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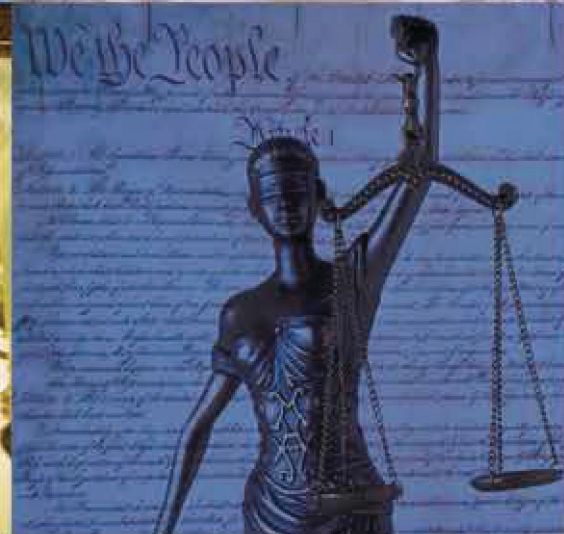
CALIFORNIA SOCIAL STUDIES



PRINCIPLES OF AMERICAN DEMOCRACY



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Education





◀ Since its dedication and opening in 1886, the Statue of Liberty has been a symbol of the freedom secured by the U.S. Constitution.

Constitutional Freedoms

CHAPTER 15

ASKING ESSENTIAL QUESTIONS

- What restrictions, if any, should be placed on our constitutional rights and freedoms?
- Why are the freedoms in the Bill of Rights and later amendments essential to our democracy?
- How have citizen movements and social movements brought about political and social change?

What Will You Learn? You will learn about the central role of the First Amendment in our democracy, the importance of the Fourteenth Amendment, and the history of discrimination in the United States. You will also learn about privacy issue concerns and the right to bear arms.

Why Does This Matter? In order to fully appreciate the freedoms you enjoy as an American citizen, you need to understand what those freedoms are, why they are important, and how they have been extended over time. You should also understand that our freedoms cannot be taken for granted—we have a duty as citizens to preserve them for future generations of Americans.

How Will You Know That You Learned It? You will be able to describe the freedoms protected by the First Amendment, explain the importance of the Fourteenth Amendment and the concept of incorporation, and identify different types of discrimination and the Court rulings and laws pertaining to them. You will also be able to analyze the right to keep and bear arms and identify the limits to privacy rights.

ANALYZING PRIMARY SOURCES

The Strength of Our Liberty

LESSON 1

Freedom of Speech

LESSON 2

Freedoms of Press, Assembly, and Petition

LESSON 3

Freedom of Religion

LESSON 4

The Fourteenth Amendment

LESSON 5

Equal Protection and Discrimination

LESSON 6

The Rights to Bear Arms and to Privacy



GO DIGITAL
It's All Online!

ANALYZING PRIMARY SOURCES

THE STRENGTH OF OUR LIBERTY

The First Amendment says that “Congress shall make no law . . . abridging the freedom of speech . . . or the right of the people peaceably to assemble.” For hundreds of years, Americans have been speaking out—about policy and politics, social issues, and everyday life. Many believe that the foundation of our democratic system of government depends on the free exercise of our right to speech. Why might this be so? Consider the following primary sources as you try to answer that question.

PRIMARY SOURCE

A

Writing for the U.S. District Court in the case of *ACLU v. Reno*, Judge Stewart Dalzell wrote,

“ . . . the strength of our liberty depends upon the chaos and cacophony of the unfettered speech the First Amendment protects. ”

—Judge Stewart Dalzell

PRIMARY SOURCE

B

“ 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 assembly, and to petition the Government for a redress of grievances. ”

—The First Amendment

PRIMARY SOURCE

C



As part of the suffrage movement, women picketed outside the White House in 1917.



PRIMARY SOURCE

D

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in the product.

In August 1963, the March on Washington for Jobs and Freedom brought citizens and activists in the Civil Rights Movement together from all over the nation.

PRIMARY SOURCE

E

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in the product.

Student-led protests against the Vietnam War occurred on many college and university campuses in the 1960s and 1970s.

PRIMARY SOURCE

F

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Unhappy with the direction government was taking, the Tea Party movement in the 2000s focused on cutting taxes and federal spending.

DBQ DOCUMENT-BASED QUESTIONS

- IDENTIFYING** For each photograph, identify in what issue or issues the people depicted are interested. What forms of expression are depicted in each?
- IDENTIFYING CONNECTIONS** How, if at all, do these photographs illustrate the idea of “chaos and cacophony”? Do they help you understand both problems and benefits associated with the chaos and cacophony of free speech?
- EVALUATING** Do these sources help you better understand the quotation from Judge Stewart Dalzell in Primary Source A? Do you agree that the “strength of our liberty” depends on free speech?

WHAT WILL YOU DO?

As a citizen, what issues do you care strongly enough about to make your voice heard in the public discussion? What forms of expression will you be most likely to use? Why?

LESSON 1

Freedom of Speech

EXPLORING THE ESSENTIAL QUESTION

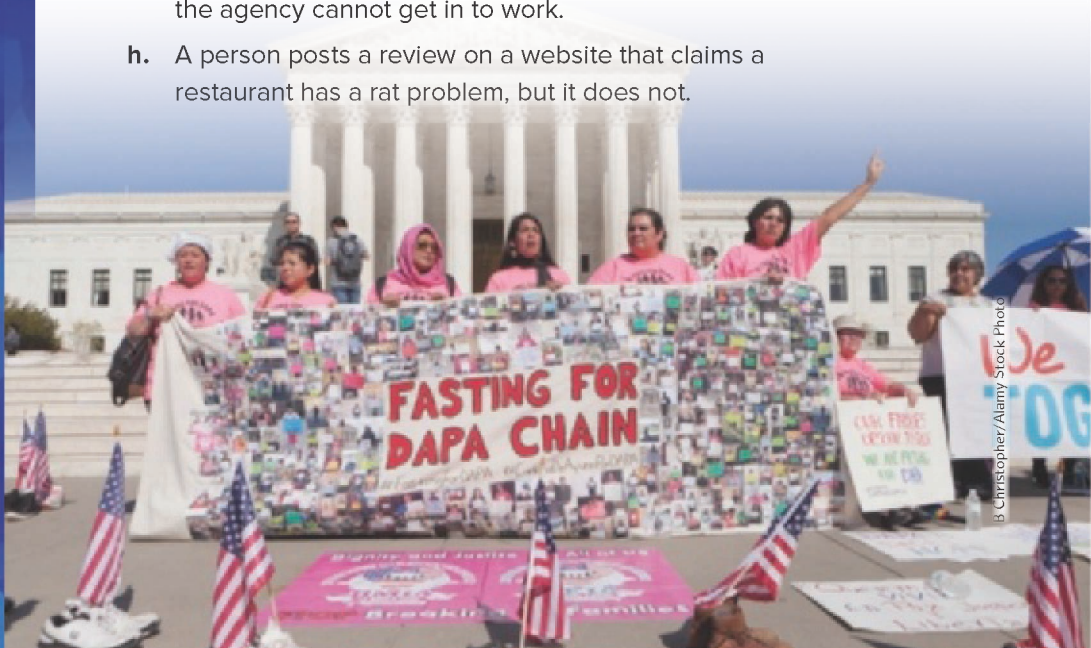
ESSENTIAL QUESTION

What restrictions, if any, should be placed on our constitutional rights and freedoms?

Free speech is guaranteed by the First Amendment to the Constitution, though that freedom is not absolute. Some speech can be prohibited or restricted in some circumstances. Think about the purpose of free speech in a democracy and then read the actions described below. For each, decide if the “speaker” should be allowed to say or do this.

- a. A student writes an article for a public school newspaper that calls the principal names.
- b. A uniformed military officer silently burns the U.S. flag at a protest rally.
- c. A person gives a speech at a public meeting that encourages people to volunteer in their communities.
- d. A band performs a song at a concert that includes offensive racial slurs.
- e. An American citizen gives money to a mayoral candidate’s campaign.
- f. A pharmaceutical company exaggerates its claims about how effective a prescription drug is.
- g. Some people who are angry with the U.S. tax system construct a barricade in front of the IRS so the employees of the agency cannot get in to work.
- h. A person posts a review on a website that claims a restaurant has a rat problem, but it does not.

The right to freedom of expression and to peaceful protest are essential in a democracy, as demonstrated by these immigration reform activists. ►



Protected Speech	Not Protected Speech

INTEGRATING KNOWLEDGE AND IDEAS

Use the table to categorize different types of speech and expression as protected or not protected by the freedom of speech in the First Amendment.

FREE SPEECH IN A DEMOCRACY

GUIDING QUESTION *Why is free speech essential in a democracy?*

The belief in fundamental freedoms of expression and religion lies at the heart of the American political system. Citizens and noncitizens alike have the right to speak freely, to read and write what they choose, and to worship as they wish or not worship at all. The Bill of Rights—the first ten amendments to the U.S. Constitution—protect those rights and others.

The First Amendment protects people's freedom of religion, speech, press, assembly, and petition. The last four rights protect political expression. They protect people's right to express themselves without interference from the government and to be able to hold the government accountable.

The First Amendment's protection of speech and expression is central to U.S. democracy. The essential, core political purpose of the First Amendment is self-governance: enabling people to obtain information from a diversity of sources, make decisions, and communicate these decisions to the government. In this sense, the First Amendment's protection of speech lies at the heart of an open, democratic society.

In authoritarian countries, the government controls the media and restricts free speech to maintain control and power. In a democracy, freedom of speech enables the truth to emerge from diverse opinions. People determine the truth by seeing which ideas have the power to be accepted in the "marketplace of ideas." This underscores the democratic principle of trusting the will of the people. Like any marketplace, there may be products (ideas) that are popular, unpopular, and even offensive to some people.

Originally, the First Amendment was *intended* to protect people from having their speech punished by the federal government. Over the past 100 years, however, courts have ruled that other government officials—in state or local governments, for example—may not make laws abridging free speech either. This process of applying Bill of Rights protections to state and local levels of government is called *incorporation* and is discussed later in this chapter.

The Bill of Rights protects people from actions by the government and from those acting with the authority of the government. For example, the First Amendment prevents the government from punishing you if you speak publicly in opposition to a government policy. It does not prevent your parents from punishing you for shouting at your brother.

The First Amendment exists to protect ideas that may be unpopular or different from those of the majority. Freedom of speech protects everyone, including people who criticize the government or express unconventional views.

ANALYZING KEY IDEAS AND DETAILS

- SUMMARIZING** What is the central idea of this section? Write a brief summary of this section in your own words.
- ANALYZING IDEAS** Identify at least two effects of the First Amendment discussed in this section.

The Constitution

"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."

—*The First Amendment*

UNDERSTANDING CONTEXT

Who is protected by the First Amendment, and from whom are they protected?

EXPLORING THE ESSENTIAL QUESTION

SUMMARIZING Read each of the quotations about the importance of free speech. Then, in your own words, explain what each speaker meant. Finally, rank the quotations in order of importance. Which do you think are the most important reasons for the freedom of speech? Why?

- a. "... the ultimate good desired is better reached by free trade in ideas—that the best test of truth is the power of the thought to get itself accepted in the competition of the market. . . ."

—Justice Holmes, dissent in *Abrams v. U.S.* (1919)

- b. "... 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."

—Justice Holmes, dissent in *U.S. v. Schwimmer* (1929)

- c. "... that right of freely examining public characters and measures, and of free communication among the people . . . has ever been justly deemed, the only effectual guardian of every other right."

—Virginia's resolution against the Sedition Act of 1798

The U.S. Constitution protects not only the person making the communication but also the person receiving it. Therefore, the First Amendment includes the right to hear, to see, to read, and in general to be exposed to different messages and points of view.

TYPES OF SPEECH

Pure speech refers to verbal expression to an audience that has chosen to listen. This is the most common form of speech and what most people think of when they hear the word *speech*. It might be talking with friends at home or giving a passionate address to a crowd.

You may be surprised to learn that the freedom of speech protects not only the spoken word, but all forms of verbal and nonverbal communication: books, art, dance, film, photographs, and telecommunications and other media.

Expression may be symbolic as well as verbal or nonverbal. **Symbolic speech** is conduct that expresses an idea. Sit-ins, flag waving, demonstrations, and wearing armbands or protest buttons are examples of symbolic speech. Because symbolic speech involves actions, the government can sometimes restrict it in ways that do not apply to pure speech—for example, if it endangers public safety.

✓ CHECKING FOR UNDERSTANDING

- 1. IDENTIFYING CONNECTIONS** Why is free speech essential in a democracy?
- 2. DIFFERENTIATING** How does pure speech differ from symbolic speech?
- 3. COMPARING AND CONTRASTING** How has the interpretation of the First Amendment changed over the past 100 years?

DETERMINING MEANING

A symbol is something (such as an object or action) that is used to represent something else. One example of **symbolic speech** is wearing a pink ribbon to say, "I support breast cancer research" without speaking the words. Give another example of symbolic speech. What is the person "saying"?

CONTENT RESTRICTIONS ON SPEECH

GUIDING QUESTION *What content restrictions may be placed on the freedom of speech?*

While our freedom of speech is important, it is not unlimited. Like other constitutional rights, the government can place some restrictions on the freedom of speech. For example, imagine if someone yells “Fire!” in a crowded place when there is not a fire. This joke could lead to a panic and injuries as people rush for the doors. The government might be able to protect public safety by restricting the speech of the person shouting “Fire!”

Conflicts involving freedom of expression are among the most difficult ones that courts are asked to resolve. Free speech cases frequently involve a clash of fundamental values. For example, how should the law respond to a speaker who makes an unpopular statement to which the listeners react violently? Courts must consider the need for peace and public order against the fundamental right of an individual to express his or her point of view. They call this the “balancing test.” They weigh the danger to the public against the benefit of an individual of being able to choose what to say and where to say it.

Because speech is such a fundamental freedom in our country, courts have ruled that laws governing free speech must be clear and specific. This is so that a reasonable person can understand what expression is allowed and what is prohibited. Laws also need to be clear so that they can be enforced in a uniform and nondiscriminatory way.

UNDERSTANDING CRAFT AND STRUCTURE

1. ANALYZING TEXT STRUCTURE

The author first explains that freedom of speech is not unlimited, and then lists specific ways government can limit speech. Does this organization help you better understand the information in this section? Explain.

2. DETERMINING MEANING

What is the difference between slander and libel? How are they the same?

SYMBOLIC SPEECH

The Supreme Court has ruled several times on what constitutes symbolic speech and when it can be restricted by the government.

Stromberg v. California (1931) A California state law prohibited the public display of a red flag (associated with communism) as a symbol of opposition to organized government. The Supreme Court said the law was unconstitutional, because it could punish legal opposition to government.

U.S. v. O'Brien (1968) Four young men burned their draft cards to protest the Vietnam War. They were arrested for violating a law that required them to keep their draft cards in their possession at all times. The Supreme Court ruled that the law did not violate the First Amendment because it served a valid government interest and was not intended to suppress speech. The men could have sent the same message in other formats.

Tinker v. Des Moines (1969) Students wore black armbands to school to protest the Vietnam War. They were suspended, but the Supreme Court ruled that the school could not punish the students for this symbolic speech. It said students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate” and this particular symbolic speech did not substantially disrupt the school’s educational environment.

Texas v. Johnson (1989) A protester burned the American flag, which was against the law in Texas. The Supreme Court said the law banning flag burning was unconstitutional because it infringed on the right to free speech.

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1. EVALUATING INFORMATION

What is the difference between pure speech and symbolic speech?

2. IDENTIFYING CONNECTIONS

What methods of symbolic speech are used today?

DETERMINING MEANING

A *category* is a group of things that have something in common. Reread the sentence that contains the word **categories**, and then think of a different word the author might have used that would have the same meaning.

Generally, the government cannot restrict speech based on what is being said—the content of the speech. However, there are a few specific **categories** of speech that can be punished based on content: obscenity, defamation, and “fighting words.” Advertising can also be regulated to some extent.

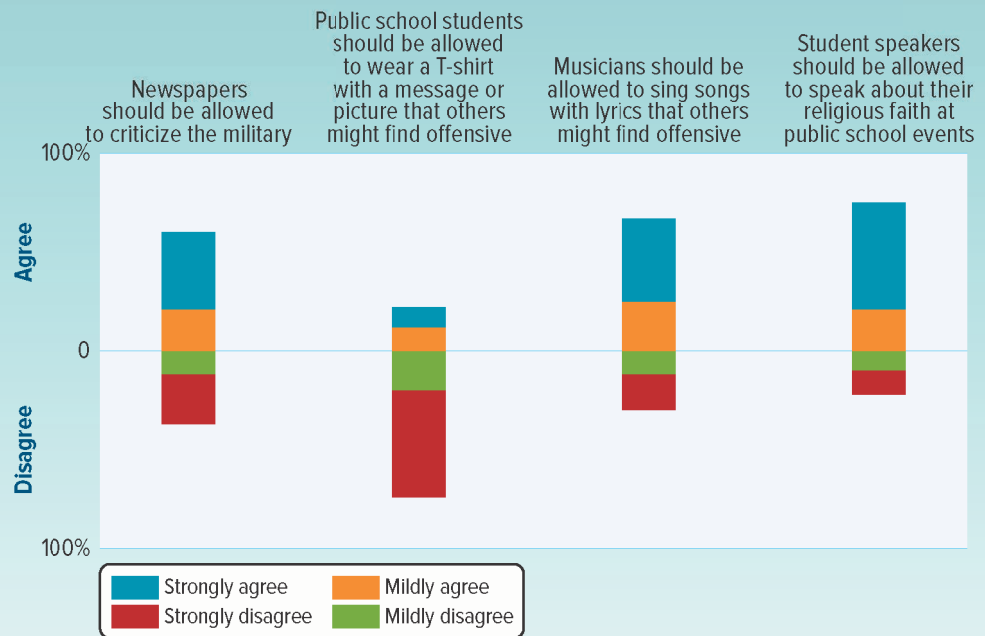
OBSCENITY

Obscenity is anything that treats sex or nudity in an offensive or lewd manner, violates recognized standards of decency, and lacks serious literary, artistic, political, or scientific value. In 1957 the U.S. Supreme Court ruled that obscenity is not speech protected by the Constitution. It also said that standards for what is considered obscene may be different from one community to the next. This has allowed some cities to pass zoning ordinances that restrict the locations of stores or theaters that feature pornography. Determining what the community standards are on the Internet presents additional challenges. In 1997, in a case called *Reno v. ACLU*, the Supreme Court ruled that a law prohibiting the distribution of indecent

PARTICIPATING IN YOUR GOVERNMENT

CONDUCTING POLLS AND ANALYZING POLL DATA

Each year, the First Amendment Center conducts polls to learn what Americans think about the First Amendment. Examine these results in the bar graph from recent State of the First Amendment reports.



