

## Civil Liberties: First Amendment Freedom

### Essential Question

How can the judiciary balance individual rights with the common good?

#### Section 1:

The Unalienable Rights

#### Section 2:

Freedom of Religion

#### Section 3:

Freedom of Speech and Press

#### Section 4:

Freedom of Assembly and Petition



### GOVERNMENT ONLINE

#### On the Go

To study anywhere, anytime, download these online resources at [PearsonSuccessNet.com](http://PearsonSuccessNet.com)

- Political Dictionary
- Audio Review
- Downloadable Interactivities

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## Lesson Goals

### SECTION 1

Students will...

- identify liberties guaranteed by the Bill of Rights by analyzing photographs and political cartoons.
- understand that rights are not absolute by debating issues in which rights and interests must be balanced.
- describe how the Constitution protects the rights of individuals by creating a diagram.

### SECTION 2

Students will...

- clarify the meaning of the Establishment Clause and its “wall of separation” by completing a diagram and chart concerning cases on freedom of religion.
- learn how the Supreme Court has interpreted the Establishment Clause and Free Exercise Clause by evaluating scenarios about freedom of religion conflicts.

### SECTION 3

Students will...

- identify the limits and protections of freedom of speech by charting restrictions on different forms of expression, analyzing prior restraint, summarizing court rulings on student speech, and interpreting political cartoons.
- identify the limits and protections of freedom of the press by researching media cases.

### SECTION 4

Students will...

- distinguish the conflicting but essential nature of the right to assemble by participating in scenarios about freedom of assembly and petition conflicts.
- understand the restrictions on assembly and petition by identifying and applying time-place-manner regulations and content neutrality to assembly situations.

### DIFFERENTIATED INSTRUCTION KEY

Look for these symbols to help you adjust steps in each lesson to meet your students’ needs.

**L1** Special Needs

**L2** Basic

**ELL** English Language Learners

**LPR** Less Proficient Readers

**L3** All Students

**L4** Advanced Students

## Pressed for Time

Have students read the Bill of Rights, and then write a matching quiz listing the first ten amendments in Column 1 and their corresponding rights (out of order) in Column 2. Ask students to exchange and complete the quizzes. Reproduce and distribute the Facts and Enduring Understandings from each section opener of the Teacher Edition. Using the information from their quizzes and the Facts and Enduring Understandings, have students create an illustrated “Know Your Rights” Guide to the Bill of Rights that briefly explains what each right includes as well as what limitations it puts on government.

“All through the years we have had to fight for civil liberty, and we know that there are times when the light grows rather dim, and every time that happens democracy is in danger.”

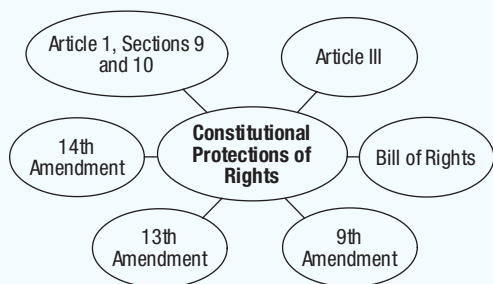
—Eleanor Roosevelt, 1940

Photo: Peaceful protest is a 1st Amendment right.

## GUIDING QUESTION

How does the Constitution protect the rights of individuals against government?

Answers may include any three of the following:



## Get Started

### LESSON GOALS

Students will . . .

- identify liberties guaranteed by the Bill of Rights by analyzing photographs and political cartoons.
- understand that rights are not absolute by debating issues in which rights and interests must be balanced.
- describe how the Constitution protects the rights of individuals by creating a diagram.

### BEFORE CLASS

Assign the section, the graphic organizer in the text, and the Reading Comprehension Worksheet (Unit 5 All-in-One, p. 72) before class.

**L2 Differentiate** Reading Comprehension Worksheet (Unit 5 All-in-One, p. 73)

## SKILLS DEVELOPMENT

### ANALYZE SOURCES

To practice analyzing sources in this section, use the Chapter 19 Skills Worksheet (Unit 5 All-in-One, p. 77). You may wish to teach the skill explicitly before you discuss the Bill of Rights. For L2 and L1 students, assign the adapted Skill Activity (Unit 5 All-in-One, p. 78).

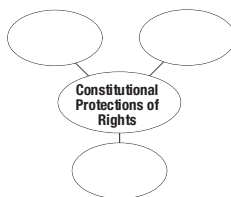
## SECTION 1

# The Unalienable Rights



### Guiding Question

**How does the Constitution protect the rights of individuals against government?** Use a concept web to identify three parts of the Constitution that protect individual rights.



### Political Dictionary

- Bill of Rights
- civil liberties
- civil rights
- alien
- Due Process Clause
- process of incorporation

### Objectives

1. Explain how Americans' commitment to freedom led to the creation of the Bill of Rights.
2. Understand that the rights guaranteed by limited government are not absolute.
3. Show how federalism affects individual rights.
4. Describe how the 9th Amendment helps protect individual rights.

**Image Above:** James Madison, author of the Bill of Rights

**H**ave you ever heard of Walter Barnette? How about Toyosaburo Korematsu? Dollree Mapp? Clarence Earl Gideon? Walter Barnette was a Jehovah's Witness in West Virginia who told his children not to salute the American flag or to recite the Pledge of Allegiance in school. Toyosaburo Korematsu was an American citizen interned by the Federal Government during World War II. Dollree Mapp was jailed for keeping "lewd and lascivious books" in her boarding house in Ohio. Clarence Earl Gideon went to prison for breaking into a poolroom in Florida. You will encounter these names again as you read this chapter and the next one. Each of these people played an important part in building and protecting the rights of all Americans.

## A Commitment to Freedom

A commitment to personal freedom is deeply rooted in America's colonial past. For centuries, the people of England waged a continuing struggle for individual rights, and the early colonists brought a dedication to that cause with them to America.

Their commitment to freedom took root here, and it flourished. The Revolutionary War was fought to preserve and expand those very rights: the rights of the individual against government. In proclaiming the independence of the new United States, the founders of this country declared:

### PRIMARY SOURCE

**We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men. . . .**

—Declaration of Independence

The Framers of the Constitution repeated the justification for the existence of government in the Preamble to the Constitution. That document, they said, was written to "secure the Blessings of Liberty to ourselves and our Posterity"

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## Focus on the Basics

**FACTS:** • The first ten amendments to the Constitution are known as the Bill of Rights. • Individual rights are not absolute. • The 14th Amendment's Due Process Clause prevents the States from abridging rights guaranteed by the Bill of Rights. • The 9th Amendment declares that people may have rights in addition to those listed in the Constitution.

**CONCEPTS:** limited government, individual rights, federalism, due process of law

**ENDURING UNDERSTANDINGS:** • The guarantees in the Bill of Rights reflect the nation's commitment to personal freedom and to the principle of limited government. • The Due Process Clause of the 14th Amendment ensures that State governments do not limit or take away rights given to citizens by the National Government.

The Constitution, as it was written in Philadelphia, contained a number of important guarantees. The most notable of these can be found in Article I, Sections 9 and 10, and in Article III. Unlike many of the first State constitutions, however, the new National Constitution did not include a general listing of the rights of the people.

That omission raised an outcry. The objections were so strong that several States ratified the Constitution only with the understanding that a listing of rights would soon be added. The first session of the new Congress proposed a series of amendments. Ten of them, known as the **Bill of Rights**, were ratified by the States and became a part of the Constitution on December 15, 1791. Later amendments, especially the 13th and the 14th, have added to the Constitution's guarantees of personal freedom.

The Constitution guarantees both rights and liberties to the American people. The distinction between civil rights and civil liberties is murky at best. Legal scholars often disagree on the matter, and the two terms often are used interchangeably.

Think of the distinction this way: In general, **civil liberties** are protections *against government*. They are guarantees of the safety of persons, opinions, and property from **arbitrary** acts of government. Thus, freedom of religion, freedom of speech and press, and the guarantees of fair trial are prime examples of civil liberties.

In contrast, **civil rights** are often associated with *positive acts of government* that seek to make constitutional guarantees a reality for all people. Viewed from this perspective, laws against discrimination on the basis of race, sex, religious belief, or national origin set out in the Civil Rights Act of 1964 are leading examples of civil rights.

## Limited Government

Remember, government in the United States is limited. The Constitution is filled with examples of this fact. Chief among them are its many guarantees of personal freedom. Each of those guarantees is either an outright

prohibition or a restriction on the power of government to do something.

All governments have and use authority over individuals. The all-important difference between a democratic government and a dictatorial one lies in the extent of that authority. In a dictatorial **regime**, the government's powers are practically unlimited. The government regularly suppresses dissent, often harshly. In the United States, however, governmental authority is strictly limited. As Justice Robert H. Jackson once put the point:

### PRIMARY SOURCE

**If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or any other matters of opinion or force citizens to confess by word or act their faith therein.**

—*West Virginia Board of Education v. Barnette, 1943*

**Rights Are Relative, Not Absolute** The Constitution guarantees many rights to everyone in the United States. Still, no one has the right to do anything he or she pleases. Rather, all persons have the right to do as they please as long as they do not infringe on the rights of others. That is, each person's rights are *relative* to the rights of every other person.

To illustrate the point: Everyone in the United States has a right of free speech, but no one enjoys absolute freedom of speech. A person can be punished for

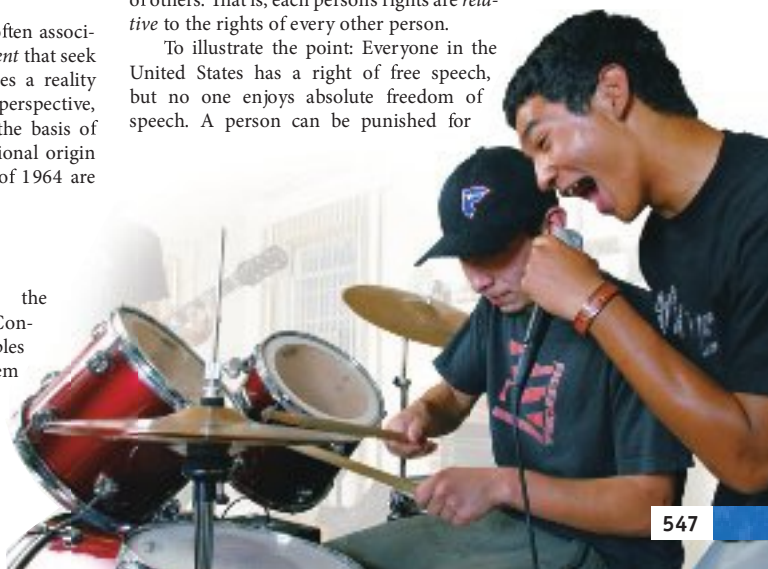
**Checkpoint**  
How does the Bill of Rights limit government in the United States?

**regime**  
n. a system of government or rule

**orthodox**  
adj. standard, recognized, accepted

**arbitrary**  
adj. random

Blaring music late at night is not a right because it infringes on the rights of others. ▼



## BELLRINGER

Display Transparency 19A. Have students answer the questions in their notebooks.

## Teach

To present this topic using online resources, use the lesson presentations at **PearsonSuccessNet.com**.

### INTRODUCE THE TOPIC

Write these terms on the board and ask students to define them in their notebooks: *civil liberties* (guarantees of the safety of persons, opinions, and property from the arbitrary acts of government); *Bill of Rights* (the first ten amendments to the Constitution); *unalienable rights* (rights that cannot be taken away; life, liberty, and the pursuit of happiness). Work with the class to agree on definitions and write them on the board. Next, have students name the 1st Amendment rights and freedoms. (*freedom of religion, speech, and press; the right to assemble and to petition the government for redress of grievances*)

**L3 Differentiate** Ask students why they think this section is titled “The Unalienable Rights.” (*It covers the most basic of rights—the 1st Amendment freedoms.*) Can students think of additional rights they consider unalienable?

**L1 L2 Differentiate** Have students create an acoustic poem or mnemonic device to help them remember the 1st Amendment freedoms.

### REVIEW BELLRINGER ANSWERS

Discuss the Bellringer questions. (*Answers: 1. The photo shows the right to free speech and the right to assemble. 2. Yes. The right to protest acts as a safeguard against government power, helps inform lawmakers of citizens' concerns, and allows the minority opinion to be heard.*) Ask students to consider what might happen if people were not allowed to protest (*only the majority voice would be heard*), or if protesters demonstrated in a country that had unlimited government. (*In dictatorships, protests against the government are usually put down forcibly.*)

**L3 L4 Differentiate** Ask students to identify demonstrations that have had an impact on the United States or other countries. (*protests against the Vietnam War or war in Iraq, Tiananmen Square, Myanmar*) Ask: **What prevents police from dispersing the protesters shown in the Bellringer photograph?** (*The 1st Amendment gives U.S. citizens the right to peaceably protest.*)

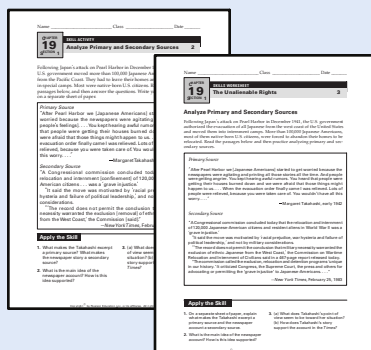
## Answers

**Checkpoint** by either prohibiting or restricting the actions of government

## Differentiated Resources

The following resources are located in the All-in-One, Unit 5, Chapter 19, Section 1:

- L2** Prereading and Vocabulary Worksheet (p. 68)
- L3** Reading Comprehension Worksheet (p. 72)
- L2** Reading Comprehension Worksheet (p. 73)
- L3** Core Worksheet (p. 75)
- L3** Skills Worksheet (p. 77)
- L2** Skill Activity (p. 78)
- L2** Extend Activity (p. 79)
- L3** Quiz A (p. 80) **L2** Quiz B (p. 81)



## DISTRIBUTE CORE WORKSHEET

Distribute Chapter 19 Section 1 Core Worksheet (Unit 5 All-in-One, p. 75). Explain that students will analyze a political cartoon related to the Bill of Rights.

**L2 L1 Differentiate** Have students work together to identify the rights portrayed and opinions expressed.

**L4 Differentiate** Have students select one right in the Bill of Rights and create political cartoons that show the interests the Supreme Court must balance when ruling on cases related to this right. Have students explain their cartoons to the class. Evaluate students' work with the Rubric for Assessing Political Cartoons (Unit 5 All-in-One, p. 244).

Name \_\_\_\_\_ Class \_\_\_\_\_ Date \_\_\_\_\_

**CHAPTER 19** CORE WORKSHEET  
**SECTION 1** The Unalienable Rights **3**

Study the cartoon and answer the questions that follow.

Source: <http://www.cartoonistsgroup.com/wordpress/photo/016-0708>

1. What rights are included in the 1st Amendment?  
\_\_\_\_\_
2. Why does the cartoonist say that the 1st Amendment gives people the right to argue about the other nine amendments in the Bill of Rights?  
\_\_\_\_\_
3. Why do you think these rights were the first to be included in the Bill of Rights?  
\_\_\_\_\_
4. What is the cartoonist's opinion of the 1st Amendment? How can you tell?  
\_\_\_\_\_

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## DISCUSS AND DEBATE BALANCING RIGHTS

Write on the board: **Rights are relative, not absolute.** Ask students to explain. (*Individuals can exercise their rights only as long as their actions do not infringe on the rights of others.*) Organize student groups to debate Issue 1 or Issue 2 below. Each debate should include a For and an Against position and a discussion of the conflicting rights.

**Issue 1** The government should pass a law limiting the use of cell phones in public places.

**Issue 2** Before entering a mall, people must show an identification card and pass through a metal detector.

## Answers

**Checkpoint** Possible response: The right to free speech does not allow one person to slander another.

**Checkpoint**  
Cite an example that illustrates the point that rights are relative.

using obscene language, or for using words in a way that causes someone to commit a crime—to riot or to desert from the military, for example. The Supreme Court dealt with this point in a recent case, *Morse v. Frederick*, 2007. A 5–4 majority held that school officials in Alaska acted properly when they disciplined a student for displaying a banner that could be read as promoting drug use.

In this oft-quoted line, Justice Oliver Wendell Holmes put the relative nature of each person's rights in this way:

### PRIMARY SOURCE

The most **stringent** protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic.

