

Civil Liberties: First Amendment Rights and Other Freedoms

By Mr. Cegielski

Colorado State Standards:

U.S. Government Standard III. Rights and Responsibilities of U.S. Citizenship, with a focus on understanding and applying the Bill of Rights.

Essential Questions:

- 1) How has judicial interpretation contributed to the development of civil liberties and civil rights?
- 2) How have American civil liberties and freedoms been limited or challenged in our nation's history?

Warm Up Questions on Civil Liberties

- 🇺🇸 **What are civil liberties? Why are they important to you as American citizens?**
- 🇺🇸 **Have all Americans always been entitled to them? Explain.**
- 🇺🇸 **Are there any restrictions on your liberties? Why?**

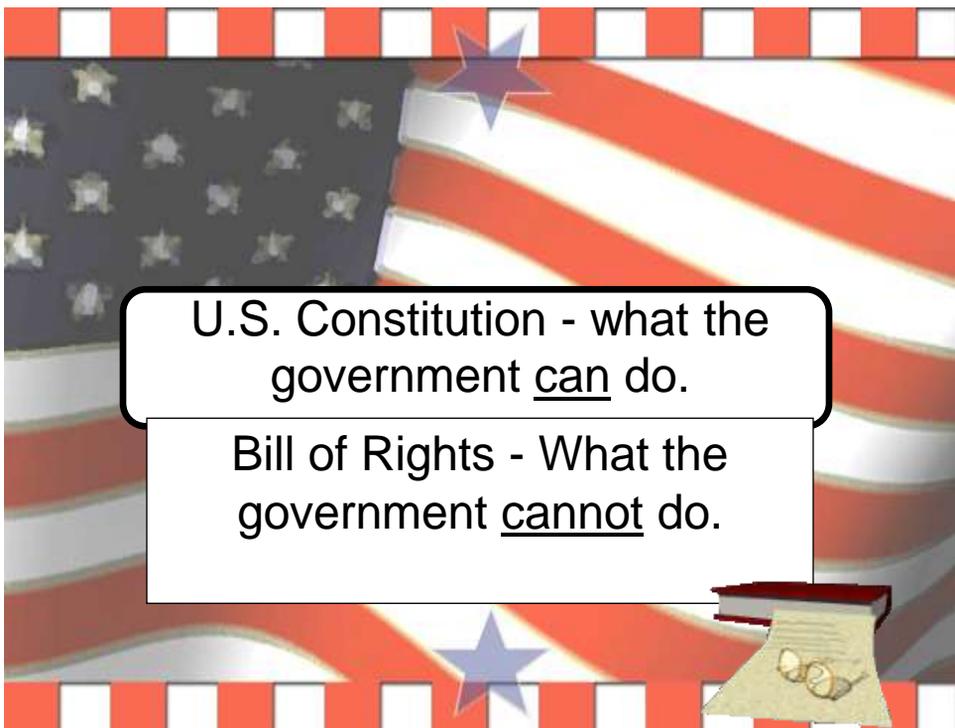


CIVIL LIBERTIES



 **Civil liberties** are the personal rights and freedoms that the federal government cannot abridge, either by law, constitution, or judicial interpretation.

 These are limitations on the power of government to restrain or dictate how individuals act



U.S. Constitution - what the government can do.

Bill of Rights - What the government cannot do.



The Bill of Rights



 **The Bill of Rights** consists of the first ten amendments to the Constitution and includes specific guarantees such as free speech, free press, and religion.

 **The proposed Bill of Rights** was sent to the states for ratification and was

Introductory exercise to the Bill of Rights. Get familiar with them!

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-  **Directions:** Read each scenario below. Explain in a couple of sentences whether you agree or disagree with each statement. Write the Bill or Rights amendment that relates to each scenario along with a brief statement that explains what you learned about that amendment. You may use your textbook and the Constitution.
-  1) A person who enters a room and screams "Bomb!" just to see the reaction of the people in the room is protected under provisions in the Bill of Rights.
Agree/Disagree:
Amendment:
-  2) Members of Congress can learn many different things – such as what you like and dislike about the area where you live – from letters you send to them.
Agree/Disagree:
Amendment:
-  3) A police officer comes to your door and asks to search your home without probable cause. You don't want to allow the officer to enter, but he is allowed to search your home.
Agree/Disagree:
Amendment:
-  4) Violence is getting to the point in our society where they should stop letting civilians own guns.
Agree/Disagree:
Amendment:

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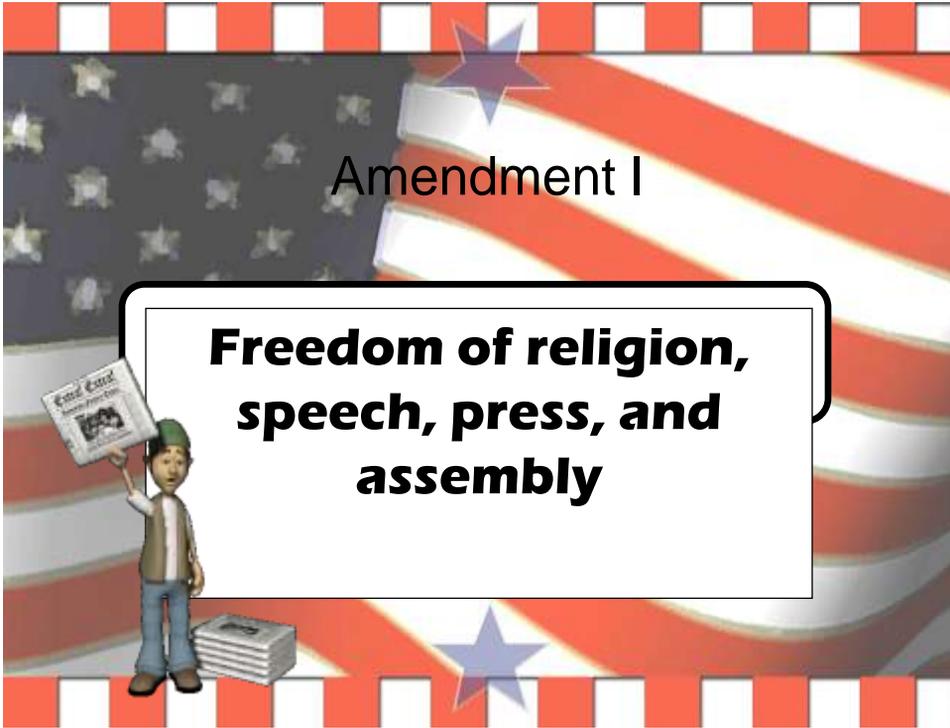
- 5) The Death Penalty is a good way to punish those who murder another human being.
Agree/Disagree:
Amendment:
- 6) A person is convicted of murdering another human being. Later, it is discovered that the victim of that murder had actually faked his or her death. Under those circumstances, it would be legal for the person convicted of the murder to kill the person who faked his/her death.
Agree/Disagree:
Amendment:
- 7) Your parents own a house. They invest hours of time and many thousands of dollar into it. The government can make your parents sell the house to them so a highway can be built on the land.
Agree/Disagree:
Amendment:
- 8) If a power is not expressed in the Constitution, then it is the responsibility of the individual states to protect citizens' rights.
Agree/Disagree:

Introductory exercise to the Bill of Rights. Get familiar with them!



Directions: Read each scenario below. Explain in a couple of sentences whether you agree or disagree with each statement. Write the Bill or Rights amendment that relates to each scenario along with a brief statement that explains what you learned about that amendment. You may use your textbook and the Constitution.

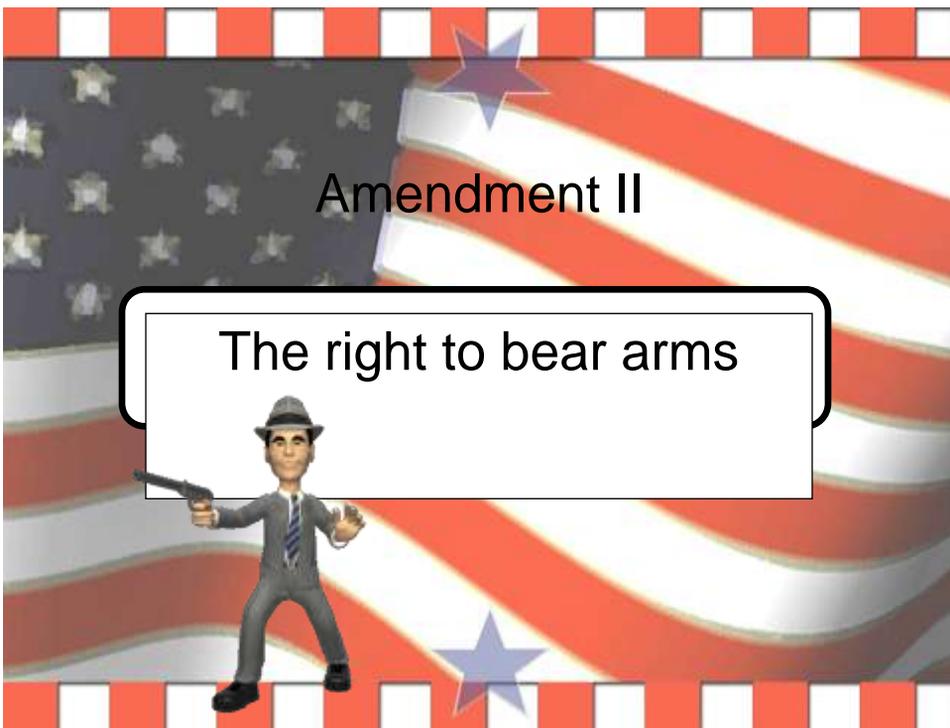
- 9) Even after September 11th, people are still free to practice the Islamic religion in the United States.
Agree/Disagree:
Amendment:
 - 10) A person involved in a dispute over \$10 is permitted to take his or her complaint to a civil court.
Agree/Disagree:
Amendment:
 - 11) President Bush is allowed to call you at home and tell you that you must let soldiers stay in your home.
Agree/Disagree:
Amendment:
 - 12) Everybody in the United States has the right to a free education.
Agree/Disagree:
Amendment:
- Discussion/Debate**
Provide time for students to share, compare, and contrast their replies to those scenarios.



Amendment I

**Freedom of religion,
speech, press, and
assembly**

A cartoon illustration of a man in a green cap and brown jacket holding a newspaper titled "The Star" and a stack of papers. The background features a stylized American flag with red and white stripes and a blue field with white stars, all framed by a red and white striped border.



Amendment II

The right to bear arms

A cartoon illustration of a man in a grey suit and hat holding a handgun. The background features a stylized American flag with red and white stripes and a blue field with white stars, all framed by a red and white striped border.

Amendment III

Prohibition against quartering of troops in private homes



Amendment IV

Prohibition against unreasonable searches and seizures



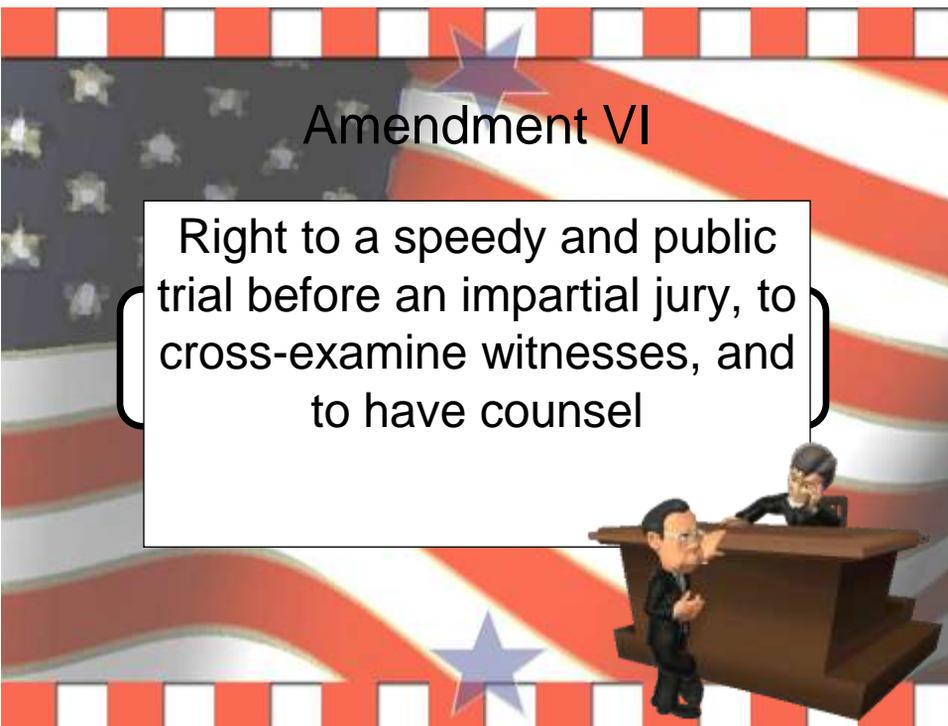
Amendment V

Rights guaranteed to the accused: requirement for grand jury indictment; protections against double jeopardy, self-incrimination; guarantee of due process



Amendment VI

Right to a speedy and public trial before an impartial jury, to cross-examine witnesses, and to have counsel



Amendment VII

Right to a trial by jury in
civil suits



Prohibition against excessive bail
and fines, and cruel and
unusual punishment

Amendment VIII



Amendment IX

Rights not listed in
Constitution are retained
by the people



Amendment X

States retain those powers not
denied to them by the
Constitution or delegated to the
national government

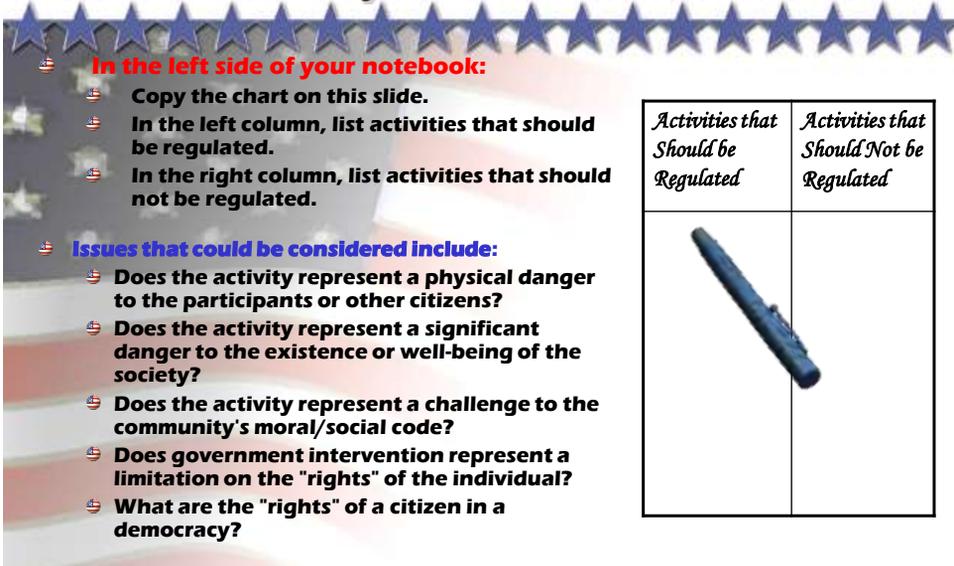




Further Exploration Of the Bill of Rights...