Source: *State of the First Amendment*, First Amendment Center

EXPLORING THE ESSENTIAL QUESTION

EVALUATING EVIDENCE To learn more about how your peers feel about the First Amendment, design and implement your own poll with at least five questions. Be sure the questions are clear and understandable. Consider multiple-choice, yes/no, or scaled questions so that you can easily compare answers. You might use the *State of the First Amendment* surveys as a guideline.

Administer your poll to at least 10 students. Create a graph of your results and write a paragraph summarizing your findings.

material online was unconstitutional. The Court said the law was too broad—it did not specifically target obscene material and did not define “indecent.”

DEFAMATION

A false expression about a person that damages that person’s reputation is called **defamation**. When defamation is spoken, it is called **slander**. Defamation published in a more lasting form—for example, a book, article, movie, audio recording, or blog—is called **libel**. However, if a statement—written or spoken, no matter how damaging or embarrassing—is proven to be true, then it is not defamation. The First Amendment does not protect defamation, so someone who commits slander or libel may be sued and ordered to pay money damages to the person harmed by the false statements.

The value placed on freedom of speech in the United States makes it difficult for public officials or public figures to win defamation suits. There is a concern that holding speakers, which includes the press, responsible for comments about matters of public importance will “chill” or discourage expression. In *New York Times Co. v. Sullivan* (1964), the Supreme Court determined that even if a newspaper story about an Alabama police commissioner was false, it was protected speech unless the statement was made with the knowledge that it was false or with reckless disregard for whether or not it was false.

“FIGHTING WORDS”

The First Amendment also does not protect you if you use words that are so abusive or threatening that they amount to what the U.S. Supreme Court calls **“fighting words.”** These are words spoken face-to-face that are likely to cause immediate violence. Fighting words are like a verbal slap in the face. They are not protected by the First Amendment. Their value is outweighed by society’s interest in maintaining order. Still, courts very rarely use the “fighting words” doctrine today. Even offensive, provocative speech that makes its listeners very angry is generally protected and not considered to be fighting words.

COMMERCIAL SPEECH

Most advertising is considered **commercial speech**, as distinguished from individual speech. At one time, commercial speech was not protected by the First Amendment at all. More recently, however, courts have ruled that commercial speech is protected, though not to the extent that political speech is.

Governments can ban or regulate commercial speech that is false or misleading or provides information about illegal products. Governments may also place restrictions on other forms of commercial speech if they have a good reason. For example, a government can prohibit advertising about cigarettes to children or can restrict distracting billboards along roads.

SEDITIONOUS SPEECH

At various times, Congress and state legislatures have outlawed **sedition speech**, which is speech urging the resistance to lawful authority or

EXPLORING THE ESSENTIAL QUESTION

Imagine that you are a police officer and you are assigned to work at a controversial rally in your town. Your job is to keep everyone safe during the rally and keep any riots or violence from breaking out. During the rally, one of the speakers talks about taking up arms against the government. He urges the attendees to protest if they disagree with government policies, and suggests that they have a responsibility to fight the government if change does not come quickly. You can see the crowd getting excited, shouting and chanting. You are worried that the crowd might become violent.

UNDERSTANDING CONTEXT

How would you respond? Would you attempt to get the speaker off the stage, even arresting him if you need to? Or would you focus on the people in the crowd and try to contain them if things get out of hand?

DETERMINING MEANING

The root of the word *commercial* is *commerce*, which means “the activity of buying and selling.” How does knowing the meaning of *commerce* help you determine the meaning of **commercial speech**?



Though commercial speech is protected, it is not protected to the same level as political speech.

INTEGRATING INFORMATION

What kind of speech is advertising?
What kinds of restrictions—if any—can be placed on this type of speech?

ANALYZING KEY IDEAS AND DETAILS

- SUMMARIZING** Reread the first paragraph of this section, and then use one or two sentences to summarize it in your own words.
- CITING TEXT EVIDENCE** Identify text evidence that supports the author's claim that students in public schools generally have more limited First Amendment freedoms than they do in public forums.

advocating the overthrow of the government. In different eras, the courts have taken different views about the constitutionality of such laws.

If a conflict occurs between free expression and public safety, judges often look at whether the speech presents an immediate danger. This standard was set out in a 1919 case called *Schenck v. United States*. A member of the Socialist Party was convicted of violating the 1917 Espionage Act by printing leaflets that urged draftees to obstruct the World War I effort. The Court ruled that Schenk's conviction was constitutional because his actions took place during wartime when there was a "clear and present danger" that they would bring about "substantive evils."

A few years later, the Supreme Court gave the government more leeway in regulating "dangerous" speech. In *Gitlow v. New York* (1925), the Court ruled that speech could be restricted even if it only had a tendency to lead to illegal action. In the same year but in a different case, the Court said the government could prohibit speech that threatened to overthrow the government by unlawful means (*Whitney v. California*, 1927). Those standards shifted a bit as the courts ruled that First Amendment freedoms are fundamental. Since the 1940s, the government has been able to restrict such speech only when absolutely necessary. For example, in a case called *Brandenburg v. Ohio* (1969), the Supreme Court said

speech that generally advocates violence is protected. Only speech directed toward "inciting immediate lawlessness" and likely to produce such behavior could be punished. Therefore, it is not illegal to merely say that the government should be overthrown. In *Brandenburg*, a man had given a speech at a Ku Klux Klan rally where he advocated violence but did not incite it.

✓ CHECKING FOR UNDERSTANDING

- SUMMARIZING** What content restrictions may be placed on the freedom of speech?
- DETERMINING CONTEXT** What is obscene speech? In what ways do local communities regulate obscenity?
- EXPLAINING CAUSES** Since the 1940s, the government has been able to restrict seditious speech only when absolutely necessary. Why is this so?

TIME, PLACE, AND MANNER REGULATIONS

GUIDING QUESTION What time, place, and manner restrictions may be placed on free speech in our democracy?

As a general rule, government cannot regulate the content of expression, except in special situations, as noted in the preceding sections. However, government may make reasonable regulations governing the time, place, and

manner of speech. Towns and cities may **require** citizens to obtain permits to hold a march; to use sound trucks; or to stage protests in parks, on streets, or on other public property. They may also regulate the time during which loudspeakers may be used, the places political posters may be displayed, and the manner in which political demonstrations may be conducted. Such laws control when, where, and how expression is allowed. However, these regulations must be viewpoint neutral; that is, they cannot promote or censor a particular point of view. They also must be enforced even-handedly—officials cannot deny permits to groups they disagree with or waive requirements for groups that they agree with.

There are some special places where the rules about free speech are different than in the general public, including prisons, schools, and the military. These are places in which the government has “compelling interests” in making sure that the purpose of the institution is not compromised.

FREE SPEECH IN SPECIAL PLACES

Enlisted military personnel are protected by the Constitution, but are also subject to a special set of laws called the Uniform Code of Military Justice. Members of the military are prohibited, for example, from using contemptuous words against the president. One of the most common explanations for restrictions of free speech in the military has to do with the need for respecting the chain of command. Speech that mocks the president could create a clear and present danger to discipline and morale within the armed forces.

Prisoners also have basic rights to free expression. However, the Court has ruled that free speech may be limited in prisons if that speech could endanger inmates and staff, or if prison authorities believe limited speech serves legitimate correctional purposes.

FREE SPEECH IN PUBLIC SCHOOLS

Public schools—which are run by the government—present special First Amendment problems. The rights of public school students may at times conflict with the rights of others or interfere with the need to maintain a good learning environment.

As a general rule, courts allow greater expression rights in public parks and on street corners than in schools. Courts sometimes speak of these places where First Amendment rights are traditionally exercised as public forums. For the most part, however, students in public schools have more limited First Amendment freedoms than in public forums. In *Tinker v. Des Moines* (1969), for example, the Supreme Court said that students have free speech rights in school as long as exercise of that right does not result in a substantial disruption in the educational process or violate the rights of others.

“It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”

—*Tinker v. Des Moines* (1969)
Supreme Court of the United States

DETERMINING MEANING

One meaning of the word *require* is “to need.” For example, you require food and water to live. The word *require* can also mean, “to demand or insist on something.” Which meaning of **require** is being used in this paragraph? How do you know?

ANALYZING PRIMARY SOURCES

1. **DETERMINING MEANING** Use context clues to determine the meaning of the word *shed* in this excerpt. Use a dictionary to check your definition.
2. **SUMMARIZING** Summarize the meaning of this excerpt in your own words.

Later rulings have clarified the authority school officials have to regulate student speech consistent with First Amendment rights. In *Bethel v. Fraser* (1986), for instance, the Court ruled that schools can punish lewd or indecent speech, even though that same speech would be protected outside school. In *Hazelwood v. Kuhlmeier* (1988), the Court ruled that school officials can regulate student speech in school-sponsored activities, like the school newspaper and theater productions.

In addition, courts consider the age of the student and the precise educational setting when deciding these cases: a student at a public university is likely to have greater expression rights than an elementary or a middle school student.

CHECKING FOR UNDERSTANDING

- 1. SUMMARIZING** What time, place, and manner restrictions may be placed on free speech in our democracy?
- 2. UNDERSTANDING CONTEXT** Why is speech more restricted in prisons, the military, and public schools?
- 3. DRAWING CONCLUSIONS** Who is more likely to have greater free speech rights in the eyes of a court: a college senior or a fourth-grade student in elementary school? Why?

LESSON 1 REVIEW

Building Citizenship

- 1. IDENTIFYING CONNECTIONS** The First Amendment protects the rights of American citizens to freely express themselves. What responsibilities come with these rights?

Building History-Social Science Analysis Skills

- 2. RELATING EVENTS** What is the “balancing test” as it relates to freedom of expression? What were the two issues the Court weighed in *Schenck v. United States*?
- 3. CONSTRUCTING HYPOTHESES** An active-duty soldier wears his dress uniform and attends a protest against the president. He carries a sign making fun of the president. Would a court uphold the soldier’s right to express himself in this manner? What argument would the court likely give for its decision?

- 4. EXPLAINING ISSUES** Choose an example from your graphic organizer in which you disagree with the Supreme Court’s current interpretation of the First Amendment. Write an essay arguing why this form of speech should or should not be protected under the First Amendment.

Writing About Government

- 5. EXPLANATORY WRITING** Write an essay explaining why the First Amendment’s protection of free speech is central to democracy in the United States. Provide at least two reasons and illustrative examples in your essay.

Collaborating

- 6. EVALUATING POINT OF VIEW** In pairs, write five short scenarios involving “speech” on index cards. Decide whether or not each scenario represents a violation of the First Amendment, and write your reasoning on the back of each card. When you are finished, present your scenarios to another pair of students and evaluate their responses.

Should our democracy limit hateful speech?

Debating Democratic Principles

In recent years, there has been an effort to punish those who express views motivated by bigotry or racism. Such speech is called *hate speech*. Some states and cities have passed laws prohibiting the display of symbols that are hateful on the basis of race, gender, or religion. Others have enacted laws that increase criminal punishments for bias-motivated violence and intimidation.

Sometimes, these laws come into conflict with the First Amendment's protection of free speech. Some laws have been ruled unconstitutional, while others have been upheld.



Hate Speech Should Be Outlawed

Hate speech should be outlawed. Certain symbols and expressions are clearly hateful and have no meaningful social benefit. Our freedom of speech is important, but it is not an absolute guarantee. The government should balance freedom of expression with other democratic values, such as respect, equality, and tolerance.

Hateful speech is particularly dangerous when it is directed against minority groups. Such people already lack power in our society. Prohibiting hateful speech against these groups prevents hateful ideas from turning into discriminatory actions. History shows us that the first act of persecution of minorities is frequently speech that condemns or abuses those minorities.



Hate Speech Should Be Protected

Hate speech is regretful and upsetting, but it should not be illegal. Exposure to offensive speech is one small price to pay to ensure our freedom to speak. It is better to counter hate speech with positive speech, or to ignore it, than to make it illegal. In an open “marketplace of ideas,” hateful and offensive ideas will be denounced by other speech.

Additionally, hate speech laws are unworkable. They require the government to determine the intent of the speaker. Once we give the government the power to punish some forms of expression based on the speaker's intent, the government will soon be able to punish other speech as well. The government should only ban actions, not what people say or believe.

EXPLORING THE ESSENTIAL QUESTION

EXPLAINING ISSUES Americans disagree about whether our democracy should limit hateful speech. Read the evidence provided, and prepare to debate one side or the other.

1. Identify the best reasons to support your side of the debate question.
2. Draft a compelling opening statement that sets out your position in the debate and summarizes your argument.
3. Anticipate the strongest arguments to support the other position. How could you respond to those points?

EXPLORING THE ESSENTIAL QUESTION

Including freedom of the press in the First Amendment to the Constitution reflects the importance the Founders placed on this right. It ensures that Americans can express opinions in writing without fear of government censorship or interference. ►

LESSON 2

Freedoms of Press, Assembly, and Petition

ESSENTIAL QUESTION

What restrictions, if any, should be placed on our constitutional rights and freedoms?

Read the following hypothetical situations. Do you consider the government's actions fair or unfair? Make note of your answers, reasons, and the criteria you used to make each decision.

- The government prevents a newspaper from publishing information about a recent murder for fear of not being able to find impartial jury members in a few weeks.
- The government denies a permit to an environmental group that planned to hold a peaceful protest that would block the path of construction crews about to build an oil pipeline.
- The government prevents a reporter from publishing leaked information about an upcoming military strike in a current war.
- The White House asks reporters not to announce that the president is visiting a country where U.S. troops are fighting until after he lands there—for his safety and theirs.
- The government prohibits the publication of news about a campaign finance scandal that involves a state senator who is up for reelection in two weeks.
- A county's charter requires its lawmakers to hold an open (public) hearing for community input before it passes any law. For one contentious issue, more than 60 people sign up to speak. The meeting starts late and due to time constraints, the moderator allows only two people to testify before a vote is taken.



Regulations		
Press	Assembly	Petition

ANALYZING KEY IDEAS AND DETAILS

SUMMARIZING As you read, list the ways in which the government regulates the freedoms of press, assembly, and petition.

FREEDOM OF THE PRESS

GUIDING QUESTION *In what instances may the freedom of the press be limited?*

The First Amendment to the U.S. Constitution guarantees freedom of the press. It protects us from government censorship of newspapers, magazines, books, radio, television, and film. **Censorship** occurs when governments prohibit the publication or production of stories that they find offensive or contrary to their own interests. Traditionally, the courts have protected the press from government censorship. In addition to providing information about news events, the press subjects all our political and legal institutions to public scrutiny and criticism.

However, freedom of the press sometimes clashes with other rights, such as a defendant's right to a fair trial or a citizen's right to privacy. Sometimes, freedom of the press also clashes with the government's interests. When can the government reasonably prevent the press from obtaining or publishing information or force the press to disclose information? Are special limits on the press needed during wartime?

PRIOR RESTRAINT

In many nations, **prior restraint**—censorship of information before it is published—is a common way for government to control information and limit freedom. In the United States, attempts at prior restraint are **presumed** unconstitutional by the courts, unless publication would cause a certain, serious, and irreparable harm, and stopping publication would prevent the harm, but no lesser means would do so.

Two Supreme Court decisions illustrate these principles. In a 1931 case called *Near v. Minnesota*, a newspaper had called local officials “gangsters” and “grafters.” A state law prohibited the publication of any “malicious, scandalous, or defamatory” newspapers or magazines. Acting under the state’s law, officials obtained a court order to prevent the paper from being published. By a 5 to 4 vote, the Supreme Court ruled that the state law was an unconstitutional limitation on the press.

The Supreme Court reaffirmed its position in *New York Times Co. v. United States* (1971)—widely known as the Pentagon Papers case. In 1971 a former Pentagon employee leaked to the *New York Times* a secret government report outlining the history of American involvement in the Vietnam War. This report, which became known as the Pentagon Papers, contained many government documents, including secret cables and memos.

ANALYZING KEY IDEAS AND DETAILS

1. CITING TEXT EVIDENCE The essential question of this lesson is: *What restrictions, if any, should be placed on our constitutional rights and freedoms?* Cite at least two pieces of evidence from this section that help answer that question.