—*Schenck v. United States*, 1919

**stringent**  
adj strict, rigid, narrow

**When Rights Conflict** On occasion, different guarantees of rights come into conflict with one another. For example, cases involving freedom of the press versus the right to a fair trial are not at all uncommon.

In one famous case, Dr. Samuel Sheppard of Cleveland, Ohio, had been convicted of murdering his wife. His lengthy trial was widely covered in the national media. On appeal, Sheppard claimed that the highly sensational coverage had denied him a fair trial. The Supreme Court agreed. In *Sheppard v. Maxwell*, 1966, the Court rejected the free press argument, overturned Sheppard's conviction, and ordered a new trial.

**To Whom Are Rights Guaranteed?** Most constitutional rights are extended to all persons. The Supreme Court has often held that “persons” includes **aliens**, people who are not citizens of the country in which they live. Not all rights are given to aliens, however. The right to travel freely throughout the country is guaranteed to all citizens, for example, but the travel of aliens can be restricted.<sup>1</sup>

<sup>1</sup> See the two Privileges and Immunities clauses, in Article IV, Section 2, and the 14th Amendment. The guarantee does not extend to citizens under some form of legal restraint—for example, in jail or out on bail awaiting trial.

After the bombing of Pearl Harbor by Japan, all persons of Japanese descent living on the Pacific Coast were evacuated—forcibly moved—inland. Many suffered economic and other hardships. In 1944, the Supreme Court reluctantly upheld the forced evacuation as a reasonable wartime emergency measure.<sup>2</sup> Still, the relocation was strongly criticized over the years. In 1988, the Federal Government admitted that the wartime relocation had been both unnecessary and unjust. Congress voted to pay \$20,000 to each living internee. It also declared, “the Congress apologizes on behalf of the nation.”

The current war on terrorism has created a political climate similar to that of the early days of World War II. Did the mistreatment of Japanese Americans then provide a lesson for today? Will the rights of Muslims and others of Middle Eastern descent be respected by government as it fights terrorism here and abroad?

## Federalism and Individual Rights

Federalism is a complicated governmental arrangement. It produces any number of problems—including a very complex pattern of guarantees of individual rights in the United States.

**The Bill of Rights** Remember, the first ten amendments were originally intended as restrictions on the new National Government, not on the already existing States. And that remains the fact of the matter today.<sup>3</sup>

To illustrate this important point: The 5th Amendment says that no person can be charged with “a capital, or otherwise infamous crime” except by a grand jury. As a part of the Bill of Rights, this provision applies

<sup>2</sup> *Korematsu v. United States*, 1944. However, on the same day the Court held, in *Ex parte Endo*, that once the loyalty of any citizen internee had been established, no restriction could be placed on that person's freedom to travel that was not legally imposed on all other citizens.

<sup>3</sup> The Supreme Court first held that the provisions of the Bill of Rights restrict only the National Government in *Baron v. Baltimore*, 1833. This was the first case in which the point was raised. The Supreme Court has followed that holding (precedent) ever since.

## Background

**DUE PROCESS CLAUSE** Congress rejected much of the original draft of the Bill of Rights, which contained restrictions on both National and State governments. In the late 1700s, many Americans trusted their State governments far more than the National Government. For many decades, however, some State governments ignored the First Amendment right to freedom of religion and continued to have State-supported churches. Decades after the Civil War ended, many southern States ignored the 14th Amendment, which was intended to protect the rights of former slaves. According to political science professor Richard Cortner, through the incorporation process the Court turned the Due Process Clause of the 14th Amendment into a “second bill of rights” more applicable “to the liberty of the average American than the one . . . ratified by the states in 1791.”

Audio Tour

Listen to a guided audio tour of these rights at PearsonSuccessNet.com

# The 14th Amendment's Due Process Clause Incorporation of Rights

• Provisions of the **Bill of Rights INCORPORATED** into the 14th Amendment's Due Process Clause

<b>1st</b> AMENDMENT	<b>4th</b> AMENDMENT	<b>5th</b> AMENDMENT	<b>6th</b> AMENDMENT	<b>8th</b> AMENDMENT
<ul style="list-style-type: none"> <li>Freedom of speech</li> <li>Freedom of press</li> <li>Freedom of assembly, petition</li> <li>Free Exercise Clause</li> <li>Establishment Clause</li> </ul>	<ul style="list-style-type: none"> <li>No unreasonable searches, seizures</li> </ul>	<ul style="list-style-type: none"> <li>No self-incrimination</li> <li>No double jeopardy</li> </ul>	<ul style="list-style-type: none"> <li>Right to counsel</li> <li>Right to confront and obtain witnesses</li> <li>Speedy trial</li> <li>Trial by jury in criminal cases</li> </ul>	<ul style="list-style-type: none"> <li>No cruel, unusual punishments</li> </ul>

• Provisions of the **Bill of Rights NOT INCORPORATED** into the 14th Amendment's Due Process Clause

<b>2nd</b> AMENDMENT	<b>3rd</b> AMENDMENT	<b>5th</b> AMENDMENT	<b>7th</b> AMENDMENT
<ul style="list-style-type: none"> <li>Right to keep, bear arms</li> </ul>	<ul style="list-style-type: none"> <li>No quartering of troops</li> </ul>	<ul style="list-style-type: none"> <li>Grand jury</li> </ul>	<ul style="list-style-type: none"> <li>Trial by jury in civil cases</li> </ul>

► **Interpreting Charts** This chart shows which rights the Supreme Court has “nationalized” by incorporating them into the Due Process Clause of the 14th Amendment. *Why do you think that some, but not all, rights are incorporated under the 14th Amendment's Due Process Clause?*

## “FROM THE CONSTITUTION

**No State shall . . . deprive any person of life, liberty, or property, without due process of law. . . .**

—14th Amendment, Section 1

The Supreme Court has often said that the 14th Amendment's Due Process Clause means that no State can deny to any person any right that is “basic or essential to the American concept of ordered liberty.”

But what specific rights are “basic or essential”? The Supreme Court has answered this question in a long series of cases in which it has held that most (but not all) of the protections in the Bill of Rights are also covered by the 14th Amendment's Due Process Clause, and so apply against the States. In deciding those cases, the Court has engaged in what has come to be called the **process of incorporation**. It has incorporated—merged,

only to the National Government. The States may use the grand jury to bring accusations of serious crime—or, if they prefer, they can use some other process to do so. The grand jury is a part of the criminal justice system in all but two States and the District of Columbia, however. For additional information, see the coverage of the grand jury in the next chapter and also in Chapter 24.

**The Modifying Effect of the 14th Amendment** Again, the provisions of the Bill of Rights apply against the National Government, not against the States. This does *not* mean, however, that the States can deny basic rights to the people.

In part, the States cannot do so because each of their own constitutions contains a bill of rights. In addition, they cannot deny these basic rights because of the 14th Amendment's **Due Process Clause**. It says:

Tell students to go to the Audio Tour for a listing of rights incorporated in the 14th Amendment's Due Process Clause.

### CREATE A DIAGRAM

Have a volunteer read aloud the 14th Amendment's Due Process Clause from the textbook. Ask: **From what or whom does the 14th Amendment protect citizens' rights?** (*State governments*) **Why does the Bill of Rights not protect citizens against the States?** (*The Bill of Rights applies only to the National Government.*) **What are some other rights that U.S. citizens have that are not specifically listed in the Constitution?** (*Provide students with prompts, such as the right to move from one State to another or the right to change jobs without government permission.*) **How are these unspecified rights protected?** (*9th Amendment*) Have students use this information to create a diagram or other visual that illustrates how individuals' rights are protected in “layers” by various parts of the Constitution.

**L3 Differentiate** Display Transparency 19B, and have students select one of the Court cases to research. They should explain in a paragraph how the case incorporated a Bill of Rights guarantee into the 14th Amendment's Due Process Clause.

### EXTEND THE LESSON

**L3 Differentiate** Have students create an illustrated “Know Your Rights” Guide to the Bill of Rights that briefly explains what each right includes and the limits it puts on government. Students can use print or online resources to find examples of citizens exercising these rights.

**L2 Differentiate** Distribute the Extend Activity entitled “The Bill of Rights” (Unit 5 All-in-One, p. 79).

## Assess and Remediate

**L2 L3** Ask students to list ten things they have the right to do without government interference. Then ask them to note whether each right listed is protected by the 1st Amendment, the 9th Amendment, the 14th Amendment, or some other part of the Constitution.

### Answers

**Interpreting Charts** Sample answer: Quartering of troops is obsolete. States should be allowed to decide on the jury process that works best for them. The right to bear arms is too controversial to be nationalized.

## Constitutional Principles

**JUDICIAL REVIEW** In *Gitlow v. New York*, 1925, the Supreme Court established that the Due Process Clause prevented States from impairing personal freedoms. However, the decision upheld Gitlow's conviction. Justice Holmes, in dissent, went one step further in arguing that the conviction be overturned. His dissent addressed the New York attorneys' claim that Gitlow's actions were an incitement. “It is said that this manifesto was more than a theory, that it was an incitement. Every idea is an incitement. . . . The only difference between the expression of an opinion and incitement in the narrower sense is the speaker's enthusiasm for the result.”



**L3** Collect the Core Worksheet and assess students' work.

**L3** Assign the Section 1 Assessment questions.

**L3** Section Quiz A (Unit 5 All-in-One, p. 88)

**L2** Section Quiz B (Unit 5 All-in-One, p. 89)

Have students complete the review activities in the digital lesson presentation and continue their work in the **Essential Questions Journal**.

### REMEDIATION

If Your Students Have Trouble With	Strategies For Remediation
Rights protected by the Bill of Rights (Questions 1, 2, 3)	Have students write a matching quiz listing the first ten amendments in column 1 and their corresponding rights (out of order) in column 2. Then have students exchange and complete the quizzes.
14th Amendment protections (Questions 4, 6)	Have students draw a large outline of their State. Within the State "boundaries," have them write out the text of the 14th Amendment's Due Process Clause. Under these words, ask students to write how the 14th Amendment protects them within their State.
Balancing individuals' rights (Question 5)	Have groups identify how rights conflict in the following scenarios: (a) a public demonstration blocks traffic for hours, (b) a neighbor blames her stereo in the middle of the night, and (c) the government halts publication of war-related information.

## Answers

**Checkpoint** The case began the incorporation of 1st Amendment rights into the 14th Amendment's Due Process Clause.

## Assessment Answers

- Guarantees are written into Article I, Sections 9 and 10; Article III; the Bill of Rights, and most notably Amendments 9, 13, and 14. These guarantees either prohibit or limit the power of government to do something.
- The Bill of Rights is the first ten amendments to the Constitution. People wanted specific, written protection against abuses of government.
- Civil liberties are protections against arbitrary acts of government; civil rights are positive acts of government that seek to make constitutional guarantees for all people.

- (a)** The process of incorporation is the judicial process that has combined most of the Bill of Rights guarantees into the 14th Amendment's Due Process Clause. Incorporating these guarantees nationalizes them—making them apply to the States as well as to the National Government. **(b)** everything in the 1st, 4th, 5th, 6th, and 8th amendments
- (a)** Individual rights cannot be absolute because they must not infringe upon the rights of others. **(b)** Sample answers: Freedom of the press may conflict with the right to a fair trial;

freedom of speech may conflict with the right to privacy.

**6.** Possible answer: Without the process of incorporation, the rights of citizens might vary from State to State.

**QUICK WRITE** Students must select an issue with at least two sides. At this stage of the writing process, have students think about the various strategies they may use to persuade their audience—for example, emotion, logic or reason, and statistics for and against.

combined—most of the guarantees in the Bill of Rights into the 14th Amendment's Due Process Clause.

The Court began that historic incorporation in *Gitlow v. New York*, 1925. The landmark case involved Benjamin Gitlow, a Communist, who had been convicted of criminal anarchy in the State courts. He had made several speeches and published a pamphlet calling for the violent overthrow of government in this country.

On appeal, the Court upheld Gitlow's conviction and the State law under which he had been tried. In deciding the case, however, the Court made this crucial point: Freedom of speech and press, which the 1st Amendment says cannot be denied by the National Government, are also "among the fundamental personal rights and liberties protected by the Due Process Clause of the 14th Amendment from impairment by the States."

Soon after *Gitlow*, the Court held each of the 1st Amendment's guarantees to be covered by the 14th Amendment. It struck down State laws involving speech (*Fiske v. Kansas*, 1927; *Stromberg v. California*, 1931), the press (*Near v. Minnesota*, 1931), assembly and petition (*De Jonge v. Oregon*, 1937), and religion (*Cantwell v. Connecticut*, 1940). In each of those cases, the Court declared a State law unconstitutional as a violation of the 14th Amendment's Due Process Clause.

In the 1960s, the Court extended the scope of the 14th Amendment's Due Process Clause even further. The key guarantees are listed in the chart on the previous page. You will look at each of the guarantees involved—the 1st Amendment rights in this chapter and the others in Chapter 20.

## The 9th Amendment

Nowhere in the Constitution will you find a complete catalog of all of the rights held by the American people. The little-noted 9th Amendment explicitly declares that rights exist beyond those listed in the Constitution:

### FROM THE CONSTITUTION

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

—9th Amendment

Over the years, the Supreme Court has found a number of other rights "retained by the people." They include, most notably, the guarantee that an accused person will not be tried on the basis of evidence unlawfully gained, and the right of a woman to choose to have an abortion without undue interference by government.

**Essential Questions Journal** To continue to build a response to the chapter Essential Question, go to your Essential Questions Journal.

## SECTION 1 ASSESSMENT

- Guiding Question** Use your completed graphic organizer to answer this question: How does the Constitution protect the rights of individuals against government?
- Key Terms and Comprehension**
- What is the **Bill of Rights**, and why did its omission from the original Constitution raise such an outcry?
- Compare and contrast **civil liberties** and **civil rights**.
- (a)** What is the **process of incorporation**? **(b)** What guarantees in the Bill of Rights are covered by the 14th Amendment's **Due Process Clause**?
- Critical Thinking**
- Draw Inferences (a)** Why are individual rights not absolute? **(b)** Cite two examples to illustrate how rights may come into conflict with one other.
- Predict Consequences** How do you think this country might be different today if the Supreme Court had not applied the process of incorporation to the 14th Amendment?

### Quick Write

**Persuasive Essay: Choose a Topic** To write a persuasive essay that convinces others to accept your views, you should select a topic that you feel strongly about. Read through the section and identify an issue, such as limits on free speech.

## SECTION 2

Freedom  
of Religion**Guiding Question****How does the 1st Amendment protect the freedom of religion?**

Use a chart like the one below to take notes on five Supreme Court cases that protect the freedom of religion.

Freedom of Religion	
Case	Ruling
• <i>Pierce v. Society of Sisters</i> , 1925	•
•	•
•	•

**Political Dictionary**

- Establishment Clause
- Free Exercise Clause
- parochial

**Objectives**

1. Examine why religious liberty is protected in the Bill of Rights.
2. Describe the limits imposed by the Establishment Clause of the 1st Amendment.
3. Summarize the Supreme Court rulings on religion and education as well as other Establishment Clause cases.
4. Explain how the Supreme Court has interpreted and limited the Free Exercise Clause.

**Image Above:** Americans are free to practice religion as they please.

In the early 1830s, a Frenchman, Alexis de Tocqueville, came to America to observe life in the young country. He later wrote in his classic, *Democracy in America*, that he had searched for the greatness of America in many places: in its large harbors and deep rivers, in its fertile fields and boundless forests, in its rich mines and vast world commerce, in its public schools and institutions of higher learning, and in its democratic legislature and matchless Constitution. Yet it was not until he went into the churches that Tocqueville said he came to understand the genius and the power of this country.

**Religious Liberty**

The 1st Amendment sets out *two* guarantees of religious freedom. It prohibits (1) “an establishment of religion” (in the **Establishment Clause**), and (2) any arbitrary interference by government with “the free exercise thereof” (in the **Free Exercise Clause**). And, recall, both protections are extended against the States by the Due Process Clause in the 14th Amendment.<sup>4</sup>

These constitutional guarantees were born out of decades of colonial opposition to established churches—to official government-sponsored churches in the colonies. The Virginia Statute for Religious Freedom, adopted in 1786, was the immediate basis for the 1st Amendment. Drafted by Thomas Jefferson, that law provided for absolute religious freedom in Virginia. It declared that that State could not require that any person profess any set of religious beliefs nor support any religious institution.

**Separation of Church and State**

The Establishment Clause sets up, in Thomas Jefferson’s words, “a wall of separation between church and state.” That wall is not infinitely high, however, and it is not impenetrable. Church and government are constitutionally separated in this country, but they are neither enemies nor even strangers to one another.

