaneled and returned...
- And that for redress of all grievances, and for the amending, strengthening and preserving of the laws, Parliaments ought to be held frequently...

**VOCABULARY**

**Pretended:** wrongly assumed  
**Impeached:** challenged

**Regal:** kingly  
**Excessive:** overly high

**Petition:** address in writing  
**Impaneled:** assembled



The Bill of Rights and THE FOUNDERS

John Locke’s Second Treatise of Civil Government (1690)

Directions: Read the excerpt below and underline sections that refer to protections in the United States Bill of Rights.

All men are naturally in... a state of perfect freedom ... [and] a state also of equality...

Men being, as has been said, by nature, all free, equal, and independent, no one can be put out of this estate, and subjected to the political power of another, without his own consent....

The great and chief end, therefore, of men’s uniting into commonwealths, and putting themselves under govern- ment, is the preservation of their property.

But though men, when they enter into society, give up the equality, liberty, and executive power they had in the state of nature, into the hands of the society... to pre- serve [themselves, their] liberty and property...

The power of the society, or legislative constituted by them, can never be supposed to extend farther, than the common good; but is obliged to secure everyone’s prop- erty ....And all this to be directed to no other end, but the peace, safety, and public good of the people.

VOCABULARY

**End:** reason or purpose  
**Commonwealths:** societies  
**Wants:** needs to be  
**Consent:** approval  
**Controversies:** disputes or crimes

**Plain:** easily understood  
**Intelligible:** understandable  
**Rational:** reasonable  
**Indifferent:** fair, not biased, and impartial

**Execution:** enforcing  
**Liberty:** freedom to act without restraint  
**Constituted:** created  
**Obliged:** supposed to

# STUDENT HANDOUT - E

## The Bill of Rights and THE FOUNDERS

### Focus Quotations

**Directions:** Select the quotation that best represents your point of view and rewrite it in your own words.

1. Liberty must at all hazards be supported. We have a right to it, derived from our Maker. But if we had not, our fathers have earned and bought it for us, at the expense of their ease, their estates, their pleasure, and their blood.  
–John Adams, 1765
2. A free people [claim] their rights as derived from the laws of nature, and not as the gift of their chief magistrate.  
–Thomas Jefferson, 1774
3. The sacred rights of mankind are not to be rummaged for, among old parchments, or musty records. They are written, as with a sun beam, in the whole volume of human nature, by the hand of the divinity itself; and can never be erased or obscured by mortal power.  
–Alexander Hamilton, 1775
4. [A]ll men are by nature equally free and independent, and have certain rights, of which, when they enter into a state of society, they cannot by any compact
- deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.  
–George Mason, 1776
5. We are descended from a people whose government was founded on liberty; our glorious forefathers of Great Britain made liberty the foundation of everything. That country is become a great, mighty, and splendid nation; not because their government is strong and energetic, but, sir, because liberty is its direct end and foundation. We drew the spirit of liberty from our British ancestors; by that spirit we have triumphed over every difficulty.  
–Patrick Henry, 1788
6. Government, in my humble opinion, should be formed to secure and to enlarge the exercise of the natural rights of its members; and every government, which has not this in view, as its principal object, is not a government of the legitimate kind.  
–James Wilson, 1791

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STUDENT HANDOUT - F

*The Bill of Rights and* **THE FOUNDERS**

## Our Legacy of Rights

**Directions:** Complete the chart by placing check marks where certain rights were protected by each document. Then discuss the questions below with your group members.

	Right	Right	Right	Right	Right	Right	Right
The United States Bill of Rights (1791)	<b>First:</b> freedom of religion, speech, press, assembly, petition	<b>Second:</b> right to keep and bear arms	<b>Third:</b> freedom from quartering troops	<b>Fourth:</b> search and seizure rights	<b>Fifth:</b> due process rights	<b>Sixth:</b> fair trial rights	<b>Eighth:</b> freedom from excessive fines, cruel and unusual punishment
<i>Magna Carta</i> (1215)							
Petition of Right (1628)							
Massachusetts Body of Liberties (1641)							
English Bill of Rights (1689)							
Was this right violated in colonies? (1763–1776)							

1. Do you notice any trends or patterns?
2. Why do you think some rights appear more often than others?
3. John Locke's *Second Treatise of Civil Government* was not an act of government. How did it influence the Declaration of Independence?
4. According to the concept of the rights of Englishmen, rights come from the law. According to John Locke, where do they come from?
5. Supreme Court Justice William Brennan said in 1990, "*The Framers of the Bill of Rights did not purport to 'create' rights. Rather, they designed the Bill of Rights to prohibit our Government from infringing rights and liberties presumed to be preexisting.*" How would you put that statement in your own words?

## TEACHER'S GUIDE

*The Bill of Rights and* **THE FOUNDERS****Critical Engagement Question***Would a bill of rights protect liberty or threaten it?***LESSON 2****Securing Liberty—  
Debate over the  
Bill of Rights****Overview**

The debate over the Bill of Rights was not about whether rights exist, but rather about how best to protect them. Would “parchment barriers” provide sufficient protection from government and majority abuses, or would a list of limitations on federal powers not among those enumerated in the Constitution lead people to assume that the government was more powerful than it actually was?

*A bill of rights is what the people are entitled to against every government on earth...*

—THOMAS JEFFERSON, 1787

*If our descendants be worthy the name of Americans they will preserve and hand down to their latest posterity the transactions of the present times; and tho I confess my exclamations are not worthy the hearing, they will see that I have done my utmost to preserve their liberty...*

—PATRICK HENRY, 1788

**Materials**

Background Essay: Securing Liberty—Debate over the Bill of Rights (★★ indicates grade twelve reading level; ★ indicates grade ten reading level.)

Handout A: Focus Quotations  
Founders DVD and Viewing Guide

Handout B: Federalist and Anti-Federalist Arguments

Handout C: Debate Role-Play  
Answer Key

**Objectives**

Students will:

- explain Federalist and Anti-Federalist beliefs as expressed in the debate over a bill of rights.
- analyze arguments from each side about the dangers or benefits of a bill of rights.
- evaluate each side's claims and conclude how best to protect liberty.

**Standards**

NCHS: Era 3, Standard 3

CCE: IIA1, IIA2, IIC1

NCSS: Strands 2, 6, and 10

**Background/Homework**

**A.** Have students read **Background Essay: Securing Liberty—Debate over the Bill of Rights**.

**Anticipatory Activity  
[10 minutes]**

**A.** Distribute or put up an overhead of **Handout A: Focus Quotations** and read the quotations.

**B.** Have students select the quote they believe best reflects their own point of view and rewrite it in their own words. Students should then share their paraphrases with the class and come to consensus on the essential Federalist and Anti-Federalist arguments.

**Activity [25 minutes]**

**A.** Show the second segment of the **Founders DVD** and have students complete the **Viewing Guide**.

**B.** Divide students in pairs and distribute **Handout B: Federalist and Anti-Federalist Arguments**. Have students read the excerpts.

**C.** Assigning roles or allowing students to choose their reading selections, have students complete **Handout C: Debate Role-Play**.

**Wrap Up [15 minutes]**

**A.** Ask for student volunteers to perform their role-plays for the class.

**B.** Ask students which side they found most convincing. If they were delegates at a state ratifying convention, would they warn against a bill of rights or insist on one? Why?

## The Bill of Rights and THE FOUNDERS

### Homework

**A.** Ask students to imagine that Alexander Hamilton has hired them to create a publicity flyer in support of the Constitution. Hamilton wants the flyer to include at least one image, as well as a reference to *The Federalist Papers*. Display completed flyers around the classroom and give students time to view them all. *(Variation: Half the class is hired by Patrick Henry to create a flyer warning of the dangers of the new Constitution. Students should use memorable phrases from Henry's Virginia Convention speech.)*

**B.** Ask students to create a four-slide PowerPoint presentation outlining and explaining Federalist and Anti-Federalist arguments.

### Extensions

**A.** Have students read James Madison's October 1788 letter to Thomas Jefferson found at: <http://press.pubs.uchicago.edu/founders/documents/v1ch14s47.html>.

They should then write a one-page analysis of Madison's viewpoint answering the following questions:

- Madison claims he has "always been in favor of a bill of rights....At the same time I have never thought the omission a material defect." After reading the letter, how would you describe Madison's views on the question of a bill of rights?

- What four reasons does Madison offer against adding a bill of rights?
- What does Madison believe a bill of rights can do most effectively?
- Who/what does Madison believe presents the biggest threat to liberty?

**B.** Have students imagine the year is 1788 and they have been asked to speak at their state's ratifying convention. Have them write a five-minute speech explaining whether the addition of a bill of rights would be good for the country.

### Responsibilities Toolbox



Have students brainstorm a list of responsibilities of citizenship that go along with the new knowledge they've gained from this lesson on the Founders. You might prompt them with the statements, "I am responsible for knowing..." and "I am responsible for doing..."

In addition to the ideas students generate, you may want to add:

- respecting the legacy of limited government.
- working to secure the civil and political rights of others.
- practicing the civic values/virtues required by self-government.
- respecting different views.
- participating in civil discourse.

## BACKGROUND ESSAY ★★

*The Bill of Rights and* **THE FOUNDERS*****Securing Liberty—Debate over the Bill of Rights***

# Were they simply going to substitute one form of tyranny for another?

The American Revolution had been won against the tyranny of a king. But what if the new government simply meant that, as one Anti-Federalist predicted, the president would “become king”?

**The Federalist—Anti-Federalist Debate**

The Declaration of Independence sums up the Founders’ belief that the goal of government is to protect inalienable rights including life, liberty, and the pursuit of happiness. Thomas Jefferson wrote, “to secure these rights, governments are instituted among men...” In order to preserve these inalienable rights, the United States Constitution was designed with a system of checks and balances and limited, specific powers. So, why was there a debate over adding a bill of rights to the Constitution?

During the 1787 Constitutional Convention, George Mason and Elbridge Gerry called for a bill of rights to be included in the document. They pointed out that since the Constitution was supreme over state law, state bills of rights were no security. These appeals were rejected, however. The Constitution was sent to the states for ratification, and the stage was set for a national debate about the need for a bill of rights. Those in favor of the Constitution as written became known as Federalists, while those demanding a bill of rights were called the Anti-Federalists.

Federalists, such as Alexander Hamilton from New York and James Madison from Virginia, did not believe a bill of rights was needed. They strongly supported the



Constitution as written, because the Constitution carefully limited the government’s powers. If a specific power was not listed, it meant the government did not have it. Hamilton and Madison also worried that a list of rights might make the people too aggressive in asserting those rights, causing people to abandon the moderation that self-government requires. Federalists also knew it would be impossible to list every right. They believed that what would be at best a partial list of rights might lead people to think that the rights that were not listed were less important.

Anti-Federalists, including Mason and fellow Virginian Patrick Henry, were not convinced. They feared a strong central government would threaten the freedoms they had fought a revolution to preserve. They believed that the “necessary and proper” clause gave Congress too much power, and pointed to the national government’s power to tax and its supremacy over state law as other signs of danger. Anti-Federalists believed that a bill of rights was needed to protect liberty.

Thomas Jefferson, who was serving in Paris as ambassador to France during the Constitutional Convention, received a copy of the Constitution and was anxious to share his thoughts with Madison. Jefferson immediately objected to “the omission of a Bill of Rights providing clearly...for freedom of religion, freedom of the press, protection against standing armies,” and other rights. In response to Federalist arguments that specific rights

## ★ ★ BACKGROUND ESSAY

### *The Bill of Rights and* **THE FOUNDERS**

did not need to be listed because protections were already included in the body of the Constitution, Jefferson added, “A bill of rights is what the people are entitled to against every government on earth, general or particular, and what no just government should refuse or rest on inferences.” Jefferson challenged Madison’s concerns about listing rights, arguing that when it came to securing liberty, “Half a loaf is better than no bread. If we cannot secure all our rights, let us secure what we can.”

As the ratification process went on in the states, the Constitution was approved in several states. But calls for a bill of rights came even from those states that did ratify. Massachusetts ratified the Constitution but sent Congress a list of proposed amendments. By June 1788, nine states had ratified the Constitution, ensuring it would replace the Articles of Confederation. But New York and Virginia, two important states, had yet to ratify. Grave doubts would be cast on the new government if these two key states rejected the Constitution. Madison predicted, “I am convinced that the Union will be lost by our [Virginia’s] rejection.”

#### **Madison’s Promise**

At the Virginia ratifying convention, James Madison and Patrick Henry clashed over the Constitution and federal power. James Madison assured the delegates that the federal government’s powers “are enumerated and extend only to certain cases.” The spectacular orator Henry thundered in response, “The rights of conscience, trial by jury, liberty of the press, all your immunities and franchises, all pretensions to human rights and privileges, are rendered insecure, if not lost, by this change.” He urged rejection of the Constitution, arguing that Virginia’s refusal to ratify would “procure amendments.”

Henry also pointed to the beheading of Charles I as an example of the danger of letting the rights of the people rest on “implication and logical discussion” rather than clear statements. Ultimately, Madison promised that a bill of rights would be added after ratification. Virginia approved the Constitution by the narrowest margin.

New York also ratified, but followed Massachusetts and Virginia’s lead by submitting a list of proposed amendments. Rhode Island and North Carolina refused to ratify without a bill of rights. New York went so far as to call for a second constitutional convention. While the Federalists enjoyed a majority in Congress, public opinion shifted in favor of the Anti-Federalists and a bill of rights.

Madison realized that the addition of a bill of rights was in the new nation’s best interest. In 1789, he began convincing his fellow congressmen, who were mostly Federalists, to support a bill of rights that would highlight some of America’s most important freedoms without undermining the recently ratified Constitution.

Influenced by state constitutions, his correspondence with Jefferson, and Mason’s Virginia Declaration of Rights, Madison proposed more than a dozen changes to Articles I and III in a speech on June 8, 1789. This speech was central to passage of the Bill of Rights. In suggesting these amendments, Madison presented them as small additions and word changes, not as a list standing apart from the body of the Constitution. Several congressmen, led by Connecticut’s Roger Sherman, objected that Congress had no authority to tamper with the original form of the Constitution. The House agreed with Sherman’s objection and considered the amendments as a separate list.

Finally, after a summer-long debate, the House sent a list of seventeen amendments to the Senate. The Senate approved twelve amendments, which Congress sent to the states for ratification in the fall. On December 15, 1791, Virginia’s state convention ratified, the last to do so. Four years after the Constitutional Convention, ten of the twelve amendments had become the first ten amendments to the United States Constitution—the Bill of Rights.

## BACKGROUND ESSAY ★

*The Bill of Rights and* **THE FOUNDERS*****Securing Liberty—Debate over the Bill of Rights***

# Were they going to replace one form of tyranny with another?

The American Revolution had been won against the abuse of a king. But what if the new government simply meant that, as one Anti-Federalist put it, the president would “become king”?

**The Federalist—Anti-Federalist Debate**

The Declaration of Independence sums up the Founders’ belief about the purpose of government. The goal of government is to protect inalienable rights such as life, liberty, and the pursuit of happiness. Thomas Jefferson wrote, “To secure these rights, governments are instituted among men...” In order to preserve these rights, the United States Constitution was designed with a system of checks and balances and limited, specific powers. So, why was there even a question about adding a bill of rights to the Constitution?

During the 1787 Constitutional Convention, George Mason and Elbridge Gerry called for a bill of rights. They pointed out that since the Constitution was supreme over state law, that state bills of rights were no security. The delegates were not convinced. The Constitution was sent to the states for ratification without a bill of rights. The stage was set for a national debate about the need for a bill of rights. Those in favor of the Constitution as written became known as Federalists, while those demanding a bill of rights were called the Anti-Federalists.



Federalists included Alexander Hamilton from New York and James Madison from Virginia. They did not believe a bill of rights was needed. They strongly supported the Constitution as written because the Constitution carefully limited the government’s powers. If a specific power was not listed, it meant the government did not have it. Hamilton and Madison also worried that a list of rights might make the people too aggressive in asserting those rights. They might abandon the moderation that self-government requires. Federalists also knew it would be impossible to list every right. They believed that a partial list of rights might lead people to think that the rights that were not listed were less important.

Anti-Federalists included Mason and fellow Virginian Patrick Henry. They believed that a bill of rights was needed to protect liberty. They feared a strong central government would threaten the freedoms they had fought a revolution to preserve. They believed that the “necessary and proper” clause gave Congress too much power, and pointed to the national government’s power to tax and its supremacy over state law as other signs of danger.

Thomas Jefferson was serving in Paris as ambassador to France during the Constitutional Convention. He received a copy of the Constitution and was anxious to



*The Bill of Rights and* **THE FOUNDERS**

share his thoughts with Madison. Jefferson immediately objected to “the omission of a bill of rights providing clearly... for freedom of religion, freedom of the press, protection against standing armies,” and other rights. Jefferson challenged Madison’s concerns about listing rights: “If we cannot secure all our rights, let us secure what we can.”

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## Madison’s Promise

James Madison and Patrick Henry clashed over the Constitution and federal power at the Virginia Ratifying Convention. James Madison assured the delegates that the federal government’s powers “are enumerated and extend only to certain cases.” Henry responded, “The rights of conscience, trial by jury, liberty of the press, all your immunities and franchises, all pretensions to human rights and privileges, are rendered insecure, if not lost, by this change.” Madison ultimately promised that a bill of rights would be added after ratification. Virginia approved the Constitution by the narrowest margin.

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Madison saw that a bill of rights was in the new nation’s best interest. In 1789, he began talking to his fellow congressmen about supporting a bill of rights. The bill of rights would highlight some of America’s most important freedoms without detracting from the recently ratified Constitution.

Madison proposed more than a dozen changes to the Constitution in a speech on June 8, 1789. This speech was central to the passage of the Bill of Rights. In suggesting these amendments, Madison presented them as small additions and word changes, not as a list standing apart from the body of the Constitution. Several congressmen objected that Congress had no authority to tamper with the original form of the Constitution. The House agreed and considered the amendments as a separate list.

After debating through the summer, the House sent a list of seventeen amendments to the Senate. The Senate approved twelve amendments, which were sent to the states for ratification in the fall. On December 15, 1791, Virginia’s state convention ratified, the last to do so. Four years after the Constitutional Convention, ten of the twelve amendments had become the first ten amendments to the United States Constitution—the Bill of Rights.

**STUDENT HANDOUT - A**

*The Bill of Rights and* **THE FOUNDERS**

**Focus Quotations**

**Directions:** *Select one quotation from each pair and rewrite it in your own words.*

**Federalist Arguments**

[B]ills of rights ... are not only unnecessary ... but would even be dangerous. They would contain various exceptions to powers which are not granted; and on this very account, would afford a ... pretext to claim more than were granted. For why declare that things shall not be done which there is no power to do?

–Alexander Hamilton, 1788

The State Declarations of Rights are not repealed by this Constitution, and being in force are sufficient.

–Roger Sherman, 1787

**Anti-Federalist Arguments**

A bill of rights is what the people are entitled to against every government on Earth ... and what no just government should refuse or rest on inference.

–Thomas Jefferson, 1787

We are told that all powers not given are reserved.... But, sir, important truths lose nothing of their validity or weight, by frequency of repetition.

–Patrick Henry, 1788

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*The Bill of Rights and* **THE FOUNDERS*****Federalist and Anti-Federalist Arguments***

**Directions:** Read the selections on both sides of this page and complete *Handout C*.

**Federalists****ALEXANDER HAMILTON**

Why for instance, should it be said, that the liberty of the press shall not be restrained, when no power is given by which restrictions may be imposed? I will not contend that such a provision would confer a regulating power; but it is evident that it would furnish, to men disposed to usurp, a plausible pretence for claiming that power. They might urge with a semblance of reason, that the constitution ought not to be charged with the absurdity of providing against the abuse of an authority, which was not given ... The truth is, after all the declamations we have heard, that the constitution is itself in every rational sense, and to every useful purpose, a BILL OF RIGHTS....

It has been several times truly remarked, that bills of rights are in their origin, stipulations between kings and their subjects, abridgments of prerogative in favor of privilege, reservations of rights not surrendered to the prince. Such was *Magna Carta* obtained by the Barons, sword in hand, from king John.... Such was the Petition of Right assented to by Charles the First, in the beginning of his reign. Such also was the ... [English] bill of rights. It is evident, therefore, that according to their primitive signification, they have no application to constitutions professedly founded upon the power of the people, and executed by their immediate representatives and servants. Here, in strictness, the people surrender nothing, and as they retain every thing, they have no need of particular reservations....

—*Federalist No. 84, 1787*

**JAMES MADISON**

He [Henry] told us that this Constitution ought to be rejected because it endangered the public liberty, in his opinion, in many instances. Give me leave to make one answer to that observation: Let the dangers which this system is supposed to be replete with be clearly pointed out: if any dangerous and unnecessary powers be given to the general legislature, let them be plainly demonstrated; and let us not rest satisfied with general assertions of danger, without examination. If powers be necessary, apparent danger is not a sufficient reason against conceding them.

The honorable member has introduced the subject of religion. Religion is not guarded; there is no bill of rights declaring that religion should be secure. Is a bill of rights a security for religion? ... There is not a shadow of right in the general government to intermeddle with religion. Its least interference with it would be a most flagrant usurpation.... The United States abound in such a variety of sects, that it is a strong security against religious persecution; and it is sufficient to authorize a conclusion, that no one sect will ever be able to outnumber or depress the rest.

—*Virginia ratifying convention, 1788*

## STUDENT HANDOUT - B

*The Bill of Rights and* **THE FOUNDERS*****Federalist and Anti-Federalist Arguments (continued)*****Anti-Federalists****THOMAS JEFFERSON**

[W]hat I do not like [about the Constitution is] first, the omission of a bill of rights providing clearly and without the aid of sophisms for freedom of religion, freedom of the press ... and trials by jury in all matters of fact triable by the laws of the land and not by the law of nations. ... Let me add that a bill of rights is what the people are entitled to against every government on earth, general or particular, & what no just government should refuse, or rest on inferences....

The general voice from north to south ... calls for a bill of rights. It seems pretty generally understood that this should go to juries, *habeas corpus*, standing armies, printing, religion and monopolies. I conceive there may be difficulty in finding general modifications of these suited to the habits of all the States. But if such cannot be found, then it is better to establish [these rights] in all cases, than not to do it in any.

—*Letter to James Madison, 1787*

It astonishes me to find ... [that so many] of our countrymen ... should be contented to live under a system which leaves to their governors the power of taking from them the trial by jury in civil cases, freedom of religion, freedom of the press, freedom of commerce, the *habeas corpus* laws, and of yoking them with a standing army. This is a degeneracy in the principles of liberty....

—*Letter to William Stephens Smith, 1788*

**PATRICK HENRY**

Is the relinquishment of the trial by jury and the liberty of the press necessary for your liberty? Will the abandonment of your most sacred rights tend to the security of your liberty? Liberty, the greatest of all earthly blessings—give us that precious jewel, and you may take every thing else! Guard with jealous attention the public liberty. Suspect every one who approaches that jewel....

This Constitution is said to have beautiful features; but when I come to examine these features, sir, they appear to me horribly frightful ... Your president may easily become king.... Where are your checks in this government? ... Show me that age and country where the rights and liberties of the people were placed on the sole chance of their rulers being good men without a consequent loss of liberty! I say that the loss of that dearest privilege has ever followed, with absolute certainty, every such mad attempt.

—*Virginia ratifying convention, 1788*

*The Bill of Rights and* **THE FOUNDERS****Debate Role-Play**

**Directions:** Read the document excerpts on **Handout B** and select one Federalist and one Anti-Federalist. Compose a brief role-play in the space below based on one of the following fictional scenarios, using at least three statements for each person from **Handout B** in the dialogue.

**POSSIBLE SCENARIOS:**

1. James Madison is attending a dinner party in Virginia. Unbeknownst to him, Patrick Henry is also on the guest list. Madison is looking forward to a relaxing evening when he is surprised to see his political rival enter the dining room. After some initial pleasantries, the conversation soon turns to the bill of rights debate.
2. Alexander Hamilton is sitting at his desk opening his mail and finds a letter from Thomas Jefferson, who is serving overseas as minister to France. As Hamilton suspects, the letter contains Jefferson's opinions on the bill of rights debate. How does Hamilton respond? Write a total of four letters between the two men.
3. Alexander Hamilton is on a carriage ride through Virginia when one of his wheels breaks in front of Patrick Henry's house. Henry comes out and offers Hamilton assistance. As the two repair the wheel, the conversation turns to the bill of rights debate.

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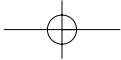
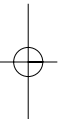
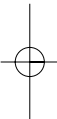
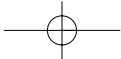
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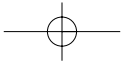
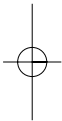
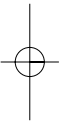
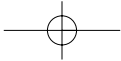
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ARTICLES

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ARTICLE

John C. Calhoun, President of the United States  
1855





*The Bill of Rights and* **RELIGION**

**UNIT OVERVIEW**

**AMENDMENT I**

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...

**Synopsis of Lessons and DVD**

**Lesson One:**  
Students examine the Establishment Clause and apply tests used by the Supreme Court to evaluate how “high” the “wall of separation” between church and state should be.

**Lesson Two:**  
Students explore the Free Exercise Clause and analyze the balance between an individual’s right to freely exercise religion and his or her responsibilities as a citizen.

## TEACHER'S GUIDE

*The Bill of Rights and* RELIGION**Critical Engagement Question**

*How “high” should the “wall of separation” between church and state be?*

**LESSON 1****Church and State—  
How Separate?****Overview**

The meaning of the First Amendment's Establishment Clause has been debated and reinterpreted throughout history. Many believe it calls for “separation of church and state,” but Thomas Jefferson's famous imagery does not appear in the amendment itself. Originally the clause was only applicable to the federal government, but was later incorporated by the Supreme Court to the states through a number of landmark cases. With state governments limited by the Establishment Clause, the number of First Amendment challenges has increased—as has debate about the clause's meaning.

*Religion and government will both exist in greater purity, the less they are mixed together. –JAMES MADISON, 1822*

*Freedom prospers when religion is vibrant and the rule of law under God is acknowledged. –RONALD REAGAN, 1983*

**Materials**

Background Essay: Church and State—How Separate? (✱✱ indicates grade twelve reading level; ✱ indicates grade ten reading level.)

Handout A: Focus Quotation

Religion DVD and Viewing Guide

Handout B: Walls of Separation

Handout C: In the Future

**Objectives****Students will:**

- identify examples of religion in modern public life.
- apply Supreme Court tests of constitutionality to government action involving religion.
- evaluate government involvement in religion in light of the Establishment Clause.
- predict future Establishment Clause challenges and possible solutions.

**Standards**

NCHS: Era 3, Standard 3; Era 9, Standards 1 and 4

CCE: IIA1

NCSS: Strands 1, 2, 5, 6, and 10

**Background/Homework**

**A.** Have students read **Background Essay: Church and State—How Separate?**

**Anticipatory Activity  
[10 minutes]**

**A.** Distribute or put up an overhead of **Handout A: Focus Quotation**. Have students rewrite it in their own words and then explain whether or not they agree with Benjamin Rush.

**B.** Working as a large group, have students brainstorm examples of religious influence in their daily life: at school, in public places, historical documents, or government institutions. Keep a running list of examples on the board.

**C.** Ask students: Do these kinds of examples support Rush's assertion?

**Activity [25 minutes]**

**A.** Show the **Religion DVD** and have students complete the **Viewing Guide**.

**B.** Give a copy of **Handout B: Walls of Separation** to each student.

**C.** Instruct students to read the statements on the “walls.” For each, have students shade in the wall to show the level they believe church and state should be kept separate. Underneath the wall, have students circle the “test” they used to reach their decision and write a short explanation.

**D.** Ask students to share their responses to each card and discuss each as a large group.

## The Bill of Rights and RELIGION

E. Ask the class what kinds of situations they believe may arise in the future that will test the meaning of the Establishment Clause.

Students may suggest:

- student speeches at graduation that proselytize.
- federally-mandated Bible classes in public school.
- requiring the words “One Nation Under God” to be placed in every public school classroom.
- taxpayer money going directly to houses of faith for clerics’ salaries.
- state attempts to establish a state church.
- federal attempts to establish a national church.

### Wrap-Up [15 minutes]

A. Distribute **Handout C: In the Future** and have students create their own “Wall of Separation” card using a situation that may bring a challenge to the Establishment Clause in the future.

B. Using the cards on **Handout B** as models, describe the challenge and four statements that represent solutions at various “heights” of the wall of separation between church and state.

C. Students should trade completed cards with a classmate, shade in the “wall,” and circle the test they used in their decision.

### Homework

A. Have students copy the quote: “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.”

–President Bill Clinton in a letter sent to all school districts in the United States (1995). Assign them to write a paragraph supporting or refuting the statement being sure to include references to the landmark cases mentioned in the **Background Essay**.

B. Have students choose the case they believe did the most to define the current wall of separation between church and state, and explain in one paragraph why this case had the greatest effect.

### Extensions

A. Have students read Thomas Jefferson’s letter to the Danbury Baptists (January 1, 1802) as well as Congressional records on the amendment debate from June–September 1789. Have students paraphrase Jefferson’s letter in

today’s language, and summarize their findings from the records.

B. Have students research the United States Department of Education’s *Guidance on Constitutionally Protected Prayer in Public Elementary and Secondary Schools* found at [http://www.ed.gov/policy/gen/guid/religionandschools/prayer\\_guidance.html](http://www.ed.gov/policy/gen/guid/religionandschools/prayer_guidance.html)

and your school board/school district’s policy on religious activity in your school. Have them compile a list of questions they still have regarding the relationship between church and school. Have students write a letter to the appropriate official with their questions or consult with your school district’s legal counsel for answers.

C. Have students create and illustrate a new metaphor to represent the “wall of separation.”

### Responsibilities Toolbox



Have students brainstorm a list of responsibilities of citizenship that go along with their rights under the Establishment Clause of the First Amendment. You might prompt them with the statements, “I am responsible for knowing...” and “I am responsible for doing...”

In addition to the ideas students generate, you may want to add:

- knowing the Founders’ view that religion was necessary for the health of a republic.
- understanding the First Amendment’s promise of freedom from government-established religion.
- understanding what “separation of church and state” means.
- understanding the civic utility of religion.
- understanding majority rule versus the rights of the minority.
- respecting the right of others to practice their faith.
- respecting the right of others to not practice a faith.

## BACKGROUND ESSAY ★★

*The Bill of Rights and* RELIGION**Church and State—How Separate?**

## Can members of the majority religion pass a law forcing others to say their prayers?

**Religion and the Founding**

Religion has always been a major part of the American experience. Most of the Founders practiced Christianity or believed in God and the colonies were a patchwork of Christian faiths. Many early colonists came to escape religious oppression in England, particularly the Congregationalists in New England. Roman Catholics founded Maryland; Anglicans settled Virginia; Rhode Island became a haven for various religious dissenters. After the Revolution, six of the thirteen states had government-supported churches, and eleven barred non-Christians from public office.

Virginia was the first state to disestablish its official church. The 1786 *Virginia Statute for Religious Freedom* was written by Thomas Jefferson and James Madison secured its passage in the state legislature. Still part of Virginia law, this statute removed religious requirements for Virginia state office, and ended forced support for the state church through taxation. Other states followed suit and disestablished their official churches; the last did so in 1818.

The Founders supported strict constitutional limits on federal involvement in religion. The Establishment Clause of the First Amendment (1791) reads, “Congress shall make no law respecting an establishment of religion....” Some of our nation’s first leaders interpreted this prohibition in varying ways. 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 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....” Madison also disapproved of “Religious proclamations by the Executive recommending thanksgivings and fasts.” As president, Madison vetoed two laws because he believed they violated the Establishment Clause. (One would have granted public lands to a Baptist church and the other would have incorporated an Alexandria Episcopal church into the District of Columbia.)

The phrase “separation of church and state” is often mentioned with regard to the First Amendment. These words do not appear in the Bill of Rights. In 1802, President Thomas Jefferson wrote to Baptists in Danbury, Connecticut, assuring them that the federal government could not interfere with their congregation. He described the First Amendment as building “a wall of separation between church and state.” The symbol is so powerful and widely used that it is often mistaken for the First Amendment.

**Interpreting the Establishment Clause**

The Fourteenth Amendment’s application of Bill of Rights protections to the states (the doctrine of incorporation) has been used to limit the actions of state governments with respect to religion. Until the twentieth century, the Supreme Court heard few cases involving the Establishment Clause. That changed when, in the 1947 case *Everson v. Board of Education*, the Court upheld a New Jersey policy of reimbursing parents of Catholic school students for the cost of busing their children to school. Justice Hugo Black invoked Jefferson’s image of a wall separating church and state, arguing the wall should be quite high.

The Court did not develop a test for identifying violations of the Establishment Clause until the adoption of the Lemon Test in 1971. In *Lemon v. Kurtzman*, the Court struck down a Pennsylvania policy of reimbursing religious schools for textbooks and teacher salaries. The decision held that a law

## ★ ★ BACKGROUND ESSAY

*The Bill of Rights and* **RELIGION**

or program does not violate the Establishment Clause if: (1) it has a primarily secular purpose, (2) its principal effect neither aids nor inhibits religion (religious neutrality), and (3) government and religion are not excessively entangled. The Court ruled that reimbursing religious schools for expenses violated religious neutrality.

The Coercion Test, developed in 1989, holds that government violates the Establishment Clause if it (1) provides direct aid to religion in a way that would tend to establish a state church, or (2) coerces people to support or participate in religion against their will.

In the early 1990s, Justice Sandra Day O'Connor developed an alternative to the Lemon Test—the Endorsement Test. Unlike the Lemon Test, the Endorsement Test would allow government involvement with religious activity as long as such involvement is “generally understood *not* to endorse” a religious message or teaching.

## Religion in Schools

Many Establishment Clause cases center on one question: Can religion and government-funded schools mix? In most cases, the Court has answered “Very little.” In 1962, the Court ruled in *Engel v. Vitale* that required prayer in public schools was unconstitutional. Later, the Court overturned state laws requiring display of the Ten Commandments in classrooms in *Stone v. Graham* (1980) and, in *Wallace v. Jaffree* (1985), setting aside a minute for “voluntary prayer.”

The Court has generally restricted religious activity at school-sponsored events, as well. The Court ruled against clergy-led prayer at high school graduation ceremonies in *Lee v. Weisman* (1992). In 2000, the Court overturned a Texas law allowing high school students to vote on a prayer to be read at athletic events in *Santa Fe Independent School District v. Doe*.

The Establishment Clause, however, places fewer restrictions on voluntary religious student groups. The Court held that public secondary schools must give religious groups the same access to facilities that other extracurricular groups enjoy (*Board of Education of Westside Community Schools v. Mergens*, 1990).

The more complicated issue of government funds in private schools arose in the twenty-first century. In *Mitchell v.*

*Helms* (2000), the Court allowed the government to pay for computer equipment for public, private, and religious schools. As Americans consider ways to improve public education, some have suggested tuition vouchers. In a voucher system, parents receive a fixed amount of public funds to pay tuition at a school of their choice—including religious schools. The Court upheld the voucher system of Cleveland, Ohio, in *Zelman v. Simmons-Harris* in 2002. The Court concluded that even though religious schools received public funds, the system provided true private choice and was designed for a secular purpose of the better education of children.

## Religion in Public Space

Another important question under the Establishment Clause is: When can government use religious symbols? The Court has yet to hand down a clear or comprehensive answer. In *Marsh v. Chambers* (1983), it held that states could hire a chaplain to open a legislative session with a prayer. States can also celebrate Christmas with a “sufficiently secular” nativity display (*Lynch v. Donnelly*, 1984) or a joint menorah-Christmas tree display (*Allegheny County v. Greater Pittsburgh ACLU*, 1989). In that case, however, the Court also ruled that a nativity scene could not be displayed alone on the city courthouse’s grand staircase.

The Supreme Court tackled the issue of Ten Commandment displays in two 2005 cases. In *McCreary County v. ACLU*, the Court found that Kentucky violated the Establishment Clause when it hung two framed copies of the Ten Commandments along with secular symbols and historical documents, in two courthouses. The ruling asserted that the Establishment Clause “require[s] the government to stay neutral on religious belief, which is reserved for the conscience of the individual.” In *Van Orden v. Perry*, on the other hand, the Supreme Court held that a Ten Commandments monument situated among other monuments on the grounds of the Texas Capitol was constitutionally permissible because no reasonable observer would conclude that government was endorsing the religious message.

Some argue that in a diverse society, the government must stay neutral on religious matters. Others argue that complete separation of government and religion, far from treating religion neutrally, would drive religion entirely out of the public sphere.

*The Bill of Rights and* **RELIGION****Church and State—How Separate?****Can members of the majority religion pass a law forcing others to say their prayers?****Religion and the Founding**

The colonies were a patchwork of Christian faiths. Many early colonists came to America to seek freedom to worship. Congregationalists came to New England. Roman Catholics founded Maryland; Anglicans settled Virginia; Rhode Island became a haven for various religious dissenters. After the Revolution, six of the thirteen states had government-supported churches, and eleven barred non-Christians from public office.

Virginia was the first state to disestablish its official church. The 1786 *Virginia Statute for Religious Freedom* was written by Thomas Jefferson. James Madison worked to pass it in the state legislature. This statute removed religious requirements for Virginia state office, and ended forced support for the state church through taxes. Other states followed suit and ended their official churches. The last did so in 1818.

The Founders supported strict constitutional limits on federal involvement in religion. The Establishment Clause of the First Amendment (1791) reads, “Congress shall make no law respecting an establishment of religion...” It is clear that the clause was meant to prevent a national church. But some of our nation’s first leaders understood other meanings of this rule in varying ways.

The same Congress that passed the First Amendment also elected chaplains and began each session with a prayer—a practice that continues today. During President George Washington’s first term, Congress asked him to declare a



national day of thanksgiving. Washington agreed and said that it was “the duty of all nations to acknowledge ... and obey” God.

Bill of Rights author James Madison believed these practices to be unconstitutional. He thought they “seem to imply and certainly nourish the erroneous idea of a *national* religion.” [Emphasis original] As president, Madison vetoed two laws that he believed violated the Establishment Clause. (One would have granted public lands to a Baptist church and the other would have incorporated an Alexandria Episcopal church into the District of Columbia.)

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The Fourteenth Amendment has been used to apply Bill of Rights protections to the states. This is called the doctrine of incorporation. Incorporation has been used to limit the actions of state governments with respect to religion. Until the twentieth century, the Supreme Court heard few cases involving the Establishment Clause. That changed with the 1947 case *Everson v. Board of Education*. The Court upheld a New Jersey policy of paying parents of Catholic school students back for the cost of busing their children to school. Justice Hugo Black invoked Jefferson’s image of a wall separating church and state, arguing the wall should be quite high.



## The Bill of Rights and RELIGION

In 1971, the Court developed a test—called the Lemon Test—for finding violations of the Establishment Clause. In *Lemon v. Kurtzman*, the Court struck down a Pennsylvania policy of public money going to religious schools for textbooks and teacher salaries. The Lemon Test set three rules for laws to be constitutional: (1) The law must have a primarily secular purpose. (2) Its principal effect can neither aid nor hurt religion (religious neutrality). And (3) government and religion cannot be excessively entangled. The Court ruled that paying religious schools for expenses violated religious neutrality.

The Coercion Test, developed in 1989, holds that government violates the Establishment Clause if it (1) provides direct aid to religion in a way that would tend to establish a state church, or (2) coerces people to support or participate in religion against their will.

In the early 1990s, Justice Sandra Day O'Connor developed the Endorsement Test. This test would allow government to take part in religious activity as long as it is “generally understood *not* to endorse” a religious message.

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Voluntary religious student groups have equal rights with non-religious clubs. The Court held that public secondary

schools must give religious groups the same access to facilities that other extracurricular groups enjoy (*Board of Education of Westside Community Schools v. Mergens*, 1990).

In *Mitchell v. Helms* (2000), the Court allowed the government to buy computers for public, private, and religious schools. As Americans consider ways to improve public education, some have suggested tuition vouchers. In a voucher system, parents get public funds to pay tuition at a school of their choice—including religious schools. The Court upheld Cleveland, Ohio’s voucher system in *Selma v. Simmons-Harris* in 2002. The Court concluded that the system had the secular purpose of improving education.

### Religion in Public Space

Another important question under the Establishment Clause is: When can government use religious symbols? In *Marsh v. Chambers* (1983), the Court held that states could have chaplains open a legislative sessions with prayers. States could also display “sufficiently secular” nativity displays at Christmas (*Lynch v. Donnelly*, 1984). A joint menorah-Christmas tree display did not violate the Establishment Clause, but a nativity displayed alone on the city courthouse’s grand staircase did (*Allegheny County v. Greater Pittsburgh ACLU*, 1989).

The Court took on the issue of Ten Commandment displays in 2005. The first case was *McCreary County v. ACLU*. The Court ruled that Kentucky could not hang copies of the Ten Commandments along with secular symbols and historical documents in courthouses. The ruling stated that the Establishment Clause meant the government must “stay neutral on religious belief.” Religious belief “is reserved for the conscience of the individual.” In *Van Orden v. Perry*, the Supreme Court held that a Ten Commandments monument placed with other monuments on the grounds of the Texas Capitol was constitutional.

Some people argue that in a diverse society, the government must stay neutral on religious matters. Others argue that complete separation of government and religion would drive religion entirely out of the public sphere.

**STUDENT HANDOUT - A***The Bill of Rights and* **RELIGION****Focus Quotation**

**Directions:** Rewrite the following quotation in your own words. Then explain whether you agree or disagree with Benjamin Rush and why.

1. "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."

–Pennsylvania Statesman Benjamin Rush, 1798

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2. I agree/disagree (circle one) with Mr. Rush. My reasons are:

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## STUDENT HANDOUT - B

*The Bill of Rights and* **RELIGION*****Walls of Separation***

**Directions:** Each of the statements on the “walls” below represent different “heights” of the “wall of separation” between church and state. Read the statements and decide which one you believe is constitutional under the Establishment Clause. Then shade in the “wall”.

**The Pledge of Allegiance**

The words “under God” should be struck from the Pledge of Allegiance.

The pledge should remain unchanged, but should not be recited in public schools.

The pledge should remain unchanged and public schools may continue to recite it. However, students may choose to not participate.

The pledge should remain unchanged and students should be made to participate or face punishment.

**Test used and reasoning for decision:**    Original Intent    Lemon Test    Endorsement Test    Coercion Test

**Religious Symbols in Government Spaces**

No religious documents or symbols should be displayed on public schools or public lands for any reason.

Religious documents or symbols may be displayed, but only if they serve an obviously secular historical purpose.

Religious documents or symbols may be displayed, but only if symbols from all major religions are present.

Religious symbols of the majority religion of a community are permissible on school and public grounds without restriction.

**Test used and reasoning for decision:**    Original Intent    Lemon Test    Endorsement Test    Coercion Test

STUDENT HANDOUT - B

*The Bill of Rights and* **RELIGION**

***Walls of Separation (continued)***

**Taxpayer Money for Religious Schools**



No government funding should go to religious schools for any purpose regardless of how the funding is spent.



Government should fund religious schools as alternatives to failing public schools as long as it is distributed to all religions fairly.



Government should fund religious schools as alternatives to failing public schools as long as it does not purposefully promote one religion over the other.



Government should grant money to religious schools to be used in any way needed even if that funding has the effect of promoting one religion over the other.

**Test used and reasoning for decision:**    Original Intent    Lemon Test    Endorsement Test    Coercion Test

## STUDENT HANDOUT - C

*The Bill of Rights and* **RELIGION*****In the Future***

**Directions:** Create your own “Wall of Separation” card. Think of a situation that may bring a challenge to the Establishment Clause in the future. Using the cards on **Handout B** as models, describe the challenge and four statements that represent solutions at various “heights” of a wall of separation between church and state. Then have a classmate shade in the “wall,” and circle the test they used in their decision.

**Future Establishment Clause Challenge:** \_\_\_\_\_

Statement 1: \_\_\_\_\_

Statement 2: \_\_\_\_\_

Statement 3: \_\_\_\_\_

Statement 4: \_\_\_\_\_

**Test used and reasoning for decision:**    Original Intent    Lemon Test    Endorsement Test    Coercion Test

## TEACHER'S GUIDE

*The Bill of Rights and* **RELIGION****Critical Engagement Question***When can the government constitutionally restrict a citizen's free exercise of religion?***LESSON 2****Free Exercise****Overview**

As Thomas Jefferson said in 1801, the Founders believed “religion is a matter which lies solely between Man & his God, that he owes account to none other for his faith or his worship.” The Free Exercise Clause protects an absolute freedom of belief. Individuals’ religious convictions are their own.

However, government can restrict religious activity if it legitimately endangers the general welfare of United States citizens. Government must not, however, use this power for political purposes or to persecute targeted groups.

*The legitimate powers of government reach actions only, & not opinions...*

—THOMAS JEFFERSON, 1802

*This is the most religious, great country in history. And yet, interestingly enough, we have the most religious freedom of any country in the world, including the freedom not to believe.*

—BILL CLINTON, 1996

**Objectives****Students will:**

- explain the Free Exercise Clause of the First Amendment.
- understand how individual free exercise can affect others in a free society.
- understand citizens’ responsibility to know the law if it conflicts with a religious practice, and to work to overturn laws that unfairly affect religious liberty.
- evaluate the Supreme Court’s attempts to balance individual free exercise with the good of society as a whole.
- appreciate religious liberty in a free society.

**Materials**

Background Essay: The Free Exercise Clause (✱✱ indicates grade twelve reading level; ✱ indicates grade ten reading level.)

Handout A: Case Cards

Handout B: Focus Quotation

Handout C: Balance of Rights and Restrictions

Scissors and glue

Answer Key

**Standards**

NCHS: Era 3, Standard 3; Era 9, Standard 4

CCE: VB1

NCSS: Strands 1, 2, 5, 6, and 10

**Background/Homework**

A. Have students read **Background Essay: The Free Exercise Clause**.

B. Assign students into groups of four or five. Cut out the Case Cards from **Handout A: Case Cards** and assign students two or three Cards each to complete for homework, so that all Cards are assigned within each group.

**Anticipatory Activity**  
**[20 minutes]**

A. Have students sit in their groups as they enter. Distribute or make an overhead of **Handout B: Focus Quotation** and allow groups to brainstorm its meaning and possible applications.

B. Using their own personal experiences and information from previous social studies courses, have groups make a list of religious beliefs and resulting actions. See **Answer Key** for suggested responses.

C. Have groups share their lists with the class. Have a recorder make one master list on the board.

D. Ask students to answer two questions: 1) “How (if at all) could free exercise of these religious actions be harmful to the individual?” and 2) “How (if at all) could free exercise of the activities of one group infringe on the rights of others in society?” Discuss as a large group.

**Activity [20 minutes]**

A. Instruct students to work individually for this part of the lesson (but to remain seated in groups to share supplies).

## The Bill of Rights and RELIGION

**B.** Distribute **Handout C: Balance of Rights and Restrictions** to each student.

**C.** Allow students to reference **Handout A: Case Cards** (which was completed for homework).

**D.** Have students list each case on **Handout C** on the appropriate side, either “individual rights” or “restrictions on activity.”

**E.** Instruct students to consider the graphic organizer and to write a statement about the balance between government interest and individual right of exercise.

**F.** In their original groups, have students share their statements, and incorporate the best concepts of the individual statements to compose one group statement. Have one representative for each group read their statement to the class.

### Wrap-Up [5 minutes]

**A.** As a large group, discuss how this issue falls within the broader democratic concept of “majority rule v. minority rights.”

**B.** Ask students if their opinions on any of the rulings on the Case Cards changed after the day’s activity, and why.

### Homework

**A.** Have students consider the fact that the United States government prohibits bigamy (being married to two people at the same time) and polygamy (having multiple spouses at once), practices that are required

for salvation by some faiths.

Instruct students to consider the overall group statement written in class and compose two arguments: one supporting the government’s restriction on this practice and one supporting the right to exercise this belief. You may also choose to have students research *Reynolds v. U.S.* (1878) to compare their own decision with the U. S. Supreme Court’s and write a comparison paragraph.

**B.** Explain to students that Thomas Jefferson’s famous statement, “[T]he legitimate powers of government reach actions only, and 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 and state” is most often noted in reference to the Establishment Clause. How can it also be applied to the Free Exercise Clause? Have students write one paragraph in response.

### Extensions

**A.** Have students perform a role-play arguing the case of *Wisconsin v. Yoder* (1971) before the Supreme Court. Have them research the background of the case and compose an argument for why the religious practice (non-attendance for compulsory education) cannot be constitutionally restricted by the state of Wisconsin.

**B.** Have students choose from the following cases and write an oral argument for why the state or federal government has a compelling interest in restricting that particular religious action based on precedents and the Free Exercise Clause of the First Amendment. Students can begin their research at [www.BillofRightsInstitute.org](http://www.BillofRightsInstitute.org).

- *United States v. Lee* (1982)
- *Goldman v. Weinberger* (1986)
- *Lyng v. Northwest Indian Cemetery Protective Assoc.* (1988)
- *Bob Jones University v. United States* (1983)



### Responsibilities Toolbox

Have students brainstorm a list of responsibilities of citizenship that go along with their rights under the Free Exercise Clause of the First Amendment. You might prompt them with the statements, “I am responsible for knowing...” and “I am responsible for doing...”

In addition to the ideas students generate, you may want to add:

- respecting beliefs and practices of others.
- knowing the law if it conflicts with religious practices: peyote, polygamy.
- challenging laws that unfairly affect religion.
- understanding majority rule v. minority rights.
- understanding respect as a “two-way street.”

## BACKGROUND ESSAY ★★

*The Bill of Rights and* **RELIGION*****The Free Exercise Clause***

## Do you have an absolute freedom of belief?

The Free Exercise Clause, which prohibits government interference with individuals' religious practice, had its greatest impact on Americans' lives after the Supreme Court began applying it to the states, starting with the landmark *Cantwell v. Connecticut* decision in 1940.

Jesse Cantwell, his father, and brother walked along Cassius Street in New Haven, Connecticut, a Roman Catholic neighborhood. They were Jehovah's Witnesses, so they believed they had a sacred duty to bring their message to others. They carried religious materials with them, including pamphlets, books, and records. They also had a portable phonograph, which played an anti-Catholic message called "Enemies." Jesse Cantwell stopped two Catholic men on the street. The men agreed to listen to the record, but reacted angrily when they heard it. They said they were tempted to hit him and told him to leave. Thereafter, the Cantwells were arrested for solicitation without a permit and for inciting a breach of the peace.

The Supreme Court overturned the Cantwells' convictions, holding that Connecticut could require permits for solicitation, but restrictions based on religion were unconstitutional. Because the local ordinance allowed officials to determine what causes should be considered religious, it violated the First Amendment. The Supreme Court recognized "the [First] Amendment embraces two concepts—freedom to believe and freedom to act." In so ruling, the Court recognized an absolute freedom of belief, placing questions of religious truth outside of the legal realm.



In addition, the Court ruled that Cantwell "had a right peacefully to impart his views to others." Since there was no evidence that Cantwell personally insulted the men or argued with them, he could not be prosecuted for inciting breach of peace. Justice Roberts delivered the opinion and wrote of the First and Fourteenth Amendments, "Freedom of conscience and freedom to adhere to such religious organization or form of worship as the individual may choose cannot be restricted by law ... and [they] safeguard the free exercise of the chosen form of religion." The Court ruled neither federal nor state governments could unduly infringe on the right to freely exercise religion without a compelling state interest.

### Free Exercise and the Supreme Court

Many Free Exercise cases involve individuals who object to consequences resulting from their exercise of religion because of a general statute. In *Sherbert v. Verner* (1963), the Court ruled that states could not deny unemployment benefits to citizens for turning down a job because it would require them to work on the Sabbath. In 1985, however, the Court struck down a Connecticut law prohibiting the firing of employees who refused to work on any day they claimed was their "Sabbath" (*Thornton v. Caldor, Inc.*). The Court noted that the Free Exercise Clause applied only to government, not to private employers.

*The Bill of Rights and* **RELIGION**

In *Employment Division v. Smith* (1990), the Court ruled that Oregon could deny unemployment benefits to someone dismissed from his job for eating peyote during a religious ceremony. Peyote eating was already illegal and, the Court reasoned, the state could refuse unemployment benefits to anyone who lost their job because of illegal activity. In dissent, Justice Harry Blackmun said the Oregon law “cut at the heart of the Native American religion” since eating peyote was “an act of worship and communion.”

In 2004, the Supreme Court considered whether denying state scholarship funds to students pursuing divinity degrees in preparation for the ministry violated students’ free exercise rights. The Court concluded that it did not, as the government has had a “substantial interest” in avoiding publicly funded religious instruction. Chief Justice Rehnquist asserted, “the subject of religion is one in which both the United States and state constitutions embody distinct views—in favor of free exercise, but opposed to establishment...” (*Locke v. Davey*, 2004).

### Targeted vs. General Laws

When deciding Free Exercise cases, the Court considers two questions: Does the law target a particular group or individual? And, even if the law is not targeted, could a reasonable exception be made for the group or individual concerned? For example, in *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. In 1978, however, the Court overturned a Tennessee law barring members of the clergy from public office, since the law directly targeted individuals simply because of their religious profession (*McDaniel v. Paty*).

Occasionally, the Court has granted or upheld individual exemptions from general laws. In *Wisconsin v. Yoder* (1972), the Court ruled that Amish adolescents could be exempt from a state law requiring school attendance for all students fourteen to sixteen years old, since their religion required living apart from the world and worldly influence. Recently, however, the Court has overturned many state policies exempting certain individuals from general laws.

During the 1980s, the Court ruled that the Amish must pay Social Security taxes (*United States v. Lee*, 1982); upheld an Air Force ban on Jewish skullcaps called yarmulkes (*Goldman v. Weinberger*, 1986); and allowed the United States Forest Service to build roads through land believed by Native Americans to be sacred (*Lyng v. Northwest Indian Cemetery Protective Association*, 1988).

Some scholars argue these decisions allow states to pass general laws (as opposed to laws targeted at specific practices) that impact free exercise without having to demonstrate a compelling state interest. In 1993, the Court explicitly applied the “general law” test to laws passed by four Florida cities banning animal sacrifice in the case *Church of the Lukumi Babalu Aye v. City of Hialeah*. The Court found these laws were targeted at the Santeria religion, which employs animal sacrifice in prayer, and as such, the laws were unconstitutional.

While generating less controversy than Establishment Clause cases, Free Exercise cases address a fundamental constitutional question: How can government enact broad policies that apply equally to all citizens while respecting an individual’s right to free exercise?

## BACKGROUND ESSAY ★

*The Bill of Rights and* RELIGION***The Free Exercise Clause***

# Do you have an absolute freedom of belief?

Jesse Cantwell, his father, and brother walked along Cassius Street in New Haven, Connecticut, a Roman Catholic neighborhood. They were Jehovah's Witnesses, so they had a sacred duty to bring their message to others. They carried religious materials with them, including pamphlets, books, and records. They also had a portable phonograph, which played an anti-Catholic message called "Enemies." Jesse Cantwell stopped two Catholic men on the street. The men agreed to listen to the record, but reacted angrily when they heard it. They said they were tempted to hit him and told him to leave. Thereafter, the Cantwells were arrested for solicitation without a permit and for inciting a breach of the peace. This led to the landmark decision *Cantwell v. Connecticut* (1940).

In *Cantwell*, the Court applied the First Amendment. It states, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof..." The Supreme Court recognized "the [First] Amendment embraces two concepts—freedom to believe and freedom to act." The Court held that Connecticut could require permits for solicitation, but restrictions based on religion were unconstitutional. Because the local ordinance allowed officials to determine what causes should be considered religious, it violated the First Amendment. The Court recognized an absolute freedom of belief. This prohibited the government from determining questions of religious truth.

In addition, the Court said that Cantwell "had a right peacefully to impart his views to others." There was no evidence that Cantwell personally insulted the men or argued with them. Since he acted peaceably, Cantwell could not be prosecuted for inciting breach of peace.



The ruling asserted, "freedom of conscience and freedom to adhere to such religious organization or form of worship as the individual may choose cannot be restricted by law ... and [they] safeguard the free exercise of the chosen form of religion." Government could not infringe on the right to freely exercise religion without a "compelling state interest."

**Free Exercise and the Supreme Court**

Can the state deny unemployment benefits if someone turns down a job because it requires work on her Sabbath? Can a private employer fire someone who refuses to work on his Sabbath day? What happens if someone smokes illegal drugs as part of his or her spiritual practice? Most Free Exercise cases involve people who object to policies they believe punish them for their faith. In particular, laws regarding work or welfare have been tested.

The Court has ruled that states cannot deny job loss benefits to citizens for turning down a job because it would call for work on the Sabbath (*Sherbert v. Verner*, 1963). The Court held that private businesses, on the other hand, could fire employees who refused to work on their Sabbath day (*Thornton v. Caldor, Inc.*, 1985). One reason for the different rulings is that the *Sherbert* case involved the state, while the *Thornton* case concerned private companies. The Court noted that the First Amendment applies only to the actions of government, not private employers.





## The Bill of Rights and RELIGION

In a famous case (*Employment Division v. Smith*, 1990), the Court ruled that Oregon could deny unemployment benefits to someone who was fired for using an illegal drug during a religious ceremony. The employee was fired for eating peyote. Peyote is used in American Indian religious rituals, but is illegal in Oregon. The Court reasoned that the state could refuse benefits to anyone who lost their job because of illegal activity. The law prohibiting peyote was unrelated to its use in religious ceremony.

In 2004, the Supreme Court was asked to decide if states could deny scholarship funds to students majoring in divinity to prepare for the ministry. The Court ruled that the denial of scholarship money did not violate the students' free exercise rights. The government had a "substantial interest" in not paying for religious training. Chief Justice Rehnquist wrote, "the subject of religion is one in which both the United States and state constitutions [have] distinct views—in favor of free exercise, but opposed to establishment..." (*Locke v. Davey*, 2004).

### Targeted vs. General Laws

When deciding Free Exercise cases, the Court must decide if a law targets one group or person. Laws that do this are unconstitutional. In *Braunfeld v. Brown* (1961), the Court let stand a Pennsylvania law requiring that stores close on Sundays. Orthodox Jews claimed the law overly burdened them since their religion required them to close their stores on Saturdays as well. The Court held the law did not target Jews specifically as a group. On the other hand, in 1978, the Court struck down a Tennessee law that barred clergy members from public office. In that case (*McDaniel v. Paty*), the law directly singled out people because of their religious job.

Sometimes even general laws have an effect on certain groups or people. The Court must then decide whether a reasonable exception could be made within a general law. Occasionally, the Court has allowed these exceptions. In a famous 1972 case (*Wisconsin v. Yoder*), the

Court ruled that Amish teens could be excused from school attendance laws since their religion required living apart from the world and worldly influence.

In 1993, the Court applied the "general law" test to laws passed by four Florida cities. The cities banned animal sacrifice (*Church of the Lukumi Babalu Aye v. City of Hialeah*, 1993). The Court found these laws targeted the Santeria religion, which uses animal sacrifice in prayer. Since they targeted a specific religious group, the laws were unconstitutional.