2. ANALYZING EVENTS How did the Supreme Court’s ruling in *New York Times Co. v. United States* affect freedom of the press?

DETERMINING MEANING

To better understand the term **prior restraint**, break it down. The word *prior* means “earlier,” and the word *restraint* means “the act of holding something back.” In cases of prior restraint, what is being held back? When is it being held back?

ANALYZING PRIMARY SOURCES

1. UNDERSTANDING CONTEXT

Who are “the governed” to which Justice Black refers in this excerpt? Who are “the governors”?

2. DETERMINING MEANING

Reread the excerpt. What does the word *bare* mean in this context?

Believing the Pentagon Papers showed that government officials had lied about the ongoing war, the newspaper began to publish parts of the report. The government tried to stop publication of the papers, arguing that national security was at risk and that the documents had been stolen. The Court rejected the government's claims that prior restraint was reasonable. Justice William O. Douglas noted that “the dominant purpose of the First Amendment was to prohibit the widespread practice of governmental suppression of embarrassing information.” Justice Hugo L. Black added:

“The press [is] to serve the governed, not the governors. . . . The press was protected so that it could bare the secrets of government and inform the people.”

— U.S. Supreme Court, *New York Times Co. v. United States* (1971)

FAIR TRIALS

Conflicts have also occurred between the First Amendment's freedom of the press and the Sixth Amendment's right to a fair trial. Can the press publish information that might influence the **outcome** of a trial? Can courts limit what can be published to increase the chances of a fair trial?

A case involving these questions went to the Supreme Court. In that case, a trial judge issued a **gag order**, which prohibited the news media from

DETERMINING MEANING

A gag is something put over a person's mouth to prevent him or her from speaking. How does knowing the meaning of *gag* help you determine the meaning of **gag order**?

CIVIC PARTICIPATION IN A DIGITAL AGE

NATIONAL SECURITY AND FREEDOM OF THE PRESS

Imagine you and four others are on the editorial team at a leading online and television news outlet. One of your top reporters came to you this morning with a story. Someone inside the state government gave the reporter a copy of a top-secret report. The report details multiple security lapses at a local electrical utility that make the facility vulnerable to a terrorist attack. It outlines the possible consequences of an attack and strongly recommends that the government immediately divert funds to fix the problems.

The reporter's source said the state's elected leaders are ignoring the report and do not plan to make it public. The source is concerned that the safety of the community is in jeopardy and wants to make people aware. You contacted the government official who would be in charge of implementing the report's findings. The official confirms the report exists and asks you not to publish this information, because the report provides very specific details about the facility and its vulnerabilities. It is possible that potential terrorists or criminals could use the information in the report to plan and launch an attack.



PHOTO: ©2007 Getty Images, Inc.; TEXT: (a) *New York Times Co. v. United States*, 403 U.S. 713 (1971); (b) *New York Times Co. v. United States*, 403 U.S. 713 (1971)

EXPLORING THE ESSENTIAL QUESTION

EXPLANATORY WRITING Your team needs to decide whether or not to publish the report. Discuss the reasons to publish and not to publish, and the possible consequences of either decision. Can you think of an alternative to publishing that would still protect the public? Make a decision and write a paragraph explaining your reasoning or present your decision to your classmates.

reporting on an upcoming murder trial. The judge feared the news coverage would make it impossible for a suspect in a multiple murder case to get a fair trial before an unbiased jury. The media challenged the gag order. The Supreme Court ruled in *Nebraska Press Association v. Stuart* (1976) that the gag order was too vague and said the trial judge could take other actions to protect the defendant's right to a fair trial. For example, the judge could keep the jury **sequestered**, or isolated from the public and media, during the trial.

NEW MEDIA

In writing the First Amendment, the Founders thought of the press as printed material like books, newspapers, and pamphlets. They could not have foreseen the growth of technology and mass communication. Modern media has created new issues regarding freedom of the press.

Even comparing news of today to 40 years ago, media and free press issues have become more complicated. Consider the dilemma of finding an unbiased jury for high-profile criminal trials like in the *Nebraska* case. Now imagine that a video clip showing the alleged murderer at the scene of the crime has gone viral on the Internet. How could a judge issue a gag order broad enough to cover any journalist who wants to cover the story? How can the defendant expect to find an unbiased jury?

The Internet has been the source of much debate when it comes to freedom of the press. Should we treat a blogger like a newspaper reporter? What do we do when an anonymous comment online is defamatory or fraudulent? The courts are still deciding cases about these new issues.

✓ CHECKING FOR UNDERSTANDING

1. **SUMMARIZING** In what instances may the freedom of the press be limited?
2. **IDENTIFYING CONNECTIONS** What are two actions a trial judge can take to protect a defendant's Sixth Amendment rights?
3. **ANALYZING CHANGE** What are some ways First Amendment issues have changed since the Founders wrote the Constitution?

FREEDOMS OF PETITION AND ASSEMBLY

GUIDING QUESTION *What restrictions can the government place on the freedoms of petition and assembly?*

The First Amendment guarantees “the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” These are essential rights in a democracy because they offer people opportunities to join together to make their voices stronger when they want to send the government a message. When individuals **petition**, they ask the government to take action or refrain from taking a planned action, and to work for them.

This image displays
in the product.

Julian Assange challenges the limits of the freedom of speech and press by publishing leaked confidential information on WikiLeaks, a website he started in 2006.

DRAWING CONCLUSIONS Should Internet posts receive the same protection as newspapers under the First Amendment? Why or why not?

DETERMINING MEANING

In this paragraph, the word **petition** is used as a verb, but it can also be used as a noun. Use context clues to write a definition for the noun *petition*.

PARTICIPATING IN YOUR GOVERNMENT

PETITION

Find out when your city or county government is having its next meeting that is open to the public. Get a copy of the agenda so you can begin thinking about the topics they will be discussing or debating.

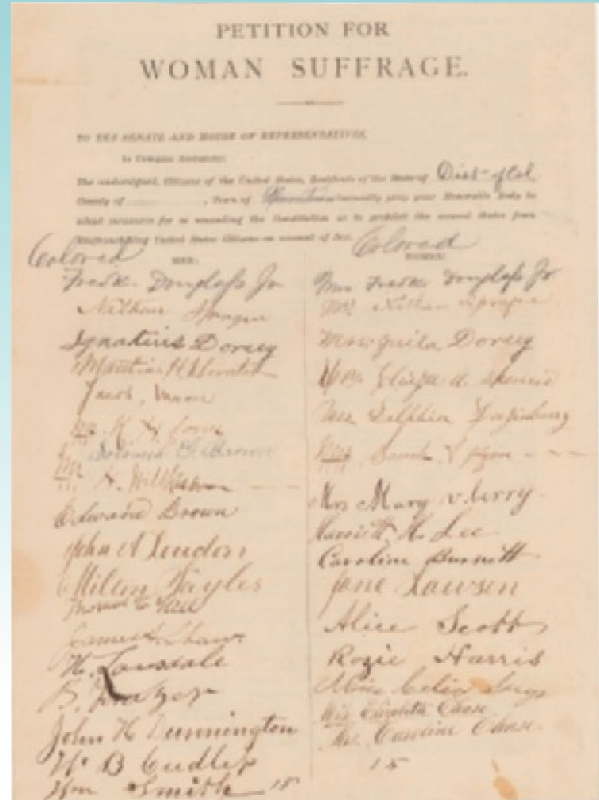
EXPLORING THE ESSENTIAL QUESTION

OPTION A

ARGUMENTATIVE WRITING If you have a strong opinion on one of the proposals, write up a petition that asks them to take a certain action and states the reasons they should. Ask friends, family, or neighbors if they will sign your petition. Make a copy for your teacher and submit your petition to your government officials at the meeting. Report back on their response.

OPTION B

ASSESSING CREDIBILITY If you do not fully understand or have a strong opinion about the proposals, observe the meeting and take notes about what other members of the public say when they testify. What points do they make? Which presenters were most persuasive and what made them most effective? Write a news report about how members of your community exercised their right to petition.



A petition for woman suffrage from 1887

UNDERSTANDING CRAFT AND STRUCTURE

1. ANALYZING TEXT STRUCTURE

Reread the first two paragraphs of this section. What comparison does the author make?

2. ANALYZING POINT OF VIEW

What clues in the text help you understand what residents and officials in Skokie, Illinois, thought about the 1977 Nazi Party rally held in their community?

These rights are not guaranteed in totalitarian states, where a gathering of people—even in a private home—can arouse government suspicion. Because totalitarian governments serve the interests of their leaders, input from citizens is irrelevant.

FREEDOM OF PETITION

The Constitution protects our right to petition the government for redress of grievances. Petition includes such things as signing a petition, filing a lawsuit, writing a letter or e-mail, testifying before tribunals, and collecting signatures for ballot initiatives. The right to petition has roots in the Magna Carta and English Bill of Rights. In fact, one of the reasons the colonists listed this right in the Declaration of Independence is that King George III failed to hear petitions from the colonies.

FREEDOM OF ASSEMBLY

The right to free assembly means people can participate in protests, parades, and other large events to show their unity and to show their support or opposition to a government policy. They are also free to meet with others in

homes and other private places. However, the Constitution makes it clear that the gatherings must be peaceful.

At times in our history, assemblies have become violent riots. Like other First Amendment freedoms, the freedom of assembly must be balanced with the need to maintain order. For example, the government can require a group to get a permit before it stages a rally. It can deny a group from taking over a public space, which would deny others the use of the same public space. As with the freedom of speech, the government can reasonably regulate the time, place, and manner of assemblies, as long as it does so in the same way for all groups, regardless of their message. Some demonstrations could become violent because those with opposite views may launch counter-demonstrations. Opponents may engage in heated verbal or physical clashes.

A controversial example of balancing freedom of speech with freedom of assembly involved a Nazi Party rally in Skokie, Illinois. In 1977 the American Nazi Party, a small group patterned after Adolf Hitler's German Nazi Party, announced plans to hold a rally in Skokie, Illinois, a largely Jewish suburb of Chicago. Skokie residents were outraged. Many were survivors of the Holocaust, the mass extermination of Jews and other groups by the Nazis during World War II. Others were relatives of Jews who were killed in Nazi death camps.

Skokie officials, citizens, and many others argued that the Nazis should not be allowed to march. They claimed that the march would cause great pain to residents and would attract a counterdemonstration. To prevent the march, the city required the Nazis to post a \$350,000 bond to get a parade permit. The Nazis claimed the high bond interfered with their rights to free speech and assembly. The courts sided with the demonstrators, ruling that the law requiring the high bond was intended to restrict speech based on its content.

Anti-racism demonstrators protest in Skokie, Illinois in the late 1970s



Some new challenges in the freedom of assembly involve the organization of protests by social media. E-mail blasts or social media can be used to organize spontaneous assemblies, sometimes in a matter of minutes. These demonstrations present new challenges for the government. Detractors say that large gatherings with no prior authorization endanger protesters and bystanders and disrupt local communities. Supporters argue that spontaneous gatherings are sometimes necessary to respond to a breaking news story or an official decision.

In keeping with the freedoms of the First Amendment, the government cannot deny a demonstration permit simply because it does not like the message. If, for example, the government permits pro-government groups to rally in a public park, then it cannot deny the same rights to groups that protest the government's actions.

✓ CHECKING FOR UNDERSTANDING

1. **SUMMARIZING** What restrictions can the government place on the freedoms of petition and assembly?
2. **COMPARING AND CONTRASTING** Why was the freedom of petition important to the colonists? Why is it important today?
3. **IDENTIFYING CONNECTIONS** The First Amendment right to petition has its origins in which historical documents?

EXPLORING THE ESSENTIAL QUESTION

EVALUATING EVIDENCE Some people claimed the purpose of the demonstration was to incite Skokie's Jewish residents and inflict emotional harm, rather than communicate ideas.

- a. Do you agree or disagree? Should the motive of the speaker influence whether speech is protected by the Constitution?
- b. Was the permit law in this case neutral in its viewpoint?
- c. How do you think this case should have been decided? In what ways, if any, should the town be able to regulate the demonstration?

LESSON 2 REVIEW

Building Citizenship

1. **DRAWING CONCLUSIONS** Explain how the right of petition encourages active citizenship.

Building History-Social Science Analysis Skills

2. **SUMMARIZING** Summarize the ways in which the government can limit the freedoms of press, assembly, and petition.
3. **IDENTIFYING CONNECTIONS** In what ways has social media strengthened Americans' constitutional freedom to assemble? Has social media jeopardized that freedom in any way?
4. **EVALUATING** What is prior restraint? What view do American courts generally take toward prior restraint? Cite evidence from the text to support your answer.

Writing About Government

5. **INFORMATIVE WRITING** How have the Internet and digital communications changed the press? How have they changed the way individuals assemble? What challenges does this present for understanding the freedoms of the press and assembly? Write an essay explaining how technology has affected these First Amendment freedoms.

Collaborating

6. **INTEGRATING INFORMATION** In a small group, create a poster that illustrates the First Amendment freedoms discussed in this lesson. Include photos and headlines from local and national newspapers and magazines in your poster.

LESSON 3

Freedom of Religion

EXPLORING THE ESSENTIAL QUESTION

ESSENTIAL QUESTION

Why are the freedoms in the Bill of Rights and later amendments essential to our democracy?

Read each scenario below. Do you think the actions described should be allowed in our democracy?

- a. A group gets together once a week in a private home for prayer and religious study.
- b. The federal government requires all citizens to donate 5 percent of their income to a religious organization of their choice.
- c. A city government provides funding to a religious organization to run a homeless shelter.
- d. A religious organization holds a pledge drive among its members to fund the construction of a new place of worship.
- e. A school requires that students pray at the beginning of the day. The school does not specify what prayer students must use.
- f. A woman wears an article of clothing, which is required by her religion, to work.
- g. A town sponsors a religious holiday display in the city hall.

The First Amendment prohibits Congress from passing a law establishing a national religion, and it guarantees Americans the right to practice any religion or no religion at all. ►



Establishment Clause	Free Exercise Clause

ANALYZING KEY IDEAS AND DETAILS

CITING TEXT EVIDENCE Use the table to list the Supreme Court cases that are related to the establishment clause and the free exercise clause.

ANALYZING PRIMARY SOURCES

DETERMINING MEANING

1. The word **respecting** is a multiple-meaning word. One meaning of its root word *respect* is to have great feeling or liking for someone. Does that meaning differ from how *respecting* is used in the quote? Use a dictionary to determine the meaning of respecting as it is used in the excerpt.
2. Use context clues from the excerpt as well as this section to write two synonyms for the word **prohibiting**.

ANALYZING KEY IDEAS AND DETAILS

1. **DETERMINING CENTRAL IDEAS** Which constitutional amendment deals with freedom of religion?
2. **CITING TEXT EVIDENCE** The author claims that religion is a significant part of American life. What evidence is given in the text to support this idea?

RELIGIOUS FREEDOM

GUIDING QUESTION *Why is the freedom of religion essential to our democracy?*

The first 16 words of the First Amendment to the U.S. Constitution deal with freedom of religion.

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

—The First Amendment

These words reflect the deep concern that the Founders of the United States had about the relationship between church and state and about the right of individuals to practice their religion freely. In addition, Article VI of the Constitution prohibits the government from requiring any religious test for public office.

The First Amendment prohibits the government from either endorsing a particular religion or punishing people based on their religious beliefs or practices. Some people believe that these two clauses require the government to be neutral toward religion. This means that the government should not take actions or create laws that favor one religion over another, or favor religious activities over nonreligious activities. Other people believe that the First Amendment requires the government to accommodate religious belief and practice, as long as it does not establish or promote a particular state or national religion. The tension between these two approaches to understanding the First Amendment has led to many Supreme Court cases.

Between 1791 and 1940, the U.S. Supreme Court heard only five cases dealing with the separation of church and state and church-state relations. Since then, the Court has heard more than a hundred such cases. Based on data about religious affiliation and attendance, religion is a **significant** part of the lives of many American people. About 85 percent of Americans identify with a religion or consider themselves religious. Many national traditions have religious overtones. For example, United States currency includes the words “In God We Trust.” Since 1954, the Pledge of Allegiance has also contained a reference to God. Many state legislatures, Congress, and the Supreme Court begin their sessions with a brief prayer. Although these traditions are criticized by some people as violating the First Amendment, they have been upheld by the courts.

✓ CHECKING FOR UNDERSTANDING

1. **SUMMARIZING** Why is freedom of religion essential to our democracy?
2. **EVALUATING** Why did the Founders think it was important to protect religious freedom in the United States?
3. **EXPLAINING ISSUES** What are the two competing interpretations of the establishment and free exercise clauses?

THE ESTABLISHMENT CLAUSE

GUIDING QUESTION *How does the establishment clause of the First Amendment protect the freedom of religion?*

The first phrase in the First Amendment is called the **establishment clause**. It forbids state and federal governments from setting up churches, from passing laws aiding one or all religions, or from favoring one religion over another. In addition, the establishment clause forbids the government from passing laws requiring attendance at any church or belief in any religious idea.

Thomas Jefferson once referred to the establishment clause as a “wall of separation between church and state.” That phrase is not used in the Constitution, however. Over time, the idea of a wall of separation has been expanded and become controversial. How high should the wall go? Does it mean that the government should have no contact with any religious group?

In practice, religion has long been a part of public life in the United States, and in some ways, the government encourages religion. Places of worship are indirectly aided by government in many ways. For example, houses of worship, such as churches, temples, and mosques, do not have to pay real estate taxes, even though they receive government services such as police and fire protection.