<sup>4</sup> Also, Article VI, Section 3 provides that “no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.” In *Torcaso v. Watkins*, 1961, the Supreme Court held that the 14th Amendment puts the same restriction on the States.

**GUIDING QUESTION**

How does the 1st Amendment protect the freedom of religion?

Freedom of Religion (Sample Answers)	
Case	Ruling
<i>Pierce v. Society of Sisters</i> , 1925	struck down law requiring children to attend public (not parochial) schools
<i>Everson v. Board of Education</i> , 1947	upheld tax-supported busing of parochial school students
<i>Westside Community Schools v. Mergens</i> , 1990	upheld law requiring schools to allow student religious groups to meet on same terms as other student groups
<i>Epperson v. Arkansas</i> , 1968	struck down law banning teaching of evolution
<i>Lemon v. Kurtzman</i> , 1971	bans government sponsorship, financing, and active involvement in religious activity

**Get Started****LESSON GOALS**

Students will . . .

- clarify the meaning of the Establishment Clause and its “wall of separation” by completing a diagram and chart concerning cases on freedom of religion.
- learn how the Supreme Court has interpreted the Establishment Clause and Free Exercise Clause by evaluating scenarios about freedom of religion conflicts.

**BEFORE CLASS**

Assign the section, the graphic organizer in the text, and the Reading Comprehension Worksheet (Unit 5 All-in-One, p. 82) before class.

**L2 Differentiate** Reading Comprehension Worksheet (Unit 5 All-in-One, p. 84)

**SKILLS DEVELOPMENT****DECISION MAKING**

Before students begin analyzing the various scenarios presented in this lesson, you may want to review tips on decision making in the Skills Handbook, p. S18.

**Focus on the Basics**

**FACTS:** • The 1st Amendment’s Establishment Clause prohibits government from establishing or aiding religion. • Most Establishment Clause cases involve religion and education. • The 1st Amendment’s Free Exercise Clause guarantees individuals the right to believe as they choose in matters of religion. • The 14th Amendment’s Due Process Clause extends 1st Amendment protections against the States.

**CONCEPTS:** individual rights and responsibilities, limited government, judicial review

**ENDURING UNDERSTANDINGS:** • The Establishment Clause sets up “a wall of separation between church and state.” • The Free Exercise Clause protects religious beliefs but does not protect religious actions that violate laws or threaten safety.

## Teach

To present this topic using online resources, use the lesson presentations at [PearsonSuccessNet.com](http://PearsonSuccessNet.com).

### BELLRINGER

Write on the board: **In what ways is freedom of religion limited in public schools? Answer in your notebook.**

**L2 Differentiate** Provide prompts, such as focus on prayer, the Bible, group meetings, religious artifacts, and religious clothing.

### REVIEW BELLRINGER ANSWERS

Ask students to share their answers to the Bellringer question. Possible responses:

- School-sponsored prayer or “moments of silence” are prohibited.
- Observances of religious holidays are prohibited.
- Religious groups cannot use public school facilities during school hours.
- Bible study is prohibited in classrooms.
- The Ten Commandments and religious icons cannot be posted in classrooms.

**L2 Differentiate** Have students define the term *icons* (visual representations of gods, saints, and other religious entities).

**L3 Differentiate** Ask: **Why do you think government prohibits these forms of religious expression in public schools?** (*Guide students to conclude that limiting government support for and opposition to all religions protects minority religions and free expression for all people.*)

**L2 L3 Differentiate** Demonstrate the sensitive nature of personal belief. First, ask students to raise their hands if they have brown eyes; do the same with blue-eyed and green-eyed students. Explain to students in the minority that they will have to purchase and wear [brown] contact lenses to “fit in.” Now loosely apply this reasoning to religion. Ask students how comfortable they would be if they were asked which religion, if any, they and their family follow. Point out that anyone who follows a minority religion would be “different.” In many countries, they would be harassed. In the United States, however, their beliefs are protected.

**L3 Differentiate** Ask: **What aspects of religion do you think are allowed in public schools?** (*Examples: Individuals can pray when and as they choose in any place. The Bible can be studied as a literary or historical piece. Religious groups may use public school facilities after school.*)

## Answers

**Checkpoint** The 1st Amendment requires the government to maintain strict neutrality, neither aiding nor opposing religion.

**Checkpoint**  
According to the Supreme Court, how does state-sponsored support of prayer in schools violate the 1st Amendment?

**sect**  
n. a religious group

Government has done much to encourage churches and religion in the United States. Nearly all property of and contributions to religious **sects** are free from federal, State, and local taxation. Chaplains serve with each branch of the armed forces. Most public officials take an oath of office in the name of God. Sessions of Congress, most State legislatures, and many city councils open with prayer. The nation’s anthem and its coins and currency make reference to God.

The limits imposed by the Establishment Clause remain a matter of continuing and often heated controversy. The Supreme Court did not hear its first Establishment Clause case until 1947. A few earlier cases did involve government and religion, but none of them involved a direct consideration of the “wall of separation.”

The most important of those earlier cases was *Pierce v. Society of Sisters*, 1925. There, the Court held an Oregon compulsory school attendance law unconstitutional. That law required parents to send their children to *public* schools. It was purposely intended to eliminate private and especially **parochial** (church-related) schools.

In striking down the law, the Court did not address the Establishment Clause question. Instead, it found the law to be an unreasonable interference with the liberty of parents to direct the upbringing of their children—and so in conflict with the Due Process Clause of the 14th Amendment.

## Religion and Education

The Court’s first direct ruling on the Establishment Clause came in *Everson v. Board of Education*, a 1947 case often called the New Jersey School Bus Case. The Court upheld a State law that provided for the public, tax-supported busing of students attending any school in the State, including parochial ones.

Critics had attacked the law as a support of religion. They maintained that it relieved parochial schools of the need to pay for busing and so freed their money for other, including religious, purposes. The Court disagreed; it found the law to be a safety measure intended to benefit children, no matter what schools they might attend. Since that

decision, the largest number of the Court’s Establishment Clause cases have involved, in one way or another, religion and education.

**Released Time** “Released time” programs allow public schools to release students during school hours to attend religious classes. In *McCollum v. Board of Education*, 1948, the Court struck down the released time program then in place in Champaign, Illinois, because the program used public facilities for religious purposes.

Yet in *Zorach v. Clauson*, 1952, the Court upheld New York City’s released time program. It did so because that program required religious classes to be held in private places off school grounds.

**Prayers and the Bible** The Court has now decided seven major cases involving prayer and the reading of the Bible in public schools. In *Engel v. Vitale*, 1962, the Court outlawed the use, even on a voluntary basis, of a prayer written by the New York State Board of Regents. The prayer read: “Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessings upon us, our parents, our teachers, and our country.”

In striking down the prayer, the Supreme Court held that:

**PRIMARY SOURCE**  
[T]he constitutional prohibition against laws respecting an establishment of religion must at least mean that, in this country, it is no part of the business of government to compose official prayers for any group of the American people to recite as part of a religious program carried on by government.

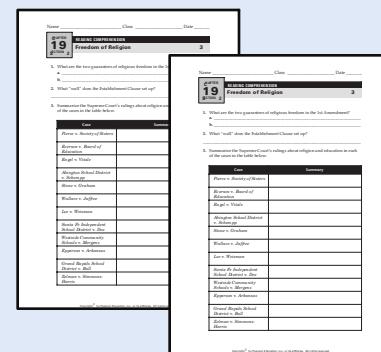
—Justice Hugo L. Black

The High Court extended that holding in two 1963 cases. In *Abington School District v. Schempp*, it struck down a Pennsylvania law requiring that each school day begin with readings from the Bible and a recitation of the Lord’s Prayer. In *Murray v. Curlett*, the Court erased a similar rule in Baltimore. In both cases, the Court found violations of

## Differentiated Resources

The following resources are located in the All-in-One, Unit 5, Chapter 19, Section 2:

- L3** Reading Comprehension Worksheet (p. 82)
- L2** Reading Comprehension Worksheet (p. 84)
- L3** Core Worksheet (p. 86)
- L3** Quiz A (p. 88)
- L2** Quiz B (p. 89)





## 1st Amendment

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.

## FROM THE CONSTITUTION



**Ruling on Religion** The Court has held that public schools cannot sponsor religious exercises. It has not ruled, however, that individuals cannot pray when and as they choose in schools or in any other place. Nor has it held that students cannot study the Bible in a literary or historical context in school. The Court's rulings have nevertheless been widely criticized. Many critics have proposed that the Constitution be amended to allow voluntary group prayer in public schools. Despite the Court's decisions, both organized prayer and Bible readings are found in many public school classrooms today.

**Constitutional Principles** How does the separation of church and state reflect the principle of limited government?

▲ Public schools cannot sponsor prayer at school-related events.

“the command of the 1st Amendment that the government maintain strict neutrality, neither aiding nor opposing religion.”

Since then, the Supreme Court has found the following to be unconstitutional:

- a Kentucky law that ordered the posting of the Ten Commandments in all public school classrooms, *Stone v. Graham*, 1980;
- Alabama's “moment of silence” law, *Wallace v. Jaffree*, 1985, which provided for a one-minute period for “meditation or voluntary prayer” at the start of each school day;
- the offering of prayer as part of a public school graduation ceremony, in a Rhode Island case, *Lee v. Weisman*, 1992;
- a Texas school district's policy that permitted student-led prayer at high school football games, *Santa Fe Independent School District v. Doe*, 2000.

**Student Religious Groups** The Equal Access Act of 1984 declares that any

public high school that receives federal funds (nearly all do) must allow student religious groups to meet in the school on the same terms that it sets for other student organizations. The Supreme Court found that the law does not violate the Establishment Clause in a Nebraska case, *Westside Community Schools v. Mergens*, 1990. There, several students had tried to form a Christian club at the high school. The students had to fight the school board in the federal courts in order to win their point.

The High Court has since gone much further than it did in *Mergens*—in a case from New York, *Good News Club v. Milford Central School*, 2001. There, a school board had refused to allow a group of grade-school students to meet after school to sing, pray, memorize scriptures, and hear Bible lessons. The school board based its action on the Establishment Clause. The Court, however, held that the board had violated Good News Club members' 1st and 14th amendment rights to free speech.

## Background

**BUILDING THE “WALL”** In 1787, the Constitution's only mention of religion was a statement that there could be no religious requirements for holding federal office. Thomas Jefferson, unlike many leaders of his day, was committed to a “wall of separation between church and state.” He resisted declaring a national day of prayer and thanksgiving. With this unpopular action, he broke a tradition begun by George Washington. Despite the 1st Amendment ban on the establishment of religion, some States continued to ignore the Bill of Rights on this issue. In the early 1800s, some States taxed their citizens to support their State's Christian churches. Several State constitutions prohibited non-Christians from holding public office or refused to allow them to vote. The “wall of separation” grew more quickly after the incorporation process of the 14th Amendment began in the twentieth century.

### CLARIFY “ESTABLISHMENT” AND “FREE EXERCISE”

Have a volunteer read aloud the 1st Amendment in the textbook feature. Ask: **Which part of the 1st Amendment addresses freedom of religion?** Be sure students understand that the constitutional guarantee of religious freedom has two parts: the Establishment Clause (*creates a “wall of separation between church and state” by prohibiting government from passing any law that establishes a State or national religion or favors one religion over another*) and the Free Exercise Clause (*guarantees all people the right to believe whatever they choose in matters of religion*).

**L2 ELL Differentiate** Explain that the term *church* refers to all religions and *state* refers to local, State, and National Government.

**L2 Differentiate** Point out that another way to think of the Establishment Clause is as an “anti-Establishment Clause”—the government *cannot* establish or favor a religion.

### DRAW A “WALL OF SEPARATION”

The “height” of the wall of separation—the limits imposed by the Establishment Clause—varies. Have students draw, in pencil, a five-paneled wall and the labels “church” in the foreground and “state” in the background. On the board, list these Establishment Clause cases (but not the height of the panels):

- *Engel v. Vitale*, 1962 (high panel)
- *Wallace v. Jaffree*, 1985 (high panel)
- *Committee for Public Education and Religious Liberty v. Regan*, 1980 (medium panel)
- *County of Allegheny v. ACLU*, 1989 (high panel)
- *March v. Chambers*, 1983 (low panel)

Have students label their panels with the cases and their rulings. Students should read about each case, decide whether the Court placed a high or low wall of separation, adjust the panel height accordingly, and explain their reasoning.

**L2 Differentiate** Instead of actual cases, write the following issues on the board, and have students apply them to their walls. These issues correspond to the cases above.

- School-sponsored prayer (high panel)
- State-sponsored “moment of silence” (high panel)
- State support for standardized testing in parochial schools (medium panel)
- Seasonal displays of a single religious doctrine at government buildings (high panel)
- Group prayer in State legislatures (low panel)

## Answers

**Constitutional Principles** It limits government interference and prevents the government from favoring one religion over another.

## SUMMARIZE ESTABLISHMENT CLAUSE CASES

Display the first column and row of Transparency 19C, which focuses on five Supreme Court cases that examine issues related to religion in schools. Working in groups of five, have students copy the chart into their notebooks, with each student completing Columns 2–4 for a single case. After students have completed their own rows, they should share their information with other group members.

When all groups are finished, uncover one row on the transparency at a time, and discuss each case. Ask: **Which cases limit free expression of religion?** (Abington, Lee, and Epperson) **Which cases support the view that the wall of separation between church and state is “not impenetrable”?** (Students may cite *Everson* and *Good News Club*. In both cases, the Supreme Court declared the actions of lower courts unconstitutional.) **In which cases do you agree with the ruling? Explain.**

**L2 LPR Differentiate** Instead of displaying Transparency 19C, draw the chart on the board. Work as a class to find the specific information in the text. Review unfamiliar words. Model note-taking skills by filling in the correct answers on the board.

## ANALYZE CONFLICTS OF RELIGIOUS FREEDOM

Distribute the Chapter 19 Section 2 Core Worksheet (Unit 5 All-in-One, p. 86), which presents four conflicts about religious freedom. Have students work in groups to analyze the scenarios.

**L2 ELL Differentiate** Assign only Scenario D.

Name _____	Class _____	Date _____
<b>Chapter 19</b> <b>Section 2</b>		<b>CORE WORKSHEET</b> <b>Freedom of Religion</b>
Each scenario below describes a conflict about religious freedom. Read the scenarios, and then answer the questions that follow.		3
<p><b>Scenario A</b></p> <p>Middle school students wrote a short prayer that the school board decided to use in all the district's middle and high schools. The prayer was nondenominational (not specific to any particular religion). The school board recommended that teachers and students begin each school day by reciting the prayer, which was voluntary. A parent sued the school board, claiming that the prayer violated his child's 1st Amendment rights. The school board argued that the prayer was nondenominational and did not attempt to “establish or endorse” a religion. Thus, the board believed that the prayer did not violate the Establishment Clause or the student's right to freedom of religion. The parent believed that prayer of any kind, including a moment of silence, showed support for religion over non-belief.</p>		
1. What is the freedom of religion issue in this case? _____		
2. Who are the two parties in this conflict? _____		
3. Did the school board's actions violate the 1st Amendment? Explain. _____		
<p><b>Scenario B</b></p> <p>A shoe-store salesclerk told her boss of three years that she was joining the Seventh Day Adventist Church and would no longer be able to work on Saturdays, a day of religious observance for her. The boss told her that Saturday was his store's busiest day, and he needed her to work then. When she refused to work the following Saturday, her employer fired her. After looking unsuccessfully for another job, the worker went to the State employment commission and applied for unemployment benefits. Officials there told her that she was not eligible to receive any benefits because she did not have a good reason for refusing to work. She disagreed and hired a lawyer to let the courts decide.</p>		
1. What is the freedom of religion issue in this case? _____		
2. Who are the two parties in this conflict? _____		
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## Answers

**Checkpoint** to determine whether or not a State law or State aid to parochial schools amounts to an establishment of religion

**Evolution** In *Epperson v. Arkansas*, 1968, the Supreme Court struck down a State law forbidding the teaching of the scientific theory of evolution. The Supreme Court held that the Constitution

### PRIMARY SOURCE

**forbids alike the preference of a religious doctrine or the prohibition of theory which is deemed antagonistic to a particular dogma. . . . ‘The State has no legitimate interest in protecting any or all religions from views distasteful to them.’**

—Justice Abe Fortas

The Court found a similar law to be unconstitutional in 1987. In *Edwards v. Aguillard*, it voided a 1981 Louisiana law that provided that whenever teachers taught the theory of evolution, they also had to offer instruction in “creation science.”