On the other hand, the Court has explained, "Not all burdens on religion are unconstitutional." The Court has upheld many government policies that some claim burden their free exercise. During the 1980s the Court ruled that the Amish must pay Social Security taxes (*United States v. Lee*, 1982). It also said that the Air Force could ban Jewish skullcaps called yarmulkes (*Goldman v. Weinberger*, 1986). In *Lyng v. Northwest Indian Cemetery Protective Association* (1988), the Court allowed the U.S. Forest Service to build roads through Native American sacred land. Some scholars believe these decisions give states too much power. They argue that the laws impact free exercise without an overriding state interest.

Free Exercise cases cause less debate than Establishment Clause cases, but they still raise an important question: In a diverse society that includes people of many different faiths and practices, how can the government pass broad policies that treat everyone fairly and yet respect everyone's right to free exercise?

**STUDENT HANDOUT - A***The Bill of Rights and* **RELIGION****Case Cards**

**Directions:** Read the **Background Essay** and write a brief summary of the Supreme Court's decisions on each of the following case cards. Then explain whether you agree with the Court's decision.

**1. *Cantwell v. Connecticut* (1940)**

Precedent set:

Your opinion on the ruling:

**2. *Sherbert v. Verner* (1963)**

Precedent set:

Your opinion on the ruling:

**3. *Thornton v. Caldor, Inc.* (1985)**

Precedent set:

Your opinion on the ruling:

**4. *Employment Division v. Smith* (1990)**

Precedent set:

Your opinion on the ruling:

**5. *Locke v. Davey* (2004)**

Precedent set:

Your opinion on the ruling:

**6. *Braunfeld v. Brown* (1961)**

Precedent set:

Your opinion on the ruling:

## STUDENT HANDOUT - A

*The Bill of Rights and* RELIGION**Case Cards (continued)****7. *McDaniel v. Paty* (1978)**

Precedent set:

Your opinion on the ruling:

**8. *Wisconsin v. Yoder* (1972)**

Precedent set:

Your opinion on the ruling:

**9. *United States v. Lee* (1982)**

Precedent set:

Your opinion on the ruling:

**10. *Goldman v. Weinberger* (1986)**

Precedent set:

Your opinion on the ruling:

**11. *Lyng v. Northwest Indian Cemetery Protective Association* (1988)**

Precedent set:

Your opinion on the ruling:

**12. *Church of the Lukumi Babalu Aye v. City of Hialeah* (1993)**

Precedent set:

Your opinion on the ruling:

STUDENT HANDOUT - B

*The Bill of Rights and* **RELIGION**

**Focus Quotation**

**Directions:** Read the following quote and brainstorm its meaning and possible applications. Then use your personal experiences and knowledge to make a list of religious beliefs and resulting actions.

**“The [First] Amendment embraces two concepts—freedom to believe and the freedom to act.”**

–Supreme Court Justice Roberts, 1940

**Religious Belief**

“Remember the Sabbath day and keep it holy.”

**Action**

An employee refuses to work a scheduled shift on his Sabbath day.

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## The Bill of Rights and RELIGION

### Balance of Rights and Restrictions

**Directions:** Using your homework **Case Cards**, categorize each case as a decision that either strengthened or limited an individual's right to freely practice his or her religion. Write each case on the appropriate side of the scale below. Then compose an overall statement that summarizes the balance of government restrictions on religious activity and individual free exercise of religion.

Individual Rights	Restrictions on Activity
	

Compose an overall statement that summarizes the balance of government restrictions on religious activity and individual rights to free religious exercise.

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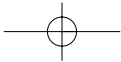
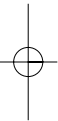
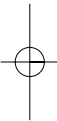
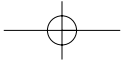
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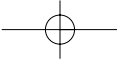
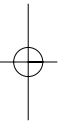
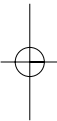
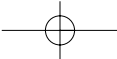
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make no law respecting  
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prohibit any, suggested by their  
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nation, when a national power is  
seized and take a vote of against  
the rights of all national power, the  
shall have been previously  
for obtaining consent, in his  
the ninth. The ninth shall have been  
any kind of the third shall  
to the tenth. The tenth shall not be  
to the eleventh. The eleventh shall be  
to the twelfth. The power not delegated to

Attest.

John C. Calhoun, Sec. of the Senate  
1825





*The Bill of Rights and* **EXPRESSION**

**UNIT OVERVIEW**

**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.

**Synopsis of Lessons and DVD**

**Lesson One:**  
Students explore the ways the First Amendment protects freedom of speech, as well as the expansion of expression.

**Lesson Two:**  
Students evaluate the ways a free press serves as a bulwark of liberty.

**Lesson Three:**  
Students analyze the First Amendment freedoms of assembly and petition.

## TEACHER'S GUIDE

*The Bill of Rights and* **EXPRESSION****Critical Engagement Question***Is freedom of speech an absolute right?***LESSON 1**  
***Freedom of Speech*****Overview**

Freedom of speech is the bedrock of the First Amendment protections. Without it, the others cannot exist. Originally intended to protect political speech, freedom of speech has expanded to include “expression” and symbolic speech. At the same time, the Supreme Court has defined exactly the types of speech the government may restrict to maintain order and protect the rights of other citizens. Today, with new technological developments such as email, blogs, instant messaging, cell phones, and PDAs, there is no end to new freedom of speech challenges that may arise.

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

—GEORGE WASHINGTON, 1783

*The Framers of the Constitution knew that free speech is the friend of change and revolution. But they also knew that it is always the deadliest enemy of tyranny.*

—HUGO BLACK, 1960

**Materials**

Background Essay: The Importance of Free Speech (✱✱ indicates grade twelve reading level; ✱ indicates grade ten reading level.)

Handout A: Focus Quotation  
Expression DVD [Segments One and Three] and Viewing Guides  
Handout B: Freedom of Speech Annotated Timeline

Handout C: Free Speech Cards

Handout D: Flag Desecration Amendment

Answer Key

**Objectives****Students will:**

- understand the concept of “the marketplace of ideas.”
- understand citizens’ responsibilities to know which forms of speech are protected.
- analyze the issue of flag desecration.
- evaluate the effect of important documents and Supreme Court cases on freedom of speech.
- appreciate the importance of keeping informed about current issues regarding free speech.

**Standards**

NCHS: Era 3, Standard 3C

CCE: IA2, IICI

NCSS: 5, 6, and 10

**Background/Homework**

**A.** Have students read **Background Essay: The Importance of Free Speech**.

**B.** Have students respond to the following prompt in a well-structured paragraph: What do you think Justice Holmes meant by the “marketplace of ideas,” and why is it important in a democracy?

**Anticipatory Activity**  
**[10 minutes]**

**A.** Distribute or make an overhead of **Handout A: Focus Quotation** and read the quotation. *Note: Inform students that Voltaire was a French Enlightenment writer and philosopher who lived from 1694 to 1778. Explain that he was not a Founder, but that the Founders studied contemporary European philosophy and would have been familiar with his views and writings.*

**B.** Have students write and then discuss whether they agree with Voltaire and under what circumstances they might make exceptions.

The Bill of Rights and **EXPRESSION**

C. Then ask them to write an extension of the quote, for example, *"I disapprove of what you say, but I will defend to the death your right to say it unless you will inflict real harm on someone else or cause a riot."* Have volunteers read their quotations to the class.

**Activity I [20 minutes]**

A. Show the **Expression DVD** (Segment One: Political Speech) and have students complete the **Viewing Guide**.

B. After watching the first segment, distribute **Handout B: Freedom of Speech Annotated Timeline**. Allow students time to put the documents and cases on the timeline being careful to categorize them correctly by placing those that help to protect speech above the timeline and those that allow government to restrict speech below the line. Have students write an annotation summarizing the importance of the document or case.

C. Show the **Expression DVD** (Segment Three: Evolution of Expression) and have students complete the **Viewing Guide**.

D. Complete **Handout B** with the cases from Segment Three.

**Activity II [15 minutes]**

A. Distribute **Handout C: Free Speech Cards** to five students.

B. Have students stand and read the card to the class. Give the class the opportunity to discuss whether the example is protected by the First Amendment. (See **Answer Key**)

C. Ask students if/how these and their other examples demonstrate the need for citizens to exercise free speech responsibly.

**Wrap-Up [15 minutes]**

A. Remind students that flag burning as political protest has been considered protected speech since *Texas v. Johnson* (1989). Explain that recently a flag burning amendment was proposed. Distribute **Handout D: Flag Desecration Amendment**. Have students read the amendment and record how they would have voted. When students are done, explain that a 2/3 vote in both houses is needed to propose an amendment. Take a class vote and announce the results.

B. Inform students that on June 22, 2005 the amendment passed in the House of Representatives by a vote of 286 to 130, but five days later failed to pass in the Senate by a vote of 66 to 34 – one vote short of the 2/3rd votes necessary.

C. Discuss as a large group reasons for and against the amendment.

*Students may defend the amendment saying that the flag is a national symbol and that it is unpatriotic to burn it. They may argue for the need for an amendment because they disagree with the Supreme Court's protection of flag burning as political expression. Others may argue against the amendment stating that even criticizing the nation by burning the flag is important for freedom of speech. They may also cite the "slippery slope" argument that if government restricts flag desecration it may restrict other freedoms or that it is unclear exactly what the "desecration" entails (e.g. flag clothing, hats, beach towels, disposal of old flags, etc.)*

D. Ask students if they believe it is important for them to stay informed about developments regarding freedom of speech (such as the proposed flag desecration amendment.) Why or why not?

## TEACHER'S GUIDE

*The Bill of Rights and* **EXPRESSION****Homework**

**A.** Using **Handout D: Flag Desecration Amendment**, have students assume the role of US Senators and write an explanation to their constituents about why they voted the way they did. They should reference at least three documents or cases from the **Background Essay**.

**B.** Have students find out how their Senators and Representative voted on the Flag Desecration Amendment and write a letter to one of them either registering their support or disapproval of the vote.

**Extensions**

**A.** Have students create five flash cards with scenarios that illustrate either protected or unprotected speech on the front and note whether they are protected and why on the back of the card.

**B.** Have students read the following quotation and write an imaginary dialogue between Justices Black and Oliver Wendell Holmes (who wrote the majority opinion in *Schenck v. United States*, 1919):

*[I]t is sometimes said that Congress may abridge a constitutional right if there is a clear and present danger that the free exercise of the right will bring about a substantive evil that Congress has authority to prevent. Or it is said that a right may be abridged where its exercise would cause so much injury to the public that this injury would outweigh the injury to*

*the individual who is deprived of the right. ...All of these formulations ... rest, at least in part, on the premise that there are no, "absolute" prohibitions in the Constitution, and that all constitutional problems are questions of reasonableness, proximity, and degree. ...I cannot accept this approach to the Bill of Rights. It is my belief that there are "absolutes" in our Bill of Rights, and that they were put there on purpose by men who knew what words meant, and meant their prohibitions to be "absolutes."*

—Supreme Court Justice Hugo Black, 1960

**Responsibilities Toolbox**

Have students brainstorm a list of responsibilities of citizenship that go along with their rights to free speech. You might prompt them with the statements, "I am responsible for knowing..." and "I am responsible for doing..."

In addition to the ideas students generate, you may want to add:

- Understanding the concept of "marketplace of ideas."
- Having the courage to speak up when injustice occurs.
- Understanding the idea that the antidote to bad speech can be more speech.
- Showing consideration for others' points of view.
- Expressing oneself with respect for the rights of others.
- Engaging in political speech and other forms of civil discourse.

*The Bill of Rights and* **EXPRESSION*****The Importance of Free Speech***

Do you ever disagree  
with the government?  
If you voice those  
opinions, will you be  
hailed to jail?

Jay Leno, Jon Stewart, and David Letterman entertain millions of Americans each night with their comedic monologues, making jokes at the expense of the president, members of Congress, and other government officials. Are their television stations shut down for criticizing the government? No, because the First Amendment protects freedom of speech. The Founders included it in the Bill of Rights because they believed free speech to be among the natural rights of all people.

The Founders also brought with them the legal tradition of free speech from England. 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, and these documents, especially Virginia's Declaration of Rights and the Massachusetts Body of Liberties, were eventually used by James Madison as models for the U.S. Bill of Rights.

During the ratification debate on the United States Constitution, James Madison encouraged public discussion of political topics. He hoped citizens of the new nation would talk about laws and policies. In *Federalist No. 10*, he explained that free political speech helps prevent violence in society. The freedom to express opinions gives groups a chance to persuade others of their position without resorting to violence.



In a society dedicated to self-government, open discussion and political participation among citizens are essential. They also help to guard against corruption in government. The Founders knew that a political system that ignored the people while claiming to receive its power from them was doomed to failure. Nearly two centuries after the Bill of Rights was ratified, the Court reaffirmed the Founders' vision in *Garrison v. Louisiana* (1964). This opinion stated that free speech about public affairs "is the essence of self-government."

In *Brandenburg v. Ohio* (1969), the Court ruled that the First Amendment protects even the most extreme criticism of the government. In this case, a Ku Klux Klan leader encouraged violent political opposition to civil rights laws. The Court ruled that the Klan leader's speech was protected because the First Amendment protected speech that encouraged unlawful action unless the speaker called for "imminent lawless action." Even though it may disagree with what a citizen has to say, the government protects a citizen's right to say it in all but the most extreme circumstances.

## BACKGROUND ESSAY ★★

*The Bill of Rights and* **EXPRESSION**

War is one such extreme circumstance. The freedom of speech is a vital part of liberty. To inhibit speech, the state must prove that its law or policy is more important than freedom of speech. In wartime, the government may be more able to make this claim. In *Schenck v. United States* (1919), Mr. Schenck was distributing pamphlets urging people to petition the government to repeal the draft law. He was arrested and charged with conspiracy to violate the Espionage Act by attempting to cause disobedience in the military and to hamper recruitment. Since it was wartime, the Court unanimously ruled that Schenck's words and actions were not entitled to First Amendment protection. The country's interest in fighting World War I outweighed Schenck's right to free speech. In peacetime, his words might have been protected.

**The Expansion of Expression**

Over the years, the definition of "speech" has expanded into "expression," covering nonverbal or symbolic acts that represent political speech or expression of ideas. Can you "speak" without saying anything? Is "speech" the only way to get ideas across? The First Amendment raises these and other questions about the definition of "speech."

Historians agree that the Founders wanted to guarantee open debate among citizens and government, and that protecting political speech was one of their primary goals. The First Amendment, however, does not say that only political speech is protected from government censorship. Over the years, speech has come to stand for what Supreme Court Justice Oliver Wendell Holmes called the "marketplace of ideas" in a free society.

Since the 1940s, First Amendment protection has been applied to several forms of non-verbal expression. In *West Virginia Board of Education v. Barnette* (1943), the Court held that the First Amendment protected a student's right to refuse to salute the American flag, saying, "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion or other matters of opinion or force citizens to confess by word or act their faith therein."

In the 1969 case of *Tinker v. Des Moines*, the Court ruled that a public school could not suspend students for wearing black armbands in protest of a war. The armbands were "akin to pure speech" and protected by the First Amendment. Another form of symbolic speech is flag burning. In *Texas v. Johnson* (1989), the Court held that burning a flag as part of a political protest is a form of expression protected by the First Amendment: "If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable... We do not consecrate the flag by punishing its desecration, for in doing so we dilute the freedom that this cherished emblem represents."

The Supreme Court has expanded First Amendment protections, but not everyone agrees with the decisions. Some people wonder whether the First Amendment has been used to protect too much. On the other hand, others wonder what might happen to all types of speech if protections are slowly chipped away. As citizens, we are free to choose a voice to believe among the "marketplace of ideas," as well as to make our own voice heard. As Holmes also remarked, "Many ideas grow better when transplanted into another mind than in the one where they sprung up."



## The Bill of Rights and EXPRESSION

### The Importance of Free Speech

Do you ever disagree with the government? If you voice those opinions, will you be hauled to jail?

Jay Leno, Jon Stewart, and David Letterman entertain millions of Americans each night with their comedic monologues, making jokes at the expense of the president, members of Congress, and other government officials. Are their television stations shut down for criticizing the government? No, because the First Amendment protects freedom of speech. The Founders included it in the Bill of Rights because they believed free speech to be among the natural rights of all people.

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During the ratification debate on the United States Constitution, James Madison encouraged public discussion of political topics. He hoped citizens of the new nation would talk about laws and policies. In *Federalist No. 10*, he explained that free political speech helps prevent violence in society. The freedom to express opinions gives groups a chance to persuade others of their position without resorting to violence.



In a society dedicated to self-government, open discussion and political participation among citizens are essential. These freedoms also help guard against corruption in government. The Founders knew that a political system would fail if it ignored the people while claiming to receive its power from them. Nearly two centuries after the Bill of Rights was ratified, the Court reaffirmed the Founders' vision in *Garrison v. Louisiana* (1964). This opinion stated that free speech about public affairs "is the essence of self-government."

In *Brandenburg v. Ohio* (1969), the Court ruled that the First Amendment protects even the most extreme criticism of the government. In this case, a Ku Klux Klan leader encouraged violent political opposition to civil rights laws. The Court ruled that the First Amendment protected speech that encouraged unlawful action unless the speaker called for "imminent lawless action." Even though it may disagree with what a citizen has to say, the government protects a citizen's right to say it in all but extreme circumstances.

## BACKGROUND ESSAY ★

*The Bill of Rights and* **EXPRESSION**

War is one such extreme circumstance. The freedom of speech is a vital part of liberty. To inhibit speech, the state must prove that its law or policy is more important than freedom of speech. In *Schenck v. United States* (1919), Mr. Schenck was distributing pamphlets urging people to petition the government to repeal the draft law. He was arrested and charged with conspiracy to violate the Espionage Act by attempting to cause disobedience in the military and to hamper recruitment. Since it was wartime, the Court unanimously ruled that Schenck's words and actions were not protected. The country's interest in fighting World War I outweighed Schenck's right to free speech. In peacetime, his words might have been protected.

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The Founders wanted to guarantee open debate among citizens and government. The First Amendment, however, does not say that only political speech is protected from government censorship. Over the years, speech has come to stand for what Supreme Court Justice Oliver Wendell Holmes called the "marketplace of ideas" in a free society.

Since the 1940s, First Amendment protection has been applied to several forms of non-verbal expression. In *West Virginia Board of Education v. Barnette* (1943), the Court protected a student's right not to say the Pledge of Allegiance. In the 1969 case of *Tinker v. Des Moines*, the Court ruled that a public school could not suspend students for wearing black armbands in protest of a war. The armbands were "akin to pure speech" and protected by the First Amendment. Another form of symbolic speech is flag burning. In *Texas v. Johnson*, 1989, the Court held that burning a flag as part of a political protest is a form of expression protected by the First Amendment.

The Supreme Court has expanded First Amendment protections, but not everyone agrees with the decisions. Some people wonder whether the First Amendment has been used to protect too much. On the other hand, others wonder what might happen to all types of speech if protections are slowly chipped away. As citizens, we are free to choose a voice to believe among the "marketplace of ideas," as well as to make our own voice heard. As Holmes also remarked, "Many ideas grow better when transplanted into another mind than in the one where they sprung up."



*The Bill of Rights and* **EXPRESSION****Focus Quotation**

**Directions:** Read the quotation and answer the questions below.

**“I disapprove of what you say, but I will defend to the death your right to say it.”**

*–Attributed to French Philosopher Voltaire (1694 to 1778)*

1. Do you agree with Voltaire? What possible exceptions (if any) would you make?

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2. Compose a new quotation that incorporates your response above.

*“I disapprove of what you say, but I will defend to the death your right to say it,*

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— \_\_\_\_\_  
(your name here)

STUDENT HANDOUT - B

The Bill of Rights and EXPRESSION

Freedom of Speech Annotated Timeline

**Directions:** After watching the video segments, put the following documents or cases on the timeline. Be careful to categorize them correctly by placing those that help to protect speech above the timeline and those that allow government to restrict speech below the line. Write an annotation about the importance of the document or case.

**Segment 1 Documents/Cases:** English Bill of Rights (1689), Colonial Charters (1606–1776), the First Amendment (1791), *Schenck v. United States* (1919), *Garrison v. Louisiana* (1964), *Tinker v. Des Moines* (1968), *Brandenburg v. Ohio* (1969).

**Segment 3 Documents/Cases:** *Texas v. Johnson* (1989), *Cohen v. California* (1971), *Reno v. ACLU* (1997), *United States v. American Library Association* (2003).

PROTECTED SPEECH



UNPROTECTED SPEECH

*The Bill of Rights and* **EXPRESSION*****Free Speech Cards***

“This line at airport security is so long, I know I will miss my plane if I don’t get through it faster. Hmmm. I know what to do to speed things up, ‘Hey everyone, I’ve got a bomb in my suitcase, out of my way!’ ”

“I finally made it to Washington, D.C. and now I can stand in front of the White House and tell the President what I think. ‘Mr. President, your income tax policy is unfair and I protest!’”

“I am a public high school student and I am against the war in which our country is now engaged. To express my views I am wearing a T-shirt that says ‘Stop the War Now.’ I am not being disruptive in any way.”

“Fellow citizens, thank you for attending this meeting of Americans United for a Fair Tax Policy. As we’ve been saying, the President’s income tax policy is unfair. When April 15th gets here tomorrow, let’s all not pay our taxes as a sign of protest. It’s the only way to get through to this administration.”

“I am a public high school student and I am against the war in which our country is now engaged. Our school has been dealing with some violence and several students have been suspended for fighting because of war demonstrations (both for and against). To express my views I am wearing a T-shirt that says ‘Stop the War Now.’ I am not being disruptive or fighting, though.”

## STUDENT HANDOUT - D

*The Bill of Rights and* **EXPRESSION****Flag Desecration Amendment**

**Directions:** Read the proposed constitutional amendment and answer the questions below.

109th CONGRESS  
2nd Session  
**S. J. RES. 12**  
**JOINT RESOLUTION**

Proposing an amendment to the Constitution of the United States authorizing Congress to prohibit the physical desecration of the flag of the United States.

1. What would your vote be on the above amendment:                      YEA                      NAY

2. (*Homework*) Write a letter to your constituents (the people of your state whom you represent) explaining why you voted the way you did. In order to write an informed and convincing letter, be sure to reference at least three documents or cases from the **Background Essay** or **Handout B**.

To the people of \_\_\_\_\_:  
(your state name here)

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The Bill of Rights and **EXPRESSION****Critical Engagement Question***Why does liberty depend on a free press?***LESSON 2****Freedom of the Press****Overview**

A free press and the “watchdog” function it plays are vital to a democratic republic. If actions of government and individuals’ opinions of them cannot be published, an informed constituency cannot exist. Indeed, the Founders believed that liberty “depends on freedom of the press” and were careful to guard what they believed was the natural right of people to publish their sentiments.

*[O]ur liberty depends on the freedom of the press, and that cannot be limited without being lost.*

—THOMAS JEFFERSON, 1786

*Only a free and unrestrained press can effectively expose deception in government.*

—HUGO BLACK, 1971

**Materials**

Handout A: True-False Challenge  
Background Essay: Freedom of the Press (★★ indicates grade twelve reading level; ★ indicates grade ten reading level.)

Handout B: Focus Quotations

**Objectives****Students will:**

- understand the Founders’ views of press freedom.
- understand how a free press protects liberty.
- evaluate cases when the government may have a legitimate interest in restricting the press.
- assess the role of a free press as a bulwark of liberty.
- appreciate the importance of a free press in a democracy.

**Standards**

NCHS: Era 3, Standard 3C

CCE: IA2, IICI

NCSS: 5, 6, and 10

**Background/Homework**

**A.** Distribute **Handout A: True-False Challenge**. Have students mark each statement true or false before they read **Background Essay: Freedom of the Press**. (Note: Statements 1-9 are false; statement 10 is true.)

**Anticipatory Activity**  
**[10 minutes]**

**A.** Ask students how they did on their True-False Challenges (**Handout A**). Were there any statements that surprised them?

**B.** Distribute or make an overhead of **Handout B: Focus Quotations**. Have students read the quotations and select one that they believe best summarizes the importance of a free press. Have a few students share their paragraphs.

**Activity [20 minutes]**

**A.** Direct students’ attention to the last quotation: “*The First Amendment is often inconvenient. But that is beside the point. Inconvenience does not absolve the government of its obligation to tolerate speech.*” — Supreme Court Justice Anthony Kennedy.

**B.** Have students brainstorm a list of instances when free press may prove “inconvenient” to the government or to citizens. Make a master list on the board of all suggested examples, even if students appear to disagree.

*Students may suggest: editorials criticizing government policies; unflattering images of leaders; sound bites recorded inadvertently (e.g., when the official did not know a microphone was on); letters to the editor complaining about officials or laws; bloggers investigating and editorializing about government actions; inaccurate reports; stories revealing classified information; giv-*

## TEACHER'S GUIDE

*The Bill of Rights and* **EXPRESSION**

*ing away military positions; revealing election results on the East Coast before West Coast state polls close; and others.*

C. Once the list is complete, give students chalk and ask them to stand up, come to the board, and circle the examples (if any) that they believe the government has a legitimate interest in restricting. If an example is already circled, they should circle it again or place a check mark next to it to indicate another "vote."

D. If students feel that none of the examples warrant government restriction, they should write "n/a" on the board and circle it as a way of registering their vote.

E. For each circled example, ask students how they believe government should be able to restrict it. (For example—Should libelous reports land journalists in jail? Should the government be able to stop in advance the publication of information it claims is dangerous to national security?)

**Wrap-Up [15 minutes]**

A. Ask students to look at the examples that were circled the most often. Discuss as a large group the following questions:

- What, if anything, do these examples have in common?
- How does limiting press activity after the fact compare to stopping printing in advance (prior restraint)?
- The First Amendment says "Congress shall make no law ...

abridging freedom of the press." Why, then, do we entertain any situations where government can restrict the activity of a free press?

- In light of the First Amendment, do you believe these are legitimate reasons for the government to restrict the freedom of the press? Why or why not?
- Do you believe the Founders would have considered these to be legitimate reasons for the government to restrict the freedom of the press? Why or why not?

**Homework**

A. In two or three paragraphs, have students answer the following questions. Why did the Founders, including Thomas Jefferson, believe that liberty "depends on freedom of the press"? Is this view outdated and no longer relevant, or is it as true today as it was in 1791?

B. Have students draw a political cartoon depicting the idea of liberty as dependent on press freedom.

**Extensions**

A. Have students research the case *Hazelwood School District v. Kuhlmeier* (1988) which deals with freedom of the press and school newspapers. Have students research what their school's policy is on prior restraint and the school paper. In a position paper, have students summarize the policy and support or challenge it.

B. Have students imagine they are writing a letter to a pen pal who lives in a country without a free press. In their letters, they should provide examples of how citizens can receive news and otherwise participate in the United States's free press.

**Responsibilities Toolbox**

Have students brainstorm a list of responsibilities of citizenship that go along with freedom of the press. You might prompt them with the statements, "I am responsible for knowing..." and "I am responsible for doing..."

In addition to the ideas students generate, you may want to add:

- members of the press have a responsibility to report accurately.
- citizens' have the responsibility to read the newspaper/watch news reports.
- knowing what their representatives in government are doing.
- watching C-SPAN.
- writing letters to the editor.
- being aware of bias.
- seeking out multiple news sources.
- considering multiple viewpoints.
- discriminating among reliable news sources.

*The Bill of Rights and* **EXPRESSION*****True-False Challenge***

**Directions:** *Before reading the **Background Essay**, mark each statement true or false.*

- \_\_\_ 1. Newspapers must get government approval before printing stories.
- \_\_\_ 2. Newspaper reporters must be licensed by the government before they can work as journalists.
- \_\_\_ 3. Television reporters must be licensed by the government before they can work as journalists.
- \_\_\_ 4. Internet editions of newspapers have to seek government approval each time they update their Web pages.
- \_\_\_ 5. Editors who do not support government policies can have their newspapers censored.
- \_\_\_ 6. Citizens who write letters to the editor criticizing the government can be fined and, if their criticism is extreme, put in jail until they apologize.
- \_\_\_ 7. Most articles in newspapers are actually written by government officials.
- \_\_\_ 8. The government pays for most newspapers' printing equipment.
- \_\_\_ 9. The government can stop the publication of news in advance if it claims that the information may damage national security.
- \_\_\_ 10. Thomas Jefferson, author of the Declaration of Independence and our third president, claimed that Americans' liberty "depends on the freedom of the press."

## BACKGROUND ESSAY ★★

*The Bill of Rights and* **EXPRESSION*****Freedom of the Press*****Why is a free press so important?**

First Amendment freedoms are essential democratic rights, without which free government is impossible. Alongside such natural freedoms as speech and assembly, the Founders saw press freedom as a bulwark of liberty and a means of assuring justice in government.

**History of Press Freedom**

The influential English jurist William Blackstone saw freedom of press and speech as essentially the same: the right of an individual to lay sentiments before the public. He noted in his *Commentaries on English Law* (1765–70): “The liberty of the press is indeed essential to the nature of a free state; but this consists in laying no previous restraints upon publication.” Others, like the Enlightenment philosophers of the early 1700s, saw the printed word as a way to fight the abuse of power by making offenses known to a wide audience.

Nearly all of the American colonies protected the freedom of the press. Virginia’s Declaration of Rights states, “the freedom of the press is one of the great bulwarks of liberty, and can never be restrained but by despotic governments.” James Madison echoed the Virginia Declaration during the debate over the Bill of Rights in the House of Representatives, saying, “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.”

The Founders not only valued a free press, but also newspapers themselves, because they helped ensure an educated citizenry. Thomas Jefferson wrote to a friend, “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.” Newspapers were a means of informing the public in a society dedicated to self-government.

The First Amendment, protecting the press from interference from the federal government, was ratified in 1791. Yet in 1798, the Federalist majority in Congress passed the Sedition Act, which suppressed criticism of the government by punishing statements critical of the government. The Sedition Act said, “If any person shall write, print, utter or publish ... with intent to defame [the President or any member of Congress] ... into contempt or disrepute ... [he] shall be punished by a fine not exceeding two thousand dollars, and by imprisonment not exceeding two years.” President John Adams claimed the law was not politically motivated. However, all twenty-five people arrested for breaking the law were members of the opposing political party.

Public opposition to the Sedition Acts was so great that many Federalists, including President Adams, were turned out of office, and Thomas Jefferson, head of the Republicans, was elected president in 1800. The Republican-controlled Congress allowed the law to expire; the Supreme Court never ruled on its constitutionality.



*The Bill of Rights and* **EXPRESSION****Prior Restraint**

The First Amendment served to protect the press from federal government censorship. However, state governments routinely censored abolitionist newspapers in the South and pro-slavery newspapers in the North prior to the Civil War. Regulation of the press by state governments continued until 1931 when the Supreme Court applied the First Amendment to the states (called the doctrine of incorporation) in the case of *Near v. Minnesota*.

The *Near* case involved a policy subjecting newspapers to official approval before publication, where publishers had to show “good motives and justifiable ends” for what they were about to print. If they could not, the paper would be censored. The Court held that this kind of prior restraint on publication was “the essence of censorship” and the heart of what the First Amendment was designed to prevent. Except in very narrow circumstances, neither federal nor state governments could stop the publication of materials in advance.

Prior restraints are not justified by a broad claim of threatened national security. In the case of *New York Times v. United States* (1971), the federal government attempted to prevent the *New York Times* and the *Washington Post* from publishing excerpts from the Pentagon Papers. These were illegally-leaked, classified

documents that revealed government misconduct during the Vietnam War, and the government claimed their publication would be dangerous to national security. The Court found the prior restraint unconstitutional: “The word ‘security’ is a broad, vague generality whose contours should not be invoked to abrogate the fundamental law embodied in the First Amendment....

“In the First Amendment the Founding Fathers gave the free press the protection it must have to fulfill its essential role in our democracy. The press was to serve the governed, not the governors ... Only a free and unrestrained press can effectively expose deception in government. ... In revealing the workings of government that led to the Vietnam War, the newspapers nobly did precisely that which the Founders hoped and trusted they would do.”

When reporting the news, journalists must balance their responsibilities to inform with their responsibilities as citizens. The fact that something can be printed does not necessarily mean it should be printed. Like all responsibly-exercised rights, press freedom can improve society. Freedom of the press permits citizens to participate in robust debate about public affairs, and, when necessary, enables them to expose corruption in government.

## BACKGROUND ESSAY



## The Bill of Rights and EXPRESSION

### Freedom of the Press

# Why is a free press so important?

First Amendment freedoms are key democratic rights that make free government possible. Alongside such natural freedoms as speech and assembly, the Founders saw press freedom as a safeguard of liberty and a means of assuring justice in government.

### History of Press Freedom

The leading English jurist William Blackstone saw freedom of press and speech as basically the same. An individual has the right to share his thoughts with the public. He noted in his *Commentaries on English Law* (1765–70): “The liberty of the press is indeed essential to the nature of a free state; but this consists in laying no previous restraints upon publication.” Others, like the Enlightenment philosophers of the early 1700s, saw the printed word as a way to fight the abuse of power. Offenses could be made known to a wide audience.

Nearly all of the American colonies protected the freedom of the press. Virginia’s Declaration of Rights states, “the freedom of the press is one of the great bulwarks of liberty, and can never be restrained but by despotic governments.” James Madison said during the debate over the Bill of Rights in the House of Representatives, “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.”

The Founders also valued newspapers themselves because they helped ensure an educated public. Thomas Jefferson wrote to a friend, “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.” Newspapers were a means of informing the public in a society dedicated to self-government.

The First Amendment protects the press from interference from the federal government. It was ratified in 1791. Yet in 1798, the Federalist majority in Congress passed the Sedition Act, which suppressed criticism of the government. Those who made statements critical of the government were punished. The Act made it a crime to “write, print, utter or publish . . . with intent to defame [the President or any member of Congress].” Those found guilty could be sent to prison for two years and fined up to \$2,000. President John Adams claimed the law was not politically motivated. However, all twenty-five people arrested for breaking the law were members of the opposing political party.

Public opposition to the Sedition Acts was so great that many Federalists, including President Adams, were turned out of office, and Thomas Jefferson, head of the Republicans, was elected president in 1800. The Republican-controlled Congress allowed the law to expire; the Supreme Court never ruled on its constitutionality.

*The Bill of Rights and* **EXPRESSION****Prior Restraint**

The First Amendment served to protect the press from federal government censorship. However, state governments routinely censored anti-slavery newspapers in the South. Pro-slavery newspapers in the North were also censored. Regulation of the press by state governments continued until 1931. In the case of *Near v. Minnesota*, the Supreme Court applied the First Amendment to the states. This is called the doctrine of incorporation.

The *Near* case involved a law requiring newspapers to get official approval before publication. Publishers had to show “good motives and justifiable ends” for what they were about to print. If they could not, the printing would not be allowed. The Court held that this kind of prior restraint on publication was “the essence of censorship” and the heart of what the First Amendment was designed to prevent. Except in very narrow circumstances, neither federal nor state government could stop the publication of materials in advance.

A broad claim of threatened national security does not justify prior restraint. In the case of *New York Times v. United States* (1971), the federal government tried to stop the *New York Times* and the *Washington Post* from printing parts of the Pentagon Papers. The Pentagon Papers were classified documents that revealed government misconduct during the Vietnam War. A government employee had broken his oath to keep them secret. The government claimed that printing the Pentagon Papers would be dangerous to national security.

The Court found the prior restraint unconstitutional. The Court held that “the word ‘security’ is a broad, vague generality,” that did not justify abridging First Amendment rights. Further, “the Founding Fathers gave the free press the protection it must have to fulfill its essential role in our democracy. The press was to serve the governed, not the governors. Only a free and unrestrained press can effectively expose deception in government. ... In revealing the workings of government that led to the Vietnam War, the newspapers nobly did precisely that which the Founders hoped and trusted they would do.”

When reporting the news, journalists must balance their responsibilities to inform with their responsibilities as citizens. The fact that something can be printed does not necessarily mean it should be printed. Like all responsibly-exercised rights, press freedom can improve society. Freedom of the press permits citizens to participate in robust debate about public affairs, and, when necessary, enables them to expose corruption in government.

## STUDENT HANDOUT - B

# The Bill of Rights and EXPRESSION

### Focus Quotations

**Directions:** Read the following quotations and circle the one that you believe best expresses the importance of a free press. Then write a short paragraph explaining why.

1. To the press alone, checkered as it is with abuses, the world is indebted for all the triumphs which have been gained by reason and humanity over error and oppression.

–James Madison, 1798

2. [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

3. [W]e trust...that man may be governed by reason and truth. Our first object should therefore be, to leave open to him all the avenues to truth. The most effectual hitherto found, is the freedom of the press. It is, therefore, the first shut up by those who fear the investigation of their actions.

–Thomas Jefferson, 1804

4. In the absence of governmental checks and balances present in other areas of our national life, the only effective restraint upon executive policy and power in the area of national defense and international affairs may lie in an enlightened citizenry. ...Without an informed and free press, there cannot be an enlightened people.

–Supreme Court Justice Potter Stewart, 1971

5. In the First Amendment, the Founding Fathers gave the free press the protection it must have to fulfill its essential role in our democracy. The press was to serve the governed, not the governors. ...The press was protected so that it could bare the secrets of government and inform the people. Only a free and unrestrained press can effectively expose deception in government.

–Supreme Court Justice Hugo Black, 1971

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

–Supreme Court Justice Anthony Kennedy, 1992

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The Bill of Rights and **EXPRESSION**

## Critical Engagement Question

### Are "Free Speech Zones" constitutional?

# LESSON 3

## Freedom of Assembly and Petition

### Overview

While the rights to assemble and petition government were among the first freedoms exercised in our country, today they are the least frequently discussed of the First Amendment freedoms. The Founders believed these rights to be purely political in nature, but over time the definition of assembly has broadened to include issues such as curfews, "free speech zones," and freedom of association. Today, as in the Founders' time, these freedoms allow citizens to participate in politics at all levels.

*The good opinion of mankind, like the lever of Archimedes, with the given fulcrum, moves the world.*

—THOMAS JEFFERSON, 1814

*If there is any principle of the Constitution that more imperatively calls for attachment than any other it is the principle of free thought, not free thought for those who agree with us but freedom for the thought that we hate.*

—OLIVER WENDELL HOLMES, 1929

### Materials

Background Essay: Freedom of Assembly and Petition (✱✱ indicates grade twelve reading level; ✱ indicates grade ten reading level.)  
Handout A: Focus Quotation  
Expression DVD [Segment Four] and Viewing Guide  
Handout B: First Amendment Zones  
Handout C: Assembly and Petition Cases Fact Sheet  
Answer Key

### Objectives

#### Students will:

- understand the historic and current importance of the freedom of assembly and petition.
- understand citizens' responsibility to assemble with a purpose and to do so without infringing on the rights or security of others.
- analyze Supreme Court cases that pertain to government restriction of freedom of assembly and petition.
- evaluate the constitutionality of "First Amendment Zones."
- appreciate the role of the Supreme Court in protecting the freedoms of assembly and petition.

### Standards

NCHS: Era 3, Standard 3C

CCE: IA2, IICI

NCSS: 5,6, and 10

### Background/Homework

A. Have students read **Background Essay: Freedom of Assembly and Petition**.

B. As a large group, discuss and identify one school issue that all students are familiar with and are likely to have opinions on. Tell them to imagine they are going to attend a school board meeting and that they should create a sign expressing their view on the issue that they will hold up at the meeting in case they do not get a chance to speak.

### Anticipatory Activity [10 minutes]

A. As soon as class begins, allow students who created signs supporting the school issue to post their signs around the classroom. Tell the remaining students that they can post their signs too, but they can only do so outside the room. If students complain, tell them that the space outside the door is the designated "free speech zone." (Note: you may also wish to flip a coin in front of the class in order to make the exercise as neutral as possible.)

B. Distribute or put up an overhead of **Handout A: Focus Quotation** and read the quotation. Have students put the quotation in their own words.

C. Have students share their ideas of situations in which this quotation would have applied.

### Activity [25 minutes]

A. Show Segment Four of the **Expression DVD** and have students complete the **Viewing Guide**.

## TEACHER'S GUIDE

*The Bill of Rights and* **EXPRESSION**

**B.** Tell students they will now assume the role of Supreme Court justices, and their job will be to determine the constitutionality of so-called “free speech zones.” Distribute **Handout B: First Amendment Zones** and have students read the scenario. Discuss the information as a large group, answering any questions students have.

**C.** Have them mark their initial determinations of constitutionality on the Handout.

**D.** Tell them that as Supreme Court justices, they will need to base their vote on the Constitution and support it with precedents. Distribute **Handout C: Assembly and Petition Cases Fact Sheet** and have students read the case information. Let students know that it is acceptable for them to change their responses after considering the information on **Handout C.** (See *Answer Key for suggested responses.*)

**Wrap-Up [15 minutes]**

**A.** Collect handouts randomly in groups of nine. Consider each one a “court.” Have student volunteers tabulate the votes for each court and announce the decisions.

**B.** Have students create a slogan or banner expressing support or disapproval of “Free Speech Zones.”

*For example: Pro: “Get in the Zone – Keep the president safe!”; “Don’t protest alone, go to the Free Speech*

*Zone”; Anti: “There is no ‘Freedom’ in the ‘Freedom of Speech Zones,’” or “Out of Sight, Out of Mind – Free Speech Zones”*

**C.** Have students share their slogans and have students vote on the most memorable ones.

**Homework**

**A.** Have students find a news report on a current or historic rally (March on Washington, Million Man March, Pro-life rally, etc.). Have students make a pamphlet containing the organizers/leaders, the number of attendees, the location, the purpose or cause of the rally and the impact of the rally.

**B.** Have students poll at least ten people (who are not in their class) asking them to recite the five freedoms listed in the First Amendment,

recording which rights each were able to recall. They should create a table of how many respondents were able to recall each right and how many were able to recall all five. Below the table, have students write a summary of the information and a hypothesis about the results.

**Extensions**

**A.** Have students research the guidelines for petitioning their school board. Facilitate the class’s selection of an issue of importance to them, initiation of a petition to the school board, gathering of signatures, and filing the petition.

**B.** Have students research a petition filed with the local or state government and report on its content and the impact it made on the issue.

**Responsibilities Toolbox**

Have students brainstorm a list of responsibilities of citizenship that go along with their rights to assembly and petition. You might prompt them with the statements, “I am responsible for knowing...” and “I am responsible for doing...”

In addition to the ideas students generate, you may want to add:

- assembling with a purpose – not merely loitering.
- attending peaceful demonstrations.
- following local laws regarding demonstrations.
- writing and/or signing petitions.
- knowing your representatives in order to know who to petition.
- joining neighborhood watches.
- being a “watchdog” against government corruption.
- not infringing on other citizens’ rights.

*The Bill of Rights and* **EXPRESSION*****Freedom of Assembly and Petition***

# How can you talk directly to government about an issue you care about?

You can write a petition. You can even get together with friends first to make sure you say everything exactly right. Then you can circulate your petition to get as many signatures on it as possible before delivering it.

Of all the rights protected by the First Amendment, the rights to assemble and petition enjoy the oldest lineage. In the *Magna Carta* (1215), groups of barons were given the right to meet to prepare for petitioning the king. Yet this right was not absolutely respected: anyone who signed a petition that listed more than twenty names was guilty of “tumultuous petitioning,” a limit that would stay in place for more than four centuries.

A century later, the Founders, who agreed that the rights to assemble and petition the government needed protection, adopted these rights. The Founders brought with them a strong tradition of petitioning government in the face of tyranny. The Petition of Right reminded the King of the fact that he was not above the law. In 1689, the English Bill of Rights lifted the ban on “tumultuous petitioning” that had been in place for 400 years. As calls for independence grew louder in the colonies, those who favored a moderate approach to Britain urged their fellow colonists to petition the British Crown rather than separate from England. The Declaration of Independence charged the king with ignoring those petitions: “In every stage of these Oppressions We have Petitioned for Redress in the most humble terms: Our repeated Petitions have been answered only by repeated injury.”



The Founders agreed that the rights to assemble and petition government were essential for self-government, and both were enshrined among the five freedoms of the First Amendment.

**Freedom of Petition**

Individuals have the right to petition the government to express their views and ask for change. This right had been vigorously exercised in the colonies and continued to be exercised by American citizens from the earliest days of the republic. Congress received petitions from citizens frequently on topics ranging from treatment of the mentally ill to the abolition of slavery.

Petitions urging the abolition of slavery began to arrive at the US Capitol with greater and greater frequency when the American Anti-Slavery Society began a petition drive in 1834. Congress received more than 130,000 petitions in one year alone. On May 18, 1836, Congress adopted a “Gag Rule,” requiring that all petitions pertaining to slavery be tabled automatically. Congress refused to hear the hundreds of thousands of petitions it received continuously for the next eight years. During that time, Massachusetts Representative John Quincy Adams tirelessly worked for the gag rule to be repealed. He was successful in 1844.

## BACKGROUND ESSAY ★★

*The Bill of Rights and* **EXPRESSION**

Throughout American history, citizens have exercised and fought for this First Amendment right. Abolitionist leaders including Angelina Grimké and Frederick Douglass, women's suffragists including Susan B. Anthony, and civil rights leaders such as Martin Luther King, Jr., all encouraged citizens to petition government to expand political and civil rights. Citizens can circulate and sign petitions for causes they believe in. Petitioning government is a method of individual efficacy that citizens can use in their everyday lives.

**Freedom of Assembly**

The right to assemble originally went hand-in-hand with the right to petition, when people assembled to discuss or write a petition. The application of the freedom has changed over the years, however. Now the right to assemble is often related to protesting, which raises a number of questions concerning time, place, and method. It is important to note that the First Amendment limits only the actions of government. Citizens do not have the right to assemble on private property.

Even when protests occur on public property, it is often difficult to balance protection of the protesters' rights to free speech and assembly with protection of others' rights and safety. The Court agreed that some restrictions could be placed upon abortion clinic protesters in accordance with the right to assemble in order to protect other citizens (*Madsen v. Women's Health Clinic*, 1994).

Further, if the government has a compelling state interest unrelated to a group's message, then the government can force the group to accept certain members.

In this century, the right to assemble has been expanded to include assembly for non-political purposes. Some Supreme Court decisions have combined the rights to assemble, petition, and speak to form a right to "free association." This means that groups of people have the right to join together without government interference. The right to associate freely is not, however, an absolute right. If the government has a compelling state interest unrelated to a group's message, then the government can force the group to accept certain members.

For example, the Court upheld a California state law requiring Rotary Clubs to admit women. Because women members would not prevent the group from accomplishing its goals, the Court held in *Rotary International v. Rotary Club of Duarte* (1987) that the state's compelling interest in ending sexual discrimination outweighed the infringement on the group's right of association.

On the other hand, the Court ruled in *Boy Scouts of America v. Dale* (2000) that the government could not force the Boy Scouts to admit a homosexual scout leader. The Court found a First Amendment "right of expressive association." To force the group to take on a gay Scout leader would "significantly burden" the organization's right to communicate its message. The Court noted that the Boy Scouts did not want "to promote homosexual conduct as a legitimate form of behavior."

Freedom of the press, assembly, and petition continue to serve the Founders' purpose today. They wanted the citizens of the United States to discuss and debate political actions because they understood that liberty fed a growing nation.





## The Bill of Rights and EXPRESSION

### Freedom of Assembly and Petition

# How can you talk directly to government about an issue you care about?

You can write a petition. You can even get together with friends first to make sure you say everything exactly right. Then you can circulate your petition to get as many signatures on it as possible before delivering it.

Of all the rights protected by the First Amendment, the rights to assemble and petition are the oldest. In the *Magna Carta* (1215), groups of barons were given the right to meet to prepare for petitioning the king. Yet this right was not completely protected. Anyone who signed a petition that listed more than twenty names was guilty of “tumultuous petitioning.”

A century later, the Founders brought with them a strong tradition of petitioning government when rights were abused. The Petition of Right had reminded the King that he was not above the law. In 1689, the English Bill of Rights lifted the ban on “tumultuous petitioning” that had been in place for 400 years.

As calls for independence grew louder in the colonies, many urged the colonists to petition the British Crown. The Declaration of Independence charged the king with ignoring those petitions: “In every stage of these Oppressions We have Petitioned for Redress in the most humble terms: Our repeated Petitions have been answered only by repeated injury.”

The Founders agreed that the rights to assemble and petition government were essential for self-government, and both were enshrined in the First Amendment.



People in the United States enjoy the right to peaceably meet, demonstrate, organize, and associate with whomever they want.

### Freedom of Petition

Individuals have the right to petition the government to express their views and ask for change. This right had been exercised in the colonies. It continued to be exercised by American citizens from the earliest days of the republic. Congress often received petitions from citizens. Topics ranged from the treatment of the mentally ill to the abolition of slavery.

The American Anti-Slavery Society began a petition drive in 1834. Petitions urging the abolition of slavery began to arrive at the US Capitol with greater and greater frequency. Congress received more than 130,000 petitions in one year alone. On May 18, 1836, Congress adopted a “Gag Rule.” This meant that all petitions about slavery would be set aside. Congress refused to hear the hundreds of thousands of petitions it received almost non-stop for the next eight years. During that time, Representative John Quincy Adams worked for the gag rule to be repealed. He was finally successful in 1844.

Throughout American history, citizens have exercised and fought for this First Amendment right. Abolitionist leaders including Angelina Grimké and Frederick

## BACKGROUND ESSAY ★

*The Bill of Rights and* **EXPRESSION**

Douglass, women's suffragists including Susan B. Anthony, and civil rights leaders such as Martin Luther King, Jr., all encouraged citizens to petition government to expand political and civil rights. Citizens can pass out and sign petitions for causes they believe in. Petitioning is a way that citizens can participate in government in their everyday lives.

### Freedom of Assembly

The right to assemble originally went hand-in-hand with the right to petition. People often assembled to discuss or write a petition. The ways the freedom has been applied, however, has changed over the years. The right to assemble is now often related to protesting.

The right to assemble in protest is not, however, an absolute right. It is important to note that the First Amendment limits only the actions of government. Citizens do not have the right to assemble on private property. Even when protests occur on public property, the protesters' rights to free speech and assembly must be balanced with others' rights and safety. For example, the Court agreed that some legal restrictions could be placed upon abortion clinic protesters that protected their right to assemble, in order to protect other citizens (*Madsen v. Women's Health Clinic*, 1994).

Some Supreme Court decisions have found a right to "free association." This means that groups of people have the right to join together without government interference. The right to associate freely is not, however, an absolute right. If the government has a compelling state interest unrelated to a group's message, then the government can force the group to accept certain members.

For example, the Court upheld a California state law requiring Rotary Clubs to admit women. Women members would not prevent the group from accomplishing its goals. Therefore, the Court held in *Rotary International v. Rotary Club of Duarte* (1987) that the state's interest in ending sexual discrimination outweighed the infringement on the group's right of association.

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Freedom of the press, assembly, and petition continue to serve the Founders' purpose today. They wanted the citizens of the United States to discuss and debate political actions because they understood that liberty fed a growing nation.

*The Bill of Rights and* **EXPRESSION****Focus Quotation**

**Directions:** *Read the quote below and put it in your own words. Then answer the question below.*

**1. Fear of serious injury alone cannot justify oppression of free speech and assembly. Men feared witches and burnt women. It is the function of speech to free men from the bondage of irrational fears.**

–Supreme Court Justice Louis D. Brandeis, 1927

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**2. Consider the **Background Essay** and your own knowledge of history and current events. List any situations where you believe that free speech and assembly helped bring about change:**

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**STUDENT HANDOUT - B***The Bill of Rights and* **EXPRESSION****First Amendment Zones**

**Directions:** *Imagine that you are a Supreme Court justice and must decide whether the following situation is a violation of freedom of assembly.*

“First Amendment Zones,” also called “Free Speech Zones” have been gaining popularity, especially since the September 11th attacks in 2001. These zones are fenced off areas, sometimes blocks away from the site of an event protesters are trying to influence. They were used first during the Clinton administration and were employed at the 2000 Democratic Convention in Los Angeles. Protestors of Democratic Party policies were sent blocks away to demonstrate. “Free Speech Zones” were also employed during the 2005 Inauguration Parade of President George W. Bush for groups who wished to demonstrate against the administration’s policies. The president’s supporters, however, were not held to the same restrictions. The Secret Service justified the zones because of a threat to the security of the president.

**Constitutional Question:**

Are “First Amendment Zones” a violation of the First Amendment?

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*The Bill of Rights and* **EXPRESSION*****Assembly and Petition Cases Fact Sheet***

**Directions:** Read the First Amendment and the following case information. After reading the background information on “First Amendment Zones,” apply these cases to determine the constitutionality of the zones.

***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.

***Edwards v. South Carolina (1963)***

- 187 black marchers protesting segregation in South Carolina participated in a peaceful and orderly march on public property (the South Carolina State House grounds).
- A group of police officers (approximately 30) ordered the group to disperse or be arrested.
- The group began to sing hymns and patriotic songs. They were arrested and charged with “breach of the peace.”
- **The Supreme Court ruled that the arrests were violations of individual rights to peaceably assemble. The justices noted that the charge was too vague and that the evidence did not prove the marchers to be violent. The Court’s opinion said that the state cannot “make criminal the peaceful expression of unpopular views.”**

***Gregory v. City of Chicago (1969)***

- Civil rights demonstrators marched to the mayor’s house in Chicago to ask for desegregation in public schools.
- Mr. Gregory addressed the marchers and said: “First we will go over to the snake pit [the mayor’s home]. Then, we will continue to go out to Mayor Daley’s home until he [desegregates the schools].”
- The marchers sang into the evening, but stopped at 8:30.
- They were arrested for creating a “diversion tending to a breach of the peace.”
- **The Supreme Court ruled that the arrests were unconstitutional based on the vagueness of the wording of the statute.**

***National Socialist Party of America v. Village of Skokie, Illinois (1978)***

- The National Socialist Party of America (NSPA) is also referred to as the Nazi party and espouses white supremacy and the inferiority of minorities.
- Skokie, Illinois, has a large Jewish population including many Holocaust survivors.
- The NSPA applied for a permit to demonstrate, which was required by law and was denied on the basis that the demonstration would “incite violence, hatred, abuse or hostility toward a person or group of persons by reason of reference to religious, racial, ethnic, national or regional affiliation....”
- **The Supreme Court ruled that the government of Skokie could not prohibit the Nazi party from holding a public march simply because of the content of their message.**

## STUDENT HANDOUT - C

*The Bill of Rights and* **EXPRESSION*****Assembly and Petition Cases Fact Sheet (continued)******Schenck v. Pro-Choice Network of Western New York (1997)***

- A District Court created “fixed buffer zones” of fifteen feet outside of abortion clinics in which blockades and disruptive activity were prohibited.
- “Floating buffer zones” were also created which prohibited protestors from coming within fifteen feet of people entering or exiting the clinic.
- **The Supreme Court ruled that the “fixed buffer zones” were constitutional, but that the “floating buffer zones” were not. It based its decision on the government’s interest in maintaining public safety weighed against the freedom of speech and assembly. “Fixed buffer zones” still allowed protestors to be seen and their message heard, but avoided physical contact. However, the Court stated that the “floating buffer zones” placed greater restrictions on free speech than was warranted to maintain public safety.**

***Hill v. Colorado (2000)***

- A Colorado law restricted coming within eight feet of another person in a 100-foot zone outside of an abortion clinic with the intent to hand out leaflets, display signs, protest orally, or counsel.
- Pro-life groups challenged the statute but the Colorado Supreme Court ruled that it struck a balance between the freedom of assembly and a person’s right to medical care.
- **The United States Supreme Court ruled that the Colorado statute is constitutional. It stated that the law “is not a regulation of speech. Rather, it is a regulation of the places where some speech may occur.”**

1. Precedents that apply to my determination of the constitutionality of “First Amendment Zones:”

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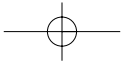
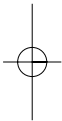
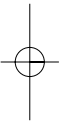
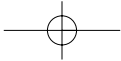
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2. My determination changed/did not change (circle one) after reading the case information.

Congress of  
begun and held  
Wednesday the Fourth of  
THE  
RESOLVED  
ARTICLE  
The fifth article of the original  
constitution requires by the first clause  
that it be a registered by law  
of a Representative shall have  
a Representative for every (10) 000  
of the population for the same  
number unless requiring a smaller  
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number the Congress may





*The Bill of Rights and* **GUNS**

**UNIT OVERVIEW**

**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.

**Synopsis of Lessons and DVD**

**Lesson One:**

Students explore the legal and philosophical foundations of the right to keep and bear arms.

**Lesson Two:**

Students analyze the gun control debate in terms of the Second Amendment.

## TEACHER'S GUIDE

*The Bill of Rights and* **GUNS****Critical Engagement Question***Who does the Second Amendment protect?***LESSON 1*****The Right to Keep and Bear Arms*****Overview**

During the Revolutionary War, the colonists defeated the British on the battlefield. When the new government was being framed, many in the Founding generation said they would not trade one tyrant for another. They firmly believed in their natural right to defend themselves and their property, and guarded their right to own firearms as a means of defense. This right was enshrined in the Second Amendment.

*Guard with jealous attention the public liberty. Suspect every one who approaches that jewel. Unfortunately, nothing will preserve it but downright force. Whenever you give up that force, you are inevitably ruined.*

—PATRICK HENRY, 1788

*One of the ordinary modes by which tyrants accomplish their purposes without resistance, is by disarming the people, and making it an offense to keep arms.*

—JOSEPH STORY, 1840

**Materials**

Background Essay: Firearms and the Founders (✱✱ indicates grade twelve reading level; ✱ indicates grade ten reading level.)

Handout A: Focus Quotation

Ticket Template

Handout B: Discussion Guide

Guns DVD and Viewing Guide

Answer Key

**Objectives****Students will:**

- understand the historical roots of the right to keep and bear arms.
- analyze the Second Amendment.
- analyze how colonists and the British regarded control of weapons.
- evaluate arguments about how best to provide security for one's community.
- appreciate the Founders' view that free citizens have the responsibility of defending their communities by taking up arms if needed.

**Standards**

NCHS: Era 3, Standard 3

CCE: VB1, VB5, VC1, VC2

NCSS: Strands 2, 5, 6, and 10

**Background/Homework**

**A.** Have students read **Background Essay: Firearms and the Founders**.

**Anticipatory Activity**  
**[10 minutes]**

**A.** Distribute or put up an overhead of **Handout A: Focus Quotation**.

Have students share their responses, and discuss as a large group. You may also wish to ask:

- Does the wording of the amendment seem antiquated or out of date?
- What about the ideas behind it?

**Activity [20 minutes]**

**A.** Before class, make copies of the **Ticket Template** for three approximately equal groups: British soldiers, Concord Town Council, and Sons of Liberty.

**B.** Give each student a "ticket." Use the tickets to assemble the students into three identity groups from 1775.

**C.** Have each group meet to read and discuss the scenario on **Handout B: Discussion Guide**. Have them discuss initial responses to the questions.

**D.** After a few minutes, choose two students from each of the groups to jigsaw into six-member Group Two's. Each "Group Two" should be made up of two "British Soldiers" members, two "Concord Town Council" members, and two "Sons of Liberty" members.

**E.** Have each pair of "British Soldiers" and "Sons of Liberty" members explain their responses to **Handout B** to the Concord Town Council members.

*The Bill of Rights and* **GUNS**

F. Ask the pair representing the Concord Town Council within each group to listen to each pair and then decide which side (if either) the council will support in the deepening controversy. Town Council members should answer the questions:

- Which side will the town council support in this controversy?
- How will you recommend that the town council prepare citizens of Concord for the likely upcoming clash with the British soldiers?
- How does the traditional right to bear arms relate to your decision? Why is this right so important?