Warm Up/Do Now--3 and 1/2 minutes:

Does the 1st Amendment guarantee unlimited freedoms and liberties?



In the left side of your notebook:

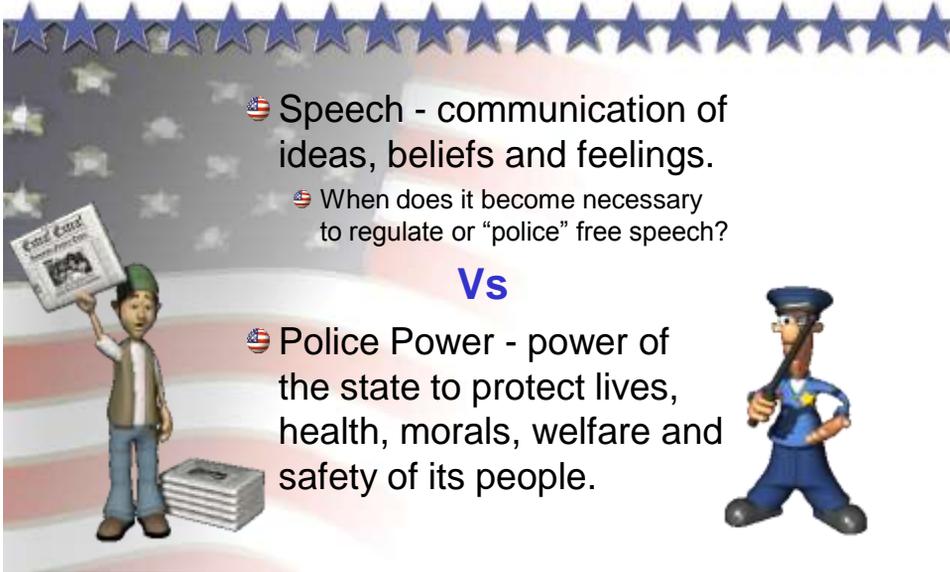
- 🇺🇸 **Copy the chart on this slide.**
- 🇺🇸 **In the left column, list activities that should be regulated.**
- 🇺🇸 **In the right column, list activities that should not be regulated.**

Issues that could be considered include:

- 🇺🇸 **Does the activity represent a physical danger to the participants or other citizens?**
- 🇺🇸 **Does the activity represent a significant danger to the existence or well-being of the society?**
- 🇺🇸 **Does the activity represent a challenge to the community's moral/social code?**
- 🇺🇸 **Does government intervention represent a limitation on the "rights" of the individual?**
- 🇺🇸 **What are the "rights" of a citizen in a democracy?**

<i>Activities that Should be Regulated</i>	<i>Activities that Should Not be Regulated</i>
	

First Amendment–Freedom of Speech and Press: Should there be limits?



 Speech - communication of ideas, beliefs and feelings.

 When does it become necessary to regulate or “police” free speech?

Vs

 Police Power - power of the state to protect lives, health, morals, welfare and safety of its people.

“make no law”

The Courts have frequently wrestled with the question of whether *freedom of expression* is an *absolute*. Does *no mean no*?

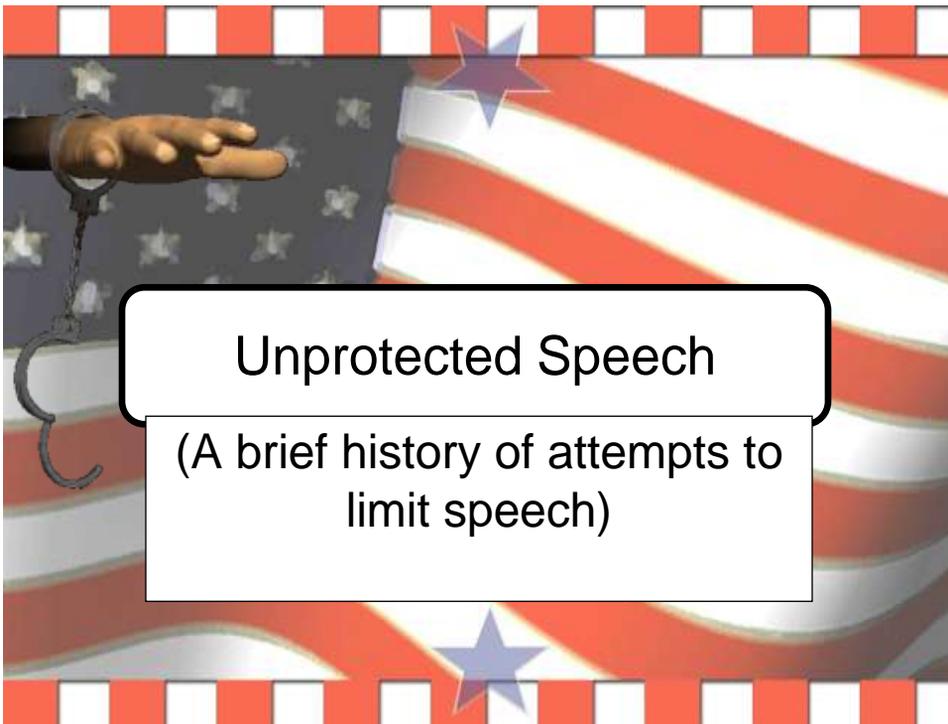
Supreme Court Justice Hugo Black believed that the words ***no law*** literally meant that Congress shall make no laws abridging the fundamental rights of the First Amendment.



A Balance


🇺🇸 In their attempt to draw the line separating permissible from impermissible speech, judges have had to balance freedom of expression against competing values like

- 🇺🇸 Public order
- 🇺🇸 National security
- 🇺🇸 The right to a fair trial



Unprotected Speech
(A brief history of attempts to limit speech)

Civil Liberties and National Security Timeline



- 🇺🇸 **Introduction:** The conflict between civil liberties and national security is age-old, as the quotations below illustrate. In the United States it's certainly as old as the nation itself. What do you think of these quotes?
- 🇺🇸 In time of war the laws are silent. –**Marcus Tullius Cicero** (106–43 B.C.), Roman orator, philosopher, statesman.
- 🇺🇸 If the fires of freedom and civil liberties burn low in other lands they must be made brighter in our own. –**Franklin D. Roosevelt**, 1938
- 🇺🇸 The history of liberty is a history of resistance. The history of liberty is a history of limitations of government power, not the increase of it. –**Woodrow Wilson**
- 🇺🇸 What a strange time it was! Who knew his neighbor? Who was a traitor and who a patriot? The hero of to-day was the suspected of tomorrow.... There were traitors in the most secret council-chambers. Generals, senators, and secretaries looked at each other with suspicious eyes. –**M. E. W. Sherwood** on spying in Washington, D.C., in 1862-1863, when it was a Civil War camp.

Alien and Sedition Acts (1798)



- 🇺🇸 **These acts were designed to silence criticism of the government.**
- 🇺🇸 **They made it a criminal offense to publish "any false, scandalous writing against the government of the United States."**
- 🇺🇸 **A new Congress allowed the acts to expire before the Supreme Court had a chance to rule on the Constitutionality of the laws.**
- 🇺🇸 **Assignment:** Read and complete "The Alien and Sedition Acts: Defining American Freedom"



SUSPENSION OF HABEAS CORPUS, CIVIL WAR**1863**

President Lincoln interfered with freedom of speech and of the press and ordered that suspected political criminals be tried before military tribunals. Probably Lincoln's most controversial act was suspending the writ of habeas corpus, a safeguard of liberty that dates back to English common law and England's Habeas Corpus Act of 1671. Habeas corpus says that authorities must bring a person they arrest before a judge who orders it. The U.S. Constitution says: "The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it." But Lincoln suspended habeas corpus without waiting for Congress to authorize it.

Lincoln's action meant that individuals could be arrested and held without formal charges being lodged against them. The ruling brought Lincoln into conflict with the Chief Justice of the United States, Roger B. Taney. The case was that of John Merryman, a Southern sympathizer who had organized soldiers to burn bridges in Maryland. Taney ruled that Lincoln's order violated Article 1, Section 9, of the U.S. Constitution, which gave only Congress the power to suspend habeas corpus. Lincoln ignored the ruling. Congress ratified the suspension in 1863.

Civil War scholars generally point to the large pockets of anti-war sentiment in the Union states as a justification for his wartime suspension of civil liberties. Today there are many "Confederate" Web sites which label Lincoln a "dictator" for these wartime acts.

Activity: Lincoln and the "Writ of Liberty." Was Lincoln right?



 **Directions:** Read the article "Lincoln and the Writ of Liberty" and answer the accompanying comprehension questions. Time permitting, we will complete the accompanying activity: A mock court trial on the case—*Vallandigham versus Lincoln*.

ACTIVITY

Vallandigham v. Lincoln

In this activity, the class will have an opportunity to argue some of the questions that the U.S. Supreme Court avoided in 1864.

1. Form groups of three. Each group will simulate a hearing on the Vallandigham case before the Supreme Court. In each group, one student should play the role of Clement L. Vallandigham, another student should take the part of Abraham Lincoln's attorney general, and the third student should represent a Supreme Court justice (two students may play this the role of justices if the group has four members).
2. The students should next meet in role groups. All those playing Vallandigham should meet in on corner of the room, those playing Lincoln's attorney general in another, and the justices in another. The groups role playing Vallandigham and Lincoln's attorney general should prepare answers and supporting arguments for each of the Questions Before the Supreme Court, below, based on information provided in the article. The justices of the Supreme Court should prepare by studying the section on "The Writ of Liberty -- Suspended" in the article and thinking of questions to ask Vallandigham and the attorney general.
3. Students should now meet in their groups of three. Vallandigham should present first, then the attorney general, and the judge should interrupt at any time to ask questions.
4. Have the Supreme Court justices come to the front of the room. Each justice should write down his or her decision on each question. The justices should then discuss the first question, vote on it, and give reasons for their votes. This procedure should be repeated for the other two questions.

Questions Before the Supreme Court



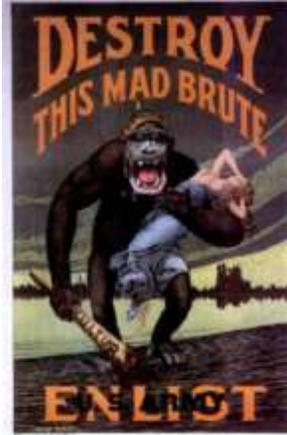
 **1) Did Lincoln have the right to suspend the writ of habeas corpus in his proclamation of 1862?**

 **2) Should Vallandigham have been arrested and put on trial?**

 **3) What types of persons should be covered in a suspension of the writ of habeas corpus?(Review Lincoln's list of offenders in his proclamation of September 24, 1862.)**

Espionage Act (1917)

- 🇺🇸 In World War I anti-German feelings ran high. Anything German was renamed – such as Sauerkraut to Liberty Cabbage.
- 🇺🇸 This law curtailed speech and press during World War I.
- 🇺🇸 The law made it **illegal to urge resistance to the draft, and even prohibited the distribution of antiwar leaflets.**
- 🇺🇸 Nearly 2,000 Americans were convicted under the Espionage Act.



Level 2: How does this propaganda Poster convey anti-German sentiment?

Espionage Act (continued)

- 🇺🇸 **Schenck v. United States (1919)** the Supreme Court upheld the conviction of Schenck (a secretary of the Socialist Party) for interfering with the draft.
- 🇺🇸 The ***bad tendency test*** was used by the Court. Engaging in speech that had a **tendency** to induce illegal behavior was **not** protected by the 1st Amendment.