**Aid to Parochial Schools** Most recent Establishment Clause cases have centered on this highly controversial question: What forms of State aid to parochial schools are constitutional? Several States give help to private schools, including schools run by church organizations, for transportation, textbooks, standardized testing, and much else.

Those who support this aid argue that parochial schools enroll many students who would otherwise have to be educated at public expense. They also point out that parents have a legal right to send their children to those

schools (*Pierce v. Society of Sisters*).

To give that right real meaning, they say, the State must give some aid to parochial schools in order to relieve parents of some of the double burden they carry because they must pay taxes to support the public schools their children do not attend. Advocates also insist that schools run by religious organizations pose no real church-state problems because they devote most of their time to secular subjects rather than to sectarian ones.



Several States give aid to parochial schools for such things as transportation.

**secular**  
adj. nonreligious

**sectarian**  
adj. religious

## Debate

Use the statement below to initiate a debate in your class. Use the debate rules on page T25 to structure the class.

**Allowing a moment of silent prayer in the public school classroom does/does not violate the Establishment Clause.**

Opponents of aid to parochial schools argue that parents who send their children to parochial schools should accept the financial consequences of that choice. Many of these critics also insist that it is impossible to draw clear lines between secular and sectarian courses in parochial schools. They say that religious beliefs are bound to have an effect on the teaching of nonreligious subjects.

**The Lemon Test** The Court applies a three-pronged standard, the *Lemon* test, to decide whether a State law amounts to an “establishment” of religion. That standard states: (1) a law must have a secular, not religious, purpose; (2) it must neither advance nor inhibit religion; and (3) it must not foster an “excessive entanglement” of government and religion.

The test stems from *Lemon v. Kurtzman*, 1971. There, the Supreme Court held that the Establishment Clause is designed to prevent three main evils: “sponsorship, financial support, and active involvement of the sovereign in religious activity.” It struck down a Pennsylvania law that provided for reimbursements (money payments) to private schools to cover their costs for teachers’ salaries, textbooks, and other teaching materials in nonreligious courses.

The Court held that the State’s program was of direct benefit to parochial schools, and so to the churches sponsoring them. It also found that the Pennsylvania program required such close State supervision that it produced an excessive entanglement of government with religion.

More often than not, the Court has ruled unconstitutional those laws that provide some form of public aid to church-related schools. Thus, it ruled in an Ohio case that public funds can not be used to pay for such things as field trips for parochial school students, *Wolman v. Walter*, 1977. Nor can tax monies be used to pay any part of the salaries of parochial school teachers, even those who teach only secular courses, *Grand Rapids School District v. Ball*, 1985. In this Michigan case, the Supreme Court noted that while the contents of, say, a textbook used in a course might be checked easily, the way a teacher handles that course cannot. And the Court invalidated a New York law that created a small school

## The Lemon Test

The courts determine whether State aid to parochial schools is constitutional by applying the *Lemon* test. **How does the Lemon test support the Court's rulings in *Wolman v. Walter* and *Mueller v. Allen*?**



district to benefit handicapped school children in a tight-knit community of Hasidic Jews, *Board of Education of Kiryas Joel v. Grumet*, 1994.

Some State laws have passed the *Lemon* test, however. The Court has held that New York can pay church-related schools what it costs them to administer the State's standardized tests, *Committee for Public Education and Religious Liberty v. Regan*, 1980. In a 1993 case from Arizona, *Zobrest v. Catalina Foothills School District*, it said that the use of public money to provide an interpreter for a deaf student in a Catholic high school does not violate the Establishment Clause. The Constitution, said the Court, does not place an *absolute* barrier to the placing of a public employee in a religious school.

In 1973, the Court struck down a New York law that reimbursed parents for the tuition they paid to religious schools, *Committee for Public Education and Religious Liberty v. Nyquist*. But in *Mueller v. Allen*, 1983, it upheld a Minnesota tax law that really accomplishes the same end.

The Minnesota law gives parents a State income tax deduction for the costs of tuition, textbooks, and transportation. Most public school parents pay little or nothing for those items, so the law is of particular benefit to parents with children in private, mostly parochial, schools. The Court found that the law meets the *Lemon* test, and it relied on this point: The tax deduction is available to all parents with children in school.

The High Court went much further in *Zelman v. Simmons-Harris* in 2002. There, it upheld Ohio's experimental "school choice" plan. Under that plan, parents in Cleveland can receive vouchers (grants for tuition payments) from the State and use them to send their children to private schools. Nearly all families who take the vouchers send their children to parochial schools. The Court found, 5–4, that the Ohio program is not intended to promote religion but, rather, to help children from low-income families.

### Other Establishment Cases

Most church-state controversies have involved public education. Some Establishment Clause cases have arisen in other policy areas, however.

**Seasonal Displays** Many public organizations sponsor celebrations of the holiday season with street decorations, programs in public schools, and the like. Can these publicly sponsored observances properly include expressions of religious belief?

In *Lynch v. Donnelly*, 1984, the Court held that the city of Pawtucket, Rhode Island, could include the Christian nativity scene in its holiday display, which also featured non-religious objects such as Santa's sleigh and reindeer. That ruling, however, left open this question: What about a public display made up *only* of a religious symbol?

The Court faced that question in 1989. In *County of Allegheny v. ACLU*, it held that the

**✓ Checkpoint**  
Why did the Supreme Court rule in favor of a law that gave an income tax deduction for parochial tuition?

Tell students to go to the Interactivity for examples of the application of the *Lemon* test.

### REVEAL THE CORE WORKSHEET SCENARIO RULINGS

Ask: **How do you think the Supreme Court or lower courts might rule in these cases? Explain your reasoning.** As you share the actual rulings, ask for a show of hands of those who agree or disagree with the ruling, and why.

- **Scenario A** is based on *Engel v. Vitale*, 1962. The Supreme Court ruled that the school board could not sponsor prayers and similar religious activities because they violated the Establishment Clause of the 1st Amendment.
- **Scenario B** is based on *Hobbie v. Unemployment Appeals Commission of Florida*, 1987. The Court ruled in favor of the worker: "To condition the availability of benefits upon this appellant's unwillingness to violate a cardinal principle of her religious faith effectively penalizes the free exercise of her constitutional liberties."
- **Scenario C** is based on *Doe v. Porter*, 2004, argued in the 6th District Court of Appeals. The judge ruled that the school board violated the Establishment Clause by allowing the college students to conduct Bible classes during school time, and the program failed the *Lemon* test.
- **Scenario D** is based on the Eastern District of Oklahoma case *Hearn, et al. v. Muskogee Public School District*, 2004. The U.S. government intervened on behalf of the student, identifying the issue as a civil rights issue of equal protection. The school district agreed to revise its dress code to allow exceptions for religious reasons.

## Background

**HISTORY OF RELIGIOUS LIBERTY** At the beginning of the Revolution in 1775, there were official, State-supported churches in at least eight former colonies. Because of growing opposition, most established churches did not survive the revolutionary period. Jefferson, with Patrick Henry and George Mason, led the effort to disestablish the Church of England in Virginia (1779). Jefferson also wrote the Virginia Statute of Religious Liberty (1786), which provided for absolute religious freedom and equality and was a precursor of the 1st Amendment. It declared that the State could not require that any person profess any set of religious beliefs nor could it support any religious institution. An insistence upon religious freedom was also written into the Northwest Ordinance (1787). Article VI of the Constitution, written that same year, prohibited any religious test as a qualification for public office in the United States.

## Answers

**The Lemon Test** *Wolman*: public funding of parochial field trips violates neutrality; *Mueller*: no violation—tax deduction available to all parents

**Checkpoint** The deduction is available to all parents with children in school.

## CATEGORIZING FREE EXERCISE ACTIONS

Ask students to define the Free Exercise Clause. (*guarantees to each person the right to believe whatever he or she chooses in matters of religion*) What does the Free Exercise Clause not protect? (*religious actions that violate criminal laws, offend public morals, or threaten community safety*)

Write the following scenarios on the board. Have students categorize each scenario as “Limiting Free Exercise” or “Upholding Free Exercise.”

- **The use of poisonous snakes is forbidden in religious rituals.** (*limiting*) *Bunn v. North Carolina*, 1949
- **Religious groups do not have to salute the flag.** (*upholding*) *West Virginia Board of Education v. Barnette*, 1943
- **Animals may be sacrificed in church services.** (*upholding*) *Lukumi Babalu Aye v. City of Hialeah*, 1993
- **A permit is required to hold a religious parade on public property.** (*limiting*) *Cox v. New Hampshire*, 1941
- **Amish children cannot be forced to attend school beyond the 8th grade.** (*upholding*) *Wisconsin v. Yoder*, 1972
- **The Federal Government can draft those who have religious objections to military service.** (*limiting*) *Welsh v. United States*, 1970

**L3 Differentiate** Have students identify the case associated with each scenario.

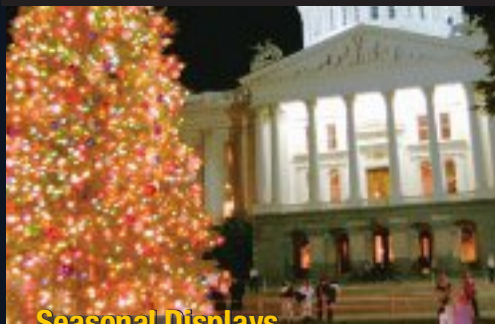
**L2 Differentiate** Ask students to select one of these scenarios and write a paragraph explaining why they agree or disagree with the Court’s ruling.

### Government online

All print resources are available on the Teacher’s Resource Library CD-ROM and online at [PearsonSuccessNet.com](http://PearsonSuccessNet.com).

## Establishment Clause Cases

# How Did the Court Rule?



### Seasonal Displays

A Christmas tree sparkles in front of the California State Capitol. The Court has ruled that “government may celebrate Christmas in some manner and form, but not in a way that endorses Christian doctrine.”



### Chaplains

A chaplain offers the opening prayer in both houses of Congress and most State legislatures (shown here). The Court has ruled that this practice, unlike organized prayers in public schools, is constitutionally permissible.

**Checkpoint**  
How do each of the situations described here and in the photos above exemplify the Establishment Clause?

county’s seasonal display “endorsed Christian doctrine,” and so violated the 1st and 14th amendments. The county courthouse had a large display celebrating the birth of Jesus and a banner proclaiming “Glory to God in the Highest.”

At the same time, the Court upheld another holiday display in *Pittsburgh v. ACLU*. The city’s display consisted of a Christmas tree, an 18-foot menorah, and a sign declaring the city’s dedication to freedom.

**Chaplains** Daily sessions of both houses of Congress and most of the State legislatures begin with prayer. In Congress, and in many States, chaplains paid with public funds offer the opening prayer.

The Supreme Court has ruled that this practice, unlike prayers in the public schools, is constitutionally permissible. The ruling was made in a case involving Nebraska’s one-house legislature, *Marsh v. Chambers*, 1983.

The Court rested its distinction between school prayers and legislative prayers on two points. First, prayers have been offered in the nation’s legislative bodies “from colonial times through the founding of the Republic and ever since.” Second, legislators, unlike

schoolchildren, are not “susceptible to ‘religious indoctrination,’ or peer pressure.”

**The Ten Commandments** Public displays of the Ten Commandments have ignited controversy in several places in recent years. The High Court decided its first case on the matter, *Stone v. Graham*, in 1980. It ruled on two other similar cases in 2005.

In *Van Orden v. Perry*, the Court held that the Ten Commandments monument located on the grounds of the Texas State Capitol in Austin does not violate the 1st and 14th amendments. The Court found that the monument (1) was erected in 1961 as part of a private group’s campaign against juvenile delinquency, (2) is set among 37 other historical and cultural markers, and (3) had gone unchallenged for some 40 years. In short, the Court found the monument’s overall message to be secular rather than religious and therefore acceptable.

In *McCreary County v. ACLU of Kentucky*, a differently divided 5–4 majority ruled that the display of the Ten Commandments in Kentucky county courthouses was unacceptable. They were, said the Court, an impermissible endorsement of religion by government.

**endorsement**  
n. approval or backing of

## Supreme Court Notes

**LIMITS ON FREE EXERCISE** In *Oregon v. Smith*, 1990, the Court upheld Oregon’s denial of unemployment benefits to a man who had been fired by a private drug counseling group because he had smoked peyote in violation of the State’s drug laws—even though the man had done so as part of a ceremony conducted by his Native American Church. However, Congress reacted to that decision by passing the Religious Freedom Restoration Act of 1993. In effect, that law permits the use of peyote, and other controlled substances, when that use occurs as part of a legitimate religious ceremony. More recently, the High Court has limited free exercise at the college level. It said that a State that provides financial aid to students who attend its public colleges and universities does not have to make that help available to students who are studying to become ministers (*Locke v. Davey*, 2004).

## Answers

**Checkpoint** Seasonal displays: Christmas trees and other secular decorations do not violate the Establishment Clause. Chaplains: Legislative sessions opening with prayer are constitutional, because legislators are not “susceptible to religious indoctrination or peer pressure.” The Ten Commandments: Rulings vary on whether the original display was set among other historical and cultural markers.



## The Ten Commandments

A tablet of the Ten Commandments is removed from a public building. The Court has ruled differently depending on whether the display is designed to promote religion.

Framed copies of the Commandments were first posted in county courthouses in 1999. Nonreligious documents, including the Bill of Rights, were added to the displays some years later, but only after the original displays' content had been challenged. The Supreme Court found that the original displays had a clear religious purpose. The later additions were merely "a sham," an attempt to mask that unconstitutional religious purpose.

## The Free Exercise Clause

The second part of the constitutional guarantee of religious freedom is set out in the 1st Amendment's Free Exercise Clause, which guarantees to each person the right to believe whatever he or she chooses to believe in matters of religion. No law and no other action by any government can violate that absolute constitutional right. It is protected by both the 1st and the 14th amendments.

No person has an absolute right to act as he or she chooses, however. The Free Exercise Clause does *not* give anyone the right to violate criminal laws, offend public morals, or threaten community safety.

The Supreme Court laid down the basic shape of the Free Exercise Clause in the first case it heard on the issue, *Reynolds v. United States*, 1879. Reynolds, a Mormon, had two wives. That practice, polygamy, was allowed by his church but prohibited by federal law in any territory.

Reynolds was convicted under the law. On appeal, he argued that the law violated his right to the free exercise of his religious beliefs. The Supreme Court disagreed. It held that the 1st Amendment does not forbid Congress the power to punish those actions that are "violations of social duties or subversive of good order."

**Limits on Free Exercise** Over the years, the Court has approved many regulations of human conduct in the face of free exercise challenges. For example, it has upheld laws that require the vaccination of schoolchildren, *Jacobson v. Massachusetts*, 1905; laws that forbid the use of poisonous snakes in religious rites, *Bunn v. North Carolina*, 1949; and laws that require certain businesses to be closed on Sundays ("blue laws"), *McGowan v. Maryland*, 1961.

A State can require religious groups to have a permit to hold a parade on public streets, *Cox v. New Hampshire*, 1941; and organizations that enlist children to sell religious literature must obey child labor laws, *Prince v. Massachusetts*, 1944. The Federal Government can draft those who have religious objections to military service, *Welsh v. United States*, 1970.

The Court has also held that the Air Force can deny an Orthodox Jew the right to wear his yarmulke (skull cap) while on active duty, *Goldman v. Weinberger*, 1986. The U.S. Forest Service can allow private companies to build roads and cut timber in national forests that Native Americans have traditionally used for religious purposes, *Lyng v. Northwest Indian Cemetery Protective Association*, 1988.