**Wrap-Up [15 minutes]**

A. Show the **Guns DVD** and have students complete the **Viewing Guide**.

B. As a large group, discuss the following questions:

- What do you think the Founders intended with the Second Amendment?
- Do you think the Founders thought they were protecting an individual right for people to own guns, or did they mean to confine it to a militia?
- What does the right to bear arms entail? What are its limits (if any)?

**Homework**

A. Have students write two new versions of the Second Amendment—one which protects all individuals' rights to own weapons, and a second version that only allows militia members to do so. Students should read the Bill of Rights and make sure to use a similar writing style.

B. Ask students: does the United States face any current challenges similar to those faced in 1775 Concord? Have them respond with a two- to three-paragraph journal entry, or a two- to three-paragraph summary of a recent newspaper article about the crisis they have chosen.

**Extensions**

A. Have students write a two- to three-page response to the following question: One argument against gun-control laws is that tyrants will always try to confiscate weapons belonging to individuals. What evidence from history to the present day is available to support or refute this assertion?

B. Have students research individuals among the Sons of Liberty such as Samuel Adams, John Hancock, Paul Revere, and William Dawes. Have them prepare brief biographical sketches in the form of business cards to present and share with the class.

**Responsibilities Toolbox**

Have students brainstorm a list of responsibilities of citizenship that go along with the Second Amendment. You might prompt them with the statements, "I am responsible for knowing..." and "I am responsible for doing..."

In addition to the ideas students generate, you may want to add:

- knowing laws about carrying concealed weapons.
- respecting others' rights to legally own weapons.
- adhering to safety procedures.
- knowing how to use weapons you own.
- keeping children away from weapons.

## BACKGROUND ESSAY ★★

*The Bill of Rights and* **GUNS****Firearms and the Founders**

# What is the history of the right to bear arms?

Massachusetts colonists launched the first battle of the American War for Independence. These “Minutemen” fired the “shot heard around the world.” Their aim was to stop King George III’s soldiers from confiscating the colonial militia’s guns and ammunition. The Minutemen believed that, as Englishmen, they had a right to these munitions. More than a dozen years later, the Founders heeded the public’s call for a bill of rights. The people’s right to bear arms was enshrined in the Second Amendment to the Constitution.

**English Precedent**

The right to bear arms traces back to English common law before the Norman Conquest in 1066. The tradition of local militia also finds its roots in medieval England. The militia was the Crown’s primary defense against foreign invasion and domestic insurrection. English law actually required landowning men to have weapons and serve in their baron’s militia. The nobles favored the militia, because they feared that a large standing army would mean high taxation, along with physical abuses of their persons and property.

By 1328, Parliament forbade Englishmen from carrying arms in public. Afterward, only the nobility and gentry could own guns. Additional regulation came from the Stuart kings of the seventeenth century, who allowed only their supporters to carry guns or any kind of weapon. This was also the case with the English Bill of Rights in 1689. Written by Parliament after the overthrow of the Catholic King James II and the installation of Protestants William and Mary to the throne, it states: “That the subjects which are Protestants, may have arms



for their defense suitable to their conditions, and as allowed by law.” While the English Bill of Rights guaranteed the right of Protestant individuals to own guns, it denied that right to the Catholic minority.

**American Colonial Experience**

Drawing on the English tradition of local militias, American colonists formed citizen armies to protect their settlements from American Indian attacks. Before 1763, militias also defended colonies against French invaders from the north and Spanish marauders from the south. After Britain expelled France, American colonists began to view the British army’s presence as unnecessary, expensive, and intrusive. Most believed that local militias could adequately protect the settlements.

Colonists learned firsthand the importance of an armed citizenry during their revolution against British rule. Trained militias served as the colonists’ first line of defense until George Washington and the Continental Congress could form, train, and equip an adequate Continental Army. The revolutionaries considered gun ownership an essential right and necessary for protection from British tyranny.

*The Bill of Rights and* **GUNS**

After independence, many states feared the formation of a federal standing army and demanded that they retain control of their own militias. Anti-Federalists insisted this guarantee be included in the Bill of Rights. Both the Federalists, who supported the ratification of the Constitution in 1788, and the Anti-Federalists, who had demanded a separate bill of rights, wanted to protect states and individuals from a national government that was too strong.

During the Revolution, most individuals exercised their traditional right to bear arms. It is likely, however, that the Founders did not consider this right universal or unlimited. Several colonies regulated guns, prohibiting ownership for free blacks and, at times, Roman Catholics. State governments continued to deny free blacks the right to own and use guns well after the Revolution, fearing they would take up arms against white landowners.

## Interpretations of the Second Amendment

Scholars, politicians, and the courts search through history and the law to determine the meaning of the Second Amendment. Two interpretations lead the debate over guns today. They involve the origin of the right to bear arms and the definition of “militia.”

The origin of the right to bear arms begins the debate over interpretation. Some scholars claim the right to bear arms stems from the colonial rights associated with a militia. The Massachusetts and Virginia Declaration of Rights mentions that a well-regulated militia is the natu-

ral defense of a free government. Other historians assert the Founders based the Second Amendment on the English Bill of Rights (1689). Scholars also point to English philosophy to support the individual’s right to bear arms. Referring to the ideas of John Locke, some scholars argue that the Founders believed groups could have “powers,” but only individuals could have “rights”—the term used in the Second Amendment.

The second interpretation revolves around the definition of “militia.” Various scholars argue that the militia mentioned in the Second Amendment represents organized state armies, and that the Second Amendment does not guarantee an individual’s right when it refers to “the right of the people to keep and bear arms.” Instead, the Second Amendment simply protects state militias from the federal government. Others believe “militia” referred to a group of individual citizens who protected themselves and their neighbors since there was no organized army or police force.

It is important, then, to decide if the Second Amendment means “individuals” when it refers to “the people.” In developing their arguments, both sides of the gun debate look to history for support of their positions. Legal examples and the intent of the Founders can make arguments more meaningful. Scholars find many examples in English and American history for the individual’s right “to bear arms,” as well as precedents for government regulation of weapons and weapon use. Such results rarely settle disagreements, but understanding these concepts can be helpful in addressing the issue of guns today.

## *The Bill of Rights and* **GUNS**

### **Firearms and the Founders**

# What is the history of the right to bear arms?

The British troops approached the arsenal and prepared to seize the colonists' supply of weapons. The Massachusetts Minutemen (a group of local men who protected the colonies) assembled in the troops' path. They believed that one of their rights as Englishmen was to keep the weapons. The two groups faced each other, and then a shot rang out in the night air. The "shot heard around the world" started the American Revolution in defense of the right to bear arms. The Founders remembered this right more than twelve years later when they wrote the Second Amendment to the Constitution.

### **English Precedent**

The right to bear arms in English common law dates back prior to the Norman Conquest in 1066. The tradition of local militia also existed in medieval England. The militia served as the Crown's main defense against invasion and domestic revolt. English law required landowning men to have weapons and serve in their baron's militia. With growing divisions of religious and political thought, the government began to limit the right to bear arms.

By 1328, Parliament forbade Englishmen from carrying arms in public. Afterward, only the nobility and gentry could own guns. Additional regulation came from the Stuart kings of the seventeenth century, who allowed only their supporters to carry guns or any kind of weapon. This was also the case with the English Bill of Rights in 1689, enacted by William and Mary of Orange, Protestants, who assumed the throne after the Catholic King James II was overthrown. It states, "That the subjects which are Protestants, may have arms for their



defense suitable to their conditions, and as allowed by law." While the English Bill of Rights guaranteed the right of Protestant individuals to own guns, it denied that right to the Catholic minority.

### **American Colonial Experience**

Once settled in America, colonists exercised the right to own and carry guns. They formed citizens' armies to protect settlements from American Indian attacks. Armed militias also protected colonies against the French from the north and the Spanish from the south. During this time, Britain sent an army to aid in the fights. After Britain forced out France, American colonists viewed the British army's presence as unnecessary, expensive, and disturbing. Most believed that local militias alone could protect settlements. Their instincts soon proved justified.

Colonists learned firsthand the importance of the right to bear arms during their revolution against England. Since much fighting occurred before Congress created a professional army, trained militias served as the first line of defense. Without individual colonists' fighting the British, Congress would not have had time to assemble, train, and equip the Continental Army.



## *The Bill of Rights and* **GUNS**

The fresh scars of revolution insured that Americans would not soon forget the importance of the right to bear arms. States feared the formation of a federal standing army. A standing army is a permanent military group maintained in peace, as well as war. They demanded that the states keep control of their own militias to protect from federal tyranny. Anti-Federalists insisted that this guarantee be included in the Bill of Rights. Both Federalists and Anti-Federalists wanted to protect states and individuals from a central government with too much power.

During the Revolution, most individuals owned guns. The Founders, however, almost certainly did not consider the right to bear arms universal or unlimited. Several colonies regulated guns. Many prohibited ownership for women, free blacks and Roman Catholics. State governments continued to deny free blacks the right to own and use guns well after the Revolution, fearing they would take up arms against white landowners.

### **Interpretations of the Second Amendment**

Scholars, politicians, and the courts search through history and the law to determine the meaning of the Second Amendment. Two interpretations lead the debate over guns today. They involve the origin of the right to bear arms and the definition of “militia.”

The origin of the right to bear arms begins the debate over interpretation. Some scholars claim the right to bear arms stems from the colonial rights associated with a militia. The Massachusetts and Virginia Declaration of Rights mentions that a well-regulated militia is the natural defense of a free government. Other historians assert the Founders based the Second Amendment on the English Bill of Rights (1689). Scholars also point to

English philosophy to support the individual’s right to bear arms. Referring to the ideas of John Locke, some scholars argue that the Founders believed groups could have “powers,” but only individuals could have “rights”—the term used in the Second Amendment.

The second interpretation revolves around the definition of “militia.” Various scholars argue that the militia mentioned in the Second Amendment represents organized state armies. According to this argument, the Second Amendment does not guarantee an individual’s right when it refers to “the right of the people to keep and bear arms.” Instead, the Second Amendment simply protects state militias from the federal government. Others believe “militia” referred to a group of individual citizens. Since there was no organized army or police force, some scholars argue that the “militia” was merely individual citizens who protected themselves and their neighbors.

It is important, then, to decide if the Second Amendment means “individuals” when it refers to “the people.” Both sides of the gun debate look to history for support of their positions. Legal examples and the intent of the Founders make the arguments more meaningful. Scholars find many examples in English and American history for the individual’s right “to bear arms.” They also find instances of government guidelines for weapons and weapon use. Such results rarely settle disagreements, but understanding these concepts can be helpful in addressing the issue of guns today.

**STUDENT HANDOUT - A***The Bill of Rights and* **GUNS****Focus Quotation**

**Directions:** Read the Second Amendment (1791) and rephrase it in your own words. Then answer the question below.

**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.

1. \_\_\_\_\_  
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2. Why do you think the Founders included both of these clauses in the Second Amendment?

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TICKET TEMPLATE

*The Bill of Rights and* **GUNS**



## BRITISH SOLDIERS



## SONS OF LIBERTY



## CONCORD TOWN COUNCIL

**STUDENT HANDOUT - B***The Bill of Rights and* **GUNS*****Discussion Guide***

**Directions:** *Read the following scenario and then discuss the questions below with your group members.*

It is 1775, and tensions with King George III are high. Colonists have begun storing guns, cannons, and other weaponry in Concord. The British know about the arms and have decided to send troops from Boston to Concord to confiscate them.

In your discussion with members of your identity group, address these questions:

1. To whom do the guns at Concord belong?
2. What should your group do in order to protect the best interests of the people of Massachusetts?
3. Who has the legal right to control the guns? Why?

*The Bill of Rights and* **GUNS****Critical Engagement Question***How does the Second Amendment apply to the gun control debate?***LESSON 2****Gun Control  
in America****Overview**

The Supreme Court has had very little to say about gun control, and has not applied the Second Amendment to the states through the doctrine of incorporation. If, as the Declaration of Independence states, life and liberty are inalienable rights, is the right to self-defense with firearms also inalienable?

*The constitutions of most of our States assert, that all power is inherent in the people; ... that it is their right and duty to be at all times armed...*

—THOMAS JEFFERSON, 1824

*You know why there's a Second Amendment? In case the government fails to follow the first one.*

—RUSH LIMBAUGH, 1993

**Materials**

Background Essay: The Second Amendment and Gun Control  
(★★ indicates grade twelve reading level; ★ indicates grade ten reading level.)

Handout A: Focus Quotations  
Handout B: Gun Control Slips  
Answer Key

**Objectives**

**Students will:**

- understand the Second Amendment.
- analyze arguments from both sides of the gun control debate in terms of the Second Amendment.
- predict possible effects on state laws were the Second Amendment to be incorporated to the states.
- appreciate the complexity of balancing individual rights to gun ownership with states' interest in protecting lives.
- appreciate citizens' responsibilities that accompany Second Amendment rights.

**Standards**

NCHS: Era 3, Standard 3  
CCE: VB1, VB5, VC1, VC2  
NCSS: Strands 2, 5, 6, and 10

**Background/Homework**

A. Have students read the **Background Essay: The Second Amendment and Gun Control**.

**Anticipatory Activity  
[10 minutes]**

A. Distribute or put up an overhead of **Handout A: Focus Quotations**. Have students select one quotation with which they either strongly agree or disagree. They should write a short paragraph explaining their response.

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

**Activity [20 minutes]**

A. Before class, cut out the slips on **Handout B: Gun Control Slips**. Divide the class into pairs or trios and give each group a slip.

B. Write the Second Amendment on the board and review its wording with the class. Then have each group discuss the statement on their slip as though it were a proposed federal law. As citizens, how would they respond to this proposal? What arguments could they make for and against its constitutionality?

C. Beginning with the group with Gun Control Slip 1, have groups read their proposed law aloud and share their responses to its constitutionality. Using an overhead of **Handout B**, note the group's key points.

D. Continue with all groups until all Gun Control Slips are complete.

## TEACHER'S GUIDE

*The Bill of Rights and* **GUNS****Wrap-Up [15 minutes]**

**A.** Using the **Answer Key**, share with the class the history of each proposal (if applicable).

**B.** Conduct a large group discussion on the **Gun Control Slips**.

- Which proposed laws would be constitutionally permissible?
- The Second Amendment restricts the actions of the federal government. Point out that in many cases, the slips referred to actual state laws—not federal laws. Does that make a difference?
- If the Second Amendment were to be applied to state action through the doctrine of incorporation, would any of the state laws necessarily be overturned? Why or why not?

**Homework**

**A.** Ask students to write a gun law for their community. They may or may not restrict gun ownership, purchases, carrying, or anything else related to firearms. (It could also preempt (ban) all restrictions.) Next class, have students trade their laws with a partner and evaluate the laws' constitutionality.

**B.** Ask students to draw a political cartoon conveying a point of view on a current gun issue. For daily updated headlines on the Second Amendment, students can visit [www.BillofRightsInstitute.org](http://www.BillofRightsInstitute.org).

**Extensions**

**A.** Have students research the gun laws in their state. What kinds of restrictions, if any, are there on gun purchases, ownership, and use? Can citizens carry concealed weapons? Have students compile

data and then select another state to research. Students should present their research on how the state laws compare in an oral report or PowerPoint presentation.

**B.** Have students research gun laws in other countries, as well as homicide rates. Does the legality of guns appear to correlate with a higher or lower murder rate? Do the data provide a clear policy path for gun control? Have students present their research in an oral report or PowerPoint presentation.

**Responsibilities Toolbox**

Have students brainstorm a list of responsibilities of citizenship that go along with gun rights. You might prompt them with the statements, "I am responsible for knowing..." and "I am responsible for doing..."

In addition to the ideas students generate, you may want to add:

- knowing what the Second Amendment says.
- knowing the Founders' reasons for writing the Second Amendment.
- participating in public discussion of gun control.
- writing letters to the editor for or against gun control.
- petitioning government for or against gun control.

*The Bill of Rights and* **GUNS*****The Second Amendment and Gun Control***

# Does the Second Amendment protect your right to keep a nuclear bomb in your home?

Just who does “the people” refer to? What is a “militia,” and who qualifies as a member? What are “arms”? Does the term refer only to guns, or does the Second Amendment also protect a person’s right to own, for example, bombs or missiles? These are questions Americans have asked when interpreting the Second Amendment and examining government attempts to regulate weapons.

Today, the most pressing question regarding the right to bear arms is to what extent government may restrict the use and ownership of firearms without violating the Second Amendment. With most amendments in the Bill of Rights, Supreme Court decisions offer a starting point for exploring how the law has been interpreted and applied.

**The Second Amendment and National Law**

The Court has ruled that the Second Amendment does not prevent all federal regulation of guns. In 1939, the Court upheld the National Firearms Act that outlawed sawed-off shotguns. In that decision, *United States v. Miller*, the Court ruled that, “In the absence of any evi-



dence...that possession or use of a [double barrel twelve-gauge Stevens shotgun] at this time has some reasonable relationship to the preservation or efficiency of a well regulated militia, we cannot say that the Second Amendment guarantees the right to keep and bear such an instrument.” Consequently, the federal government possessed the power to limit the types of weapons allowed.

Several recent cases involving federal gun control laws have been decided using the Commerce Clause in Article I of the Constitution, which gives Congress the power to regulate interstate trade. In *Lewis v. United States* (1980), the Court upheld a federal law prohibiting felons from owning guns shipped across state lines. However, in *United States v. Lopez* (1995), the Court overturned a federal law banning possession of a firearm in a school zone since Congress’ authority did not encompass non-commercial activity. Two years later, the Court used a similar argument to overturn a portion of the Brady Bill that required local law enforcement officials to conduct immediate background checks on individuals purchasing guns (*Printz v. United States*, 1997). The Court ruled that the federal government could not use the Commerce Clause in that situation to force state officials to run checks.

## BACKGROUND ESSAY ★★

*The Bill of Rights and* **GUNS****The Second Amendment and State Law**

The Bill of Rights was originally written to restrict the actions of the federal government only. It did not apply to the states. Since the adoption of the Fourteenth Amendment, though, the Court has applied some Bill of Rights limitations to states. This is called the doctrine of incorporation. Although it may do so in the future, the Court has not used the doctrine of incorporation to overturn states' attempts to regulate guns.

In 1886, the Supreme Court ruled in favor of states' power to regulate guns in *Presser v. Illinois*. The Court upheld an Illinois law that stopped citizens from marching or drilling with firearms unless they were doing so within a regular organized militia. The Court said that states could regulate gun ownership outside militias under the Second Amendment. The Court explained, "The [Second A]mendment is a limitation only upon the power of congress and the national government, and not upon that of the state." Eight years later, in *Miller v. Texas* (1894), the Court again said that the Second Amendment applied only to the federal government. Almost a century later, the Court declined to hear *LaGiao v. Morton Grove* (Illinois, 1981), which challenged a town council's attempt to outlaw handguns, arguing that it violated the Second Amendment.

If the Court does incorporate the Second Amendment in the future, the question remains as to the extent of regulation (if any) that would be constitutionally permissible.

**Beyond the Supreme Court**

Two main groups emerge from the gun control debate: those who support some government control of gun ownership and those who advocate very limited or no government interference. Both sides often quote the Second Amendment.

Some in favor of gun control point to advances in weaponry technology and accessibility that have created a situation the Founders could not have anticipated in

drafting the amendment. Some suggest hunters should be allowed to keep rifles, but also say that weapons of power, such as assault rifles and automatics, and those generally accessible to criminals or children, like handguns, should be restricted. Some suggest improved weapons tracking by requiring registration of all firearms and licensing of owners. While a small contingent claims there is no individual right to own guns and calls for a total ban on private gun ownership, most gun control advocates support what they see as reasonable regulations that balance the right to bear arms with the public's need for safety.

Advocates of gun rights argue that the Second Amendment grants individuals the right to own guns without restrictions. In addition, they argue that the real purpose of the Second Amendment is to preserve the people's right to be armed against tyranny, as demonstrated by the central role of armed citizens early in the American Revolution. To those who suggest registration of firearms, some gun rights supporters respond that, historically, such registration has often lead to confiscation, and they point to numerous historical examples in various countries. In general, opponents of gun control argue that while costs to gun ownership do exist, regulation of firearms ultimately comes at the much higher price of diminishing individual freedom.

The effects of concealed weapon laws spark even more debate over gun control. Proponents of gun rights point to data suggesting that laws making it easier to carry concealed weapons produce measurable reductions in violent crime. The concept behind the theory is that a criminal is less likely to assault someone if he or she knows that person may be carrying a weapon. Skeptics argue that the "more guns, less crime" argument ignores other possible factors of crime reduction. Gun control advocates point to some states that have toughened gun control laws and have also experienced a decrease in violent crime, suggesting that other factors must be involved.



## The Bill of Rights and GUNS

### The Second Amendment and Gun Control

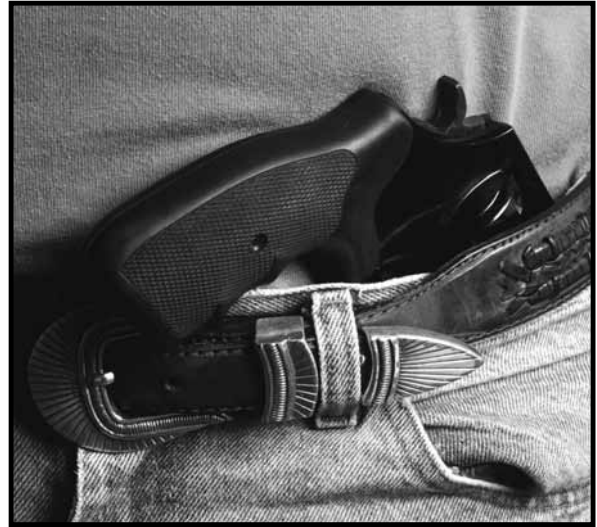
# Does the Second Amendment mean you can keep a nuclear weapon in your home?

Just who does “the people” refer to? What is a “militia,” and who qualifies as a member? What are “arms”? Does the term refer only to guns, or does the Second Amendment also protect a person’s right to own, for example, arsenals of bombs or missiles? These are questions Americans have asked when interpreting the Second Amendment and examining government attempts to regulate weapons.

Today, the most pressing question regarding the right to bear arms is to what extent government may restrict the use and ownership of firearms without violating the Second Amendment. With most amendments in the Bill of Rights, Supreme Court decisions offer a starting point for exploring how the law has been interpreted and applied.

### The Second Amendment and National Law

The Court has affirmed that the Second Amendment applies to the federal government. The amendment does not, however, mean that the federal government cannot regulate firearms at all. In *United States v. Miller* (1939), the Court upheld the National Firearms Act that outlawed sawed-off shotguns. The Court ruled that, “In the absence of any evidence...that possession or use of a [double barrel twelve-gauge Stevens shotgun] at this time has some reasonable relationship to the preserva-



tion or efficiency of a well regulated militia, we cannot say that the Second Amendment guarantees the right to keep and bear such an instrument.” Therefore, the federal government had the power to limit the types of weapons people can own.

Several recent cases involving federal gun control laws have been decided using the Commerce Clause. The Commerce Clause in Article I of the Constitution gives Congress the power to regulate interstate trade. In 1980, the Court upheld a federal law prohibiting felons from owning guns shipped across state lines (*Lewis v. United States*). In 1995, however, the Court struck down a federal law banning possession of a firearm in a school zone (*United States v. Lopez*). The Court found this non-commercial activity outside the realm of the Commerce Clause. Two years later, the Court used a similar argument to overturn a portion of the Brady Bill. The bill required local law enforcement officials to conduct immediate background checks on gun buyers (*Printz v. United States*, 1997). The Court ruled that the federal government could not use the Commerce Clause in this situation to compel state officials to run checks.

## The Bill of Rights and GUNS

### The Second Amendment and State Law

The Bill of Rights originally applied to the federal government only. It did not apply to the states. Since the adoption of the Fourteenth Amendment, though, the Court has applied some Bill of Rights limitations to states. This is called the doctrine of incorporation. The Court has not used the doctrine of incorporation to overturn states' attempts to regulate guns.

In 1886, the Supreme Court ruled in favor of states' power to regulate guns in *Presser v. Illinois*. The Court upheld an Illinois law that stopped citizens from marching or drilling with firearms unless they were doing so within a regular organized militia. The Court said that states could regulate gun ownership outside militias under the Second Amendment. The Court explained, "The [Second A]mendment is a limitation only upon the power of congress and the national government, and not upon that of the state." Eight years later, in *Miller v. Texas* (1894), the Court again said that the Second Amendment applied only to the federal government. Almost a century later, the Court declined to hear *LaGioia v. Morton Grove* (Illinois, 1981), which challenged a town council's attempt to outlaw handguns as violating the Second Amendment.

If the Court does incorporate the Second Amendment in the future, the question remains as to the extent of regulation that would be constitutionally permissible.

### Beyond the Supreme Court

Two main groups emerge from the gun control debate: those who support government control of gun ownership and those who advocate limited or no government interference. Both sides often quote the Second Amendment.

Gun control supporters argue that the Second Amendment grants no personal right. Additionally, they point out the substantial changes in technology of

weapons and accessibility to handguns. These conditions, control advocates say, have made a situation the Founders could not have expected. Some suggest hunters should be allowed to keep rifles, but argue that weapons like assault rifles and automatics should be restricted. They also support restriction of weapons that are easily accessible to criminals or children, like handguns. Some suggest improved weapons tracking by calling for registration of all firearms and licensing of owners. While a small number call for a total ban on private gun ownership, most support what they see as reasonable regulations that balance a right to bear arms with the need for public safety.

Advocates of gun rights argue that the Second Amendment confers an individual right to own and carry guns. They point out that the primary purpose of the Second Amendment is to preserve the people's right to be armed against tyranny. The need for this right was demonstrated by the central role of armed citizens early in the American Revolution. Some argue that guns should not have to be registered. Registration of guns, they say, has often come before the guns are taken away. They point to numerous historical examples in various countries. In general, opponents of gun control acknowledge the potential risks associated with gun ownership. They argue, however, that regulation of firearms comes at the much higher price of losing individual freedom.

The effects of concealed weapon laws spark even more debate over gun control. Proponents of gun rights point to data suggesting that laws making it easier to carry concealed weapons produce measurable reductions in violent crime. The concept behind the theory is that a criminal is less likely to assault someone if he or she knows that person may be carrying a weapon. Skeptics argue that the "more guns, less crime" argument ignores other possible factors of crime reduction. Gun control advocates point to some states that toughened gun control laws and have also experienced a decrease in violent crime, suggesting that other factors must be involved.



*The Bill of Rights and* **GUNS****Focus Quotations**

**Directions:** Read the quotations below and select one with which you strongly agree or disagree. Then write one paragraph explaining your response.

1. [It is] the privilege of every citizen, and one of his most essential rights, to bear arms, and to resist every attack upon his liberty or property, by whomsoever made. The particular states, like private citizens, have a right to be armed, and to defend, by force of arms, their rights, when invaded.

–Connecticut Statesman Roger Sherman, 1790

2. By calling attention to ‘a well regulated militia,’ the ‘security’ of the nation, and the right of each citizen ‘to keep and bear arms,’ our founding fathers recognized the essentially civilian nature of our economy. Although it is extremely unlikely that the fears of governmental tyranny which gave rise to the Second Amendment will ever be a major danger to our nation, the Amendment still remains an important declaration of our basic civilian-military relationships, in which every citizen must be ready to participate in the defense of his country.

–President John F. Kennedy, 1960

3. For too long, most members of the legal academy have treated the Second Amendment as the equivalent of an embarrassing relative, whose mention brings a quick change of subject to other, more respectable, family members. That will no longer do. It is time for the Second Amendment to enter full scale into the consciousness of the legal academy.

–Constitutional Law Professor Sanford Levinson, 1989

4. The word “militia”...appears only in the Amendment’s subordinate clause. The ultimate right to keep and bear arms belongs to “the people”...[and] ‘the people’ at the core of the Second Amendment are the same ‘people’ at the heart of the Preamble and the First Amendment, namely citizens.

–Constitutional Law Professor Akhil Amar, 1990

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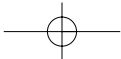
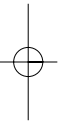
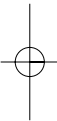
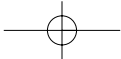
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**STUDENT HANDOUT - B***The Bill of Rights and* **GUNS*****Gun Control Slips***

1. Only Protestants can own guns. Catholics and others outside the Anglican church may not own guns.
2. Merchants who sell guns must conduct background checks on buyers before selling them any weapons.
3. No one convicted of a misdemeanor domestic violence offense can buy or own a gun.
4. Merchants who wish to sell firearms must obtain a federal license.
5. Firearms dealers may not sell handguns to anyone under 18.
6. In order to carry a concealed weapon, citizens must complete an 8-hour training course.
7. It is illegal to carry a concealed weapon.
8. Citizens may only buy one handgun per month.
9. Gun license applicants must get certification from a doctor stating that no medical or psychological problems would prevent the person from owning a gun.
10. Handguns are banned within the District of Columbia.
11. No one who did not have at least a 3.0 GPA in high school may buy a gun.
12. No citizens may own any type of gun.

*The Bill of Rights and*  
**PRIVATE  
PROPERTY**





*The Bill of Rights and* **PRIVATE PROPERTY**

**UNIT OVERVIEW**

**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 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.

**Synopsis of Lessons and DVD**

**Lesson One:**

Students explore the Founders' views on property and why they were so concerned with its protection.

**Lesson Two:**

Students examine the Fifth Amendment's Takings Clause in more detail and evaluate the constitutionality of government action.

## TEACHER'S GUIDE

*The Bill of Rights and* PRIVATE PROPERTY

## Critical Engagement Question

*What is the relationship between property rights and other rights?*

# LESSON 1

## The “Most Sacred Property”

### Overview

When Thomas Jefferson wrote the Declaration of Independence, he didn't change John Locke's maxim “life, liberty, and property,” as much as elaborate on it. The rights to choose a job or start a business, and reap the benefits of one's industry (in other words, property rights) are key to self-ownership and the pursuit of happiness. From the protection of private property and self-ownership spring many, if not all, of the other freedoms Americans cherish.

*Every man has a property in his own person. This nobody has a right to, but himself.*

—JOHN LOCKE, 1689

*Just as man can't exist without his body, so no rights can exist without the right to translate one's rights into reality, to think, to work and keep the results, which means: the right of property.*

—AYN RAND, 1957

### Materials

Background Essay: What is Property? Why Protect It?  
(✱✱ indicates grade twelve reading level; ✱ indicates grade ten reading level.)

Handout A: Focus Quotations

Handout B: Property and the Bill of Rights

Answer Key

### Objectives

Students will:

- understand the Founders' reasons for affording private property a high protection.
- understand how the Bill of Rights protects property.
- analyze statements about property and self-ownership.
- evaluate Bill of Rights property protections.
- appreciate the importance of private property, freedom of conscience, and individual responsibility in a free society.

### Standards

NCHS: Era 3, Standard 3

CCE: IA3, IB4, IC2, IIA1, IIB1, VB1, VB3

NCSS: Strands 2, 5, 6, and 10

### Background/Homework

A. Have students read **Background Essay: What is Property? Why Protect It?**

### Anticipatory Activity [15 minutes]

A. Distribute or put up an overhead of **Handout A: Focus Quotations** and read each quotation aloud. Have students discuss what Madison means by each statement. (See **Answer Key** for suggested responses.) In order to prompt discussion, you may ask:

1. What two kinds of “property” does Madison identify?
2. According to Madison, what is the relationship between these two types of property?
3. What does Madison mean by “whatever is his own” in quotation #8?
4. Had you ever thought of “property” in terms of self-ownership?
5. What does Madison mean by “has a property in \_\_\_\_”?

### Activity [20 minutes]

A. Distribute **Handout B: Property and the Bill of Rights**. Have students underline the sections that protect the first kind of property Madison discusses (physical property). Using an overhead of **Handout B**, go over responses as a class, pointing out the property protections in the Third, Fourth, Fifth, Seventh, and Eighth Amendments.

B. Next, ask students if they see examples of protections of what Madison calls “the most sacred property” or, conscience. Go through the Bill of Rights once more, this time circling protections of this type of property.

## The Bill of Rights and PRIVATE PROPERTY

C. Discuss as a large group how all five freedoms of the First Amendment, the Fifth Amendment right against self-incrimination, and the Ninth Amendment's protection of all natural rights protect freedom of conscience.

### Wrap-Up [15 minutes]

A. Ask students how, if at all, the Bill of Rights protects things like a right to:

- pursue their own interests.
- dress the way they want to.
- choose their profession.
- a free education.
- a job.
- own as much physical property as one can afford.

B. Ask students how they think Madison would respond to suggestions that the government should guarantee the right to free education, a job, or equal wealth.

### Homework

A. Have students write a paragraph explaining which Bill of Rights property protection they believe is most important, and why.

B. Ask students to write a new amendment to the Constitution explicitly securing the property people have in their conscience. They should also write a two- or three-sentence explanation of why they worded it the way they did. Have the class vote on the best amendment next time.

### Extensions

A. Some scholars believe that property ownership is the key to all individual liberty. (For example, freedom of the press would be impossible without private ownership of printing facilities.) Have students choose something that is of value to them and come to class next time prepared to explain how they would lose political freedom if they lost ownership of that thing. Students might also do research on countries where ownership of that item is illegal. After all students have presented, have the class write a one-page journal entry, analyzing the kinds of items that were discussed. What do they have in common?

B. Have students contrast James Madison's ideal society with the ideal society of Karl Marx. Explain that Madison's notion emphasizes private property and individual responsibility, while Marx's vision emphasized state ownership of property and enforced equality. Have students present research in a PowerPoint or other presentation formats on how the governments of free market economies versus centrally controlled economies differ in their protection of freedom of religion, freedom of the press, and other political freedoms. Can complete equality exist in a free society? Why is private property central to Madison's ideal society? Why is *no* private property so central to Marx's?

### Responsibilities Toolbox



Have students brainstorm a list of responsibilities of citizenship that go along with their rights to private property. You might prompt them with the statements, "I am responsible for knowing..." and "I am responsible for doing..."

In addition to the ideas students generate, you may want to add:

- knowing what property is.
- knowing that the Founders viewed the self as property.
- providing for my family.
- avoiding large debts.
- paying bills on time.
- safeguarding personal property.
- caring for personal property.
- respecting others' physical property: not stealing or trespassing.
- respecting others' intellectual property: not illegally downloading music/videos.
- giving to worthy charities.
- investing money wisely in private businesses.

## BACKGROUND ESSAY ★★

*The Bill of Rights and* PRIVATE PROPERTY**What is Property? Why Protect It?**

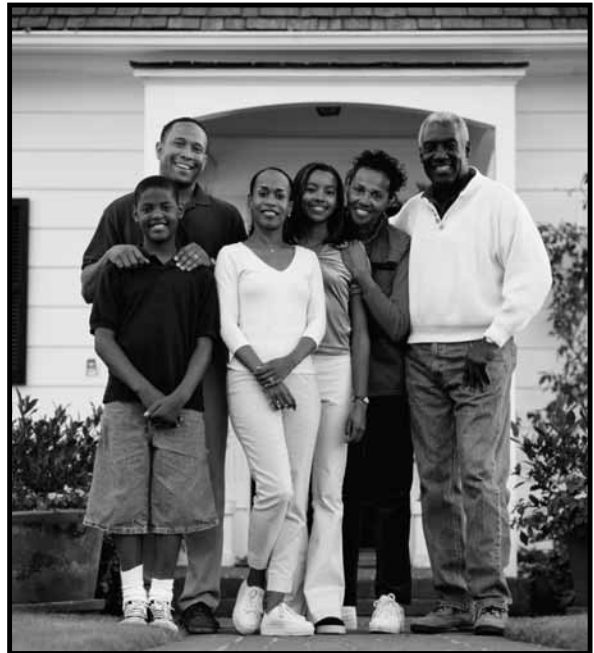
# What is the most important thing you own?

Most people think of property as land, and most property law deals with land use. Property, however, embraces much more than just land, including houses, cars, and other material objects like information, ideas, and creative works, as well as things that do not exist yet, such as future profits from the sale or use of an existing object or idea.

Early Americans had many things in mind when they used the word “property.” Rather than saying, “That horse is my property,” most Americans would have said, “I have a property in that horse,” meaning they had a legal right to use the horse and to keep others from doing so, called a right of exclusion. Take another example: People usually do not refer to themselves as property, but they clearly have a general right to do what they want with their bodies and to keep others from doing things to them. Thus, individuals have a property in their body. This concept—associated with English natural rights philosopher John Locke—is called self-ownership, and it helps us explain why the Founders took many steps to protect property.

**Americans, Property, and the Bill of Rights**

The Founders were deeply influenced by Locke as well as by English documents, such as the *Magna Carta* (1215) and the English Bill of Rights (1689), which restricted the power of the monarch to randomly seize possessions (through confiscation and taxation) or persons (through imprisonment of citizens). Ironically, it



was British violations of colonists’ property rights in the form of forced housing of troops, warrantless searches of homes, and arbitrary confiscations and arrests that pushed many colonists to support revolution.

In the Declaration of Independence (1776), Thomas Jefferson adapted Locke’s dictum “life, liberty, and property” to the famous “life, liberty, and the pursuit of happiness.” Jefferson did not change Locke’s meaning so much as expand it. Jefferson believed that a major part of the pursuit of happiness is its many rewards, including the material fruits of labor and the intellectual fruits of creativity.

James Madison, author of the Bill of Rights (1791), understood property rights to be the key to protecting all rights, which was the purpose of all “just government,” as he put it. In his famous work *Property*, published one year after the ratification of the Bill of Rights, Madison argued that man had a property not just in his body and possessions, but also in his religious beliefs, his



*The Bill of Rights and* **PRIVATE PROPERTY**

opinions, and in the exercise thereof. Madison noted that security of property played an important role in personal development, allowing each individual “the free use of his faculties and free choice of the objects on which to employ them.”

Madison, a strong believer in a commercial republic, urged Americans to protect both the owning and acquiring of property through hard work. He criticized excessive taxes that “invade the domestic sanctuaries of the rich and ... grind the faces of the poor.” Madison concluded with a warning to his fellow citizens: “If the United States mean to obtain or deserve the full praise due to wise and just governments, they will equally respect the rights of property, and the property in rights.”

It is clearly no accident that property protections appear in half of the ten amendments known as the Bill of Rights: freedom and security of one’s home and possessions (Third and Fourth Amendments); the freedom from loss of property without due process and just compensation (Fifth Amendment); the right to a jury trial in common law controversies involving more than twenty dollars (Seventh Amendment); and freedom from excessive fines (Eighth Amendment). The Founders understood that the protection of all kinds of property was the key to protecting all rights.

Questions of property law are at the center of many societal concerns today. Some examples are environmental regulations restricting land use, conserving endangered species, community interests, and even the legality of music exchange websites. Individual property rights must be balanced with legitimate state concerns about natural resources, and Internet music sharers must consider whether they are “sharing” or “stealing.” As Samuel Adams wrote in *Rights of the Colonists*, “Now what liberty can there be where property is taken away without consent?”



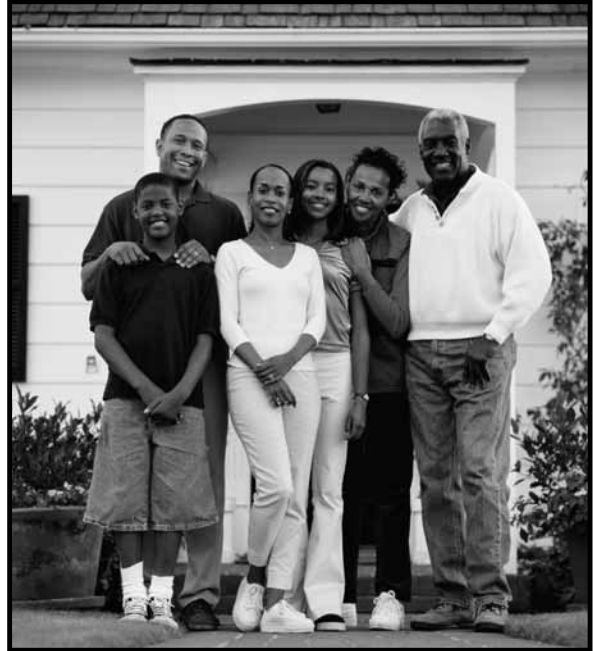
## *The Bill of Rights and* PRIVATE PROPERTY

### ***What is Property? Why Protect It?***

# What is the most important thing you own?

One might say the Founders were not only concerned with property rights, they were passionate about them. Half of the Bill of Rights deals with property. Most people think of property as land. Property law, for the most part, does deal with land use. Property, however, includes much more than just land. It involves houses, cars, and other material things, as well as information, ideas, and creative works. It sometimes includes things of the future, such as future profits from the sale or use of an existing object or idea. More than just securing these things for individuals, property rights secure freedom.

Early Americans had many things in mind when they used the word “property.” Rather than saying, “That horse is my property,” most Americans would have said, “I have a property in that horse.” That phrase meant they had a legal right to use the horse. They also had a right of exclusion, meaning they could keep (or exclude) others from using the horse. Another example of property is one’s own body. People usually do not refer to themselves as “property,” but they clearly have a general right to do what they want with their bodies and to keep others from doing things to them. Thus, individuals have a property in their body. This concept is associated with English natural rights philosopher John Locke. It is called self-ownership, and helps explain why the Founders took many steps to protect property.



### **Americans, Property, and the Bill of Rights**

The Founders were deeply influenced by Locke as well as by English documents. The *Magna Carta* (1215) and the Declaration of Rights (1689) restricted the power of the monarch to randomly take possessions or imprison citizens. Ironically, it was British abuse of colonists’ property rights—including forced housing of troops, warrantless searches of homes, and arbitrary confiscations and arrests— that pushed many colonists to support revolution.

Thomas Jefferson adapted one of Locke’s famous phrases dealing with property in the Declaration of Independence (1776). Locke wrote that people have inherent rights to “life, liberty, and property.” Jefferson modified it to “life, liberty, and the pursuit of happiness.” He did not change Locke’s meaning so much as expand it. Jefferson believed the enjoyment of material things and the satisfaction of creativity, both included in the colonial definition of property, were essential to happiness.



## *The Bill of Rights and* PRIVATE PROPERTY

James Madison, author of the Bill of Rights (1791), believed property rights to be the key to protecting all rights. Protecting these rights is the purpose of all “just government,” as he put it. His famous work, *Property*, was published one year after the ratification of the Bill of Rights. In it, Madison argues that man has a property, not just in his body and possessions, but also in the maintaining and exercise of opinions and religious beliefs. Madison notes that security of property plays an important role in personal development. It allows each individual “the free use of his faculties and free choice of the objects on which to employ them.”

Madison strongly believed in a commercial republic. He urged Americans to protect the acquiring and owning of property through hard work. He criticized excessive taxes that “invade the domestic sanctuaries of the rich and ... grind the faces of the poor.” Madison concluded with a warning to his fellow citizens: “If the United States mean to obtain or deserve the full praise due to wise and just governments, they will equally respect the rights of property, and the property in rights.”

It is clearly no accident that property protections appear in half of the Bill of Rights. The Third and Fourth Amendments assure freedom and security of one’s home and possessions, while the Fifth Amendment guarantees freedom from loss of property without due process and just compensation. The Seventh Amendment addresses the right to a jury trial in common law controversies involving more than twenty dollars, and the Eighth protects the freedom from excessive fines. The Founders understood that the protection of all kinds of property was the key to protecting all rights.

Questions of property law are at the center of many societal concerns today. Some examples are environmental regulations restricting land use, conserving endangered species, community interests, and even the legality of music exchange websites. Individual property rights must be balanced with legitimate state concerns about natural resources, and Internet music sharers must consider whether they are “sharing” or “stealing.” As Samuel Adams wrote in *Rights of the Colonists*, “Now what liberty can there be where property is taken away without consent?”



## STUDENT HANDOUT - A

*The Bill of Rights and* PRIVATE PROPERTY**Focus Quotations**

**Directions:** Read the selections from James Madison's essay *Property*, and discuss each as a large group.

1. This term [property] means that dominion which one man claims and exercises over the external things of the world, in exclusion of every other individual ... it embraces every thing to which a man may attach a value and have a right; and which leaves to every one else the like advantage.
2. In the former sense, a man's land, or merchandise, or money is called his property.
3. In the latter sense, a man has a property in his opinions and the free communication of them.
4. He has a property of peculiar value in his religious opinions, and in the profession and practice dictated by them.
5. He has a property very dear to him in the safety and liberty of his person.
6. He has an equal property in the free use of his faculties and free choice of the objects on which to employ them.
7. In a word, as a man is said to have a right to his property, he may be equally said to have a property in his rights.
8. Government is instituted to protect property of every sort.... This being the end of government, that alone is a *just* government, which *impartially* secures to every man, whatever is his *own*.
9. Conscience is the most sacred of all property.... To guard a man's house as his castle ... can give no title to invade a man's conscience which is more sacred than his castle....
10. If there be a government then which prides itself in maintaining the inviolability of property; which provides that none shall be taken directly even for public use without indemnification to the owner, and yet directly violates the property which individuals have in their opinions, their religion, their persons, and their faculties ... such a government is not a pattern for the United States.

—James Madison, 1792

*The Bill of Rights and* **PRIVATE PROPERTY*****Property and the Bill of Rights***

**Directions:** Read the Bill of Rights and underline examples of protections of physical property. Then follow your teacher's directions.

**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.

## TEACHER'S GUIDE

*The Bill of Rights and* PRIVATE PROPERTY

## Critical Engagement Question

*When is your property not your property?*

## LESSON 2

**Due Process, Just Compensation, and Private Property**

## Overview

The Fifth Amendment's Takings Clause guarantees that owners receive "just compensation" from government for their taken

*And it is no less true, that personal security and private property rest entirely upon the wisdom, the stability, and the integrity of the courts of justice.*

—JOSEPH STORY, 1833

*To reason, as the Court does [in Kelo v. New London (2005)] that the incidental public benefits resulting from the subsequent ordinary use of private property render economic development takings "for public use" is to wash out any distinction between private and public use of property—and thereby effectively to delete the words "for public use" from the Takings Clause of the Fifth Amendment.*

—SANDRA DAY O'CONNOR, 2005

property. But what is a "taking"? Sometimes, owners retain all their physical property, but the government's presence, intrusion, or regulation constitutes a "taking." Further complicating matters are recent Supreme Court cases that have tested the interpretation of "public use" required by the Fifth Amendment, potentially opening the door to takings of property for "public benefit."

## Materials

Background Essay: Due Process and Just Compensation (★★ indicates grade twelve reading level; ★ indicates grade ten reading level.)

Handout A: Focus Quotation  
Property DVD and Viewing Guide  
Handout B: Takings Scenarios  
Handout C: Updates  
Answer Key

## Objectives

Students will:

- define the Takings Clause of the Fifth Amendment.
- understand situations where government may take property for public use.
- evaluate government action and determine whether a "taking" has occurred.
- appreciate the responsibilities of citizenship that go along with rights to private property.

## Standards

NCHS: Strands 2, 5, 6, and 10  
CCE: IA3, IB4, IC2, IIA1, IIB1, VB1, VB3  
NCSS: Era 3, Standard 3; Era 10, Standard 2

## Background/Homework

A. Have students read **Background Essay: Due Process and Just Compensation**.

Anticipatory Activity  
[15 minutes]

A. Distribute or put up an overhead of **Handout A: Focus Quotation**. Divide students into groups of three or four and have students define the terms of the Fifth Amendment's Taking Clause.

B. Ask students to share their definitions with the class. Come to a consensus as to the best ones and write them on the board.

C. Conduct a large group brainstorming session of facilities or purposes that could be considered public use. (See **Answer Key** for suggested responses.)

## Activity [20 minutes]

A. Show the **Property DVD** and have students complete the **Viewing Guide**.

B. Cut out the scenario cards on **Handout B: Takings Scenarios**. Ask two students to come to the front of the room, assume the roles of the people on the first scenario

## The Bill of Rights and PRIVATE PROPERTY

card, and present the information to the class in role-play form.

C. After students have finished presenting, conduct a large group discussion about the situation.

Questions for discussion:

- Is the situation described a “taking” of property?
- Is the situation described a constitutional exercise of government power?
- If so, what would be the best way to determine just compensation?

D. Put up an overhead of **Handout C: Updates**, and share with the class how the Supreme Court ruled on the case. Ask students to share their reactions to the ruling before moving on to the next Takings Scenario with two new student volunteers.

E. Continue until all three **Takings Scenarios** have been presented.

### Wrap-Up [15 minutes]

A. Divide the class into three groups—Kelo, Causby, and Nollan. Ask students to discuss in their groups:

- One promise of the Fifth Amendment is “just compensation” to property owners. Do you believe justice was done in your scenario? Why or why not?
- What would you do if you were the property owner in the situation?
- Are property rights more or less important than other rights like freedom of speech or press? Why?

### Homework

A. Have students select something that is of great value to them and determine what amount would be considered “just compensation” if the government were to take it. They could use resources like eBay or classified ads to determine what a willing buyer would pay for the item(s).

B. Have students locate a newspaper article describing a government’s planned use of eminent domain and write a two-paragraph summary of the government’s plans as well as citizens’ responses.

### Extensions

A. The Supreme Court decision *Kelo v. New London* (2005) has prompted some states to enact laws preventing the use of eminent domain to take non-blighted property for economic development. Additionally, at least one bank has said it will not loan

money to be used for development of land that was obtained through this kind of taking. Have students investigate the public and private reactions to the *Kelo* case and present their findings in a PowerPoint or oral presentation.

B. Ask students to simulate a situation where an environmental law prohibiting logging on land where an endangered species of eagle lives must be balanced with the rights of property owners who wish to sell timber from their land. Divide the class into groups of nine including: three property owners, three environmental activists, and three policymakers. With each group, have each side lobby the policymakers with their best arguments for how the law should be written and how takings, if any, will be compensated. Policymakers should write legislation and each group can present their law to the class. Have the class vote on the best one.



### Responsibilities Toolbox

Have students brainstorm a list of responsibilities of citizenship that go along with their rights to private property. You might prompt them with the statements, “I am responsible for knowing...” and “I am responsible for doing...”

In addition to the ideas students generate, you may want to add:

- caring for your home and the upkeep of your property.
- not littering, as well as picking up trash.
- respecting others’ property.
- understanding government’s power of eminent domain.
- attending local government meetings where eminent domain may be discussed.
- expressing one’s views to government on the taking of property for public use.

## BACKGROUND ESSAY ★★

*The Bill of Rights and* PRIVATE PROPERTY***Due Process and Just Compensation***

## When is your property not your property?

The Fifth Amendment is the most important amendment in terms of property because of its due process and just compensation clauses. Due process means the federal government cannot arbitrarily deprive an individual of life, liberty, or property. The government must act fairly and abide by established legal procedures when it seeks to take property, which means notifying the owner, allowing him or her to respond, and much more. The Fifth Amendment's just compensation clause requires the federal government to pay for any private property it does take for public use.

The Founders realized the importance of balancing the taking of property for public use and protecting individuals' rights to property. Historically, most takings happened through "eminent domain," which refers to the government's right to acquire private property for public use. In the 1800s, eminent domain was used to claim land for railroads, and in the twentieth century it was used to remove residents from land along planned interstate highway routes.

Recently, in the 2005 case of *Kelo v. New London*, the Supreme Court upheld the power of the government to take land not only for "public use," as the Fifth Amendment says, but also for "public benefit." The Court held that the government could take private property from an individual in order to turn it over to a private developer in cases where the taking will result in "economic development" for the region. The Court explained that it had "rejected a literal requirement" of the phrase "public use" in the Takings Clause of the Fifth Amendment, and held that the phrase can be interpreted as "public benefit." The case has been controversial and has prompted some states to enact legislation preventing this type of eminent domain power from being exercised.



Supporters of the decision say that the increased tax revenue from the new development will be to the benefit of the community.

### What Is a Taking?

Although the Constitution protects private property, the government sometimes has the power to seize or restrict the use of that property for public use, which is called a "taking." The definition of "taking" has been expanded in recent years. The Court has ruled that a person may be deprived of his property even if he still owns it. For example, if a law greatly restricts what a person may do with his land or interferes with its value, it may be considered a taking.

Sometimes a government's constant presence or intrusion has been enough for the Supreme Court to find a "taking." For example, in 1946, the Supreme Court found a taking when low-flying jets at an air base made farming impossible on nearby land, even though the government never actually took the land itself (*U.S. v. Causby*, 1946). In another case, the Court ruled that the owner of a beachfront had to be compensated after a state law stopped all new construction on the property, destroying its economic value (*Lucas v. South Carolina Coastal Commission*, 1992).

However, in *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency* (2002), the Court ruled that a temporary ban on development does not



*The Bill of Rights and* **PRIVATE PROPERTY**

constitute a taking. In 1980, the Tahoe Regional Planning Agency imposed a temporary moratorium on building that went on for 32 months. The Court ruled that, “a temporary restriction causing a diminution in value is not [a taking], for the property will recover value when the prohibition is lifted.”

In addition, zoning laws restricting the uses of privately owned historic buildings have been upheld, and damages caused by the government in the exercise of its police powers to protect health and safety (such as damage caused to buildings by police stopping a riot) have not been ruled takings.

If the government takes property, a decision must be made about the amount of compensation owed. Today, the Court generally uses the “fair market value” standard, defining just compensation as “what a willing buyer would pay in cash to a willing seller at the time of the taking.” These decisions get very complicated, particularly when the government affects the value of the property being taken. In *U.S. v. Cors* (1949), the Court ruled the owner of a tugboat was not entitled to the market value at the time of the taking, because the effects of World War II and the government’s need inflated the boat’s price. The Court does not require compensation for moving costs, replacement expenses, legal costs, or the cost of rebuilding in a more expensive location.

## Property, Creativity, and Government

Authors, researchers, inventors, and artists also have a strong interest in protecting their rights to the products of their minds, referred to as intellectual property. Songs, artwork, books, or poems are property, just like cars, houses, or land. Other forms of intellectual property can include plans for an invention, a business plan, or a secret recipe. The government promotes the good of society by protecting intellectual property through copyrights and patents. Article I, Section 9 lists Congress’s power “To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.”

The Internet has been an unmatched method of distributing information, but has also made it much easier to steal intellectual property. Entire books can be downloaded for free, sometimes depriving the publisher of sales and the author of royalties, and music can be “shared”, meaning musicians are not paid for their work. If these owners do not think they will be justly paid for their work, they may produce less and the consequences to our culture may be huge: fewer novels, fewer medicines, fewer inventions, and less art.

On the other hand, some argue that very few ideas are truly and wholly “original,” but build on the efforts of past artists and inventors. Therefore, they say, affording intellectual property too much protection can result in decreased creative output.

To the Founding Fathers, the protection of private property was of the greatest importance. Yet, legal scholars, politicians, and property owners often disagree over how much, if any, property the government should take for public use.



## BACKGROUND ESSAY ★

*The Bill of Rights and* PRIVATE PROPERTY***Due Process and Just Compensation***

## When is your property not your property?

The Fifth Amendment is the most important amendment in terms of property because of its due process and just compensation clauses. Due process means the federal government cannot randomly take away an individual's life, liberty, or property. The government must act fairly and obey legal procedures. When it seeks to take property, it must let the owner know, allowing him or her to respond, and much more. The Fifth Amendment's just compensation clause requires the federal government to pay for any private property it does take for public use.

The Founders knew how important it was to balance the taking of property for public use with private property rights. Historically, most takings happened through "eminent domain." This refers to the government's right to take private property for public use. In the 1800s, eminent domain was used to claim land for railroads. In the twentieth century it was used to remove residents from land along planned interstate highway routes.

Recently, in the 2005 case of *Kelo v. New London*, the Supreme Court upheld the power of the government to take land for "public benefit." The Court held that the government could take private property from an individual in order to turn it over to a private developer, in cases where the taking will result in "economic development" for the region. The Court explained that the Fifth Amendment's phrase "public use" could be interpreted as "public benefit." The decision has been controversial. In response, some states have enacted legislation to stop this type of eminent domain power from being exercised. Supporters of the decision say that more tax revenue from new development will help the community.



### What Is a Taking?

Although the Constitution protects private property, the government sometimes has the power to seize or restrict the use of that property for public use, which is called a "taking." The definition of "taking" has been expanded in recent years. The Court has ruled that a person may be deprived of his property even if he still owns it. For example, if a law greatly restricts what a person may do with his land or interferes with its value, it may be considered a taking.

Sometimes a government's constant presence or disturbance has been enough for the Supreme Court to find a "taking." For example, in 1946, the Supreme Court looked at a case where low-flying jets at an air base made farming impossible on nearby land. Even though the government never actually took the land itself, the Court found a taking (*U.S. v. Causby*, 1946). The Court ruled that the owner of a beachfront had to be paid back after a state law stopped all new construction on the property, since the law destroyed its value (*Lucas v. South Carolina Coastal Commission*, 1992).

However, in *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency* (2002), the Court ruled that a temporary ban on development does not amount to a taking. In 1980, the Tahoe Regional Planning Agency forced a temporary ban on construction that went on for 32 months. The Court ruled that, "a temporary restriction causing a diminution in value is not



## *The Bill of Rights and* PRIVATE PROPERTY

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If the government takes property, a decision must be made about the amount of compensation owed. Today, the Court generally uses the “fair market value” standard, defining just compensation as “what a willing buyer would pay at the time of the taking.” The Court does not require compensation for moving costs, replacement expenses, legal costs, or the cost of rebuilding in a more expensive location.

### Property, Creativity, and Government

Authors, researchers, inventors, and artists have rights to the products of their minds, known as intellectual property. Songs, artwork, books, or poems are property, just like cars, houses, or land. Other forms of intellectual property can include plans for an invention, a business plan, or a secret recipe. The government promotes the good of society by protecting intellectual property through copyrights and patents. Article I, Section 9 lists Congress’s power “To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.”

The Internet has been an unmatched method of distributing information. It has also made it much easier to steal intellectual property. Books can be downloaded for free, which means publishers and author will not be paid. Music can be “shared,” which means musicians are not paid for their work. If these owners do not think they will be justly paid for their work, they may produce less. The consequences to our culture may be huge: fewer novels, fewer medicines, fewer inventions, and less art.

On the other hand, some argue that very few ideas are truly “original,” but build on the efforts of past artists and inventors. Therefore, they say, giving intellectual property too much protection can mean less creative output.

To the Founding Fathers, the protection of private property was of the greatest importance. Yet, legal scholars, politicians, and property owners often disagree over how much, if any, property the government should take for public use.



**STUDENT HANDOUT - A***The Bill of Rights and* **PRIVATE PROPERTY****Focus Quotation**

**Directions:** Read the following excerpt from the Fifth Amendment. With your group members, come to a consensus about how best to define the bolded words. Then, in the space below, brainstorm facilities or purposes that could be considered “public use.”

“No person shall ... be deprived of life, liberty, or property, without due process of law; nor shall private property be **taken** for **public use**, without just compensation.”

1. Definition of “taken”:

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2. Definition of “public use”:

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3. Examples of things that could be considered “public use:”

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*The Bill of Rights and* **PRIVATE PROPERTY****Takings Scenarios****SCENARIO 1**

1. My name is **Suzette Kelo**. About seven years ago I bought a Victorian home on the Thames River in Connecticut. I spent seven years restoring my house and I really love it here. The city has been somewhat depressed economically, although the area my home is in good shape. Now I just found out that the city wants to take my land so that the area can be re-energized.