Cases involving the establishment clause have been among the most controversial to reach the U.S. Supreme Court. One of the first cases the Court decided on the establishment clause was *Everson v. Board of Education*. In 1947 the Supreme Court ruled that New Jersey was allowed to pay for busing students to religious private schools, even though opponents argued that it amounted to state support for religion. Because the law did not give any money to the religious schools the justices determined that it benefited students and their parents rather than aiding a religion directly.

Since then, the Supreme Court has decided several cases about public funding for religious private schools. Sometimes, they have upheld the funding as legal, while other times they say the aid is unconstitutional. For example, it has allowed states to provide bus transportation, computers, and loans of certain textbooks to students in religious schools. It refused to allow state-supported bus transportation for field trips, though. Why the difference? Since 1971, the justices have used a three-part evaluation to decide whether such government aid to schools violates the establishment clause.

UNDERSTANDING CRAFT AND STRUCTURE

1. ANALYZING POINT OF VIEW

Reread this section and find all the instances of the word *controversial*. How many did you find? Why does the author use this word frequently in this section?

2. ANALYZING TEXT STRUCTURE

The author begins the last paragraph of the section on school prayer with the phrase, “Despite restrictions on school-led or school-endorsed prayer . . .” Why does the author use this phrase?

DETERMINING MEANING

To establish means “to set up” or “to found something.” How might knowing the meaning of the word *establish* help you remember what the **establishment clause** is?

U.S. money includes the words “In God We Trust.” While such traditions have been criticized as violating the First Amendment, they have been upheld by the courts.

EXPLAINING ISSUES Is the motto “In God We Trust” on U.S. currency a violation of constitutional principles? Explain your answer.



DETERMINING MEANING

Things that are **secular** are not associated with any faith-based organization. Use context clues to name an antonym for *secular*.

Known as “The Lemon Test,” because it was first set out in the case of *Lemon v. Kurtzman* (1971), the Court said that a law or government action must:

- have a **secular**, or nonreligious, purpose;
- in its main effect neither advance nor **inhibit**, or hold back, religion; and
- avoid **excessive** entanglement of government with religion.

In 2002 the Court approved a program from Ohio that provided vouchers to low-income parents to help pay tuition at a variety of schools, including religiously affiliated schools (*Zelman v. Simmons-Harris*).

Many states have provisions in their constitutions that ban government aid to any school with a religious affiliation. These are known as Blaine Amendments, after a similar federal constitutional amendment that was proposed in 1875 but failed to gain enough votes in Congress.

SCHOOL PRAYER

Establishment clause cases are particularly controversial when they involve prayer in public schools. Because they are funded and run by the government, public schools are part of the government. In cases such as *Engel v. Vitale*, the Supreme Court has held that public school-sponsored prayer violates the establishment clause.

Many Americans disagree with the Supreme Court’s decisions in prayer-in-school cases. Congress has considered several constitutional amendments to allow prayer in public schools, but none have received enough votes in Congress or the states to be ratified.

Despite restrictions on school-led or school-endorsed prayer, public school students may still study religion, and may even meet in religious groups. Schools are allowed to teach about the history of religion and the religions of the world as long as they do not endorse any particular belief. Student-initiated and -led groups, including student prayer groups, are allowed to use school space to meet outside school hours, just like any other club.

SUMMARIZING Choose one of the Supreme Court cases and research the public reaction to the Court’s decision. Write a brief summary of what you have learned.

PRAYER IN PUBLIC SCHOOLS	
Engel v. Vitale (1962)	The Court ruled that the prayer read every morning in New York public schools violated the establishment clause. The prayer acknowledged God, but was not tied to a specific religion. The ruling said that it is no “business of government to compose official prayers for any group of the American people to recite as part of a religious program carried on by government.”
Abington v. Schempp (1963)	The Supreme Court banned school-sponsored Bible reading and recitation of the Lord’s Prayer. Because these activities were conducted by government-paid teachers, the Court ruled that they violated the establishment clause.
Wallace v. Jaffree (1985)	The Court struck down an Alabama law requiring teachers to observe a moment of silence for “meditation or voluntary prayer” at the start of each school day. The Court said that this law had a religious purpose, and that the state failed to maintain absolute neutrality toward religion and instead endorsed it.
Santa Fe v. Doe (2000)	The Supreme Court ruled that public school districts cannot let students lead stadium crowds in prayer before football games.

(t)Engel v. Vitale, 370 U.S. 421 (1962); (b)Wallace v. Jaffree 472 U.S. 38 (1985)

FREEDOM OF RELIGION

The Universal Declaration on Human Rights proclaims the freedom of religion. Protections for religious freedom and their day-to-day implementation vary from country to country.



JAPAN

Religious Affiliations
52% Shinto
42% Buddhist
4% Other
1% Christian



CHILE

Religious Affiliations
70% Roman Catholic
15% Protestant
10% Unaffiliated
5% Other



SAUDI ARABIA

Religious Affiliations
85 to 90 % Sunni Muslim
10 to 15 % Shia Muslim

Church and state are officially separate, and religious freedom is protected by law and in practice. According to Japan's Agency for Cultural Affairs, approximately 183,000 religious groups were certified by the government as religious organizations with corporate status. The government does not observe any religious holidays as national holidays.

Church and state are officially separate, and religious freedom is generally protected by law and in practice. Publicly subsidized schools are required to offer religious education during two teaching hours per week through high school. Parents may decide to have their children excused from any religious education. The majority of religious instruction in public schools is Catholic, although the Ministry of Education has approved curricula for 14 other religious groups. The government observes several religious holidays as national holidays.

Sunni Islam is the official religion, and there is no separation between state and religion. Saudi Arabia does not recognize freedom of religion and prohibits the public practice of any religion other than Islam. Some Muslims who do not adhere to the government's interpretation of Islam face significant political, economic, legal, social, and religious discrimination. All public schools provide religious instruction. The Committee for the Promotion of Virtue and Prevention of Vice is a government agency that monitors social behavior and enforces morality according to the government's interpretation of Islam.

RELIGIOUS DISPLAYS BY GOVERNMENTS

Not all establishment clause issues concern education. For example, the establishment clause also prohibits some religious displays by the government. Generally, the Supreme Court has ruled that in instances where governments display symbols of a variety of religions, or do so with a secular (nonreligious) purpose, such displays are constitutional.

For example, when a Kentucky courthouse displayed a copy of the Ten Commandments by itself, the Supreme Court said that it violated the establishment clause (*McCreary Co. v. ACLU*, 2005). However, a Texas monument on the state capitol grounds that was donated by a private organization and included the Ten Commandments and accompanied by many other monuments and statues was found to be constitutional (*Van Orden v. Perry*, 2005). The city of Pawtucket, Rhode Island, was allowed to display a nativity scene with secular items like a Christmas tree, sleigh, and reindeer (*Lynch v. Donnelly*, 1984). Allegheny County, Pennsylvania, however, was prevented from displaying a publicly funded nativity scene on its own (*Allegheny County v. ACLU*, 1989).

1. COMPARING AND CONTRASTING

Compare the religious composition and protections of these countries. In what ways are the protections similar and different?

2. INFORMATIVE WRITING

Choose one of your countries of origin (a country your relatives left to come to the U.S.) or the United States. Research that country's religious composition and level of religious freedom, and write a profile of that country.



This tablet of the Ten Commandments sits on the lawn of the Lucas County Courthouse in Toledo, Ohio.

✓ CHECKING FOR UNDERSTANDING

- 1. EXPLAINING EFFECTS** How does the establishment clause of the First Amendment protect the freedom of religion?
- 2. RELATING EVENTS** How has the Supreme Court ruled on school prayer cases? Explain.
- 3. DETERMINING CONTEXT** Under what circumstances might a government display symbols of a religious nature?

THE FREE EXERCISE CLAUSE

ANALYZING KEY IDEAS AND DETAILS

- 1. SUMMARIZING** Summarize the first paragraph in this section in your own words.
- 2. ANALYZING EVENTS** What was the effect of the Supreme Court's ruling in *Wisconsin v. Yoder* (1972)?

DETERMINING MEANING

To better understand the phrase **free exercise clause**, break it down. *Free* means “able to act as one wishes”; *exercise* means “to practice something.” What does the *free exercise clause* give people the freedom to practice?

GUIDING QUESTION How does the free exercise clause of the First Amendment protect the freedom of religion?

The **free exercise clause** protects the right of individuals to worship as they choose. However, when an individual's right to free exercise of religion conflicts with other important interests, the First Amendment claim does not always win. As a rule, religious belief is protected, yet actions based on those beliefs may be restricted if they violate an important secular government interest. In 1878 the U.S. Supreme Court upheld the conviction of a Mormon man who had violated the criminal law against polygamy—having multiple spouses—even though his religion encouraged this practice at that time in history (*Reynolds v. United States*).

Difficulties arise when the government passes a law that happens to punish religious practice or forces people to act in a way that violates their religious beliefs. For example, many states have laws requiring that children be in school until age 16. In 1972 some Amish parents challenged one state's law, arguing that children should not be required to attend school past eighth grade. In *Wisconsin v. Yoder*, the Supreme Court ruled in their favor.

Two of the most discussed free exercise cases have to do with whether children could be forced to salute the American flag. In 1935 William and Lillian Gobitis were expelled from school for refusing to salute the flag. The family believed this violated the religious commandment against worshipping **graven images**. In *Minersville School District v. Gobitis* (1940), the Court upheld the school regulation. It said that the state legislature was democratically elected, had control over schools, and had a reasonable purpose for promoting patriotism—all of which outweighed the Gobitis family's claim.

After the *Gobitis* decision, the West Virginia board of education directed all students and teachers to salute the flag and recite the Pledge of Allegiance as part of regular school activities. When this state requirement was challenged, the Court overturned the *Gobitis* decision and said such laws are unconstitutional interferences with the free exercise of religion. The Court concluded in *West Virginia State Board of Education v. Barnette* (1943) that patriotism could be achieved without forcing people to violate their religious beliefs. It also said the right to free speech also means the government cannot compel speech, like requiring someone to recite the pledge.

CHECKING FOR UNDERSTANDING

1. **EXPLAINING EFFECTS** How does the free exercise clause of the First Amendment protect the freedom of religion?
2. **RELATING EVENTS** Why did the Court rule that students and teachers cannot be required to salute the flag and recite the Pledge of Allegiance?
3. **UNDERSTANDING CHANGE** Why did the Supreme Court rule as it did in *Reynolds v. United States*?

DETERMINING MEANING

The word *grave* used to mean “to dig, cut, or carve.” This is the root of the word *graven* in the phrase **graven image**. Can you think of a modern English word with the root word *grave* that means “to cut or carve”?

LESSON 3 REVIEW

Building Citizenship

1. **DRAWING CONCLUSIONS** How does the constitutional guarantee of freedom of religion enhance American citizenship?

Building History-Social Science Analysis Skills

2. **ANALYZING CHANGE** How has the number of Supreme Court cases involving church-state relations changed since 1940? What conclusions can you draw from this change?
3. **RELATING EVENTS** What is the purpose of the “Lemon Test”? What are its components?
4. **COMPARING AND CONTRASTING** Would a student be expelled from school today for refusing to salute the flag, as William and Lillian Gobitis were in 1935? Explain your answer.

Writing About Government

5. **ARGUMENTATIVE WRITING** Choose one of the Supreme Court cases discussed in this lesson where you disagree with the Court's ruling. Write a blog post or letter to the editor explaining why you disagree with the Court's decision.

Collaborating

6. **EVALUATING POINT OF VIEW** In pairs, make a statement to your partner about the establishment and free exercise clauses of the U.S. Constitution. Your partner will then rephrase what you have said, and then make a related statement. You will repeat what your partner did. This pattern of statement-paraphrase-statement will continue for several rounds until the question has been thoroughly explored.

LESSON 4

The Fourteenth Amendment

ESSENTIAL QUESTION

EXPLORING THE ESSENTIAL QUESTION

Why are the freedoms in the Bill of Rights and later amendments essential to our democracy?

The Supreme Court has ruled that some rights are “fundamental” and that any government law that affects these fundamental rights should be closely scrutinized.

- Think about the concept of fundamental rights.
- What does *fundamental* mean to you?
- Which rights do you consider fundamental? Why?

The Civil Rights Act and Voting Rights Act of the mid-1960s brought an official end to the system of legal segregation known as Jim Crow. ►



USDA Photograph Archives

Citizenship	Due Process	Equal Protection

ANALYZING KEY IDEAS AND DETAILS

SUMMARIZING Use the table to take notes about the Fourteenth Amendment.

THE CONTEXT OF THE FOURTEENTH AMENDMENT

GUIDING QUESTION *What historical conditions led to the passage of the Fourteenth Amendment?*

After the Civil War, three amendments to the Constitution were ratified almost immediately. The Thirteenth Amendment outlawed slavery, and the Fifteenth Amendment said that the right to vote could not be restricted based on race or color. The Fourteenth Amendment was the longest and most complex of the three. It did three very important things:

1. Granted citizenship to all persons born in the United States.
2. **Guaranteed** due process of law from all state governments.
3. Guaranteed equal protection of the laws from all state governments.

CITIZENSHIP

Just before the Civil War, the Supreme Court ruled that African Americans, whether enslaved or free, were not citizens. In this case, *Dred Scott v. Sandford* (1857), the Supreme Court said that an enslaved man could not sue in federal court because African Americans were not U.S. citizens when the Constitution was adopted. This decision, regarded today as one of the worst decisions the Court ever made, caused great outrage at the time. After the Civil War, the Fourteenth Amendment clearly established what constitutes citizenship: Anyone born or naturalized in the United States is a citizen, as long as he or she is subject to U.S. jurisdiction. Diplomats and foreign officials, for example, are not subject to U.S. jurisdiction.

The Fourteenth Amendment was a major milestone. For the first time, people of all races (excluding Native Americans) who were born in the U.S. were citizens and states could not deprive anyone of that citizenship.

NATIVE AMERICAN CITIZENSHIP

The Fourteenth Amendment, however, did not grant citizenship to Native Americans. That came later. In 1887 Congress passed the General Allotment Act, which came to be known as the Dawes Act, for its champion, Henry Dawes. Seen in a positive light, the Dawes Act aimed to give individual Native Americans all the benefits of land ownership and education. The government would pay for schools where Native Americans could learn how to integrate into mainstream American society, which would ultimately lessen the burden of the government to oversee Native American welfare.

UNDERSTANDING CRAFT AND STRUCTURE

1. ANALYZING TEXT STRUCTURE

Which part of the Fourteenth Amendment does the author discuss in this section? Why did the author begin with this part of the amendment?

2. ANALYZING POINT OF VIEW

In the opening paragraph, the author mentions three things the Fourteenth Amendment did. Why do you think the author chose not to discuss all three of them in this section?

Seen in a negative light, the Dawes Act had the effect of breaking up reservations and cultural loyalty. In order to receive U.S. citizenship and a parcel of land, Native Americans had to agree to live separately from their own cultures and to give up their traditional ways. After all the allotments of land were given out, much of the remaining reservation land was sold to white settlers at a very low cost.

In 1919 Congress passed a law that made it possible, but not guaranteed, that those Native Americans who had fought during World War I and had been honorably discharged could become U.S. citizens. Finally, in 1924 the Indian Citizenship Act granted citizenship to all Native Americans born in the United States.

HISTORY OF THE FOURTEENTH AMENDMENT

At the time of the Civil War, the Fifth Amendment already ensured that the federal government could not deprive anyone of “life, liberty, or property, without due process of law.” However, since the Bill of Rights limited only the federal government, this right to due process was not guaranteed by the states.

In theory, states already had such protections built into their constitutions. In practice, however, some state governments had ignored individual rights even after the Civil War. Many denied voting rights to African Americans, restricted their movement, prohibited them from accessing the courts, or discriminated in other ways. An amendment to the national Constitution would ensure that states could not continue to treat African Americans as second-class citizens. Or would it?

Shortly after ratification, the Fourteenth Amendment was used to overturn several laws that overtly discriminated against a specific racial group, such as a ban on African Americans serving on a jury. Unfortunately, these early

The Constitution

“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.”

— The Fourteenth Amendment

Read and analyze the Fourteenth Amendment of the U.S. Constitution, and answer the document-based questions below.

1. **CITING TEXT EVIDENCE** Which part of this text guarantees citizenship to people born in the United States?
2. **CITING TEXT EVIDENCE** Which words say that state governments have to provide due process of law?
3. **CITING TEXT EVIDENCE** Which part guarantees equal protection of the laws from state governments?

moves toward equality were short-lived. By the late 1800s, about half of the states had adopted **Jim Crow laws** requiring racial segregation in places like schools, hotels, and public transportation. In the 1896 case *Plessy v. Ferguson*, the Supreme Court ruled that states were allowed to segregate by race so long as the state provided similar facilities to all. The justices said that such segregation did not violate the Fourteenth Amendment's requirements about fair laws.

Over time, the members of the Supreme Court changed and Americans' ideas about discrimination began to change, too. In 1954 the Supreme Court unanimously ruled that separate facilities for African Americans and whites were *inherently unequal*. This decision came in the landmark case of *Brown v. Board of Education*. The Supreme Court said that segregated public schools did, in fact, violate the Fourteenth Amendment's protections.

Today, almost 150 years of court rulings have informed our understanding of the Fourteenth Amendment. The Supreme Court has decided many cases that clarify what the Fourteenth Amendment permits and prohibits. There are two key provisions of the Fourteenth Amendment that guarantee fair laws: due process and equal protection.