Espionage Act (continued)



Justice Oliver Wendell Holmes sought to allow limits on the 1st Amendment.

1. Justice Holmes defined the ***“Clear and Present Danger”*** test in the Schenck case. This includes speech leading to a riot, the destruction of property, or corruption of an election.

“Even the most stringent protection of free speech would not protect a man falsely shouting fire in a crowded theatre.” Justice Holmes.



WORLD WAR II — JAPANESE INTERNMENT

Soon after the bombing of Pear Harbor, President Roosevelt, also quoted above, signed Executive Order 9066, which authorized the military to remove Japanese-Americans from America's West Coast. The removal was designed to protect military bases and manufacturing plants from "Fifth Column" sabotage or Japanese attack.

In this case it was not foreign nationals who were moved into camp, but also American citizens of Japanese descent. In total 110,000 persons of Japanese ancestry were relocated from the West Coast to 10 American concentration camps in seven states: California, Wyoming, Idaho, Utah, Arizona, Colorado and Arkansas. The relocated consisted of both the Issei, first-generation immigrants who were barred from U.S. citizenship, and their children, the Nisei, born in this country as U. S. citizens. Two-thirds of those incarcerated were U.S. citizens. Those citizens were forced to sell their businesses, homes and farms at rock-bottom prices — they lost their hold on their American lives and citizenship.

In 1980, President Jimmy Carter signed legislation to create the Commission on Wartime Relocation and Internment of Civilians (CWRIC). In 1983, the CWRIC issued its findings in PERSONAL JUSTICE DENIED, concluding that the incarceration of Japanese Americans had not been justified by military necessity.

With the [The Civil Liberties Act of 1988: Redress for Japanese Americans](#) the U.S. apologized to Japanese Americans for this grave injustice and this Act was signed into law, authorizing the payments of \$20,000 to each person who had been evacuated in the 1940s.

HUAC AND MCCARTHYISM

Senator Joseph McCarthy's name has become a byword for the abuse of civil liberties and the malignant use of publicity to silence people of dissenting viewpoints. However, what we generally lump under the rubric of McCarthyism has longer, deeper roots.

A main implement of the Cold War Red Scare was the House of Un-American Activities Committee (HUAC), set up by Congress under Martin Dies in 1938 to investigate people suspected of unpatriotic behavior. By 1947 HUAC had turned its attention to Hollywood and the public airwaves. The Committee called many people to testify about "Communist" influence in the industry. Those testifying were encouraged to "name names" of those they knew with ties to the Communist Party or with leftist agendas (anything from labor activism to support for Spanish Civil War refugees to civil rights activism). Ten "unfriendly witnesses" took the Fifth Amendment but were found guilty of contempt of Congress and each was sentenced to between six and twelve months in prison.

Soon after, in June, 1950, came the publication of RED CHANNELS, a pamphlet written by former FBI agents purporting to list the of leftists in the entertainment industry deserving of blacklisting for their leftist views.

On 9th February, 1950, Joseph McCarthy, a senator from Wisconsin, made a speech claiming to have a list of 205 people in the State Department known to be members of the American Communist Party. The list of names was not a secret and had been in fact published by the Secretary of State in 1946. McCarthy and his friend, J. Edgar Hoover, were off and running — instituting four years of hearings in the superheated atmosphere of the Cold War. Many of the domestic spying techniques employed under Hoover's stewardship of the F.B.I. at this time were later ruled unconstitutional.

Do Now:

Introduction to the Patriot Act

- **DO-NOW—Oral Discussion:** Indicate whether you "Strongly Agree," "Agree Somewhat," "Disagree Somewhat," and "Strongly Disagree" with the following statements and explain why.
 - 1) Parents who suspect that their children are involved with an illegal activity, such as drug use, vandalism or shoplifting, are justified in eavesdropping on them to discover the truth.
 - 2) If a citizen seems to be involved in a criminal activity, governmental authorities are justified in listening in on his or her phone conversations, even if there is no direct evidence of wrongdoing.
 - 3) Following September 11, 2001, the United States government is justified in taking extraordinary measures to monitor the activities of "suspicious" people living within its borders.
 - 4) Any United States citizen affiliated with an organization that has ties to the Middle East should be considered suspect by the federal government.
 - 5) Citizens should be wary of any government action that threatens to undermine their personal privacy.



TOPIC What is The Patriot Act?

 The **USA PATRIOT Act** (Public Law 107-56) is federal legislation in the United States.

 Passed after the September 11, 2001 Terrorist Attacks, the Act expands the authority of U.S. law enforcement for the stated purpose of fighting terrorist acts in the United States and abroad. This expanded legal authority is also used to detect and prosecute other alleged potential crimes.



Level 2: Evaluate these cartoons for meaning.

Activity Option #1: "Is the Patriot Act unconstitutional?"



 In this cooperative learning activity, you will work in groups of three to four. Acting as a group of legislatures in Congress, you will:

-  1) Analyze the debate over the Patriot Act.
-  2) Reach a consensus on the issue. Either decide to renew it or choose to vote it down.
-  3) Write a legislative proposal. If you wish to renew the Patriot Act, discuss the benefits of the Patriot Act and suggest ways to strengthen it without violating people's civil liberties. If you are against it, discuss why Congress must strike it down and propose an alternative plan which safeguards Americans' civil liberties while protecting them against future terrorist acts.

***Your group's proposal should be 1-page long and use relevant evidence, including quotes from the handouts, important people, as well as from the Constitution itself. Your group's proposal will be presented and debated on in front of class, be prepared and knowledgeable about the issue!**

Activity #1: "Is the Patriot Act unconstitutional?" Procedures

- ☞ 1) Review the USA PATRIOT Act with the following Web site:
<http://www.pbs.org/newshour/bb/terrorism/homeland/patriotact.html>
http://www.pbs.org/newshour/extra/features/july-dec03/patriotact_9-17.html
- ☞ 2) Find out about the lawsuit filed by the ACLU in relation to the USA PATRIOT Act. Review the basics of the case that is before the courts including the ACLU's reasons for challenging the act. Information can be found at the ACLU Web site:
<http://www.aclu.org/SafeandFree/SafeandFree.cfm?ID=13249&c=206>
 - ☞ Discuss the ACLU's case and reasons why people would react so strongly to the impact that the USA PATRIOT Act has on the average American's civil liberties.
- ☞ 2) Next, investigate opposition to the ACLU's point of view by directing them to the Online NewsHour transcript featuring former Assistant Attorney General Viet Dinh on the Patriot Act and the balance between security and freedom in America. This link is found at http://www.pbs.org/newshour/bb/terrorism/july-dec03/patriot_8-19.html.
 - ☞ Read/see/hear specific arguments supporting the USA PATRIOT Act from Viet Dinh and discuss the misconceptions or confusion surrounding certain provisions of the act such as the "Sneak and Peek" aspect of the legislation.
- ☞ 3) Answer these questions in a 250-word, well-organized paragraph or short essay:
 - ☞ 1) Which is more important, providing domestic security against terrorism or preserving the civil liberties guaranteed by the U.S. Constitution? Why?
 - ☞ 2) How would you feel if you were directly affected by some of the new powers granted under the USA PATRIOT Act (i.e. wiretaps, access to personal records)?

Activity Option #2 on the Patriot Act

- 🇺🇸 **Directions: Read "The Patriot Act: What Is the Proper Balance Between National Security and Individual Rights?" and answer the accompanying questions. Then, we will complete the suggested small group activity on National Security and Freedom.**

The Patriot Act: Does it violate Americans' civil liberties?



Critics such as the American Civil Liberties Union charge that **Section 215-216 of the Patriot Act allows FBI agents to conduct searches of library and business records without a warrant and without probable cause. (www.aclu.org/privacy/spying/15423res20021024.html)**

Civil libertarians and librarians argue that this provision violates patron's right to privacy. So it has come to be called the "library provision."

Other critics have argued that Section 215-216 violates the 1st Amendment by allowing authorities to engage in unrestricted bugging and spying on American citizens who choose to exercise their 1st Amendment right to speak out against the American government.

The Justice Department defends Section 215 by saying that because it requires an order to be issued by a FISA Court judge, it provides better protection for libraries and Americans in general.



Could the new anti-terrorism measures lead to "racial profiling?"

•Introduction: Imagine that you are a member of President Bush's new anti-terrorist military tribunal, which is responsible for trying and prosecuting suspected terrorists. For each case you review, you will work in groups to answer these questions:

- Overall, do you think that this scenario warrants suspicion? Why or why not?
- Would this scenario warrant suspicion if the person were not a Middle East foreigner? Why or why not?
- What is the maximum length of time that your group feels this person should be detained, unless concrete proof of guilt is found?
- In what ways will your tribunal resemble a regular criminal trial, and in what ways will it be different? For example, who will be appointed to represent the suspect/detainee? What rights will this suspect/detainee have, and not have? How big will the jury be, or will a single official determine his or her fate?
- How much information about the process and what is learned from it would your group be willing to release to the media for sharing with the public?
- What do you think will be the defendant's biggest challenge in terms of representing/defending him or herself?
- Does the fact that a defendant has information about terrorist activity, automatically make him or her a terrorist (or guilty) in this scenario? Is there a danger that the suspect's civil liberties may be violated?

The Cases: What would you decide?



- 1) The case of a Jordanian - an official of the Palestinian Liberation Organization - who was on his way from Cairo to Los Angeles to attend flight school.
- 2) The case of a Muslim who, at the end of Ramadan, makes a charitable contribution to an orphanage in South Lebanon that was established by Hezbollah.
- 3) The case of a person from Kuwait who left a piece of luggage unattended in an airport on September 13, 2001.
- 4) The case of a college student being held after a "voluntary" interview with officials showed that he or she has relatives who are connected with the Taliban.
- 5) The case of a foreigner from the Middle East who is caught traveling within the United States, using an expired visa.

Warm Up—Controversial Types of Speech and Press: Are they protected?

Warm Up Questions—5 minutes:

- 1) Should the National Enquirer and other such publications be allowed to publish untruthful comments and pictures about celebrities? How does **libel** and **slander** factor into this?
- 2) Are all forms of pornography protected? What defines what is **obscene**?
- 3) Should casinos, beer, and cigarette companies receive unlimited protection and liberties or should their commercial content be regulated? Is **commercial speech** protected under the 1st Amendment?

Note: If you are unsure how to answer these, look up the terms in your textbook.

Ist Amendment Issues: Libel and Slander

 **Libel** is a written statement that defames the character of a person.

 **Slander** is spoken words that defame the character of a person.

 In the United States, it is often difficult to prove libel or slander, particularly if “public persons” or “public officials” are involved.

Ist Amendment Issues: What is “obscene”?

 Efforts to define **obscenity** have perplexed courts for years. Public standards vary from time to time, place to place and person to person.

 Work that some call “obscene” may be “art” to others. Justice Potter Stewart once said he couldn’t define obscenity, but “I know it when I see it.” The ambiguity of definition still exists and is becoming even more problematic with the Internet.

 No nationwide consensus exists that offensive material should be banned.

Obscenity

-  **The courts have consistently ruled that states may protect children from obscenity (*Osborne v. Ohio*, 1991); while adults often have legal access to the same material.**
-  **Although the Supreme Court has ruled that “obscenity is not within the area of constitutionally protected speech or press” (*Roth v. United States*, 1957) it has proven difficult to determine just what is obscene.**



Miller vs. California

-  **Miller concerned bookseller Marvin Miller's conviction under California obscenity laws for distributing illustrated books of a sexual nature.**
-  **In *Miller*, the Court's decision stated that obscene material is not protected by the First Amendment.**



"Three-Pronged Test" for Obscenity

In order to meet the definition of obscene material articulated in this case, **three conditions** must be met:

1. whether the average person, applying contemporary community standards, would find that the work, taken as a whole, appeals to the prurient (unwholesome interest or desire) interest
2. whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law.
3. whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.

Commercial Speech

 **Commercial speech**—advertisements and commercials for products and services that receive less first Amendment protection, primarily false and misleading ads.

 **In recent years, the Supreme Court has extended more protection to commercial speech, as long as it doesn't promote anything illegal, such as narcotics.**

 **While beer and liquor tv commercials are legal, tobacco television ads are still banned.**

What Types of Speech are Protected?

1. Symbolic speech—symbols, signs, and other methods of expression. The Supreme Court has upheld as constitutional a number of actions including:

- 🇺🇸 **An example of protected symbolic speech would be the right of high school students to wear armbands to protest the Vietnam War (Tinker v. De Moines Independent Community School District, 1969).**

- 🇺🇸 **flying a communist red flag**

- 🇺🇸 **burning the American flag**



TOPIC

Flag Burning

- 🇺🇸 **Burning the American flag is a form of protected symbolic speech.**

- 🇺🇸 **The Supreme Court upheld that right in a 5-4 decision in **Texas v. Johnson (1989)**.**



Texas v. Johnson (1989)

Is There a Constitutional Right to Burn the American Flag?



The flag is one of the most widely recognized symbols of the United States.

I disapprove of what you say, but I will defend to the death your right to say it.
—Voltaire (1664-1778), French philosopher and writer

If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.
—William J. Brennan Jr. (1906–1997), justice of the U.S. Supreme Court

In 1988, the U.S. Supreme Court agreed to hear *Texas v. Johnson*. This case raised the question of whether the First Amendment protected the right of a protester to burn the American flag. Some argue that the right to burn the American flag is fundamental to the First Amendment's guarantee of freedom of speech. Others maintain that burning the flag constitutes a fundamental rejection of the system that protects freedom of speech, and they conclude that such conduct does not merit First Amendment protection. In *Texas v. Johnson*, the Supreme Court settled the issue as a matter of constitutional law. As a political issue, however, the debate over flag burning remains controversial.