2. My name is **Jason Helm** and I am on the New London City Council. We plan to take Ms. Kelo's land using our power of eminent domain and turn it over to a private developer. The developer will build new a new facility for a pharmaceutical company that will create hundreds of jobs and \$680,000 in new tax revenue for the city. They will also build upscale condominiums. All these things will benefit the community and therefore amount to "public use."

3. **Kelo:** I think this is an unconstitutional taking, because the Fifth Amendment only says that property can be taken "for public use." This means something like a library or highway—something the public will actually use. I am fighting this because I believe it is an unconstitutional infringement on my right to private property. Fourteen of my neighbors are joining me.

4. **Helm:** The residents of New London can certainly "use" the additional money that will be brought in to this depressed area by the new development. I believe this taking is constitutional because it will benefit the city.

**SCENARIO 2**

1. My name is **Thomas Lee Causby**. My wife Tinnie and I bought 2.8 acres of land in North Carolina several years ago. We decided it would be the perfect place for raising chickens. It was the perfect place until Army planes started taking off from the nearby airport. Now it's unusable because of all the airplane noise. Therefore, I believe we're entitled to just compensation from the government, since the government is causing the noise.

2. I am **Rachel Ash**, an attorney for North Carolina. I don't believe the Causbys are entitled to compensation from the government. Their land was not taken from them. The government has never set foot on their land and has not physically intruded on it in any way. Furthermore, the Causbys knew the land was close to the airport when they bought the land.

3. **Causby:** We knew it was just over 2,000 feet from an airport, but only a few commercial flights and crop dusters took off from there. It was many years after we bought that the Army started using the airport. Their planes are constantly flying right over us—just 67 feet over us to be exact. The noise keeps us awake and we lost 150 chickens because they would get so scared from the noise that they'd fly into the walls of the barn and die. I think that even though the government didn't physically "take" our land, that we are entitled to just compensation.

4. **Ash:** I don't know why Mr. Causby is complaining; he and his wife still own every acre of land that they did before. The government has not "taken" anything.

**STUDENT HANDOUT - B***The Bill of Rights and* **PRIVATE PROPERTY*****Takings Scenarios (continued)*****SCENARIO 3**

1. My name is **Bob Dale**, and I work on the Ventura, California Coastal Commission. We're very proud of our gorgeous beaches. As our population has grown, more and more people want to experience them, and congestion on public beaches is worsening. We've made it a rule now that whenever people apply for building permits to do new construction on the beach, they will have to provide public walkways on their land. We believe this will cut down on congestion.

2. My name is **Mr. Nollan**. My wife and I have a small bungalow on our Ventura beachfront property. It has gotten kind of run down, and we'd like to tear it down and build a new, three-bedroom house similar to the other ones in the area. We applied to the city for a building permit, but we were told we would not be able to get one unless we let the government build a public walkway through the middle of our land so people can walk across it. We don't want to do this, and furthermore, we believe it's an unconstitutional demand.

3. **Dale:** We believe that a walkway would serve a legitimate public purpose, especially since the Nollan's land is surrounded by public beach on all sides. We told everyone we were going to make these walkways a condition of new building permits, so I don't know what they're complaining about. The government is not taking their land away; we're just asking that they let people walk through a small part of it. If they don't like it, then they don't have to build a new house.

4. **Nollan:** They can't restrict the use of our land this way without paying us for it.

*The Bill of Rights and* **PRIVATE PROPERTY****Updates**

**Directions:** Discuss the outcome of the three Takings Scenarios.

**SCENARIO 1**

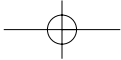
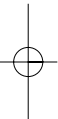
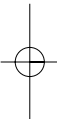
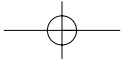
The Supreme Court ruled on *Kelo v. New London* in 2005. The Court agreed with the city of New London and held that the government could take privately-owned land in order to turn it over to a private developer. The Court explained that it had “rejected a literal requirement” of the phrase “public use” in the Takings Clause of the Fifth Amendment. The phrase “public use” could be interpreted as “public benefit.” Therefore, the government can take private property from an individual in order to turn it over to a private developer, because the taking will result in “economic development” for the region.

**SCENARIO 2**

The Court found a taking in *United States v. Causby* (1946) when low-flying jets at an airbase made farming impossible on nearby land even though the government never actually claimed the land itself. The Court held, “As a result of the noise, respondents had to give up their chicken business. As many as six to ten of their chickens were killed in one day by flying into the walls from fright.... Production also fell off. The result was the destruction of the use of the property as a commercial chicken farm.” The Causbys were entitled to just compensation from the government. “It is the owner’s loss, not the taker’s gain, which is the measure of the value of the property taken.”

**SCENARIO 3**

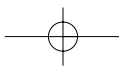
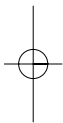
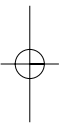
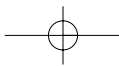
In *Nollan v. California Coastal Commission* (1987) the Court held that “where individuals are given a permanent and continuous right to pass to and fro, so that the real property may continuously be traversed,” there was a taking of property. Therefore, the government could not make the public walkway a condition of a building permit. If the government wished to take the property, it would have to exercise its power of eminent domain and provide the owners with just compensation: “if it wants an easement across the Nollans’s property, it must pay for it.”





*The Bill of Rights and*  
**CRIMINAL  
PROCEDURE**





## *The Bill of Rights and* CRIMINAL PROCEDURE

### UNIT OVERVIEW

#### 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 VIII

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

### Synopsis of Lessons and DVD

#### Lesson One:

Students explore the ways the Bill of Rights protects the rights of the accused.

#### Lesson Two:

Students analyze what constitutes an “unreasonable search” and evaluate situations where citizens may have a “reasonable expectation of privacy.”

## TEACHER'S GUIDE

*The Bill of Rights and* **CRIMINAL PROCEDURE****Critical Engagement Question***How does the Bill of Rights protect the rights of the accused?***LESSON 1*****The Rights of the Accused*****Overview**

A major principle of the American legal system is the *Ex Ante* function of law, which means citizens must know the law, be aware of the consequences of breaking the law, and therefore follow the law. But when someone is accused of breaking a law, citizens must be aware of the law for another purpose—protecting their own rights from government abuse. Because people are at their most vulnerable when accused of a crime, the Founders dedicated four amendments in the Bill of Rights to those protections.

*Knowledge will forever govern ignorance; and a people who mean to be their own governors must arm themselves with the power which knowledge gives.*

—JAMES MADISON, 1821

*Life and liberty can be as much endangered from illegal methods used to convict those thought to be criminals as from the actual criminals themselves.*

—EARL WARREN, 1959

**Materials**

Background Essay: The Rights of the Accused (★★ indicates grade twelve reading level; ★ indicates grade ten reading level.)

Handout A: Focus Quotation

Handout B: Amendments that

Protect the Rights of the Accused

Handout C: “Life without the Bill of Rights” Story

Handout D: Story Key

Answer Key

**Objectives****Students will:**

- identify the rights protected in the Fourth, Fifth, Sixth, and Eighth Amendments.
- understand citizens’ responsibility to know their rights if accused of a crime.
- analyze government action in light of criminal procedure protections.
- evaluate the importance of the protection of the rights of the accused in a democracy.

**Standards**

NCHS: Era 3, Standard 3

CCE: IA2, IICI

NCSS: 2, 5, 6, and 10

**Background/Homework**

A. Have students read **Background Essay: The Rights of the Accused**.

B. Based on the essay, have students rank the Fourth, Fifth, Sixth, and Eighth Amendments in order of their importance to a person accused of a crime. Have students write an explanatory sentence for each ranking.

**Anticipatory Activity**  
**[10 minutes]**

A. Distribute or put up an overhead of **Handout A: Focus Quotation** and read the quotation. Have students put the quote in their own words.

B. Ask students to write a paragraph explaining whether or not they agree with Thomas Jefferson. Discuss student responses as a large group.

**Activity [25 minutes]**

A. Distribute **Handout B: Amendments that Protect the Rights of the Accused** and have students read the amendments.

B. Distribute **Handout C: “Life without the Bill of Rights Story.”** Have students read the story and underline the twelve incidents in the narrative that are inconsistent with the Bill of Rights. After they have found all twelve, instruct them to number them from 1 to 12 in the margin of the story.

## The Bill of Rights and CRIMINAL PROCEDURE

C. Distribute **Handout D: Story Key**. Have students use **Handout B** to find which amendment is being violated in each incident and to quote the part of the amendment that pertains to that violation of rights.

### Wrap-Up [15 minutes]

A. As you read through the story aloud to the class, instruct students to raise their hands when a violation occurs. *Variations: You may wish to pause at the end of each sentence and ask students if they believe it described a violation. Alternately, you may wish to have two students at a time come to the front of the class and hit a buzzer (as on a TV game show) when they first hear a violation.*

B. For each violation, call on a student to volunteer which amendment was violated and the quote they noted. Correct any inaccuracies and explain.

C. Considering the injustice in the story, have students discuss the importance of knowing their rights if accused of a crime.

### Homework

A. Have students write their own story including five incidents that violate criminal procedure protections in the Bill of Rights. Instruct them to make two copies. One should remain clean and on the other, the students should underline and number from 1 to 5 the

violations. Have them trade the clean copies of their stories with a partner next class.

B. Instruct students to make a key to the violations in their story using **Handout D** as a model.

### Extensions

A. Have students research a case currently before the U.S. Supreme Court or recently decided that deals with criminal procedure amendments. Students should write a synopsis of the facts of the case, the path of the case, and the constitutional issue before the court. If the case has been decided,

have students summarize the majority decision. If the case is still pending, have students predict what the Court's decision will be. Students can begin their research at [www.BillofRightsInstitute.org](http://www.BillofRightsInstitute.org).

B. Have students write a position paper and prepare for a mini-debate on the question, "Does capital punishment violate the Eighth Amendment's protection from 'cruel and unusual punishment'?" You may wish to prompt them to consider the issues of execution of the mentally retarded and minors.

### Responsibilities Toolbox



Have students brainstorm a list of responsibilities of citizenship that go along with the rights of the accused under the Fourth, Fifth, Sixth, and Eighth Amendments. You might prompt them with the statements, "I am responsible for knowing..." and "I am responsible for doing..."

In addition to the ideas students generate, you may want to add:

- knowing and obeying the law.
- understanding our rights as citizens.
- serving on juries.
- understanding the concept of civil disobedience as a means of ensuring justice.
- testifying in court.
- knowing what the police's powers are.
- respecting jury verdicts, or challenging verdicts within the system.

## BACKGROUND ESSAY ★★

*The Bill of Rights and* **CRIMINAL PROCEDURE*****The Rights of the Accused***

“Who’s there?” asks Mrs. Proctor when there is a loud bang on her door.

She cracks open the door hesitantly. The men push past her, despite her protests. They begin rummaging through her closets, rifling through her husband’s files, overturning her children’s drawers.

“What are you looking for? What law have we broken?” She begs for them to answer.

They ignore her and continue searching. The British officers have a “writ of assistance,” which gives them the power to conduct general searches. Apparently they find something incriminating, but no one tells Mrs. Proctor what it is. She is taken to a holding cell, where her bail is set at three times her annual salary. Her trial date remains a mystery, as she has no right to a speedy trial. Several months later, Mrs. Proctor learns that she has been accused of stealing some flour, and she is being fined \$250,000.

Writs of assistance, excessive bails, and other violations of rights of the accused were among the most despised forms of British tyranny that led the colonists to declare independence.

The Founders understood how easy it is to take advantage of people accused of crimes because public opinion is often against them, and installed safeguards to criminal procedure to prevent scenarios like the one above. Four Amendments in the Bill of Rights, the Fourth, Fifth, Sixth, and Eighth, concern some aspect of criminal procedure.

**Fourth Amendment Protection**

The British oppressed the colonists through the use of general warrants, which did not list a particular person or place to be searched. An official armed with a general warrant could attempt to find any incriminating evidence on any person’s property. In the colonies, British officers could search whenever, wherever, or whomever they wanted and seize whatever they wished.

In the Fourth Amendment of the Bill of Rights, the Founders outlined requirements for the issuance of warrants. Warrants may be issued only with probable cause, citing a specific person or place to be searched, and the evidence sought. This requirement motivates officials to be very sure of their suspicion.

**Fifth Amendment Protection**

The Founders constructed the Fifth Amendment to secure other rights they believed they had legitimately possessed earlier as English subjects. The protection against self-incrimination insures that no one can be required to testify under oath at her own trial, a principle that the Founders carried over from English tradition. Having seen the protection against self-incrimination ignored by the British government, the Founders cherished this principle.

In criminal cases against colonists, suspects were in danger of incriminating themselves for separate offenses. A defendant who swore to tell the truth in response to all

*The Bill of Rights and* **CRIMINAL PROCEDURE**

questions might end up supplying evidence of other crimes. The only alternative would be to lie under oath, and thereby subject oneself to perjury charges. Defendants who refused to take such oaths or to answer particular questions faced punishment by the court. By relieving the accused of any obligation to answer potentially incriminating questions, the Fifth Amendment resolves this conflict between defending oneself and telling the truth.

Once a case gets to trial, the Fifth Amendment protects against double jeopardy. The protection against having to stand trial more than once for the same crime was well known and recognized in the American colonies. Without this protection, a government could retry a suspect and use the vast resources of the state to either crush a suspect financially or pressure jurors to render a guilty verdict. Like the Fourth Amendment, the Fifth Amendment is a way of motivating the government to be sure of its case before proceeding. Since prosecutors know they only have one chance to convict a defendant, they have more incentive to do a good job.

### Sixth Amendment Protection

In many cases, the British violated the colonists' rights long before a case went to court. To keep the accused in prison while awaiting trial, colonial courts would set bail so high that the accused could not pay. In such cases, a defendant could remain in jail indefinitely, since there was no guarantee of a speedy trial.

At one point, the British government even suspended jury trials. The much-hated Stamp Act of 1765 empowered British admiralty courts to enforce the act without a trial by jury. Revolutionary John Adams summed up the colonists' thoughts on the Stamp Act when he declared, "[b]ut the most grievous innovation of all, is the alarming extension of the power of courts of admiralty. In these courts, one judge presides alone! No juries have any concern there! The law and the fact are both to be decided by the same single judge."

In reaction to the actions of the British, the Founders included the right to a jury trial in Article III of the

Constitution and in the Sixth Amendment. Additional guarantees include the right to a speedy trial in the district where the alleged crime occurred, the right to know the crime of which one is accused, the right to confront and to call witnesses, and the right to have the assistance of an attorney.

### Eighth Amendment Protection

The Founders insured that even those found guilty still have rights when the trial concludes, and the Eighth Amendment guarantees the protection of these rights. Torture as a form of punishment was rare in colonial America, but the British and colonial courts had sometimes employed whipping, branding, public humiliation, or extremely long prison sentences for minor offenses. Under the Eighth Amendment, "cruel and unusual" punishment is forbidden in both major and minor offenses. Executions for capital offenses have to be as swift and as painless as possible, without lingering death or any form of torture. The definition of "cruel and unusual" continues to evolve as society changes. Some now argue that the death penalty is, by definition, "cruel and unusual."

The Eighth Amendment also requires that fines and other monetary penalties, just like physical punishment, fit the crime and not be excessive. In practice, the courts have struggled with how to define or identify an excessive fine. In *United States v. Bajakajian* (1998), however, the Supreme Court found that an excessive fine is one that is grossly disproportionate to the offense committed.

While having a great respect for the will of the majority, James Madison, writer of the Bill of Rights, saw potential for the majority to abridge minorities' rights. He viewed the Bill of Rights as a way of controlling the power of majorities, which might be abused against those who are disliked in the community. The accused as well as convicted criminals are groups that particularly need the Bill of Rights' protection, and the fact that almost half of the amendments in the Bill of Rights concern some aspect of criminal procedure demonstrates its importance to the Founders.

## BACKGROUND ESSAY ★

*The Bill of Rights and* **CRIMINAL PROCEDURE*****The Rights of the Accused***

**“Who’s there?” asks Mrs. Proctor when there is a loud bang on her door.**

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**The Founders and Criminal Procedure**

The Founders installed safeguards to criminal procedure to prevent scenarios like the one above. They understood how easy it is to take advantage of people suspected of or charged with crimes because public opinion is often against them. The Founders provided ways for the law to protect rights of the accused. Four Amendments in the Bill of Rights, the Fourth, Fifth, Sixth, and Eighth, concern some aspect of criminal procedure.

American colonists knew firsthand the effects of life under oppressive criminal procedure laws. They frequently found British policies unfair and, they argued, in direct violation of their rights as Englishmen. The Founders thought the government’s purpose was to protect its citi-



zens’ rights. One way to protect these rights was by providing certain safeguards in criminal procedure.

**Fourth Amendment Protection**

The British often issued writs of assistance, also known as general warrants. These warrants did not list a particular person or place to be searched, nor did they require a particular reason. An official who held a general warrant could search for any incriminating evidence on any person’s property. In the colonies, British officers searched whenever, wherever, or whomever they wanted and took whatever they wished. The Founders saw this as tyranny and addressed it in the Bill of Rights.

The Fourth Amendment requires that warrants be issued only with probable cause and with a specific person or place to be searched. Further, the warrant must specifically list the items for which officials are looking. This requirement motivates officials to be very sure of their suspicion.

**Fifth Amendment Protection**

The British government violated other rights of Englishmen, which the Founders protected in the Fifth Amendment. The Fifth Amendment safeguards many rights including protection against self-incrimination, which means that no one can be required to testify under oath at his own trial. The Founders carried over this principle from English tradition.





## *The Bill of Rights and* CRIMINAL PROCEDURE

In criminal cases against colonists, suspects were in danger of incriminating themselves for multiple offenses. A defendant who swore to tell the truth in response to all questions might end up giving evidence of other crimes. The only other choice would be to lie under oath and in so doing, subject oneself to perjury charges. Defendants who refused to take these oaths or to answer particular questions faced punishment by the court. By allowing people the option of not answering questions that might make them seem guilty, the Fifth Amendment resolves the conflict between defending oneself and telling the truth.

Once a case gets to trial, the Fifth Amendment protects against double jeopardy. Protection against having to stand trial more than once for the same crime was well known and recognized in the American colonies. Without this protection, the government could retry a suspect endlessly. It could use the resources of the state to either crush a suspect financially or pressure jurors to return a guilty verdict. Like the Fourth Amendment, the Fifth Amendment is a way of motivating the government to be sure of its case before proceeding. Since prosecutors know they only have one chance to convict a defendant, they have more incentive to do a good job.

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The Founders insured that even those found guilty still have rights when the trial draws to a close. The Eighth Amendment guarantees the protection of these rights. Torture as a form of punishment rarely occurred in colonial America, but the British and colonial courts had employed whipping, branding, public humiliation, or extremely long prison sentences for minor offenses. The Eighth Amendment forbids "cruel and unusual" punishment. Executions for capital offenses, therefore, must be as quick and painless as possible. The definition of "cruel and unusual" continues to change with time. Some now argue that the death penalty is, by definition, "cruel and unusual."

The Eighth Amendment also requires that bails, fines, and other monetary penalties fit the crime and not be excessive. In practice, the courts have struggled with how to define or identify an excessive fine. In *United States v. Bajakajian* (1998), however, the Supreme Court found that an excessive fine is one that is grossly out of proportion to the crime.

While having a great respect for the will of the majority, James Madison, writer of the Bill of Rights, saw potential for the majority to abridge minorities' rights. He viewed the Bill of Rights as a way of controlling the majority's power, which might be abused against those who are disliked in the community. The accused, as well as convicted criminals, are groups that particularly need the Bill of Rights' protection. The fact that almost half of the amendments in the Bill of Rights concern some aspect of criminal procedure demonstrates its importance to the Founders.

**STUDENT HANDOUT - A***The Bill of Rights and* **CRIMINAL PROCEDURE****Focus Quotation**

**Directions:** Read the quotation and put it in your own words. Then write a paragraph explaining whether or not you agree with Jefferson.

**1. It is more dangerous that a guilty person should be punished, without the forms of law, than that he should escape.**

–President Thomas Jefferson, 1788

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**2. Do you agree with Jefferson's philosophy about the rights of the accused? Why or why not?**

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*The Bill of Rights and* **CRIMINAL PROCEDURE*****Amendments that Protect the Rights of the Accused***

**Directions:** Use the amendments below to find the violations in the “Life without the Bill of Rights” Story on *Handout C*.

**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 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 VIII**

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

## STUDENT HANDOUT - C

*The Bill of Rights and* **CRIMINAL PROCEDURE*****“Life without the Bill of Rights” Story***

**Directions:** Read the following story and use **Handout B** to identify violations of the amendments within the story. Underline each offense. After you have found all 12 violations, number them from 1 to 12 in the margins.

As Johnny Q. Public dozed off to sleep while watching a crime show on TV, he suddenly sat straight up on the couch. There was a noise on his porch and then, “BAM!” the door was on the floor. Five men in SWAT uniforms were standing in his living room with guns pointed at him. “Don’t move and no one will get hurt! You, go search the basement. You, search the garage. You, search the kitchen!” shouted the captain. “Wh- wh- where’s your search warrant?” asked an extremely nervous Johnny. “Warrant? Here’s the warrant,” replied the SWAT captain. Johnny read, “Warrant to search the kitchen of John Q. Public and its contents.”

When the SWAT team returned from the search, they had evidence bags with them. They spoke quietly in the kitchen. Then the captain announced, “Johnny Q. Public, you are under arrest.” They took Johnny out of the house and placed him in the patrol car. Johnny was booked and led to a prison cell where he was left to wonder what exactly he had been arrested for. “Guard, what am I being held for?” pleaded Johnny each day, but the guards said they didn’t know. Eventually, he was told that if he could post one million dollars bail, he could get out of jail until the trial. “I can’t raise that kind of money. Can I at least talk to an attorney?” He’d beg, but the answer was always, “No.”

A year passed, and finally Johnny was transported from Virginia to Pennsylvania for trial. As he entered the courtroom, he saw an empty jury box and asked,

“Where’s my jury?” He was told he couldn’t have one because judges were better at determining guilt. The district attorney made the case for the prosecution that Johnny had shoplifted twenty dollars of merchandise from the local convenience store. Before the prosecution rested, the DA said, “The prosecution calls Johnny Q. Public to the stand.” Johnny didn’t want to testify, but was told he would be jailed for contempt of court if he did not. Johnny mounted the best defense he could, and by some miracle was acquitted.

A month later, Johnny was arrested again for the same charge. He was told to prepare for another trial. The prosecution presented a stronger case this time with new evidence. Johnny asked to cross-examine the prosecution’s witnesses, but the district attorney refused to allow him to question them. When it was time for Johnny to present his case, Johnny said, “I’d like to have my neighbor verify my alibi. He knows that I was at home alone that night.” But the judge replied, “Your neighbor didn’t want to get involved, and so he refused to appear. Sorry, young man, there’s nothing we can do.”

Johnny was found guilty. The judge asked Johnny to stand while he read the sentence: “Johnny Q. Public since this is your first offense, you have been sentenced to five years in a maximum security prison.” Johnny sat down dizzy with disbelief. He thought to himself, “If only there was something to protect me from all these government abuses...”

## STUDENT HANDOUT - D

*The Bill of Rights and* **CRIMINAL PROCEDURE****Story Key**

**Directions:** Use the key below to note which amendment protects citizens from each numbered violation in the story. Note the part of the amendment that pertains to each.

VIOLATION #	AMENDMENT #	QUOTE FROM AMENDMENT
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
11.		
12.		

## TEACHER'S GUIDE

*The Bill of Rights and* **CRIMINAL PROCEDURE****Critical Engagement Question***When and where do citizens have a "reasonable expectation of privacy"?***LESSON 2****Enforcement of Fourth Amendment Protections****Overview**

The United States Constitution is a social contract in which citizens give up some liberties in exchange for security from the government. Technology and national security often force the renegotiation of that contract, with innovations such as email, instant messaging, PDAs and blogs testing the definitions of "unreasonable" searches. These situations demand new definitions of

*They that can give up essential liberty to purchase a little temporary safety, deserve neither liberty nor safety.*

—BENJAMIN FRANKLIN, 1759

*The 4th Amendment and the personal rights it secures have a long history. At the very core stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion.*

—POTTER STEWART, 1961

what forms of communication have a "reasonable expectation of privacy" and may change the way citizens view what is "unreasonable" government intrusion.

**Materials**

Background Essay: Enforcement of Fourth Amendment Protections (✖✖ indicates grade twelve reading level; ✖ indicates grade ten reading level.)

Handout A: Focus Quotation  
Criminal Procedure DVD and Viewing Guide

Handout B: Fourth Amendment Definitions

Handout C: Supreme Court Interpretations Chart

Handout D: Should You Expect Privacy?

Answer Key

**Objectives****Students will:**

- understand citizens' responsibility to know their Fourth Amendment rights.
- understand the concept of "reasonable expectation of privacy."
- analyze scenarios in which citizens may have a "reasonable expectation of privacy."
- evaluate Supreme Court cases to determine what aspect of the Fourth Amendment was interpreted.
- appreciate the importance the Founders placed on Fourth Amendment protections.

**Standards**

NCHS: Era 3, Standard 3

CCE: IA2, IICI

NCSS: Strands 2, 5, 6, and 10

**Background/Homework**

A. Have students read **Background Essay: Enforcement of Fourth Amendment Protections**.

**Anticipatory Activity [10 minutes]**

A. Distribute or put up an overhead of **Handout A: Focus Quotation** and read the quotation. Have students discuss the meaning of the quote in their own words.

B. Ask students what kinds of current events might apply to the quotation. How is the Fourth Amendment relevant in the United States today?

**Activity [25 minutes]**

A. Show the **Criminal Procedure DVD** and have students complete the **Viewing Guide**.

B. Distribute **Handout B: Fourth Amendment Definitions**. In pairs, have students read the text of the Fourth Amendment and write definitions for the terms "secure," "unreasonable," and "search." Have two pairs of students join together in a group of four and compare definitions. Allow them to add to their own definitions if they choose.

## The Bill of Rights and CRIMINAL PROCEDURE

C. Reconvene the class and discuss definitions as a large group, noting definitions on the board or overhead as you go.

D. Distribute **Handout C: Supreme Court Interpretations Chart**. In their groups of four, have students evaluate which term or terms the Supreme Court was interpreting in each case. They can use the information in their **Background Essays** as they work.

E. Choose a group to report on each case.

### Wrap-Up [15 minutes]

A. Tell students that one factor in deciding if a search requires a warrant is whether or not a person has a “reasonable expectation of privacy.” Ask students what they think is meant by the term and discuss answers. Explain that like the terms above, the Supreme Court has interpreted this term through individual cases.

B. Distribute or put up an overhead of **Handout D: Should You Expect Privacy?** Have students record their answers to whether or not they believe they would have a “reasonable expectation of privacy” in each scenario.

C. Using the **Answer Key**, tell students how the Supreme Court ruled in each scenario. As a large group, have students share their opinions on the rulings. Are there any with which they strongly agree or disagree?

D. Have students share their generalizations about when a person has a “reasonable expectation of privacy” and discuss responses as a large group.

### Homework

A. Ask students to compose a generalization about students’ expectations of privacy in a public school setting. In one paragraph, have students contrast their expectation of privacy now with their understanding before they studied this concept.

B. Have students write a paragraph defending the exclusionary rule or proposing an alternative method of protecting citizens’ Fourth Amendment rights.

### Extensions

A. Have students compose five questions each pertaining to their Fourth Amendment rights in and outside of school. Invite your School Resource Officer, administrator, or local police officer into the classroom to answer students’ questions.

B. Have students research the Supreme Court case *New Jersey v. TLO* (1985). Have them role-play that they are TLO and write three diary entries of her thoughts: the first immediately after the principal searched her purse, the second after the Supreme Court of New Jersey excluded the evidence and overturned her conviction, and the third when the U.S. Supreme Court reversed that decision and allowed the evidence. Student can begin their research at [www.CitizenBee.org](http://www.CitizenBee.org).



### Responsibilities Toolbox

Have students brainstorm a list of responsibilities of citizenship that go along with their Fourth Amendment rights and protections. You might prompt them with the statements, “I am responsible for knowing...” and “I am responsible for doing...”

In addition to the ideas students generate, you may want to add:

- knowing and obeying the law.
- understanding our rights as citizens.
- reporting suspicions of crimes.
- testifying in court.
- knowing what the police’s powers are.

## BACKGROUND ESSAY ★★

*The Bill of Rights and* **CRIMINAL PROCEDURE****Enforcement of Fourth Amendment Protections**

# Is a man's home his castle? What about your locker?

British Prime Minister William Pitt said in a speech to Parliament in 1763, "The poorest man may, in his cottage, bid defiance to all the forces of the Crown. It may be frail; its roof may shake; the wind may blow through it; the storm may enter; the rain may enter; but the King of England may not enter; all his force dares not cross the threshold of the ruined tenement."

In the colonies, however, a man's house was far more vulnerable, legally speaking. Judges, called magistrates, issued general warrants, giving soldiers the power to enter and search homes at their discretion. In one instance, a warrant authorized the search of an entire Connecticut village and all the homes in it for a stolen pig. Though this warrant was eventually ruled invalid, it was this kind of overreaching government intrusion and persecution that the Founders wanted to prevent when drafting the Constitution.

The Founders devised the American system of government with the goal of protecting the rights of all persons. Through the separation of powers, which separates the government into executive, legislative, and judicial branches, they arranged a permanent tension between the branches of government that would help protect the rights of the people. An example of this system is the issuance of warrants. The police, agents of the executive branch, must receive a search warrant from the courts, the judicial branch. If the courts agree that "probable cause" exists and that the warrant will lead to the discovery of unlawful activity, they give the police permission to act.

**The Exclusionary Rule**

The exclusionary rule is an important tool in defending a citizen's rights as guaranteed in the Bill of Rights. This rule maintains that objects seized or knowledge gained from a search in violation of the Fourth Amendment cannot be used as evidence in court. Though the police are bound by the Fourth Amendment's prohibitions against unreasonable searches and seizures, some officers might be more concerned with the seizure of contraband or evidence than with the rights of citizens. With few exceptions, if a judge decides that a piece of evidence was obtained in violation of the defendant's Fourth Amendment rights, that evidence is excluded from the court's consideration.

In theory, the end result is that police are encouraged to follow procedure and respect citizens' rights. By refusing to allow the introduction of illegally-obtained evidence, the judiciary exercises an important check on government's prosecutorial power.

Although the Supreme Court applied the exclusionary rule to federal prosecutions in the 1914 case of *Weeks v. United States*, it was not until 1961 that the Court applied the rule to the states. In *Mapp v. Ohio*, the Court ruled that states could not use evidence illegally seized by the government. Writing for the majority, Justice Tom Clark observed, "The criminal goes free, but it is the law that sets him free. Nothing can destroy a government more quickly than its failure to observe its laws."



## The Bill of Rights and CRIMINAL PROCEDURE

### Exceptions to the Exclusionary Rule

The exclusionary rule is not an absolute. In *United States v. Calandra* (1974) and *Nix v. Williams* (1984), the Supreme Court upheld convictions based on illegally-seized evidence when the police proved that the evidence would certainly have been found through legal means. This is called the inevitable discovery principle.

Some other exceptions to the warrant requirement include evidence discovered “in hot pursuit” of a suspect, the observation of contraband in plain view, and when a person consents to a search. The Court has also ruled that in cases where one owner of a home consents to a search but the other does not, the search is unconstitutional (*Georgia v. Randolph*, 2006).

The exclusionary rule remains controversial. Critics claim that the rule punishes the public for the mistakes of a single police officer. Other critics have claimed the rule fails to deter officers from conducting illegal searches because the officers face no personal punishment if they do so.

### The Right to Privacy

Word definitions evolve over time, and, like many other terms, “search” has been understood in new ways since the Founders wrote the Constitution. The term now



encompasses more than simply government officials looking through one's possessions. People have asked whether it should include drug testing of railroad employees and public school students, while others have questioned whether new observation technologies make “searches” possible even without physical entrance.

The “right to privacy” is not mentioned in the Constitution or Bill of Rights, but the Supreme Court found one to exist by virtue of the First, Fourth, and Ninth Amendments. In *United States v. Katz* (1967), the Court ruled that monitoring and recording of a conversation without permission might infringe one's “reasonable expectation of privacy.” People usually assume that the person with whom they are talking on the phone is the only one listening and have a reasonable expectation that the conversation is private. Future changes in technology may change reasonable expectations.

The case of *Kyllo v. United States* (2001) also concerned privacy issues. Police believed a man was growing marijuana in his home, so they used a heat-sensing device to look for evidence of heat lamps used to grow the illegal plants. The 5-4 decision found that the police's actions amounted to an unreasonable search. “[T]he Government uses a device that is not in general public use, to explore details of the home that would previously have been unknowable without physical intrusion, the surveillance is a ‘search’ and is presumptively unreasonable without a warrant.”

A “search” can also mean inspecting bodily fluids, as is the case in *Skinner v. Railway Labor Executives* (1989). The Court upheld drug testing of railroad workers who had been involved in an accident, because it found the “government's compelling interest” in preventing “great human loss” made the search reasonable.

### Public School Students and Searches

Students in public school have fewer privacy rights than adults. Schools can search student lockers at any time. In the 1985 case of *New Jersey v. TLO*, the Court ruled that public school officials were not required to obtain search

## BACKGROUND ESSAY ★★

*The Bill of Rights and* **CRIMINAL PROCEDURE**

warrants when searching students' belongings. Teachers and administrators, however, were bound by the Fourth Amendment's essential requirement that searches be "reasonable."

Drug testing in schools has also come before the Court's consideration. In *Vernonia School District v. Acton* (1995), the Court ruled that schools could force athletes to submit to random drug testing. In *Board of Education of Pottawatomie County v. Earls* (2002), students challenged a school policy that required drug testing not just for athletes, but for all extracurricular activities. Some activities are linked to academic classes like choir and marching band, so the drug test was a condition to take these courses. The Court upheld the policy because it "reasonably serve[d] the School District's important interest in detecting and preventing drug use among its students."

**The Future**

The Fourth Amendment is inevitably at the center of debates about liberty and security. The War on Terror has brought many changes to criminal procedure in the United States. Technologies have made secret searches possible, and PATRIOT Act legislation has legalized them. Americans debate the constitutionality of executive-ordered warrantless wiretapping as part of the hunt for terrorists. Do "enemy combatants" in the war on terror have Fourth, Fifth, and Sixth Amendment rights?

It is important to understand the reasons the Founders included criminal procedure protections in the Constitution and Bill of Rights and the consequences of setting these protections aside. This enables Americans to balance the need for safety in wartime with prevention of government oppression.



## The Bill of Rights and CRIMINAL PROCEDURE

### Enforcement of Fourth Amendment Protections

# Is a man's home his castle? What about your locker?

British Prime Minister William Pitt said in a speech to Parliament in 1763, "The poorest man may, in his cottage, bid defiance to all the forces of the Crown. It may be frail; its roof may shake; the wind may blow through it; the storm may enter; the rain may enter; but the King of England may not enter; all his force dares not cross the threshold of the ruined tenement."

In the colonies, however, homes were in greater danger of being searched because Judges issued general warrants. A general warrant gave soldiers the power to enter and search homes at will. In one instance, a warrant authorized the search of an entire Connecticut village and all the homes in it for a stolen pig. Though this warrant was later ruled invalid, it was this kind of government invasion and harassment that the Founders had in mind when drafting the Constitution.

The Founders formed the American system of government with the goal of protecting the rights of all persons. The separation of powers divides the government into executive, legislative, and judicial branches. This creates a permanent tension between the branches of government that helps protect the rights of the people. The warrant requirement is an example of this system. The police, agents of the executive branch, must get a search warrant from the court, the judicial branch. If the court agrees that "probable cause" exists and that the warrant will lead to the discovery of unlawful activity, the court gives the police permission to act.

### The Exclusionary Rule

Sometimes a news report will say that a known criminal was released "on a technicality." Frequently, the technicality



means that the state seized evidence illegally and, therefore, could not use that evidence to prove its case. This is called the exclusionary rule. Evidence obtained illegally is excluded, or barred, from being presented as evidence at trial. The exclusionary rule is an important tool in defending a citizen's Fourth Amendment rights.

In theory, the end result is that police are encouraged to follow procedure and respect citizens' rights. By refusing to let the jury hear about illegally obtained evidence, the judiciary works as an important check on police power.

The Supreme Court applied the exclusionary rule to federal prosecutions in the 1914 case of *Weeks v. United States*. It was not until 1961, however, that the Court applied the rule universally. In *Mapp v. Ohio*, the Court ruled that states could not use evidence illegally seized by the federal government, and vice versa. Writing for the majority, Justice Tom Clark observed, "The criminal goes free, but it is the law that sets him free. Nothing can destroy a government more quickly than its failure to observe its laws."

### Exceptions to the Exclusionary Rule

The exclusionary rule is not an absolute. Prosecutors may mention illegally-seized evidence while questioning grand jury witnesses. In *United States v. Calandra* (1974) and *Nix v. Williams* (1984), the Supreme Court also upheld convictions based on illegally-seized evidence when the police have proved that the evidence would certainly have been found through legal means. This is called the inevitable discovery principle.

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## BACKGROUND ESSAY



## The Bill of Rights and CRIMINAL PROCEDURE

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The exclusionary rule remains controversial. Critics claim that the rule punishes the public for a police officer’s mistakes. Other critics have claimed the rule fails to stop officers from conducting illegal searches because they face no personal punishment.

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Over time, we often must revise the meanings of words. Like many other terms, “search” has been understood in new ways since the Founders wrote the Constitution. The term now encompasses more than simply government officials looking through one’s possessions. People have asked whether it should include drug testing of railroad employees and public school students. Others have questioned whether new observation technologies make “searches” possible even without physical entrance.

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The Court also ruled upon drug testing in schools. In *Vernonia School District v. Acton* (1995), the Court ruled that schools could force athletes to submit to random drug testing. In *Board of Education of Pottawatomie County v. Earls* (2002), students challenged a school policy that required drug testing for all extracurricular activities. Some activities are linked to academic classes like choir and marching band, so the drug test was a condition to take these courses. The Court upheld the policy because it “reasonably serve[d] the School District’s important interest in detecting and preventing drug use among its students.”

### The Future

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It is important to understand the reasons the Founders included criminal procedure protections in the Constitution and Bill of Rights and the consequences of setting them aside. This enables Americans to balance the need for safety in wartime with prevention of government oppression.

*The Bill of Rights and* **CRIMINAL PROCEDURE****Focus Quotation**

**Directions:** Read the quotation and put it in your own words. Then answer the question below.

**It is a measure of the framers' fear that a passing majority might find it expedient to compromise Fourth Amendment values that these values were embodied in the Constitution itself.**

–Supreme Court Justice Sandra Day O'Connor, 1987

1. \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

2. Consider the **Background Essay** and your own knowledge of current events. List any situations in which you think this quote might apply:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**STUDENT HANDOUT - B***The Bill of Rights and* **CRIMINAL PROCEDURE*****Fourth Amendment Definitions***

**Directions:** Define the three terms from the Fourth Amendment below as completely as possible.

**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.

**1. Secure:**

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**2. Unreasonable:**

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**3. Searches:**

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*The Bill of Rights and* **CRIMINAL PROCEDURE*****Supreme Court Interpretations Chart***

**Directions:** Reread the **Background Essay** and decide which term or terms the Supreme Court was interpreting in each case. Put an X in the correct box(es).

<b>CASE</b>	<b>Secure</b>	<b>Unreasonable</b>	<b>Searches</b>
<i>United States v. Katz</i> (1967)			
<i>Kyllo v. United States</i> (2001)			
<i>Skinner v. Railway Labor Executives</i> (1989)			
<i>New Jersey v. TLO</i> (1985)			
<i>Vernonia School District v. Acton</i> (1995)			
<i>Board of Education of Pottawatomie County v. Earls</i> (2002)			

**STUDENT HANDOUT - D***The Bill of Rights and* **CRIMINAL PROCEDURE*****Should You Expect Privacy?***

**Directions:** Read the following scenarios and decide whether you should have a “reasonable expectation of privacy.” Then answer the question that follows.

<b>SCENARIO</b>	<b>“reasonable expectation of privacy”? (Yes/No)</b>
1. Trash you’ve placed in a garbage bag at the corner of your property.	_____
2. The contents of a closed container in your care that the police believe holds evidence.	_____
3. Your pictures and information on a “My Space” or other blog.	_____
4. Your conversation on a pay phone in a phone booth.	_____
5. Your conversation on your land-line phone at home.	_____
6. Your backpack that you left in the cafeteria.	_____
7. Illegal drugs being grown on your land, discovered by an airplane fly-over.	_____
8. Anything in your school locker.	_____
9. Your visit to a friend’s house where you are going to sell stolen electronic equipment.	_____
10. Your baggage while you are riding on a Greyhound bus.	_____

11. Considering the above scenarios, write a statement about when and where a citizen has a “reasonable expectation of privacy.”

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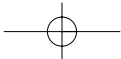
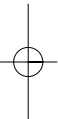
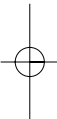
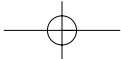
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# *The Bill of Rights and* **CITIZEN JURIES**





*The Bill of Rights and* **CITIZEN JURIES****UNIT OVERVIEW****ARTICLE III, SECTION 2 OF  
THE CONSTITUTION OF THE  
UNITED STATES:**

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the Congress may by law have directed.

**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...

**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...

**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.

**Synopsis of Lessons  
and DVD****Lesson One:**

Students examine the history of citizen juries and evaluate a jury's power to judge the law as well as facts.

**Lesson Two:**

Students explore the role of jurors and the ways the justice system attempts to ensure impartial juries.

## TEACHER'S GUIDE

*The Bill of Rights and* **CITIZEN JURIES****Critical Engagement Question***How do juries protect individual liberties?***LESSON 1****The Tradition of Citizen Juries****Overview**

With roots in ancient republics, the right to trial by jury was enshrined in the *Magna Carta*, the English Bill of Rights, and the United States Constitution as an essential means of ensuring justice. The Constitution and Bill of Rights provide for jury trials in criminal cases, as well as in civil trials involving more than twenty dollars. The collective wisdom of individual citizens sitting in judgment of their peers provides an important check against overreaching government power.

*I consider [trial by jury] as the only anchor ever yet imagined by man, by which a government can be held to the principles of its constitution.* —THOMAS JEFFERSON, 1789

*If the jury have no right to judge of the justice of a law of the government, they plainly can do nothing to protect the people against the oppressions of the government; for there are no oppressions which the government may not authorize by law.*

—LYSANDER SPOONER, 1852

**Materials**

Background Essay: The Tradition of Citizen Juries (✱✱ indicates grade twelve reading level; ✱ indicates grade ten reading level.)

Handout A: Focus Quotations

Handout B: Juries Flyer Template

Colored pencils or markers

**Objectives**

Students will:

- understand the English legal protections of the right to trial by jury.
- analyze statements about the powers of juries.
- evaluate the power of juries to nullify the law as a means of ensuring justice.
- appreciate the role juries play in protecting individual liberties.

**Standards**

NCHS: Era 3, Standard 3

CCE: VA1

NCSS: Strands 2, 6, and 10

**Background/Homework**

**A.** Have students read **Background Essay: The Tradition of Citizen Juries**.

**Anticipatory Activity**  
**[10 minutes]**

**A.** Distribute or put up an overhead of **Handout A: Focus Quotations**, and have students select one quotation to rephrase in their own words.

**Activity [30 minutes]**

**A.** Ask students to imagine that Thomas Jefferson, dismayed at the lack of knowledge among 21st century Americans as to the full powers of juries, has hired them to create an educational flyer informing citizens about the history of juries, jury protections in the Constitution and Bill of Rights, and the jury's power to judge the law as well as the facts.

**B.** Conduct a large group brainstorming session on flyer concepts. In addition to the ideas students generate, you may wish to add: William Penn, John Peter Zenger, a fugitive slave, symbols of justice, an "anchor" to the Constitution (from the Jefferson quote), "teeth" of justice (from the Holmes quote), scales of checks and balances (from the Ross quote).

**C.** Distribute **Handout B: Juries Flyer Template**, and make colored pencils or markers available. Let students know that their flyer should include at least three quotations, at least one individual from history, and at least three graphics.

**D.** Have students post their flyers around the room and give students a few moments to view them all.

*The Bill of Rights and* **CITIZEN JURIES****Wrap-Up [10 minutes]**

Reconvene the class for a large group discussion. Ask students:

- Before the day's lesson, did they know about the power of juries to judge law as well as fact?
- Does a controversial decision (e.g. the O.J. Simpson criminal trial, the Rodney King verdict, etc.) necessarily mean a jury has nullified?
- Jury nullification is controversial. Some say that the way to deal with unjust laws is to work to change them, not to ignore them. Is jury nullification ever wrong?
- Are there times when jury nullification can be abused?

**Homework**

**A.** Have students answer the following question in two to three paragraphs: Should trial judges be required to inform the jury of their power to nullify unjust laws? Why or why not?

**B.** Have students write two to three paragraphs supporting one of the two statements below:

1. Jurors should judge the law as well as facts, because jury nullification is a way citizens can ensure justice in society.
2. Jurors should judge facts, not the law, because jury nullification leads to anarchy.

**Extensions**

**A.** Have students research the trials of William Penn or John Peter Zenger. Ask them to explain in a one- to two-page essay why jurors were so important in these cases.

**B.** Give students time in the library or at computers to research the Fugitive Slave Act and instances of Northern juries refusing to convict people who helped slaves escape bonded servitude. Have students present their research in a two-page report.

**Responsibilities Toolbox**

Have students brainstorm a list of responsibilities of citizenship that go along with citizen juries. You might prompt them with the statements, "I am responsible for knowing..." and "I am responsible for doing..."

In addition to the ideas students generate, you may want to add:

- knowing the history of juries.
- understanding the powers of juries.
- understanding the power of jury nullification.
- distinguishing between jury nullification—refusing to apply unjust laws—and juries refusing to apply the law for other reasons (such as KKK members refusing to convict people who murdered blacks).

## BACKGROUND ESSAY ★★

*The Bill of Rights and* **CITIZEN JURIES*****The Tradition of Citizen Juries***

# Which is more important, serving on a jury or voting?

If you said serving on a jury, Thomas Jefferson would have agreed with you.

It is fitting that a government that derives its power from the people trusts private citizens with the administration of justice. The judicial system is a government branch with elected and appointed judges, but lawyers and jurors are private citizens.

The Founders believed that juries were essential to a system of justice, enshrining the right to a jury trial in the Declaration of Independence, the Constitution, and the Bill of Rights. Juries bring the voice of the people to the justice system. Twelve private citizens sit in judgment of their neighbors with the power to determine the application of the law. The police search, the lawyers argue, the judge oversees the trial, but it is the jury who ultimately ensures that justice is done. Serving on a jury is an important responsibility of citizenship.

**Juries in England and the United States**

The role of citizen juries in a free society emerged in 1215, when King John of England conceded in the *Magna Carta*: “No freeman shall be taken, imprisoned...or in any other way destroyed...except by the lawful judgment of his peers...” Despite this, King John and later monarchs remained hostile to juries and often ignored their decisions. Some kings and queens arrested jurors for “incorrect” verdicts or fined them for acquitting certain defendants.

Despite such harassment, juries played a key role in defending the rights of the English. In 1670, four jurors



refused to convict William Penn for preaching at a Quaker religious meeting. Penn had openly broken the law that made the Church of England the kingdom's only legal church. The four holdouts called the law “unjust.” They were sentenced to nine weeks of torture in prison. After a few days, the King freed the jurors, but fined each a hefty sum. They refused to pay and remained in jail until the court removed the fines. This case enshrined into English law the principle that no juror can be punished for a verdict. After his trial, Penn left England and founded the colony of Pennsylvania, bringing, along with other settlers, the tradition of jury independence.

In time, juries in America were also faced with laws they considered “unjust.” In 1735, attorney Andrew Hamilton defended New York journalist John Peter Zenger, who was accused of criticizing the governor. Hamilton acknowledged that his client had indeed criticized the governor in his newspaper, which was against the law, but since Zenger had made no false statements, Hamilton argued he was not guilty of libel and the law was unjust. The jury agreed with Hamilton and set Zenger free. While the decision is famous for securing the freedom of the press, it also emphasizes the power of juries to refuse to apply unjust laws. This power is called jury nullification.

**Juries, the Constitution, and the Bill of Rights**

By most accounts, the Founders considered juries very important, enshrining the right to a jury trial in the

## ★ ★ BACKGROUND ESSAY

### *The Bill of Rights and* **CITIZEN JURIES**

Declaration of Independence, the Constitution, and the Bill of Rights.

Before the American Revolution, the British often violated colonists' rights to a jury trial, fueling the colonists' desire for independence. They particularly despised the British practice of taking colonists to England to be tried in admiralty courts, where a single military judge determined guilt. Responding in the Declaration of Independence (1776), Thomas Jefferson criticized George III for "depriving us...of the Benefit of Trial by Jury...[and] for transporting us beyond Seas to be tried for pretended Offences."

Twelve years later, when the Founders wrote the Constitution, they ensured that jury trials would be the law of the land. Article III provides that "the Trial of all Crimes... shall be by Jury" and in the state where the alleged crime was committed. The tradition of citizens, rather than government, determining guilt was upheld.

The Bill of Rights, ratified in 1791, reinforced the right to a trial by jury. The Fifth Amendment states that the federal government must assemble a grand jury for "a capital or otherwise infamous crime." That means a federal prosecutor must first convince a grand jury of sixteen to twenty-three members that he or she has enough evidence to go to trial. Grand juries are called "grand" because they are larger than regular twelve-person "petit" juries. The system has been applied on the state level, as well. The grand jury system ensures that citizens hold the power to determine if the government may prosecute someone in capital cases.

The Sixth Amendment requires a criminal trial to be speedy and public. This means it must be open to interested persons, including the media, though not necessarily television cameras. Portions of a trial may be closed if the state can show an overriding interest, such as when a juvenile victim of a sex crime testifies.

The Sixth Amendment also requires that the jury be impartial and that a trial be held in the area where the alleged crime occurred. The jury must be drawn from the citizens of that area, unless the citizens are greatly

prejudiced against the defendant. The Supreme Court has ruled that trials can be moved when "prejudicial publicity" makes finding an unbiased jury impossible, in which case the trial may be moved out of the district or even the state (*Sheppard v. Maxwell*, 1966).

The Seventh Amendment protects the right to a jury trial in most federal common law suits, which are non-criminal lawsuits that are brought in federal court usually because the parties live in different states. The Seventh Amendment also establishes that once a jury has tried the facts of any case, no other court proceedings can challenge those facts.

### **Power of Juries**

Prior to the Civil War, many juries refused to convict abolitionists who had helped slaves escape. Fugitive slave laws had made it illegal to harbor or assist escaped slaves, but many jurors believed slavery to be an immoral and unjust institution and refused to apply these laws. Cases of jury nullification enraged slaveholders and helped push many leaders in the South to consider secession to keep slavery legal.

Some people opposed to jury nullification point out that the power of juries to refuse to apply the law can be abused. In the post-Civil War South, some juries of white supremacists refused to convict fellow members of the Ku Klux Klan for lynching blacks. These are not true cases of jury nullification—the jurors were not refusing to apply an unjust law, they were refusing to apply the law because of racist attitudes.

Throughout American history, ordinary citizens have served on juries, accepting a key responsibility of citizenship. They have defended the security of their communities, checked abuses of government power, and protected individual liberty. Ordinary citizens from various backgrounds and with different beliefs, attitudes, and values, have come together for their civic duty. By serving on juries, they have contributed to American society and democracy in administering justice.

## BACKGROUND ESSAY ★

*The Bill of Rights and* **CITIZEN JURIES*****The Tradition of Citizen Juries***

# Which is more important, serving on a jury or voting?

If you said serving on a jury, Thomas Jefferson would have agreed with you.

It is fitting that a government that derives its power from the people trusts private citizens with the administration of justice. The judicial system is a government branch with elected and appointed judges, but lawyers and jurors are private citizens.

The Founders considered juries very important. They included the right to a jury trial in the Declaration of Independence, the Constitution, and the Bill of Rights. Juries bring the voice of the people to the justice system. Twelve private citizens sit in judgment of their neighbors with the power to determine the application of the law. The police search, the lawyers argue, the judge oversees the trial, but the jury makes the final decision. Serving on a jury is an important responsibility of citizenship.

**Juries in England and the United States**

The role of citizen juries in a free society emerged in 1215. In the *Magna Carta*, King John of England said: "No freeman shall be taken, imprisoned...or in any other way destroyed...except by the lawful judgment of his peers . . ." Despite this, King John and later monarchs were still hostile to juries and often ignored their decisions. Some kings and queens arrested jurors for "incorrect" verdicts or fined them for finding certain defendants not guilty.

Despite such harassment, juries played a key role in defending the rights of the English. In 1670, four jurors



refused to convict William Penn for preaching at a Quaker religious meeting. Penn had openly violated the law that had established the Church of England as the kingdom's only legal church. The four holdouts said the banning of other churches was an "unjust law." Because of this, the four jurors were sentenced to nine weeks of torture in prison. The King freed the jurors after a few days, but fined each a hefty sum. The four refused to pay and remained in jail until the court removed the fines. This case protected the principle that jurors cannot be punished for their verdict. After his trial, Penn left England and founded the colony of Pennsylvania. He and other settlers brought the tradition of jury independence with them.

Juries in America also faced laws they found "unjust." In 1735, attorney Andrew Hamilton defended New York journalist John Peter Zenger, who was accused of criticizing the governor. Such criticism was called "libel" and was against the law. Hamilton acknowledged that Zenger had indeed said bad things about the governor in his newspaper. But Zenger had made no false statements. Hamilton argued that the law was unjust. The jury agreed with Hamilton. They found Zenger not guilty even though under the law, he should have been found guilty. While the decision is famous for securing freedom of the press, it is also an example of the juries' power to refuse to apply unjust laws. This power is called jury nullification.

**Juries, the Constitution, and the Bill of Rights**

Before the American Revolution, the British often violated colonists' rights to a jury trial. The colonists par-



*The Bill of Rights and* **CITIZEN JURIES**

ticularly hated the British practice of taking colonists to England to be tried in admiralty courts. A single military judge determined guilt in these courts. Responding in the Declaration of Independence (1776), Thomas Jefferson criticized George III for “depriving us...of the Benefit of Trial by Jury...[and] for transporting us beyond Seas to be tried for pretended Offences.”

Twelve years later, when they wrote the Constitution, the Founders made sure jury trials would be the law of the land. Article III insures that “the Trial of all Crimes... shall be by Jury” and in the state where the alleged crime was committed. The tradition of citizens, rather than government, determining guilt was upheld.

The Bill of Rights, ratified in 1791, again protected the right to a jury trial. The Fifth Amendment states that the federal government must assemble a grand jury for “a capital or otherwise infamous crime.” To carry out this requirement, a federal prosecutor must convince a grand jury of sixteen to twenty-three members that he or she has enough evidence to go to trial. Grand juries are called “grand” because they are larger than regular twelve-person “petit” juries. The system has been applied on the state level as well. The grand jury system ensures that citizens hold the power to determine if the government may prosecute someone in capital or infamous crimes.

The Sixth Amendment requires a criminal trial to be speedy and open to interested persons. This includes the media, though not always cameras. There are some limits to the openness of the trial. Portions may be closed if the state can show an overriding reason, such as when a young victim of a sex crime testifies.

The Sixth Amendment also requires that the jury be “impartial” and that a trial be held in the area where the alleged crime occurred. The jury must be drawn from the citizens of that area, unless the citizens are greatly prejudiced against the defendant. The Supreme Court has ruled that trials can be moved when “prejudicial publicity” makes finding an unbiased jury impossible (*Sheppard v. Maxwell*, 1966). In such a case, the trial

may be moved out of the district or even the state. Famous change of venue cases include the trials of Oklahoma City bomber Timothy McVeigh and young D.C. sniper Lee Boyd Malvo.

The Seventh Amendment protects the right to a jury trial in most federal civil or common law lawsuits. These lawsuits usually are brought in federal court because the parties live in different states. The Seventh Amendment also establishes that once a jury has decided the facts of any case, no other court proceedings can challenge those facts.

**Power of Juries**

Juries are often unaware of one of their most powerful abilities. If a jury believes a law to be unjust, they can refuse to use it to convict someone. Prior to the Civil War, many juries refused to convict abolitionists who had helped slaves escape. Fugitive slave laws made it illegal to harbor or assist escaped slaves, but many jurors believed slavery to be an immoral and unjust institution. Cases of jury nullification allowed abolitionists to remain free and allowed the abolitionist movement to gain strength.

Some people opposed to jury nullification point out that the power of juries to refuse to apply the law can be abused. In the post-Civil War South, some juries made up of white supremacists refused to convict fellow members of the Ku Klux Klan for lynching blacks. These were not true cases of jury nullification—the jurors were not refusing to apply an unjust law, they were refusing to apply the law because of racist attitudes.

Throughout American history, ordinary citizens have served on juries, accepting a key responsibility of citizenship. They have defended the security of their communities, checked abuses of government power, and protected individual liberty. Ordinary citizens from various backgrounds and with different beliefs, attitudes, and values, have come together for their civic duty. By serving on juries, they have contributed to American society and democracy in administering justice.

**STUDENT HANDOUT - A**

*The Bill of Rights and* **CITIZEN JURIES**

***Focus Quotations***

**Directions:** *Read the quotations below and choose one to rephrase in your own words.*

**1.** I consider trial by jury as the only anchor ever yet imagined by man, by which a government can be held to the principles of its constitution.

–Thomas Jefferson, 1789

**2.** The jury has the power to bring a verdict in the teeth of both the law and the facts.

–Supreme Court Justice Oliver Wendell Holmes, 1920

**3.** The jury is the last line of defense, the last check and balance, against tyrannical government, if, that is, it is charged with determining the justice of a case and not just with blindly applying the law as given by a judge.

–Philosopher Kelley L. Ross, 1997

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## *The Bill of Rights and* CITIZEN JURIES

### ***Juries Flyer Template***

**Directions:** *Imagine that Thomas Jefferson has hired you to create a flyer educating the public on the history, constitutional protections, and powers of juries. Use the template below for ideas and remember to include at least three quotations and three illustrations/drawings to help people remember juries' important powers.*

FLYER TITLE

“ QUOTATION ”  
\_\_\_\_\_  
-AUTHOR

ILLUSTRATION  
(history)

ILLUSTRATION  
(constitutional  
protections)

ILLUSTRATION  
(powers of juries)

“ QUOTATION ”  
\_\_\_\_\_  
-AUTHOR

“ QUOTATION ”  
\_\_\_\_\_  
-AUTHOR

## TEACHER'S GUIDE

*The Bill of Rights and* **CITIZEN JURIES****Critical Engagement Question***How does the justice system attempt to provide an "impartial jury"?***LESSON 2****The Role of Jurors****Overview**

For criminal trials, the Sixth Amendment requires an impartial jury drawn from the area where the alleged crime occurred. Throughout United States history, citizens have attempted to define the word "impartial" as it applies to the fitness of potential jurors. Should jurors be chosen completely at random, or should lawyers have the power to remove potential jurors who they believe will most likely rule against their position?

*I consider trial by jury as the only anchor ever yet imagined by man, by which a government can be held to the principles of its constitution.*

—THOMAS JEFFERSON, 1789

*The jury has the power to bring a verdict in the teeth of both the law and the facts.*

—OLIVER WENDELL HOLMES, 1920

**Materials**

Background Essay: The Role of Jurors (★★ indicates grade twelve reading level; ★ indicates grade ten reading level.)