**Free Exercise Upheld** Over time, however, the Court has found many actions by governments to be incompatible with the free exercise guarantee. The Court did so for the first time in one of the landmark Due Process cases cited earlier in this chapter,

**Checkpoint**  
What acts are not protected by the Free Exercise Clause?

## REVISITING THE ESSENTIAL QUESTION

Write the chapter's Essential Question on the board: **How can the judiciary balance individual rights with the common good?** Ask students to write a paragraph applying this question to religious rights. (*To protect people's right to practice their religion, the judiciary must uphold laws that ensure each individual is free to follow his or her own religious beliefs or to have no religious beliefs at all. To protect the common good, the judiciary must uphold laws that ensure that individuals practice their religions in ways that do not violate the rights of others in the community.*)

**L2 ELL Differentiate** Discuss the meaning of the term *common good*.

## EXTEND THE LESSON

Display Transparency 19D, and discuss the three standards of the *Lemon* test. Then have students work in pairs to write a brief that applies the three-part *Lemon* test to one of the cases discussed in the text. Tell students to use the Internet and other resources to learn more about the case they have chosen. Explain that student papers should include these parts of a typical brief for appealing a case to a higher court:

- 1. Statement of Facts:** a short summary of the facts in the case;
- 2. Statement of Issues:** the main issues or questions in the case;
- 3. Arguments:** a list of reasons why the actions in this case do or do not pass the *Lemon* test, and a list of three related cases that provide precedents for arguments;
- 4. Conclusion:** one or two sentences that ask the Court to affirm or overturn a lower court ruling or to issue a ruling prohibiting an existing program from continuing.

**L2 Differentiate** Have students make a T-chart listing arguments for and against providing public aid to parochial schools.

## Assess and Remediate

**L3** Have students work in groups to rewrite each head and subhead in this section of the textbook as a newspaper headline—for example, "Religious Liberty Protected by 1st Amendment."

## Answers

**Checkpoint** acts that violate criminal laws, offend public morals, or threaten community safety

## Supreme Court Notes

**FREE EXERCISE UPHELD** A State cannot forbid ministers to hold elected public offices (*McDaniel v. Paty*, 1978). Nor can a State deny unemployment compensation benefits to a worker who quit a job because it involved a conflict with his or her religious beliefs (*Sherbert v. Verner*, 1963; *Thomas v. Indiana*, 1981; *Hobbie v. Florida*, 1987; *Frazee v. Illinois*, 1989).

**✓ Checkpoint**  
How did the decision in *Barnette* differ from the decision in *Gobitis*?

**L3** Collect the Core Worksheets and assess the students' class participation using the Rubric for Assessing Performance of an Entire Group (Unit 5 All-in-One, p. 241).

**L3** Assign the Section 2 Assessment questions.

**L3** Section Quiz A (Unit 5 All-in-One, p. 88)

**L2** Section Quiz B (Unit 5 All-in-One, p. 89)

Have students complete the review activities in the digital lesson presentation and continue their work in the **Essential Questions Journal**.

## REMEDIATION

If Your Students Have Trouble With	Strategies For Remediation
Understanding the Establishment Clause and the "wall of separation" (Questions 1, 2, 3, 5)	Have students write ten Establishment Clause cases on ten index cards. On another ten cards, have them write what these cases uphold or prohibit. Students should turn the cards facedown and mix them up in four rows of five cards each. Then have them play the Memory game, matching the cases with their rulings.
Understanding the Free Exercise Clause (Questions 1, 4, 6)	Have groups of five students write a news-cast summarizing five Free Exercise Clause cases. Then, in character as reporters or anchors, students should answer the questions <i>Who? What? When?</i> and <i>Where?</i> for each case in a 2- to 3-minute news story. As a conclusion, students should explain why these cases are considered Free Exercise cases.

## Answers

**Checkpoint** The *Gobitis* decision upheld a compulsory flag-salute law; the *Barnette* decision struck down a similar law.

## Assessment Answers

- The 1st Amendment prohibits government from establishing or aiding religion, and guarantees to each person the free exercise of religion.
- (a) a statement in the 1st Amendment forbidding Congress from making any law that establishes a religion (b) It protects religion from interference by government.
- (a) The *Lemon* test evaluates laws that provide aid to parochial schools. (b) *Lemon v. Kurtzman*, 1971

- that each person has the right to believe whatever he or she wants to in matters of religion without interference from government
- Possible answer: The exact nature of separation cannot be pinned down, which leads to reinterpretation. In addition, religion is a sensitive topic for many Americans.
- Students should recognize that in these two cases, the Supreme Court struck down laws requiring prayer in schools. Students should provide reasons for their opinions.

*Cantwell v. Connecticut*, 1940. There, the Court struck down a law requiring a person to obtain a license before soliciting money for a religious cause. The Court reaffirmed that holding in an Ohio case, *Watchtower Bible and Tract Society v. Village of Stratton*, 2002.

The Supreme Court has decided a number of other cases in a similar way. Thus, Amish children cannot be forced to attend school beyond the 8th grade, because that sect's centuries-old "self-sufficient agrarian lifestyle is essential to their religious faith and is threatened by the exposure of their children to modern educational influences," *Wisconsin v. Yoder*, 1972. On the other hand, the Amish, who provide support for their own people, must pay Social Security taxes, as all other employers do, *United States v. Lee*, 1982.

The Court has often held that "only those beliefs rooted in religion are protected by the Free Exercise Clause," *Sherbert v. Verner*, 1963. So what beliefs are "rooted in religion"? Clearly, religions that seem strange to most Americans are as entitled to constitutional protection as are the more traditional ones. For example, in *Lukumi Babalu Aye v. City of Hialeah*, 1993, the High Court struck down a Florida city's ordinance that outlawed animal sacrifices as part of any church services.

The Jehovah's Witnesses have carried several important religious freedom cases to the High Court. Perhaps the stormiest controversy resulting from these cases arose

out of the Witnesses' refusal to salute the flag because they see such conduct as a violation of the Bible's commandment against idolatry. In *Minersville School District v. Gobitis*, 1940, the Court upheld a Pennsylvania school board regulation requiring students to salute the flag each morning. Walter Gobitis instructed his children not to do so, and the school expelled them. He went to court, basing his case on the constitutional guarantee.

Gobitis finally lost in the Supreme Court, which declared that the board's rule was not an infringement of religious liberty. Rather, it found the rule a lawful attempt to promote patriotism and national unity.

Three years later, in the midst of World War II, the Court reversed that decision. In *West Virginia Board of Education v. Barnette*, 1943, it held a compulsory flag-salute law unconstitutional. Justice Robert H. Jackson's words below, as well as in Section 1, are from the Court's powerful opinion in that case.

### PRIMARY SOURCE

**To believe that patriotism will not flourish if patriotic ceremonies are voluntary and spontaneous, instead of a compulsory [forced] routine, is to make an unflattering estimate of the appeal of our institutions to free minds.**

—Justice Robert H. Jackson

### Essential Questions Journal

To continue to build a response to the chapter Essential Question, go to your Essential Questions Journal.

## SECTION 2 ASSESSMENT

- Guiding Question** Use your completed graphic organizer to answer this question: How does the 1st Amendment protect the freedom of religion?

### Key Terms and Comprehension

- (a) What is the **Establishment Clause**? (b) How does it provide for a separation of church and state?
- (a) What does the *Lemon* test evaluate? (b) How did the test originate?

- What does the **Free Exercise Clause** guarantee?

### Critical Thinking

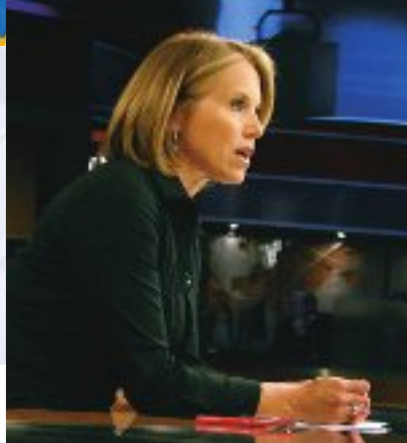
- Draw Inferences** Why do you think the doctrine of separation between church and state is a continuing issue?
- Identify Central Issues** Some critics feel that Supreme Court decisions such as *Engel v. Vitale* and *Murray v. Curlett* limit people's free exercise of religion. Do you agree or disagree?

### Quick Write

**Persuasive Essay: Gather Evidence** Based on the topic you chose in Section 1, gather evidence to support your position. In addition, gather information on the other side of the issue. Make a Pro and Con chart to list arguments on both sides.

## SECTION 3

# Freedom of Speech and Press



### Guiding Question

**What are the limits on the guarantees of free speech and free press?** Use a table like the one below to take notes on how freedom of expression is limited in the various types of speech and media.

Type of Expression	Limitation
Seditious speech	

### Political Dictionary

- libel
- slander
- sedition
- seditious speech
- prior restraint
- injunction
- shield law
- symbolic speech
- picketing

### Objectives

1. Explain the importance of the two basic purposes served by the guarantees of free expression.
2. Summarize how the Supreme Court has limited seditious speech and obscenity.
3. Examine the issues of prior restraint and press confidentiality, and describe the limits the Court has placed on the media.
4. Define symbolic and commercial speech; describe the limits of their exercise.

**Image Above:** Network television news anchor Katie Couric

Think about this children's verse: "Sticks and stones may break my bones, but names will never hurt me." This rhyme says, in effect, that acts and words are separate things, and that acts can harm but words cannot.

Is that really true? Certainly not. You know that words can and do have consequences, sometimes powerful consequences. Words, spoken or written, can make you happy, sad, bored, informed, or entertained. They can also expose you to danger, deny you a job, or lead to other serious events.

### Free Expression

The guarantees of free speech and press in the 1st and 14th amendments serve two fundamentally important purposes: (1) to guarantee to *each* person a right of free expression, in the spoken and the written word, and by all other means of communication; and (2) to guarantee to *all* persons a wide-ranging discussion of public affairs. That is, the 1st and 14th amendments give people the right to have their say *and* the right to hear what others have to say.

The American system of government depends on the ability of the people to make sound, reasoned judgments on matters of public concern. People can best make such judgments when they know all the facts and can hear all the available interpretations of those facts.

Keep two other points in mind: First, the guarantees of free speech and press are intended to protect the expression of unpopular views. The opinions of the majority need little or no constitutional protection. These guarantees ensure, as Justice Holmes put it, "freedom for the thought that we hate," (dissenting opinion, *Schwimmer v. United States*, 1929). Second, some forms of expression are not protected by the Constitution. No person has an unbridled right of free speech or free press. Reasonable restrictions can be placed on those rights. Think about Justice Holmes's comment about restricting the right to falsely shout "Fire!" in a crowded theater. Or consider this restriction: No person has the right to libel or slander another. **Libel** is the false and malicious use of printed words; **slander** is the false and malicious use of spoken words.<sup>5</sup>

<sup>5</sup> Both libel and slander involve the use of words maliciously—with vicious purpose; to injure a person's character or reputation; or to expose that person to public contempt, ridicule, or hatred.

### GUIDING QUESTION

What are the limits on the guarantees of free speech and free press?

Type of Expression	Limitation
Seditious speech	crime if words trigger clear and present danger of criminal acts or advocate government overthrow
Obscenity	may not disseminate materials average person would judge as appealing to prurient interest; depicts sexual conduct dealt with in anti-obscenity law; and lacks literary, artistic, political, scientific value
Media	prior restraint only in war, obscenity, or incitement to violence; reporters must testify unless protected by shield law
Movies	rating system
Radio, TV	licensing; no indecent language
Internet	public libraries must filter access to pornographic sites
Symbolic speech	illegal or violent picketing; dissent that government has constitutional power to restrict, restriction is reasonable, and intent is not to squelch dissent
Commercial speech	advertising may not be false or misleading or advertise illegal goods

## Get Started

### LESSON GOALS

Students will . . .

- identify the limits and protections of freedom of speech by charting restrictions on different forms of expression, analyzing prior restraint, summarizing court rulings on student speech, and interpreting political cartoons.
- identify the limits and protections of freedom of the press by researching media cases.

## SKILLS DEVELOPMENT

### GIVE A MULTIMEDIA PRESENTATION

Before students dramatize freedom of press cases in this lesson, you may want to review tips on giving a multimedia presentation in the Skills Handbook, p. S21.

## Focus on the Basics

**FACTS:** • The 1st and 14th Amendment guarantees of free speech and press protect a person's right to speak freely and to hear what others have to say. • The Supreme Court has limited seditious speech and obscenity but seldom allows prior restraint. • Radio and television are subject to more regulation because they use public airwaves. • Symbolic speech and commercial speech are protected by the Constitution but can be limited under certain circumstances.

**CONCEPTS:** individual rights and responsibilities, limited government

**ENDURING UNDERSTANDINGS:** • The guarantees of free speech and press are intended to protect the expression of unpopular views. • The government cannot place prior restraint on spoken or written words.

## BEFORE CLASS

Assign the section, the graphic organizer in the text, and the Reading Comprehension Worksheet (Unit 5 All-in-One, p. 90) before class.

**L2 Differentiate** Reading Comprehension Worksheet (Unit 5 All-in-One, p. 91)

## BELLRINGER

Write the following on the board, and have students answer in their notebooks:

**“One man’s vulgarity is another’s lyric.”**

—Supreme Court Justice John M. Harlan

1. What did Harlan mean by this remark?
2. How does his comment capture the fundamental issue of freedom of speech?

## Teach

To present this topic using online resources, use the lesson presentations at **PearsonSuccessNet.com**.

### DISCUSS BELLRINGER QUESTIONS

Students should infer from the quote that defining *vulgarity* (obscenity) varies according to opinion. The fundamental issue is protecting the minority voice.



This World War II poster warned of the dangers of careless talk and espionage. **What was the Espionage Act?** ▶

**run afoul of**  
*adv.* to come into conflict with, become entangled with

**insubordination**  
*n.* rebellion or disobedience

**scurrilous**  
*adj.* insulting or scandalous

Similarly, the law prohibits the use of obscene words, the printing and distributing of obscene materials, and false advertising. It also condemns the use of words to prompt others to commit a crime—for example, to riot or to attempt to overthrow the government by force.

## Seditious Speech

**Sedition** is the crime of attempting to overthrow the government by force or to disrupt its lawful activities by violent acts.<sup>6</sup> **Seditious speech** is the advocating, or urging, of such conduct. It is not protected by the 1st Amendment.

**The Alien and Sedition Acts** Congress first acted to curb opposition to government in the Alien and Sedition Acts of 1798. Those acts gave the President the power to deport

<sup>6</sup> Espionage, sabotage, and treason are often confused with sedition. Espionage is spying for a foreign power. Sabotage involves an act of destruction intended to hinder a nation’s war or defense effort. Treason can be committed only in times of war and can consist only of levying war against the United States or giving aid and comfort to its enemies.

undesirable aliens and made “any false, scandalous, and malicious” criticism of the government a crime. The laws were meant to stifle the opponents of President John Adams.

The Alien and Sedition Acts were undoubtedly unconstitutional, but that point was never tested in the courts. Some 25 persons were arrested for violating them; of those, 10 were convicted. The Alien and Sedition Acts expired before Thomas Jefferson became President in 1801, and he soon pardoned those who had **run afoul** of them.

**Seditious Acts in Wartime** Congress passed another sedition law during World War I, as part of the Espionage Act of 1917. That law made it a crime to encourage disloyalty, interfere with the draft, obstruct recruiting, incite **insubordination** in the armed forces, or hinder the sale of government bonds. The act also made it a crime to “willfully utter, print, write, or publish any disloyal, profane, **scurrilous**, or abusive language about the form of government of the United States.”

More than 1,000 persons were convicted for violating the Espionage Act. The constitutionality of the law was upheld several times, most importantly in *Schenck v. United States*, 1919. Charles Schenck, an officer of the Socialist Party, had been found guilty of obstructing the war effort. He had sent fiery leaflets to some 15,000 draftees, urging them to resist the call to military service.

The Supreme Court upheld Schenck’s conviction. The case is particularly noteworthy because the Court’s opinion, written by Justice Oliver Wendell Holmes, established the “clear and present danger” rule:

### PRIMARY SOURCE

**The question in every case is whether the words used are used in such circumstances and are of such nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent.**

—Justice Oliver Wendell Holmes

In short, the rule says that words can be outlawed. Those who utter them can be

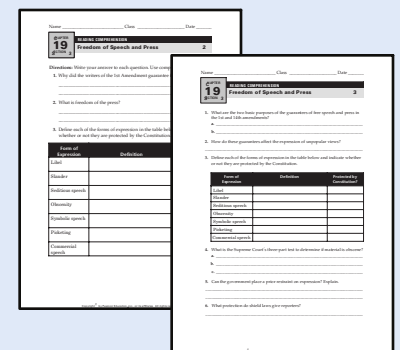
## Differentiated Resources

The following resources are located in the All-in-One, Unit 5, Chapter 19, Section 3:

- L3** Reading Comprehension Worksheet (p. 90)
- L2** Reading Comprehension Worksheet (p. 91)
- L3** Core Worksheet (p. 92)
- L3 L4** Extend Worksheet (p. 95)
- L2** Extend Activity (p. 96)
- L3** Quiz A (p. 97)
- L2** Quiz B (p. 98)

## Answers

**Caption** a 1917 law that made it a crime to encourage disloyalty, interfere with the draft, obstruct recruiting, incite insubordination in the armed forces, hinder the sale of government bonds, or utter or print disloyal or abusive language about the U.S. government





punished if there is an immediate danger that criminal acts will follow.