American Civil Liberties Union

Forms of Political Protest

- Why do people protest?**
Gregory Lee Johnson burned the American flag as part of a political protest. Why was he protesting? What do other people protest?
- How do people protest?**
In the space below, list as many methods of protest as you can.
- Which methods of protest are legal and which are illegal?**
Take the methods listed above and list them in the appropriate columns below.

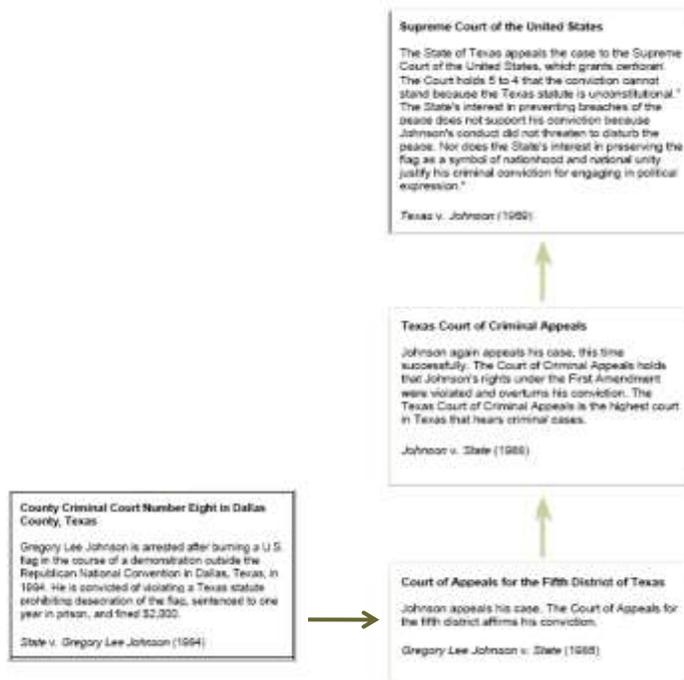
LEGAL METHODS OF PROTEST	ILLEGAL METHODS OF PROTEST

Your teacher will go over the answers.

Conclusion

If we live in a free country with free speech, why are some of these forms of protest illegal? How does the government determine which forms of protest are illegal?

Diagram of How the Case Moved Through the Court System



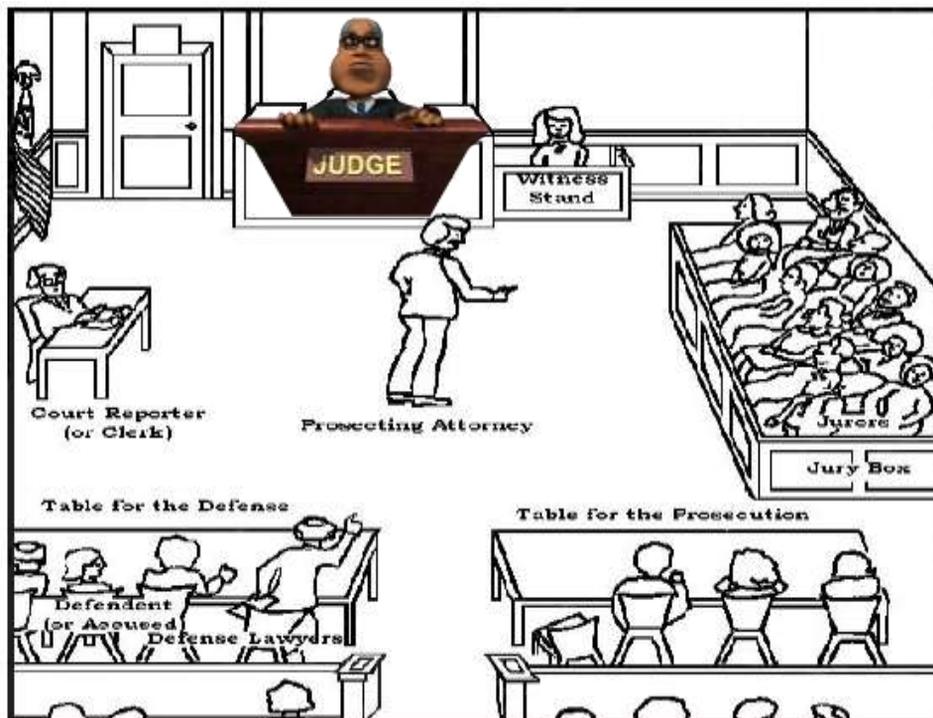
TRIAL PREPARATION: "I must see your completed work by the last 10 minutes of the period!" See the requirements for your group, below:



- ⊕ **Everyone:** Reread through your materials on the Johnson case.
- ⊕ **Judges:** You must master court trial procedure and direct every step of the trial! You are in charge! In addition, if an attorney cries "objection!" you must decide to "sustained" (agree with the objection) or "overruled" (disagree with the objection). Prepare a two-column chart, one column with 10 fact-based questions for the defense, the other column with 10 fact-based questions for the prosecution. Whichever side answers your questions best the trial, should win the case.
- ⊕ **Prosecution Team:** Prepare opening statement, 10 good arguments with evidence, fact-based questions for witnesses, closing statement.
- ⊕ **Defense Team:** Prepare opening statement, 10 good arguments with evidence, fact-based questions for witnesses, closing statement.
- ⊕ **Witnesses:** Become a master of your role in the trial. If you are Gregory Lee Johnson, you must KNOW him and how he would respond to questions. You must provide factual answers! Develop 10 facts about how Johnson feels and why, especially concerning his own defense.
- ⊕ **Jury:** Review the grading rubric for the court trial. Prepare a two-column chart, one column with 10 fact-based arguments for the defense, the other column with 10 fact-based arguments for the prosecution. You should expect to see some of these arguments presented during the trial. You will unanimously reach a verdict towards the end of the trial.

Simplified Steps in a Trial:

1. Calling of Case by Bailiff: "All rise. The Court of _____ is now in session. Honorable Judge _____ presiding.
2. Opening Statement: First the prosecutor (criminal case) or plaintiff's attorney (civil case), then the defendant's attorney, explain what their evidence will be and what they will try to prove.
3. Prosecution's or Plaintiff's Case: Witnesses are called to testify (direct examination) and other physical evidence is introduced. Each witness called is cross-examined '(questioned so as to break down the story or be discredited) by the defense.
4. Defendant's Case: Same as the third step except that defense calls witnesses for direct examination; cross-examination by prosecution/plaintiff.
5. Closing Statement: An attorney for each side reviews the evidence presented and asks for a decision in his/her favor.
6. Jury Instructions (Jury Trials Only): The Judge explains to the jury appropriate rules of law that it is to consider in weighing the evidence. As a general rule, the prosecution (or the plaintiff in a civil case) must meet the burden of proof in order to prevail. In a criminal case this burden is very high. In order for the accused? Are some parts of the trial more important than others? Would you trust a jury of your peers to determine your guilt or innocence? Students should also explore their reactions to playing attorneys, witnesses, jurors, and the judge. What roles do each play in the trial process?

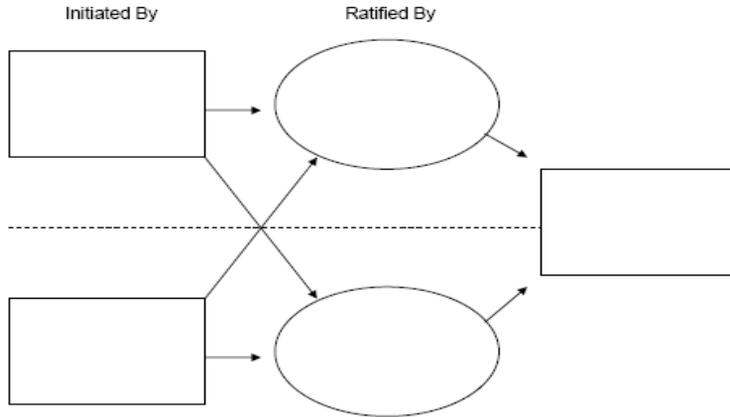


Texas v. Johnson

The Amendment Process

1. Read Article 5 of the United States Constitution. (http://www.law.cornell.edu/constitution/constitution_articlev.html)
2. Diagram the process using the blank diagram below. Check your answers by comparing them to your teacher's completed diagram.
3. Note that there are two methods of initiating amendments and two methods of ratifying them, for a total of four possible routes. Why would one method be preferable to others?

Amending the United States Constitution



The Amendment Process

Evaluating the Amendment Process

1. Work with your group to generate a list of ways in which citizens can be involved in the process. Share responses with other groups and take notes.
2. Identify the advantages and disadvantages of the amendment process. Use the chart below. Your teacher will guide you through the process.

Advantages and Disadvantages of the Amendment Process

Characteristics of Process	Advantages	Disadvantages
Two Part Process		
Role of Citizens		
Role of States		

Texas v. Johnson

The Amendment Process

Closure

Discuss the following questions:

1. Which process is easiest? Which is the most difficult?
2. At which level are there the greatest opportunities for citizen involvement? Explain.

For Extension

Complete one of the following activities:

1. Evaluate the amendment process. Should there be changes to the process that make it easier or more difficult to amend the Constitution? Why or why not?
2. Write an amendment that you would like added to the Constitution and choose the process you would use. Explain the reasons for your amendment and choice of process.
3. Like the United States as a whole, your state has a Constitution. At times, this document has also needed to be changed. The process for doing so is similar to that which occurs at the federal level. Examine your state's constitution to find out specifics of this process. Identify how the system of checks and balances is at work. Make note of opportunities for citizen involvement, as well as the similarities and differences in the process at the federal and state levels.

Note: This activity has been adapted from a lesson called "The Amendment Process" that appeared in a national, state, and local government curriculum guide created by the Montgomery County Public Schools in 1996. The school system is located in Maryland.

Texas v. Johnson



Source: Benson(c) 6-95 Arizona Republic

Source: [Benson](#), "J.D. Hayworth (as Smokey the Bear). *Only you can prevent free speech.*" [Online cartoon] 12 May 2002.

Texas v. Johnson

Political Cartoon Analysis: Hayworth the Bear

Analyze the cartoon on the next page in terms of its meaning related to the *Texas v. Johnson* case. Answering the following questions will help you correctly interpret the cartoon's meaning.

1. What do you see in the cartoon? Make a list. Include objects, people, and any characteristics that seem to be exaggerated.
2. Which of the items on the list from Question 1 are symbols? What does each stand for?
3. Who do you think JD Hayworth is? What are his views on the anti-flag burning amendment? If you're still not sure, visit his home page (<http://www.house.gov/hayworth/az/services.htm>)
4. What is happening in the cartoon?
5. What is the cartoonist's message? Does he agree or disagree with JD Hayworth? In your opinion, how does he feel about the ruling in *Texas v. Johnson*?
6. Do you agree or disagree with the cartoonist's message? Explain your answer.

Texas v. Johnson

WebQuest: Should the United States Enact a Constitutional Amendment to Prohibit Flag Burning?

Introduction

Did you know that the proper method of destroying or "retiring" a flag that is worn out or soiled is to burn it? Boy Scouts and American Legion groups regularly perform such ceremonies. However, ordinary citizens who have burned flags for other reasons, such as political protest, have often been subject to arrest in this country. This is because many states, including Texas, have laws making it a crime to burn or desecrate the flag. In 1984, Gregory Lee Johnson was arrested for burning a flag during protest outside the Republican National Convention in Texas. His case eventually went to the Supreme Court of the United States. In the 5 to 4 ruling the Court explained that what Johnson did is a form of speech that is protected by the First Amendment.

Question/Task

In response to this decision, flag supporters have tried to pass a Constitutional amendment to protect the flag or prohibit flag burning. A proposed constitutional amendment needs a two-thirds majority in both houses of Congress and be approved by three-fourths of the state legislatures. Since the Supreme Court ruling, the House has approved flag amendments in 1995, 1997, 1999 and 2001, all by more than 300 votes. The Senate, in votes in 1995 and 2000, came up with only 63 votes, four short of the two-thirds majority needed.

For information on the 2004 attempt to pass the Desecration of the Flag Resolution, visit http://thomas.loc.gov/cgi-bin/tdquery/z?d1108_SJ00004_@@@X.

And so the debate continues, with proponents likely to continue raising the issue. As a recently elected U.S. Senator, you will be asked to vote on this issue, which is very important to many of your constituents. Before voting, you must learn about the arguments on both sides and make an informed decision. Then you will vote on this issue: Should the United States enact a constitutional amendment to prohibit flag burning?

Background for Everyone

Read the CNN article [High court rulings led to quest for flag-burning amendment](http://www.cnn.com/2001/LAW/07/17/flag.desecration.court/index.html) (<http://www.cnn.com/2001/LAW/07/17/flag.desecration.court/index.html>)

Process

1. Your teacher will assign you one of the base groups listed below. You and the other members of your group will read at least two of the articles that have been assigned to your base group.