Citizen Juries DVD and Viewing Guide

Handout A: Focus Quotation

Handout B: An Impartial Jury

Answer Key

**Objectives**

Students will:

- define the Sixth Amendment's requirement of an impartial jury.
- understand the attempts of the justice system to ensure impartial juries.
- appreciate the jury system as a safeguard of justice.
- appreciate the powers and responsibilities of jurors in a free society.

**Standards**

NCHS: Era 3, Standard 3; Era 9, Standard 4

CCE: VA1

NCSS: Strands 2, 6, and 10

**Background/Homework**

Have students read **Background Essay: The Role of Jurors**.

**Anticipatory Activity**  
**[15 minutes]**

A. Show the **Citizen Juries DVD** and have students complete the **Viewing Guide**.

B. Distribute **Handout A: Focus Quotation** and have students brainstorm words and ideas associated with "impartial" as they believe the Sixth Amendment requires.

**Activity [20 minutes]**

A. Tell students to imagine that they have been hired as jury consultants. Jury consultants are individuals or firms outside the justice system who are hired by lawyers to help select jurors. Lawyers must discover potential biases or attitudes that might influence potential jurors in their judgment of the case.

B. Distribute **Handout B: An Impartial Jury** and go over the directions. Give students some example questions they might ask and discuss as a large group what might be learned from potential responses. (See **Answer Key** for suggested questions and responses.)

C. Have students work in pairs or trios to complete **Handout B** with at least five original questions and an explanation of what the answer might tell them.

D. Have a pair of student volunteers come to the front of the class and "act out" their *voir dire* questions, with one student playing the role of potential juror and one student playing the role of the

## The Bill of Rights and CITIZEN JURIES

questioning lawyer. When students have finished, ask the class if they would accept this juror for the defense of Shackett. Why or why not? Allow other pairs to present as time allows.

### Wrap-Up [15 minutes]

**A.** Ask students if they believe *voir dire* is an effective means to empanelling an impartial jury.

**B.** Write the following proposals on the board or overhead and ask students how they would respond to the following proposals. Allow discussion of each proposal, then take a vote and tally the results:

- Only people with direct knowledge of the case should serve on juries (as in old English common law).
- Only white, male, property owners can serve on juries (as in many states in early US history).
- No one without a college degree may serve on a jury.
- Lawyers may not use any pre-emptory challenges; they can only strike jurors "for cause."
- *Voir dire* should be eliminated—a totally random selection is the best.
- All jury trials should be eliminated—a single judge would be better able to decide the case.
- The jury system does not need improving—no changes are needed.
- Invite students to suggest other possible methods for empanelling juries.

**C.** As a large group, discuss the assumptions on which *voir dire* is based.

- Should jurors be eliminated if one side's lawyer believes they will most likely vote against their position?
- Does giving each side an equal chance to eliminate jurors result in an impartial jury?
- Do jury consultants, (private individuals or firms hired from outside the justice system) promote justice?

### Homework

**A.** Have students write two paragraphs answering the questions: Do you believe *voir dire* is an effective means to empanelling an impartial jury? Why or why not?

**B.** Have students create a concept web with the central question – who do citizen juries serve? Radiating from the central question should be spaces in which to note how each of the following people or entities benefit from citizen juries: the accused; the victim(s); all citizens; the state.

### Extensions

**A.** Have students research landmark Supreme Court cases involving jury selection, including *Strauder v. West Virginia* (1880); *Taylor v. Louisiana* (1975); *Powers v. Ohio* (1991); and *J.E.B. v. Alabama* (1994). How did each case affect the way juries are empanelled? Have students present their research in a 10- to 12-slide PowerPoint presentation. Students can begin their research at [www.BillofRightsInstitute.org](http://www.BillofRightsInstitute.org).

**B.** Ask students to imagine that they are writing a letter to a friend who has recently been summoned to jury duty and plans to try to get out of it. In their letters, students should try to persuade their friend not to view jury duty as a burden but rather convince him or her of its importance as a civic responsibility.

### Responsibilities Toolbox



Have students brainstorm a list of responsibilities of citizenship that go along with citizen juries. You might prompt them with the statements, "I am responsible for knowing..." and "I am responsible for doing..."

In addition to the ideas students generate, you may wish to add:

- serving faithfully on a jury.
- following the judge's orders to not discuss the case with others.
- remaining impartial throughout the trial as the lawyers present evidence.

## BACKGROUND ESSAY ★★

*The Bill of Rights and* CITIZEN JURIES***The Role of Jurors*****“Has the jury reached a verdict?”**

For the last two weeks the jury has been presented with evidence—sometimes complicated, sometimes tedious—and has now finished its deliberations. All eyes are fixed on the jury foreman. The observers wait anxiously, reporters sit with pens poised and cameras rolling: some on the defendant, some on the victim's family.

“Yes, your honor, we have,” the foreman replies.

“What say you?”

The packed courtroom waits to hear the verdict. ...

In the hands of the jury is great power. Jurors determine the facts of a case. They decide who is truthful and who is lying. They apply the laws in the arena of the courtroom. They choose which citizens will be allowed to remain free, and which ones will lose their liberty and be removed from society.

**The Citizen's Voice**

Thomas Jefferson, a strong supporter of the powers of juries, believed it was more important that ordinary people serve on juries than vote. The other Founders also regarded serving as a juror to be a citizen's obligation and privilege. But with great power comes great responsibility.

The evolution of the legal system has affected the power of juries. Some early American judges were citizens who had no formal training, but who were known for resolving disputes in a just manner. They generally trusted jurors to understand and apply the law. As the law became more technical, however, judges began receiving more training. Law schools opened, and the legal profession developed, giving birth to professional judges who



started to instruct jurors on how to understand and apply the law. Judges rarely informed jurors of their power to nullify an application of the law, which continues to the present day. Today, even as juries remain important protectors of individual rights, most jurors do not appreciate their full powers and responsibilities.

**Jury Selection**

As a first step in selecting jurors, courts summon more citizens than they actually need. The group, or “jury pool,” is made up of the people who live in the community of the court's jurisdiction. All of these people are randomly selected from the community, which is meant to ensure a fair cross-section of the community.

African Americans and women had to fight long legal battles to obtain the right to be members of juries. Since the Sixth Amendment requires an impartial jury, the Supreme Court has ruled that no one may be excluded from a court's jury pool because of their race, sex, or national origin (*Strauder v. West Virginia*, 1880; *Taylor v. Louisiana*, 1875; and *Hernandez v. Texas*, 1954, respectively). In *Taylor*, the Court addressed the method in which the jury pool was drawn. At the time of *Taylor*, women were not included on jury lists unless they registered for military service. The Court found this practice, known as “affirmative registration,” in violation of the Sixth Amendment.

Today, most jury lists are drawn from voter registration and driver's license lists, so that they are more likely to reflect the gender, racial, and ethnic makeup of the community. Unlike the jury pool, however, the jury that is finally impaneled may not be a cross-section of the community.

*The Bill of Rights and* **CITIZEN JURIES**

To impanel a jury, the judge and attorneys interview the prospective jurors during a process called *voir dire*. A French term meaning, “to speak the truth,” the *voir dire* is designed to determine whether a citizen is fit to serve on a jury. Each attorney has several “peremptory challenges,” whereby the attorney may dismiss a prospective juror for any reason or no reason (excluding race or sex). Attorneys may also strike prospective jurors “for cause,” based on their answers to attorneys’ questions. Common “causes” include strong personal or political biases. Also, people who have been victims of particular crimes, or lawyers or police officers whose knowledge of the legal system might bias their decisions are often dismissed for cause. Most criminal trials require that a jury of twelve members and two alternates be impaneled.

The Fourteenth Amendment’s equal protection clause also prohibits attorneys from using a “peremptory challenge” to strike prospective jurors solely on account of race or sex (*Batson v. Kentucky*, 1986; *Powers v. Ohio*, 1991; and *J.E.B. v. Alabama*, 1994). By contrast, the Court has not ruled that defendants are entitled to a jury made up of members of their own race or ethnicity.

## Jury Procedures and Responsibilities

Jurors have important responsibilities during trial. They must listen impartially to the evidence presented and be prepared to consider the facts of the case, then judge the defendant’s guilt or innocence under the law. Jurors must also keep an open mind until they enter deliberation, which comes after the attorneys finish presenting evidence. In some cases, jurors have been dismissed for commenting on the guilt or innocence of a defendant prior to deliberation. Jurors are also not allowed to discuss the trial with their families or watch news accounts of the trial. In some cases where widespread media coverage is expected, jurors may be “sequestered” by the judge, which means they must live apart from their families, usually in a hotel without access to media sources, for the length of the trial in order to be protected from outside influence.

When the defense and prosecution are done presenting and examining the evidence, the judge instructs the jurors

about applying the law. Generally, judges explain the relevant law and how it applies to the case at hand. Then the jury deliberates. To reach a verdict, the jury typically must reach a common understanding of the facts and then reach a verdict on the application of the law. When a verdict is reached, deliberation concludes, and the jury foreman usually reads the verdict to the court. All federal criminal verdicts, and criminal verdicts in forty-eight states, must be unanimous in order to protect the innocent. In some civil cases, a unanimous verdict is not required.

## Special Cases

Some criminal juries fail to reach a unanimous verdict, no matter how long they deliberate. These juries are called “hung juries,” and the judge usually declares a mistrial. At that time, the prosecutor may request to have a new jury impaneled to hear the case.

A jury may exercise an important power when they refuse to convict a defendant for breaking a law they consider unjust, which is called “nullification.” Famous cases of jury nullification include the trial of William Penn in England, the trial of John Peter Zenger in New York, and numerous cases in which juries refused to apply the Fugitive Slave Act to abolitionists who had assisted escaped slaves.

More recently, juries have refused to convict pacifists who avoided the draft during the Vietnam War; marijuana-users accused of nonviolent offenses; and individuals who assist with euthanasia. Proponents of nullification argue that it is simply one way in which a jury might fulfill its duty, while critics of nullification argue that the way to bring about justice is to change the laws, not to ignore the existing ones.

In 1789, Thomas Jefferson wrote to his friend Thomas Paine, “I consider trial by jury as the only anchor ever yet imagined by man, by which a government can be held to the principles of its constitution.” Citizens depend on the legal system, as well as their own education, to be aware of their rights and responsibilities as jurors. Recognizing the powers of juries is an important way citizens can understand and take part in a democratic society.

## BACKGROUND ESSAY ★

*The Bill of Rights and* **CITIZEN JURIES*****The Role of Jurors*****“Has the jury reached a verdict?”**

For the last two weeks the jury has been presented evidence and has now finished deliberating. All eyes are on the jury foreman.

“Yes, your honor, we have,” the foreman replies.

“What say you?” asks the judge.

The packed courtroom waits to hear the verdict. ...

In the hands of the jury is great power. Jurors determine the facts of a case. They decide who is truthful and who is lying. They apply the laws in the arena of the courtroom. They choose which citizens will be allowed to remain free and which ones will lose their liberty.

**The Citizen’s Voice**

With great power comes great responsibility. Today, many think of serving on a jury as doing their “civic duty.” The Founders also viewed serving as a juror to be a citizen’s obligation and privilege. Thomas Jefferson, for example, believed serving on a jury was more important for ordinary citizens than voting.

The way the legal system has evolved has affected the power of juries. Some colonial American judges were ordinary citizens with reputations for fairness in resolving disputes. They had no formal training. They generally trusted jurors to understand and apply the law. As the law became more technical, however, judges began receiving more training.

Law became a profession, and ordinary citizens were no longer expected to understand the law. Law schools



opened, and a legal degree became a requirement for attorneys and judges. Jurors now counted on the new professional judges to instruct them on how to understand and apply the law. Today, even as juries remain important protectors of individual rights, most jurors do not appreciate their full powers and responsibilities.

**Jury Selection**

As a first step in selecting jurors, courts summon more citizens than they actually need. The group, or “jury pool,” is made up of the people who live in the community of the court. All of these people are randomly selected from the area, which should ensure a fair cross-section of the community.

African Americans and women had to fight long legal battles to secure the right to be members of juries. Since the Sixth Amendment requires an impartial jury, the Supreme Court has ruled that no one may be kept out of a jury pool because of their race, sex, or national origin. In *Taylor v. Louisiana*, 1975, the Court addressed the method in which the jury pool was drawn. At the time of *Taylor*, women were not included on jury lists unless they registered for military service. The Court found this practice, known as “affirmative registration,” in violation of the Sixth Amendment.

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## *The Bill of Rights and* CITIZEN JURIES

Most criminal trials require that a jury of twelve members and two alternates be impaneled. To impanel a jury, the judge and attorneys interview the prospective jurors, which is called a *voir dire*. A French term meaning, “to speak the truth,” the *voir dire* is designed to determine whether a citizen is fit to serve on a jury. Each attorney has a number of “peremptory challenges.” This means the attorney may dismiss a juror for any reason or no reason (except race or sex). Attorneys may also strike prospective jurors “for cause,” based on their answers to attorneys’ questions. Common “causes” include strong personal or political biases. Also, people who have been victims of particular crimes, or lawyers or police officers whose knowledge of the legal system might bias their decisions are often dismissed for cause.

The Court has ruled that the Fourteenth Amendment’s equal protection clause also prohibits attorneys from using a “peremptory challenge” to remove possible jurors because of race or sex. By contrast, the Court has not ruled that defendants are entitled to a jury made up of members of their own race or ethnicity.

### Jury Procedures and Responsibilities

Jurors have critical responsibilities during trial. They must listen impartially to the evidence presented and be prepared to consider the facts of the case. They must then judge the defendant’s guilt or innocence under the law. Jurors must also keep an open mind and not make comments about the defendant’s guilt or innocence until the attorneys finish presenting evidence. Jurors may not discuss the trial with anyone, including family members. They may not read or watch news accounts of the trial. In some cases where a lot of media coverage is expected, jurors may be “sequestered” by the judge. This means they must live apart from their families, usually in a hotel without access to media sources, for the length of the trial in order to be protected from outside influence.

When the prosecution and defense conclude presenting and examining the evidence, the judge instructs the jurors about applying the law. Generally, judges explain the relevant law and how it applies to the case at hand.

The jury then withdraws to deliberate. To reach a verdict, the jury must discuss and agree on the facts of the case, and decide if the defendant is guilty under the law. The jury foreman usually reads the verdict to the court. All federal criminal verdicts, and criminal verdicts in forty-eight states, must be unanimous in order to protect the innocent. In some civil cases, a unanimous verdict is not required.

### Special Cases

Some criminal juries fail to reach a unanimous verdict, no matter how long they deliberate. These are called “hung juries.” In such cases, the judge might order the jury to try deliberating some more, but usually declares a mistrial. At that time, the prosecutor may ask for a new trial with a new jury.

A jury may exercise an important power when they refuse to convict a defendant for breaking a law they consider unjust. In such cases, the jury is said to have engaged in “nullification.” Famous cases of jury nullification include the trial of William Penn in England, the trial of John Peter Zenger in New York, and numerous cases in which juries refused to apply the Fugitive Slave Act to abolitionists who had assisted escaped slaves.

More recently, juries have refused to convict pacifists who avoided the draft during the Vietnam War; marijuana-users accused of nonviolent offenses; and individuals who assist with euthanasia. Proponents of nullification argue that it is simply one way in which a jury might fulfill its duty. Critics argue that the way to bring justice is to change the laws, not to ignore the existing ones.

In 1789, Thomas Jefferson wrote to his friend Thomas Paine, “I consider trial by jury as the only anchor ever yet imagined by man, by which a government can be held to the principles of its constitution.” Citizens depend on the legal system, as well as their own education, to understand their rights and responsibilities as jurors. Recognizing the powers of juries is an important way citizens can comprehend and take part in a democratic society.

STUDENT HANDOUT - A

The Bill of Rights and CITIZEN JURIES

Focus Quotation

**Directions:** Read the excerpt from the Sixth Amendment below, then brainstorm as many ideas as you can that might be associated with the word “impartial.” You can note words, phrases, or draw illustrations.

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...

TERM	WORDS, PHRASES, OR CONCEPTS THAT MIGHT BE ASSOCIATED WITH IT
Impartial	

The Bill of Rights and CITIZEN JURIES

An Impartial Jury

Directions: Read the memo below and complete the chart.

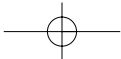
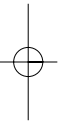
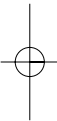
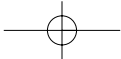
To: B.O.R. Jury Consultants  
From: Law Offices of Wilson, Wilson and Wilson  
Re: Trial of Jane Shackett

Thank you for your help with jury selection for the upcoming murder trial of Jane Shackett. As you know, she has been accused of murdering her husband.

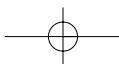
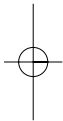
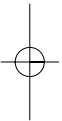
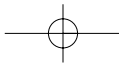
Mrs. Shackett claims that her husband physically abused her for years. She went to the emergency room at least three times with injuries that got more serious with each visit. Doctors will testify about black eyes, a broken wrist, and a concussion (swelling of the brain) she received from a blow to the head. She also says her husband threatened to kill their three young children if she tried to leave him. She says one day she snapped, took a gun from his gun rack, and shot him while he slept. She does not deny shooting him.

Obviously, we are trying to empanel jurors that will be likely to find Mrs. Shackett not guilty. What questions do you advise we ask potential jurors? We need at least five. Also, for each question, please give us an idea of what answers might reveal about jurors' biases and why. This information will help our lawyers during *voir dire*.

QUESTION	WHAT WE MIGHT LEARN FROM POSSIBLE ANSWERS
Have you (or anyone you know) ever been a victim of domestic abuse?	Someone who has experience with domestic abuse may be more likely to believe Mrs. Shackett's story and find her not guilty.
1.	1.
2.	2.
3.	3.
4.	4.
5.	5.



[illegible]



*The Bill of Rights and* **PERSONAL LIBERTY**

**UNIT OVERVIEW**

**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 IX**

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

**AMENDMENT XIV,  
SECTION 1**

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

**Synopsis of Lessons  
and DVD**

**Lesson One:**

Students analyze the definition of liberty and the responsibilities that accompany it.

**Lesson Two:**

Students evaluate the ways the First, Third, Fourth, Fifth, and Ninth Amendments protect citizens' rights to personal liberty.

## TEACHER'S GUIDE

*The Bill of Rights and* **PERSONAL LIBERTY****Critical Engagement Question***What rights and responsibilities come with liberty?***LESSON 1**  
**What is Liberty?****Overview**

The term “liberty” is used in every Founding document of the United States. Yet as pervasive as the concept of liberty is, most Americans would be at a loss to define it. Perhaps even more difficult than defining the term, is determining exactly which personal liberties the Constitution and the Bill of Rights protect. However, it is clear that every right brings with it the responsibility to consider the impact on others.

*Rightful liberty is unobstructed action according to our will within limits drawn around us by the equal rights of others. I do not add ‘within the limits of the law’ because law is often but the tyrant’s will, and always so when it violates the rights of the individual. –THOMAS JEFFERSON, 1819*

*If the First Amendment means anything, it means that a state has no business telling a man, sitting alone in his own house, what books he may read or what films he may watch. –THURGOOD MARSHALL, 1969*

**Materials**

Background Essay: What is Liberty? (★★ indicates grade twelve reading level; ★ indicates grade ten reading level.)  
 Handout A: Focus Quotation  
 Handout B: What Does “Liberty” Mean?  
 Handout C: Personal Liberties, Responsibilities, and Impact Chart  
 Handout D: Motorcycle Helmet Laws  
 Answer Key

**Objectives****Students will:**

- identify the documents that help to define the American concept of liberty.
- understand citizens’ responsibility to balance their individual liberties with the rights of others in society.
- understand and articulate the responsibilities associated with liberty.
- evaluate the impact of their actions on society.
- appreciate the role of government in ensuring inalienable rights, including liberty.

**Standards**

**NCHS:** Era 3, Standard 3  
**CCE:** VB1, VB2, VB3, VB4, VB5, VC1, VC2, VD1, VD2, VD3, VD4  
**NCSS:** Strands 2 and 10

**Background/Homework**

**A.** Have students read **Background Essay: What is Liberty?**

**B.** Have students keep a log of all the personal liberties they enjoy in a 24-hour period.

**Anticipatory Activity**  
**[10 minutes]**

**A.** Distribute or make an overhead of **Handout A: Focus Quotation** and read the quotation. Allow students time to brainstorm real life examples where they might apply the quote.

**B.** Have students share examples with the class. Then instruct students to compose a version of the quote that fits one of their specific examples: “The right to \_\_\_\_\_ ends where \_\_\_\_\_ begins.”

**Activity [25 minutes]**

**A.** Divide the class into groups of three to five and give each group a copy of **Handout B: What Does “Liberty” Mean?** Have groups share answers and facilitate the composition of a class definition of liberty.

**B.** Explain to students that within the definition of liberty is a narrower concept referred to as “personal liberty,” which allows individuals to make private decisions about their daily lives. Point out that with the exercise of personal liberties comes responsibility. Have students reference their homework assignments



## The Bill of Rights and PERSONAL LIBERTY

to complete **Handout C: Personal Liberties, Responsibilities, and Impact Chart**. Have students share answers with the class. (See **Answer Key** for suggested responses.)

**C.** Remind students of the definition of “license” (an excess of liberty or liberty unchecked by personal responsibility). For each of the liberties on the list have the class brainstorm possible examples of license.

**D.** Distribute or put up an overhead of **Handout D: Motorcycle Helmet Laws**. Ask students to consider the issue of motorcycle helmet laws. Ask the class:

- Is it a personal liberty to ride a motorcycle without a helmet?
- Is this a purely private decision or does it impact society?
- What responsibilities go along with riding a motorcycle?
- Should states pass laws requiring the use of motorcycle helmets?

### Wrap-Up [15 minutes]

**A.** Have groups compose a rule that will specify when government should intervene and impose restrictions on citizens’ personal liberty.

**B.** Ask students to compare their new rule to:

- their responses to the focus quotation.
- the Ninth Amendment.

### Homework

**A.** Have students write the word “LIBERTY” vertically on a piece of paper. Instruct them to write a short phrase or word for each letter

that will help them remember the essential information about liberty.

Example:

License (an abuse of liberty)

Individual’s choices

Balance between rights and responsibilities

Excess of liberty (license)

Responsibility comes with liberty

Tyranny destroys liberties

Your choices = personal liberty

**B.** Have a student identify a local, state, or federal law that restricts a liberty they believe they should have (curfews, age restrictions on drinking, driving, getting tattooed, etc.) Instruct students to identify the appropriate official and write a formal business letter or email with a well-reasoned argument for repealing the government restriction.

### Extensions

**A.** Have students research the topic of women and smoking and write a

position paper on whether smoking during pregnancy should be a personal liberty or if government should restrict it. You may wish to direct students to *The Surgeon General’s Report: Women and Smoking 2001 At a Glance*, available at

[http://www.cdc.gov/tobacco/sgr/sgr\\_forwomen/ata glance.htm](http://www.cdc.gov/tobacco/sgr/sgr_forwomen/ata glance.htm); *The Reports of the Surgeon General: Secondary Smoking, Individual Rights, and Public Space*, available at <http://profiles.nlm.nih.gov/NN/View s/Exhibit/narrative/secndary.html>; and *Quick Reference: Smoking During Pregnancy*, available at [http://www.marchofdimes.com/professionals/14332\\_1171.asp](http://www.marchofdimes.com/professionals/14332_1171.asp).

**B.** Have students research the philosophies of John Locke and Thomas Hobbes and write a dialogue with at least five exchanges between the two debating the role of personal liberty in the social contract.

### Responsibilities Toolbox



Have students brainstorm a list of responsibilities of citizenship that go along with their personal liberties. You might prompt them with the statements, “I am responsible for knowing...” and “I am responsible for doing...”

In addition to the ideas students generate, you may want to add:

- understanding the meaning of liberty.
- understanding the purpose of government in ensuring inalienable rights, including liberty.
- exercising personal liberty with responsibility.
- distinguishing between liberty and license.
- respecting others’ liberty.
- understanding how personal choices affect society.
- sometimes choosing to let personal interest give way for the good of other individuals.
- understanding the consequences of actions and accepting them.

## BACKGROUND ESSAY ★★

*The Bill of Rights and* PERSONAL LIBERTY***What is Liberty?***

## How does the Constitution ensure the “blessings of liberty”?

Perhaps no ideal is more frequently or vigorously proclaimed in America than liberty. Liberty is the freedom to act without unauthorized restraint, as well as the freedom to choose not to act.

The Founders understood a philosophical basis of liberty to be natural rights—the rights that all humans possess by virtue of their humanity. As Thomas Jefferson wrote in the Declaration of Independence, natural or inalienable rights include life, liberty, and the pursuit of happiness. The Founders also brought with them a legal understanding of liberty: the English common law tradition that individuals lived freely under a system of laws designed to protect their property and their freedom from government abuse.

According to European philosophers, including John Locke and Jean Jacques Rousseau, when people unite into a society, they willingly surrender some of their natural liberty in exchange for the protections that government can provide them—for example, the preservation of their property and the means of securing order. But the people must be ever vigilant to make sure that government does not grow so powerful as to bring an end to liberty. The Founders, aware of the potential for government tyranny, created a limited federal government, and further restrained federal power by adopting the Bill of Rights—a list of limitations on the national government and specific protections for individual rights.

The Founders also believed that liberty would not endure unless the people were virtuous. The exercise of private virtue and civic values by individuals, they believed, would



ensure the happiness of society as a whole. As George Mason asserted in the 1776 Virginia Declaration of Rights, “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.” In other words, in a society dedicated to self-government, individuals must govern themselves.

### Personal Liberty

Liberty allows individuals to make choices every day that affect their lives: how to dress, what subjects to study, what kind of career to pursue, and other personal matters. The government cannot compel people to pursue a certain line of work; it cannot force them to worship a certain God in a specific way; in short, it cannot tell them what to do or what to think.

Individuals can travel from state to state; choose a house of worship; get a job or start a business; get married; rent or buy a home; raise children; and do all these legal things according to the dictates of their conscience. The blessings of liberty are the rewards that come from these choices: the

*The Bill of Rights and* **PERSONAL LIBERTY**

pleasure of experiencing new places, the satisfaction of a job well done, the joy of watching families grow.

## Responsibility

In other cases, liberty requires accepting the consequences of poor choices. The choice not to study may mean taking a failing grade. The liberty to start one's own business means accepting the responsibility for working hard, and for what will happen if the business fails.

As envisioned by America's Founders, the freedom to make one's own choices in life means that one also assumes the responsibility that goes along with those choices. Exercising free speech rights responsibly means doing so in respectful ways. Exercising the right to freely practice religion means respecting the rights of others with different religious beliefs or practices.

When liberty is exercised without responsibility, the result is called license. License is what some might call "an excess of liberty" or liberty unchecked by personal responsibility. This excess of liberty becomes harmful to society.

Where the people are the government, government is the peoples' responsibility. Similarly, when the people govern themselves as a group, they must govern themselves as individuals. Thomas Jefferson knew that "the price of liberty is eternal vigilance." Each individual must direct that vigilance outwardly as well as inwardly – outward at governments to protect against abuses, as well as inwardly at one-self to guard against license and ensure virtuous self-government.

## Personal Liberty and the Constitution

Actions that are deeply personal, regarding when and whether to start a family, pursuing intimate relationships, and choices about medical intervention when death nears, are often referred to as issues of personal liberty. As with traveling, choosing a career, and other ways citizens exercise their liberty, these kinds of choices are not named in the Constitution or the Bill of Rights.

The Constitution was written, as the Preamble declares, in part to ensure the blessings of liberty to members of society. The First Amendment, which in part protects freedom of religion, speech, and assembly, has been interpreted to mean that people can associate with whomever they choose. Free speech means the right to say what one believes, as well as the freedom from being forced to say something one does not believe. The fact that government cannot force beliefs or speech protects the individual's conscience.

Other amendments have also been interpreted to ensure personal liberty, including the Third and Fourth, which protect a person's home and belongings from unreasonable government intrusion. The Ninth Amendment, which protects all individual rights not named in the Constitution, is also often cited as a means of ensuring liberty.

In many cases, issues of personal liberty such as abortion, legalized drug use, or assisted suicide spark intense debate. What are the limits of liberty? At what point do personal choices cease being purely personal and begin to affect society? Are there in fact any actions that could be called purely personal in that they affect no one else? Even if some choices are purely personal, are there certain actions that society should have the power to ban?

What is the best way to balance the individual's right to control his or her life with promoting the happiness of society? The struggles between liberty and security, between liberty and order, and between liberty and tyranny continue to challenge society today.

## BACKGROUND ESSAY ★

*The Bill of Rights and* PERSONAL LIBERTY***What is Liberty?***

# How does the Constitution ensure the “blessings of liberty”?

Perhaps no ideal is more often or strongly proclaimed in America than liberty. Liberty is the freedom to act without unauthorized restraint, as well as the freedom to choose not to act.

The Founders understood one philosophical basis of liberty to be natural rights. These are the rights that all humans possess by virtue of their humanity. As Thomas Jefferson wrote in the Declaration of Independence, natural or inalienable rights include life, liberty, and the pursuit of happiness. The Founders also brought with them a legal framework of liberty. The English common law tradition was that individuals lived freely under a system of laws. These laws kept their property safe and protected them from government abuse.

The Founders drew on the ideas of European philosophers including John Locke and Jean Jacques Rousseau. They theorized that when people unite into a society, they choose to give up some of their liberty. They trade it for the safeguards that government gives them. These include protecting their property and securing order. But the people must be ever watchful to make sure that government does not grow so powerful as to bring an end to liberty. The Founders were aware of the potential for government tyranny. They created a limited federal government, and further restrained federal power by adding the Bill of Rights to the Constitution. The Bill of Rights is a list of limitations on the national government and specific protections for individual rights.

The Founders also believed that liberty would not last long unless the people were virtuous. The practice of pri-



vate virtue and civic values by individuals, they believed, would ensure the happiness of society as a whole. As George Mason wrote in the 1776 Virginia Declaration of Rights, “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.” In other words, in a society dedicated to self-government, individuals must govern themselves.

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Individuals can travel from state to state; choose a house of worship; get a job or start a business; get married; rent or buy a home; raise children; and do all these legal things according to the dictates of their conscience. The blessings



## *The Bill of Rights and* PERSONAL LIBERTY

of liberty are the rewards that come from these choices: the pleasure of experiencing new places; the satisfaction of a job well done; the joy of watching families grow.

### Responsibility

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As envisioned by America's Founders, the freedom to make one's own choices in life means that one also assumes the responsibility that goes along with those choices. Exercising free speech rights responsibly means doing so in respectful ways. Exercising the right to freely practice religion means respecting the rights of others with different religious beliefs or practices.

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### Personal Liberty and the Constitution

Actions that are deeply personal, such as when and whether to start a family, forming intimate relationships, and choices about medical intervention when death nears, are often referred to as issues of personal liberty. As with traveling, choosing a career, and other ways citizens exercise their liberty, these kinds of choices are not named in the Constitution or the Bill of Rights.

The Preamble states that the Constitution was written in part to ensure the blessings of liberty to members of society. The First Amendment, which in part protects freedom of religion, speech, and assembly, has been interpreted to mean that people can associate with whomever they choose. Free speech means the right to say what one believes, as well as the freedom from being forced to say something one does not believe. The fact that government cannot compel beliefs or speech protects the individual's conscience.

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In many cases, issues of personal liberty such as abortion, legalized drug use, or assisted suicide spark intense debate. What are the limits of liberty? At what point do personal choices cease being purely personal and begin to affect the liberty of others? Indeed, are there, in fact, any actions that could be called purely personal in that they affect no one else? Even if some choices are purely personal, are there certain actions that government should have the power to proscribe?

What is the best way to balance the individual's right to control his or her life with promoting the happiness of others? The struggles between liberty and security, between liberty and order, and between liberty and tyranny continue to challenge society today.

**STUDENT HANDOUT - A***The Bill of Rights and* **PERSONAL LIBERTY****Focus Quotation**

**Directions:** Read the following quote and give real life examples where you might apply it.

**“The right to swing my fist ends where the other man’s nose begins.”**

– Supreme Court Chief Justice Oliver Wendell Holmes, Jr., *attributed*

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_

6. Compose a version of this quote that fits one of your examples above:

“The right to \_\_\_\_\_ ends where \_\_\_\_\_ begins.”

– \_\_\_\_\_  
(your name here)

*The Bill of Rights and* **PERSONAL LIBERTY*****What Does “Liberty” Mean?***

**Directions:** Read the following references to liberty. Then compose a definition of what “liberty” means.

1. “I know not what course others may take, but as for me, give me **liberty**, or give me death!”  
–Virginia Governor Patrick Henry, 1765
2. “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, that among these are Life, **Liberty** and the pursuit of Happiness.”  
–The Declaration of Independence (1776)
3. “We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of **Liberty** to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.”  
–The Preamble to the Constitution (1787)
4. “No person shall ... be deprived of life, **liberty**, or property, without due process of law...”  
–The Fifth Amendment (1791)
5. “...nor shall any State deprive any person of life, **liberty**, or property, without due process of law”  
–The Fourteenth Amendment (1868)
6. “I pledge allegiance to my Flag and the Republic for which it stands, one nation indivisible, with **liberty** and justice for all.”  
–The Pledge of Allegiance (1892)

Liberty is \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

STUDENT HANDOUT - C

The Bill of Rights and PERSONAL LIBERTY

Personal Liberties, Responsibilities, and Impact Chart

**Directions:** Using your homework assignment, share with your group the list of personal liberties you have and write the list in the left hand column. As a group, discuss the responsibilities of each personal liberty listed and how it impacts others.

PERSONAL LIBERTIES	RESPONSIBILITIES	IMPACT ON SOCIETY



*The Bill of Rights and* **PERSONAL LIBERTY*****Motorcycle Helmet Laws***

**Directions:** Read the following statements and answer the question below.

- Currently, nineteen states, Washington, D.C., and Puerto Rico require helmets for all riders. Twenty-eight states require helmets for riders under a certain age or new operators. Three states have no helmet requirements.
- Head injury is the leading cause of death in motorcycle accidents.
- When a motorcycle crash occurs, speed and blood alcohol level have the greatest impact on whether or not the rider dies.
- Past a certain speed, helmets can increase the likelihood of neck injuries.

Considering the above information, should riding a motorcycle without a helmet be a personal liberty?  
Why or why not?

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## TEACHER'S GUIDE

*The Bill of Rights and* PERSONAL LIBERTY

## Critical Engagement Question

*What is "privacy" and how much do we have?*

## LESSON 2

**Debate over the Scope of the Bill of Rights****Overview**

How much privacy a citizen enjoys concerning various issues has been hotly debated and people's opinions have changed over time. The Supreme Court has even reversed several of its own decisions on privacy cases. Every present and emerging issue like same-sex marriage, registration by sex offenders, physician-assisted suicide, and abortion will continue to help define and shape the nebulous concept of the right to privacy.

*I would rather be exposed to the inconveniences attending too much liberty than to those attending too small a degree of it.*

—THOMAS JEFFERSON, 1791

*There is nothing new in the realization that the Constitution sometimes insulates the criminality of a few in order to protect the privacy of us all.*

—ANTONIN SCALIA, 1987

**Materials**

Background Essay: Debate over the Scope of the Bill of Rights (★★ indicates grade twelve reading level; ★ indicates grade ten reading level.)

Handout A: The Eleventh Amendment

Handout B: Focus Quotations  
Personal Liberty DVD and Viewing Guide

Handout C: "Privacy" Amendments

Answer Key

**Objectives****Students will:**

- identify the amendments that combine to protect the right to privacy.
- understand and articulate the liberties included in a citizen's right to privacy.
- understand citizens' responsibility to know and defend their rights guaranteed by the Ninth Amendment.
- evaluate the importance of the Ninth Amendment in assuring the right to privacy.
- appreciate the difficulty the Founders faced when writing the amendments that became the Bill of Rights.

**Standards**

NCHS: Era 3, Standard 3

CCE: IA3, IC2, IIA1

NCSS: Stands 2, 5, 6, and 10

**Background/Homework**

**A.** Have students read **Background Essay: Debate over the Scope of the Bill of Rights**.

**B.** Distribute **Handout A: The Eleventh Amendment**. Instruct students to imagine that they have traveled back in time to 1789 and it is their job to compose an eleventh amendment that explicitly protects the privacy of citizens. Tell them to be sure to address all the privacy issues of today, but to remember that their amendment must be written as if they were writing it in 1789.

**Anticipatory Activity**  
**[10 minutes]**

**A.** Distribute or put up an overhead of **Handout B: Focus Quotations** and read the Ninth Amendment and the quotation. Have students respond to the question: *In what way does the Ninth Amendment support Justice Brennan's argument?* Discuss as a large group.

**B.** Ask students to brainstorm which liberties Brennan was referring to when he said, "rights and liberties presumed to be preexisting." Make a running list of responses on the board and discuss.

## The Bill of Rights and PERSONAL LIBERTY

### Activity [25 minutes]

A. Show the **Personal Liberty DVD** and have students complete the **Viewing Guide**.

B. Distribute **Handout C: "Privacy" Amendments**. Instruct students to underline the parts of the amendments where a right to privacy can be inferred.

C. Use **Handout C: "Privacy" Amendments** to illustrate that the protection of privacy is not explicitly stated in the Constitution.

D. Divide the class into groups of three or four. Have students share with each other their homework responses from **Handout A: The Eleventh Amendment**. After each student has shared with the group, instruct groups to compose a group amendment that explicitly protects privacy while staying faithful to 1789 knowledge of technology and future developments.

### Wrap-Up [10 minutes]

A. Have students share their group amendment and discuss the merits of each as a large group.

B. Explain to students that it takes a two-thirds vote of both houses of Congress to propose an amendment and that they will be voting on this amendment. Take a vote and announce whether this amendment would have been proposed.

C. Reread the winning amendment and write it on the board. Ask students:

- Will this amendment address all the privacy issues we are dealing with in the twenty-first century?
- Does this amendment give enough privacy to citizens? Too much privacy?

### Homework

A. Have student choose one of the issues mentioned in the **Background Essay**: abortion rights, homosexual activity, physician-assisted suicide, medication not approved by the FDA, illegal drugs, or driving. Have them compose an opinion of how much privacy a citizen should have in regards to their chosen issue. They should defend their points with amendments One, Three, Four, Five and Nine.

### Extensions

A. Have students research the recent decisions by the U.S. Supreme Court regarding abortion rights. Based on their findings, have students evaluate whether the right to privacy has been expanded or curtailed and communicate their findings in a well-written five-paragraph essay.

B. Have students review petitions to the Supreme Court, recent decisions, and current cases to construct a list of other issues that define a citizen's right to privacy. Have students focus on one case and write a summary of the issues.



### Responsibilities Toolbox

Have students brainstorm a list of responsibilities of citizenship that go along with their "right to privacy" under the First, Third, Fourth, Fifth, and Ninth Amendments. You might prompt them with the statements, "I am responsible for knowing..." and "I am responsible for doing..."

In addition to the ideas students generate, you may want to add:

- understanding the meaning of liberty.
- understanding the purpose of government as ensuring inalienable rights, including liberty.
- understanding how personal choices affect other individuals.
- staying informed about government action affecting liberty.
- being vigilant in preserving liberty.

## BACKGROUND ESSAY ★★

*The Bill of Rights and* PERSONAL LIBERTY***Debate over the Scope of the Bill of Rights***

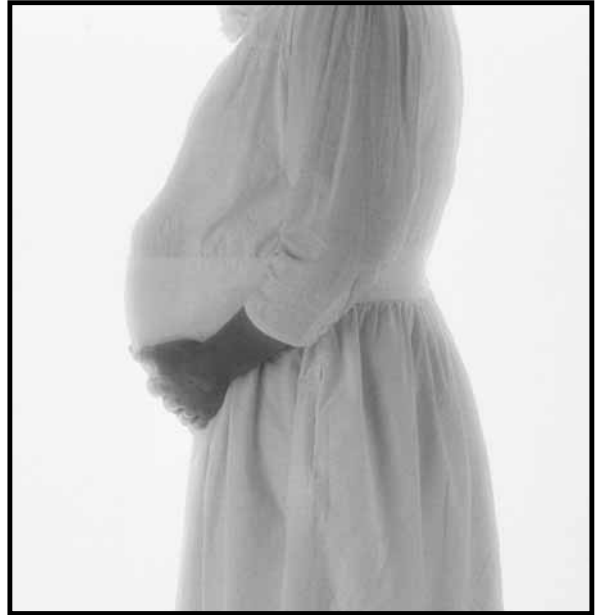
# Does the Ninth Amendment protect a right to: Privacy? Abortion? Drive? Take Drugs?

The Ninth Amendment does not declare specific rights, but one thing it does guarantee is a good debate. It has been interpreted to protect all natural rights not specifically listed in the First through Eighth Amendments, and its inclusion in the Bill of Rights raises many possibilities.

The Founders believed government did not “grant” rights. Rather, its role was to protect rights that existed before any government was created. One of the concerns of the Federalists, those who opposed a Bill of Rights, was that listing certain rights might mean that others would be considered less important. To try to ensure this did not happen, the Ninth Amendment was included in the Bill of Rights.

***Griswold v. Connecticut: “Zones of Privacy”***

The Constitution does not mention the word “privacy,” but the Court has asserted that several amendments could not exist without this fundamental right. In *Griswold v. Connecticut* (1965), the Court struck down a Connecticut law banning birth control. The Court determined that the marital bedroom was well “within the zone of privacy created by several fundamental constitutional guarantees.”



Specifically, the Court cited the First, Third, Fourth, and Fifth Amendments as creating that “zone of privacy.” The Third and Fourth Amendments provide protections against unreasonable government intrusion into the home. The First and Fifth Amendments are based on a sphere of the individual’s conscience or mind into which the government may not trespass—through freedom of religion and speech (First) and freedom from self-incrimination (Fifth).

The opinion elaborated on the right to privacy: “We deal with a right of privacy older than the Bill of Rights—older than our political parties, older than our school system. Marriage is a coming together for better or for worse, hopefully enduring, and intimate to the degree of being sacred.”

The concurring opinion also cited the Ninth Amendment. “To hold that a right so basic and fundamental and so deep-rooted in our society as the right of privacy in marriage may be infringed because that right is not guaranteed in so many words by the first eight amendments to the Constitution is to ignore the Ninth Amendment and to give it no effect whatsoever. ...

## ★ ★ BACKGROUND ESSAY

# The Bill of Rights and PERSONAL LIBERTY

Rather, the Ninth Amendment shows a belief of the Constitution's authors that fundamental rights exist that are not expressly enumerated in the first eight amendments and an intent that the list of rights included there not be deemed exhaustive. As any student of this Court's opinions knows, this Court has held, often unanimously, that the Fifth and Fourteenth Amendments protect certain fundamental personal liberties from abridgment by the Federal Government or the States...."

Since the 1960s, there have been many claims that the Ninth Amendment prohibits certain state action; nevertheless, courts have been reluctant to rely on Ninth Amendment claims alone. They have looked for other support of rights, specifically the due process guarantees of the Fifth or Fourteenth Amendments.

## Abortion Rights

In 1973, the Supreme Court used the Ninth Amendment and Fourteenth Amendments in the reasoning of *Roe v. Wade*. Citing *Griswold*, the Court reaffirmed a right to "personal, marital, familial, and sexual privacy" based on the First, Third, Fourth, Fifth, and Ninth Amendments. Another basis was the "liberty" protected by the Fourteenth Amendment's due process clause. The Court also pointed to laws allowing abortion in early pregnancy in the United States during the eighteenth and early nineteenth centuries as evidence for the right.

The opinion stated, "This right of privacy, whether it be founded in the Fourteenth Amendment's concept of personal liberty and restrictions upon state action, as we feel it is, or, as the District Court determined, in the Ninth Amendment's reservation of rights to the people, is broad enough to encompass a woman's decision whether or not to terminate her pregnancy. ...but this right is not unqualified and must be considered against important state interests in regulation." The Court found that a state criminal abortion law without regard to pregnancy stage or the life and health of the woman violated the Due Process Clause of the Fourteenth Amendment.

Some abortion opponents argue that the Court decided *Roe v. Wade* incorrectly. They maintain that life begins at conception and therefore the embryo or fetus has inalienable rights that outweigh the mother's right to terminate her pregnancy. Others argue that because the Constitution is silent on the issues of when life begins and of abortion rights, that the issue should be decided by states.

## Other Issues of Personal Liberty

The Supreme Court has acknowledged certain Ninth Amendment rights aside from reproductive rights. At the same time, they have denied Ninth Amendment protection in a number of cases. For example, the Court refused to acknowledge the right to engage in private, consensual homosexual activity in *Bowers v. Hardwick* (1986), but reversed this decision in *Lawrence v. Texas* (2003).

In *Washington v. Glucksberg* (1997), the Court unanimously rejected a doctor's argument that individuals have the right to physician-assisted suicide. Individual states could allow assisted suicide if they chose, the Court said, but the Constitution protected no such right.

Other issues of personal liberty continue to be debated. Some people claim that they have a right to take whatever medicine they wish, even ones that have not yet been



## BACKGROUND ESSAY ★★

*The Bill of Rights and* PERSONAL LIBERTY

approved by the United States Food and Drug Administration. They cite the slow review process and political biases in approvals of certain medications including forms of birth control. Opponents argue that the federal government has an obligation to make sure all of the country's medicine is safe and effective.

Some people claim a natural right to ingest any substance they choose, including those the government labels as illegal drugs. They find the use of drugs like marijuana to be a matter of personal liberty. Regulating and outlawing drugs, they argue, goes beyond the role of a limited government. They also maintain that government decisions about which substances to ban are random and may be politically motivated. They point out that tobacco and alcohol are legal, even though some experts believe they are more dangerous and addictive than marijuana. On the other hand, many people argue that government has a duty to protect citizens from harmful substances by banning them. They reason that illegal drug use can destroy lives—not only of the lives of those who use drugs, but also of those around the user who may be negatively affected.

Some people claim the Ninth Amendment protects a citizen's right to drive. While states consider driving to be a privilege rather than a right, those who believe driving is a right argue that work is a means of pursuing happiness and property. Since driving is a means of getting to work, driving should be a right. They believe, therefore, the government should not issue licenses. Others, however, want the government to regulate driving in order to protect them from careless or reckless drivers.

Patrick Henry warned, "Guard with jealous attention the public liberty. Suspect everyone who approaches that jewel." The Founders also believed that for a free government to endure, liberty must not degrade into license, and citizens must sometimes let personal interests give way to the common good. The debate surrounding personal liberty issues continues today.



## The Bill of Rights and PERSONAL LIBERTY

### Debate over the Scope of the Bill of Rights

# Does the Ninth Amendment protect a right to: Privacy? Abortion? Drive? Take Drugs?

The Ninth Amendment does not name any rights, but one thing it does guarantee is a good debate. It has been read to protect all natural rights not listed in the First through Eighth Amendments. It raises many possibilities.

The Founders believed government did not “grant” rights. Rather, its role was to protect rights that existed before government was created. One of the concerns of the Federalists, those who opposed a Bill of Rights, was that listing certain rights might mean that others would be ignored. To try to ensure this did not happen, the Ninth Amendment was included in the Bill of Rights.

### ***Griswold v. Connecticut*: “Zones of Privacy”**

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Specifically, the Court cited the First, Third, Fourth, and Fifth Amendments as creating that “zone of privacy.” The Third and Fourth Amendments give protection

from unreasonable government intrusion into the home. The First and Fifth Amendments are based on a sphere of each person’s mind into which the government may not trespass. The First Amendment does this through freedom of religion and speech, and the Fifth Amendment through freedom from self-incrimination.

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Rather, the Ninth Amendment shows a belief of the Constitution’s authors that fundamental rights exist that are not expressly enumerated in the first eight amendments and an intent that the list of rights included there [is not] exhaustive.”

Since the 1960s, there have been many claims that the Ninth Amendment prohibits certain state action. Nevertheless, courts have been reluctant to rely on Ninth Amendment claims alone. They have looked for other support of rights, specifically the due process guarantees of the Fifth or Fourteenth Amendments. In other words, claims of rights should have some constitutional basis in addition to the Ninth Amendment.

### Abortion Rights

In 1973, the Supreme Court used the Ninth and Fourteenth Amendments in the reasoning of *Roe v. Wade*. Citing *Griswold*, the Court reaffirmed a right to “personal, marital, familial, and sexual privacy” based on the First, Third, Fourth, Fifth, and Ninth Amendments. Another basis was the liberty protected by the Fourteenth Amendment’s due process clause. The Court also pointed to broader abortion rights in early pregnancy in

## BACKGROUND ESSAY ★

*The Bill of Rights and* PERSONAL LIBERTY

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*The Bill of Rights and* **PERSONAL LIBERTY*****The Eleventh Amendment***

**Directions:** *The Founders met in 1789 to write the Bill of Rights. In 1791, ten amendments were ratified and became the Bill of Rights. Your job is to travel back in time and compose an eleventh amendment that explicitly protects the privacy of citizens. Be sure to address all the privacy issues of today, but remember: the article must be written as if you were living in 1789.*

**CONGRESS OF THE UNITED STATES**

Begun and held at the City of New York,

On Wednesday the fourth of March, one thousand seven hundred and eighty nine.

THE Conventions of a number of the States, having at the time of their 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 ensure 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; viz.

ARTICLES in addition to, and Amendment of the Constitution of the United States of America, proposed by Congress, and ratified by the Legislatures of the several States, pursuant to the fifth Article of the original Constitution.

**AMENDMENT ELEVEN:**

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**STUDENT HANDOUT - B***The Bill of Rights and* **PERSONAL LIBERTY****Focus Quotations**

**Directions:** Read the Ninth Amendment and the following quote. Then answer the questions below.

**AMENDMENT IX**

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

**The Framers of the Bill of Rights did not purport to “create” rights. Rather, they designed the Bill of Rights to prohibit our government from infringing rights and liberties presumed to be preexisting.**

–Supreme Court Justice William J. Brennan, Jr., 1990

1. How does the Ninth Amendment support Justice Brennan’s argument?

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2. What do you think Brennan meant by “rights and liberties presumed to be preexisting”?

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## STUDENT HANDOUT - C

*The Bill of Rights and* **PERSONAL LIBERTY*****“Privacy” Amendments***

**Directions:** Read the First, Third, Fourth, Fifth, and Ninth Amendments and underline sections that could imply a right to privacy.

**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 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**

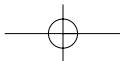
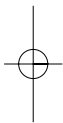
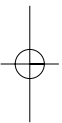
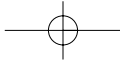
The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched and the persons 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 deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

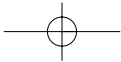
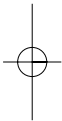
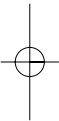
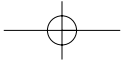
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# *The Bill of Rights and* **FEDERALISM**





*The Bill of Rights and* **FEDERALISM****UNIT OVERVIEW****THE COMMERCE CLAUSE:  
ARTICLE I, SECTION 8,  
CLAUSE 3:**

The Congress shall have power...To regulate commerce with foreign nations, and among the several states, and with the Indian tribes...

**THE ELASTIC CLAUSE:  
ARTICLE I, SECTION 8,  
CLAUSE 18:**

The Congress shall have power...to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

**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.

**Synopsis of Lessons  
and DVD****Lesson One:**

Students analyze *Federalist No. 39* and explore how the United States government is neither wholly national nor wholly federal.

**Lesson Two:**

Students examine the Commerce Clause and evaluate the legislative authority it grants to Congress.

## TEACHER'S GUIDE

*The Bill of Rights and* **FEDERALISM****Critical Engagement Question**

*How does the Constitution provide a government that is both national and federal?*

**LESSON 1*****A Federal Republic*****Overview**

In attempting to frame a national government that would be more effective than the one created under the Articles of Confederation, the Founders built a system of divided powers. One important check on the abuse of power was the enumeration of certain powers delegated to the federal government, with

*I am sure they were fully impressed with the necessity of forming a great consolidated Government, instead of a confederation. That this is a consolidated Government is demonstrably clear, and the danger of such a Government, is, to my mind, very striking.*  
—PATRICK HENRY, 1788

*As the plan of the convention aims only at a partial union or consolidation, the State governments would clearly retain all the rights of sovereignty which they before had, and which were not, by that act, EXCLUSIVELY delegated to the United States.*  
—ALEXANDER HAMILTON, 1788

the rest retained by states and the people. Further, the election, operation, and authorities of the three branches of government blend federal and national features, resulting in what Madison called a government “of mixed character” —neither wholly federal nor wholly national.

**Materials**

Background Essay: A Federal Republic (★★ indicates grade twelve reading level; ★ indicates grade ten reading level.)

Handout A: Focus Quotations  
Federalism DVD and Viewing Guide

Handout B: Excerpts from *Federalist No. 39*

Handout C: Federal or National Government?

**Objectives**

Students will:

- define federalism.
- understand the Founders' reasons for creating a federal system.
- understand the differences between a federal government and a national government.
- analyze James Madison's arguments in *Federalist No. 39*.
- analyze the Constitution's provisions for federal and national government.
- appreciate their rights and responsibilities under a federal system.
- appreciate the complexity and elegance of the American system of government.

**Standards**

NCHS: Era 3, Standard 3

CCE: IIIA1, IIIA2, IIIB1

NCSS: Strands 5 and 6

**Background/Homework**

A. Have students read **Background Essay: A Federal Republic**.

**Anticipatory Activity [10 minutes]**

A. To create a mindset for the lesson, distribute **Handout A: Focus Quotations**, and have students read the quotations and choose one to paraphrase.

B. Conduct a large group discussion to answer the questions:

- What is a federal system? Why did the Founders create a federal and national system? What concerns were they attempting to address?
- How did the distribution of powers between the national and state governments provide a “double security” to the people?
- What did Hamilton mean by “a certain rivalryship”?
- Ask students to think of historical examples of conflicts between the national and state governments.

**Activity [30 minutes]**

A. Show the **Federalism DVD** and have students complete the **Viewing Guide**.

B. Divide the class into pairs or trios and distribute **Handout B: Excerpts from Federalist No. 39**.



# The Bill of Rights and FEDERALISM

Ask students who are strong readers to read the document aloud, one paragraph at a time.

C. After answering any questions students have about the document, distribute **Handout C: Federal or National Government?** Assign each group to work on one paragraph from paragraphs 1-5 of **Handout B**. On **Handout C**, students should first paraphrase Madison's example, circle either "federal" or "national," and then draw an illustration of the principle in the space below.

## Wrap-Up [10 minutes]

A. Have students post their illustrations around the room, and give students a few moments to view them all.

B. As a large group, discuss the differences between a national government and a federal government.

Ask students:

- Is the United States a nation of people or a nation of states? Or both?
- Was Madison persuasive in his argument?

## Homework

A. Using Article I, Sections 8–10 of the Constitution, have students choose one power of Congress (Section 8), one power denied to Congress (Section 9), and one power denied to states (Section 10). Have them draw or find illustrations of those powers and accompany each with a one-sentence explanation of why they believe the Founders delegated or denied certain powers to each level of government.

B. Have students read the Tenth Amendment. Then have them choose one of the following statements and write one or two paragraphs defending it:

- The Tenth Amendment was a redundant addition to the Constitution.
- The Tenth Amendment is critical to our federal system.

## Extensions

A. Have students read the entire text of *Federalist No. 39*, and research the Anti-Federalist arguments that Madison sets out to answer in it. Stage a mock ratifying convention, allowing students to take turns playing the role of Madison and Anti-Federalists including Patrick Henry, George Mason, or others. Madison should answer critics of the Constitution using arguments from *Federalist No. 39*.

B. The Seventeenth Amendment changed the way Americans elect their United States Senators. Have students research the history of the amendment, including the primary arguments made for/against it. Have them summarize their findings and analyze if/how the amendment altered the Founders' vision of federalism in a one- to two-page essay.

## Responsibilities Toolbox



Have students brainstorm a list of responsibilities of citizenship that go along with their rights under the Tenth Amendment. You might prompt them with the statements, "I am responsible for knowing..." and "I am responsible for doing..."

In addition to the ideas students generate, you may want to add:

- knowing the authority/power of various levels of government.
- understanding the Founders' reasons for creating a federal system.
- understanding how our present system differs from the one created by the Founders.
- understanding our duties and obligations to each level of government.

## BACKGROUND ESSAY ★★

*The Bill of Rights and* **FEDERALISM*****A Federal Republic***

# Is the United States a nation of people or a nation of states? The answer is: both.

The Founders aimed to create a system of strictly defined government powers. In the Constitution, they set up two separate and independent powers. This federal system gave certain listed powers to the national government. Other powers were kept with the states and the people. The Founders included the Tenth Amendment to reinforce the divisions of power between the people and the states, and the federal government.

Many members of the Continental Congress had argued that the United States's first governing document, the Articles of Confederation, gave too little power to the national government for it to be effective. Responding to this concern, the Founders gave greater powers to the federal government in the new Constitution. Among these were the power to regulate commerce between states, coin money, raise armies, and levy taxes.

These new proposed powers gave rise to two political factions at the time. Federalists (who supported the Constitution) and Anti-Federalists (who did not) debated how much power should be given to the national government and how much should be given to the states. Anti-Federalists emphasized that the states had much closer contact with the people and could protect their rights more effectively. Convinced that the new Constitution gave the federal government too much power, many Anti-Federalists opposed its ratification.



When eight individual states proposed amendments to the Constitution, the one proposed by all was the principle now contained in the Tenth Amendment. By making clear that the people and the states reserved all powers not given to the federal government, the Tenth Amendment helps clarify the division of power and acts as a check against the federal government's expansion of its powers.

As James Madison noted in *Federalist No. 39*, the Constitution created a government that was “neither wholly federal nor wholly national.” Although the states surrendered many of their powers to the new federal government, they retained “a residuary and inviolable sovereignty.” Under the Tenth Amendment, the states and the people retain all powers not delegated by the Constitution to the federal government. The Constitution also limits the power of states, for example, by prohibiting them from making treaties. Thus, the Constitution grants certain powers to the federal government, but also places strict limits on those powers.

In the early republic, states jealously guarded their powers from what they saw as encroachments by the federal government. The Virginia and Kentucky Resolutions, secretly written by James Madison and Thomas Jefferson

*The Bill of Rights and* **FEDERALISM**

in response to the Alien and Sedition Acts (a federal law that suppressed freedom of the press) argued that states had the right to nullify unconstitutional federal laws.

## Views on Federalism

One major criticism of state power comes from the legacy of slavery. After the Civil War and the end of Reconstruction, many states enacted Jim Crow laws (named after a black character in minstrel shows) that mandated segregation and different treatment based on race. By 1914, every Southern state had passed these racist laws that created two separate societies: one for whites, and one for blacks and non-whites. Blacks could not use white facilities like restrooms, restaurants, or parks, or even be buried in the same cemeteries as whites. The Supreme Court upheld the constitutionality of so-called separate but equal accommodations in railway cars in the case of *Plessy v. Ferguson* (1896).

The first major blow to Jim Crow laws was dealt in the 1954 decision of *Brown v. Board of Education*, in which the Supreme Court found segregation in schools unconstitutional. The 1954 *Brown* case marked the beginning of the Civil Rights Movement and the end of the Jim Crow period.

The Jim Crow laws illustrate the conflict between state and federal power. As a result of Jim Crow laws, many

argued for increased federal power, pointing to the legal inequality put in place by state governments. With a strong federal government, they argued, such wrongs could be corrected. They made the case that states often commit wrongful acts, and the federal government is an important force to correct these injustices.