In *Brown v. Board of Education* (1954), the Supreme Court ruled that separate facilities for African Americans and whites were inherently unequal.

EXPLAINING EFFECTS How did the Supreme Court justify segregation by race in the 1896 *Plessy v. Ferguson* case, in light of the Fourteenth Amendment? How did the Court find differently in the 1954 *Brown v. Board of Education* case?

✓ CHECKING FOR UNDERSTANDING

- 1. UNDERSTANDING CONTEXT** What historical conditions led to the passage of the Fourteenth Amendment?
- 2. IDENTIFYING CONNECTIONS** Why is the Fourteenth Amendment important to our democracy?
- 3. EXPLAINING EFFECTS** What were the negative effects of the Dawes Act?

DUE PROCESS

GUIDING QUESTION *How does due process protect individual rights and limit the powers of government?*

The text of the Fourteenth Amendment has been interpreted to include both procedural and substantive due process protection.

PROCEDURAL DUE PROCESS

Procedural due process means the government must follow fair procedures if it is going to deprive someone of life, liberty, or property. The law cannot be enforced arbitrarily, and there must be reasonable safeguards to make sure that people are treated fairly.

ANALYZING KEY IDEAS AND DETAILS

- 1. DETERMINING CENTRAL IDEAS** What is the central idea of this section?
- 2. SUMMARIZING** In your own words, summarize the difference between procedural and substantive due process.

EXPLORING THE ESSENTIAL QUESTION

EVALUATING INFORMATION

Categorize the following Supreme Court cases by whether they address procedural or substantive due process.

- a. *Miranda v. Arizona* (1966) ruled that people accused of crimes must be informed of their right to remain silent and to avoid self-incrimination.
- b. *in re Gault* (1967) ruled that juveniles accused of crimes are entitled to many of the same due process rights as adults.
- c. *Engel v. Vitale* (1962) ruled that school prayer violated the establishment clause.
- d. *Loving v. Virginia* (1967) ruled that a state law criminalizing marriage between people of different races violated the fundamental right to marry.

UNDERSTANDING CRAFT AND STRUCTURE

1. ANALYZING TEXT STRUCTURE

In what order does the author present the three levels of judicial review as it relates to the equal protection clause?

2. ANALYZING POINT OF VIEW

What is the writer's purpose for organizing the text this way?

DETERMINING MEANING

Using context clues, write a definition of the **equal protection clause** in your own words.

Procedural due process guarantees that anyone who goes to court will go through a fair process and have the opportunity to assert his or her legal rights. Today, this is most often seen in criminal law, where all suspects have the right to an attorney, the right to be tried by a jury, and the right to have their attorney cross-examine any witnesses who have testified against the suspect. No matter where you go in the United States, procedural due process ensures that the fundamental procedures that make a trial fair should be present.

SUBSTANTIVE DUE PROCESS

Substantive due process means that the laws themselves have to be fair. A law or government action cannot unreasonably interfere with a fundamental or basic right.

What is a fundamental right? Fundamental rights go to the heart of the American system and are indispensable to justice. The Supreme Court has ruled that the freedom of speech, freedom of the press, right to a fair trial, right to marry, right to travel, and right to educate one's children are all fundamental rights. Some of these rights are stated in the Constitution, and others are not specifically listed but are deeply rooted in American society.

A law will not necessarily be declared unconstitutional simply because it affects a fundamental right. If the government does want to take action that affects a fundamental right, it must show that it has a very strong, or compelling, interest. Sometimes, the government can prove this compelling interest and a court will uphold a law that infringes on someone's fundamental right. For example, the right to vote is a fundamental one. However, the government has a compelling interest in preventing voter fraud, so states may set reasonable residency and registration requirements for voters.

✓ CHECKING FOR UNDERSTANDING

1. **SUMMARIZING** How does due process protect individual rights and limit the powers of government?
2. **CONSTRUCTING HYPOTHESES** The text states that the right to marry is fundamental. How can states pass requirements preventing people under a certain age from marrying without violating substantive due process?
3. **EXPLAINING ISSUES** Are all fundamental rights specifically listed in the Constitution? Explain your answer.

EQUAL PROTECTION

GUIDING QUESTION How does the equal protection clause protect individual rights and limit the powers of government?

Equal protection means that laws must apply equally to all people who are in similar situations unless the state has a very good reason. The government cannot draw unreasonable distinctions. The key word is *unreasonable*. As with setting a minimum age for driver's licenses, governments must draw some distinctions between different groups of people.

When a law or government action is challenged as violating the **equal protection clause**—that is, unfairly discriminating between different groups of

people—judges must determine whether or not the law is constitutional. To determine whether a law or government practice meets the equal protection standard, courts use one of three different tests, depending upon the type of discrimination involved.

RATIONAL BASIS

In most discrimination cases that go to court, judges use the **rational basis** test. Using this test, judges will uphold a law or practice that treats some people differently than others if there is a rational basis for the different treatment. A rational basis exists when there is a logical relationship between the treatment or classification of some group of people and the purpose of the law. This test is used when the group of people being discriminated against is not part of a group that has been historically mistreated by the government.

For example, states require their citizens to be a certain age before they can marry. This discriminates against people below that age. However, this ensures that those who do marry are capable of accepting the responsibilities of marriage. In general, people become more responsible as they get older, so there is a rational relationship between the classification and the purpose of the law.

STRICT SCRUTINY

Because some groups have historically faced severe discrimination in our society, laws that discriminate based on race, national origin, or citizenship status of people are judged more strictly. In these cases, the courts use a test called **strict scrutiny**. Judges applying strict scrutiny will find the law or practice constitutional if the state can show that the discriminating classification serves a compelling, or very important, interest. For example, a state law in Virginia prohibited marriage between persons of different races. When *Loving v. Virginia* (1967) came to the U.S. Supreme Court for review, it presented a clear situation where a state law created a classification based on race. The Court was unanimous in overturning this law because the racial classification did not serve a compelling state interest. The strict scrutiny test is also used when a law infringes on a fundamental right, as described above.

As Chief Justice Earl Warren stated in the Court's decision:

“The freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men.”

— Chief Justice Earl Warren, *Loving v. Virginia* (1967)

SUBSTANTIAL RELATIONSHIP

In gender discrimination cases, courts use the **substantial relationship** test—a middle ground between rational basis and strict scrutiny. By this standard, there must be a close connection—not just a rational relationship—between the law or practice and its purpose. In addition, laws that classify based on gender must serve an important governmental purpose.



*The Supreme Court used a test called strict scrutiny to make its decision in the case of *Loving v. Virginia* (1967), ruling that a racial classification did not serve a compelling state interest. This photograph shows Mildred and Richard Loving at a press conference after the ruling.*

CITING TEXT EVIDENCE What is the relationship between substantive due process and the Supreme Court's ruling in *Loving v. Virginia*?

DETERMINING MEANING

The word *rational* comes from the Latin word *rationalis*, which means “logical or reasonable.” How does knowing the derivation of the word *rational* give you a clue about the meaning of the **rational basis** test?

ANALYZING PRIMARY SOURCES

- 1. DETERMINING MEANING** The text says that the strict scrutiny test is used when a law infringes on a fundamental right. What word in the excerpt has a similar meaning to the word *fundamental*?
- 2. IDENTIFYING CONNECTIONS** Can you think of recent court rulings regarding marriage that might have cited *Loving v. Virginia* in the decision?

DETERMINING MEANING

What context clues in the paragraph strengthen your understanding that the **substantial relationship** test is the second level of deciding issues using judicial review?

Equal protection cases are complicated and controversial. Some people have argued, for example, that when the Fourteenth Amendment was ratified in 1868, Congress intended it to protect only against racial discrimination. Others argue that it was intended to protect only African Americans—not women, other racial minorities, or whites—against discrimination. Still others contend that the amendment embodies the national commitment to the fundamental value of equality; therefore, all unfair forms of government discrimination should be prohibited by the equal protection clause.

✓ CHECKING FOR UNDERSTANDING

1. **EXPLAINING EFFECTS** How does the equal protection clause protect individual rights and limit the powers of government?
2. **SUMMARIZING** What standards has the Court used to determine when the equal protection clause has been violated?
3. **DRAWING CONCLUSIONS** Which is more likely to face the strict scrutiny test: a law prohibiting people under the age of 16 from working in a factory or a law prohibiting homosexuals from working in public schools? Why?

INCORPORATION OF THE BILL OF RIGHTS

ANALYZING KEY IDEAS AND DETAILS

1. **ANALYZING EVENTS** Reread the second paragraph in this section. What part of this paragraph signals that the *Gitlow v. New York* case brought about a change in the development of the incorporation doctrine?
2. **CITING TEXT EVIDENCE** The text says that almost all of the Bill of Rights now applies to the states. What evidence does the author provide to support this claim?

GUIDING QUESTION *How has the selective incorporation of the Bill of Rights expanded due process and affected federalism?*

Originally, the Bill of Rights was intended to limit only the national government's power. In the 1833 case of *Barron v. Baltimore*, the Supreme Court affirmed this intention by ruling that the Bill of Rights applied only to the national government. It said the Constitution was silent on how the states could treat their citizens. When the Fourteenth Amendment was ratified in 1868, many thought that it would require the states to abide by all of the protections in the Bill of Rights. Until the turn of the century, however, the Court repeatedly ruled that the Fourteenth Amendment did not bind states with respect to the Bill of Rights.

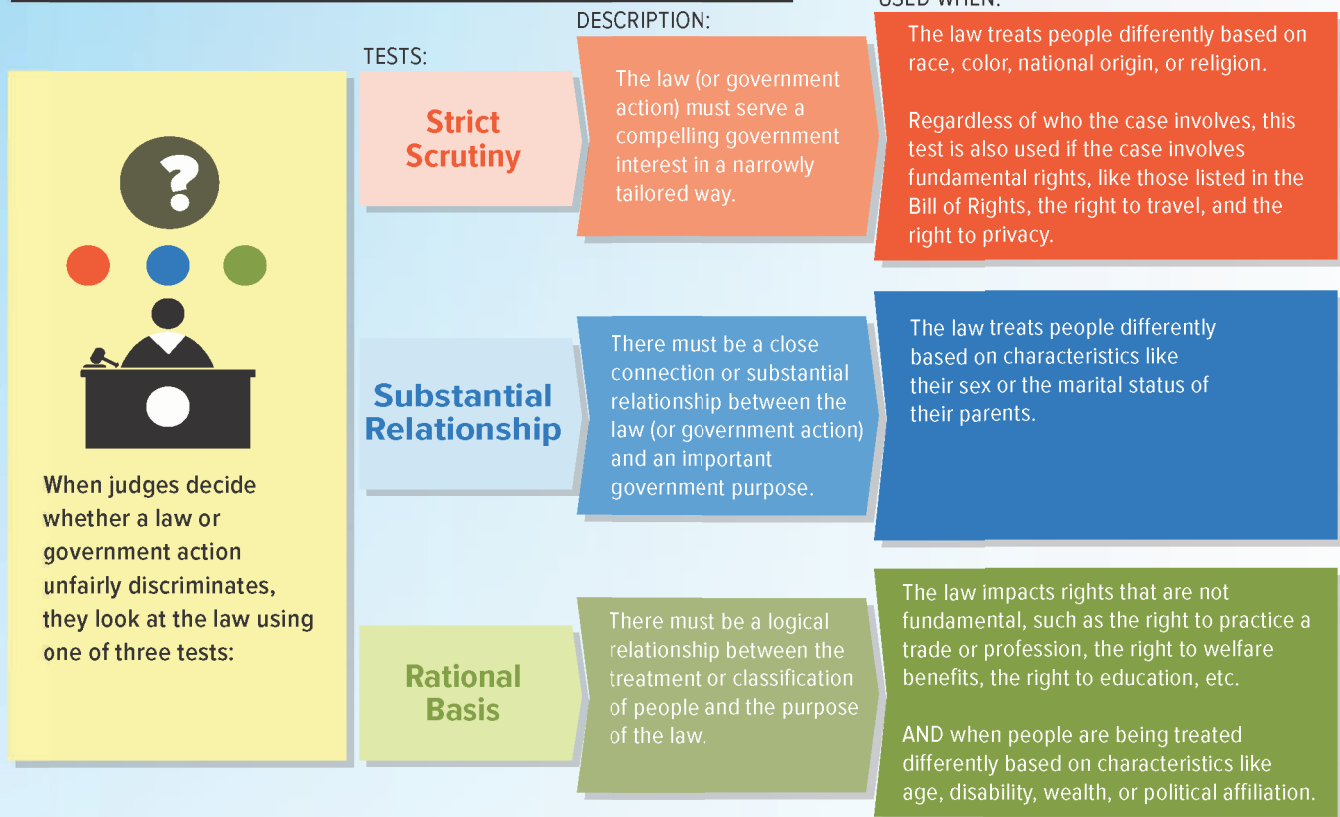
EXPLORING THE ESSENTIAL QUESTION

In a 1979 Supreme Court case, Justice Potter Stewart wrote “the Fourteenth Amendment guarantees equal laws, not equal results.”

The case, *Personnel Administrator of Massachusetts v. Feeney*, was about a state law that gave preference to military veterans for government jobs. A woman who applied for a government job scored high on the civil service exam, but was ranked lower than several veterans who had also applied and not done as well on the exam. She protested against the law, claiming that the law unfairly discriminated against women because the overwhelming number of veterans at that time were men. The government defended the law, arguing that the veterans' preference was available for both men and women, and both male and female non veterans were equally disadvantaged. The Court ruled that the law was not discriminatory against women.

- a. **INTERPRETING** How does this case illustrate a guarantee of equal laws, rather than equal results?
- b. **DRAWING CONCLUSIONS** Do you believe that the law unconstitutionally discriminated against women? Why or why not?

JUDICIAL ANALYSIS OF 14th AMENDMENT CASES



EXPLORING THE ESSENTIAL QUESTION

INTEGRATING INFORMATION Which test would a judge use to evaluate the constitutionality of:

- a city law that says that women cannot be firefighters? The city says its purpose is to make sure that the firefighters can carry people out of burning houses.
- a state's practice of funding of its public schools by property taxes? This means that wealthier communities with more expensive homes will have much more money available for schools than poorer communities.

Do you believe these laws or actions violate the Fourteenth Amendment? Why or why not?

In 1925, however, the Court began to shift its position when it ruled the Fourteenth Amendment required states to protect freedom of speech (*Gitlow v. New York*). The justices said free speech was one of the liberties protected by the Fourteenth Amendment's promise that no one could be deprived of liberty without due process of law. This was the first step in the development of the **incorporation doctrine**, an interpretation of the Constitution that means the due process clause of the Fourteenth Amendment requires state and local governments to guarantee their citizens the rights stated in the Bill of Rights. To that end, the Court in the 1931 *Near v. Minnesota* ruling held that the amendment also required states to protect freedom of the press.

But did all the Bill of Rights apply to every state action? In 1937 the Court said in *Palko v. Connecticut* that incorporation applied to what it called fundamental rights, those rights so essential to order, liberty, and justice "as to be ranked fundamental." Using this standard, the Court began following

DETERMINING MEANING

How does the term **selective incorporation** tell you that not all of the specific rights in the Bill of Rights have been incorporated by the states?

a process called **selective incorporation**, whereby it decided on a case-by-case basis which federal rights also applied to the states.

Eventually selective incorporation came to mean that almost all of the Bill of Rights now apply to the states. In 2010 the right to bear arms (Second Amendment) was incorporated in the case of *McDonald v. City of Chicago* when the Court said the right to keep a handgun in your home was a “fundamental” right. Today, only three rights have not been incorporated by the states: the right to a grand jury (part of the Fifth Amendment), the unanimity requirement in a criminal jury (part of the Sixth Amendment), and the right to a civil jury trial (part of the Seventh Amendment).

The process of incorporation has greatly expanded the scope of constitutional rights. It gives people the opportunity to take their cases to federal court if they believe a state or local government is refusing to protect their fundamental liberties. At the same time, by doing this incorporation, it has altered the balance of power between the states and the national government in our federal system. The power of the national government to overrule or modify state government actions through the federal courts has expanded at the expense of the states.

✓ CHECKING FOR UNDERSTANDING

1. **UNDERSTANDING CHANGE** How has the selective incorporation of the Bill of Rights expanded due process and affected federalism?
2. **EVALUATING** How have the Court’s decisions requiring states to uphold the Bill of Rights affected the balance of power between the states and the national government?
3. **IDENTIFYING EFFECTS** What has been the effect of the Supreme Court’s ruling in *McDonald v. City of Chicago*?

LESSON 4 REVIEW

Building Citizenship

1. **EXPLAINING EFFECTS** How has the incorporation doctrine impacted the civil rights of American citizens? Provide some specific examples in your answer.

Building History-Social Science Analysis Skills

2. **ANALYZING CHANGE** What was the effect of the Supreme Court’s decision in *Plessy v. Ferguson* in respect to Jim Crow laws? What was the effect of the Court’s decision in *Brown v. Board of Education*? How do you account for the change?
3. **RELATING EVENTS** Why was the Fourteenth Amendment written to guarantee due process when the Fifth Amendment had already done so nearly 100 years earlier?
4. **EXPLAINING ISSUES** Briefly explain the competing opinions regarding the scope of the Fourteenth Amendment as it applies to equal protection cases.

Writing About Government

5. **EXPLANATORY WRITING** Return to the questions at the beginning of this lesson. How do your choices compare to the list of rights the Supreme Court has called fundamental? Create a chart that compares and contrasts the two. Then write a few paragraphs explaining the rights the Court has called fundamental.