Citizens Flag Alliance (CFA), an organization founded by the American Legion and other like minded groups

[It's Not the Flag, Stupid](http://www.qgazette.com/news/1999/1110/Editorial_Pages/Its_Not_The_Flag_Stupid.html) Editorial by Major General Patrick H. Brady (USA Ret), CFA Board Chairman
(http://www.qgazette.com/news/1999/1110/Editorial_Pages/Its_Not_The_Flag_Stupid.html)

[The Flag Protection Amendment and the Return to First Principles](http://www.cfa-inc.org/editorials/edit19.htm) by Stephen B. Presser
(<http://www.cfa-inc.org/editorials/edit19.htm>)

[CFA members rally around flag-protection amendments](http://www.cfa-inc.org/oldglory/ogn0401c.htm) Old Glory News; April 2001
(<http://www.cfa-inc.org/oldglory/ogn0401c.htm>)

[Just Plain Tired of Being Pushed Around](http://www.cfa-inc.org/editorials/edit27.htm) by Daniel S. Wheeler, CFA President (<http://www.cfa-inc.org/editorials/edit27.htm>)

Veterans groups for the Amendment

[Frontlines: Our fight, the right thing to do](http://www.cfa-inc.org/oldglory/ogn0801b.htm) by Major General Patrick H. Brady, CFA Board Chairman
(<http://www.cfa-inc.org/oldglory/ogn0801b.htm>)

[The Flag Speaks](http://www.angelfire.com/pa/post571/flag.html) Poem and anecdote about the flag
(<http://www.angelfire.com/pa/post571/flag.html>)

[Just Plain Tired of Being Pushed Around](http://www.cfa-inc.org/editorials/edit27.htm) by Daniel S. Wheeler, CFA President (<http://www.cfa-inc.org/editorials/edit27.htm>)

[The Flag Protection Amendment and the Return to First Principles](http://www.cfa-inc.org/editorials/edit19.htm) by Stephen B. Presser
(<http://www.cfa-inc.org/editorials/edit19.htm>)

Politicians for the Amendment

[Open Forum -- The Flag Deserves Protection](http://www.esquilax.com/flag/cha4.html) by Senator Dianne Feinstein
(<http://www.esquilax.com/flag/cha4.html>)

[Stenholm sounds support for flag burning amendment](http://web.gosanangelo.com/archive/99/july4/1.htm) Article from Texas paper explaining a Democratic Congressman's position (<http://web.gosanangelo.com/archive/99/july4/1.htm>)

Texas v. Johnson

Civil Liberties Organizations (American Civil Liberties Union/ACLU and People for the American Way/PFAW)

[Veterans Group Oppose Flag Constitutional Amendment](http://www.aclu.org/FreeSpeech/FreeSpeech.cfm?ID=16180&c=50); Joins ACL in Call To Reject Censorship in the Constitution (<http://www.aclu.org/FreeSpeech/FreeSpeech.cfm?ID=16180&c=50>)

[ACLU Letter to Senate](http://www.aclu.org/FreeSpeech/FreeSpeech.cfm?ID=15312&c=50) opposing anti-flag burning measures
(<http://www.aclu.org/FreeSpeech/FreeSpeech.cfm?ID=15312&c=50>)

[Burning the Bill of Rights to Save the Flag](http://www.firstamendmentcenter.org/commentary.aspx?id=14012)
(<http://www.firstamendmentcenter.org/commentary.aspx?id=14012>)

[On Capitol Hill, Flag Amendment](http://www.pfaw.org/pfaw/general/default.aspx?oid=3073) PFAW explains all of the reasons they oppose the flag amendment. People for the American Way discusses potential impact of the flag burning amendment (<http://www.pfaw.org/pfaw/general/default.aspx?oid=3073>)

Individual veterans against the Amendment

[In Their Own Words](http://www.aclu.org/FreeSpeech/FreeSpeech.cfm?ID=11933&c=50) Direct quotes from a number of famous veterans
(<http://www.aclu.org/FreeSpeech/FreeSpeech.cfm?ID=11933&c=50>)

[Letter from Colin Powell](http://www.aclu.org/FreeSpeech/FreeSpeech.cfm?ID=11879&c=50) (<http://www.aclu.org/FreeSpeech/FreeSpeech.cfm?ID=11879&c=50>)

[Veterans Defending the Bill of Rights](http://www.aclu.org/FreeSpeech/FreeSpeech.cfm?ID=12009&c=50) Contains some of the same comments that are in the other articles (<http://www.aclu.org/FreeSpeech/FreeSpeech.cfm?ID=12009&c=50>)

[Testimony of Gary May](http://www.aclu.org/FreeSpeech/FreeSpeech.cfm?ID=12517&c=50) to Congress: Opposition to H.J. Res. 4
(<http://www.aclu.org/FreeSpeech/FreeSpeech.cfm?ID=12517&c=50>)

Politicians against the Amendment

[Flag Amendment raises symbol above liberty](http://www.freedomforum.org/templates/document.asp?documentID=14506) Editorial
(<http://www.freedomforum.org/templates/document.asp?documentID=14506>)

[Flag more endangered by patriots than pyromaniacs](http://www.freedomforum.org/templates/document.asp?documentID=14539) Commentary by Dennis Neal on the Freedom Forum Web site (<http://www.freedomforum.org/templates/document.asp?documentID=14539>)

[Ted Kennedy](http://www.esquilax.com/flag/kenne.html) Comments from a 1990 speech before Congress
(<http://www.esquilax.com/flag/kenne.html>)

Data Analysis: How do Americans Feel about the Constitutional Amendment To Protect the Flag?

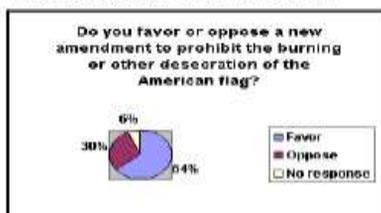
(Note to teachers: You may want to do a continuum activity prior to assigning this activity.)

The table below contains results from Survey I.

Group	Percentage who would vote for a Constitutional Amendment to protect the flag
Men	78%
Women	83%
Age 18-34	78%
Age 35-54	80%
Age 55+	84%
Northeast	82%
Midwest	83%
South	78%
West	80%
HS/Less Education	88%
Some College	80%
College Grads	87%
Whites	82%
Blacks	71%
Republicans	85%
Democrats	78%
Independents	78%
Conservative Democrats	88%
Conservative Republicans	84%
Moderate/Liberal Democrats	72%
Moderate/Liberal Republicans	80%

- According to the table, which demographic group listed below is most in favor of a Constitutional Amendment to protect the flag?
 - College Graduates
 - Politicians
 - Moderate/Liberal Republicans
 - Women
- What conclusion can be drawn from the data regarding the Constitutional Amendment to protect the flag?
 - It will pass by a large margin.
 - It enjoys widespread political support.
 - It has only partisan support.
 - It has pitted regional interests against one another.

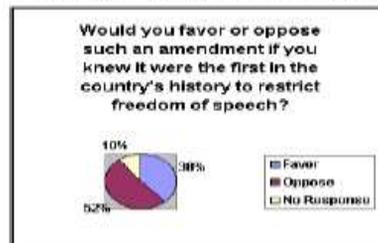
The chart below contains results from Survey II.



Source: The ASA News Center. "Flag Burning Poll Results Show Americans Opposed To Amending Constitution." [Online] 12 May 2002.

- According to the chart, how do the majority of Americans feel about a Constitutional amendment to protect the flag?
 - They are unsure of their position.
 - They are opposed to this amendment.
 - They are in favor of this amendment.
 - They are evenly divided on this issue.

The chart below summarizes responses to a follow-up question in the same survey.



Source: The American Bar Association News Center, "Flag Burning Test Results Show Americans Opposed To Amending Constitution," [Online] 12 May 2002.

4. What conclusions can be drawn from this chart?
- A majority of Americans are in favor of such an amendment.
 - Many people would burn the flag if given the opportunity to do so.
 - A different group of people must have been surveyed for this question and the previous one.
 - None of the above.

Questions for Discussion

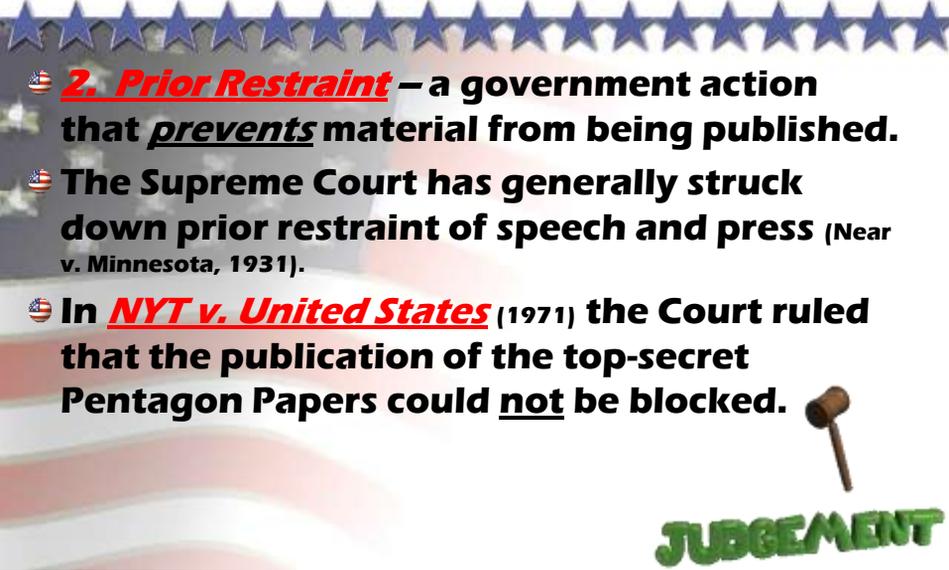
- What would account for the differences in results in Survey 1 and Survey 2?
- From studying the table and charts, what conclusions can be drawn regarding American political opinion on the issue of the Constitutional amendment to protect the flag?
- What are the implications of this information?
- Why do some people believe that even speech that is unpopular needs to be protected?

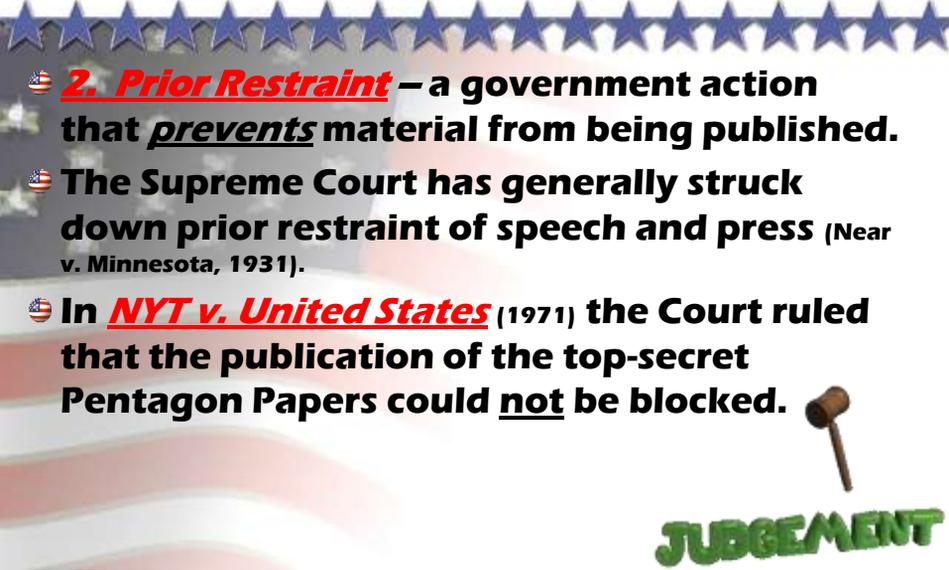
Warm-Up/Do Now: Freedom of Press

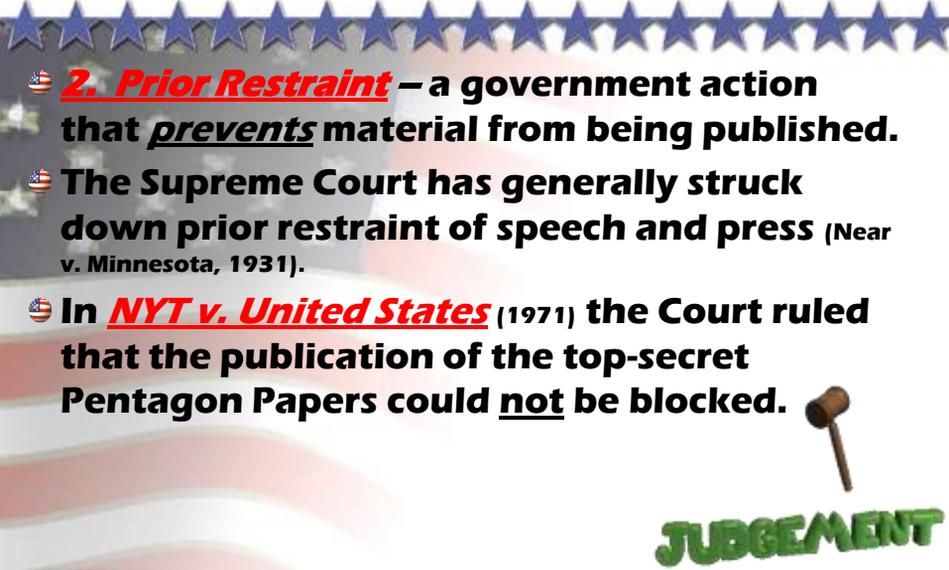


- **WARM-UP/DO-NOW:** Indicate whether you "Strongly Agree," "Agree Somewhat," "Disagree Somewhat," and "Strongly Disagree" with the following statements and explain why:
 - Freedom of speech is absolute.
 - In a time of war, the media should curb its reporting on any issue the government deems sensitive.
 - The public should be wary of any attempt by the government to withhold information from them.
 - Any information found by newspaper reporters should be published, regardless of the potential negative repercussions for individuals or groups of people.
- Now, relate your responses to the New York Times article "Patriotism and the Press?" Did you agree with the author's position in this article? Explain.