Others disagree, saying that the federal government is just as likely as state governments to pass unjust legislation. If the federal government's solution to a policy problem is wrong, then all citizens of the fifty states are forced to live under bad laws. Supporters of federalism also object to what they call a "one-size fits all" approach to government, pointing out that different kinds of policies are right for the people of different states. Granting states power could allow them to develop policies that meet the particular needs of their citizens or to adopt successful policies from other states. Current issues of federalism include legalized marijuana, legalized assisted suicide, and questions of federal or state responsibility in natural-disaster responses.

The American federal system was designed to prevent an abuse of power, but neither a very strong federal system nor complete state sovereignty has proven to be perfect. Finding the right balance of power was of central concern to the Founders, and continues to be vital to liberty today.

## BACKGROUND ESSAY ★

*The Bill of Rights and* **FEDERALISM*****A Federal Republic***

# Is the United States a nation of people or a nation of states?

## The answer is: both.

The Founders were always skeptical of government power. They drafted the Constitution to be a limiting document, setting up two separate, independent powers. This federal system gave specific powers to the central government, keeping other powers with the states and the people. The Founders added the Tenth Amendment to support the division of power between the people, the states, and the federal government.

The Founders drew on their experience with the United States' first governing document, the Articles of Confederation. Many members of the Continental Congress had argued that it gave too little power to the central government. The Founders gave greater powers to the federal government in the new Constitution. Among these were the powers to regulate commerce between states, to coin money, to raise armies, and to levy taxes.

The two major political groups at the time, the Federalists and the Anti-Federalists, disagreed about this new division of power. They debated how much power the national government should have and how much power state governments should have. Anti-Federalists stressed that the states had much closer contact with the people and could better protect their rights.

Eight states proposed rights to be included in a bill of rights. The one proposed by all was the principle of the Tenth Amendment. The Tenth Amendment helps clarify



the division of power. It also acts as a check against expansion of the federal government's powers. It makes clear that the people and the states keep all powers not given to the federal government.

As James Madison noted in *Federalist No. 39*, the Constitution created a government that was "neither wholly federal nor wholly national." The states yielded many of their powers to the new federal government. However, they kept "a residuary and inviolable sovereignty." Under the Tenth Amendment, the states and the people retain all powers not given to the federal government. Thus, the Constitution grants certain powers to the federal government, but also places strict limits on those powers.

**Views on Federalism**

One major criticism of state power comes from the legacy of slavery. After the Civil War and the end of Reconstruction, many states enacted Jim Crow laws. (These laws were named after a black character in minstrel shows.) They required segregation and different treatment based on race. By 1914, every Southern state had passed these racist laws that created two separate societies: one for whites, and one for blacks and non-

*The Bill of Rights and* **FEDERALISM**

whites. Blacks could not use white facilities like restrooms, restaurants, or parks, or even be buried in the same cemeteries as whites. The Supreme Court upheld so-called separate but equal accommodations in railway cars in the case of *Plessy v. Ferguson* (1896).

The first major blow to Jim Crow laws was dealt in the 1954 decision of *Brown v. Board of Education*. The Supreme Court found segregation in schools unconstitutional. The 1954 *Brown* case marked the beginning of the Civil Rights Movement and the end of the Jim Crow period.

The Jim Crow laws illustrate the conflict between state and federal power. In response to Jim Crow laws, many argued for greater federal power. They pointed to the legal inequality caused by state government. They claimed a strong federal government could correct such wrongs. They made the case that states often commit wrongful acts, and that the federal government is an important force to correct these injustices.

Others disagree, saying that the federal government is just as likely as state governments to pass unjust legislation. Further, if the federal government's law is wrong, then all citizens of the fifty states are forced to live under it.

Supporters of federalism also object to what they call a "one-size fits all" approach to government, pointing out that different kinds of policies are right for the people of different states. Granting states power could allow them to develop policies that meet the particular needs of their citizens or to adopt successful policies from other states. Current issues of federalism include legalized marijuana, legalized assisted suicide, and questions of federal or state responsibility in natural-disaster responses.

The American federal system was designed to prevent an abuse of power. Neither a very strong federal system nor complete state sovereignty has proven to be perfect. Finding the right balance of power has been vital to liberty through the years and still is today.

**STUDENT HANDOUT - A***The Bill of Rights and* **FEDERALISM****Focus Quotations**

**Directions:** *Read the quotations and select one to rewrite in your own words.*

1. The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite.

–James Madison, 1788

2. This balance between the National and State governments ought to be dwelt on with peculiar attention, as it is of the utmost importance. It forms a double security to the people.... Indeed, they will both be prevented from overpassing their constitutional limits by a certain rivalry, which will ever subsist between them.

–Alexander Hamilton, 1788

3. In the next place, the state governments are, by the very theory of the Constitution, essential constituent parts of the general government. They can exist without the latter, but the latter cannot exist without them.

–Supreme Court Justice Joseph Story, 1833

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## The Bill of Rights and FEDERALISM

### Excerpts from Federalist No. 39, 1788

**Directions:** In this document, James Madison discusses the question: Is the government of the United States national or federal? Read the excerpts and complete **Handout C**. (All italics are Madison's.)

#### Ratification of the Constitution [1]

[R]atification is to be given by the people, not as individuals composing one entire nation, but as composing the distinct and independent States to which they respectively belong....The act, therefore, establishing the Constitution, will not be a *national*, but a *federal* act.

#### The House of Representatives [2]

The House of Representatives ... is elected immediately by the great body of the people. The House of Representatives will derive its powers from the people of America; and the people will be represented in the same proportion, and on the same principle, as they are in the legislature of a particular State. So far the government is *national*, not *federal*.

#### The Senate [3]

The Senate... derives its appointment indirectly from the people .... [and] will derive its powers from the States, as political and coequal societies; and these will be represented on the principle of equality in the Senate, as they now are in the existing Congress. So far the government is *federal*, not *national*.

#### Government Power [4]

The idea of a national government involves in it, not only an authority over the individual citizens, but an indefinite supremacy over all persons and things, so far

as they are objects of lawful government...[T]he proposed government cannot be deemed a *national* one; since its jurisdiction extends to certain enumerated objects only, and leaves to the several States a residuary and inviolable sovereignty over all other objects....

#### Amending the Constitution [5]

[On] the authority by which amendments are to be made, we find it neither wholly *national* nor wholly *federal*. Were it wholly national, the supreme and ultimate authority would reside in the *majority* of the people of the Union...Were it wholly federal, on the other hand, the concurrence of each State in the Union would be essential to every alteration that would be binding on all... In requiring more than a majority, and particularly in computing the proportion by *States*, not by *citizens*, it departs from the *national* and advances towards the *federal* character; in rendering the concurrence of less than the whole number of States sufficient, it loses again the *federal* and partakes of the *national* character....

The proposed Constitution ...[is] neither a national nor a federal Constitution, but a composition of both. In its foundation it is federal, not national; in the sources from which the ordinary powers of the government are drawn, it is partly federal and partly national; in the operation of these powers, it is national, not federal; in the extent of them, again, it is federal, not national; and, finally, in the authoritative mode of introducing amendments, it is neither wholly federal nor wholly national.

#### VOCABULARY

**Derives:** to receive from a specific source

**Indefinite:** difficult to determine

**Supremacy:** having the highest authority or power

**Enumerated:** listed

**Residuary:** remaining

**Inviolable:** sacred

**Sovereignty:** independence

**Reside:** originate in

**Concurrence:** agreement

**STUDENT HANDOUT - C**

*The Bill of Rights and* **FEDERALISM**

**Federal or National Government?**

**Directions:** After reading **Handout B**, write a paraphrase of the paragraph your group worked on. Then in the space below, draw an illustration of what Madison describes, representing either the federal character of the Constitution, or the national character, or both.

Federalist No. 39 – paragraph # \_\_\_\_\_

paraphrase: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

<p>“The proposed Constitution...[is] neither a national nor a federal Constitution, but a composition of both.”</p>		
<p>The Constitution “preserve[s] the <i>federal</i> form, which regards the Union as a <i>Confederacy</i> of sovereign states...”</p>	<p>...AND...  (circle the one your paragraph explains)</p>	<p>...frames “a <i>national</i> government, which regards the Union as a <i>consolidation</i> of the States.”</p>
<p>Illustration</p>		



*The Bill of Rights and* **FEDERALISM****Critical Engagement Question**

*What is the relationship between the Commerce Clause and the principles of federalism?*

**LESSON 2****Federalism and the Commerce Clause****Overview**

The Supreme Court has often been the scene of struggles over federal and state power to regulate the production of goods, minimum wages, and other business practices. The Court's interpretation of the Commerce Clause, which has shifted greatly since the Founding, is often key to settling questions about the nature of federalism.

*To take a single step beyond the boundaries thus specially drawn around the powers of Congress, is to take possession of a boundless field of power, not longer susceptible of any definition.*

—THOMAS JEFFERSON, 1791

*We have said that Congress may regulate not only "Commerce . . . among the several states," . . . but also anything that has a "substantial effect" on such commerce. This test, if taken to its logical extreme, would give Congress a "police power" over all aspects of American life.*

—CLARENCE THOMAS, 1995

**Materials**

Background Essay: Federalism and the Commerce Clause (★★ indicates grade twelve reading level; ★ indicates grade ten reading level.)  
Handout A: Focus Quotations  
Handout B: Interstate Commerce?

**Objectives****Students will:**

- explain the Commerce Clause.
- understand the importance of the Commerce Clause as a basis for much federal legislation.
- analyze situations in which Congress has claimed authority to legislate under the Commerce Clause.
- evaluate trends in Supreme Court decisions based on the Commerce Clause.

**Standards**

NCHS: Era 3, Standard 3; Era 8, Standard 2; Era 10, Standard 2  
CCE: IIIA1, IIIA2, IIIB1  
NCSS: Strands 2, 5, and 6

**Background/Homework**

Have students read **Background Essay: Federalism and the Commerce Clause**.

**Anticipatory Activity**  
**[10 minutes]**

A. Distribute or put up an overhead of **Handout A: Focus Quotations** and have students paraphrase the Commerce Clause and select the quotation they most agree with.

**Activity [30 minutes]**

A. Before class, cut out the "Situation Slips" and "Outcome Slips" from **Handout B: Interstate Commerce?** Distribute the slips to individual students, asking them not to share them with classmates.

B. Write on the board the following question: Does Congress have legislative authority in these situations under the Commerce Clause?

C. Ask the student with Situation Slip #1 to read the description aloud to the class. Allow large group discussion on whether the situation described should fall under Congress's authority under the Commerce Clause. (The student with the corresponding Outcome Slip should take care not to reveal what it says.)

*Note: Students may know how the Supreme Court ruled from the **Background Essay** or from their own knowledge. But encourage students to move beyond trying to predict the Court's ruling, and to discuss their own opinions.*

D. After a few minutes, ask the student with Outcome Slip #1 to read the decision and ask students for their opinion on the Court's ruling. Continue until all slips have been read and discussed.

## TEACHER'S GUIDE

*The Bill of Rights and* **FEDERALISM****Wrap-Up [10 minutes]**

**A.** Have the students with the ten Outcome Slips come to the front of the room and stand in chronological order, creating a “living timeline” of Commerce Clause cases. Review the cases by having each student read their outcome aloud.

**B.** Discuss as a large group the following questions:

- What trends do you see in the types of decisions made by the Court?
- Which decisions do you agree or disagree with?
- What are the effects of increased federal power to regulate commerce?
- How do all of these decisions affect your daily lives?

**Homework**

**A.** Give students a copy of

**Handout B.** Have them research one situation and prepare a two-to three-paragraph brief on the case.

**B.** Ask students to make a T-chart of the federalism cases in the lesson, listing decisions that increased federal power on the left, and decisions that limited it on the right.

**Extensions**

**A.** The *Lopez* and *Morrison* decisions led some analysts to believe the Supreme Court may be embracing a “new federalism” with a more limited view of Congress’s power under the Commerce Clause. Does the 2005 *Raich* decision undermine this analysis? Why or why not? Have students research the decisions and present their opinions in a one- to two-page essay.

**B.** As a class, brainstorm a list of the five most pressing problems in American society today. Ask students to decide which level of government (if any) can most efficiently and effectively deal with each problem:

- the federal government
- state government
- the private sector
- personal initiative

Students should share the reasoning behind their answers. Then ask them to consider if the Federalists of 1787 would agree with their answers. What about the Anti-Federalists?

**Responsibilities Toolbox**

Have students brainstorm a list of responsibilities of citizenship that go along with their rights under the Constitution. You might prompt them with the statements, “I am responsible for knowing...” and “I am responsible for doing...”

In addition to the ideas students generate, you may want to add:

- knowing the authority/power of various levels of government.
- understanding the Commerce Clause and the shift in interpretation by the Supreme Court.
- knowing how Congress’s power to legislate under the Commerce Clause affects one’s daily life.
- taking steps to communicate one’s views to representatives at all government levels.
- voting.
- paying taxes.

*The Bill of Rights and* **FEDERALISM*****Federalism and the Commerce Clause***

# Is marijuana grown for personal and legal medical use “interstate commerce”?

Struggles over federal and state power often hinge on the reach of the Commerce Clause. Found in Article 1, Section 8 of the Constitution, the Commerce Clause says in part, “Congress shall have the power ... to regulate commerce with foreign Nations, and among the several States, and with the Indian Tribes.”

But what kinds of activities can be called “interstate commerce”? Congress often has one answer while states and the Supreme Court may have another.

In the early twentieth century, the Supreme Court dealt with federalism and the Commerce Clause a number of times. The Court ruled twice that Congress had authority under the Commerce Clause to regulate the meat-packing industry within single states, because the industry’s actions had substantial effects on interstate commerce. In *Hammer v. Dagenhart* (1918), the Court addressed Congress’s power to regulate child labor. The Court found that the Tenth Amendment reserved this power to the states and that Congress had no power to make rules for the production of goods.



Courtesy Library of Congress: LC-USZ62-117121

**President Franklin Roosevelt and the Supreme Court**

In the 1930s, under heavy political pressure, the Supreme Court abandoned this line of reasoning when President Franklin Delano Roosevelt created New Deal programs. As part of the New Deal, Roosevelt and Congress established new government agencies including the Social Security Administration, which provides pensions and aid to the disabled and elderly, and the Securities and Exchange Commission, which regulates stock market trading. When the New Deal social programs were challenged, the Court ruled them unconstitutional. The Court reasoned in several cases that Congress did not have the power to create such programs.

The decision infuriated President Roosevelt. He believed the Court made the judgment based on politics, not the law. (Republicans had appointed seven of the nine justices, while Roosevelt was a Democrat.) He had won reelection by ten million votes. He refused to accept the decision against legislation he believed the public overwhelmingly supported, and vowed to secure a majority vote by any means. Roosevelt then tried to pass legislation that would allow the President to add one new justice for each current justice over seventy-years-old.

## BACKGROUND ESSAY ★★

*The Bill of Rights and* **FEDERALISM**

To alleviate some of the political stress on the Court, one justice reversed his earlier stance and began voting to uphold New Deal programs as constitutional. Another justice retired, and was replaced by a supporter of New Deal programs. The new majority found the increased federal power constitutional, but the conflict had already sharply divided the country and tested the federal system of government.

**A Change in Direction?**

This new direction for the Supreme Court allowed Congress to create laws regulating, banning, and subsidizing a wide range of activities. This continued uninterrupted until 1995. In *United States v. Lopez*, the Court overturned a federal law creating gun-free school zones. In a 5-4 decision, the Court held that the law was unrelated to interstate commerce. *Lopez* marked the first time since 1936 that the Supreme Court had made such a ruling.

Since *Lopez*, the Supreme Court has ruled in several cases dealing with federalism and the Commerce Clause. In 2000, the Court overturned parts of the Violence Against Women Act in *United States v. Morrison*. The Court held, in another 5-4 decision, that the Commerce Clause did not give Congress the power to create a law that would enable alleged rape victims to sue their accused attackers in federal court for monetary damages.

According to some legal analysts, these decisions indicate the Court has grown uncomfortable with its own previous expansive reading of the Commerce Clause and is now embracing a more narrow view. In the 2005 case of *Raich v. Gonzales*, however, the Court upheld Congress's authority under the Commerce Clause to ban medical marijuana. The Court struck down a California law allowing individuals to grow marijuana for medical use, saying that the practice was an "economic activity" related to interstate marijuana demand. Therefore, the Court held, the federal law banning medical marijuana superseded the state law.

In our federal republic, citizens elect representatives to Congress who will craft legislation that can affect almost every area of their lives. With the Commerce Clause cited as the basis of much federal legislation, being aware of Congress's attempted uses of the Commerce Clause as well as the Supreme Court's interpretation of it, are of central importance for engaged citizens.



## The Bill of Rights and FEDERALISM

### Federalism and the Commerce Clause

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Courtesy Library of Congress: LC-USZ62-117121

an agency to regulate the stock market. When the New Deal social programs were first challenged, the Court ruled them unconstitutional. The Court reasoned in several cases that Congress did not have the power to create such programs.

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## BACKGROUND ESSAY ★

*The Bill of Rights and* **FEDERALISM****A Change in Direction?**

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Since *Lopez*, the Supreme Court has ruled in several cases dealing with federalism and the Commerce Clause. In 2000, the Court overturned parts of the Violence Against Women Act in *United States v. Morrison*. The Court held, in another 5-4 decision, that the Commerce Clause did not give Congress the power to create a way for alleged rape victims to sue their attackers in federal court.

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In our federal republic, citizens elect representatives to Congress. These lawmakers will craft policies that can affect almost every area of Americans' lives. The Commerce Clause is cited as the basis of much federal legislation. Therefore, being aware of Congress's attempted uses of the Commerce Clause as well as the Supreme Court's interpretation of it, are of central importance for engaged citizens.

*The Bill of Rights and* **FEDERALISM****Focus Quotations**

**Directions:** *Rephrase the Commerce Clause in your own words. Then choose one of the following quotations that best represents your point of view. Explain why you chose it in the space below.*

**Article I, Section 8 of the Constitution states that the United States Congress has the power:**

***... to regulate commerce with foreign nations, and among the several states, and with the Indian tribes.***

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1. To take a single step beyond the boundaries thus specially drawn around the powers of Congress, is to take possession of a boundless field of power, not longer susceptible of any definition.

–Thomas Jefferson, 1791

2. . . . What is it that is to be regulated? Not the commerce of the several States, respectively, but the commerce of the United States. Henceforth, the commerce of the States was to be an unit ...complete, entire, and uniform. Its character was to be described in the flag which waved over it, *E PLURIBUS UNUM*. [out of many, one]

–Supreme Court Chief Justice John Marshall, 1824

3. [T]he Commerce Clause grants Congress extensive power and ample discretion to determine its appropriate exercise. –Supreme Court Justice Anthony Kennedy, 1995

4. Congress cannot define the scope of its own power merely by declaring the necessity of its enactments.

–Supreme Court Justice Clarence Thomas, 2005

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## STUDENT HANDOUT - B

*The Bill of Rights and* **FEDERALISM*****Interstate Commerce?***

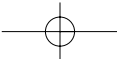
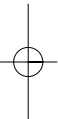
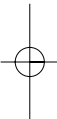
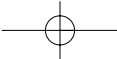
<b>Situation Slips</b>	<b>Outcome Slips</b>
1. Congress issues permits for commercial ships on interstate waterways. The state of New York wants to grant its own permits for the use of commercial ships on its interstate waterways that would outweigh permits granted by the federal government.	1. <b>Yes.</b> In <i>Gibbons v. Ogden</i> (1824) the Court held that the Constitution gave Congress, not the states, the power to regulate interstate commerce (i.e. trade between states).
2. Congress tries to regulate a “meat trust” among Chicago meat suppliers – the companies agreed not to bid against each other in order to control prices.	2. <b>Yes.</b> In <i>Swift Co. v. United States</i> (1905) the Court held that the trust’s activities were an unlawful attempt to monopolize sales and would have a direct effect on interstate commerce.
3. United States Congress passes a law banning the interstate shipment of goods if those goods were manufactured by child laborers.	3. <b>No.</b> The Supreme Court held in <i>Hammer v. Dagenhart</i> (1918) that production was not “commerce” and Congress had no power to make rules for the production of goods.
4. Congress enacts the Fair Labor Standards Act. This law establishes a national minimum wage, a maximum 44-hour work week, and bans “oppressive child labor” at companies whose goods are sold in other states.	4. <b>Yes.</b> The Supreme Court unanimously upheld this law in <i>United States v. Darby</i> (1941) as a valid exercise of Congress’s power under the Commerce Clause. (This decision overturned <i>Hammer v. Dagenhart</i> , 1918.)
5. A federal law sets a wheat quota for farmers. A farmer is penalized because he grows twelve acres more wheat than he is allowed under the law, saying it is for personal use.	5. <b>Yes.</b> The Court held in <i>Wickard v. Filburn</i> (1942) that government could regulate demand as well as supply. Therefore, it could regulate local and non-commercial activities if they would have an effect on interstate commerce.
6. A federal law makes it illegal for hotels to discriminate against potential guests based on race.	6. <b>Yes.</b> In <i>Heart of Atlanta Hotel v. U.S.</i> (1964), the Court held that hotels have “a direct and substantial relation to the interstate flow of goods and people” and therefore Congress had the power to make rules for their acceptance of guests in the Civil Rights Act of 1964.
7. Congress passes a law forbidding restaurants from discriminating based on race, if they serve interstate travelers or if they receive food from interstate sources. A restaurant owner in Alabama refuses to serve African American customers.	7. <b>Yes.</b> In <i>Katzbach v. McClung</i> (1964), the Court held that the refusal to serve African Americans burdened interstate commerce as well as the freedom of African American citizens to travel from state to state.



## The Bill of Rights and FEDERALISM

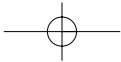
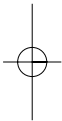
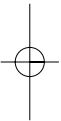
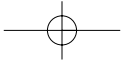
### Interstate Commerce? (continued)

Situation Slips	Outcome Slips
<p><b>8.</b> Congress passes a law banning discrimination in “public accommodations.” An Arkansas recreation park with swimming, boating, and a snack bar, serves 100,000 people per year, but denies entry to African Americans. 75% of the snack bar’s offerings come from out of state and much of the park’s equipment is leased or purchased from out of state.</p>	<p><b>8. Yes.</b> The Court held in <i>Daniel v. Paul</i> (1969) that the activities in the park had a substantial effect on commerce, were dependent on interstate commerce (boats were leased from out of state, for example), and the park was advertised in ways designed to attract interstate travelers.</p>
<p><b>9.</b> United States Congress wants to create “gun-free” school zones. It would make possession of a gun within a certain distance of a school a federal offense.</p>	<p><b>9. No.</b> In <i>United States v. Lopez</i> (1995), the Court overturned a federal law creating gun-free school zones, saying this kind of law was not related to interstate commerce.</p>
<p><b>10.</b> Congress passes a law allowing rape victims to sue their alleged attackers in federal court. Congress cites the failure of states to help rape victims adequately, as well as the effects on interstate commerce caused by violence against women as the basis for the law.</p>	<p><b>10. No.</b> The Court held in <i>United States v. Morrison</i> (2000) that the effect on interstate commerce was not substantial enough and that states should be the ones to provide remedies to victims.</p>
<p><b>11.</b> Congress passes a law classifying marijuana as an illegal drug. A California law allows individuals to grow marijuana for personal, medical use when recommended or approved by a doctor. This law contradicts the federal law that classifies marijuana as an illegal drug.</p>	<p><b>11. Yes.</b> The Court reasoned in <i>Raich v. Gonzales</i> (2005) that growing and using marijuana for personal medical use was an “economic class of activity” related to national marijuana demand and therefore to interstate commerce under the Commerce Clause. Therefore, the federal law banning medical marijuana overruled the state law.</p>



# *The Bill of Rights and* **INCORPORATION**





*The Bill of Rights and* **INCORPORATION**

**UNIT OVERVIEW**

**AMENDMENT XIV,  
SECTION 1**

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

**Synopsis of Lessons  
and DVD**

- Lesson One:**  
Students define incorporation and analyze its impact on the Bill of Rights and the role of the federal government.
- Lesson Two:**  
Students evaluate whether the Fourteenth Amendment requires the incorporation of any part of the Bill of Rights.

## TEACHER'S GUIDE

*The Bill of Rights and* **INCORPORATION****Critical Engagement Question***What is incorporation?***LESSON 1*****The Fourteenth Amendment and the Bill of Rights*****Overview**

The immediate impact of the Fourteenth Amendment was to secure citizenship for “all persons born or naturalized in the United States,” including former slaves. However, another important effect has been the incorporation of bill of

*[The Constitution] aims only at a partial union or consolidation, the State governments would clearly retain all the rights of sovereignty which they before had, and which were not, by that act, exclusively delegated to the United States.*

—ALEXANDER HAMILTON, 1788

*Had the Framers of these amendments intended them to be limitations on the powers of state governments, they would have imitated the Framers of the original constitution and expressed that intention.*

—JOHN MARSHALL, 1833

rights protections—which formerly applied only to the federal government—to state governments. Fourteenth Amendment claims against states have kept the Supreme Court busy and have greatly increased its power.

**Materials**

Background Essay: The Fourteenth Amendment and the Bill of Rights (★★ indicates grade twelve reading level; ★ indicates grade ten reading level.)

Handout A: Focus Quotation  
Incorporation DVD and Viewing Guide

Transparency Master B:  
Amendment XIV

Handout C: What are “Privileges and Immunities”?

Handout D: Supreme Court Interpretations of Privileges and Immunities

Answer Key

**Objectives**

**Students will:**

- define incorporation.
- identify key provisions of the Fourteenth Amendment.
- understand the “Privileges and Immunities” and “Due Process” Clauses.
- understand citizens’ responsibility to challenge state government’s restrictions of liberties.

- evaluate the importance of the Fourteenth Amendment in incorporating the Bill of Rights.
- appreciate the role of the Supreme Court in interpreting the Fourteenth Amendment.

**Standards**

NCHS: Era 3, Standard 3; Era 5, Standard 3

CCE: IA1, IB1, IIIC1

NCSS: Strands 2, 5, 6, and 10

**Background/Homework**

A. Have students read **Background Essay: The Fourteenth Amendment and the Bill of Rights**.

**Anticipatory Activity**  
**[10 minutes]**

A. Distribute or put up an overhead of **Handout A: Focus Quotation** and read the quotation. Have volunteers share their answers with the class.

**Activity I [15 minutes]**

A. Show the **Incorporation DVD** and have students complete the **Viewing Guide**.

B. Put up an overhead of **Transparency Master B: Amendment XIV**. Allow students time to read the amendment and go over each clause as a large group.

## The Bill of Rights and INCORPORATION

C. As a large group, discuss the impact of incorporation on the meaning of the Bill of Rights. How did the Fourteenth Amendment transform the Bill of Rights from a list of limitations on the federal government to a set of rights guaranteed by the federal government?

### Activity II [20 minutes]

A. Distribute **Handout C: What are “Privileges and Immunities”?** Have students work in pairs to complete the first section.

B. Distribute **Handout D: Supreme Court Interpretations of Privileges and Immunities.** Have students read the excerpts from the Supreme Court decisions and fill in the chart on **Handout C.** After they are done, have them circle the rights which appear on both lists.

C. Reconvene the class and have pairs share their responses. As a large group, discuss the following questions:

- Does the Fourteenth Amendment require the application of federal Bill of Rights protections to the states (incorporation)?
- What are the advantages of incorporation?
- What are the disadvantages?
- After today’s activity, do you have any new perspectives on why Madison’s proposed amendment failed in the Senate?

### Homework

A. Have students write a paragraph explaining why it is important for citizens to understand the incorporation doctrine.

B. In a separate paragraph, have students identify steps citizens can take if they feel their state is denying them a fundamental right.

### Extensions

A. Have students make an illustrated booklet entitled “The Fourteenth Amendment for Beginners” using at least one illustration or graphic and a simplified explanation for each of the clauses of the first section. Instruct students to make a glossary of terms used in the booklet that they didn’t know before this lesson.

B. Have students research and take notes on the debates about the proposal of the Fourteenth Amendment that took place in the House of Representatives and Senate (available at [http://www.law.harvard.edu/students/orgs/jol/vol42\\_1/kaczorowski.php#Heading675](http://www.law.harvard.edu/students/orgs/jol/vol42_1/kaczorowski.php#Heading675)). Assign students roles (propose—House of Representatives, defeat—House of Representatives, propose—Senate, or defeat—Senate). Have students recreate the debate over the amendment. You may also wish to have students research your state’s role in ratification (if applicable).

### Responsibilities Toolbox



Have students brainstorm a list of responsibilities of citizenship that go along with the Fourteenth Amendment. You might prompt them with the statements, “I am responsible for knowing...” and “I am responsible for doing...”

In addition to the ideas students generate, you may want to add:

- knowing which Bill of Rights protections apply at the state level, and which do not.
- understanding the impact of the Fourteenth Amendment and the evolution of incorporation.

## BACKGROUND ESSAY ★★

*The Bill of Rights and* **INCORPORATION*****The Fourteenth Amendment and the Bill of Rights***

# Can the Supreme Court help you if your state violates the Bill of Rights?

The Founders wrote the Bill of Rights to apply only to the actions of the newly created federal government. “Had the framers of these amendments intended them to be limitations on the powers of the state governments, they would have...expressed that intention,” stated Chief Justice John Marshall in the 1833 Supreme Court case of *Barron v. Baltimore*.

In that case, the city of Baltimore had diverted several streams and, as a result, lowered water levels. John Barron claimed that since the city had destroyed the value of his wharf, it should be required to pay him “just compensation” as required by the Fifth Amendment. But Justice Marshall argued that the Founders were very clear in applying the Fifth Amendment only to the federal government, so the Supreme Court did not have jurisdiction. Mr. Barron would have to turn to the Maryland state constitution for help.

## **The Civil War and the Fourteenth Amendment**

The issue of federal power versus state sovereignty under the Constitution came to a head in the wake of the Civil War. President Lincoln was assassinated in 1865 and his anti-Reconstruction vice-president, Andrew Johnson, assumed the office. Eager to offer citizenship to former slaves and protection against abuses by state governments, Congress passed the Civil Rights Act of 1866.



President Andrew Johnson, however, vetoed the act, saying Congress had no authority to enact such legislation. The Republicans in power had enough votes to override President Johnson’s veto, but they knew that anything they might do to protect the rights of former slaves could be undone by future legislatures. The Supreme Court also overturned most civil rights legislation.

Because legislation alone could not guarantee the rights of formerly enslaved persons, the Republican Congress looked for a more lasting solution. As a result, the Fourteenth Amendment was ratified in 1868. At the time, most members of Congress believed the amendment had three primary functions. Those were to grant national citizenship to all Americans, to punish southern states for restricting voting rights of former slaves, and to ban those who had sworn oaths to the Confederacy from holding federal office. Others supported the amendment to protect the former slaves’ economic liberties. These included the right to own property, to enter into contracts, and to have access to fair court proceedings to defend those rights.



## ★ ★ BACKGROUND ESSAY

*The Bill of Rights and* **INCORPORATION**

The key to understanding the Fourteenth Amendment's impact on the Bill of Rights is found in Section 1, which reads:

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

These clauses are respectively referred to as the privileges and immunities clause, the due process clause, and the equal protection clause.

### "Privileges and Immunities" and "Due Process"

The Fourteenth Amendment's language raises the questions: what rights are the "privileges and immunities" of citizens, and what rights could be claimed against the states? In addressing these questions, the Supreme Court has focused on two clauses: privileges and immunities, and due process.

The Supreme Court quickly limited the scope of the privileges and immunities clause. In the 1873 *Slaughterhouse Cases*, the Court ruled that the privileges

and immunities clause protected only certain narrow federal rights, such as the right to travel, to petition Congress, and to vote in national elections. In dissent, Justice Stephen J. Field argued that the majority's reading was too narrow, and a more plausible reading guaranteed all Americans the rights listed in the Bill of Rights. The majority, however, disagreed.

By 1897, the majority of the Court had adopted a version of Field's opinion. In *Quincy Railways v. Chicago*, the Supreme Court held that states must honor the Bill of Rights requirement to pay owners just compensation for taken property. The Court used part of the federal Bill of Rights—the Fifth Amendment and its requirement of just compensation for private property taken for public use—to interpret the constitutionality of a state action. This opened the door for other claims of Bill of Rights limitations against states.

Over the next seventy-five years, the Court used the Fourteenth Amendment's due process clause to strike down many state laws and to incorporate specific provisions of the Bill of Rights. This is called the doctrine of incorporation. The Fourteenth Amendment fundamentally altered the Founders' Bill of Rights. Whether it has been altered for the better or for the worse is debated still today.

*The Bill of Rights and* **INCORPORATION*****The Fourteenth Amendment and the Bill of Rights***

# Can the Supreme Court help you if your state violates the Bill of Rights?

The Founders wrote the Bill of Rights to apply only to the actions of the newly created federal government. “Had the framers of these amendments intended them to be limitations on the powers of the state governments, they would have...expressed that intention,” stated Chief Justice John Marshall in the 1833 Supreme Court case of *Barron v. Baltimore*.

In that case, the city of Baltimore had diverted several streams. Water levels had gone down as a result. John Barron claimed that since the city had destroyed the value of his wharf, the city should be required to pay him “just compensation” as required by the Fifth Amendment. But Justice Marshall argued that the Founders were very clear in applying the Fifth Amendment only to the federal government. The Supreme Court, he said, did not have jurisdiction. Mr. Barron would have to turn to the Maryland state constitution for help.

**The Civil War and the Fourteenth Amendment**

The issue of federal power versus state self-rule came to a head after the Civil War. The country was in turmoil. President Lincoln was assassinated in 1865, and his anti-Reconstruction vice-president, Andrew Johnson, assumed



the office. Congress wanted to protect the rights of former slaves and passed the Civil Rights Act of 1866. It offered citizenship to former slaves and protection against abuses by state governments. President Andrew Johnson vetoed the act. He noted that Congress had no authority to enact such legislation. The Republicans in power had enough votes to override President Johnson's veto. The Supreme Court, however, soon overturned most civil rights legislation. Congress also knew that anything they might do to protect the rights of former slaves could be undone by future legislatures.

Laws alone could not guarantee the rights of former slaves, so Congress looked for a more lasting solution. As a result, the Fourteenth Amendment was ratified in 1868. At the time, most members of Congress believed the amendment had three primary functions. First, the amendment gave national citizenship to all Americans. Second, it punished southern states for restricting voting rights of former slaves, and, third, it banned those who had sworn oaths to the Confederacy from holding federal office. Other Congressmen supported the amendment



## The Bill of Rights and INCORPORATION

to protect the former slaves' economic liberties. These included the right to own property, to enter into contracts, and to have access to fair court proceedings to defend those rights.

The key to understanding the Fourteenth Amendment's impact on the Bill of Rights is found in Section 1, which reads: "*All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the **privileges or immunities** of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without **due process of law**; nor deny to any person within its jurisdiction the **equal protection of the laws**."* These clauses are respectively referred to as the privileges and immunities clause, the due process clause, and the equal protection clause.

### "Privileges and Immunities" and "Due Process"

Despite Congress' clear goal of protecting rights against abuses by state governments, the Fourteenth Amendment's language is very broad. Which rights are the "privileges and immunities" of citizens? What rights can be claimed against states? In addressing these questions, the Supreme Court has focused on two clauses: privileges and immunities, and due process.

The Court quickly limited the reach of the privileges and immunities clause. In the 1873 *Slaughterhouse Cases*, the Court ruled that the clause protected only certain narrow federal rights. These included the right to travel, to petition Congress, and to vote in national elections. In dissent, Justice Stephen J. Field argued that the majority's reading was too limited. A more reasonable reading, he said, was that the privileges and immunities clause guaranteed all Americans the rights listed in the Bill of Rights. The majority, however, disagreed.

By 1897, the majority of the Court had adopted a version of Field's opinion. In *Quincy Railways v. Chicago*, the Supreme Court held that states must honor the Bill of Rights requirement to pay owners just compensation for taken property. The Court used part of the federal Bill of Rights—the Fifth Amendment and its requirement of "just compensation" for private property taken for public use—to interpret the constitutionality of a state action. This opened the door for other claims of Bill of Rights limitations against states.

Over the next seventy-five years, the Court's use of the Fourteenth Amendment increased. It used the due process clause to strike down many state laws and to incorporate parts of the Bill of Rights. This is called the doctrine of incorporation. The Fourteenth Amendment fundamentally changed the Founders' Bill of Rights. Whether it has been altered for the better or for the worse is debated still today.

**STUDENT HANDOUT - A***The Bill of Rights and* **INCORPORATION****Focus Quotation**

**Directions:** Read the following proposed amendment to the Constitution and then answer the questions below.

**No state shall violate the equal rights of conscience, or the freedom of the press, or the trial by jury in criminal cases.**

–James Madison’s proposed amendment to the Constitution, June 8, 1789, in the House of Representatives

**1.** How does this proposed amendment differ from those that were approved and eventually became the Bill of Rights?

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**2.** If you had been a representative, what would you have said when this amendment was debated?

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## Amendment XIV

**Section 1.** All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States;

nor shall any State deprive any person of life, liberty, or property, without due process of law;

nor deny to any person within its jurisdiction the equal protection of the laws.

STUDENT HANDOUT – C

The Bill of Rights and INCORPORATION

What are “Privileges and Immunities”?

Directions: Answer the following questions and then follow your teacher’s directions.

“No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States...”–Amendment XIV, Section 1

- 1. What does the word “privilege” mean to you?
- 2. What do you think the privileges of U.S. citizens should be?
- 3. What does the word “immunity” mean to you?
- 4. What do you think the immunities of U.S. citizens should be?

Directions: After reading the Background Essay and Handout D, fill in the chart of Supreme Court interpretations of “privileges and immunities.” After you complete the chart, circle any that you also listed above.

Supreme Court Interpretations:	Privileges	Immunities
Dred Scott v. Sanford (1857)		
Slaughterhouse Cases (1873)		

5. Did the Supreme Court define “privileges and immunities” more narrowly or widely than you? Why do you think that is?

*The Bill of Rights and* **INCORPORATION*****Supreme Court Interpretations of Privileges and Immunities***

**Directions:** Read the following opinions and fill in the chart on **Handout C**.

***Dred Scott v. Sanford, 1857***—This decision (which came before the Fourteenth Amendment) uses the term “privileges and immunities” more than twenty times. John Bingham, principal author of the first section of the Fourteenth Amendment, used the term specifically to overturn this decision, which held that blacks could never be citizens.

...For if they [blacks] were ... entitled to the privileges and immunities of citizens, it would ... give to persons of the negro race, who were recognized as citizens in any one State of the Union, the right to enter every other State whenever they pleased, singly or in companies, without pass or passport, and without obstruction, to sojourn there as long as they pleased, to go where they pleased at every hour of the day or night without molestation, unless they committed some violation of law for which a white man would be punished; and it would give them the full liberty of speech in public and in private upon all subjects upon which its own citizens might speak; to hold public meetings upon political affairs, and to keep and carry arms wherever they went.

***Slaughterhouse Cases, 1873***—This decision narrowed the scope of the privileges and immunities clause.

... We venture to suggest some [privileges and immunities] which owe their existence to the Federal government, its National character, its Constitution, or its laws.

... It is said to be the right of the citizen of this great country, protected by implied guarantees of its Constitution, “to come to the seat of government to assert any claim he may have upon that government, to transact any business he may have with it, to seek its protection, to share its offices, to engage in administering its functions. He has the right of free access to its seaports, through which all operations of foreign commerce are conducted, to the sub-treasuries, land offices, and courts of justice in the several States.”

Another privilege of a citizen of the United States is to demand the care and protection of the Federal government over his life, liberty, and property when on the high seas or within the jurisdiction of a foreign government. ... The right to peaceably assemble and petition for redress of grievances, the privilege of the writ of *habeas corpus*, are rights of the citizen guaranteed by the Federal Constitution. The right to use the navigable waters of the United States, however they may penetrate the territory of the several States, all rights secured to our citizens by treaties with foreign nations, are dependent upon citizenship of the United States, and not citizenship of a State....

## TEACHER'S GUIDE

*The Bill of Rights and* **INCORPORATION****Critical Engagement Question**

*Which parts of the Bill of Rights (if any) should be incorporated to the states by the Fourteenth Amendment?*

**LESSON 2*****The Incorporation Debate***

*Those reading the English language with the meaning which it ordinarily conveys, those conversant with the political and legal history of the concept of due process, those sensitive to the relations of the States to the central government...would hardly recognize the Fourteenth Amendment as a cover for the various explicit provisions of the first eight Amendments.*

—FELIX FRANKFURTER

*My study of the historical events that culminated in the Fourteenth Amendment, and the expressions of those who sponsored and favored, as well as those who opposed its submission and passage, persuades me that one of the chief objects that the provisions of the Amendment's first section...were intended...to make the Bill of Rights applicable to the states.*

—HUGO BLACK

**Overview**

Does the Fourteenth Amendment require total incorporation of the Bill of Rights or rather, incorporation of only fundamental liberties? More than a century after the amendment's ratification, this debate continues. What is not debatable, however, is the fact that the Fourteenth Amendment has increased the power the federal government. In this process, citizens have become more reliant on the federal government.

**Materials**

Background Essay: The Incorporation Debate (★★ indicates grade twelve reading level; ★ indicates grade ten reading level.)  
Handout A: Focus Quotation  
Handout B: Amendments/Supreme Court Cases Matching  
Answer Key

**Objectives****Students will:**

- identify the amendments that are currently incorporated to the states.
- understand the debate between “total” and “selective” incorporation.
- understand citizens' responsibility to challenge the state when fundamental rights are infringed upon.
- evaluate the importance of Supreme Court cases in incorporating the Fourteenth Amendment.

- appreciate the role of Supreme Court justices in interpreting the Fourteenth Amendment.

**Standards**

NCHS: Era 3, Standard 3; Era 5, Standard 3

CCE: IA1, IB4, IIC1

NCSS: Strands 2, 5, 6, and 10

**Background/Homework**

**A.** Have students read **Background Essay: The Incorporation Debate**.

**B.** Have students decide which (if any) of the first eight amendments they believe should be incorporated to the states. For each amendment, instruct them to write a brief explanation of their reasoning.

**Anticipatory Activity [10 minutes]**

**A.** Distribute or put up an overhead of **Handout A: Focus Quotation**. Call on volunteers to read their responses and have a brief class discussion.

**Activity [25 minutes]**

**A.** Distribute a copy of **Handout B: Amendments/Supreme Court Cases Matching**.

**B.** Allow students time to read the case descriptions and draw a line connecting the case on the left with the amendment it incorporates on the right.



## The Bill of Rights and INCORPORATION

C. Instruct students to place a check mark (✓) next to amendments that are fully or partially incorporated and an "X" next to those that have not been incorporated.

D. Use the **Answer Key** to go over correct answers.

### Wrap-Up [10 minutes]

A. Have students compare the reality of selective incorporation with their answers from the homework assignment. Poll the class for each amendment, having students raise their hands if their response differed from the reality.

B. As a large group, discuss the following questions:

- Is total incorporation, selective incorporation, or no incorporation the best approach to the Fourteenth Amendment and the Bill of Rights?
- Why do you think the Second, Third, and Seventh Amendments have not been incorporated to the states?
- The Founders wrote the Bill of Rights to apply only to the national government. Why do you think this is? Didn't they believe Bill of Rights protections were important?

### Homework

A. Have students write one or two paragraphs in response to the question: Whose opinion, Justice Black's or Justice Frankfurter's, is more rooted in the Constitution?

B. Have students compile a timeline of incorporation cases including, but not limited to the cases in the **Background Essay** and

**Handout B.** Have students write a paragraph that summarizes the definition of incorporation.

### Extensions

A. Have students research the debate about Second Amendment incorporation and prepare for a class debate on the topic. Suggest

they consider the opinions in the following cases: *United States v. Cruikshank*, (1876); *Presser v. Illinois*, (1886); *Miller v. Texas* (1894); *United States v. Miller* (1939); *Lewis v. United States* (1980).

B. Have students write a one-page essay defending one of the following theses:

*The doctrine of incorporation did away with state sovereignty and would have appalled the Founders.*

Or,

*The doctrine of incorporation forces state governments to better protect the rights of citizens and would have pleased the Founders.*

### Responsibilities Toolbox



Have students brainstorm a list of responsibilities of citizenship that go along with the incorporation of most of the Bill of Rights to the states. You might prompt them with the statements, "I am responsible for knowing..." and "I am responsible for doing..."

In addition to the ideas students generate, you may want to add:

- knowing what Bill of Rights protections apply at state level, and which do not.
- understanding incorporation's impact on American identity.
- understanding the increased power of the federal government due to incorporation.

## BACKGROUND ESSAY ★★

*The Bill of Rights and* **INCORPORATION*****The Incorporation Debate***

# What are our fundamental freedoms as Americans?

In the process of bringing the states under the provisions of the Bill of Rights, several Supreme Court justices wondered how far incorporation should go. Incorporation is the process of applying the Bill of Rights to the states. In 1937, Justice Benjamin Cardozo wrote that the Court was “selectively incorporating” rights it considered “so rooted in the traditions and conscience of our people as to be ranked as fundamental.” These fundamental rights, Cardozo added, included only those “implicit in the concept of ordered liberty.” Cardozo’s words, unfortunately, give little guidance for determining what rights are fundamental.

The most famous debate on incorporation was waged between Justices Hugo Black and Felix Frankfurter. Dissenting in *Adamson v. California* (1947), Black supported “total incorporation,” the idea that every provision of the Bill of Rights applies to the states. The due process clause of the Fourteenth Amendment, Black argued, protects the life, liberty and property of Americans, and the most complete expression of American liberty is found in the Bill of Rights. Black also argued that the privileges and immunities clause directly incorporates the Bill of Rights: “The words ‘No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States’ seem an eminently reasonable way of expressing the idea that henceforth the Bill of Rights shall apply to the states.”

Justice Frankfurter, on the other hand, argued that the Fourteenth Amendment does not require incorporation of any provision of the Bill of Rights. Rather, it requires



states to honor principles of “fundamental fairness.” While these principles might overlap with the Bill of Rights, they are not inevitably connected. In *Rochin v. California* (1952), Frankfurter argued that the Court should indeed apply the Bill of Rights when actions taken by a state “shock the conscience.” Black retorted that Frankfurter’s flexible philosophy “must inevitably imperil all the individual liberty safeguards” found in the Bill of Rights.

**Incorporation’s Impact**

Incorporation has had two major effects: 1) increasing the Supreme Court’s power to define rights, and 2) changing the meaning of the Bill of Rights from a series of limits on government power to a set of rights belonging to the individual and guaranteed by the federal government. With incorporation, the Supreme Court became busier and more influential. Incorporation also gave more power to American citizens, who now have an avenue for challenging most government action.

As the Supreme Court’s responsibilities increased along with the legal protections afforded American citizens, the federal government has become larger, especially

## ★ ★ BACKGROUND ESSAY

*The Bill of Rights and* **INCORPORATION**

since 1900. The federal government has expanded in regard to business regulation in the early 1900s, New Deal programs (1930s), military strength during World War II, antipoverty Great Society programs (1960s), environmental regulation and education (1970s), nuclear arms race in the Cold War Era, and health entitlements in the 1990s. During the same period, state governments have also expanded. All this growth in local, state, and federal activities has extended the Court's reach as the number of possible conflicts involving the law has risen.

In response to the increase in the Court's power, Americans have shifted their view of themselves as citizens. Well into the nineteenth century, most Americans thought of themselves as citizens of their respective states. With the Bill of Rights applying to the states and state sovereignty declining during the Civil War, the Progressive Era, and the New Deal, Americans began to see the federal government as the main protector of their rights. With these changes, citizens began to think of themselves as citizens of America, rather than their individual states.

Some legal scholars applaud federally guaranteed rights as the fulfillment of the Declaration of Independence and its promise of inalienable rights. They also point to instances where states' infringements of individual rights were in desperate need of remedy. Critics complain, however, that federal dominance undermines the Founders' ingenious system of federalism, which was designed to protect the rights of individuals from the federal government along with the sovereignty of states.

One point is clear: A powerful Supreme Court—which acts as the protector of individual rights—makes understanding the specific protections listed in the Bill of Rights more important than ever. Since the United States government depends on the consent of the governed, it is the responsibility of citizens to know their rights, and understanding the doctrine of incorporation is an essential part of this task.

## BACKGROUND ESSAY ★

*The Bill of Rights and* **INCORPORATION*****The Incorporation Debate***

# What are our fundamental freedoms as Americans?

Several Supreme Court Justices have wondered how far incorporation should go. Incorporation is the process of applying the Bill of Rights to the states. In 1937, Justice Benjamin Cardozo wrote that the Court was “selectively incorporating” rights. It incorporated rights “so rooted in the traditions and conscience of our people as to be ranked as fundamental.” These fundamental rights included only those “implicit in the concept of ordered liberty.” Cardozo’s words, unfortunately, leave many questions as to which rights are fundamental.

The most famous debate on incorporation was waged between Justices Hugo Black and Felix Frankfurter. Black was in favor of applying the entire Bill of Rights to the states. Frankfurter believed no part of the Bill of Rights needed to be incorporated.

Dissenting in *Adamson v. California* (1947), Black supported “total incorporation.” Total incorporation means applying every part of the Bill of Rights to the states. Black argued that the due process clause of the Fourteenth Amendment protects the life, liberty, and property of Americans. Furthermore, the most complete statement of American liberty is found in the Bill of Rights. Black also argued that the privileges and immunities clause directly incorporates the Bill of Rights. He said, “The words ‘No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States’ seem an eminently reasonable way of expressing the idea that henceforth the Bill of Rights shall apply to the states.”



Justice Frankfurter, on the other hand, argued that the Fourteenth Amendment does not require applying any part of the Bill of Rights to states. He said that it means states must honor principles of “fundamental fairness.” These principles might happen to overlap with the Bill of Rights, but they are not always connected. In *Rochin v. California* (1952), Frankfurter said the Court should indeed apply the Bill of Rights when actions taken by a state “shock the conscience.”

Black responded that Frankfurter’s flexible theory was a threat to “all the individual liberty safeguards” in the Bill of Rights.

**Incorporation’s Impact**

Incorporation produced two major effects. First, it has given the Supreme Court more power to define rights and has changed the meaning of the Bill of Rights. Originally, the Bill of Rights was a series of limits on government power. Incorporation transformed these to a set of rights belonging to the individual and guaranteed by the federal government. Incorporation expanded



## *The Bill of Rights and* **INCORPORATION**

the Supreme Court's influence and docket. It also gave more power to American citizens, who now have an avenue for challenging most government action.

As the Supreme Court's responsibilities increased along with the legal protections afforded American citizens, the federal government became larger, especially after 1900. The federal government has expanded in regard to business regulation in the early 1900s New Deal programs in the 1930s, military strength during World War II, antipoverty Great Society programs in the 1960s, environmental regulation and education in the 1970s, the nuclear arms race in the Cold War Era, and health entitlements in the 1990s.

State governments also expanded during this period. All this growth in local, state, and federal activity created potential for more conflict of power. As a result, it has extended the Supreme Court's reach.

In response to the changing view of government, Americans have shifted their view of themselves as citizens. Well into the nineteenth century, most Americans thought of themselves as citizens of their states. They were considered Virginians or Georgians. Over the last

century more Bill of Rights protections were applied to states. In addition, state sovereignty declined during the Civil War, the Progressive Era, and the New Deal. With these changes, citizens began to think of themselves as citizens of America. The federal government became the main protector of citizens' rights in many cases.

Some legal scholars applaud incorporation. They view it as the achievement of the Declaration of Independence's promise of inalienable rights. They also point to instances in history where states' infringements of individual rights were in desperate need of remedy. Critics complain, however, that federal authority undermines the original system of federalism. The system was designed to protect individual rights along with state sovereignty.

One point is clear: A powerful Supreme Court, which acts as the protector of individual rights, makes understanding the specific protections listed in the Bill of Rights more important than ever. Since the United States government depends on the consent of the governed, it is the responsibility of citizens to know their rights. Understanding the Bill of Rights and the doctrine of incorporation is a vital part of this task.

**STUDENT HANDOUT - A***The Bill of Rights and* **INCORPORATION****Focus Quotation**

**Directions:** *Read the following quote and respond to the question below.*

**There is suggested merely a selective incorporation of the first eight Amendments into the Fourteenth Amendment. Some are in and some are out, but we are left in the dark as to which are in and which are out. Nor are we given the calculus for determining which go in and which stay out.**

–Supreme Court Justice Felix Frankfurter, 1947

How do you think the United States Supreme Court should decide which amendments (if any) to incorporate?

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## The Bill of Rights and INCORPORATION

### Amendments/Supreme Court Cases Matching

**Directions:** Read the case descriptions and note the amendment(s) it incorporated to the states on the line next to each case. Then place a check mark (✓) in the box next to amendments that are fully or partially incorporated and an "X" next to those that have not been incorporated.

#### Cases

*Mapp v. Ohio* (1961)—incorporated the exclusionary rule (evidence obtained in an illegal search is not admissible in state court). \_\_\_\_\_

*Gideon v. Wainwright* (1963)—required states to provide counsel to indigent (poor) defendants in all felony cases. \_\_\_\_\_

*Everson v. Board of Education* (1947)—“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.” \_\_\_\_\_

*Robinson v. California* (1962)—state law allowing a 90 day prison sentence for drug usage (a misdemeanor) was unconstitutional because it was out of proportion to the crime. \_\_\_\_\_

*Gitlow v. New York* (1925)—states can only restrict political speech if it creates a “dangerous tendency.” \_\_\_\_\_

*Malloy v. Hogan* (1964)—incorporated protection against self-incrimination to states. \_\_\_\_\_

*Miranda v. Arizona* (1966)—states must inform accused of protection to self-incrimination and right to assistance of counsel. \_\_\_\_\_

*Duncan v. Louisiana* (1968)—a trial by jury must be provided by the state in criminal proceedings when a significant sentence is possible. \_\_\_\_\_

*Near v. Minnesota* (1931)—state “gag law” violated a newspaper’s right to publish criticism of government officials. \_\_\_\_\_

*Benton v. Maryland* (1969)—protected accused from being tried twice by the state for the same crime (double jeopardy). \_\_\_\_\_

*DeJonge v. Oregon* (1937)—protected right of communist party leader to meet as long as it was peaceful. \_\_\_\_\_

*Klopper v. North Carolina* (1967)—ruled that states must guarantee the accused a prompt trial. \_\_\_\_\_

*Cantwell v. Connecticut* (1940)—protected Jehovah’s Witnesses from a state law restricting their right to go door to door handing out literature. \_\_\_\_\_

*Pointer v. Texas* (1965)—ruled that states must allow accused persons to confront adverse witnesses (prosecution witnesses). \_\_\_\_\_

*Chicago, Burlington & Quincy Railway Co. v. Chicago* (1897)—required compensation to citizens for property seized by state and local government. \_\_\_\_\_

#### Amendment

##### 1st Amendment

freedom of religion, speech, press, assembly and petition ☐

##### 2nd Amendment

the right to keep and bear arms ☐

##### 3rd Amendment

no quartering of troops in homes ☐

##### 4th Amendment

warrant requirement; freedom from unreasonable searches ☐

##### 5th Amendment

due process, protection from self-incrimination and double jeopardy, grand juries, just compensation for taken property ☐

##### 6th Amendment

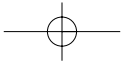
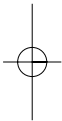
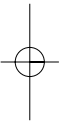
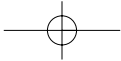
jury trials, right to counsel and to call and cross-examine witnesses ☐

##### 7th Amendment

jury trials in civil cases ☐

##### 8th Amendment

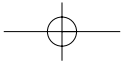
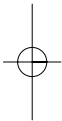
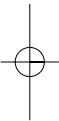
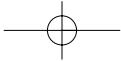
protection against excessive bail, fines, and cruel and unusual punishment ☐





# ANSWER KEY





# ANSWER KEY

## **Founders Lesson One**

### **Handout E: Focus Quotations**

1. We must always work for liberty. It is God's gift to us, and even if it weren't, our ancestors gave their lives and fortunes for it.
2. People are born with their rights; government does not grant them to us.
3. Our rights don't exist because they are written down. We have them because of God's will and natural law. No one can take them away.
4. Everyone is born with equal rights to life, liberty, happiness, and property.
5. Our ancestors were dedicated to liberty. We've inherited that spirit from our ancestors. England was strong not because she had a strong government, but rather because her citizens loved liberty.
6. The purpose of all just government is to protect the rights of the people. A government which has a goal other than this is an unjust one.

## **Handout F: Our Legacy of Rights**

**Chart:** *Magna Carta*—Amendments 1, 3, 4, 5, 6, 8; Petition of Right—Amendments 4, 5, 6, 8; English Bill of Rights—1, 2, 4, 5, 6, 8; Right violated in the colonies—1, 2, 3, 4, 5, 6, 8.

1. Rights protected by government seem to expand; on the other hand, governments have a history of violating the rights they exist to protect.
2. Perhaps they were considered more important than the others; or perhaps they were more frequently violated by government and therefore believed more important to secure in writing.
3. The natural rights philosophy articulated in the document influenced the Founders.
4. God, or nature.

5. Governments do not give us our rights. We are born with our rights, and the purpose of government is to protect those rights.

## **Founders Lesson Two**

### **Handout A: Focus Quotations**

#### **Federalist Arguments**

1. A bill of rights might make it easier for government to take our rights away, because it will make people think the government has more power than it actually does. If we say the government can't do certain things, people will assume it has every power not forbidden to it.
2. We don't need a federal bill of rights because the state bills of rights are enough.

#### **Anti-Federalist Arguments**

1. The people deserve a bill of rights, and we shouldn't be comfortable leaving our rights as merely inferred.
2. We know that the government only has those powers the Constitution says it has, but it doesn't hurt anything to emphasize that again.

## **Religion Lesson One**

### **Handout A: Focus Quotation**

1. The only good basis for education in a republic is religion. This is because religion is the foundation of virtue, and if the people aren't virtuous, they cannot be free.
2. Answers will vary.

# ANSWER KEY

## Religion Lesson Two

### Handout A: Case Cards

1. *Cantwell v. Connecticut* (1940): Restrictions based on religion were unconstitutional; affirmed an absolute freedom to believe, the right to peacefully impart views to others, and required a “compelling state interest” to restrict.

2. *Sherbert v. Verner* (1963): States could not deny state benefits for turning down a job that requires work on the Sabbath.

3. *Thornton v. Caldor, Inc.* (1985): Struck down law prohibiting firing of employees who refused to work on any day they claimed was their Sabbath.

4. *Employment Division v. Smith* (1990): Oregon could deny unemployment benefits to someone dismissed for smoking peyote.

5. *Locke v. Davey* (2004): States could deny public scholarship funds to students pursuing divinity degrees.

6. *Braunfeld v. Brown* (1961): A Pennsylvania law requiring stores to be closed on Sundays was upheld, even though Orthodox Jews claimed an “undue burden.”

7. *McDaniel v. Paty* (1978): Overturned a Tennessee law barring members of the clergy from public office.

8. *Wisconsin v. Yoder* (1972): Amish teens could be exempt from compulsory education.

9. *United States v. Lee* (1982): Amish must pay Social Security taxes.

10. *Goldman v. Weinberger* (1986): Upheld an Air Force ban on Jewish skullcaps (yarmulkes).