**The Smith Act of 1940** Congress passed the Smith Act in 1940, just over a year before the United States entered World War II. That law is still on the books. It makes it a crime for anyone to advocate the violent overthrow of the government of the United States, to distribute any material that teaches or advises violent overthrow, or to knowingly belong to any group with such an aim.

The Court upheld the Smith Act in *Dennis v. United States*, 1951. There, 11 Communist Party leaders had been convicted of advocating the overthrow of the Federal Government. On appeal, the Communist leaders argued that the Smith Act violated the 1st Amendment's guarantees of freedom of speech and press. They also claimed that no actions of theirs constituted a clear and present danger to this country. The Court disagreed:

### PRIMARY SOURCE

**Certainly an attempt to overthrow the government by force, even though doomed from the outset because of inadequate numbers or power of the revolutionists, is a sufficient evil for Congress to prevent. . . .**

—Chief Justice Fred M. Vinson

Later, however, the Supreme Court modified the *Dennis* ruling in several cases. In *Yates v. United States*, 1957, for example, the Court overturned the Smith Act convictions of several Communist Party leaders. It held that merely to urge someone to believe something, in contrast to urging that person to do something, cannot be made illegal. In *Yates* and other Smith Act cases, the Court upheld the constitutionality of the law, but interpreted its provisions so that enforcing the Smith Act became practically impossible.

## Obscenity

Both federal and State laws have made the dissemination of obscene material—material that is objectionable or offensive—illegal, and the courts have generally agreed that

obscenity is not protected by the 1st and 14th amendments. But what is the standard for *obscenity*? Lawmakers and judges have wrestled with that question for decades. Justice Potter Stewart once famously said that, although he could not define the term, “I know it when I see it.” *Jacobellis v. Ohio*, 1964.

A large part of the problem in defining *obscenity* is that moral standards vary from time to time, place to place, and person to person. Much of what appears on television today would, in fact, have been banned as obscenity only a few decades ago.

In 1872, Congress passed the first in a series of laws that prevent the mailing of obscene matter. The current postal law, upheld in *Roth v. United States*, 1957, excludes “obscene, lewd, lascivious, or filthy” material from the mail. The Court found the law a proper exercise of the postal power (Article I, Section 8, Clause 7) and so not prohibited by the 1st Amendment. *Roth* marked the Court's first attempt to define obscenity.

Today, the leading case is *Miller v. California*, 1973. There the Court laid down a three-part test to determine what material is obscene and what is not. A book, film, recording, or other piece of material is legally obscene if (1) “the average person applying contemporary [local] community standards” finds that the work, taken as a whole, “appeals to the prurient interest”—that is, tends to excite lust; (2) “the work depicts or describes, in a patently offensive way,” a form of sexual conduct specifically dealt with in an anti-obscenity law; and (3) “the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.”

In recent years, the Court has heard only a handful of cases involving questions of obscenity. As you will see shortly, those cases have all involved the Internet.

## Prior Restraint

The Constitution allows government to punish some utterances after they are made—for example, in cases involving libel or slander, or obscenity. With almost no exceptions, however, government cannot curb ideas *before* they are expressed. That is, except in the most extreme situations, government cannot place

**Checkpoint**  
What are the provisions of the Smith Act?

## CHART RESTRICTIONS ON SPEECH

Ask: **What forms of speech are not protected by the 1st Amendment?** (*libel, slander, seditious speech, obscene words, and some symbolic and commercial speech*) On the board, draw a chart like the one below. Have students complete it by defining the types of speech and their restrictions.

Type of Speech (definition)	Restrictions
seditious speech (advocating the overthrow of government by force or the disruption of its lawful activities by violent acts)	<i>Schenck v. United States</i> : seditious words can be outlawed if they present a “clear and present danger” of criminal acts; Smith Act: made it a crime to advocate the overthrow of the U.S. government, to distribute material that teaches or advises violent overthrow, or to knowingly belong to any group with this aim
obscenity (objectionable or offensive words or materials)	Mailing of obscene materials prohibited; <i>Miller v. California</i> : laid down three-part test to determine what is and is not obscenity; public libraries that receive federal aid must block computer access to pornographic sites; FCC bans indecent language on radio and network TV
symbolic speech (expression by conduct)	Picketing “set in background of violence” is prohibited; <i>U.S. v. O'Brien</i> : cannot burn draft cards; <i>Virginia v. Black</i> : cannot burn a cross as an act of intimidation
commercial speech (business purposes, advertising)	False and misleading advertising is prohibited, as is advertising for illegal goods and services; tobacco ads on radio and TV are prohibited

**utterance**  
n. remark

**dissemination**  
n. distribution

## Background

**SEDITIONOUS SPEECH** The Alien and Sedition Acts of 1798, the Sedition Act of 1918, and the Smith Act all led to heated debate on the constitutional limits of political dissent. Congress passed the Alien and Sedition Acts in 1798 at a time when Americans feared that war was about to break out between France and the United States. Most Federalists supported the act, arguing that criticism of government would endanger the nation's safety. Jeffersonians, who largely opposed the acts, believed they exceeded the powers given by the Constitution to the National Government. The Sedition Act of 1918 was passed during World War I, when there was small but vocal opposition to U.S. participation in the war. The Smith Act was passed soon after World War II began in Europe. Federal prosecutors first applied this law to members of the Socialist Workers Party and then to Communist Party members.

## Answers

**Checkpoint** illegal to advocate violent overthrow of government, distribute materials teaching or advising violent overthrow, or knowingly belong to a group with such an aim

## ANALYZE PRIOR RESTRAINT

Read aloud this quote from Thomas Jefferson:

“We have nothing to fear from the demoralizing reasonings of some, if others are left free to demonstrate their errors and especially when the law stands ready to punish the first criminal act produced by the false reasonings; these are safer corrections than the conscience of the judge.” (This quote also appears in the Document-Based Assessment at the end of Chapter 19.)

Then ask students to infer answers to the following questions: **Does Jefferson believe in prior restraint of unpopular views or words that incite violence?** (*No; he says there is nothing to fear from “demoralizing reasonings.”*) **What two actions does Jefferson believe will counteract unpopular opinions?** (*others who are also free to voice their opinions, and laws that will punish criminal acts that arise from the speech*) **Do you agree with Jefferson’s quote? Why or why not? What if the “demoralizing reasoning” incites people to commit acts of terrorism? Should we wait for the first criminal act to occur, or should the speaker be censored? Explain.**

**L2 ELL Differentiate** Before reading the passage, review the meaning of *prior restraint* by asking students to predict what it means based on the meaning of each word.

**L2 LPR Differentiate** Have students review the text material under “Prior Restraint” and point out the exceptions to prior restraint on publications. (*such extreme situations as wartime or when a publication is obscene or incites its readers to acts of violence*) **What prior restraints has the Court approved?** (*cases regarding political literature on military bases, publications about the CIA, certain publications in prisons, and student speech*) **Do you think Jefferson would agree with these examples of prior restraint? Why or why not?**

**L4 Differentiate** To have students realize the importance of no prior restraint in a democracy, ask them to research control of the press in Nazi Germany or the Soviet Union. Have them compare government censorship and propaganda with the ability of Americans to speak openly about government actions. Ask students to use this information to write a poem or rap comparing speech in a totalitarian versus democratic society.

## Answers

**Supreme Court at a Glance** The ruling in the case made it illegal for public officials to stop the publication of outrageous or insulting information.



### SUPREME COURT at a glance

- ▶ **Case:** *Near v. Minnesota*, 1931
- ▶ **Constitutional Principle:** Limited Government
- ▶ **Decision:** Local public officials relied on a State law to prevent a newspaper from printing scandalous information about them. The Supreme Court struck down the State law. The Court ruled that freedom of press does not allow prior restraint on publications.

Above are headlines from the *Saturday Press*, the newspaper at issue in *Near v. Minnesota*. **What is the significance of the ruling in this case?**

any **prior restraint** on written or spoken expression.

The concept of prior restraint is basic to the meaning of the 1st and 14th amendment protections of freedom of expression. *Near v. Minnesota*, 1931, is a leading case in point. There, the Supreme Court struck down a State law that allowed local public officials to prevent the publication of any “malicious, scandalous, and defamatory” periodical. Acting under that law, a local court had issued an order forbidding the publication of the *Saturday Press*. That Minneapolis newspaper had published a series of articles charging public corruption and attacking local officials as “grafters” and “Jewish gangsters.”

The Court held that the guarantee of a free press does not allow a prior restraint on publication—*except* in such extreme situations as wartime, or when a publication is obscene or incites its readers to acts of violence. Even “miscreant purveyors of scandal”

and anti-Semitism are entitled to constitutional protection, said the Court.

The Constitution does not forbid any and all forms of prior censorship, but “any prior restraint on expression comes to this Court with a ‘heavy presumption’ against its constitutional validity,” *Nebraska Press Association v. Stuart*, 1976.<sup>7</sup> The Court has used that general rule several times—for example, in the famous Pentagon Papers Case, *New York Times v. United States*, 1971.

In that case, several newspapers had obtained copies of a set of classified documents, widely known as the Pentagon Papers. Officially titled *History of U.S. Decision-Making Process on Viet Nam Policy*, those documents had been stolen from the Defense Department and then leaked to the press.

The Nixon administration sought an **injunction** (a court order) to bar their publication, arguing that national security was at stake and the documents (government property) had been stolen. The newspaper argued the “public right to know,” and it insisted that the 1st Amendment protected its right to publish the papers. The Court found that the government had not shown that printing the documents would endanger the nation’s security. The government, in effect, had not overcome the “heavy presumption” against prior censorship.

The few prior restraints the Supreme Court has approved include:

- regulations prohibiting the distribution of political literature on military bases without the approval of military authorities, *Greer v. Spock*, 1976;
- a Central Intelligence Agency (CIA) rule that agents must never publish anything about the agency without the CIA’s express permission, *Snepp v. United States*, 1980;
- a federal prison rule that allows officials to prevent an inmate from receiving publications considered “detrimental to the security, good order, or discipline” of the prison, *Thornburgh v. Abbott*, 1989.

<sup>7</sup> There, a State judge had ordered the media not to report certain details of a murder trial. The Court found the judge’s gag order to be unconstitutional.

## Supreme Court Notes

**FIGHTING WORDS** “Fighting words” are not protected by the 1st Amendment. In *Chaplinsky v. New Hampshire*, 1942, the Supreme Court held: “There are certain well defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem. These include the lewd and obscene, the profane, the libelous, and the insulting or ‘fighting’ words—those which, by their very utterance, inflict injury or tend to incite an immediate breach of the peace. . . . Resort to epithets or personal abuse is not in any proper sense communication of information or opinion safeguarded by the Constitution, and its punishment as a criminal act would raise no question under that instrument.”

The Court has also said that public school officials have a broad power to censor school newspapers, plays, and other “school-sponsored expressive activities.” It did so in a case from Missouri, *Hazelwood School District v. Kuhlmeier*, 1988. There, the principal of a St. Louis high school had prohibited the publication of a series of articles written by student reporters for their school’s paper. Those articles explored the impact that various events, among them pregnancy and parents’ divorces, can have on teenagers. Three students sued, but they finally lost their case when the High Court held that school administrators can exercise “editorial control over the style and content of student speech in school-sponsored expressive activities so long as their actions are reasonably related to legitimate pedagogical concerns.”

## The Media

The 1st Amendment stands as a monument to the central importance of the media in a free society. That raises this question: To what extent can the media—whether print, radio, television, or the Internet—be regulated by government?

**Confidentiality** Can news reporters be forced to testify before a grand jury in court or before a legislative committee? Can those government bodies require journalists to name their sources and reveal other confidential information? Many reporters and news organizations insist that they must have the right to refuse to testify in order to protect their sources. They argue that without this right they cannot assure confidentiality, and therefore many sources will not reveal important, sensitive information.

Both State and federal courts have generally rejected the news media argument. In recent years, several reporters have refused to obey court orders directing them to give information, and they have gone to jail, thus testifying to the importance of these issues.

In the leading case, *Branzburg v. Hayes*, 1972, the Supreme Court held that reporters, “like other citizens, [must] respond to relevant questions put to them in the course of a valid grand jury investigation or criminal

trial.” If the media are to receive any special exemptions, said the Court, they must come from Congress and the State legislatures.

To date, Congress has not acted on the Court’s suggestion, but some 30 States have passed so-called **shield laws**. These laws give reporters some protection against having to disclose their sources or reveal other confidential information in legal proceedings in those States.

**Motion Pictures** The Supreme Court took its first look at motion pictures early in the history of the movie industry. In 1915, in *Mutual Film Corporation v. Ohio*, the Court upheld a State law that barred the showing of any film that was not of a “moral, educational, or amusing and harmless character.” The Court declared that “the exhibition of moving pictures is a business, pure and simple,” and “not . . . part of the press of the country.” With that decision, nearly every State and thousands of communities set up movie review (really movie censorship) programs.

The Court reversed itself in 1952, however. In *Burstyn v. Wilson*, a New York censorship case, it found that “liberty of expression by means of motion pictures is guaranteed by the 1st and 14th amendments.” Still, the Court has never held that the Constitution grants the film industry the same level of protection against prior restraint that it gives to newspapers. In fact, it has upheld a requirement that films be submitted to official censors so long as those censors are required to act reasonably and their decisions are subject to speedy court review, *Freedman v. Maryland*, 1965.

Very few of the once-common movie review boards still exist. Most people now rely on the film industry’s own rating system and on the comments of movie critics to guide their viewing choices.

**Radio and Television** Both radio and television broadcasting are subject to extensive federal regulation. Most of this regulation is based on the often-amended Federal Communications Act of 1934, which is administered by the Federal Communications Commission (FCC). As the Supreme Court noted in

**Checkpoint**  
How has the Supreme Court ruled on student speech?

**pedagogical**  
adj./ educational,  
academic, instructional

## EXPLAIN RESTRICTIONS ON SCHOOL SPEECH

The Supreme Court and lower courts have ruled that student rights are limited by the “special characteristics of the school environment.” Ask: **What might these “special characteristics” be?** (*atmosphere in the school; impact of students’ actions on normal school routine; effects of student speech on classroom instruction and other activities in the school building; impact of students’ actions on the rights of others*) Explain that school officials must be able to show that student conduct or opinions have disrupted class work, led to disorder in the school, or restricted the rights of other students. Ask: **Do these special characteristics support the chapter Essential Question: How can the judiciary balance individual rights with the common good?**

## DISTRIBUTE CORE WORKSHEET

Distribute the Chapter 19 Section 3 Core Worksheet (Unit 5 All-in-One, p. 92), which analyzes cases related to freedom of speech in schools. Organize students into six groups, and assign each group a different case. Groups can use the Jigsaw strategy (p. T27) to analyze their cases and share their information and opinions with the class.

Name \_\_\_\_\_ Class \_\_\_\_\_ Date \_\_\_\_\_

**CHAPTER 19 CORE WORKSHEET**  
**SECTION 3 Freedom of Speech and Press 3**

These cases deal with freedom of speech in schools. Read each case carefully, and then answer the questions.

**Case A** At a school assembly, a student made a nominating speech for another student. In his speech, the student used obscene and sexually explicit language. The school suspended the student for two days for using such language. The student claimed that his 1st Amendment rights had been violated.

**Decision** *Bethel School District No. 403 v. Fraser*, 1988. The Supreme Court ruled that the student’s language was offensive, and the punishment did not violate his 1st Amendment rights. The Court pointed out that the vulgar language the student used was not the same as the political protest speech the Court had protected in *Tinker v. Des Moines*. The language used by the student at the assembly was not in keeping with the “fundamental values of public school education.”

- How did the Court rule on the case?
- What limits did the decision put on the student’s right to freedom of speech?
- Do you agree or disagree with the decision in this case? Why?

**Case B** A middle school student drew a Confederate flag in his notebook. After school officials learned about the drawing, the student received a short suspension. The school district had a policy clearly stating: “Students shall not at school . . . have in their possession any written material . . . that is racially divisive or creates ill-will or hatred.” The policy prohibited “a depiction of the Confederate flag.”