What Types of Speech are Protected? Pentagon Papers

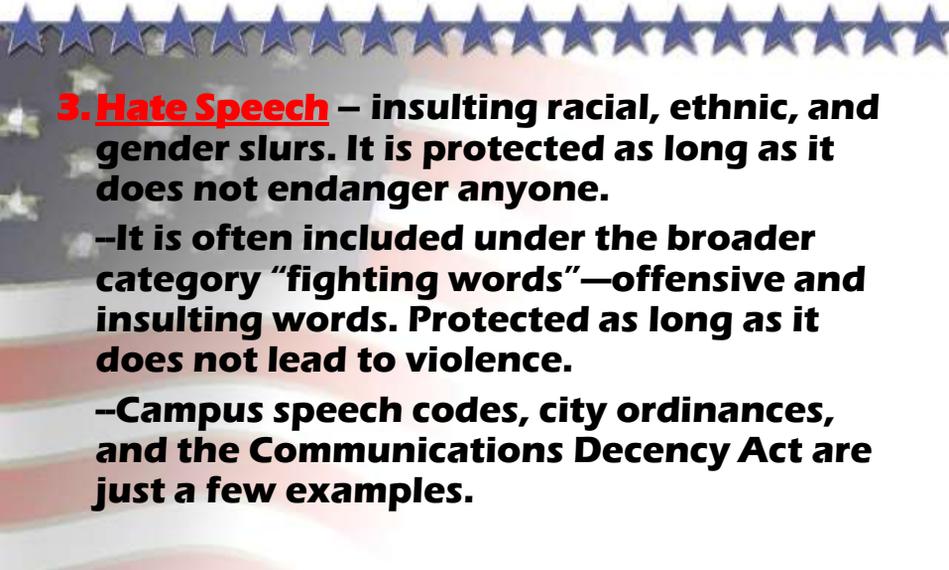
 **2. Prior Restraint** – a government action that prevents material from being published.

 The Supreme Court has generally struck down prior restraint of speech and press (Near v. Minnesota, 1931).

 In **NYT v. United States** (1971) the Court ruled that the publication of the top-secret Pentagon Papers could not be blocked.



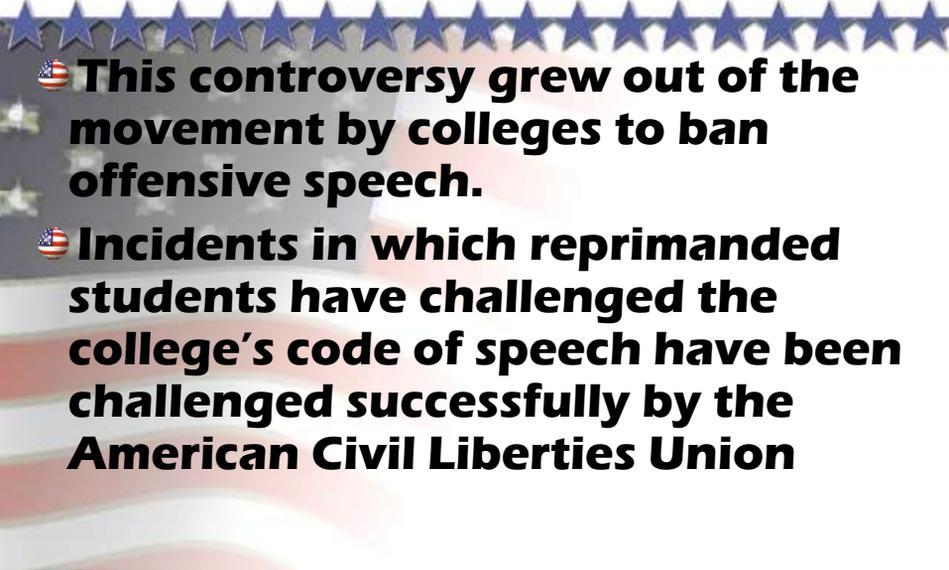
What Types of Speech are Protected?

 **3. Hate Speech** – insulting racial, ethnic, and gender slurs. It is protected as long as it does not endanger anyone.

–It is often included under the broader category “fighting words”—offensive and insulting words. Protected as long as it does not lead to violence.

–Campus speech codes, city ordinances, and the Communications Decency Act are just a few examples.

4. Politically Correct Speech

  **This controversy grew out of the movement by colleges to ban offensive speech.**

 **Incidents in which reprimanded students have challenged the college's code of speech have been challenged successfully by the American Civil Liberties Union**

Freedom of Religion

-   **1) What does freedom of religion mean?**
2) What could we not do in the name of religion?
3) What is meant by separation of church and state?



Warm Up Questions on Freedom of Religion—7 Minutes

From the *Holy Roman Empire* to the *Church of England* history indicates that when church and state are linked, all individual freedoms are in jeopardy.



Emperor Constantine proclaimed Christianity the official religion of the Roman Empire.

Comment on/answer the following:

- 1) If government is merely an arm of God what power of government is not justified?
- 2) What could happen to religious minorities if government and religion were linked? Can you provide historical examples from world history?
- 3) Do you agree or disagree with the following: If religion becomes part of the government, in Madison's words, it results in "pride and indolence in the clergy; ignorance and servility in the laity; in both superstition, bigotry and persecution." Explain.
- 4) What do the **free exercise** and **free establishment clauses** guarantee in American society?

An Established Religion...

means that a **Government** can create and support an official state church...often



- **tax dollars support that chosen church.**
- **that church's laws become the law of the land.**
- **the Nation's leader usually appoint the leading clerics.**
- **often other religions are often excluded.**



First Amendment: Freedom of Religion



The First Amendment states that: “Congress shall make no law

1. respecting an establishment of religion,
2. or prohibiting the free exercise thereof;...”



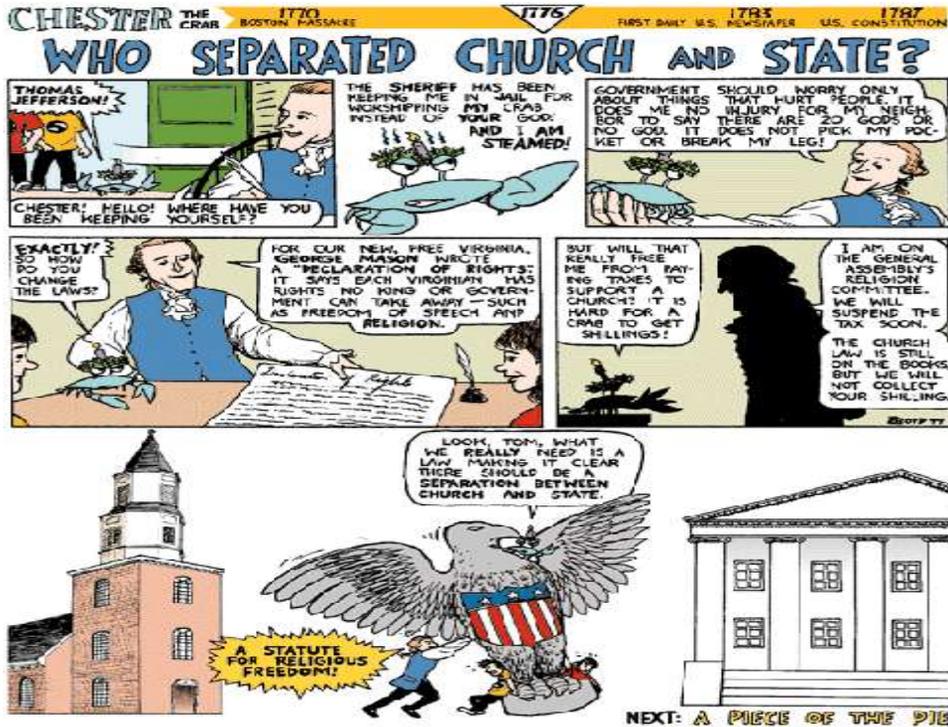
In this section we will look at each of these clauses of the First Amendment, the controversy and power struggles surrounding them and the way the Courts have interpreted and applied them.

Drafting the First Amendment

🇺🇸 The Founding Fathers asked, “Should we *establish* a religion or not?”

🇺🇸 Thomas Jefferson wrote that there should be “a wall of separation between church and state.”





Arguments for Religious Freedom

Many of the founding fathers believed that the spiritual purity and sanctity of religion would be ruined if it mixed with the worldly realm of politics.

—If religion becomes part of the government, in Madison's words, it results in "pride and indolence in the clergy; ignorance and servility in the laity; in both superstition, bigotry and persecution."



Separationists vs. Accommodationists



How high should the wall between church and state be?

Separationists argue that a high “wall” should exist between the church and state.

Accommodationists contend that the state should not be separate from religion but rather should accommodate it, without showing preference.

The Establishment Clause



The Establishment Clause of the First Amendment guarantees that the government will not create and or support an official state religion.

The Supreme Court and the Establishment Clause

- The Supreme Court has held fast to the rule of strict separation between church and state when issues of prayer in public school are involved.
- In the early 1960s, the Court ruled that official lead prayer and bible reading is unconstitutional.
- In *Engel v. Vitale*, the Court ruled that even nondenominational prayer could not be required of public school children.



Prayer in School

 In *Lee v. Weisman* (1992), the Court continued its unwillingness to allow prayer in public schools by finding the saying of prayer at a middle school graduation unconstitutional.



Lemon v. Kurtzman



🇺🇸 In 1971, the Court ruled that New York state could not use state funds to pay parochial school teachers' salaries.

🇺🇸 To be Constitutional the challenged law must

1. Have a secular purpose
2. Neither advance nor inhibit religion
3. Not foster excessive government entanglement with religion.

🇺🇸 In 1980, this **Lemon Test** was used to invalidate a Kentucky law that required the posting of the Ten Commandments in public schools in classrooms.

The Free Exercise Clause



🇺🇸 "Congress shall make no law.....prohibiting the free exercise thereof (religion)" is designed to prevent the government from interfering with the practice of religion.

🇺🇸 This freedom is not absolute.

🇺🇸 Several religious practices have been ruled unconstitutional including:

- 🇺🇸 snake handling
- 🇺🇸 use of illegal drugs
- 🇺🇸 Polygamy

🇺🇸 Nonetheless, the Court has made it clear that the government must remain NEUTRAL toward religion.

"See You at the Pole"

 **Student participation in before - or after - school events, such as "see you at the pole," is permissible.**

 **School officials, acting in an official capacity, may neither discourage nor encourage participation in such an event.**



Let's Play: Predict the Ruling!

For each of the following cases,
predict the Supreme Court's ruling
pertaining to disputed religious freedoms.



Predict the Ruling!



1942 - EVERSON VS BOARD OF EDUCATION

* **Establishment clause**

 **School district transports all children to school, parochial kids too. Taxpayers paying for bus and driver. Church not charged for their kids to ride. Their parents pay taxes anyway.**

 **Supreme Court - can't let church kids ride; violates separation.**

Predict the Ruling!



1976 - SERBIAN EASTERN ORTHODOX DIOCESE VS. MILIVOJEVICH

 **Milivojevich - Bishop - fired without cause, appealed case on grounds fired unjustly.**

 **Supreme Court - this is strictly a church matter; cannot render judgement.**

Predict the Ruling!

1962 - ENGEL VS. VITALE

-  **New York School Board OK's and composes a prayer, instructed each class to use it daily. Prayer is nondenominational. Is it OK?**
-  **Supreme Court says no.**
-  **Food for thought: If not mandatory, just a moment of silence? Swear in President on Bible? In God We Trust on coins? National Anthem?**

Predict the Ruling!

Abington Township School District v. Schempp (1963)

-  **The *Abington* case began when Edward Schempp, a Unitarian, filed suit against the Abington Township School District, Pennsylvania, to prohibit enforcement of a Pennsylvania state law that required his children, specifically Ellery Schempp, to hear and sometimes read portions of the Bible as part of their public school education. That law [24 Pa. Stat. 15-1516, as amended, Pub. Law 1928] required that "[a]t least ten verses from the Holy Bible [be] read, without comment, at the opening of each public school on each school day." Schempp specifically contended that the statute violated his and his family's rights under the First and Fourteenth Amendments.**
-  **In the case, the Court decided 8-1 in favor of Edward Schempp and declared school sponsored Bible reading in public schools in the United States to be unconstitutional. The case was part of a string of Supreme Court cases ruling on the place of religion in public schools, and was both condemned by religious conservatives and celebrated by those who supported constitutional separation of church and state.**

Predict the Ruling!

1879 - REYNOLDS VS US.

-  **Mormon practice of polygamy based on religious practice.**
-  **Supreme Court says no—still illegal.**

Predict the Ruling!

1970 - WALZ VS. TAX COMMISSION

-  **New York school system giving text books to all schools, including parochial schools. Books paid for by tax money. Violation of church and state?**
-  **Supreme Court says no—The school system was not teaching or promoting religion, so giving books was allowed.**

Predict the Ruling!