11. *Lyng v. Northwest Indian Cemetery Protective Association* (1988): The U.S. Forest Service could build roads through land believed by Native Americans to be sacred.

12. *Church of the Lukumi Babalu Aye v. City of Hialeah*

(1993): Struck down Florida laws banning animal sacrifice because they were targeted at the Santeria religion.

### Handout B: Focus Quotation

Beliefs/Actions may include:

1. Fasting as a means of purification / abstaining from eating at certain times

2. Prayer necessary several times a day / taking breaks during the workday to pray

3. Belief in healing through prayer / refusing medical treatment or vaccinations

4. Importance of sacraments / baptizing babies, taking communion, being married

5. Importance of Kosher preparation / keeping Kosher diet

6. Multiple wives necessary for salvation / engaging in polygamy

7. Peyote essential for mystical experiences / smoking peyote

8. Belief that everything is conscious and has a soul (animism) / vegetarian or vegan diet

9. Belief in need for religious instruction / home schooling children

10. Particular clothing required by faith / wearing headscarves, yarmulkes, saris

11. Birth control is a sin / not using birth control (or refusing to dispense birth control if a medical provider)

### Handout C: Balance of Rights and Restrictions

Cases which strengthened individual free exercise:

*Cantwell v. Connecticut* (1940); *Sherbert v. Verner* (1963); *Wisconsin v. Yoder* (1972); *Church of the Lukumi Babalu Aye v. City of Hialeah* (1993).

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Cases which limited free exercise: *Thornton v. Caldor, Inc.* (1985); *Employment Division v. Smith* (1990); *Locke v. Davey* (2004); *Braunfeld v. Brown* (1961); *United States v. Lee* (1982); *Goldman v. Weinberger* (1986); *Lyng v. Northwest Indian Cemetery Protective Association* (1988).

Suggested statements: Governments may restrict an individual's right to freely exercise religion when it can prove there is a compelling state interest in doing so, for instance when it would infringe on the guaranteed rights of other citizens or endanger public health or welfare. It cannot, however, target certain groups or religions and must make reasonable exceptions for groups unless the accommodation will cause harm to others.

## Expression: Lesson One Handout A: Focus Quotation

1. Students may agree that even "speech that we hate" is important because then government cannot restrict political speech with which it disagrees. Students may disagree, stating that when speech intrudes on someone else's rights it should be limited. Examples may include screaming "fire" in a crowded theater, words that incite others to violence, and obscenity.
2. "I disapprove of what you say, but I will defend to the death your right to say it unless you will inflict real harm on someone else or cause a riot."

## Handout B: Freedom of Speech Annotated Timeline

Above the timeline:

**English Bill of Rights** (1689)—Protected free speech in Parliament

**Colonial Charters** (1606–1776)—Most had provisions protecting speech

**First Amendment** (1791)—Congress cannot abridge freedom of speech

**Garrison v. Louisiana** (1964)—States cannot criminalize the criticizing of a public official

**Tinker v. Des Moines** (1969)—Permits students to wear clothing for political reasons as long as it does not interfere with the educational process (*May be placed on both lists*)

**Brandenburg v. Ohio** (1969)—Ku Klux Klan leader's First Amendment rights were violated when arrested for hate speech (*May be placed on both lists*)

**Texas v. Johnson** (1989)—Declared Texas' flag desecration law as an unconstitutional restriction of "expressed" or "symbolic" political speech

**Cohen v. California** (1971)—The Court protected the right to display an expletive because it wasn't addressed at anyone (not a "fighting word") and expressed emotion

**Reno v. ACLU** (1997)—Struck down the 1996 Communication Decency Act as an unconstitutional restriction on speech based in part on the vagueness of the term "indecent"

Below the timeline:

**Schenck v. United States** (1919)—Advocating draft dodging was not protected because it presented a "clear and present danger" to the nation

**United States v. American Library Association** (2003)—Upheld a law requiring libraries that receive federal funds to filter out inappropriate content or forego the funding

**Tinker v. Des Moines** (1969)—Government can restrict expressed speech in schools when it interferes with the educational process (*May be placed on both lists*)

**Brandenburg v. Ohio** (1969)—Speech can be restricted if 1) it incites "imminent lawless action," or 2) it is "likely to incite such action" (*May be placed on both lists*)

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## Expression Lesson Three

### Handout A: Focus Quotation

1. The government cannot deny groups the right to demonstrate just because they worry there is a potential to cause trouble. Free speech will help the problem, not make it worse.
2. Students may suggest women's suffrage conventions and parades; civil rights demonstrations; anti-war rallies; the Million Man March; the Million Mom March; Promise Keepers rallies; immigration rallies; and others.

### Handout B: First Amendment Zone

First Amendment violation—"First Amendment Zones" are a violation of free speech, assembly, and petition because the group that is attempting to express a viewpoint to the government official cannot even be seen by the official. While the protestors can still speak and assemble, they cannot be heard. What good is a petition for redress if no one is able to hear it? *Edwards v. South Carolina* (1963) established that if a demonstration is peaceful it could not be restricted. Establishing zones before the demonstration begins does not follow that precedent. Also, the case of *National Socialist Party of America v. Village of Skokie, Illinois* (1978) established that the content of a message could not be a deciding factor. Since pro-administration groups were able to demonstrate along the parade route, the precedent in this case was violated.

No First Amendment violation—This is a constitutional balance of liberty and security and therefore does not violate the First Amendment. In the case of the 2005 inaugural, "First Amendment Zones" were set up to protect the life of the president, and, therefore, national security. The case *Schenck v. Pro-Choice Network of Western New York* (1997) permitted "buffer zones" around clinics to maintain safety, so these zones to keep the president safe should be allowed. Like the protestors at the abortion clinics, there is a possibility of physical confrontation and, therefore, danger to the person being protected whether that is a woman seeking services or the president. The protestors still have the right to

assemble, petition, and speak. They are only restricted as to the location of the protest.

## Guns Lesson One

### Handout A: Focus Quotation

1. Because people have the right to defend themselves and their communities, government will not infringe on their right to own weapons.
2. Students may say both clauses were included so that the Founders could emphasize the importance of free ownership of weapons in a free society. Some may say that the first clause restricts the meaning of the second, limiting gun ownership to members of militias. Others may respond that the Founders would have considered all capable adult men to be members of the militia, and that therefore the first clause does not restrict the second clause, but rather emphasizes that freedom depends in part on free ownership of weapons.

### Handout B: Discussion Guide

1. The group representing the British Soldiers may claim they own the weapons. The Sons of Liberty will likely say the guns belong to them. The Town Council may attempt to find a middle ground. Students should consider the question of gun ownership in terms of the colonial power struggle as well as individual rights.
2. Sons of Liberty might say that to insist on keeping all their weapons is to resist tyranny. British Soldiers may say that colonists should not have weapons, because rebellion jeopardizes the safety of citizens. The Concord Town Council should recognize the complexity of the situation—there are good reasons to help the British soldiers maintain order, and there are also good reasons to support the Sons of Liberty as they fight against British rule.
3. Students should consider the issue of gun control by governmental authority as opposed to personal ownership as addressed in the first question. Some students will say the residents of Concord own the weapons, but

# ANSWER KEY

the British have the right to regulate or “control” them by confiscation. Others will claim the British do not have the power to abridge the claimed natural right of people to defend themselves with guns.

Student responses to what the Concord Town council should recommend might fall in these main categories:

- Let the British confiscate the weapons; then work with the British government to settle grievances and maintain peace.
- Fight against the British soldiers and start a war with the mighty British empire.
- Run away and hide as many weapons as possible to prepare for guerrilla warfare.

## Private Property Lesson One

### Handout A: Focus Quotations

1. Property is everything that a person has the exclusive right to.
2. The first kind of property refers to physical, tangible things of value.
3. The second kind of property is a person's beliefs and his or her right to express them.
4. Within the second kind of property is the free exercise of religion.
5. Within the second kind of property is ownership of self, and personal liberty.
6. Within the second kind of property is the right to make choices and take actions that will allow for the acquisition, use, and exchange of the first kind of property.
7. The right to property is one kind of right—all people also “own” all their other rights.
8. The purpose of government is to protect rights. Just governments will protect all kinds of property.

9. The most important kind of property is the individual's mind and his or her right to his own beliefs. Protecting physical property is not enough—governments must also respect the rights of conscience.

10. The U.S. should respect both physical property and the property people have in their opinions, religious beliefs, bodies, and personal choices.

### Discussion Questions

1. Physical property including land and money, as well as his beliefs, opinions, and conscience.
2. All natural rights spring from the individual. Just as a person's belongings are his physical property, a person's conscience belongs exclusively to him or herself as well.
3. All of a person's physical and intellectual belongings: land, money, and other tangible things, along with his personal liberty.
4. Answers will vary.
5. A necessary implication of an individual's right to direct the action of his or her body and mind is the enjoyment of the rewards of those actions—in other words, the right to acquire, use, and exchange property.

## Handout B: Property and the Bill of Rights

Physical property protections: 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; Amendment V: 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 VII: In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; Amendment XIII: Excessive bail shall not be required, nor excessive fines imposed.

# ANSWER KEY

“The most sacred property” protections: 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 V: nor shall be compelled in any criminal case to be a witness against himself; Amendment IX: The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

## ***Private Property Lesson Two*** **Handout A: Focus Quotation**

1. removed from the owner’s possession, destroyed, built over, made unusable
2. something for the service of the people
3. In addition to the ideas students generate, you may wish to add: a highway, railroad, library, school, national park, hiking trail, military base, museum, government office, post office, and other types of facilities.

## ***Criminal Procedure Lesson One*** **Handout A: Focus Quotation**

1. “It’s better if a guilty person goes free than if the laws are broken to convict him.” Or, “It’s worse to convict someone without following the law, than to let someone go free who is really guilty.”
2. Answers will vary.

## **Handout C: “Life without the Bill of Rights” Story**

1. Warrant to search the kitchen of John Q. Public and its contents.
2. He was left to wonder what exactly he had been arrested for...

3. Eventually, he was told that if he could post one million dollars bail...

4. “Can I at least talk to an attorney?” He’d beg, but the answer was always, “no.”

5. A year passed.

6. Johnny was transported from Virginia to Pennsylvania for trial.

7. He saw an empty jury box and asked, “Where’s my jury?” He was told he couldn’t have one because judges were better at determining guilt.

8. The DA said, “The prosecution calls Johnny Q. Public to the stand.” Johnny didn’t want to testify, but was told he would be in contempt of court if he did not.

9. A month later, Johnny was arrested again for the same charge.

10. The district attorney refused to allow him to question them.

11. “Your neighbor didn’t want to get involved, and refused to appear. Sorry, young man, there’s nothing we can do.”

12. Sentenced to 5 years in a maximum security prison.

## **Handout D: “Life without the Bill of Rights” Story Key**

(1) Fourth Amendment, “particularly describing the place to be searched, and the persons or things to be seized” (2) Fifth Amendment, “unless on a presentment or indictment of a Grand Jury” (3) Eighth Amendment, “Excessive bail shall not be required” (4) Sixth Amendment, “and to have the Assistance of Counsel for his defense” (5) Sixth Amendment, “speedy and public trial” (6) Seventh Amendment, “of the State and district wherein the crime shall have been committed” (7) Sixth Amendment “by an impartial jury” (8) Fifth Amendment, “nor shall be compelled in any criminal case to be a witness against him-



# ANSWER KEY

self” (9) Fifth Amendment, “nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb” (10) Sixth Amendment, “to be confronted with the witnesses against him” (11) Sixth Amendment, “to have compulsory process for obtaining witnesses in his favor” (12) Eighth Amendment, “nor cruel and unusual punishments inflicted”

## Criminal Procedure Lesson Two

### Handout A: Focus Quotation

1. “The reason the Founders included the Fourth Amendment was because they were afraid a majority might try to take those rights away for their own advantage;” Or, “The Founders put the Fourth Amendment in to protect people from a majority in government taking away their rights to make it easier on themselves.”

2. Security measures in wartime that may abridge civil liberties, “sneak and peek” searches, secret wiretapping, government investigation of banking records, email surveillance, claimed rights of enemy combatants. Other issues might include increased crime, illegal immigration, and drug abuse.

### Handout B: Fourth Amendment Definitions

1. able to feel safe, safe from government intrusion, safe from harm
2. too intrusive, government too powerful, not justified, not what a reasonable person would support
3. looking for items or persons, testing for drugs/alcohol, wiretapping, reading email

### Handout C: Supreme Court Interpretations Chart

*United States v. Katz* (1967)—secure, unreasonable  
*Kyllo v. United States* (2001)—secure, unreasonable  
*Skinner v. Railway Labor Executives* (1989)—search, unreasonable

*New Jersey v. TLO* (1985)—secure, unreasonable  
*Vernonia School District v. Acton* (1995)—secure, search, unreasonable  
*Board of Education of Pottawatomie County v. Earls* (2002)—secure, search, unreasonable

### Handout D: Should You Expect Privacy?

1. No—*California v. Greenwood* (1988)—The trash bag was “readily accessible to animals, children, scavengers, snoops, and other members of the public” so there was no expectation of privacy.
2. No—*California v. Acevedo* (1991)—The Court ruled that the “automobile exception” can be applied to closed containers they believe hold evidence (drugs in Acevedo’s case).
3. No—This is in the public domain and there is no expectation of privacy.
4. Yes—*Katz v. United States* (1967)—Wiretapping of a phone booth was inadmissible because the Constitution protects “people, not places.”
5. Yes—Police need a warrant to tap land-line phones.
6. No—Schools may search abandoned property.
7. No—*California v. Ciraolo* (1986)—A police fly-over was “nonintrusive” and “took place within public navigable airspace.”
8. No—Schools retain ownership of the locker. Students only use the locker temporarily, since it is school property there is no “expectation of privacy” from school officials or random searches (including drug dogs). This does not apply however to police officers who still require a warrant to search a specific locker.
9. No—*Minnesota v. Carter* (1998)—people who visit a home for a short period of time—as opposed to those who stay overnight or for several nights—do not have the same protection from unreasonable search and seizure as residents of the home do.

# ANSWER KEY

**10.** Yes—*Bond v. United States* (2000)—Police felt a brick-like object in a passenger’s bag that turned out to be drugs. The evidence was suppressed because bags are not usually examined in this manner so Bond had a reasonable expectation of privacy.

**11.** “People are secure in their own homes and where most citizens would consider private. But if others can see or hear you, then you are not protected. In schools, you are hardly ever protected because safety comes first.”

## ***Citizen Juries Lesson One*** **Handout A: Focus Quotations**

**1.** A jury is the only way to keep a government tied to the principles it is supposed to uphold.

**2.** The jury can return a verdict that judges the facts of the case as well as the law the accused is charged with breaking.

**3.** A jury protects against abuse by government. Jury members should not simply follow the law as the judge tells them to. They should actually serve justice.

## ***Citizen Juries Lesson Two*** **Handout B: An Impartial Jury**

### Possible questions and answers:

**1.** Have you ever known anyone who was murdered? People who have known murder victims may judge the accused more harshly, so Mrs. Shackett’s lawyers should look for people who answer “no.”

**2.** What do you do for a living? Doctors, nurses, social workers, and others who work with victims of abuse might be more likely to find Mrs. Shackett not guilty.

**3.** Are you married? Married people may be more likely to find Mrs. Shackett not guilty because of the horrible idea of being abused by a spouse. On the other hand, people with very traditional views of marriage might judge Mrs. Shackett more harshly.

**4.** Do you have children? People with children (perhaps especially mothers with children) might be more likely to accept Mrs. Shackett’s claim that her husband threatened the lives of their children if she tried to leave as a defense for her actions.

**5.** Have you seen movies or documentaries about abused women? People who answer in the affirmative may consider themselves more educated about domestic violence and may be more likely to find Mrs. Shackett not guilty.

**6.** Do you enjoy hunting or going to the rifle range? People with strong views against hunting or guns might feel less sympathy for the victim, as he may have been a hunter (since he had a gun rack in the house).

## ***Personal Liberty Lesson One*** **Handout A: Focus Quotation**

**1.** I can play music, but not so loud that it might bother someone else.

**2.** I can have a dog, but I have to keep it on a leash when we are outside.

**3.** I can share my religious beliefs with others, but I must respect their right to believe differently.

**4.** I can drive a car, but I have to follow the rules of the road.

**5.** I can hang out with my friends, but I have to obey the curfew my parents set.

**6.** Student responses might include: “The right to play music loudly ends where someone else’s ear begins” or “The right to own a dog ends where someone’s injury begins.”

# ANSWER KEY

## Handout B: What does “Liberty” Mean?

Liberty is: “Freedom to do what you want to do as long as it doesn’t infringe on someone else’s rights,” or “The right to choose what you do with your life/make your own decisions.”

## Handout C: Personal Liberties, Responsibilities, and Impact Chart

**Liberty:** smoking. **Responsibilities:** obeying laws about smoking in public places, being considerate of those bothered by smoke. **Impact:** health impact of second hand smoke, damage to furniture or clothing.

**Liberty:** drinking alcohol. **Responsibilities:** obeying the law, moderation. **Impact:** drunk drivers, alcoholism, family dysfunction.

**Liberty:** driving. **Responsibilities:** following traffic rules, maintaining one’s car, having insurance. **Impact:** driving carelessly or recklessly can cause death, injuries, and property damage.

**Liberty:** choosing a career. **Responsibilities:** Attending school or university to achieve job requirements, completing work, treating employer and customers respectfully, arriving regularly and on time. **Impact:** excessive absences can create problems for business, rudeness may cause unhappy customers who may not return, and these will all impact the economy.

## Handout D: Motorcycle Helmet Laws

Student responses may include: “Riding a motorcycle without a helmet should not be a personal liberty because the impact on the public good is too high. It costs too many lives. After all, most states have seatbelt laws which are similar.” or “It should be a personal liberty to ride a motorcycle without a helmet, because it primarily affects only the person making the choice. It doesn’t infringe on the liberty of anyone else.”

## Personal Liberty Lesson Two

### Handout A: The Eleventh Amendment

“The right of the people to be secure in their right to privacy in issues of marriage, relationships, occupation, education, medical treatment, and personal information shall not be violated.” Or, “In situations that do not affect the rights of others, citizens’ right to privacy shall not be abridged.”

### Handout B: Focus Quotations

1. “The Ninth Amendment didn’t set out new rights. It just protected the ones we already had.” Or, “The Ninth Amendment doesn’t say what rights we do have, it says that the government can’t take the rights that have always been ours.”

2. Responses will vary, but may include: marriage; the choice to have an abortion; to decide what substances to ingest; to work at a job of your choosing; to choose your own medical treatment.

### Handout C: “Privacy” Amendments

*Amendment I*—Congress shall make no law ... prohibiting the free exercise [of religion]; or abridging the freedom of speech

*Amendment III*—No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner

*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

*Amendment V*—No person 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 ...

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

# ANSWER KEY

## ***Federalism Lesson One*** **Handout A: Focus Quotations**

1. The powers the national government has are specifically listed, and there aren't very many of them. The state governments have many more powers, and they aren't limited by the Constitution.
2. The balance of power between the state and federal governments is key. It gives the people two ways of protecting their rights. The state governments will be a check on the federal government's power, and the federal government will check that of the state governments.
3. The state governments are the foundation of the federal government. The state governments can exist without the federal government, but the federal government cannot exist without the state governments.

## **Handout C: Federal or National Government?**

1. The Constitution will not be ratified by the people as a whole. Rather, the states will ratify the constitution. Therefore this is a federal act.
2. Members of the House of Representatives are elected directly by the people. The House will have representation based on state population. This is a national quality of the government.
3. The state legislatures will select Senators. Each state will have equal representation in the Senate. This is a federal quality of the government.
4. A national government is one with indefinite powers. The central government created by the Constitution has limited powers that are listed out. The states remain self-governing.

5. The Constitutional amendment process is both national and federal. If it were purely national, it would be done by popular vote. If it were purely federal, all the states would need to agree. A majority of states, not a majority of citizens, is required for ratification of amendments. This makes it federal. However, not all states have to agree. This makes it national. The Constitution is neither completely federal nor completely national. It is a combination of both.

## ***Federalism Lesson Two*** **Handout A: Focus Quotations**

1. Congress has the authority to make rules for business and trade with other countries, between the states, and with American Indian tribes.
2. Answers will vary.

## ***Incorporation Lesson One*** **Handout A: Focus Quotation**

1. The proposed amendment began with the words "No state..." whereas the Bill of Rights was originally written to apply only to the federal government.
2. Student responses may include: "I would have supported this amendment because it is more likely that your state would take away your rights and you need a higher power to keep them in control;" or, "I would have argued against the change. People were already nervous about such a strong central government and this kind of amendment would have all but done away with state sovereignty;" or, "States are closer to their citizens and will be better protectors of individual rights."

## **Handout C: What are "Privileges and Immunities"?**

1. Some things you are allowed to do because you are part of a group (like senior privileges), more than a right, a benefit of belonging.

# ANSWER KEY

2. Personal liberties, civil liberties, traveling/moving from state to state, everything in the Bill of Rights.

3. Protection, safety from harm, invulnerability.

4. Fair trials, not having to testify against oneself or one's spouse, protection from unreasonable government intrusion, safety and national security.

**Dred Scott v. Sanford**, 1857—Privileges: “right to enter every other State whenever they pleased,” “the full liberty of speech,” “hold public meetings upon political affairs” “keep and carry arms.” Immunities: “go where they pleased at every hour of the day or night without molestation”

**Slaughterhouse Cases**, 1873—Privileges: “come to the seat of government,” “assert any claim,” “transact any business he may have with it,” “to share its offices,” “engage in administering its functions,” “free access to its seaports ... to the subtreasuries, land offices, and courts of justice,” “peaceably assemble and petition for redress of grievances,” “writ of *habeas corpus*,” “use the navigable waters,” “become a citizen of any State.” Immunities: “to seek its protection,” “demand the care and protection of the Federal government when on the high seas or within the jurisdiction of a foreign government”

5. Answers will vary.

## Incorporation Lesson Two

### Handout A: Focus Quotation

1. Answers will vary, but may include: “All of the amendments in the Bill of Rights should be incorporated. That would make it clear and simple,” or, “Only the ones that are really important to liberties like the First, or that protect the rights of the accused like the Fifth, Sixth, and Eighth,” or, “No amendments must be incorporated. The Fourteenth Amendment doesn't say anything about the Bill of Rights applying to the states.”

## Handout B: Amendments/Supreme Court Cases Matching

*Mapp v. Ohio* (1961): Fourth Amendment

*Gideon v. Wainwright* (1963): Sixth Amendment

*Everson v. Board of Education* (1947): First Amendment

*Robinson v. California* (1962): Eighth Amendment

*Gitlow v. New York* (1925): First Amendment

*Malloy v. Hogan* (1964): Fifth Amendment

*Miranda v. Arizona* (1966): Fifth and Sixth Amendments

*Duncan v. Louisiana* (1968): Sixth Amendment

*Near v. Minnesota* (1931): First Amendment

*Benton v. Maryland* (1969): Fifth Amendment

*DeJonge v. Oregon* (1937): First Amendment

*Klopfert v. North Carolina* (1967): Sixth Amendment

*Cantwell v. Connecticut* (1940): First Amendment

*Pointer v. Texas* (1965): Sixth Amendment

*Quincy Railway Co. v. Chicago* (1897): Fifth Amendment

1st Amendment: ✓—Fully incorporated

2nd Amendment: X—Last Supreme Court decision in 1876 (rejected)

3rd Amendment: X—No Supreme Court decision

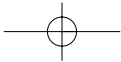
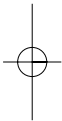
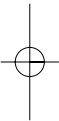
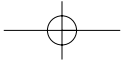
4th Amendment: ✓—Fully incorporated

5th Amendment: ✓—Incorporated except for clause guaranteeing criminal prosecution only on a grand jury indictment

6th Amendment: ✓—Fully incorporated

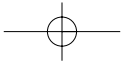
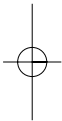
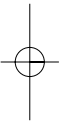
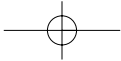
7th Amendment: X—Not incorporated

8th Amendment: ✓—Incorporated with respect to the protection against “cruel and unusual punishments,” but no Supreme Court ruling on the incorporation of “excessive fines” and “excessive bail”



# LANDMARK SUPREME COURT CASES







# LANDMARK SUPREME COURT CASES

## **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 teachers to lead "willing students" in a prayer to "Almighty God . . . the Creator and Supreme Judge of the world" in public schools 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.

# LANDMARK SUPREME COURT CASES

## *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.

## *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.

## *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.

## *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).

# LANDMARK SUPREME COURT CASES

## *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.

## *Locke v. Davey* (2004)

States could refuse to award scholarship funds to college students pursuing theology degrees in preparation for the ministry. The denial of government funding for religious instruction was not a violation of free exercise.

## **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 resist 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 recruiting.

# LANDMARK SUPREME COURT CASES

## *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 cause 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.

## *Island Trees School District v. Pico* (1982)

The Supreme Court ruled that officials could not remove books from school libraries because they disagreed with the content of the books’ messages.

## *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 was 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 receiving federal funds 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.

# LANDMARK SUPREME COURT CASES

## *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 of free speech. States could ban cross-burning with intent to intimidate, but the cross burning act alone was not enough evidence to infer intent.

## *Ashcroft v. ACLU* (2004)

The Child On-Line Protection Act violated the First Amendment because it was overbroad, it resulted in content-based restrictions on speech, and there were less restrictive options available to protect children from harmful materials.

## **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**

### *Rex v. Zenger* (1735)

The colony of New York tried publisher John Peter Zenger for seditious libel against the governor. At that time, truth was not a defense in a libel case. Zenger’s attorney told the jury of their power and duty to judge the law as well as the facts, and the jury acquitted Zenger. Though not a Supreme Court case, this is a landmark freedom of the press case.

### *People v. Croswell* (1804)

Harry Croswell was convicted of libel for printing a story critical of President Thomas Jefferson in his newspaper. Alexander Hamilton represented Croswell on appeal and argued that truth should be a defense for libel. Croswell’s conviction was upheld, but the case led New York to change its law to permit truth as a defense. Though not a Supreme Court case, this is a landmark freedom of the press case.

### *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.

# LANDMARK SUPREME COURT CASES

## *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 was not a public official could 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 First Amendment did not give a television station the right to air the entire act of a performance without the performer’s permission.

## *Hustler v. Falwell* (1988)

The First Amendment prohibited 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 could censor school-sponsored newspapers, because the newspapers were 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 could prohibit demonstrators from assembling in their private malls since the First Amendment applies to public, not private property.

### *Village of Skokie v. 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 which “burden[ed] no more speech than necessary” to protect access to the

# LANDMARK SUPREME COURT CASES

clinic and ensure orderly traffic flow on the street were upheld. The restrictions which 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.

## Right to Bear Arms

*United States v. Cruikshank* (1876)  
The right of the people to keep and bear arms predated the Constitution and the Bill of Rights. They ruled that the right to bear arms was not dependent on the Constitution for its existence; consequently, the Second Amendment only forbade Congress, not the states, from infringing on it.

*Presser v. Illinois* (1886)  
In a case dealing with public military drilling by private organizations, the Supreme Court suggested that the Second Amendment applies to the states through the Fourteenth Amendment.

*Miller v. Texas* (1894)  
The Court confirmed that it had not incorporated the Second Amendment and applied it to the states through the Fourteenth Amendment. Since Miller had not made his objections in a timely fashion, the Court refused to address his arguments regarding incorporation.

*United States v. Miller* (1939)  
A shotgun with a barrel less than 18 inches long had no reasonable relation to a well regulated militia and the Second Amendment did not protect the citizen’s right to keep and bear such a weapon. This is the only case in which the Supreme Court has applied the Second Amendment to a federal firearms statute.

*Lewis v. United States* (1980)  
Congress could prohibit convicted felons from owning firearms.

## Private Property

*United States v. Causby* (1946)  
The Court found a taking when low-flying jets at an air-base made farming impossible on nearby land even though the government never actually claimed the land itself.

# LANDMARK SUPREME COURT CASES

## *United States v. Cors* (1949)

The owner of a taken tugboat was not entitled to the market value at the time of the taking (during World War II) since the government's need for the boat in the war inflated its price.

## *Loretto v. Teleprompter Manhattan* (1982)

A New York law granted a cable company permanent access to parts of private apartment buildings. The Court found that partial takings had to be compensated for since the access was a physical invasion of the property.

## *Nolan v. California Coastal Commission* (1987)

California could not require beachfront property owners seeking building permits to maintain a public walkway on their property as a condition of being granted a building permit.

## *Lucas v. South Carolina Coastal Commission* (1992)

The owner of a beachfront property had to be compensated after a state law stopped all new construction on his property, because the law totally eliminated the land's economic value.

## *Dolan v. City of Tigard* (1994)

Cities could not require property owners to give up parts of their land for public use in order to receive permits to develop that land (in cases where the city's demands had no connection with the development intended by the owner).

## *Tahoe-Sierra Preservation Council v. Tahoe Regional Planning Agency* (2002)

A temporary moratorium on new development did not constitute a partial taking of landowners' property, and property owners were not entitled to compensation.

## *Kelo v. New London* (2005)

Cities could take private property in order to turn it over to private developers, if the new development would result in greater revenue and benefits to the city. The Court held that if the transfer of property was for "public benefit," it satisfied the Fifth Amendment's "public use" requirement.

## *MGM Studios v. Grokster* (2005)

Companies that produce file-sharing software could be held liable for copyright infringements resulting from the use of that software.

## **Criminal Procedure and Searches**

### *Powell v. Alabama* (1932)

The Court ruled that when indigent members of society (in this case, the Scottsboro Boys), were charged with a capital crime, they must be given competent counsel at the expense of the public.

### *Betts v. Brady* (1942)

The Court refused to grant the right to an attorney to all indicted or accused individuals. The courts had to hear each non-capital situation and decide on an individual basis.

### *Bartkus v. Illinois* (1959)

Prosecutions in state and federal courts for the same act were not violations of due process and double jeopardy protections; persons may be tried twice for the same crimes, once in federal court and once in state court.

### *Mapp v. Ohio* (1961)

All evidence obtained by searches and seizures in violation of the Constitution was inadmissible in court; this is the "exclusionary rule."

### *Robinson v. California* (1962)

A California law imprisoning those with the "illness" of drug addiction was a cruel and unusual punishment in violation of the Eighth Amendment. The law punished people because of their "status" of addiction and was not aimed at the purchase, sale, or possession of illegal drugs.

### *Gideon v. Wainwright* (1963)

The Supreme Court overturned *Betts v. Brady* (1942) and required that any indigent person accused of a felony must be given an attorney at the public's expense.



# LANDMARK SUPREME COURT CASES

*Escobedo v. Illinois* (1964)

The Court extended the “exclusionary rule” to include any confessions obtained by unconstitutional means. Once questioning reaches past a stage of “general inquiry,” the suspect has the right to have an attorney present.

*Miranda v. Arizona* (1966)

Since the police had not informed a suspect of his constitutional rights to keep silent and have a lawyer present during questioning, his rights were violated and his confession could not be used against him.

*Terry v. Ohio* (1968)

A “stop and frisk” was a “search and seizure” under the Fourth Amendment and, under certain circumstances, was a reasonable crime prevention practice. Seized evidence may be admissible.

*Furman v. Georgia* (1972)

The death penalty was “cruel and unusual punishment” in violation of the Eighth and Fourteenth Amendments because it was done in “an arbitrary, discriminatory, and capricious manner.”

*Gregg v. Georgia* (1976)

Georgia’s law imposing the death penalty under very specific circumstances and guidelines was held constitutional. The judicious and careful use of the penalty was justified in that it met contemporary standards of society, served a deterrent or retributive purpose, and was not arbitrarily applied.

*Ingraham v. Wright* (1977)

Corporal punishment in schools was not prohibited under the Eighth Amendment as cruel and unusual.

*Nix v. Williams* (1984)

If police learn of evidence by unconstitutional means, they could still introduce it at trial if they could prove that they would have found the evidence anyway through constitutional means. There was an “inevitable discovery” exception to the Exclusionary Rule.

*New Jersey v. T.L.O.* (1985)

The Fourth Amendment ban on unreasonable searches applied to those conducted by public school officials as well as by law enforcement personnel; however, the Court used a less strict standard of “reasonable suspicion” to conclude that the search of a student’s purse by public school officials did not violate the Fourth and Fourteenth Amendments.

*Vernonia v. Acton* (1995)

A public school policy requiring students to submit to random drug testing in order to participate in interscholastic athletics was “reasonable and hence constitutional.”

*Chandler v. Miller* (1997)

Georgia’s requirement of drug tests for candidates for designated state offices did not fit “within the closely guarded category of constitutionally permitted suspicionless searches.”

*Knowles v. Iowa* (1998)

Police searches of vehicles on routine traffic stops were an “unreasonable search and seizure.”

*Wyoming v. Houghton* (1999)

Police could search the belongings of all passengers in a car when lawfully seeking evidence against the driver.

*Bond v. United States* (2000)

The Fourth Amendment was violated when officials squeezed a carry-on bag in a bus overhead compartment and discovered illicit drugs.

*Indianapolis v. James* (2001)

The Court invalidated the city’s roadblock program because it was “indistinguishable from the general interest of crime control” and did not fit into the established exceptions to individualized suspicion.

*Kyllo v. United States* (2001)

Warrantless use of thermal-imaging devices to monitor heat emissions from a private residence violated the Fourth Amendment protection against unreasonable searches.

# LANDMARK SUPREME COURT CASES

## *Ferguson v. City of Charleston* (2001)

Public hospital testing of pregnant women for cocaine use and reporting the results to police officials was an unconstitutional search in violation of the Fourth Amendment.

## *Board of Education of Pottawatomie County v. Earls* (2002)

School district requirements of drug tests for all students participating in any extra-curricular activities were upheld by the Court. The testing was a “reasonable means of furthering the School District’s important interest in preventing and deterring drug use among its schoolchildren.”

## *Hibel v. Sixth Judicial District of Nevada* (2004)

The Court ruled that requiring citizens to identify themselves to police did not violate their Fourth or Fifth Amendment rights if police have a “reasonable suspicion” that someone was involved in or had knowledge of a crime.

## *Groh v. Ramirez* (2004)

An incorrectly written search warrant could result in any evidence obtained being excluded from trial.

## *Hamdi v. Rumsfeld* (2004)

The Court held that the Executive Branch could not label a US citizen captured in Afghanistan an “enemy combatant” and detain him indefinitely without access to a lawyer or the court system.

## *Georgia v. Randolph* (2006)

Police acted unconstitutionally when they searched a home with one resident’s permission over the objections of the other resident.

## *Hudson v. Michigan* (2006)

The Exclusionary Rule did not apply to evidence gathered in “no knock” searches. Police who did not first knock on the door, announce themselves, and wait a reasonable time before forcing their way in, would still be subject to any penalties called for by state law, but evidence obtained could still be used at trial.

## **Citizen Juries**

### *Rex v. Zenger* (1735)

The colony of New York tried John Peter Zenger, a newspaper publisher, for seditious libel against the colonial governor. At that time, truth was not a defense in a libel case. Zenger’s attorney, Andrew Hamilton, told the jury of their power and duty to judge the law as well as the facts, and the jury acquitted Mr. Zenger. While not a Supreme Court case, this is a landmark example of jury nullification.

### *Strauder v. West Virginia* (1880)

A law barring non-whites from serving on juries was an unconstitutional violation of the Fourteenth Amendment’s equal protection clause.

### *Sparf et al. v. United States* (1895)

Federal judges were not obligated to inform jurors of their full rights and powers to judge both the facts as well as the law.

### *Smith v. State of Texas* (1941)

Racial discrimination in jury selection violated the Fourteenth Amendment.

### *Hernandez v. Texas* (1954)

Excluding people from serving on a jury because of their national origin violated the Fourteenth Amendment; a conviction was overturned because the accused had been tried before a jury from which members of his ethnicity had been excluded.

### *Duncan v. Louisiana* (1968)

The Sixth Amendment’s guarantee of jury trials was fundamental to the American system of justice, and states were required to provide them under the Fourteenth Amendment.

### *Taylor v. Louisiana* (1975)

The Sixth Amendment required that jurors represent a “fair cross-section of the community.” No citizen could be excluded from a jury pool because of sex.

# LANDMARK SUPREME COURT CASES

## *Batson v. Kentucky* (1986)

The Sixth and Fourteenth Amendments prohibited attorneys from using peremptory challenges to strike prospective jurors solely on the basis of race. Racial discrimination in juror selection damaged the community by “undermining public confidence” in the justice system.

## *Powers v. Ohio* (1991)

The Equal Protection clause of the Fourteenth Amendment prohibited attorneys from using peremptory challenges to strike prospective jurors solely on the basis of race, whether or not the accused was of the same race/ethnicity as the excluded jurors.

## *J.E.B. v. Alabama* (1994)

The Equal Protection clause of the Fourteenth Amendment prohibited attorneys from using peremptory challenges to strike prospective jurors solely on the basis of sex.

## **Personal Liberty**

### *Kent v. Dulles* (1958)

The Court ruled that “freedom to travel is, indeed, an important aspect of the citizen’s liberty.”

### *Griswold v. Connecticut* (1965)

In stating a “right to privacy,” the Court determined that a married couple’s decision to use birth control was a personal decision and not subject to government regulation.

### *Loving v. Virginia* (1967)

Virginia’s anti-miscegenation law banning inter-racial marriages was declared an unconstitutional violation of the Equal Protection Clause because it had no legitimate purpose “independent of invidious racial discrimination.”

### *Roe v. Wade* (1973)

The Court found that “the right of personal privacy includes the abortion decision.”

## *Bowers v. Hardwick* (1986)

The Court found no right to engage in homosexual activities in the Constitution.

## *Rotary International v. Rotary Club of Duarte* (1987)

California state law requiring Rotary Clubs to admit women to membership was constitutional and did not violate “expressive association.” Any small infringement of members’ rights was “justified by the state’s compelling interest in eliminating discrimination against women and assuring them equal access to public accommodations.”

## *Washington v. Glucksberg* (1997)

The Court held that the right to physician-assisted suicide did not exist in the Constitution and that state prohibitions were constitutional.

## *Boy Scouts of America v. Dale* (2000)

Forcing the Boy Scouts to admit a homosexual as a scout leader would violate the private organization’s right of freedom of association. Forced inclusion of an unwanted person infringes on the group’s rights if that person’s presence affects the group’s ability to advocate its viewpoints; this is a right of “expressive association.”

## *Owasso Independent School District v. Falvo* (2001)

Peer grading of student papers was upheld by the Court.

## *Lawrence v. Texas* (2003)

Texas’s anti-sodomy law “furthered no legitimate state interest which can justify its intrusion into the personal and private life of the individual,” and was an unconstitutional violation of the Due Process clause of the Fourteenth Amendment.

## *Sell v. United States* (2003)

Forced medication of a mentally incompetent defendant was constitutionally acceptable when the courts followed specific guiding principles in order to have him participate in his trial.

# LANDMARK SUPREME COURT CASES

*Smith v. Doe* (2003)

The Court upheld Alaska's Sex Offender Registration Act as a civil sanction in the interest of public safety; therefore, the enforcement of the law does not violate the *Ex Post Facto* clause of the Constitution.

## Federalism

*Hammer v. Dagenhart* (1918)

The Court ruled that under the Tenth Amendment, only the states and not the federal government could regulate child labor (on the grounds that manufacturing is not commerce and not subject to federal regulation).

*South Dakota v. Dole* (1987)

A federal law that would withhold five percent of a state's highway funds if it did not raise its minimum drinking age to 21 was ruled constitutional. The Court believed it was passed in the interest of the "general good" and by "reasonable means."

*United States v. Lopez* (1995)

The Commerce Clause did not give Congress the power to enact the federal Gun-Free School Zones Act.

*United States v. Morrison* (2000)

Neither the Commerce Clause nor the Fourteenth Amendment gave Congress the power to enact the Violence Against Women Act.

*Raich v. Gonzalez* (2005)

A California law allowing citizens to grow marijuana for personal, medical use was overruled by a federal law declaring marijuana an illegal substance. The Court held that personal marijuana growth was related to interstate commerce and therefore Congress had the authority to ban it under the Commerce Clause.

## Incorporation

*Slaughterhouse Cases* (1873)

The Court ruled that the privileges and immunities clause protected only certain narrow federal rights (such as the right to travel, to petition Congress, and to vote in national elections), not the protections found in the Bill of Rights.

*Quincy Railways v. Chicago* (1897)

The Court ruled that the states must pay just compensation when taking private property for public use. The Court never actually said Illinois had to abide by the Fifth Amendment's just compensation clause, but by using the Fourteenth Amendment to apply part of the Bill of Rights to a state action, the Court opened the door for similar incorporation of other provisions.

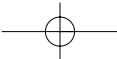
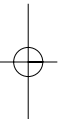
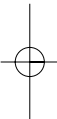
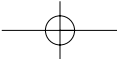
# LANDMARK SUPREME COURT CASES

## The following portions of the Bill of Rights have been incorporated against actions by state governments:

Freedom of Speech, *Gitlow v. New York* (1925)  
 Freedom of the Press, *Near v. Minnesota* (1931)  
 Right to Counsel in Capital Cases, *Powell v. Alabama* (1932)  
 Freedom of Assembly, *DeJonge v. Oregon* (1937)  
 Free Exercise of Religion, *Cantwell v. Connecticut* (1940)  
 No Established National Religion, *Everson v. Board of Ed.* (1947)  
 Right to Public Trial, *In re: Oliver* (1948)  
 Ban on Unreasonable Search and Seizure, *Wolf v. Colorado* (1949)  
 No Evidence from Illegal Searches, *Mapp v. Ohio* (1961)  
 No Cruel and Unusual Punishment, *Robinson v. California* (1962)  
 Right to Counsel in all Felony Cases, *Gideon v. Wainwright* (1963)  
 No Self-Incrimination, *Malloy v. Hogan* (1964)  
 Right to Confront Adverse Witnesses, *Pointer v. Texas* (1965)  
 Right to Impartial Jury, *Parker v. Gladden* (1966)  
 Right to Obtain Defense Witnesses, *Washington v. Texas* (1967)  
 Right to Speedy Trial, *Klopper v. North Carolina* (1967)  
 No Double Jeopardy, *Benton v. Maryland* (1968)  
 Right to Counsel for Imprisonable Misdemeanors, *Argersinger v. Hamlin* (1972)  
 Right to Notice of Accusation, *Rabe v. Washington* (1972)

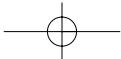
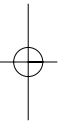
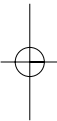
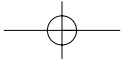
## Students and the Supreme Court

*Jacobsen v. Massachusetts* (1905)  
*Minersville v. Gobitis* (1940)  
*West Virginia v. Barnette* (1943)  
*Everson v. Board of Education* (1947)  
*Brown v. Board of Education* (1954)  
*Engel v. Vitale* (1962)  
*Abington School District v. Schempp* (1963)  
*Murray v. Curlett* (1963)  
*Epperson v. Arkansas* (1968)  
*Tinker v. Des Moines* (1969)  
*Wisconsin v. Yoder* (1972)  
*Ingraham v. Wright* (1978)  
*Stone v. Graham* (1980)  
*New Jersey v. T.L.O.* (1985)  
*Wallace v. Jaffree* (1985)  
*Bethel School District v. Fraser* (1986)  
*Edwards v. Aguillard* (1987)  
*Hazelwood v. Kuhlmeier* (1988)  
*Westside Community Schools v. Mergens* (1990)  
*Lee v. Weisman* (1992)  
*Zobrest v. Catalina Foothills School District* (1993)  
*Kiryas Joel School District v. Grumet* (1994)  
*Vernonia v. Acton* (1995)  
*Santa Fe Independent School District v. Doe* (2000)  
*Mitchell v. Helms* (2000)  
*Good News Club v. Milford Central School* (2001)  
*Owasso Independent School District v. Falvo* (2001)  
*Zelmans v. Simmons-Harris* (2002)  
*Board of Education of Pottawatomie County v. Earls* (2002)



# READING QUIZZES







## READING QUIZZES

***The Bill of Rights  
and the Founders***  
**Lesson One: Origins of  
the Bill of Rights**

1. Why was the *Magna Carta* important?

- A. It guaranteed voting rights to all Englishmen.
- B. It guaranteed personal and property rights to Englishmen.
- C. It defined English citizenship.
- D. It defined American citizenship.

2. Which of the following was written by John Locke?

- A. The English Bill of Rights
- B. *The Rights of the Colonists*
- C. *Two Treatises of Government*
- D. The Declaration of Independence

3. How did John Locke expand on the concept of the rights of Englishmen?

- A. He wrote that the rights of Englishmen included more rights than ever before.
- B. He wrote that governments exist to grant rights to the people.
- C. He authored several colonial charters.
- D. He said all people are born with the same rights, regardless of their nationality.

4. What document did the colonists issue in 1776 when they believed their rights as Englishmen had been repeatedly violated?

- A. *The Rights of Man and the Citizen*
- B. The Bill of Rights
- C. The Declaration of Independence
- D. The Constitution

5. How did George Mason contribute to the development of American rights?

- A. He wrote the Bill of Rights.
- B. He wrote the Virginia Declaration of Rights.
- C. He wrote the Preamble to the Constitution.
- D. He wrote a landmark commentary on English common law.

***The Bill of Rights  
and the Founders***  
**Lesson Two: Securing  
Liberty—Debate over  
the Bill of Rights**

1. Which of these arguments did the Federalists support?

- A. A Bill of Rights was needed to keep the central government from taking rights away from individuals and states.
- B. A Bill of Rights was needed so that people would know exactly what rights they did or did not have.
- C. A Bill of Rights was unnecessary because the national government had no direct relationship to individuals.
- D. A Bill of Rights was unnecessary because the Constitution itself limits federal powers.

2. Which of these arguments did the Anti-Federalists support?

- A. A Bill of Rights was needed to keep the central government from taking rights away from individuals and states.
- B. A Bill of Rights was needed so that people would know exactly what rights they did or did not have.
- C. A Bill of Rights was unnecessary because the national government had no direct relationship to individuals.
- D. A Bill of Rights was unnecessary because the powers of the national government are enumerated and extend to only certain cases.

3. Which of these American leaders was a Federalist?

- A. Patrick Henry
- B. Alexander Hamilton
- C. Thomas Jefferson
- D. George Mason

4. Who wrote the Congressional proposals that eventually became the Bill of Rights?

- A. Thomas Jefferson
- B. James Madison
- C. George Washington
- D. Patrick Henry

5. How many amendments were approved by Congress and sent to the states for ratification?

- A. 10
- B. 12
- C. 17
- D. Congress never approved any amendments.

# READING QUIZZES

## ***The Bill of Rights and Religion***

### **Lesson One: Church and State—How Separate?**

1. Which statement best describes religious practices in Colonial North America?
  - A. No religious discrimination was tolerated.
  - B. All English colonies allowed only Christians to practice their faith.
  - C. People in the colonies practiced different religions, and some colonies were more religiously tolerant than others.
  - D. All of the English colonists came to North America to practice their faith freely.

2. Where did the phrase “wall of separation between church and state” originate?
  - A. The *Magna Carta*
  - B. The English Bill of Rights
  - C. The First Amendment
  - D. Thomas Jefferson’s letter to a Baptist association in Connecticut
3. Which of these is a part of the Supreme Court’s Lemon Test?
  - A. A law must have a secular purpose.
  - B. A law must obey local religious customs.
  - C. A law must be supported by members of the majority religion.
  - D. A law must follow state laws.
4. Which of these practices has the Supreme Court judged to be constitutional?
  - A. Religious clubs holding meetings on school grounds after school
  - B. School-sponsored prayer
  - C. Ten Commandments posted in public school classrooms
  - D. Students voting on a prayer to be read at sporting events

- A. Religious clubs holding meetings on school grounds after school
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- D. Students voting on a prayer to be read at sporting events

5. In 2002 the Supreme Court ruled in the case of *Zelman v. Simmons-Harris* that public money could be used for which of these purposes?
  - A. Allowing groups to use public stadiums for religious meetings for free
  - B. Paying religious leaders in the military
  - C. Paying for vouchers for students to attend private and/or religious schools
  - D. Purchasing equipment for religious observances at schools

## ***The Bill of Rights and Religion***

### **Lesson Two: The Free Exercise Clause**

1. What two concepts did the Supreme Court’s decision in the *Cantwell v. Connecticut* case embrace?
  - A. Freedom to worship and freedom of speech
  - B. Freedom to worship and to have access to places of worship
  - C. Freedom to believe and freedom to act
  - D. Freedom to criticize religion and freedom to organize for religious purposes
2. In the *Cantwell* case, the Court ruled that the only time the government could interfere with religious belief was
  - A. When students insisted on praying in public schools

- B. When there was a compelling state interest
  - C. When religious practices offended community standards
  - D. The government cannot ever interfere with religious beliefs.
3. What did the Supreme Court rule in *Employment Division v. Smith*?
    - A. Oregon could deny a welfare claim because Smith committed a crime.
    - B. Oregon could deny a welfare claim because the United States government did not have jurisdiction over Oregon’s treatment of Native Americans.
    - C. Oregon could not deny a welfare claim because a treaty protecting Native American religious practices was superior to state laws.
    - D. Oregon could not deny a welfare claim because smoking peyote is a protected Native American religious practice protected by the First Amendment.

4. What ruling has the Court handed down regarding the Amish people?
  - A. No religious group’s practices can over rule any law.
  - B. Amish children are excused from mandatory high school attendance because of their religious beliefs.
  - C. Any state or national law that violates Amish religious practices is unconstitutional.
  - D. None of the above
5. The Court has held that “targeted” laws aimed at a particular religion are:
  - A. The most difficult kind to interpret in light of the First Amendment
  - B. Unconstitutional
  - C. Constitutional if the majority is offended by the group’s religious practices
  - D. The best way to write laws that treat everyone equally

## READING QUIZZES

### ***The Bill of Rights and Expression*** **Lesson One: The Importance of Free Speech**

1. James Madison supported open discussion of political topics for all the following reasons EXCEPT
  - A. Citizens of the new nation should not talk about laws and policies.
  - B. Interest groups should be able to discuss ideas.
  - C. People might act violently if they can't express their ideas.
  - D. Peaceful discussion is better than violent action.
2. Open discussion and political participation are important in a demo-

cratic republic for all of the following reasons EXCEPT:

- A. They are the essence of self-government.
  - B. They guard against corruption in government
  - C. A political system that derives its power from the people cannot ignore the people.
  - D. People cannot be permitted to voice opinions contrary to the government's policies.
3. What form of free speech did the Supreme Court protect in the case *Brandenburg v. Ohio* (1969)?
    - A. Obscene speech
    - B. Hate speech
    - C. Speech encouraging violent opposition to law

D. Private discussions between individuals

4. The Supreme Court has ruled that speech includes the following forms of expression:
  - A. Non-verbal acts
  - B. Symbolic acts
  - C. Spoken words
  - D. All of the above
5. The Supreme Court has held that burning the US flag in protest:
  - A. Is a form of expression protected by the First Amendment
  - B. Cannot be tolerated in a free society
  - C. Can be prohibited, but only by state governments
  - D. Is now a federal offense

### ***The Bill of Rights and Expression*** **Lesson Two: Freedom of the Press**

1. The Founders saw press freedom as all of the following EXCEPT:
  - A. A bulwark of liberty
  - B. A means of assuring justice in government
  - C. A natural freedom, such as speech and assembly
  - D. A privilege granted by government and which can be revoked
2. What function did the Founders believe newspapers serve in a free society?

- A. They served mainly to advertise British goods.
  - B. They inform the public and help ensure an educated citizenry.
  - C. They are a state-controlled means of distributing information.
  - D. They were viewed as unimportant.
3. What 1798 law suppressed criticism of the government?
    - A. The Stamp Act
    - B. Prior Restraint Law
    - C. The Sedition Act
    - D. The Pentagon Papers Act
  4. In which case did the Supreme Court incorporate First Amendment protection of the press to the states?
    - A. *Adams v. Jefferson* (1798)

- B. *Near v. Minnesota* (1931)
  - C. *New York Times v. United States* (1971)
  - D. *New York Times v. Washington Post* (1973)
5. The 1971 case of *New York Times v. United States* (1971) involved:
    - A. Government penalties for newspapers that knowingly print false statements
    - B. The question of whether the government can force reporters to reveal their sources
    - C. The constitutionality of prior restraint in cases of national security
    - D. Holding publishers liable for false advertising claims in newspaper ads

## READING QUIZZES

### ***The Bill of Rights and Expression***

#### **Lesson Three: Freedom of Assembly and Petition**

1. Which First Amendment right(s) has the oldest lineage?
  - A. Assembly and Petition
  - B. Religion
  - C. Speech
  - D. Press
2. Which of the following does NOT reflect the Founders' views on petitioning?
  - A. The rights to assemble and petition should be protected by government.

- B. They inherited a strong tradition of petitioning government.
- C. Assembling and petitioning were essential to self-government.
- D. "Tumultuous petitioning" should be prohibited by law.

3. What was the 1836 "Gag Rule"?
  - A. State governments banned all demonstrations except silent protests.
  - B. Congress automatically tabled any petitions dealing with slavery.
  - C. The Massachusetts Superior Court upheld a ban on petitioning.
  - D. None of the above

4. Citizens do NOT have the right to:
  - A. Assemble on public property with a permit

- B. Circulate and sign petitions for unpopular causes
- C. Assemble on private property
- D. Circulate and sign petitions encouraging the repeal of laws

5. Some Supreme Court decisions have combined the rights to assemble, petition, and speak to form a right to:
  - A. Free association
  - B. Free organization
  - C. Free administration
  - D. Free acceptance

### ***The Bill of Rights and Guns***

#### **Lesson One: Firearms and the Founders**

1. When did Englishmen first get the right to bear arms?
  - A. English Common Law before the Norman Conquest of 1066
  - B. 1066
  - C. In the *Magna Carta* in 1215
  - D. In the English Bill of Rights in 1688
2. Which of the following does NOT describe the tradition of local militia?
  - A. The tradition has its roots in medieval England.

- B. English laws required landowning men to have weapons and serve in their baron's militia.
- C. Local militias were the Crown's primary defense against foreign invasion and domestic insurrection.
- D. Local militias were not favored by the nobility, because they preferred a standing army.

3. Who owned guns during the American Revolution?
  - A. All Americans
  - B. Most people
  - C. Only the national government was allowed to own guns.
  - D. Only state governments were allowed to own guns.

4. Which of the following is NOT a focus of debate over the meaning of the Second Amendment?
  - A. The question of whether the Second Amendment protects an individual or group right

- B. The origin of the right to bear arms
- C. The definition of the "militia"
- D. The definition of the term "necessary"

## READING QUIZZES

### ***The Bill of Rights and Guns***

#### **Lesson Two: The Second Amendment and Gun Control**

1. In the case *United States v. Miller*, (1939) the Supreme Court ruled that the national government could outlaw sawed-off shotguns because:  
A. The United States has the right to regulate militias.  
B. These guns are manufactured in several states and overseas.  
C. Such guns had no reasonable relationship to militias.  
D. These guns are very dangerous.

2. In the 1995 case *United States v. Lopez*, the Court said that Congress could not ban firearms in schools because:

- A. Only the states can regulate firearms.  
B. This violated the Second Amendment right of individuals to bear arms.  
C. The Commerce Clause of the Constitution did not give Congress the authority to make such a law.  
D. The Ninth Amendment reserved this right to the people.

3. In the 1884 case of *Presser v. Illinois*, the Court upheld the power of \_\_\_\_\_ to regulate guns.

- A. State legislatures  
B. Congress  
C. The national military  
D. None of the above

4. Which of these positions do most gun control supporters **NOT** want?

- A. A restriction on assault rifles and automatic weapons  
B. Restrictions on handguns  
C. Registration of all firearms and licensing of owners  
D. A complete ban on private ownership of guns in the U.S.

5. Most in favor of gun rights support all the following **EXCEPT**:

- A. An individual has the right to own and carry guns.  
B. Registering gun ownership is an unnecessary burden on gun owners.  
C. The Second Amendment applies only to groups—not individuals.  
D. Individuals have the right to be armed against the potential tyranny of government.

### ***The Bill of Rights and Private Property***

#### **Lesson One: What Is Property?**

1. Which of these property rights violations contributed to the American revolt against England?  
A. Searches with no warrants  
B. Forced housing of troops  
C. Random arrests  
D. All of the above

2. Why did Thomas Jefferson change John Locke's "property" to "pursuit of happiness" in the Declaration of Independence?

- A. Jefferson did not believe people should own property.  
B. Jefferson thought that Locke's idea of property was too broad.

- C. Jefferson expanded the idea of property to include things like the satisfaction of creativity.  
D. None of the above

3. In *Property*, James Madison made the following point about the personal ownership of property:

- A. Private ownership of property is harmful.  
B. Acquiring property through hard work is a myth.  
C. Property rights are not natural rights.  
D. Property includes a person's religious beliefs, opinions, and body.

4. Which amendment to the Constitution guarantees just compensation when the government takes property from individuals?

- A. Third Amendment

- B. Fifth Amendment  
C. Seventh Amendment  
D. Ninth Amendment

5. How does the Seventh Amendment help secure property rights?

- A. It guarantees jury trials in Common Law disputes in suits involving more than \$20.  
B. It establishes a common currency.  
C. It stops the national government from taxing land.  
D. It guarantees homestead rights for landless people.

## READING QUIZZES

### ***The Bill of Rights and Private Property*** **Lesson Two: Due Process and Just Compensation**

1. When the government takes property from someone, how much does the government have to pay?
  - A. The seller gets to set the price.
  - B. The Tax Board determines the price.
  - C. "What a willing buyer would pay in cash to a willing seller at the time of the taking."
  - D. The government assesses the property and sets the price.
2. What is eminent domain?
  - A. The United States owns all American land.

- B. People may claim unused government land.
  - C. The states own the land within their state boundaries.
  - D. The government can take land from private individuals for the public's use.
3. What did the Supreme Court hold in the 2005 case of *Kelo v. New London*?
    - A. The government cannot seize privately-owned land and turn it over to private developers.
    - B. The "public use" requirement of the Fifth Amendment should be read literally.
    - C. The Fifth Amendment phrase "public use" can be interpreted as "public benefit."
    - D. States may not pass laws preventing the exercise of eminent domain for economic development.

4. Which would NOT likely be considered a taking?
  - A. Zoning laws banning new construction lower a property's value.
  - B. Noise from low-flying government airplanes restricts land use, making farming impossible.
  - C. A temporary halt on construction
5. How has the Internet created problems in protecting property?
  - A. The Internet has made it easier to steal intellectual property such as music or books.
  - B. The Internet makes it easier for the government to take property.
  - C. The Internet has forced property values to increase.
  - D. It is difficult for the Court to decide who owns the information on the Internet.

### ***The Bill of Rights and Criminal Procedure*** **Lesson One: The Rights of the Accused**

1. What were general warrants?
  - A. Documents allowing British officials to search for anything on anyone's property
  - B. Documents used to convict colonists
  - C. Orders for the arrest of class of people
  - D. Orders that verdicts of colonial juries could be reversed by the King
2. According to the Fifth Amendment, when can an accused criminal be forced to testify against herself?