**Decision** *West v. Derby Unified School District No. 260*, 2000. In a school where hate crimes were increasing, the Tenth Circuit Court ruled that school officials had reason to believe the student’s flag drawing could cause a major disruption at the school or interfere with the rights of others. The judges noted that outside of school, this form of political speech would be protected by the 1st Amendment.

- How did the Court rule on the case?
- What limits did this decision put on the student’s right to freedom of speech?
- Do you agree or disagree with the decision in this case? Why?

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**L1 L2 Differentiate** Choose one of the Core Worksheet cases to read aloud. State the facts in the case, but do not indicate how the courts ruled. Ask the class if they think the ruling will favor the school district or the student, and why.

## Answers

**Checkpoint** School officials may exercise editorial control over style and content of student speech in school-sponsored expressive activities reasonably related to pedagogical concerns.

## Constitutional Principles

**JUDICIAL REVIEW** Although the law protects most people against libel and slander, public officials are less protected. In *New York Times v. Sullivan*, 1964, the Supreme Court held that public officials cannot recover damages for published criticisms even if exaggerated or false, unless the criticism was made “with actual malice.” The Court ruled that debate on public issues is critical to democracy, and that lawsuits discourage future criticism of government officials. Later decisions extended that ruling to other public figures, such as actors and private individuals involved in newsworthy events. Actress Carol Burnett proved malice and won a libel case in 1983 against the *National Enquirer*. However, in *Hustler Magazine v. Falwell*, 1988, the Court affirmed the right to make fun of public figures in political cartoons and satire, noting that both have played a key role in “public and political debate.”

**RECOGNIZE LIMITS AND PROTECTIONS OF THE MEDIA**

Ask students to raise their hands if they think the following statements are TRUE:

- Public officials are allowed to prevent the publication of malicious and defamatory periodicals. (*false*; *Near v. Minnesota*)
- Reporters are protected against having to reveal their sources during testimony. (*false*; *Branzburg v. Hayes*)
- Any radio station that allows a personal attack on a public figure must alert that person about the attack and allow him or her to respond to the attack at no charge. (*true*; *Red Lion Broadcasting Co., Inc. v. FCC*)
- No Internet site may knowingly transmit obscene or indecent speech or images to any person under age 18. (*false*; *Reno v. American Civil Liberties Union*)
- The government has the right to prevent publication of material that it asserts to be harmful to national security. (*false*; *New York Times v. United States*)
- Newspapers may advertise abortion services. (*true*; *Bigelow v. Virginia*)
- Newspapers may not print State liquor prices. (*false*; *44 Liquormart, Inc. v. Rhode Island*)

Ask: **Were you surprised by any of these rulings? With which rulings did you agree? Disagree? Why?**

**DRAMATIZE FREEDOM OF PRESS CASES**

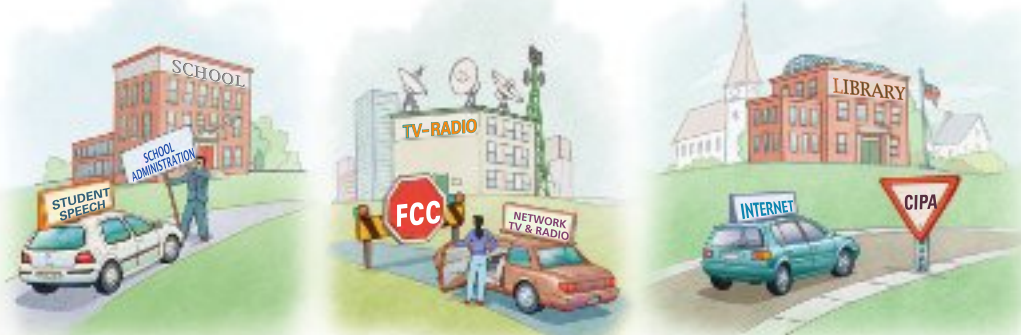
Organize students into five groups: three newspaper groups, one radio and television group, and one Internet group. Assign each group one of the first five Supreme Court cases listed above that pertains to its particular medium. Each group should research details of its case and the majority, concurring, and dissenting opinions of the Court. Then have each group present its information to the rest of the class in the form of its medium; for example, the three groups researching newspaper issues should present their cases in newspaper form. The radio group could present its information in an “on-air” newscast. The Internet group could construct a bulletin board display of its home page and “link” pages that describe the aspects of its case.

**Answers**

**Freedoms of Speech and Press** because they both use public airwaves

**Freedoms of Speech and Press****Rules of the Road**

The 1st Amendment stands as a monument to the central importance of free speech and the media in a free society. Various forms of speech are regulated by government, however. **Why are radio stations and network television subjected to wide-ranging federal regulation?**



**The Supreme Court has ruled** that school administrators can exercise “editorial control over the style and content of student speech in school-sponsored expressive activities. . . .”

**The Federal Communications Act**, administered by the FCC, bans the use of indecent language on the radio and on network television, and may deny violators a renewal of their operating licenses.

**The Children’s Internet Protection Act** (CIPA) requires public libraries that receive federal money to use filters to block their computers’ access to pornographic sites on the Internet.

*FCC v. Pacifi ca Foundation*, 1978: “Of all forms of communication, broadcasting has the most limited 1st Amendment protection.”

The Court has several times upheld this wide-ranging federal regulation as a proper exercise of the commerce power. Unlike newspapers and other print media, radio and television use the public’s property—the public airwaves—to distribute their materials. They have no right to use the limited broadcast frequencies without the public’s permission in the form of a proper license, said the Court in *National Broadcasting Co. v. United States*, 1943.

The Court has regularly rejected the argument that the 1st Amendment prohibits such regulations. Instead, it has said that regulation of this industry implements the constitutional guarantee. In *Red Lion Broadcasting Co. v. FCC*, 1969, the Court held that there is no “unabridgeable 1st Amendment right to broadcast comparable to the right of every

individual to speak, write, or publish.” However, “this is not to say that the 1st Amendment is irrelevant to public broadcasting. . . . It is the right of the viewers and the listeners, not the right of the broadcasters. . . .”

The Federal Communications Act forbids prior censorship—and so the FCC cannot censor the content of programs before they are broadcast. However, the law does permit the FCC to ban the use of indecent language, and the Court has held that it can take violations of that ban into account when a station applies for the renewal of its operating license, *FCC v. Pacifi ca Foundation*, 1978.

In several recent decisions, the Supreme Court has given cable television somewhat broader 1st Amendment freedoms than those enjoyed by traditional network television. *United States v. Playboy Entertainment Group*, 2000, is fairly typical. There, the Court struck down an attempt by Congress to force many cable systems to limit sexually explicit

**Teacher-to-Teacher Network**

**ALTERNATE LESSON PLAN** Have students read the Alien and Sedition Acts, as well as the Smith Act of 1940. Have students debate whether laws like these should be strengthened in times of war and what effects such laws would have on society.

To see this lesson plan, go to



**Audio Tour**

Listen to a guided audio tour of this diagram at [PearsonSuccessNet.com](http://PearsonSuccessNet.com)



Except in the most extreme situations, government cannot place any prior restraint on newspapers and other print media.

channels to late night hours. The Court agreed that shielding children from such programming is a worthy goal; nevertheless, it found the 1996 law to be a violation of the 1st Amendment.

**The Internet** The Internet has generated only a handful of Supreme Court cases—and each of them has involved attempts by Congress to regulate access to pornographic matter on the World Wide Web. Congress first attempted to protect minors from that material in the Communications Decency Act of 1996. That law made it a crime to “knowingly” transmit any “obscene or indecent” speech or image that is “patently offensive as measured by contemporary community standards” to any person under the age of 18.

The Court promptly declared that law unconstitutional in *Reno v. American Civil Liberties Union*, 1997. A majority of the justices found that the words “indecent” and

“patently offensive” were too vague and that the overall effect of that law was to deny to adults materials that are protected by the 1st Amendment. “Regardless of the strength of the government’s interest in protecting children,” said the Court, “the level of discourse reaching a mailbox cannot be limited to that which would be suitable for a sandbox.”

The Supreme Court did uphold an act of Congress dealing with pornography, the Internet, and public libraries in *United States v. American Library Association*, 2003. There, a majority could find no constitutional fault in the Children’s Internet Protection Act (CIPA) of 2002. That law provides that those public libraries that receive federal money—nearly all of them do—must use filters to block their computers’ access to pornographic sites on the Internet.

### Symbolic Speech

Most people tend to also communicate ideas by their conduct, by the way they do a particular thing. Thus, a person can “say” something with a facial expression or a shrug of the shoulders, or by carrying a sign or wearing an armband. This expression by conduct is known as **symbolic speech**.

Clearly, not all conduct amounts to symbolic speech. If it did, murder or robbery or any other crime could be excused on grounds that the person who committed the act meant to say something by doing so.

Just as clearly, however, some conduct does express opinion. Take picketing in a labor dispute as an example. **Picketing** involves the patrolling of a business site by workers who are on strike. By their conduct, picketers attempt to inform the public of the controversy and to persuade others not to deal with the firm involved. Picketing is, then, a form of expression. If peaceful, it is protected by the 1st and 14th amendments.

The leading case on the point is *Thornhill v. Alabama*, 1940. There, the Court struck down a State law that made it a crime to loiter about or to picket a place of business in order to influence others not to trade or work there. Picketing that is “set in a background of violence,” however, can be prevented. Even peaceful picketing can be restricted if it is

**Checkpoint**  
What is symbolic speech?

### ANALYZE LIMITATIONS ON MEDIA

Display Transparency 19E. Ask: **Which type of speech is most limited?** (*student speech*) **What regulatory agency functions as a watchdog over radio and network television?** (*Federal Communications Commission*) **What is the purpose of the Children’s Internet Protection Act of 2002?** (*to block children’s access to Internet pornographic sites at public libraries*) **Which types of media have little or no prior restraint?** (*newspapers and other print media; the Internet*)

### INTERPRET SYMBOLIC SPEECH

Ask students for examples of symbolic speech, and write them on the board. (*textbook examples include picketing, burning draft cards, burning a cross, wearing armbands to protest war, flag burning*) **Which of these forms of symbolic speech are not protected by the 1st Amendment?** (*picketing if it is violent, burning draft cards, and burning a cross if it is used to intimidate a person*) Lead to a discussion of whether students think burning the U.S. flag should be protected by the 1st Amendment. Display Transparency 19F. **What opinion does Cartoon 1 convey?** (*Cartoon 1 supports flag burning as protected free speech. The cartoonist uses satire to point out that by calling for a ban on flag burning, the Congressman is actually attacking the 1st Amendment.*) **What opinion does Cartoon 2 display?** (*Cartoon 2 is similar to Cartoon 1 in its satire. It, too, calls for a ban on burning the American flag and shows the man is ready to attack the First Amendment.*)

**L3 Differentiate** Create a classroom Blogger Bulletin Board related to this issue. Post the following statement on the bulletin board: “The United States needs a constitutional amendment making the burning of a U.S. flag a crime.” Choose two students with opposing points of view to post opinions about this statement on the bulletin board. Encourage other students to write their own reactions or responses to the original question or student responses on note cards and post them on the board.

Tell students to go to the Interactivity for more examples of the freedoms of speech and press.

## Background

**CAMPAIGN FINANCE AS “SPEECH”** In *Buckley v. Valeo*, 1976, the Court found that campaign contributions are “a symbolic expression of support” for candidates, and therefore the making of those contributions is entitled to constitutional protection. Both federal and State laws regulate campaign contributions, but the fact that in politics “money is speech” greatly complicates the whole matter of campaign finance regulation.

## Answers

**Checkpoint** expression by conduct, such as carrying a sign, wearing an armband, or using facial expressions

## EXTEND THE LESSON

**L3 Differentiate** Have students debate the following statement: “Violence on television and in movies is a threat to society and should be censored.” Both sides should research statistics and information supporting or opposing the statement. (If pressed for time, have each student write a paragraph as homework, agreeing or disagreeing with the statement, and explaining why.)

**L2 Differentiate** Have students work in groups to make a list of rules for speech on the Internet. The class might be divided into such topics as regulation of libel, seditious speech, and obscenity. Others might prepare rules about prior restraint and whether some Web sites should be completely censored. Then have students decide how these rules might be enforced.

**L3 L4 Differentiate** Have students complete the Chapter 19 Extend Worksheet (Unit 5 All-in-One, p. 96). They will use library resources or the Internet to research the school freedom of speech and press case *Hazelwood School District v. Kuhlmeier*, 1988. In this case, the Supreme Court ruled that school officials may censor school-sponsored newspapers because they are part of the school curriculum rather than a forum for public expression. The case is often cited as precedent in other cases involving the 1st Amendment rights of students.

**L2 Differentiate** Have students complete the Chapter 19 Extend Activity entitled “Freedom of the Press” (Unit 5 All-in-One, p. 96).

## Assess and Remediate

**L3** Have students identify what they believe are the three most important cases that have guaranteed freedom of speech to Americans. Ask them to work in pairs to identify the constitutional issue of each case and then summarize the Court’s rulings. When finished, students should explain why they gave these cases most-important status.

**L4** Restate the chapter Essential Question: **How can the judiciary balance individual rights with the common good?** Do students believe that the Supreme Court rulings discussed in this section have done a fair job of balancing rights with the common good? Have students draw a sketch of “blind justice,” with one of her scales labeled “individual rights” and the other labeled “common good.” Students should list guarantees of speech and press in the appropriate scale.

## Answers

**Checkpoint** if the object of the protest is within the constitutional powers of government, the restriction is no greater than necessary in the circumstances, and the government’s interest in the matter is not to squelch dissent

**✓ Checkpoint**  
When are acts of dissent by conduct punished?

conducted for an illegal purpose—for example, forcing someone to do something that is itself illegal.

**Other Symbolic Speech Cases** The Court has been sympathetic to the symbolic speech argument, but it has not given blanket 1st Amendment protection to that means of expression. Note these cases:

*United States v. O’Brien*, 1968, involved four young men who had burned their draft cards to protest the war in Vietnam. A court convicted them of violating a federal law that makes that act a crime. O’Brien appealed, arguing that the 1st Amendment protects “all modes of communication of ideas by conduct.” The Supreme Court disagreed, saying: “We cannot accept the view that an apparently limitless variety of conduct can be labeled ‘speech’ whenever the person engaging in the conduct intends thereby to express an idea.”

The Court also held that acts of dissent by conduct can be punished if: (1) the object of the protest is within the constitutional powers of the government; (2) whatever restriction is placed on expression is no greater than necessary in the circumstances; and (3) the government’s real interest in the matter is not to squelch dissent.

Using that three-part test, the Court has sometimes denied claims of symbolic speech. Thus, in *Virginia v. Black*, 2003, it upheld a State law that prohibits the burning of a cross

as an act of intimidation, a threat that can make a person fear for his safety. The Court also made this point: Those who burn crosses at rallies or parades as acts of political expression (acts not aimed at a particular person) cannot be prosecuted under the law.

*Tinker v. Des Moines School District*, 1969, on the other hand, is one of several cases in which the Court has come down on the side of symbolic speech. In *Tinker*, several students who had worn black armbands to school to dramatize their opposition to the war in Vietnam had been suspended by the district.

The Court found that school officials had overstepped their authority and violated the students’ right to free expression. Said the Court: “It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”<sup>8</sup>

The Court recognized campaign donations as protected speech in *Buckley v. Valeo*, 1976. See Chapter 7 to learn more.

**Flag Burning** A sharply divided Court has twice held that burning the American flag as an act of political protest is expressive conduct protected by the 1st and 14th amendments. In *Texas v. Johnson*, 1989, a 5–4 majority ruled that State authorities had violated a protester’s rights by prosecuting him under a law that forbids the “desecration of a venerated object.” Johnson had set fire to an American flag during an anti-Reagan demonstration at the Republican National Convention in Dallas in 1984. Said the Court:

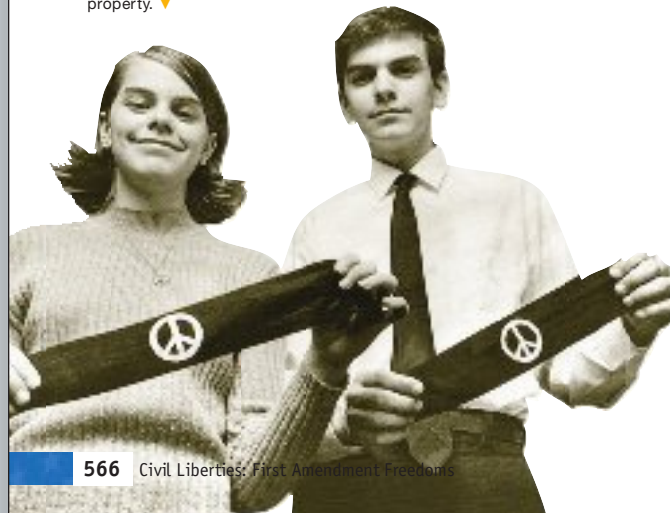
### PRIMARY SOURCE

If there is a bedrock principle underlying the 1st Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the

<sup>8</sup> Do not read too much into this, for the Court noted that it “has repeatedly emphasized the need for affirming the comprehensive authority of the States and of school officials, consistent with fundamental constitutional safeguards, to prescribe and control conduct in the schools.” The fact that in *Tinker* the students’ conduct did not cause a substantial disruption of normal school activities was an important factor in the Court’s decision.