1943 - WEST VIRGINIA STATE BOARD OF EDUCATION VS BURNETTE

 **School district compelled children to salute the flag. Jehovah Witness objected. Does mandatory regulations which go against religious grounds violate First Amendment?**

 **(Supreme Court - illegal). What are our guidelines on pledge to flag?**

Predict the Ruling!

1961 - BRAUNFIELD VS BROWN

 **Jewish community - pass laws to close businesses on Sunday - Sabbath. Non-Jewish businessman objects. Legal? Free Enterprise?**

 **Supreme Court said not legal.**

Predict the Ruling!

1963 - SHERBERT VS VERNER

 7th Day Adventist fined for refusal to work on Saturday, fired, and then denied unemployment compensation.

 Supreme Court – ruled that denying Sherbert unemployment compensation was an unconstitutional burden on her free exercise of religion.

Predict the Ruling!

1934 - HAMILTON VS REGENTS OF U OF CALIFORNIA

 Methodist-Episcopal church - religious beliefs forbid military training. State law requires course in Military Science/Training Tactic. Legal state law?

 Supreme Court - No

Predict the Ruling!

1972 - WISCONSIN VS YODER

 **Amish refuse to send kids to school. State law required mandatory education to age 16. Amish argument - state law threatens religious way of life. State's argument - prepares them for adult life; Amish - don't need it. State - what if they leave Amish community?**

 **Supreme Court found that Amish children could not be placed under compulsory education past 8th grade, as it violated their fundamental right to freedom of religion.**

Predict the Ruling!

1989 - NATIVE AMERICAN CHURCH VS OREGON

 **Native American arrested for use of peyote. Also arrested for snake handling. These are done in conjunction with religious ceremonies. People have died from either or both of these. If we legalize it, what about pot for your own church? Crack? Oregon State Law - illegal to possess peyote and/or use it.**

 **Supreme Court eventually ruled that drug use and snake handling at ceremonies was**

Predict the Ruling!

1963 - US VS SEEGER

 **Selective Service Act - exempts from combat any person who because of religious beliefs consciously objects to participation in war of any form - 3 men refused induction. Means - belief in Supreme Being - defined by Court. Seeger - When asked about belief in Supreme Being, said rather he had a belief in good and bad and war was bad, he believed he should do only good. Should he be exempted? Is he just trying to avoid the draft?**

 **Supreme Court stated not exempted.**

Predict the Ruling!

1971 GILLETTE VS US

 **Gillette convicted of willful failure to report for induction into armed services. Stated - not opposed to war needed for national defense, or one sponsored by UN for peace keeping. Was drafted, went through Basic, when given orders to Viet Nam, proceeded with conscientious objector status. Cited numerous religious texts - a devout Catholic, said his duty to judge what wars just, what are unjust.**

 **Supreme Court exemption not allowed**

Do Now: The Right to Keep and Bear Arms—4 minutes



Introduction: The 2nd Amendment states that
"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."

This amendment has been hotly contested in recent years particularly since the 1999 shootings at Columbine High School. However, the Court has not incorporated this right, nor have they heard many cases about it.

Questions:

- 1) Offer your own interpretation of the 2nd Amendment. For example, is the right the bear arms reserved for militia only or for everyone? What did the Founding Fathers mean?
- 2) Who should have the final word on this right? Congress or the Supreme Court? Federal or state governments?
- 3) Speculate on how pro and anti-gun lobbyists and partisan politics influence gun legislation. What is the likelihood that an anti-gun amendment will be passed in the near future?

What do you think? Is the Brady Bill constitutional?

Introduction: The **Brady Handgun Violence Prevention Act** was passed by the United States Congress, signed into law by President Bill Clinton on November 30, 1993, and went into effect on February 28, 1994. The act was named after James Brady, who was shot by John Hinckley, Jr. during an attempted assassination of President Ronald Reagan on March 30, 1981.

The Act initially required purchasers to wait up to **five days for a background check** to occur before purchasing a handgun from a federal firearms licensee. If the background check was returned before the five days had elapsed, then the transfer could occur at that time, and if the check had not completed in five days, then the transfer was allowed to occur. In some states, proof of a previous background check could be used to bypass the wait; for example, a state issued concealed carry permit usually included a background check equivalent to the one required by the Act and could be used in place of the Act's check. Many states passed *shall issue* concealed carry laws in the wake of the Act's passing.

What do you think? Is the Brady Bill constitutional? Continued...

The Supreme Court on this issue: In 1997, one provision of interim Brady Law was **ruled unconstitutional** by the Supreme Court in **Printz v. United States** on 10th amendment grounds. The provision compelled state and local law enforcement officials to perform the background checks mandated by federal law. The Court determined that this provision violated both the concept of federalism and that of the unitary executive. However, state and local law enforcement officials were free to conduct the check if they so chose and many continued to do so. This issue became moot when NICS (National Instant Criminal Background Check System) came online.

ACTIVITY: GUN CONTROL DEBATE!

COMPLETE BOTH SIDES OF THE TABLE AND PREPARE YOUR EVIDENCE AND ARGUMENTS!

Arguments for Gun Control:	Arguments against Gun Control:
Questions to ask opposition:	Questions to ask opposition:

Warm Up—10-15 minutes: What do you think about the Exclusionary rule and other legal rights for the accused?

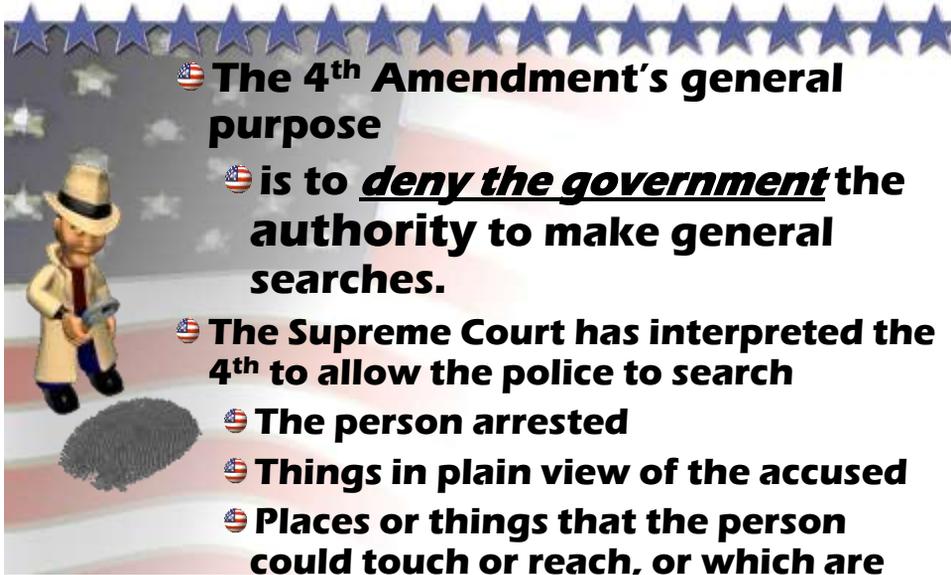
- 1) Review the case **Mapp v. Ohio** in your packet. Do you agree with the application of the Exclusionary Rule in this case? Why or why not?
- 2) What about the case of **Billy Greenwood**? When are warrantless searches acceptable?
- 3) What other rights are granted to the accused in the Bill of Rights and other Supreme Court decisions? Do you agree with these?
 - If you finish these early, continue to work quietly on your homework packet until I begin class.

Rights of Criminal Defendants

are the due process rights and the procedural guarantees provided by the Fourth, Fifth, Sixth, and Eighth Amendments



Fourth Amendment

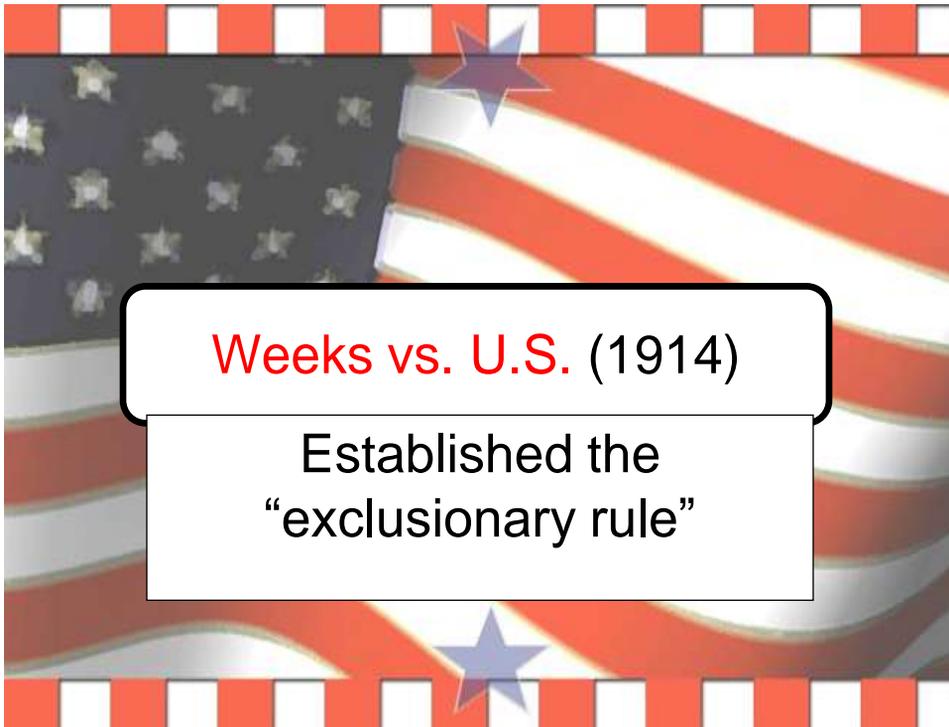


- 🇺🇸 The 4th Amendment's general purpose
 - 🇺🇸 is to **deny the government** the authority to make general searches.
 - 🇺🇸 The Supreme Court has interpreted the 4th to allow the police to search
 - 🇺🇸 The person arrested
 - 🇺🇸 Things in plain view of the accused
 - 🇺🇸 Places or things that the person could touch or reach, or which are

Fourth Amendment

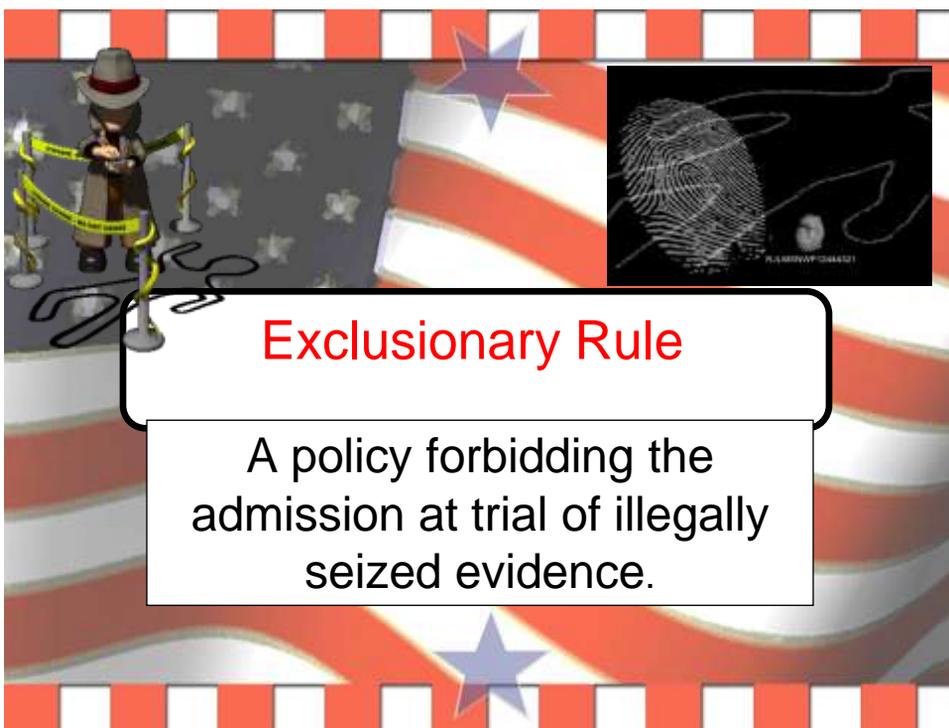


- 🇺🇸 Provides protection against "unreasonable" searches and seizures
- 🇺🇸 Requires search warrants-probable cause
- 🇺🇸 Allows **"Stop and Frisk"**-warrant less searches only with reasonable suspicion



Weeks vs. U.S. (1914)

Established the
“exclusionary rule”



Exclusionary Rule

A policy forbidding the
admission at trial of illegally
seized evidence.

Activity on School Searches

- Imagine that our class is in the library doing research on the Constitution. The girls take their purses with them. At the end of class, one girl screams, "Someone took my wallet!" The only person who could have taken it was in the class.
- The class will break the class into **six groups**. They are to answer questions posed to them as if they were:
 - The guilty student
 - An innocent boy
 - An innocent girl
 - A girl with a controlled substance on her person
 - A boy with chewing tobacco and cigarettes (illegal in school)
 - The girl who lost the wallet
- Each group will brainstorm and reach a consensus in regard to the following questions:
 - 1) Should a search of everyone occur? Explain.
 - 2) Who should conduct the search, if one does take place? Does it make a difference?
 - 3) Decide what you will do if a search of all is conducted.
 - 4) Is the Constitution involved here? Can you use it to support or oppose this proposed search? Explain.