Collaborating

6. **USING MULTIMEDIA** In teams, create a multimedia presentation summarizing the different parts of the Fourteenth Amendment and the impact those parts have made on American liberty. Include visuals, sound clips, and other elements from the various periods you cover to describe and explain the circumstances surrounding the various applications of the Fourteenth Amendment.

LESSON 5

Equal Protection and Discrimination

ESSENTIAL QUESTION

EXPLORING THE ESSENTIAL QUESTION

What restrictions, if any, should be placed on our constitutional rights and freedoms? How have citizen movements and social movements brought about political and social change?

The following situations involve some form of discrimination. For each, decide whether the discrimination is reasonable and should be allowed or is unreasonable and should not be allowed. Explain your reasons.

- An airline requires its pilots to retire at age 60.
- A child with a disability is not permitted to play at a public playground.
- Veterans receive preference in applying for government jobs.
- Girls are not allowed to try out for positions on an all-boy baseball team at a public high school.
- Auto insurance rates are higher for young, unmarried drivers.
- An expensive seafood restaurant requires that its servers wear tuxedos. The restaurant hires only male wait staff.
- Latinos and African Americans are charged higher interest rates for home loans compared to Caucasians with the same credit scores.

Select one example where you think the discrimination described is unreasonable. What actions could be taken to prevent future discrimination?

The 1963 March on Washington for Jobs and Freedom was a landmark event in the history of civil rights in the United States. Several civil rights organizations sponsored the march, which drew an estimated 250,000 demonstrators to the National Mall. ►



Discrimination Based On	Constitutional Protections and Laws
Race	
National Origin	
Gender	
Other	

ANALYZING KEY IDEAS AND DETAILS

EVALUATING INFORMATION Use the chart to list different types of discrimination and the constitutional protections and civil rights legislation that prohibit this discrimination.

ANALYZING KEY IDEAS AND DETAILS

EVALUATING EVIDENCE The author states that at times “the government must treat different groups of people differently.” What evidence is given to support this type of discrimination? Do you find it convincing? Why or why not?

PROTECTION FROM UNFAIR DISCRIMINATION

GUIDING QUESTION *When is discrimination unconstitutional?*

The promise of equality is set out in the Declaration of Independence: “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...” But what does *equality* mean? Does it mean that every American receives the same treatment? That everyone has equal opportunities? Or something else?

Discrimination occurs when some people are treated differently than others because of their membership in a group based on some shared characteristic—like their race, age, gender, religion, or appearance. Sometimes, the government must treat different groups of people differently. For example, we require people to be a certain age before we allow them to drive. Those laws discriminate on the basis of age, but it is reasonable and legal to do so. Other laws or government actions discriminate in a way that is unconstitutional. For example, in the 1950s, some public school districts did not allow children of different races to go to school together. That kind of discrimination violates the U.S. Constitution, specifically the Fourteenth Amendment.

✓ CHECKING FOR UNDERSTANDING

- 1. UNDERSTANDING CONTEXT** When is discrimination unconstitutional?
- 2. SUMMARIZING** What is discrimination?
- 3. IDENTIFYING CONNECTIONS** Give one example of discrimination that would likely be found legal. Give another example of illegal discrimination.

UNDERSTANDING CRAFT AND STRUCTURE

1. ANALYZING TEXT STRUCTURE

How has the author organized information about the history of race-based discrimination in the United States?

2. ANALYZING POINT OF VIEW

What type of emotional language does the author use in the section about the civil rights movement? What is the author’s purpose in doing so?

DISCRIMINATION BASED ON RACE

GUIDING QUESTION *How do the Constitution and federal legislation protect people from discrimination based on race?*

Even though the Thirteenth Amendment ended slavery in 1865 and the Fifteenth Amendment guaranteed the right to vote for all citizens regardless of race, segregation and discrimination based on color persisted. In the decades after the Civil War, many states passed Jim Crow laws, which allowed segregation of people of different races. The laws also limited opportunities and legal protections for African Americans. These types of laws were upheld by the Supreme Court in the case of *Plessy v. Ferguson* (1896). Then, in 1954 the Supreme Court made a decision

that would change everything and become a milestone in the long struggle for civil rights.

BROWN V. BOARD OF EDUCATION (1954)

In the 1950s, the schools of Topeka, Kansas, were racially segregated. Linda Carol Brown, an eight-year-old African American, was denied admission to an all-white school near her home and had to attend an all African American school further from her home. With the help of the National Association for the Advancement of Colored People (NAACP), Linda's family sued the Topeka Board of Education.

At the time, the head lawyer for the NAACP was Thurgood Marshall. He and his team had already successfully argued several discrimination cases before the courts, including cases about segregated juries, law schools, and graduate schools. The *Brown v. Board of Education of Topeka* case would be the first to challenge segregated elementary, middle, and high schools.

In what many consider one of the most important Supreme Court decisions in U.S. history, the Court unanimously ruled that segregated schools could never be equal and were, therefore, unconstitutional. In doing so, the Court overturned the “separate but equal” doctrine from the *Plessy* case and set a precedent that guided numerous later decisions.

In the words of the court:

“We come then to the question presented: Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other “tangible” factors may be equal, deprive the children of the minority group of equal educational opportunities? We believe that it does.”

—Chief Justice Earl Warren, *Brown v. Board of Education of Topeka* (1954)

In 1967 President Johnson appointed Marshall associate justice on the Supreme Court, where he became the first African American justice.

THE CIVIL RIGHTS MOVEMENT

The *Brown* decision reflected decades of work to reduce discrimination. It also was a powerful catalyst to expand the **civil rights movement**. Courageous men and women of many races fought segregation and discrimination through actions across the country. Many individuals and groups worked tirelessly, organized nonviolent protests, and risked their lives to stand up to entrenched discrimination.

Dr. Martin Luther King, Jr., who was a Baptist minister, led nonviolent marches and demonstrations against segregation. He understood the importance of the courts in trying to win equal rights and sought to stir the nation's conscience. King, John Lewis, Rev. Fred Shuttlesworth, Rosa Parks, and other leaders coordinated the actions of groups like the NAACP, the Montgomery Improvement Association, and the Southern Christian Leadership Conference (SCLC). These leaders and countless less famous Americans held **sit-ins** at restaurant lunch counters that served only whites. When arrested for breaking the law, they were almost always found guilty. They could then appeal, challenging the constitutionality of the laws. Other groups organized boycotts, Freedom Schools, or marches.

LANDMARK LAWS

THE CIVIL RIGHTS ACT OF 1964

The Civil Rights Act of 1964 empowered the federal government to:

- ★ Prohibit discrimination based on race, religion, sex, and national origin in employment, which includes hiring, firing, working conditions, and promotion
- ★ Ban discrimination in public accommodations and in government services
- ★ Establish the Equal Employment Opportunity Commission (EEOC) to enforce the law and investigate complaints

IDENTIFYING CONNECTIONS

Think of an example where the Civil Rights Act of 1964 has protected you or someone you know from discrimination.

ANALYZING PRIMARY SOURCES

1. IDENTIFYING EFFECTS

According to this excerpt, what is an effect of segregation of children in public schools solely on the basis of race?

2. DETERMINING MEANING

What are some examples of the “tangible factors” Justice Warren is referring to in this excerpt?

DETERMINING MEANING

Use context clues to write a definition of the term **sit-in**. Use a dictionary or online reference to check your definition.



The Voting Rights Act of 1965 allowed the federal government to ensure qualified voters can exercise their voting rights. The act was amended in the 1970s and 1980s and extended for another 25 years in 2006.

In some cases, people across the country saw news footage of police violence in response to nonviolent protests. Slowly, public opinion about segregation and racial discrimination changed, and Congress began to act. After intense debates and filibustering by some, Congress passed two landmark civil rights and voting rights laws: the Civil Rights Act of 1964 and the Voting Rights Act of 1965. They prohibited discrimination based on race, gender, religion, and national origin in employment, public accommodations, government services, and voting. The Civil Rights Acts of 1968, 1974, and 1988 expanded these protections to housing discrimination.

✓ CHECKING FOR UNDERSTANDING

- 1. SUMMARIZING** How does the Constitution and federal legislation protect people from discrimination based on race?
- 2. EXPLAINING CAUSE AND EFFECT** What led to the case of *Brown v. Board of Education* and what effects did the ruling have on the civil rights movement?
- 3. DRAWING CONCLUSIONS** How do you think news images of police violence against nonviolent protesters affected white American's views on racial discrimination?

DISCRIMINATION BASED ON NATIONAL ORIGIN

UNDERSTANDING CRAFT AND STRUCTURE

1. ANALYZING TEXT STRUCTURE

What words or phrases does the author use to describe Latino civil rights leaders? How does such language affect the tone of this section?

2. DETERMINING MEANING

The paragraph about the trial of Pete Hernandez states that Mexican Americans “had been systematically barred from jury service for more than 25 years.” Use context clues to determine the meaning of the word *barred*.

GUIDING QUESTION *How does the Constitution protect people from discrimination based on national origin?*

In 1954 the Supreme Court made it clear that the Fourteenth Amendment protects people based on national origin as well as race. The case was *Hernandez v. Texas*. Pete Hernandez, a Mexican American, was convicted of murder by an all-white jury. His lawyer appealed, noting that a significant number of Mexican Americans were eligible for jury service where Hernandez was tried but had been systematically barred from jury service for more than 25 years. The Court agreed that the systematic exclusion of Mexican Americans on juries deprived defendants such as Hernandez of equal protection.

Latinos made significant advances in the 1960s and 1970s. Leaders such as Cesar Chavez and Dolores Huerta formed the National Farmworkers Association, which became the United Farm Workers. Together they worked for equal rights and fair pay for farmworkers, many of whom were Latino. Committed to the same philosophy of nonviolent protest as Martin Luther King, Jr., and Mohandas Gandhi, these activists held rallies and voter registration drives and organized boycotts aimed at pressuring farmers to stop using dangerous pesticides on fruit being picked by farmworkers.

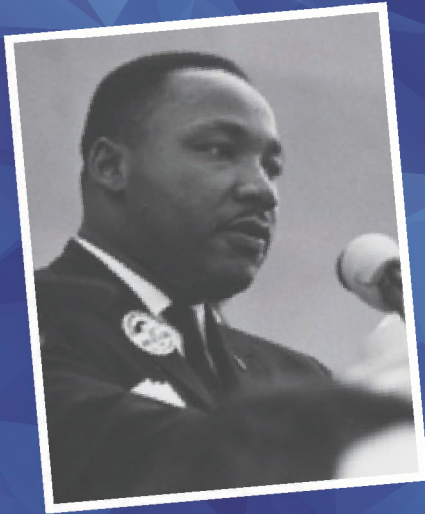
Their work continues, as does the work of many other groups working to end discrimination based on national origin such as the Asian American Justice Center and the National Congress of American Indians.

Civil rights laws protect against employment discrimination based on national origin. This means that employers cannot treat people less favorably in hiring or on the job because of their place of origin, ethnicity, or accent.

WE THE PEOPLE: MAKING A DIFFERENCE



DR. MARTIN LUTHER KING, JR.



Following in the footsteps of his grandfather and father, Martin Luther King, Jr. became a minister. In 1954 King became pastor of Dexter Avenue Baptist Church in Montgomery, Alabama, and soon emerged as a central figure in the civil rights movement, leading a boycott that ended with a Supreme Court ruling against bus segregation. As president of the Southern Christian Leadership Conference, King focused on fighting racial injustice. His massive protest campaign in Birmingham in 1963 increased support across the nation for civil rights. That same year King delivered his “I Have a Dream” speech to 250,000 peaceful marchers in Washington, D.C.

Though successful, King’s work provoked violent opposition. His home was bombed, he was assaulted, and authorities arrested him twenty times. Despite these challenges, he remained committed to peaceful protest. King’s effective use of nonviolent tactics led to a Nobel Peace Prize in 1964. King continued using nonviolent methods to fight injustice until his assassination in April 1968.

1. **ANALYZING INDIVIDUALS** How do you think King’s background helped prepare him to lead the civil rights movement?
2. **ANALYZING EVENTS** Do you agree with the style of protest tactics King used to promote civil rights? Why or why not?

In 1981 undocumented immigrants challenged a Texas law that refused funding to local school districts for the education of undocumented children. In the case of *Plyler v. Doe*, the Supreme Court said this was unconstitutional because undocumented immigrants are protected by the Fourteenth Amendment. The state law severely disadvantaged these children by denying them the right to an education. Since Texas could not prove there was a compelling interest for the law, the Court said it was unconstitutional.

✓ CHECKING FOR UNDERSTANDING

1. **SUMMARIZING** How does the Constitution protect people from discrimination based on national origin?
2. **RELATING EVENTS** What strategies were used by Latinos in their struggle for civil rights?
3. **IDENTIFYING CONNECTIONS** How did the views of Martin Luther King, Jr., and Mohandas Gandhi impact the work of leaders such as Caesar Chavez and Dolores Huerta?

DISCRIMINATION BASED ON SEX AND GENDER

GUIDING QUESTION *How do the Constitution and federal legislation protect people from discrimination based on sex and gender?*

The movement to secure equal rights for women has a long history. The first women’s rights convention was held in 1848. The most controversial issue to come out of the convention was demand for the right to vote.

UNDERSTANDING CRAFT AND STRUCTURE

1. **ANALYZING TEXT STRUCTURE** What signal does the author give in the first sentence that this section is going to be organized in chronological order?
2. **ANALYZING STRUCTURE** Do you think chronological order is an effective way to organize this information? Explain your answer.



Title IX of the Education Act of 1972 prohibited gender discrimination in most school activities, including curriculum, faculty hiring, and student athletic programs.

DETERMINING MEANING

Today, the verb *picket* means to demonstrate or protest against something. The original meaning of picket comes from the French word *piquet*, a pointed stake used as a defensive weapon. A *picket line* was a line of military troops. How do you explain the connection between the original meaning of **picket** and its meaning today?

Women in Wyoming, Colorado, Idaho, and Utah gained the right to vote by the end of the 1800s. Elsewhere, women and men who supported their cause **picketed** the White House, marched, petitioned, staged hunger strikes, and were arrested to draw attention and support to their cause. Women finally won full voting rights with the ratification of the Nineteenth Amendment in 1920.

The Equal Rights Amendment (ERA) has been introduced in every congressional session (every two years) since 1923. It would amend the Constitution to specifically prohibit federal, state, and local governments from passing discriminatory laws or unequally enforcing laws based on gender. It passed the Congress in 1972 and was sent to the states for ratification. Supporters succeeded in getting 35 states to ratify it, but fell three states short of the required number of states by the deadline. While there is still no federal ERA, at least 22 states had passed specific protection laws against gender discrimination by 2012.

A variety of state and federal laws protect women and girls from discrimination. This includes the 1963 Equal Pay Act, which bans wage discrimination, and Title VII of the 1964 Civil Rights Act, which prohibits discrimination based on race and sex, including sexual harassment. Title IX of the Education Amendments Act of 1972, which also protects women and girls from discrimination, says: “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.” While Title IX is best known for protecting female athletes from discrimination, it also requires fair treatment for pregnant and parenting students and greatly expands the opportunities for females pursuing educational opportunities in math and science.

Despite many advances, women continue to earn less money than men. In 2014 the Bureau of Labor Statistics reported that women earn an average of 82 cents for every \$1 white non-Hispanic men are paid. The pay gap typically widens as women age. The gap was generally even larger for women of color, with African American women earning 68 cents and Latino women earning 63 cents compared to white non-Hispanic men. There are many explanations for these pay gaps and perspectives about what, if anything, should be done to close them. The women’s movement continues to fight for equal pay for equal work.

✓ CHECKING FOR UNDERSTANDING

1. **SUMMARIZING** How does the Constitution and federal legislation protect people from discrimination based on sex and gender?
2. **IDENTIFYING EFFECTS** What are some ways that discrimination has impacted women over the past 100 years?
3. **DRAWING CONCLUSIONS** The text states that the pay gap between men and women typically widens as women age and that the gap is generally even larger for women of color. Why do you think this might be?

COMBATING OTHER FORMS OF DISCRIMINATION

GUIDING QUESTION *How has protection against discrimination been extended to other categories of people?*

Federal discrimination laws have expanded to include age discrimination and discrimination against those living with disabilities. However, there are no federal laws that prohibit discrimination on the basis of sexual orientation.

DISCRIMINATION BASED ON SEXUAL ORIENTATION

Public opinion polls show that in the past two decades, American attitudes toward gays and lesbians have become more tolerant. Today, millions of people are campaigning for laws that would give gay, lesbian, and bisexual people equal rights. However, gay rights remain a controversial issue, and many people oppose specific laws that protect gays and lesbians.

In 2010 Congress passed a bill repealing a ban on openly gay people serving in the military. Under the ban, any service member who revealed he or she was gay or lesbian, or who was discovered, could be discharged from the armed services. A number of states, cities, and towns have passed laws that provide some protection from discrimination for people who are gay, lesbian, or bisexual. These laws vary and may protect individuals in the areas of employment, housing, education, family matters, and public accommodation. In 2013 the Supreme Court ruled that the federal government was required to recognize valid same-sex marriages for the purpose of federal law and benefits. By 2014, 11 states had passed laws legalizing same-sex marriages. Another 21 states allowed same-sex marriages despite a law or state constitutional amendment prohibiting it, because a state or federal court had ruled that the states' law violated the U.S. Constitution. In June 2015, the Supreme Court ruled in *Obergefell v. Hodges* that the fundamental right to marry was guaranteed to same-sex couples legalizing same-sex marriages nationwide.