- A. When she is arrested
  - B. When the state believes that other witnesses are lying
  - C. During sentencing
  - D. Accused persons can never be forced to testify at their own trials.
3. What rights does the Sixth Amendment guarantee accused criminals during their trials?
    - A. The right to an attorney
    - B. The right to call and confront witnesses
    - C. The right to know the specific crime of which they are accused
    - D. All of the above
  4. What kinds of punishment does the Eighth Amendment prohibit?
    - A. Punishments which limit personal liberty
    - B. Monetary punishments

- C. Cruel and unusual punishments
  - D. Impounding of vehicles
5. Why did James Madison put so many protections for the rights of accused criminals in the Bill of Rights?
    - A. He was a lawyer and wanted his clients to win.
    - B. He had been arrested, tried, convicted, and punished unfairly by the British during the American Revolution.
    - C. He feared that a majority of people could use the criminal justice system to abuse their power over those they did not like.
    - D. He believed that accused persons were almost always guilty.

## READING QUIZZES

### ***The Bill of Rights and Criminal Procedure*** **Lesson Two: Enforcement of Fourth Amendment Protections**

1. Which two branches of government have to agree that probable cause exists before a search warrant can be issued?  
A. The legislative and the executive  
B. The legislative and the judicial  
C. The judicial and the executive  
D. The state and federal
2. The exclusionary rule says that prosecutors cannot use \_\_\_\_\_ seized during a search in violation of the Fourth Amendment.

- A. Persons  
B. Evidence  
C. Laws  
D. Juries
3. When can illegally obtained evidence be used?  
A. It can be used in civil cases.  
B. Prosecutors can use this evidence when questioning witnesses.  
C. When officers can prove that the evidence would certainly have been discovered through legal means  
D. When the crime is horrible and the defendant will go free when the evidence shows that he is guilty
4. Which of the following was NOT part of the Supreme Court's ruling in the 1985 case of *New Jersey v. TLO*?  
A. Students in public school have fewer privacy rights than adults.

- B. Public school officials were not required to obtain search warrants when searching students' belongings.  
C. School officials were bound by the Fourth Amendment's requirement that searches be "reasonable."  
D. Schools may not search students' lockers without a warrant.

5. In the 2002 case *Board of Education of Pottawatomie County v. Earls*, the Supreme Court held that school districts may conduct random drug tests on:  
A. Student athletes only  
B. Any student participating in extracurricular activities  
C. Teachers and other school employees  
D. No one, unless police have a search warrant

### ***The Bill of Rights and Citizen Juries*** **Lesson One: The Tradition of Citizen Juries**

1. In 1215, the *Magna Carta* declared that freemen would only be imprisoned by:  
A. The lawful judgement of their peers  
B. The King, provided he had the noblemen's consent  
C. Noblemen  
D. Church judges
2. What important principle of English law did the Penn case establish?

- A. The courts of England have no authority in religious laws.  
B. Jurors cannot be punished for their verdicts.  
C. Jurors can be sequestered.  
D. The King can overrule juries.
3. What does a grand jury do?  
A. It re-tries a case.  
B. It decides guilt or innocence.  
C. It sets the penalty for a crime.  
D. It decides if there is enough evidence to go to trial.
4. The Sixth Amendment requires that trials be:  
A. Speedy and public  
B. Open to television cameras

- C. Held in a state other than the one where the alleged crime was committed  
D. Decided by a judge, rather than a jury, in federal cases
5. What is jury nullification?  
A. The right of a jury to overrule a judge's order.  
B. The right of a jury to refuse to convict someone who has broken an unjust law.  
C. The right of a jury to set a penalty for a crime.  
D. The right of a single juror to prevent a verdict.

## READING QUIZZES

### ***The Bill of Rights and Citizen Juries***

#### **Lesson Two: The Role of Jurors**

1. What did Thomas Jefferson believe about jury duty?

- A. It was not important in a country with trained judges.
- B. It was not important in a constitutional system in which laws took care of themselves.
- C. It was the only important duty a citizen should perform.
- D. It was more important than voting.

2. For which of the following reasons can a person be “struck” from a jury?

- A. Political bias
- B. Personal bias
- C. Knowledge of the participants in the trial
- D. All of the above

3. Where are most jury lists drawn from?

- A. Volunteer jury pools
- B. Voter registrations and driver’s license lists
- C. Telephone books
- D. Lists supplied by opposing sides in the trial

4. What happens to a sequestered juror?

A. She is sent to jail for not doing her job or doing it wrong.

- B. She lives away from her family in a hotel during the trial.
- C. She is recycled in the jury pool and may be called to serve again.
- D. She is eliminated from a jury for cause.

5. What is *voir dire*?

- A. The juror-selection process
- B. The judge’s orders to a jury before the beginning of deliberation
- C. The listing of each side’s exhibits during a trial
- D. The recording machine used by the court reporter

### ***The Bill of Rights and Personal Liberty***

#### **Lesson One: What Is Liberty?**

1. What did the Founders believe to be a philosophical basis of liberty?

- A. Liberty is granted by governments.
- B. Liberty is a natural right of mankind.
- C. Liberty is an absolute right to do whatever one wishes.
- D. Liberty does not require personal responsibility.

2. According to philosophers such as John Locke and Jean Jacques Rousseau, people surrender some of their natural liberty when they:

- A. Have children
- B. Break the law
- C. Unite into a society
- D. Acquire property

3. The Founders believed that liberty would not endure in a society unless the people were:

- A. Intelligent
- B. Brought under control of strong leaders
- C. Religious
- D. Virtuous

4. When liberty is exercised without responsibility, the result is called:

- A. License
- B. Absolutism

- C. Virtue
- D. Natural Rights

5. How does the Bill of Rights protect personal liberty?

- A. The First, Third, Fourth, and Ninth Amendments protect the individual’s conscience, rights of association, home, and belongings from unreasonable government intrusion.
- B. The Ninth Amendment list privacy as a natural right.
- C. The Tenth Amendment forbids states from passing laws infringing on citizens’ right to personal liberty
- D. The Bill of Rights insures that choices about abortion, assisted suicide, drug use, and other matters of personal liberty can never be restricted by state governments.



## READING QUIZZES

### ***The Bill of Rights and Personal Liberty***

#### **Lesson Two: Debate Over the Scope of the Bill of Rights**

1. The Ninth Amendment has been interpreted to protect all \_\_\_\_\_ not listed in the first eight amendments.
- A. Due process rights
  - B. Natural rights
  - C. Political rights
  - D. Civil rights

2. In the 1965 case *Griswold v. Connecticut*, the Supreme Court held that the right to marital privacy was \_\_\_\_\_ the Bill of Rights.
- A. Less important than
  - B. Granted by
  - C. Older than
  - D. Not protected by

3. The Supreme Court has \_\_\_\_\_ relied on the Ninth Amendment alone when deciding cases.
- A. Often
  - B. Rarely

4. In the 1973 case of *Roe v. Wade*, the Court held that the right to have an abortion:

- A. Was part of the liberty protected by the Fourteenth Amendment
- B. Was part of the right to privacy protected by several amendments in the Bill of Rights
- C. Was not absolute, and could be regulated by states to some degree
- D. All of the above

5. In *Washington v. Glucksberg* (1997), the Supreme Court held that there was no constitutional right to:
- A. Drive
  - B. Take non-FDA approved drugs
  - C. Homosexual activity
  - D. Assisted suicide

### ***The Bill of Rights and Federalism***

#### **Lesson One: A Federal Republic**

1. Federalism is:
- A. The principle that guides the division of federal and state power
  - B. The doctrine that the federal government can determine state law
  - C. A monarchical government
  - D. A style of furniture
2. Powers given to Congress by the Constitution include all of the following EXCEPT:

- A. To direct commerce between the states
  - B. To coin money and collect taxes
  - C. To raise armies
  - D. To issue driver's licenses
3. What is the purpose of the Tenth Amendment?
- A. It makes clear that the people and the states keep all powers not given to the federal government.
  - B. It forbids Congress from regulating interstate commerce.
  - C. It allows states to make treaties.
  - D. It enables the central government to prohibit slavery.

4. Which of the following is NOT TRUE of Jim Crow laws?
- A. Jim Crow laws legalized segregation.
  - B. Jim Crow laws favored whites.
  - C. Jim Crow laws were upheld in *Plessy v. Ferguson* (1896).
  - D. Jim Crow laws were upheld in *Brown v. Board of Education* (1954).
5. The United States federal system was designed to prevent:
- A. A back-log of federal court cases
  - B. An abuse of power
  - C. A tie in the electoral college
  - D. The enactment of Jim Crow laws

# READING QUIZZES

## ***The Bill of Rights and Federalism***

### **Lesson Two: Federalism and the Commerce Clause**

1. What does the Commerce Clause do?

- A. It gives Congress the power to produce and sell goods.
- B. It gives Congress the power to regulate commerce with foreign nations, among the states, and with Indian tribes.
- C. It allows the Executive Branch to regulate commerce with foreign nations, among the states, and with Indian tribes.
- D. It allows the Supreme Court to regulate commerce with foreign nations, among the states, and with Indian tribes.

2. In *Hammer v. Dagenhart* (1918), why did the Supreme Court rule that the federal government could not regulate child labor?

- A. Because the Tenth Amendment left this power to the states
- B. Because Congress could not make rules related to the production of goods
- C. Both A and B
- D. None of the above

3. How did the Supreme Court's philosophy about federal power change following President

- Roosevelt's New Deal legislation?
- A. The Supreme Court placed new, tighter limits on federal government power.
- B. The Supreme Court forbade Congress from creating laws about child labor.
- C. Federal power expanded as Congress was eventually able to pass laws regulating, banning, and supporting a wide range of activities.
- D. The Supreme Court found that the federal government did not have the power to create a Social Security program.

4. What is the significance of the 1995 case of *United States v. Lopez*?

- A. It marked the first time since 1936 that the Supreme Court held that Congress had gone too far in making laws under the Commerce Clause.
- B. The Court found that Congress could create gun-free school zones.
- C. It continued the trend of increased federal power.
- D. It was the first unanimous decision the Court had reached concerning an act of Congress in several decades.

5. In the 2005 case of *Raich v.*

*Gonzalez*, the Supreme Court said all of the following EXCEPT:

- A. Growing marijuana for personal medical use was an economic activity related to interstate demand for the drug.
- B. The federal law classifying marijuana as an illegal drug superseded a California law allowing people to grow marijuana for personal, medical use.
- C. Congress had the authority under the Commerce Clause to declare marijuana illegal.
- D. Growing marijuana for personal medical use was not related to interstate commerce.

## READING QUIZZES

### ***The Bill of Rights and Incorporation***

#### **Lesson One: The Fourteenth Amendment and the Bill of Rights**

1. What does the term “incorporation” mean?
  - A. Using the Fourteenth Amendment to apply parts of the Bill of Rights to the states
  - B. Eliminating rights which are only guaranteed by state constitutions and not by the U.S. Bill of Rights
  - C. Creating new rights from constitutional interpretation
  - D. None of the above

2. The Founders wrote the Bill of Rights to apply to:
  - A. Only actions of the federal government
  - B. Only actions of the state governments
  - C. Actions of both the state and federal government
  - D. Actions of neither the state nor federal governments

3. Which of the following is NOT a clause of the Fourteenth Amendment?
  - A. The Due Process Clause
  - B. The Commerce Clause
  - C. The Privileges and Immunities Clause
  - D. The Equal Protection Clause

4. In the *Slaughterhouse Cases* (1897), the Supreme Court \_\_\_\_\_ the scope of the Privileges and Immunities Clause:
  - A. Narrowed
  - B. Broadened

5. How did the 1897 ruling in *Quincy Railways v. Chicago* redefine the Fourteenth Amendment?
  - A. It held that the Fourteenth Amendment does not apply to the states.
  - B. The Supreme Court used the Fourteenth Amendment to apply part of the Bill of Rights to a state action.
  - C. It held that the Fourteenth Amendment only applied to freed slaves.
  - D. It held that the Fourteenth Amendment was unconstitutional.

### ***The Bill of Rights and Incorporation***

#### **Lesson Two: The Incorporation Debate**

1. What incorporation theory did Justice Hugo Black advocate?
  - A. Total incorporation
  - B. Fundamental fairness
  - C. Unitary incorporation
  - D. Selective incorporation
2. What incorporation theory did Justice Felix Frankfurter advocate?
  - A. Total incorporation
  - B. Fundamental fairness
  - C. Unitary incorporation
  - D. Selective incorporation
3. What effect has incorporation had on the Supreme Court?
  - A. It decreased the Court's power to define rights.

- B. It increased the Court's power to define rights.
- C. It made the Court less important.
- D. None of the above

4. What effect has incorporation had on the meaning of the Bill of Rights?
  - A. It changed it from being a list of limits on federal government power to a set of rights guaranteed by the federal government.
  - B. It changed it from being a set of rights guaranteed by the federal government to a list of limits on federal government power.
  - C. It changed it from a set of protections from the federal government to a set of protections guaranteed by both states and the federal government.
  - D. It changed it from a set of rights to a set of responsibilities.
5. Which of the following views do supporters of incorporation NOT hold?
  - A. Federally-guaranteed rights are the fulfillment of the Declaration of Independence.
  - B. The Federal government should protect inalienable rights.
  - C. History has shown that states often have poor records of protecting individual rights, and the federal government should remedy that.
  - D. Incorporation has strengthened the federal system.

6. Which of the following views do critics of incorporation NOT hold?
  - A. Federal dominance undermines the Founders' system of federalism.
  - B. The Constitution was designed to protect the rights of individuals from the federal government.
  - C. When states infringe on the rights of their citizens, the federal government must stop them.
  - D. The Constitution was designed to preserve the sovereignty of states.

# READING QUIZZES

## ***Reading Quizzes Answer Key***

### **Founders Lesson One**

1. B
2. C
3. D
4. C
5. B

### **Founders Lesson Two**

1. D
2. A
3. B
4. B
5. B

### **Religion Lesson One**

1. C
2. D
3. A
4. A
5. C

### **Religion Lesson Two**

1. C
2. B
3. A
4. B
5. B

### **Expression Lesson One**

1. A
2. D
3. C
4. D
5. A

### **Expression Lesson Two**

1. D
2. B
3. C
4. B
5. C

### **Expression Lesson Three**

1. A
2. D
3. B
4. C
5. A

### **Guns Lesson One**

1. A
2. D
3. B
4. D

### **Guns Lesson Two**

1. C
2. C
3. A
4. D
5. C

### **Property Lesson One**

1. D
2. C
3. D
4. B
5. A

### **Property Lesson Two**

1. C
2. D
3. C
4. C
5. A

## READING QUIZZES

### Criminal Procedure Lesson One

1. A
2. D
3. D
4. C
5. C

### Criminal Procedure Lesson Two

1. C
2. B
3. C
4. D
5. B

### Citizen Juries Lesson One

1. A
2. B
3. D
4. A
5. B

### Citizen Juries Lesson Two

1. D
2. D
3. B
4. B
5. A

### Personal Liberty Lesson One

1. B
2. C
3. D
4. A
5. A

### Personal Liberty Lesson Two

1. B
2. C
3. B
4. D
5. D

### Federalism Lesson One

1. A
2. D
3. A
4. D
5. B

### Federalism Lesson Two

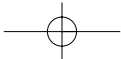
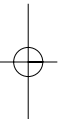
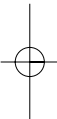
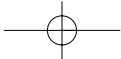
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3. C
4. A
5. D

### Incorporation Lesson One

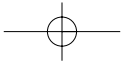
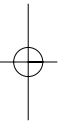
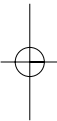
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2. A
3. B
4. A
5. B

### Incorporation Lesson Two

1. A
2. B
3. B
4. A
5. D
6. C



[illegible]





## DVD VIEWING GUIDES

### ***Unit One: The Founders***

#### **SEGMENT 1**

#### **Content**

1. What was the *Magna Carta*? What rights did the British Declaration of Rights grant?
2. How were American colonists influenced by British documents?
3. What documents did British colonists write to protect their rights?
4. Where did Thomas Jefferson say rights originated?
5. What was the Virginia Declaration of Rights? Who wrote them? What did they protect?
6. Who wrote the United States Bill of Rights?

#### **Discussion**

Think back to the pictures of the Founders you have just seen. What kinds of people were deciding what rights to protect? Is this reflected in the rights they did protect?

#### **SEGMENT 2**

#### **Content**

1. Why did the original writers of the Constitution leave out a bill of rights?
2. What political group demanded a bill of rights?
3. Who wrote the Bill of Rights? Why did he write it?
4. What did Thomas Jefferson say about a bill of rights?
5. Why did James Madison fear that a bill of rights might not work?
6. How many Amendments were originally proposed to Congress?
7. Why was the Bill of Rights added at the end of the Constitution?

#### **Discussion**

James Madison feared that a bill of rights would not protect individuals from the abuse of their rights by popular majorities. Can you think of examples of a majority taking away rights from individuals? In the country? In your town? At school? How do you think those rights might be made more secure?

### ***Unit Two: Religion***

#### **Content**

1. What relationship did most of the Founders want the national government and religion to have?
2. How did states treat religion during the first years of our nation?
3. What did Thomas Jefferson think was the best relationship between church and state?
4. What Supreme Court case first applied the First Amendment to the states?
5. What is the Lemon Test?
6. How has the Court applied the Lemon Test?
7. What is the Endorsement Test?

#### **Discussion**

Why did the Founders want to make sure that the national government was neutral on the issue of religion, neither helping it out nor holding it back? Can you think of ways the government could help religions? How could it hold them back?

# DVD VIEWING GUIDES

## Unit Three: Expression

### SEGMENT 1

#### Content

1. When did the English Parliament first get unrestricted rights to debate political matters?
2. What caused the case *Schenck v. U.S.* to come to the court? Why was the decision important?
3. What did Justice Oliver W. Holmes compare Schenck's speech to?
4. What did the court call free speech in the case of *Garrison v. Louisiana*?
5. What brought the case of *Tinker v. Des Moines* to court? Whose rights did the Court protect with this decision?
6. What kind of speech was protected in the Court's decision in *Brandenburg v. Ohio*?

#### Discussion

Should the government have extra powers when regulating forms of expression in schools? Why or why not?

### SEGMENTS 2 & 3

#### Content

1. List three ways the Founders used freedom of expression during the American Revolution.
2. What is non-speech?
3. What is symbolic speech?
4. What right was protected in the case *Texas v. Johnson*?
5. What did the Court decide in the case *Cohen v. California*?
6. What was the Communications Indecency Act? What did the court rule about it in *ACLU v. Reno*?

#### Discussion

Should a person have the right to burn the American flag? Why or why not? Some people have proposed a Constitutional Amendment to ban flag burning. Would you favor such an Amendment? Why or why not?

Pornographic pictures, obscene language, and hateful vulgarities are all forms of expression. Should the government set any restrictions on this kind of expression? Why or why not?

### SEGMENT 4

#### Content

1. When did English noblemen first get the right to assemble?
2. List three ways Americans use their freedom to assemble.
3. Whose right to protest was upheld in the case *Edwards v. South Carolina*?
4. What principle of assembly did the Court clarify in the case *Village of Skokie v. Nationalist Socialist Party*?
5. What two groups had a conflict in *Hurley v. Irish-American GLIB*? Why did the Court find against GLIB?

#### Discussion

Should the same principles of free assembly apply to both American Nazis who want to parade through a Jewish neighborhood and African American civil rights marchers who want to march to a state capital? Why or why not?

## DVD VIEWING GUIDES

### **Unit Four: Guns**

#### **Content**

1. What amendment to the Constitution deals with the right to bear arms?
2. What is a militia?
3. What is the difference between powers and rights?
4. What caused the battles of Lexington and Concord?
5. Who served in the militia before the American Revolution?
6. How much did the Framers debate the amendment protecting a right to bear arms?
7. What restrictions on gun ownership has the Supreme Court upheld? What test did it apply to these laws?
8. Why did the Founders favor an armed citizenry?

#### **Discussion**

What regulations should be put on weapons ownership? Should there be any restrictions on which individuals can own guns? Why or why not? What powers should the government have in regulating gun control?

### **Unit Five: Private Property**

#### **Content**

1. List three kinds of property.
2. How does the Fifth Amendment protect property?
3. When did the most government taking of private property occur?
4. What is a “regulatory taking”?
5. What did the Court decide in *Lucas v. South Carolina Coastal Commission*?
6. What did the Court decide in *Dolan v. City of Tigard*? Why?
7. Has the Court upheld laws restricting the use of historic buildings?
8. Does the government have to pay for property damage it causes stopping a riot?

#### **Discussion**

The government wants to take away your home to build a senior citizen center. Do you think the government should be able to do this? Why or why not? How much should the government pay you for your home? Who should decide this price?

# DVD VIEWING GUIDES

## ***Unit Six: Criminal Procedure***

### **Content**

1. What constitutional amendment keeps the police from making random searches?
2. Why did the Founders create a situation in which two branches of government have to agree before a legal search can take place?
3. What is probable cause?
4. What is the exclusionary rule?
5. Why do some people object to the exclusionary rule?

### **Discussion**

Should the exclusionary rule keep prosecutors from using evidence in court? Why or why not? What should happen to police who violate the exclusionary rule?

## ***Unit Seven: Citizen Juries***

### **Content**

1. In what three documents did the Founders mention the right of trial by jury?
2. What amendment guarantees the right of a jury trial in all criminal cases?
3. Who serves on juries?
4. What percentage of a jury has to agree to a verdict in a criminal trial?
5. What is jury nullification?

### **Discussion**

Should people be allowed to “opt-out” of jury duty because it is inconvenient? What are justifiable excuses for declining to serve on a jury?

## DVD VIEWING GUIDES

### **Unit Eight: Personal Liberty**

#### **Content**

1. What specific rights does the Ninth Amendment protect?
2. What right did the Court uphold in the case *Griswold v. Connecticut*?
3. What are “due process” rights? List two ways they have been used.
4. What personal right was at the center of the case, *Roe v. Wade*?
5. What did the Court decide in the case *Planned Parenthood v. Casey*?
6. Who is Jack Kevorkian?
7. Does the Supreme Court recognize a constitutional right to commit suicide?
8. What did the Court decide in the case *Bowers v. Hardwick*?
9. What did the Court decide in *Lawrence v. Texas*? Why?

#### **Discussion**

The Founders knew and people today argue that there are rights not specifically listed in the Constitution. What are some of these rights and should they be protected by the Ninth Amendment?

### **Unit Nine: Federalism**

#### **Content**

1. How did the Constitution re-define citizenship?
2. What powers did the Constitution take from the states and give to the national government?
3. What was the original intent of the Commerce Clause of the Constitution?
4. How did President Roosevelt’s New Deal lead to a re-interpretation of the Commerce Clause?
5. How did President Roosevelt propose to overrule the Supreme Court’s decisions about his New Deal policies?
6. Why did President Roosevelt’s proposal fail?
7. How did the 1995 case *United States v. Lopez* redefine how the Commerce Clause was applied?

#### **Discussion**

Which level of government do you think should have the power to regulate the following: drinking or driving age; speed limits on interstate highways; policies on carrying concealed handguns; and educational requirements for minors?

# DVD VIEWING GUIDES

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## ***Unit Ten: Incorporation***

### **Content**

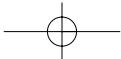
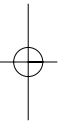
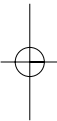
1. Whose actions did the U.S. Bill of Rights originally restrict?
2. According to Chief Justice John Marshall's opinion in *Barron v. Baltimore*, what individual rights could a state take away from a person?
3. What power did Congress want when the Fourteenth Amendment was ratified?
4. What three rights does the Fourteenth Amendment guarantee?
5. What constitutional principle did the *Slaughterhouse Cases* decide?
6. What part of the Fourteenth Amendment did the Supreme Court apply to the states in the *Quincy Railways v. Chicago* case?
7. What parts of the Bill of Rights apply to the states today?
8. Why do most civil rights activists favor federal incorporation of the Bill of Rights?

### **Discussion**

Justice Hugo Black believed in total incorporation. Do you agree or disagree? Why?

# GLOSSARY







# GLOSSARY

**Abolitionists**—People who contributed to the cause of emancipation and worked to end slavery.

**Alleged**—Asserted or stated to be true, but not proven.

**Anti-Federalists**—The political faction that did not support the ratification of the Constitution because they believed it would create a powerful and eventually despotic central government. Once the Constitution was ratified, they demanded a bill of rights.

**Articles of Confederation**—The compact that was first made by the original thirteen states of the United States. The articles were adopted March 1, 1781, and remained the supreme law until March 1789, when the Constitution was ratified by enough states to go into effect.

**Bail**—Money paid as a bond in exchange for an accused person's release, providing security that s/he will appear in court.

**Censor**—To examine and prohibit the publication of material deemed objectionable.

**Clear and Present Danger**—In *Schenck v. United States* (1919), the Supreme Court ruled that the country's interest in fighting World War I was more important than Schenck's right to free speech. Schenck's actions, in the words of Justice Oliver Wendell Holmes, presented a "clear and present danger" to the country because of the active resistance he was advocating.

**Coercion Test**—Test used by the current Supreme Court to judge Establishment Clause cases. If a law forces a person to participate in a religious ceremony, that law is unconstitutional.

**Commerce**—The exchange, buying and selling of goods, often involving transporting items and commodities from place to place.

**Commerce Clause**—United States Constitution Article 1 Section 8, in part, "The Congress shall have the power...; To regulate commerce with foreign nations, and among the several States, and with the Indian tribes ..."

**Commercial Speech**—Defined by the Supreme Court as communication between businesses, their customers, and the public.

**Common Law**—English and American legal precedents regarding disputes among private individuals involving property, torts, and contracts, as well as basic rules of evidence and criminal law. By the time the Constitution was written, common law had been evolving for over 500 years of jury- and judge-made decisions.

**Content Neutral**—The principle that speech cannot be restricted because of its content alone. For example, a town may require permits for marches, but could not require permits only for racist marches.

**Criminal Procedure**—Process by which the government charges a person with a criminal violation and brings him/her to trial.

**Cruel and Unusual Punishment**—Refers to punishments that are excessively harsh, including torture. Protection from cruel and unusual punishment is guaranteed by the Eighth Amendment.

**Double Jeopardy**—The act of trying a person more than once for an offense for which s/he has already been prosecuted.

**Due Process**—Requirement that government must use fair and reasonable procedures in making, applying, and enforcing the law. Clauses in the Fifth and Fourteenth Amendments protect individuals from losing their life, liberty, or property without due process of law.

**Elastic Clause**—U.S. Constitution Article 1 Section 8, in part, "The Congress shall have the power ... To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States." The Elastic Clause is also referred to as the "Necessary and Proper" Clause.

**Eminent Domain**—Process by which the government takes private property, usually for the purpose of public projects.

# GLOSSARY

**Endorsement Test**—Test used by the current Supreme Court to judge Establishment Clause cases. Government policies or actions that endorse a specifically religious message violate the Establishment Clause.

**Establishment Clause**—Clause of the First Amendment prohibiting the establishment of a national church.

**Excessive Fines**—Fines disproportionate to the offense.

**Exclusionary Rule**—Provides that evidence obtained in violation of the Fourth Amendment is excluded and cannot be used in court.

**Expression**—Words, conduct or activity that conveys an idea or opinion.

**Expressive Association**—The right to associate with those you wish. In *Boy Scouts of America v. Dale* (2000), the Supreme Court ruled that groups have the right to “expressive association.” Choosing their members may be a way they express their message to society.

**Fair Market Value**—Amount the government must pay a property owner for taking his/her property. The Supreme Court defines fair market value as “what a willing buyer would pay in cash to a willing seller at the time of the taking.”

**Federalism**—A system of dual sovereignty in which government power is divided between a central government and state governments. In the system of government set up in the U.S. Constitution, the national government has specific powers, while all other powers are reserved to state governments or to the people.

**Federalist**—A political faction that supported the ratification of the Constitution, not necessarily with a bill of rights. They believed the Constitution would provide a small, limited, but effective, central government.

**Federalist Papers**—A series of essays written by Alexander Hamilton, John Jay, and James Madison, in support of ratification of the Constitution.

**Free Association**—The right to form or join voluntarily groups of one’s choosing. Though “free association” does not appear in the Bill of Rights, the Supreme Court has ruled that the First Amendment’s protection of free speech and peaceable assembly implies such a right.

**Free Exercise Clause**—Clause of the First Amendment prohibiting the federal government (and later the state governments) from interfering with an individual’s right to exercise his/her religion as s/he sees fit.

**Freedom of Belief**—The Supreme Court has ruled that individuals are free to believe anything they wish pertaining to religion, and that the truthfulness of such beliefs cannot be judged in a court of law.

**Fugitive Slave Laws**—Laws passed to allow slave owners to recover slaves who had escaped. Enslaved people were considered property. Those who escaped had to be returned. Any free person assisting a slave to escape could be fined and imprisoned. These laws were originally passed in 1793 and reinforced in 1850 as part of the Compromise of 1850.

**Fundamental Fairness**—A term used by Justice Felix Frankfurter to explain what he believed the Fourteenth Amendment should protect. Frankfurter argued that the Fourteenth Amendment should protect only those rights that citizens could expect as a matter of fundamental fairness (as interpreted by the Supreme Court), without which a just legal system would be impossible. These rights might overlap with the Bill of Rights, but such overlap was only coincidental.

**General Warrant**—The general warrant is so broad that it allows for the searching of almost anywhere, at any time, and need not specify what evidence is sought. British authorities often used general warrants to find contraband hidden by American colonials.

**Grand Jury**—Grand juries decide if there is enough evidence to proceed with a trial. It is called “grand” because it has more members than a *petit* jury (in most states). Federal grand juries must consist of at least 16 people.

# GLOSSARY

**Imminent**—About to happen, ready to take place.

**Impartial**—Unbiased, objective, fair. The Sixth Amendment protects the right to a trial before a jury of impartial citizens.

**Incorporation**—The Supreme Court's application of portions of the Bill of Rights to the states through the Fourteenth Amendment.

**Inevitable Discovery**—If the police prove that certain evidence would surely have been found through legal means, it may be presented at trial even if a search warrant was not obtained.

**Intellectual Property**—The products of the minds of authors, researchers, inventors, and artists, including songs, books, schematics, or poems.

**Jim Crow Laws**—Laws passed by a majority of states between 1880 and 1960 which outlawed interracial marriage and enforced segregation of “non-white” races from whites.

**Jurisprudence**—The philosophy of law or principles on which law and legal decisions are based.

**Jury Nullification**—The power of juries to refuse to convict a person who has broken an unjust law.

**Jury pool**—Made up of the people who live in the court's jurisdiction, who may be selected for jury duty. These persons are selected at random to ensure a fair cross-section of the community.

**Just Compensation**—Payment by the government to an individual whose property has been taken for public use, as required by the Fifth Amendment. The government must pay a just amount for the property taken.

**Lemon Test**—Three-part test used by the Court to distinguish acceptable and unacceptable government involvement in religion. Constitutional policies must a) have a primarily secular purpose; b) neither principally aid nor harm religion; and c) not cause the government to be excessively entangled with religion.

**Magna Carta**—The oldest document in the British and American heritage of rights, written in 1215. Through the centuries, *Magna Carta* freedoms found their way into English common law. The colonists brought their rights as Englishmen to the earliest American colonies. More than half the amendments in the Bill of Rights have roots in the *Magna Carta*.

**Militia**—In the Eighteenth Century, this term generally referred to an army composed of ordinary citizens rather than professional soldiers, and even the whole body of physically fit civilians eligible by law for military service. Today it may refer to a military force that is not part of a regular army and is subject to call for service in an emergency.

**Miranda Warnings**—Warnings given to suspects before they are questioned and/or when they are arrested. “You have the right to remain silent, anything you say can and will be used against you in a court of law. You have the right to have an attorney present during questioning. If you cannot afford an attorney one will be appointed for you.”

**Natural Rights**—The rights, including life, liberty, property, and the pursuit of happiness, that all people are born with, regardless of nationality. English philosopher John Locke asserted that individuals willingly give up some of their natural rights in exchange for the protections provided by government.

**Obscene Speech**—Expression that appeals solely to the audience's sexual interest (rather than artistic). The Supreme Court has ruled that obscene speech can be regulated.

**Partial Taking**—The government's exercise of eminent domain that does not actually take physical property, but deprives the property owner of the use or value of a portion of their property.

**Personal Liberty**—The right to engage in certain actions without control or interference of government.

# GLOSSARY

**Petition**—A formal, written request, often signed by many citizens and presented to government, urging a course of action or change in policy. The right to petition the government is protected by the First Amendment.

**Prior Restraint**—Censoring or requiring approval on what the press may print before such material is actually published. Prior restraint has historically been considered the most serious and questionable form of censorship, and has been found unconstitutional even in cases of claimed threats to national security.

**Privileges and Immunities**—Clause of the Fourteenth Amendment prohibiting states from making or enforcing laws “which shall abridge the privileges or immunities of citizens of the United States.”

**Probable Cause**—Suspicion or belief, supported by facts and circumstances, which would lead a reasonable person to believe that a person has committed a crime.

**Property**—Things over which an owner legitimately has exclusive control and obtains value. While most people think of property as land, it also includes other material objects; information, ideas, and creative works. In some cases, property may be things that are only possibilities, such as future profits from a sale.

**Ratify**—To formally approve.

**Religious Neutrality**—Doctrine that government policies must be neutral toward religion, not hurting or helping it significantly.

**Right**—Sphere of activity to which a person has a legitimate legal, moral, or social claim.

**Right of Exclusion**—Right to keep other individuals from using or taking one's property.

**Right to Privacy**—This right is not specifically listed in the Constitution, but the Supreme Court, beginning with *Griswold v. Connecticut* (1965), has found it to exist by virtue of the First, Third, Fourth and Fifth Amendments. The right to privacy is key to many issues of personal liberty.

**Total Incorporation**—Applying all of the Bill of Rights's protections to state governments.

**Self-Incrimination**—Admitting to a crime or giving evidence that tends to implicate oneself in the crime.

**Self-Ownership**—The principle that each individual owns (has a property) in their person, i.e., in their body and thoughts. John Locke thought self-ownership to be the fundamental root of all claims to property, and thus the root of all rights.

**Sequestered**—A jury that is sequestered must live apart from their families, usually in a hotel, and must have no access to media sources for the length of the trial. This is to help ensure they will be free from outside influences and remain impartial.

**Sovereignty**—Freedom from controlling influence.

**Standing Army**—A permanent military group maintained in peace, as well as war.

**Symbolic Speech**—Nonverbal expression of ideas.

**Taking**—A government action or law that deprives an individual of the use or enjoyment of his/her property.

**Tyranny**—Oppressive power, often referring to a single government ruler.

**Unbiased**—Impartial, not favoring one side over another and treating all equally.

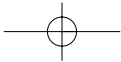
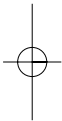
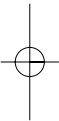
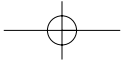
**Unenumerated Rights**—The rights not listed in the Bill of Rights, but still retained by the people. They are the natural rights that the Founders considered inalienable.

**Voir Dire**—The jury selection process where the lawyers from each side ask questions of potential jurors in an attempt to discover biases and empanel an impartial jury. From the French, “To see, to say.”

**Voucher System**—Parents receive a fixed amount of public funds called a voucher to pay for a private or religious school of their choice.

# EDUCATIONAL RESOURCES





## EDUCATIONAL RESOURCES

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### ***Educational Resources***

#### **America's Story**

<http://www.AmericasLibrary.gov>

#### **American Bar Association Division for Public Education**

<http://www.abanet.org/publiced/>

#### **The Avalon Project at Yale Law School**

<http://www.yale.edu/lawweb/avalon/avalon.htm>

#### **Citizenship Study Guide**

<http://www.CitizenBee.org>

#### **Constitution Society**

<http://www.constitution.org>

#### **Digital History**

<http://www.DigitalHistory.uh.edu/>

#### **Do You Have the Right?**

<http://DoYouHavetheRight.org>

#### **FindLaw Supreme Court Opinions**

<http://www.findlaw.com/cascode/supreme/html>

#### **First Amendment Center On-Line**

<http://www.FirstAmendmentCenter.org>

#### **The Founder's Constitution**

<http://press-pubs.uchicago.edu/founders/tocs/toc.html>

#### **The Gilder Lehrman Institute of American History**

<http://GilderLehrman.org/>

#### **James Madison Papers**

<http://www.virginia.edu/pjm/gwhome.html>

#### **Legislative Information on the Internet**

<http://thomas.loc.gov/>

#### **Library of Congress: American Memory**

<http://memory.loc.gov/ammem/>

#### **National Archives**

<http://www.archives.gov>

#### **National Constitution Center**

<http://www.ConstitutionCenter.org>

#### **Our Documents**

<http://www.OurDocuments.gov>

#### **Oyez: U.S. Supreme Court Multimedia**

<http://www.oyez.org/>

#### **Teaching American History**

<http://www.TeachingAmericanHistory.org>

# EDUCATIONAL RESOURCES

## ***Web Site Evaluation***

Title of Web page being evaluated:

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URL: http:// 

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## **Source Evaluation:**

Web site's content author(s) and/or sponsoring group or organization:

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Does the site give any information about the credentials of the author(s)? Yes      No

If so, what? (If not, you can try to run a search on the author(s) or organization to get more information. Sometimes, the author(s) e-mail address is included for more information.)

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Check the domain part of the URL and tell if and how this might affect the reliability of the content (i.e. gov=government source, com=commercial site, edu=educational site, org=organization, usually nonprofit, net=network, mil=military). Remember that individuals often put personal pages on some of these sites.

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When was the site last updated, if given? 

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Does the author tell you when the content information was obtained? Yes      No

Does the author tell you where/how the information was obtained? Yes      No

## **Content Evaluation:**

Is the material relevant to the topic you are addressing? Yes      No

Is the material adequate in terms of depth? Yes      No

Is the information consistent with what you already know or have read? Yes      No

Would the information have been available elsewhere in our library? Yes      No



## EDUCATIONAL RESOURCES

Would it have been easier to get this information from other sources?	Yes	No
Is the information up-to-date?	Yes	No
Does the author include links to other helpful sources?	Yes	No
Does the author include a bibliography of printed materials?	Yes	No
Can you print out the information?	Yes	No
Can you print out the bibliography?	Yes	No
Does the information represent a point of view or contain biases?	Yes	No

Explain briefly: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

How would you verify that this information is accurate and reliable? \_\_\_\_\_

\_\_\_\_\_

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Do the graphics (pictures, charts, etc.) contribute to your understanding of the content? Yes No

Could the graphics be used to enhance an oral presentation? Yes No  
*(Remember that text is usually too small to be seen from a distance when projected via an LCD panel or monitor.)*

Overall assessment of this Web site for your purposes:

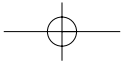
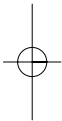
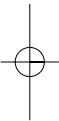
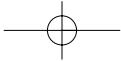
Excellent

Average

Poor

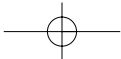
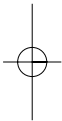
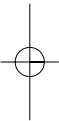
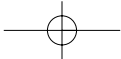
Please comment on the Web site and its applicability to the assignment: Was the information valuable in terms of your research topic? What were the strengths and weaknesses of this site? How could this site be improved?

—Created by Dr. Jana S. Eaton



# SCHOLAR BIOGRAPHIES





## SCHOLAR BIOGRAPHIES

### Clint Bolick

*President and General Counsel, Alliance for School Choice*  
Clint Bolick serves as president and general counsel of the Alliance for School Choice, founded in 2004. He also serves as Counsel for Strategic Litigation for the Institute for Justice. He has challenged regulatory barriers to entrepreneurship on behalf of start-up businesses in the inner city and leads the litigation effort to defend school choice programs. In 1998, he helped win a landmark ruling in *Jackson v. Benson* in the Wisconsin Supreme Court upholding the Milwaukee Parental Choice program.

Mr. Bolick received his J.D. from the University of California at Davis and his undergraduate degree from Drew University.

### Walter E. Dellinger, III

*Professor of Law, Duke University*  
Walter Dellinger is the Douglas B. Maggs Professor of Law at Duke University. He served as acting Solicitor General for the 1996–97 term of the Supreme Court. Professor Dellinger argued nine cases before the Supreme Court, the most by any Solicitor General since the 1970s. After serving in early 1993 in the White House as an advisor to the President on constitutional issues, Professor Dellinger was Assistant Attorney General and head of the Office of Legal Counsel (OLC).

Professor Dellinger is a graduate with Honors in Political Science from the University of North Carolina and graduated from Yale Law School, where he was an editor of the Yale Law Journal.

### Ingrid Duran

*National Right to Life Committee*  
Ingrid Ann Duran has been the state legislative assistant in the National Right to Life's State legislation Department since 1995. This department works with all 50 state affiliates to help write, propose, advocate and enact pro-life legislation. Ms. Duran currently serves as the Second Vice President of Maryland Right to Life and advises on legislative policy. She has drafted legislation for many states and has testified on behalf of pro-life bills in the Maryland

Senate committee. She also volunteers on behalf of Hispanic Americans for Life and Black Americans for Life.

### Richard A. Epstein

*Professor of Law, University of Chicago Law School*  
Richard A. Epstein is the James Parker Hall Distinguished Service Professor at the University of Chicago, where he has served as Professor of Law since 1973. He is now a director of its Olin Program in Law and Economics, and served as interim dean of the University of Chicago Law School in the spring of 2001. He has been a Fellow at the Hoover Institution since 2000. He was named James Parker Hall Professor in 1982 and Distinguished Service Professor in 1988. Professor Epstein has written many scholarly articles on a broad range of common law, constitutional, economic, historical, and philosophical subjects. Among the subjects he has taught are contracts, property, torts, and criminal law. He is a member of the Bill of Rights Institute's Academic Advisory Council.

Professor Epstein received a B.A. in philosophy, *summa cum laude*, from Columbia University, a B.A. in Law with first class honors from Oxford University in 1966, and an LL.B., *cum laude*, from the Yale Law School.

### Chai R. Feldblum

*Professor of Law, Georgetown University and Director, Federal Legislation Clinic*  
Chai R. Feldblum joined the faculty of the Georgetown Law Center as a visiting professor for the 1991–93 academic years. In 1993, she established a new law school clinic, the Federal Legislation Clinic, and has served as the Clinic's Director since 1993. Prior to joining the law faculty, Professor Feldblum worked as a legislative counsel at the AIDS Action Council, and at the ACLU AIDS Project, focusing on federal legislation concerning AIDS. Professor Feldblum played a leading role in the drafting and negotiating of the Americans with Disabilities Act. She has also worked extensively in advancing gay and lesbian rights, particularly in the drafting of the Employment Nondiscrimination Act.

Professor Feldblum received her J.D. from Harvard Law School.

## SCHOLAR BIOGRAPHIES

### Robert A. Goldwin, Ph.D.

*Resident Scholar, American Enterprise Institute*

Robert Goldwin's primary research areas at the American Enterprise Institute include constitutional studies, human rights, and education. One of his most significant books is *From Parchment to Power: How James Madison Used the Bill of Rights to Save the Constitution*. Among other positions, Dr. Goldwin has served as an associate professor at Kenyon College from 1960 to 1966, and special consultant to President Gerald Ford.

Dr. Goldwin received his B.A. from St. John's College and an M.A. and Ph.D. in Political Science from the University Of Chicago.

### Marci A. Hamilton

*Professor of Law, Benjamin N. Cardozo School of Law, Yeshiva University*

Marci A. Hamilton holds the Paul R. Verkuil Chair in Public Law at the Benjamin N. Cardozo School of Law, Yeshiva University, where she is the founding Director of the Intellectual Property Law Program. She has been a visiting scholar at Princeton Theological Seminary, the Center of Theological Inquiry, and Emory University School of Law. She is an internationally recognized expert on the topics of constitutional law and copyright law.

Professor Hamilton received her J.D., *magna cum laude*, from the University of Pennsylvania, an M.A. in Philosophy and an M.A. in English from Pennsylvania State University, and her B.A., *summa cum laude*, from Vanderbilt University.

### Stephen P. Halbrook, Ph.D.

*Attorney, Author of A Right to Bear Arms*

Stephen P. Halbrook has argued the Fifth Circuit criminal appeal in the Branch Davidian/Waco case; challenges to assault weapon prohibitions in Massachusetts, New Jersey, California, Columbus, and Denver. He has also represented importers, manufacturers, dealers, special manufacturers, and special taxpayers in litigation against the Bureau of Alcohol, Tobacco, and Firearms. He was lead counsel in three Supreme Court cases including

*Printz v. United States* (1997). He was an assistant professor of Philosophy at the Tuskegee Institute, Howard University, and George Mason University.

Dr. Halbrook graduated from Georgetown University Law Center, J.D. He also received a B.S. in Business, and Ph.D. in philosophy from Florida State University.

### Kevin J. ("Seamus") Hasson

*President, The Beckett Fund for Religious Liberty*

Kevin J. Hasson left a large Washington, D.C. law firm to found The Becket Fund for Religious Liberty in 1993. He has specialized in religious freedom cases for over twenty years. He is a former Attorney-Advisor for the U.S. Department of Justice's Office of Legal Counsel (OLC), where his responsibilities included advising the Reagan Administration on church/state issues.

Mr. Hasson is a 1985 *magna cum laude* graduate of the Notre Dame Law School and also holds a Masters Degree in Theology from the University of Notre Dame.

### Dennis A. Hennigan

*Director, Legal Action Project at the Center to Prevent Handgun Violence*

Dennis Hennigan heads the Legal Action Project, a national public interest law program that provides *pro bono* legal representation to victims of gun violence. He has written and spoken extensively on liability and constitutional issues relating to firearms, including testifying before several congressional committees. He is the author of several law review articles on the Second Amendment. He was a partner in the law offices of Foley & Lardner for 11 years.

Mr. Hennigan received his B.A. from Oberlin College, and his J.D. from the University of Virginia School of Law.

## SCHOLAR BIOGRAPHIES

### Nat Hentoff

*Journalist/Author, The Village Voice*

Mr. Hentoff is a nationally recognized columnist and author of several books including his current work, *The War on the Bill of Rights and the Gathering Resistance*. His honors include the American Bar Association Silver Gavel Award, received in 1980 for his coverage of criminal justice, the Zengar Award, and the National Press Foundation Award for Distinguished Contributions to Journalism. Mr. Hentoff has authored numerous publications and articles, including biographies and novels for adults and children, works on education, politics, and jazz; and comprehensive writings on civil liberties and rights. Two of his most notable works are *Free Speech for Me—But Not for Thee: How the American Left and Right Relentlessly Censor Each Other* and *Listen to the Stories: Nat Hentoff on Jazz and Country Music*.

Mr. Hentoff graduated with honors from Northeastern University and did graduate work at Harvard. He was also a Fulbright fellow at the *Sorbonne* in Paris in 1950.

### Gordon Lloyd

*Professor of Public Policy, Pepperdine University*

Gordon Lloyd is Professor of Public Policy at Pepperdine University and a contributor to TeachingAmericanHistory.org. The co-author of three books on the American founding and author of two forthcoming publications on political economy, Professor Lloyd's areas of research include the New Deal, slavery and the Supreme Court, and the relationship between politics and economics. He has received many teaching, research, and leadership awards including admission to Phi Beta Kappa and an appointment as a Distinguished Visiting Scholar for the Oklahoma Scholarship Leadership Program.

Professor Lloyd earned his Bachelor's Degree at McGill University. He received his M.S. and Ph.D. at Claremont Graduate School.

### Nelson Lund

*Professor of Law, George Mason University*

Nelson Lund is the Patrick Henry Professor of Constitutional Law and 2nd Amendment at George Mason University. He has acted as Associate Dean for Academic Affairs, and has written widely in the field of constitutional law, including articles on constitutional interpretation, federalism, separation of powers, the Second Amendment, the Commerce Clause, the Speech or Debate Clause, and the Uniformity Clause. Professor Lund has also published articles in the fields of employment discrimination and civil rights, the legal regulation of medical ethics, and the application of economic analysis to legal institutions and to legal ethics. He held positions at the United States Department of Justice, the Office of the Solicitor General, and the Office of Legal Counsel, and served in the White House as Associate Counsel to the President from 1989 to 1992.

Professor Lund earned his M.A. at Catholic University, his A.M and Ph.D. at Harvard University, and his J.D. from the University of Chicago.

### Timothy Lynch

*Director, Project on Criminal Justice, The Cato Institute*

Timothy Lynch focuses on issues relating to the American criminal justice system as Director of the Project on Criminal Justice. He also writes on the Constitution and the Bill of Rights. In 2000, he served on the National Committee to Prevent Wrongful Executions. Since joining Cato in 1991, Lynch has published articles in *The New York Times*, *The Wall Street Journal*, *The Washington Post*, the *ABA Journal*, *Legal Times*, and the *National Law Journal*. He co-edited the Cato Supreme Court Review for 2003/2004 and 2001/2002.

Mr. Lynch is a graduate of the Marquette University School of Law and a member of the Wisconsin and District of Columbia bar associations.

## SCHOLAR BIOGRAPHIES

### Barry Lynn

*Executive Director, Americans United for Separation of Church and State*

Barry Lynn is Executive Director of Americans United for Separation of Church and State. From 1984 to 1991, he was legislative counsel for the Washington office of the American Civil Liberties Union. From 1974 to 1980, Reverend Lynn served in a variety of positions with the national offices of the United Church of Christ, including two years as legislative counsel.

Reverend Lynn is a member of the Washington, D.C. bar, and earned his law degree from Georgetown University Law Center. In addition, he is an ordained minister in the United Church of Christ and received his Theology degree from Boston University. He earned his Bachelor's Degree from Dickinson College.

### Pauline Maier

*William R. Kenan, Jr. Professor of American History, Massachusetts Institute of Technology*

Pauline Maier is the William R. Kenan, Jr. Professor of American History. Her research interests include the American Revolution and American History through 1865. Among her many publications are *From Resistance to Revolution: Colonial Radicals and the Development of American Opposition to Britain, 1765–1776* (1972), and *The American People: A History* (1986), a junior-high school textbook. In 1997 she published *American Scripture: Making the Declaration of Independence*, a finalist for the National Book Critics' Circle Award. At present, she is working on a book about the ratification of the federal Constitution. She is a member of the Bill of Rights Institute Academic Advisory Council.

Professor Maier received her Ph.D. from Harvard University.

### Edwin Meese, III

*Ronald Reagan Distinguished Fellow in Public Policy, The Heritage Foundation*

Edwin Meese, III is a Distinguished Visiting Fellow at the Hoover Institution, Stanford University, and a Distinguished Senior Fellow at the Institute of United States Studies, University of London. Mr. Meese served as U.S. Attorney General for President Ronald Reagan. As Chairman of the Domestic Policy Council and the National Drug Policy Board, and as a member of the National Security Council, he played a key role in the development and execution of domestic and foreign policy. During the 1970s, Mr. Meese was Director of the Center for Criminal Justice Policy and Management and Professor of Law at the University of San Diego. He earlier served as Chief of Staff for then-Governor Reagan and was a local prosecutor in California.

Mr. Meese earned his B.A. from Yale University and his J.D. from the University of California, Berkeley.

### Kate Michelman

*President Emeritus, National Abortion Rights Action League (NARAL)*

Kate Michelman served for 18 years as president of NARAL before stepping down in April of 2004. Prior to joining NARAL in 1985, Ms. Michelman was Executive Director of Planned Parenthood in Harrisburg, Pennsylvania. She also provided clinical training of medical students and residents in child development while working as a Clinical Assistant Professor in the Department of Psychiatry at Pennsylvania State University School of Medicine in Hershey, Pennsylvania. In 1994 she served as a fellow at the John F. Kennedy School of Government's Institute of Politics at Harvard University. After leaving NARAL, Ms. Michelman began work with the Democratic National Committee.



## SCHOLAR BIOGRAPHIES

### William Moffitt

*Attorney, Past President National Association of Criminal Defense Lawyers*

William Moffitt is a practicing criminal attorney and an acclaimed lecturer. He speaks to legal organizations and is on the faculty of the National Criminal Defense College. He has appeared in *Best Lawyers of America* for several years. Mr. Moffitt is the past vice-president and president of the National Association of Criminal Defense Lawyers and of the Virginia College of Criminal Defense.

Mr. Moffitt graduated from the University of Oklahoma and the Washington College of Law.

### Tim O'Brien, Esq.

*Distinguished Visiting Professor of Law, Nova Southeastern University Law School*

Tim O'Brien is a Distinguished Visiting Professor of Law at Nova Southeastern University Law School in Ft. Lauderdale. From 1999–2000, he served as ABC news' chief correspondent at the United States Supreme Court. He has also worked with CNN and taught at Hofstra University. Mr. O'Brien was the writer and principal correspondent for the critically acclaimed ABC NEWS documentary, "Escape from Justice: Nazi War Criminals in America." The report received the Clarion Award for Human Rights reporting and an Alfred I. duPont-Columbia Award for excellence in journalism. He is a member of The Bill of Rights Institute Program Advisory Council.

Mr. O'Brien earned his B.A. from Michigan State University; his M.A. from the University of Maryland, and a J.D. from the Loyola University School of Law in New Orleans. He is also a member of the Bar of the Supreme Court of the United States.

### David O'Steen, Ph.D.

*Executive Director, National Right to Life Committee*

David O'Steen is Executive Director of the National Right to Life Committee, and has served as the Director for the Committee for a Pro-Life Congress, Executive Director of Minnesota Citizens Concerned for Life, Inc., and

Executive Director of the National Right to Life Committee. He has been a pro-life consultant for numerous Congressional campaigns in 1978, 1980, and 1982. He has served as an organizational fund-raising and legislative consultant to numerous state pro-life groups.

Dr. O'Steen earned his A.B. from Guilford College, an M.A. from the University of Georgia, and a Ph.D. from the University of Houston.

### William Otis

*Counselor to the Administrator, Drug Enforcement Agency, Department of Justice*

William Otis serves as Counselor to the Administrator at the Drug Enforcement Agency for the Department of Justice. He is a former U.S. Attorney, and Senior Litigation Counsel for the state of Virginia. In 1992, he served in the White House as Special Counsel to President George Bush. After the elections that year, he returned to the U.S. Attorney's Office as its chief appellate lawyer.

Mr. Otis is a graduate of the University of North Carolina and Stanford Law School.

### Jack Rakove, Ph.D.

*Professor of History and American Studies, Stanford University*

Jack Rakove has taught History and American Studies at Stanford University for 25 years. He was a Visiting Professor of Law at New York University's Law School in 2000, although he is primarily a historian. In 1997, he won a Pulitzer Prize in History for his book, *Original Meanings: Politics and Ideals in the Making of the Constitution*. His research interests include the intersection of political thought during the era of the American Revolution and the role of historical thinking in contemporary constitutional disputes.

Professor Rakove earned his A.B. from Haverford College and a Ph.D. from Harvard University.

## SCHOLAR BIOGRAPHIES

### Stephen F. Smith

*Associate Professor, University of Virginia School of Law*

Stephen F. Smith joined the University of Virginia Law School faculty in 2000 as an associate professor of law. Smith served in the Supreme Court and appellate practice group of Sidley & Austin in Washington, D.C. He also served as Associate Majority Counsel to a 1996 House of Representatives select subcommittee investigating U.S. involvement in Iranian arms transfers to Bosnia and as an adjunct professor at George Mason University School of Law.

Professor Smith received his J.D. from the University of Virginia School of Law and received the Maragaret G. Hyde Award and the Daniel Rosenbloom Award.

### Rod Smolla

*Dean, and Allen Professor of Law, University of Richmond*

Rod Smolla is Dean of the Law School at University of Richmond, and Allen Professor of Law. Before joining the faculty at the University of Richmond, he served as the Arthur B. Hanson Professor of Law at the College of William and Mary School of Law. He also served as Director of the Institute of Bill of Rights Law at William and Mary. He is a member of The Bill of Rights Institute Academic Advisory Council.

Professor Smolla earned his J.D., first in his class, Order of the Coif, at Duke University School of Law, and also received the American Jurisprudence Awards in Torts and Constitutional Law. He received a B.A., *cum laude*, from Yale University.

### Nadine Strossen

*President, ACLU and Professor of Law, New York Law School*

Nadine Strossen, Professor of Law at New York Law School, has written, lectured, and practiced extensively in the areas of constitutional law, civil liberties, and international human rights. Before becoming a law professor, she practiced law for nine years in Minneapolis and in New York City. In 1991, she was elected President

of the American Civil Liberties Union, the first woman to head the organization.

Professor Strossen graduated Phi Beta Kappa from Harvard College and *magna cum laude* from Harvard Law School, where she was an editor of the Harvard Law Review.

### Mark Tushnet

*Professor of Law, Georgetown University*

Mark Tushnet is the Carmack Waterhouse Professor of Constitutional Law and Associate Dean of Research. He is co-author of four casebooks, including the most widely-used casebook on constitutional law; author of twelve books, including a two-volume biography of Justice Thurgood Marshall. He is former president of the Association of American Law Schools and Fellow of the American Academy of Arts and Sciences. He taught at University of Wisconsin at Madison until joining the Georgetown Law Center faculty in 1981.

Professor Tushnet received his B.A. from Harvard University and his M.A. and J.D. from Yale University.

### Todd Zywicki

*Professor of Law, George Mason University*

Todd Zywicki is a member of the faculty at the George Mason University School of Law. He teaches in the areas of bankruptcy and contracts, with a focus on law and economics. He came to the George Mason University School of Law from the Mississippi College of Law, where he had held a faculty position since 1996. Prior to teaching, he worked as an associate at Alston & Bird in Atlanta, Georgia, where he practiced bankruptcy law. He is a member of the Bill of Rights Institute Academic Advisory Council.

Professor Zywicki earned his J.D. at the University of Virginia, where he was executive editor of the Virginia Tax Review and John M. Olin Scholar in Law and Economics. He received a M.A. from Clemson University and his A.B. *magna cum laude* from Dartmouth College.

## SUGGESTED LETTER TO PARENTS

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### ***Dear Parents,***

As part of our study of the United States Constitution and Bill of Rights, we will be covering some controversial topics. In discussing the First and Ninth Amendments in particular, we will be exploring cases involving political protest, flag burning, obscene or indecent speech, abortion, gay marriage, and controversial news stories. The aim of the lesson is not to advance a particular view, but to aid students in exploring the legal and constitutional issues surrounding these subjects.

With each issue, students will be exposed to a range of opinions—and encouraged to challenge those opinions and make up their own minds. As young adults and citizens, students will encounter these issues on television, in the classroom, or just talking with their friends.

I encourage you to explore these issues with your son or daughter at home as well.

As always, if you have any questions or concerns, please send a note to school with your child. Also feel free to call or e-mail.

Sincerely,

# SPECIAL THANKS

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## Teacher Author

### **Catherine Ruffing**

Centreville High School  
Clifton, Virginia

Catherine Ruffing has been a teacher in Fairfax County Public Schools since 1991. She currently teaches Advanced Placement Government at Centreville High School in Clifton, Virginia. She achieved National Board for Professional Teaching Standards Certification in November 2005. She earned a B.A. from the University of Pennsylvania and completed graduate work at George Washington University. An experienced curriculum writer, Catherine was a member of the development team for Fairfax County, Virginia's World History and Geography I course and subsequent training courses for teachers. She acted as lead teacher for the creation of a law elective and accompanying teacher's training course.

## ***Field-Testing Teachers***

### **Kimberly Huffman**

Wayne County Schools Career Center  
Smithville, Ohio

### **Shelbey Rosengarten**

St. Petersburg College  
Seminole, Florida

### **Gennie Westbrook**

Calhoun High School  
Port Lavaca, Texas

## ***A Note on Standards***

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