Further Questions for Discussion:

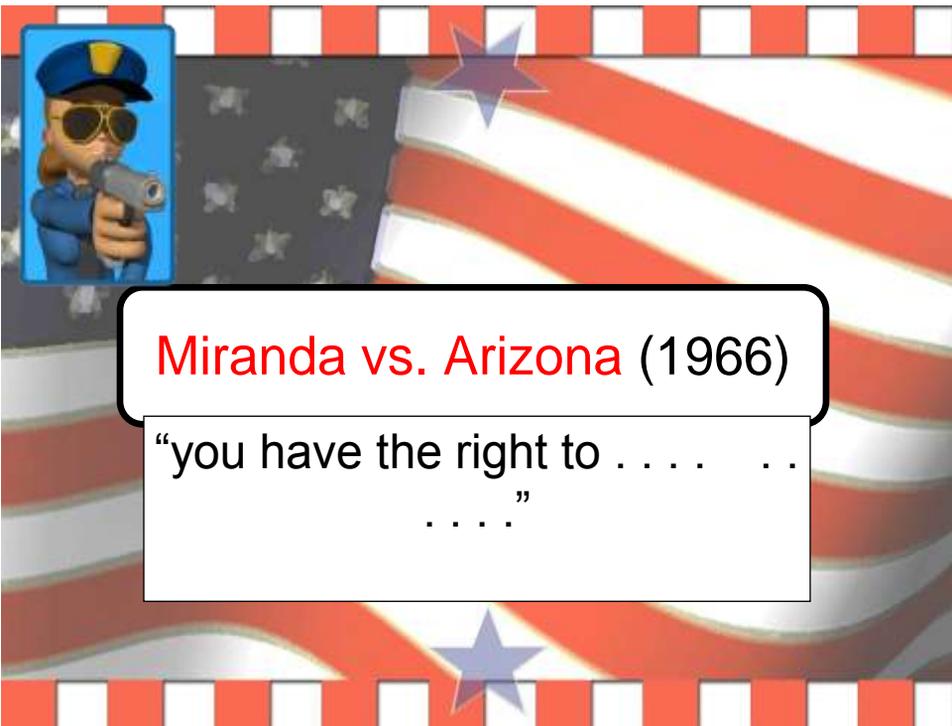
- Should law enforcement be allowed to search when/where they want because innocent people have nothing to fear? Wouldn't that cut down on crime?
- How would you feel having been subjected to a search that ultimately reveals nothing? How would the innocent girl or boy feel if coincidentally they have similar denominations on them? Would they still be comfortable with a search?
- What about the students who possess illegal items? Should they get in trouble for what is discovered on them?
- What does the Constitution say? Should a search of everyone be conducted immediately? Does the Fourth Amendment apply to students? Do school officials need a warrant? Are they "police"? What would be the most efficient way the solve this? Is that the most just way?

Fifth Amendment



 **The 5th Amendment states that “No person shall be ...compelled in any criminal case to be a witness against himself.**

 **So criminals cannot be required to take the stand in a trial.**



Miranda vs. Arizona (1966)

“you have the right to
 ”

Sixth Amendment

- 🇺🇸 The 6th Amendment Guarantees a right to counsel.
- 🇺🇸 In the past this meant that a defendant *could* hire an attorney.
- 🇺🇸 Since most criminals are poor they did not have counsel.
- 🇺🇸 ***Gideon v. Wainwright*** (1963).
 - 🇺🇸 In *Gideon*, a poor man, was accused of a crime and denied a lawyer.
 - 🇺🇸 The Court ruled unanimously that a lawyer was a necessity in criminal court, not a luxury. The state must provide a lawyer to poor defendants in felony cases.



Eighth Amendment

- 🇺🇸 The 8th Amendment prohibits *cruel and unusual punishment*.
- 🇺🇸 The 8th is most often used in arguing death penalty cases? Some of the major death penalty cases are:
 - 🇺🇸 ***Furman v. Georgia*** (1972) the Court ruled that the death penalty constituted unconstitutional cruel and unusual punishment when it was imposed in an *arbitrary* manner.
 - 🇺🇸 ***Mckleskey v. Kemp*** (1987) the Court rules that the death penalty – even when it appeared to discriminate against African Americans – did not violate the constitution.
 - 🇺🇸 ***McKleskey v. Zant*** (1991) the Court made it more difficult for death row inmates to file repeated appeals.



Assignment: Shall there be 27 Amendments or only Ten? Debate it!



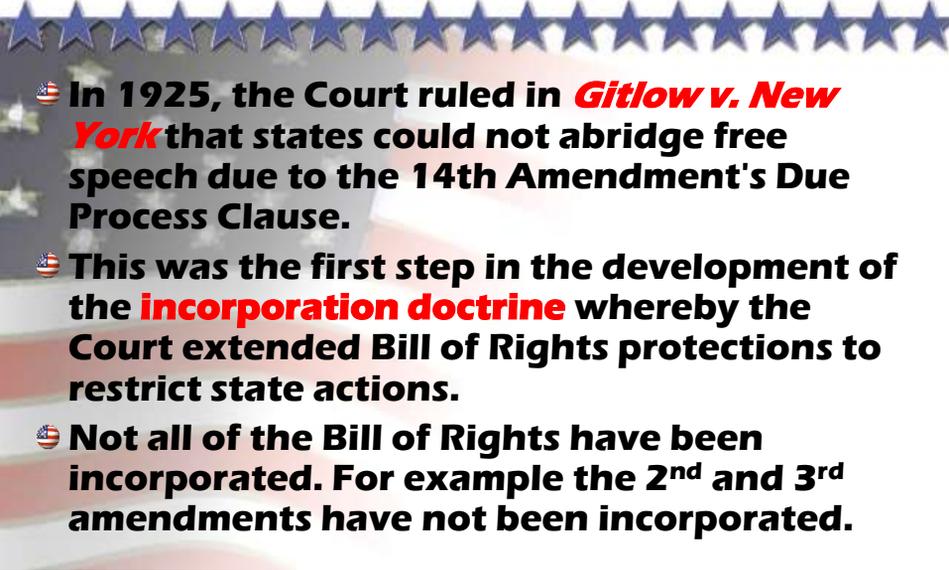
- **Procedure:** You will be role-playing a Constitutional Convention that has been charged with reorganizing the 26 amendments back to 10.
- 1) Break into groups of 3 or 4 students.
- 2) Possible Options: You may delete amendments that currently exist, combine amendments that have similar topics, or introduce new amendments. Can you think of other options?
- 3) After the small groups have completed their task, the class will come back together. Each group then introduces their proposal.
- 4) The whole class is then given time for informal debate and discussion over the various proposals. At this point, the large group must formally debate and vote on the amendments they want to keep.

Background to the Incorporation Doctrine



- The Bill of Rights was designed to limit the powers of the national government.
- In 1868, the **Fourteenth Amendment** was added to the Constitution and its language suggested that the protections of the Bill of Rights might also be extended to prevent state infringement of those rights.
- The amendment begins: "No state shall....deprive any person, of life, liberty, or property without due process of law."
- The Supreme Court did not interpret the 14th Amendment that way until 1925 in *Gitlow v. New York*.

The Incorporation Doctrine



 In 1925, the Court ruled in ***Gitlow v. New York*** that states could not abridge free speech due to the 14th Amendment's Due Process Clause.

 This was the first step in the development of the **incorporation doctrine** whereby the Court extended Bill of Rights protections to restrict state actions.

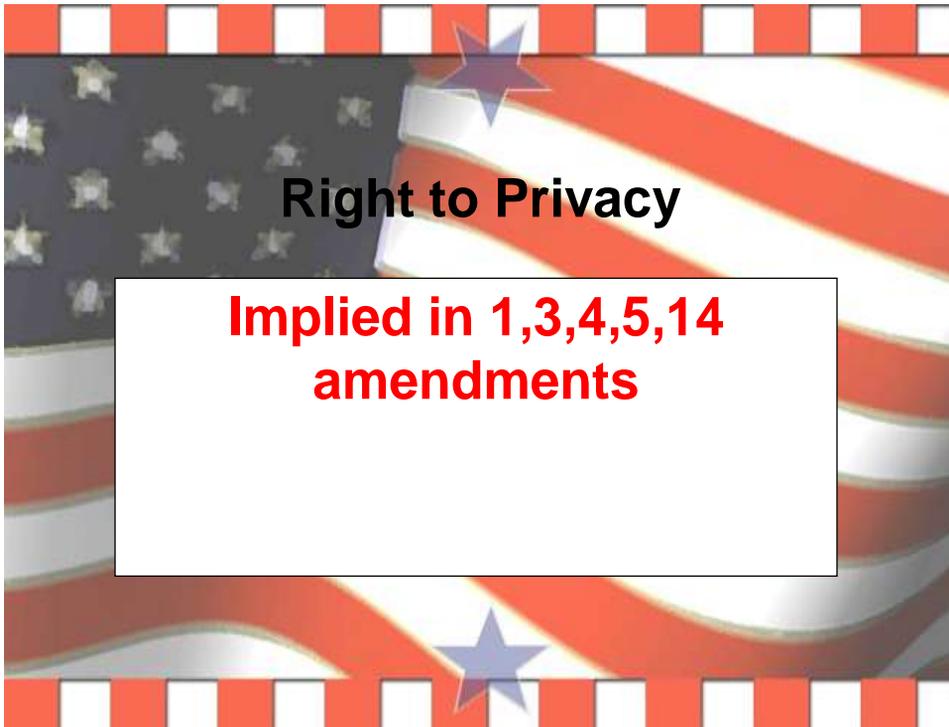
 Not all of the Bill of Rights have been incorporated. For example the 2nd and 3rd amendments have not been incorporated.

The Right to Privacy



 The Supreme Court has also given protection to rights not specifically enumerated.

 The Court has ruled that though **privacy** is not specifically mentioned in the Constitution, the Framers expected some areas to be off-limits to government interference.



The Right to Privacy - Abortion

- In ***Roe v. Wade*** (1973) The Supreme Court ruled that a Texas law prohibiting abortion violated a woman's constitutional right to privacy.
- Since *Roe*, a number of other cases on abortion have been decided, in general they have limited abortion rights in some way.
- Webster v. Reproductive Health Services*** (1989) - upheld fetal viability tests
- Planned Parenthood of Southeastern Pennsylvania v. Casey*** (1992) - Pennsylvania was allowed to limit

The Right to Privacy Homosexuality

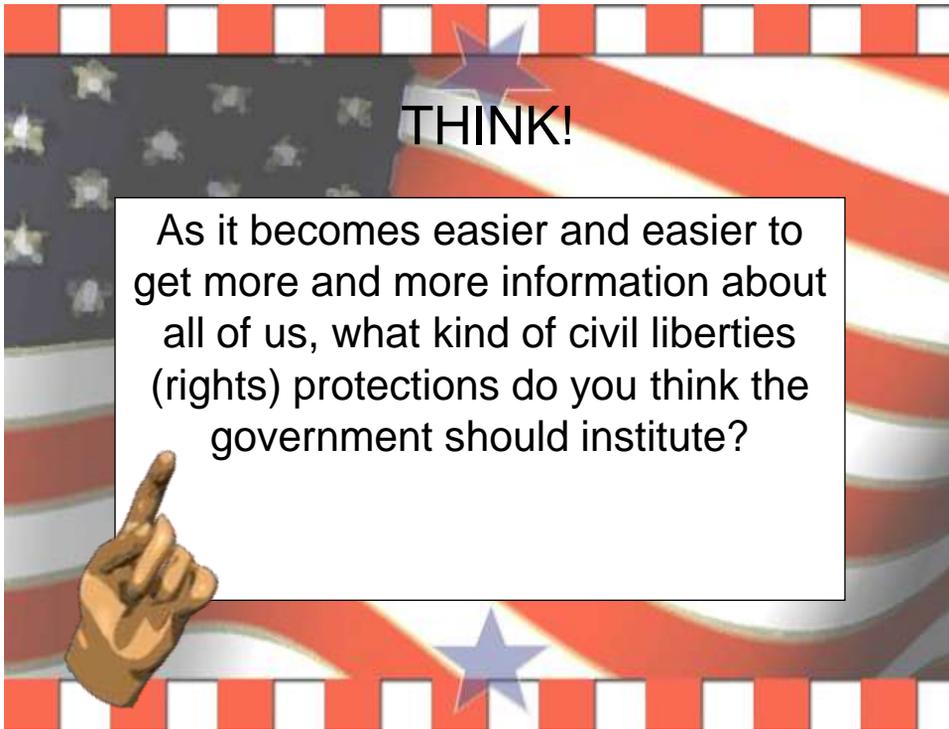
- 🇺🇸 The Court has declined to extend privacy rights to protect homosexual acts.
- 🇺🇸 In 1986, the Court upheld a Georgia law against sodomy in a 5-4 decision in the case of *Bowers v. Hardwick*.
- 🇺🇸 However, in 1996, the Court ruled that a state could not deny rights to homosexuals simply on the basis of sexual preference.



The Right to Privacy The Right to Die

- 🇺🇸 In 1990, the Court heard the case *Cruzan by Cruzan v. Director, Missouri Department of Health*.
- 🇺🇸 In a 5-4 ruling, the Court rejected a right to privacy in such cases but argued that living wills, written when competent, were constitutional.
- 🇺🇸 In 1997, the Court ruled that there was no constitutional right to assisted suicide.





End?



Video on Alien and Sedition Acts



Were the Alien and Sedition Acts unconstitutional? Why?