In the United States, many people oppose legal recognition of same-sex couples, arguing that it is inconsistent with the country's mainstream religious teachings, core traditions, and the morality of many people. Others see the protection of gay and lesbian people from discrimination as a moral issue and as part of the long history of civil rights movements.

DISCRIMINATION BASED ON AGE

Under the federal Age Discrimination in Employment Act of 1967, it is illegal for employers to discriminate against people over age 40. This means that employers cannot refuse to hire or promote someone simply because he or she is older. The law has several important exceptions, including if there is a valid reason to consider age.

Age discrimination is not limited to older people. Many laws and practices also discriminate against youth. However, restrictions based on age as it relates to voting, running for public office, making a will, driving, and drinking alcoholic beverages are generally upheld by the courts as being reasonable.

ANALYZING KEY IDEAS AND DETAILS

1. ANALYZING EVENTS What was the effect of the Supreme Court's ruling in *Obergefell v. Hodges*?

2. EVALUATING TEXT

EVIDENCE What distinction does the text make between age discrimination against older Americans and younger Americans?

STATE CIVIL RIGHTS LAWS

When the U.S. Supreme Court makes a decision regarding the Constitution, it determines the minimum protection that governments must extend to their citizens. However, state and local governments may offer greater protection than the Constitution requires. For example, federal civil rights laws prohibit certain forms of discrimination based on race, national origin, citizenship, gender, age, and disability. In addition, some state and local governments have passed their own antidiscrimination laws that cover discrimination based on marital status, personal appearance, sexual orientation, political affiliation, and more.

GATHERING EVIDENCE

Investigate the laws in California.

- What types of discrimination are outlawed in California?
- How do residents report discrimination?
- What agency or commission investigates and resolves complaints of discrimination?

DETERMINING MEANING

The word **disability** is composed of two parts: the prefix *dis-* and the word *ability*. *Ability* means “the means or skill to do something.” Use context clues to determine the meaning of the prefix *dis-*.

DISCRIMINATION BASED ON DISABILITY

According to the U.S. Census Bureau, about one in five Americans has some kind of **disability**. One in ten has a severe disability. A person is considered to have a disability if he or she has difficulty performing certain basic functions such as seeing, hearing, talking, or walking or has regular difficulty performing basic activities of daily living.

Many people with disabilities regularly suffer discrimination in certain areas of daily life. Since the 1970s, a number of laws have been passed to prohibit discrimination against people with disabilities, most notably the Americans with Disabilities Act (ADA) and the Individuals with Disabilities Education Act (IDEA). These laws require consideration of a person's special needs in education, employment, building design, and transportation.

✓ CHECKING FOR UNDERSTANDING

- SUMMARIZING** How has protection against discrimination been extended to other categories of people?
- RELATING EVENTS** What federal laws prevent discrimination based on a person's age or disability?
- EXPLAINING ISSUES** Why do some people oppose legal recognition of same-sex marriage? Why do others support it?

AFFIRMATIVE ACTION

GUIDING QUESTION *How has the Supreme Court ruled on affirmative action?*

Affirmative action involves governments and private employers taking steps to remedy past and current discrimination in employment and education. It goes beyond merely stopping or avoiding discrimination. For example, a university might take affirmative action by starting a program to attract more applications from students who are members of minority groups. Some affirmative action is required by governments, but many businesses use it voluntarily.

Affirmative action is controversial, and people in several states have voted to ban or limit these programs. Opponents of affirmative action say that it is a form of reverse discrimination. They argue that race should not be used as a basis for classification, because special treatment for some means discrimination against others. Supporters of affirmative action say that preferential treatment in educational programs and in employment is needed to overcome the effects of past discrimination.

The affirmative action issue in education was presented to the U.S. Supreme Court in the case of *Regents of the University of California v. Bakke* (1978). A white male student named Allan Bakke sued because he was twice rejected for medical school. He claimed the University of California had practiced reverse discrimination because a certain number of slots were guaranteed to minorities.

The Supreme Court found the medical school's special admissions program unconstitutional and ordered that Bakke be admitted to the university. The Court said that while **racial quotas** (reserving a certain number of spots for

minorities) were illegal, race could be considered as one of the factors—but not the single deciding factor—in the admissions process in order to obtain a **diverse** student body.

After the *Bakke* decision, many colleges did use race as one of the factors in admissions to achieve a diverse student body. In two cases from Michigan, *Grutter v. Bollinger* and *Gratz v. Bollinger* (2003), the Court distinguished between types of admission preferences. The Court said universities could treat race as a “plus factor” in admitting students. However, it was unconstitutional to use a system that automatically gave a certain number of extra admission points to minorities. The Court said that universities serve a special role because they make it possible for people of all backgrounds to compete at all levels of society.

Outside of the educational **sphere**, the use of affirmative action has also been mixed. In a 1987 trucking industry case, the Supreme Court upheld a plan by a state transportation agency to take account of gender in promotions if the candidates for a position were equally qualified. Then in 1995, in *Adarand Constructors, Inc. v. Peña*, the Court overturned earlier decisions by saying that federal agencies could not automatically favor minority-based companies for federal contracts.

✓ CHECKING FOR UNDERSTANDING

1. **RELATING EVENTS** How has the Supreme Court ruled on affirmative action?
2. **EXPLAINING ISSUES** What are some arguments for and against the use of affirmative action in education and employment?
3. **IDENTIFYING EFFECTS** How did the Court’s ruling in *Adarand Constructors, Inc. v. Peña* impact minority business owners?

ANALYZING KEY IDEAS AND DETAILS

1. **CITING TEXT EVIDENCE** The author states, “Affirmative action is controversial . . .” What evidence is given in the text to support this statement?
2. **SUMMARIZING** Write one or two sentences summarizing the circumstances surrounding the *Bakke* case.

DETERMINING MEANING

A *quota* is a specific number of things. Use this information and context clues from the text to determine the purpose of a **racial quota**.

LESSON 5 REVIEW

Building Citizenship

1. **IDENTIFYING CONNECTIONS** What role have private citizens played in the expansion of civil rights to women and minorities?

Building History-Social Science Analysis Skills

2. **ANALYZING CHANGE** How would you describe the pace of change regarding segregation and racial discrimination in the United States? How do you explain this? How much more, if anything, needs to be done?
3. **CONSTRUCTING HYPOTHESES** How might life in the United States be different if the Nineteenth Amendment had not been ratified?

Writing About Government

4. **NARRATIVE WRITING** Write a personal narrative about a time you experienced discrimination. Was it legal or unlawful discrimination? What did you do, if anything, to fight the discrimination? Is there something you wish you had done? Explain.

Collaborating

5. **PRESENTING** In a small group, create an in-class presentation on one aspect of the disability rights movement. Examples include patients’ rights, the independent living movement, or the neurodiversity movement. Discuss the origins, aims, and goals of your movement. Also address the topic of ableism—prejudice based on disability—and the ways your movement works to counter it.

Grutter v Bollinger (2003)

FACTS OF THE CASE In 1997 Barbara Grutter, a resident of Michigan, applied for admission to the University of Michigan Law School. Grutter, who is white, had a 3.8 undergraduate GPA and scored well on the Law School Admission Test (LSAT). She was denied admission to the law school. She then sued, claiming that her rights to equal protection under the Fourteenth Amendment had been violated.

At the time, the law school had an admissions policy that used race as a factor in the admissions process. In selecting students, the law school considered the applicant's academic ability, including undergraduate GPA, standardized test scores, the applicant's personal statement, and letters of recommendation. The school also considered factors such as the applicant's experience and the degree to which the applicant would contribute to law school life and the diversity of the community, including the applicant's race.

ISSUE

Does a public university's use of race as a factor in admissions policies violate the Fourteenth Amendment?

ARGUMENTS

GRUTTER In this case, the university was discriminating on the basis of race, and the Constitution's prohibition against racial discrimination protects whites as well as minorities. While diversity was an important interest, there are other ways to achieve a diverse student body without looking at the race of each individual applicant. It is not acceptable to discriminate based on race when other methods would achieve the same government interest. In the 1970s, the Supreme Court ruled in case called *Bakke* that quotas—or numerical requirements that minority students make up a certain portion of the class—were unacceptable. In this case, the university's attempt to achieve a “critical mass” is essentially a quota.

BOLLINGER Diversity among the student body is a “compelling state interest” and therefore some consideration of applicants' race should be allowed. A critical mass of students of different racial backgrounds enhances everyone's education, breaks down racial stereotypes, and prepares a diverse workforce. Furthermore, the admission policy in this case is flexible because it individually assessed each applicant, and race was only one of several criteria. Universities are the training ground for many of our nation's leaders. The country will be best served by making sure that those universities and the path to leadership is visibly open to qualified applicants of all races and ethnicities.

EXPLORING THE ESSENTIAL QUESTION

PRESENTING You will be assigned to one of three groups: lawyers for Barbara Grutter, lawyers for the University of Michigan Law School, and Supreme Court justices. You will prepare for a moot court of this case. The lawyers for each side should develop arguments to present during oral argument and prepare to answer questions from the justices. The justices should prepare questions to ask the lawyers during oral argument. When you argue the case, each team will have five minutes to present its side, and the justices will be allowed to ask the lawyers questions throughout their five minutes. The justices will then vote and announce their decision, explaining their reasons. After the moot court is complete, write a persuasive essay or blog that reflects your personal opinion about this issue.

YOU BE
the **JUDGE**

LESSON 6

The Rights to Bear Arms and to Privacy

ESSENTIAL QUESTION

What restrictions, if any, should be placed on our constitutional rights and freedoms?

Like most constitutional freedoms, the courts have allowed some reasonable restrictions on the right to bear arms and the right to privacy. Think about the principles of democracy and the purposes of government. Do you think the government should be able to:

- limit the number of weapons a law-abiding citizen can purchase? If so, to what number? If not, why not?
- keep a national database of anyone with a history of mental health issues, give gun sellers access to it, and make it illegal to sell a gun to a person on the list? Why or why not?
- perform full-body scans of all individuals for security reasons before they board an airplane? Why or why not?
- keep track of everyone's health conditions and genetic predispositions to diseases in a database? Explain your reasoning.



Passenger screening at the airport is an important part of security procedures intended to prevent prohibited items and other threats to transportation security. Advanced imaging technology detects potential threats such as weapons by indicating their location on a generic outline of a person. ►

	Laws	Supreme Court Cases
Right to Bear Arms		
Right to Privacy		

ANALYZING KEY IDEAS AND DETAILS

CITING TEXT EVIDENCE Use the chart to list the major laws and Supreme Court cases regarding the right to bear arms and to privacy.

UNDERSTANDING CRAFT AND STRUCTURE

1. ANALYZING TEXT STRUCTURE

Explain why the author put this sentence in the introduction to this section: “The Constitution and Bill of Rights were written at a time when many people were concerned that a strong national government might suppress their freedoms.” How does this sentence contribute to one of the central ideas of the section?

2. ANALYZING POINT OF VIEW

Search the first paragraph in the section titled “Gun Control” and find words that signal an opinion. Write the full sentence that contains the opinion and explain how you identified it.

ANALYZING PRIMARY SOURCES

1. DETERMINING MEANING What is the meaning of the word *arms* as used in the amendment?

2. UNDERSTANDING CONTEXT Why does the amendment say that the people’s right to keep and bear arms should not be limited?

DETERMINING MEANING

The word **militia** has the same root as the word *military*, which means “related to soldiers or war.” How might knowing the meaning of military help you determine the meaning of militia?

THE SECOND AMENDMENT

GUIDING QUESTION *In what circumstances may the government limit the right to keep and bear arms?*

In colonial times and through the American Revolution, it was common for groups of men in one town or region to form **militias**. These were groups of people who owned guns and were ready to defend the town, even though they were not professional soldiers. Without these well-armed militias, America could not have won the war against the British and gained independence.

The Constitution and Bill of Rights were written at a time when many people were concerned that a strong national government might suppress their freedoms. The Second Amendment expresses their concerns this way:

“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.”

Today, many Americans disagree about exactly what the Second Amendment means. The Supreme Court has clearly ruled that it protects an individual’s right to keep a gun. Beyond that, does it give individuals the right to keep, carry, and use all types of guns? Can or should the government reasonably restrict gun ownership? What level of government should decide these questions—national, state, or local?

GUN CONTROL

Efforts by the government to regulate firearms are very controversial. Most Americans who own firearms own them legally and use them lawfully. They believe that “guns don’t kill people, people do”; so to them, limiting gun ownership is misguided. They believe passionately that their liberty and perhaps their safety will be at risk if gun ownership is restricted. Supporters of gun control laws believe that the relatively easy availability of firearms contributes to violent crime, accidental shootings, and suicide. They point out that the United States has the highest rate of civilian gun ownership in the world.

The primary federal gun-control law is the Gun Control Act of 1968. It prohibits certain people—such as convicted felons, minors, and illegal immigrants—from buying or possessing guns. It also regulates how and where guns can be sold and sets penalties for carrying and using firearms in crimes of violence or drug trafficking.

Many states have also enacted their own legislation about guns. Some states have given people more freedom to own and carry guns. For example, in Alaska and Vermont, adults without a felony conviction can carry a concealed weapon without having to first obtain a permit. Other states have passed laws making it harder to own, carry, and use guns. Some states require background checks, fingerprinting, firearms training, and other application requirements to purchase a gun.

In 1976 the city government of Washington, D.C., passed a law that made it a crime to carry an unregistered firearm and prohibited the registration of handguns in the district. It further mandated that all registered (legal) firearms be kept unloaded and disassembled or trigger locked. Several D.C. residents tried to fight the law in court, claiming it violated the Second Amendment.

In a landmark case called *District of Columbia v. Heller* (2008), the Supreme Court ruled that D.C. law was unconstitutional. In its written opinion, the justices explored the history and language of the Second Amendment. A five-justice majority ruled that people have a constitutional right to keep guns in their homes. The justices said, “the inherent right of self-defense has been central to the Second Amendment right.” The Court said that the scope of the right to bear arms is not unlimited, however. The government can choose to regulate the possession of guns, or to ban certain groups, like convicted felons, from possessing guns.

Four justices dissented from this ruling. They also examined the language and history of the amendment, and came to the opposite conclusion. In their dissent, they wrote that the purpose and intent of the Second Amendment was to protect the right of the people to maintain a well-regulated militia. They also argued that in reviewing firearms laws, the Court should balance protection of constitutional rights against the interest of public safety.

CIVIC PARTICIPATION IN A DIGITAL AGE

GUN RIGHTS

Americans for Responsible Solutions is an advocacy group and political action committee that supports stricter gun-control laws to limit the sale of assault weapons and to require criminal background checks for all gun buyers and other measures to protect people from gun owners who are criminals or who are mentally ill. The organization was started in 2013 by former U.S. Representative Gabrielle Giffords. In 2010 Giffords was severely injured herself by a man who fired 33 bullets from a semiautomatic pistol into a crowd listening to her speak. Twelve others were injured and another six people died.

The National Rifle Association’s Institute for Legislative Action describes itself as America’s premier defender of the Second Amendment. It advocates for preserving the right of all law-abiding individuals to purchase, possess, and use firearms for legitimate purposes. It lobbies to prevent gun-control laws and to enact pro-gun legislation. The NRA was founded in 1871 to promote rifle practice and improve the marksmanship of potential American soldiers.

EXPLAINING ISSUES Look at the websites of Americans for Responsible Solutions and the National Rifle Association’s Institute for Legislative Action. Both websites feature a section called “take action.” Using both websites, look for petitions you could sign, polls you could take, volunteer opportunities, and other ways you can add your voice to the debate about what gun control, if any, is best for America. Write a summary of what you found.

✓ CHECKING FOR UNDERSTANDING

1. **UNDERSTANDING CONTEXT** In what circumstances may the government limit the right to keep and bear arms?
2. **RELATING EVENTS** Why did the Supreme Court rule that Washington, D.C.'s gun law was unconstitutional? Explain.
3. **DIFFERENTIATING** What arguments are commonly made by opponents of gun-control legislation? What arguments are made by proponents?

RIGHT TO PRIVACY

ANALYZING KEY IDEAS AND DETAILS

1. DETERMINING CENTRAL IDEAS

Reread the paragraph that begins “The Supreme Court first recognized” What was the effect of the Court’s ruling in *Griswold v. Connecticut*?

- #### 2. SUMMARIZING
- Use your own words to summarize the arguments of the proponents and opponents of the USA Patriot Act.

GUIDING QUESTION *In what circumstances may the government limit privacy rights?*

Although the words “right to privacy” or “right to be let alone” do not appear anywhere in the U.S. Constitution, many people contend that privacy is a basic right that should be protected against unreasonable interference from the government.

The Supreme Court has issued several rulings that relate to privacy, citing the First, Third, Fourth, Fifth, and Ninth Amendments. They have said that, taken together, the freedom of speech and association, the right to have one’s home free of soldiers during peacetime, the freedom from unreasonable search and seizure, the right to remain silent, and the unspecified rights kept by the people create a “zone of privacy.”

Like other constitutional freedoms, however, the government may limit privacy rights. Sometimes the right to privacy conflicts with important government interests. For example, the police may obtain a search warrant to examine the contents of a computer that it believes may have been used by a suspected criminal.

Some states have passed privacy laws or added a right to privacy to their state constitutions. Others believe that the Supreme Court has gone too far in recognizing a right to privacy, arguing that that right does not appear anywhere in the Constitution.

REPRODUCTIVE RIGHTS AND PRIVACY

The Supreme Court first recognized a right to privacy in the mid-1960s. In a case called *Griswold v. Connecticut*, the Court examined whether a state could outlaw access to contraception. In reading the entire Bill of Rights, the justices found that several implied a right to privacy. The Court ruled that Connecticut could not outlaw contraception, because it would violate the privacy of married couples.

Perhaps the most controversial rulings about a right to privacy come from cases about the right to an abortion. Before the 1970s, states had a wide variety of laws relating to abortion. Some permitted it. Others outlawed it. Others made it illegal unless the life of the mother was at stake.

In 1973 the landmark *Roe v. Wade* decision established a woman’s right to get an abortion during the first six months of her pregnancy but said that individual states could prohibit abortion in the last three months. The Court noted that it was necessary to balance a woman’s right to privacy of her



This photograph shows pro-life and pro-choice activists holding signs outside the U.S. Supreme Court during the “March for Life” event in 2005.

SUMMARIZING Briefly summarize the Supreme Court’s 1973 *Roe v. Wade* decision.

body with the rights of the unborn child. It also noted that there was no clear agreement among medical and philosophical experts on exactly when life begins.

Since the 1970s, abortion has remained very controversial. Some people argue that abortion is wrong in all situations. They believe human life begins at conception and must be protected from that moment on. Others argue that whether or not to have an abortion is a private matter. They believe that a woman must be allowed to control her own body and that abortion is a right protected by the Constitution.

In 1992 the Supreme Court ruled that states can impose restrictions on abortion in the first six months of pregnancy, as long as the restrictions do not impose an “undue burden” on women’s ability to obtain abortions. Many state restrictions on abortion, such as counseling requirements and waiting periods, were allowed. In 2016 the Supreme Court ruled that a Texas law, which required abortion facilities to meet strict building codes and have relationships with nearby hospitals, was unconstitutional. The law imposed an undue burden because approximately three quarters of the abortion facilities in Texas would not have been able to meet the law’s requirements.

Abortion has been an important and controversial issue in elections and in judicial nominations. As long as the American public and the Supreme Court remain divided over abortion issues, advocacy groups on both sides will closely **monitor** elections and nominations to the Supreme Court and other federal courts.

INFORMATION GATHERING AND PRIVACY

Telecommunications has changed the way we live, work, and play. Advances in technology have allowed businesses, organizations, individuals, and the government to collect and store information in ways that America’s Founders never imagined. Often, personal data is collected without the knowledge or consent of the individuals concerned.

DETERMINING MEANING

In the text, the word **monitor** is used as a verb. Used as a noun, the word *monitor* can mean “a device that watches over something.” Parents might use a baby monitor, for instance, to hear what their child is doing in another room. Using this information and context clues from the text, write a definition for the verb monitor.

INTERNET PRIVACY RULES

Internet service providers (ISPs) know a lot about their customers—they are able to track their location, web browsing history, and use of apps. Marketers want that information to create targeted Internet advertising—ads for people who would likely be interested in certain products or services. And a new law may make it easier for them to get it. In 2017 President Donald Trump signed into law a bill that eliminated Internet privacy rules established by the Federal Communications Commission in 2016. Those rules, which had not yet gone into effect, required ISPs to get customers' permission to share or sell their online data to third parties. ISPs do have their own privacy policies, but for now, there will be no government rules preventing them from selling that data to the highest bidder, even without customers' permission.

Online privacy is also threatened by websites and hackers who gather information on people who use the Internet. By monitoring—some call it “spying on”—your online activity, companies can develop targeted advertisements that show they know your income, recent purchases, music preferences, political party, etc. More and more, personal information is being collected in data warehouses where it is for sale to businesses, current or potential employers, or nearly anyone else willing to pay for it. These actions of private businesses or individuals do not violate the Constitution (which applies only to government actions). Private businesses and individuals are affected by state and federal laws regulating data collection and online privacy.

GOVERNMENT SURVEILLANCE

War and the threat of terrorism create tension in a democracy between citizens' privacy rights and national security needs. Since the terrorist attacks of September 11, 2001, the U.S. government has had more power to conduct **surveillance** against everyone. Currently, two laws lay down the guidelines for government surveillance in national security cases: the 1978 Foreign Intelligence Surveillance Act (FISA) and the 2001 USA Patriot Act. FISA requires federal agents to get a warrant from a special FISA court before tapping domestic phone and computer lines. FISA court records and rulings are kept completely secret.

The Patriot Act and its revisions broadened the definition of who could be seen as a terrorist and expanded the government's power to detain, investigate, and prosecute suspected terrorists. The FISA court can approve **wiretaps** to monitor an individual's telephone and Internet communications, even if the government has not met the standards of proof that would be required by a non-FISA court. Evidence that was authorized secretly by the FISA court can now also be used in criminal trials. In some cases, the government can delay notifying people that their houses or apartments have been searched until long after the search has taken place.

Most citizens supported the Patriot Act when it was passed. However, these **expanded** powers raised key questions for Americans: Do these measures infringe on citizens' rights? How much freedom and privacy should be given up in order to be more secure? Some members of Congress and the public have criticized the expanded surveillance powers and use of secret

DETERMINING MEANING

1. The word **surveillance** is derived from the prefix *sur-*, meaning “over, above” and the root *veiller* (the French word for “to watch”). Use this information to explain what it means for a person to be under surveillance by the government. What kind of person is most likely to be under surveillance?
2. The combination of two common words—*wire* and *tap*—create the word **wiretap**. A tap is a device that is connected to a wire in order to secretly listen to someone's conversation. To what specific kind of wire is the tap connected during a wiretap?

wiretaps by the government. Others argue that these powers keep us safer and that some loss of freedom is the appropriate price to pay for safety.

✓ CHECKING FOR UNDERSTANDING

1. **UNDERSTANDING CONTEXT** In what circumstance may the government limit privacy rights?
2. **SUMMARIZING** Which laws regulate government surveillance in national security? What do these laws do?
3. **EXPLAINING ISSUES** Why do some people oppose abortion? Why do others believe it should be legal?

EXPLORING THE ESSENTIAL QUESTION

EXPLAINING ISSUES On a scale from 1 to 5, with 1 meaning that you strongly agree, and 5 meaning that you strongly disagree, indicate where you stand on the following statement:

“In a time of heightened concern about domestic terrorism and national security, the government should be allowed to do whatever it believes is necessary to find and arrest terrorists.”

Using the same scale, take a stand on each of the following statements. In each case, assume that Congress has proposed laws giving the federal government the power to take the following actions:

- a. Look at everyone’s e-mail at work
- b. Look at everyone’s social network posts
- c. Install surveillance cameras on all public streets
- d. Plant small cameras in the homes of suspected terrorists
- e. Check the travel records of people coming into the country

LESSON 6 REVIEW

Building Citizenship

1. **IDENTIFYING EFFECTS** In what ways does technology impact the privacy rights of citizens?

Building History-Social Science Analysis Skills

2. **EXPLAINING ISSUES** What reasons did the dissenting justices in *District of Columbia v. Heller* give for their dissent?
3. **IDENTIFYING CONNECTIONS** How did the Supreme Court construct the concept of a “zone of privacy”?
4. **ANALYZING CHANGE** How have abortion rights changed since the Supreme Court’s 1973 decision in *Roe v. Wade*?

Writing About Government

5. **ARGUMENTATIVE WRITING** Write a persuasive speech that advocates for your stance on the USA Patriot Act. What elements of persuasion did you use?

Collaborating

6. **EVALUATING POINT OF VIEW** In small groups, discuss what might happen if the Second Amendment were repealed. As you discuss the topic, build on and respectfully critique one another’s ideas, reasons, and examples. After discussion, one group member should share the group’s conclusions with the class.

STUDY GUIDE

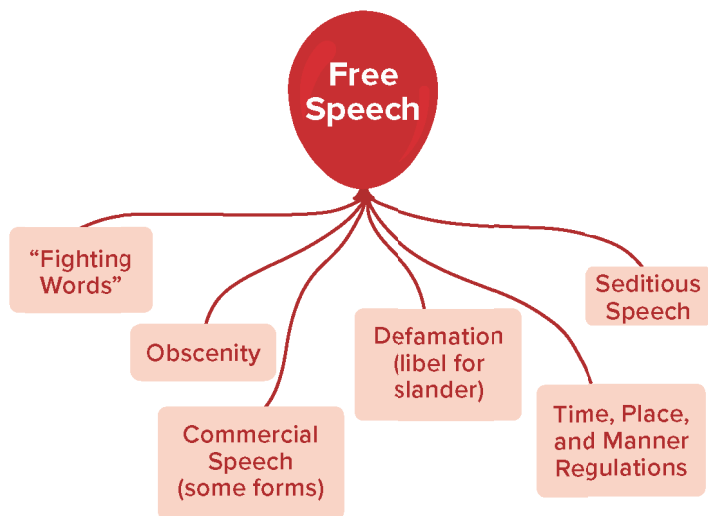
FIRST AMENDMENT PROTECTIONS

LESSONS 1, 2, and 3

Freedom of Speech	Protects the right to free speech—verbal expression and the use of action and symbols
Freedom of the Press	Protects against government censorship of newspapers, magazines, books, radio, television, and film
Freedom of Petition	Protects the right to petition the government for redress of grievances
Freedom of Assembly	Protects the right to join with others in peaceful gatherings
Freedom of Religion	Protects against government interference in religious practice and establishment of religion

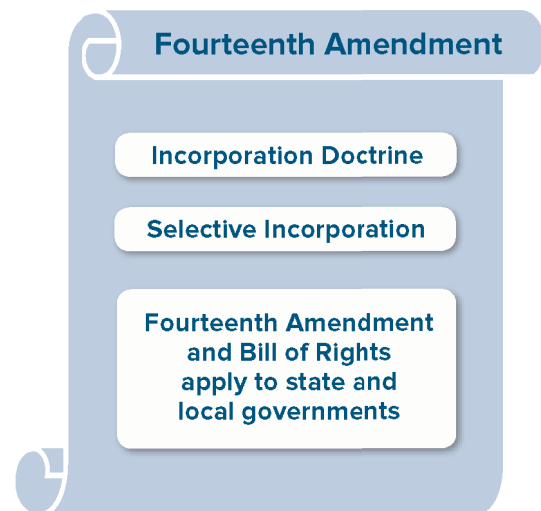
RESTRICTIONS ON FREE SPEECH

LESSON 1



FOURTEENTH AMENDMENT

LESSON 4



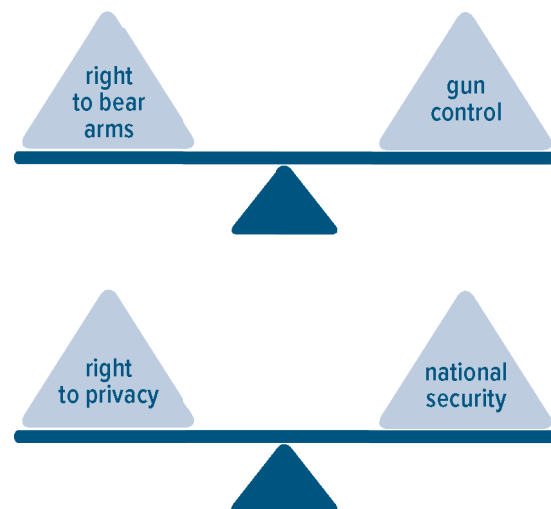
ADVANCING EQUAL PROTECTION

LESSON 5

Discrimination based on...	Key Protections
Race	<ul style="list-style-type: none"> <i>Brown v. Board of Education</i> Civil Rights Acts of 1964, 1968, 1974, 1988 Voting Rights Act of 1965
National Origin	<ul style="list-style-type: none"> <i>Hernandez v. Texas</i> <i>Plyler v. Doe</i>
Gender	<ul style="list-style-type: none"> Nineteenth Amendment Equal Pay Act of 1963 Title VII of Civil Rights Act of 1964 Title IX of Education Amendments Act of 1972
Sexual Orientation	<ul style="list-style-type: none"> some state and local laws end of “don’t ask, don’t tell” policy <i>Obergefell v. Hodges</i>
Disability	<ul style="list-style-type: none"> Age Discrimination in Employment Act of 1967 Americans with Disabilities Act Individuals with Disabilities Education Act

FINDING A BALANCE

LESSON 6



CHAPTER 15 Assessment

Write your answers on a separate piece of paper.

Short Answer

- 1 DETERMINING CENTRAL IDEAS** Identify three categories of speech that can be punished based on the content of the speech.
- 2 INTERPRETING** How did the Supreme Court rule in *Texas v. Johnson* (1989)? Why? Do you agree or disagree? Explain your viewpoint.
- 3 ANALYZING EVENTS** Why are conflicts involving freedom of expression among the most difficult ones that courts are asked to resolve?
- 4 DETERMINING CONTEXT** What part of the Constitution protects the freedom to ask the government for a “redress of grievances”?
- 5 DETERMINING CENTRAL IDEAS** What restrictions, if any, should be placed on our constitutional rights and freedoms? What is required of the government when regulating or limiting them?
- 6 ANALYZING CHANGE** Why are the First Amendment rights of speech, press, assembly, and petition important in a democracy? How have they changed over time?
- 7 UNDERSTANDING CONTEXT** Why did the Founders protect religious freedom in the United States? Why did they guarantee its free exercise in the First Amendment?
- 8 COMPARING AND CONTRASTING** Discuss the similarities and differences between these two phrases: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof” and “separation of church and state.”
- 9 EVALUATING TEXT EVIDENCE** What does the Fourteenth Amendment’s guarantee of “equal protection of the laws” mean?
- 10 COMPARING AND CONTRASTING** Why are the freedoms in the Bill of Rights and later amendments essential to our democracy?

- 11 EVALUATING ARGUMENTS** Explain the process of selective incorporation, using the outcomes of these Court cases: *Gitlow v. New York*, *Palko v. Connecticut*, *McDonald v. City of Chicago*. Analyze the effects of these cases on the scope of fundamental rights and federalism.
- 12 DESCRIBING** How did the outcome of *Hernandez v. Texas* affect the interpretation of the Fourteenth Amendment?
- 13 ANALYZING CHANGE** How have citizen movements and social movements brought about political and social change?
- 14 UNDERSTANDING CONTEXT** Describe the historical context that underscored the importance of including the Second Amendment rights in the Constitution.
- 15 EVALUATING ARGUMENTS** What right did the Supreme Court establish in *Roe v. Wade*, and why does this issue continue to be controversial?

History and Social-Science Analysis

Use the political cartoon to answer the following questions.



- 16 INTERPRETING** What does the lady in the cartoon represent? What is the significance of the scale?
- 17 UNDERSTANDING CONTEXT** What is this cartoon saying about the application of the First Amendment?

Need Extra Help?

If You've Missed Question	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
Review Lesson	1	1	1	2	2	2	3	3	4	4	4	5	5	6	6	1	1

CHAPTER 15 **Assessment,** continued

Analyzing Primary Sources

Both *Schenck v. United States* and *Brandenburg v. Ohio* were important Supreme Court cases dealing with freedom of speech and its limitations.

“The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic. . . . The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger.”

—Justice Oliver Wendell Holmes (1919), *Schenck v. United States*

“Freedoms of speech and press do not permit a State to forbid advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.”

—Unanimous Supreme Court decision in *Brandenburg v. Ohio* (1969)

- 18 EVALUATING ARGUMENTS** In *Schenck v. United States* the Court limited free speech if it
- A. produces immediate danger.
 - B. defames government officials.
 - C. can be proved false.
 - D. is interpreted as obscene.
- 19 DESCRIBING** According to the Court’s decision in *Brandenburg v. Ohio*, the government can ban speech that urges people to
- A. protest government policies.
 - B. break the law.
 - C. boycott elections.
 - D. protest military actions.

Research and Presentation

- 20 EVALUATING TEXT EVIDENCE** Analyze the Supreme Court’s interpretation of freedom of religion in *Engel v. Vitale*. Do research to find out more about the case. Then write a position paper supporting your point of view, using facts from the case.

- 21 EVALUATING ARGUMENTS** Do research on the meaning of affirmative action today. Prepare an electronic slideshow explaining how the key cases *Regents of the University of California v. Bakke*, *Grutter v. Bollinger*, and *Gratz v. Bollinger* shaped the practice of affirmative action.
- 22 COLLABORATING** Work with a group of your classmates to prepare a debate on one of these issues: gun control, government surveillance, or reproductive rights. One part of your group should prepare to argue in favor of more restrictions and the other group against more restrictions. Research your group’s position and stage a debate.

Writing About Government

- 23 INFORMATIVE WRITING** Create a chronological chart of the Supreme Court decisions regarding the freedom of religion discussed in Lesson 3. Include the year, a short summary of the facts, and the basic Court ruling. Why do you think so many of these Supreme Court cases are about religion in public schools?

Speaking and Listening About Government

- 24 USING MULTIMEDIA** Use print and digital resources to research the movement to expand rights for African Americans or Latinos. Create a multimedia time line of key events in the movement and their significance. Present your time line to the class.
- 25 EVALUATING** Use a variety of print and online resources to find more information on court cases involving freedom of speech. Concentrate your research on learning why this particular freedom continues to be so controversial and a part of so many court cases. Pay particular attention to cases involving freedom of expression on the Internet, along with the advent of “fake” news. Then develop an oral presentation in which you explain current cases dealing with free speech and expression on the Internet for the class.

Need Extra Help?

If You’ve Missed Question	18	19	20	21	22	23	24	25
Review Lesson	3	5	6	1	1	3	5	1