**squelch**  
v. to silence or smother

The Supreme Court ruled in favor of John and Mary Beth Tinker (shown here), emphasizing that students’ 1st Amendment rights could not be abridged just because students are on school property. ▼



566 Civil Liberties: First Amendment Freedoms

## Background

**COMMERCIAL SPEECH** One of the Court’s first commercial speech cases had an interesting twist. In *Wooley v. Maynard*, 1977, the Court held that a State cannot force its citizens to act as “mobile billboards.” At least, a State cannot do so when the words used conflict with its citizens’ religious or moral beliefs. The Maynards, who were Jehovah’s Witnesses, objected to the New Hampshire State motto on their automobile license plates. The words *Live Free or Die* clashed with their belief in everlasting life, and so they covered those words with tape. For this, Maynard was arrested three times. On appeal, the Supreme Court sided with Maynard.

idea itself offensive. . . . We do not consecrate the flag by punishing its desecration, for in doing so we dilute the freedom that this cherished emblem represents.

—Justice William J. Brennan, Jr.

The Supreme Court's decision in *Johnson* set off a firestorm of criticism around the country and prompted Congress to pass the Flag Protection Act of 1989. It, too, was struck down by the Court, 5–4, in *United States v. Eichman*, 1990. The Court based its decision on the same grounds as those set out a year earlier in *Johnson*. Since *Johnson* and *Eichman*, Congress has rejected several attempts to propose a constitutional amendment to outlaw flag burning.

## Commercial Speech

Commercial speech is speech for business purposes; the term refers most often to advertising. Until the mid-1970s, it was thought that the 1st and 14th amendments did not protect such speech. In *Bigelow v. Virginia*, 1975, however, the Court held unconstitutional a State law that prohibited the newspaper advertising of abortion services. The following year, in *Virginia State*

*Board of Pharmacy v. Virginia Citizens Consumer Council*, it struck down another Virginia law forbidding the advertisement of prescription drug prices.

Not all commercial speech is protected, however. Government can and does prohibit false and misleading advertisements, and the advertising of illegal goods or services.

In fact, government can even forbid advertising that is neither false nor misleading. In 1970, Congress banned cigarette ads on radio and television. In 1986, it extended the ban to include chewing tobacco and snuff.

In most of its commercial speech cases, the Court has struck down arbitrary restrictions on advertising. In *44 Liquormart, Inc. v. Rhode Island*, 1996, the Court voided a State law that prohibited ads in which liquor prices were listed. In *Greater New Orleans Broadcasting Association v. United States*, 1999, it struck down a federal law that prohibited casino advertising on radio or television.

More recently, the Court dealt with limits on smokeless tobacco and cigar advertising. Massachusetts had barred outdoor ads for these **commodities** within 1,000 feet of any school or playground. The Court held that the limit was a violation of the 1st and 14th amendments' guarantee of free speech, *P. Lorillard Co. v. Reilly*, 2001.

**Checkpoint**  
Why, according to Justice Brennan, is flag burning protected by the 1st and 14th amendments?

**commodity**  
n. article that can be bought or sold

## SECTION 3 ASSESSMENT

**Essential Questions Journal** To continue to build a response to the chapter Essential Question, go to your Essential Questions Journal.

**1. Guiding Question** Use your completed graphic organizer to answer this question: What are the limits on the guarantees of free speech and free press?

### Key Terms and Comprehension

- (a)** What is **libel**? **(b)** What is **slander**? How do the two differ?
- Why does the government restrict **sedition** and **sedition** speech?
- (a)** What are **shield laws**? **(b)** Why have some States passed these laws?

### Critical Thinking

- 5. Draw Inferences** What do you think are the advantages and disadvantages of a free press?
- 6. Identify Central Issues** The Constitution makes a particular effort to protect the expression of unpopular views. **(a)** Why is this important? **(b)** Do you think even racist or sexist expressions should be protected? Why or why not?

### Quick Write

**Persuasive Essay: Develop a Thesis** Based on the topic you chose in Section 1 and the evidence you gathered in Section 2, identify your argument in a thesis statement, which expresses the main idea of your persuasive essay. All information that follows should support or elaborate on this statement.

## Assessment Answers

- Libel, slander, seditious speech, words prompting others to commit a crime, disseminating obscene materials, illegal or violent picketing, some forms of dissent, false and misleading advertising, and advertising illegal goods are not protected by the 1st Amendment. The FCC regulates radio and television.
- (a)** false and malicious use of printed words **(b)** false and malicious use of spoken words; libel is printed, whereas slander is spoken

- The Supreme Court determined that seditious speech could provide a “clear and present danger” that criminal acts will follow.
- (a)** laws that give reporters some protection against having to disclose their sources or reveal other confidential information in legal proceedings **(b)** to assure confidentiality so that sources will reveal vital information
- Possible answers: **advantages:** citizens have the right to free expression and to read what others have to say; minority opinions can be heard; a free press can act as a watchdog on conduct in government and business;

**L3** Collect the Core Worksheets and assess the students' class participation using the Rubric for Assessing Performance of an Entire Group (Unit 5 All-in-One, p. 241).

**L3** Assign the Section 3 Assessment questions.

**L3** Section Quiz A (Unit 5 All-in-One, p. 97)

**L2** Section Quiz B (Unit 5 All-in-One, p. 98)

Have students complete the review activities in the digital lesson presentation and continue their work in the **Essential Questions Journal**.

## REMEDIATION

If Your Students Have Trouble With	Strategies For Remediation
Freedom of speech limits and protections (Questions 1, 2, 3, 6)	Have students make a poster titled “Free Speech.” Underneath this title, ask them to write two subtitles: “Know Your Rights” and “Know Your Limits.” Then ask them to list or illustrate the rights and limits on freedom of speech. Students should also include limits that are particular to student speech.
Freedom of press limits and protections (Questions 1, 4, 5)	Have students draw a web diagram with “Freedom of the Press” in the center oval. In the outer ovals, ask students to identify at least five facts (cases, issues, examples) that protect freedom of the press and at least three facts (exceptions) that allow prior restraint on publications.

## Answers

**Checkpoint** An important principle that flag burning represents is freedom of speech, even if offensive. If flag burning is punished, then the principle of free speech for which it stands is undercut.

people can be more fully informed; **disadvantages:** some printed material might be offensive or reveal potentially damaging information

**6. (a)** Protecting unpopular views means that every citizen has a voice and can participate in public affairs. **(b)** Some students might argue that even offensive speech is protected. Others might say that sexist and racist speech is intimidating and should be limited.

**QUICK WRITE** Have students review the effectiveness of their thesis statements with these questions: What detail does the statement provide? What does it prompt readers to ask?

## LESSON GOAL

- Students will research an issue and participate in a classroom debate.

## Teach

### READ AND BRAINSTORM

Have students read the feature. Brainstorm possible responses to the issue of extending the school year.

### WRITE SPEECH FOR PUBLIC DEBATE

Pose this issue to students for debate: **Song lyrics promoting violence or defaming women should NOT be protected by the 1st Amendment.** Have students research the issue and write a speech. Explain that speeches should begin with a position statement for or against followed by evidence. Students must also address objections to their arguments. Tell them to bring up points that seem to be against their views, and then explain why those points are wrong. Students should conclude their speeches by forcefully restating their position.

### DELIVER PUBLIC DEBATE SPEECHES

Have students deliver one-minute speeches. Provide these tips for effective public speaking: (1) Raise and lower your voice to stress key points. (2) Make eye contact with the audience. (3) Use gestures to emphasize main points. (4) Avoid distracting gestures, looking down, or saying “um,” “like,” and “you know.”

## Assess and Remediate

Peer-assess speeches using this checklist:

- \_\_\_ Had strong opening position statement
- \_\_\_ Included supporting arguments
- \_\_\_ Provided arguments against other positions
- \_\_\_ Used facts from research in arguments
- \_\_\_ Summarized position in a logical conclusion
- \_\_\_ Modulated tone, pitch, and volume
- \_\_\_ Engaged audience with eye contact

## Answers

1. State Department of Education, local school board, superintendent, principal, teachers
2. short-term goals: persuading others to join the cause, or a promise by a public official to investigate the matter; possible long-term goals: progress on a public issue, identifying problems and solutions, learning to speak well in public
3. Students should include a position statement, arguments for and against, and a conclusion.

## Participating in Public Debate

Dear Student,

Our State Department of Education has instituted new requirements for the current school year. Effective immediately, the school year will be lengthened from 180 days to 200 days, and each school day will be extended one additional hour. The DOE feels strongly that this decision is necessary in order to remain competitive in the global economy. Statistics show that schools in China and India are in session 225–250 days a year. Students in those countries are well on their way to outperforming American students.

Thank you for your cooperation,  
George Carruthers, Principal

Your right to participate in public debate is central to the founding principles of our country. If you received a letter from your school like the one above, you would probably have strong feelings about it. One way to express your views is by participating in public debate. You might speak at a city council or town hall meeting, or address your local school board. Use these opportunities to voice your opinions by following these steps:

1. **Choose an issue of concern to you, and then find out whom to contact.** Your opinion counts most when you express it to those people who have some authority or influence in the matter. That could be city council members, a private lobbying group, a school board, or a media outlet.
2. **Organize your arguments.** Decide on the best way to get your ideas across. Create an outline or a list of talking points to organize your thoughts. Think of supporting details for each point, and then identify the most important points, which you will emphasize to influence your particular audience. You might want to make

these points the first few lines of your speech. Most important, rehearse what you will say.

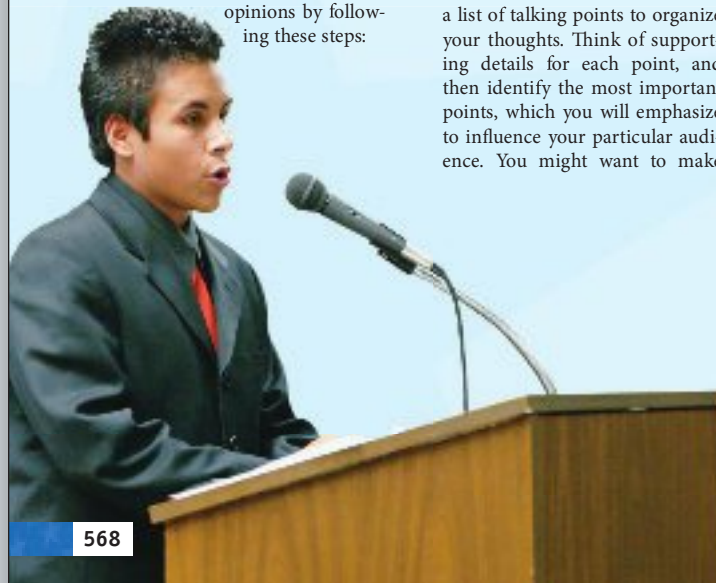
3. **Present your ideas.** Speak in a loud, clear voice when you present your ideas. Keep your speech lively and exciting, and be precise with the words you use. If you conduct yourself with civility and respect to win the hearts and minds of other citizens, you will persuade them to take up your cause.

### » What do you think?

1. Whom might you contact to express your views in the situation presented here?
2. What short-term and long-term goals might you seek through participating in public debate?
3. **You Try It** Follow the steps above to develop a strategy for airing your views about the issue presented here. Prepare a one-minute oral argument on the issue and present it to your peers.

### GOVERNMENT ONLINE Citizenship Activity Pack

For activities on participating in public debate, go to  
[PearsonSuccessNet.com](http://PearsonSuccessNet.com)



## Citizenship Activity Pack

If your students need extra support, use the Citizenship Activity Pack lesson *How to Participate in Public Debate*. It includes a lesson plan for you and eleven tent cards and two posters for students. Each tent card describes characteristics of a participant in a town meeting about an issue illustrated in the posters. While eleven students play roles in the town meeting debate, the remaining students serve as interested observers. Students may also access the Citizenship Activity Pack online for activities on How to Participate in Public Debate at [PearsonSuccessNet.com](http://PearsonSuccessNet.com).



## SECTION 4

# Freedom of Assembly and Petition



### Guiding Question

#### How has the Supreme Court ruled on assembly and petition cases?

Use a table like the one below to take notes on important Supreme Court cases involving freedom of assembly.

Case	Issue	Ruling

### Political Dictionary

- assemble
- civil disobedience
- content neutral
- right of association

### Objectives

1. Explain the Constitution's guarantees of assembly and petition.
2. Summarize how government can limit the time, place, and manner of assembly.
3. Compare and contrast the freedom-of-assembly issues that arise on public versus private property.
4. Explore how the Supreme Court has interpreted freedom of association.

**Image Above:** The 1st Amendment protects the people's right to protest peaceably.

A noisy street demonstration by gay rights activists or neo-Nazis; a candlelight vigil by opponents of the death penalty; pro-life supporters picketing an abortion clinic; pro-choice supporters on the steps of the State capitol . . . these are all everyday examples of freedom of assembly and petition.

### The Constitution's Guarantees

The 1st Amendment guarantees "the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." The 14th Amendment's Due Process Clause also protects those rights of assembly and petition against actions by the States or their local governments, *DeJonge v. Oregon*, 1937.

The Constitution protects the right of the people to **assemble**—to gather with one another—to express their views. It protects their right to organize to influence public policy, whether in political parties, interest groups, or other organizations. It also protects the people's right to bring their views to the attention of public officials by such varied means as written petitions, letters, or advertisements; lobbying; and parades or marches.

Notice, however, that the 1st and 14th amendments protect the rights of *peaceable* assembly and petition. The Constitution does not give to anyone the right to incite others to violence, block a public street, close a school, or otherwise endanger life, property, or public safety.

Note this important point as well: A significant part of the history of this country can be told in terms of **civil disobedience**. That is to say that much of our history has been built out of incidents in which people have purposely violated the law—nonviolently, but nonetheless deliberately, as a means of expressing their opposition to some particular law or public policy.

Do the 1st and 14th amendment guarantees of freedom of assembly and petition include a right of civil disobedience? That thorny question cannot be answered absolutely or without qualification because of the very nature of civil disobedience: those acts are expressions of opinion on some public matter.

Still, courts have consistently held that, as a general rule, civil disobedience is not a constitutionally protected right. Those who choose to take part

### GUIDING QUESTION

How has the Supreme Court ruled on assembly and petition cases?

Case	Issue	Ruling
<i>Delonge v. Oregon</i>	Do assembly and petition apply to State governments?	yes, by Due Process Clause
<i>Gregory v. Chicago</i>	demonstrators arrested; bystanders caused disorder	convictions overturned; demonstrators acted peacefully
<i>Cox v. Louisiana</i>	parade near courthouse	banned if intended to influence court
<i>Coates v. Cincinnati</i>	groups gathering on street were annoying	struck down law due to vague wording
<i>Forsyth County v. Nationalist Movement</i>	Can assembly be regulated based on what might be said there?	no—not content neutral

## Get Started

### LESSON GOALS

Students will . . .

- distinguish the conflicting but essential nature of the right to assemble by participating in scenarios about freedom of assembly and petition conflicts.
- understand the restrictions on assembly and petition by identifying and applying time-place-manner regulations and content neutrality to assembly situations.

## SKILLS DEVELOPMENT

### DRAW INFERENCES AND CONCLUSIONS

To teach the skill of drawing inferences and conclusions, have students read Draw Inferences and Conclusions in the Skills Handbook, p. S19. Then have them do the Bellringer activity.

## Focus on the Basics

**FACTS:** • The 1st Amendment guarantees the right to assemble peacefully and to petition the government for a redress of grievances. • Government can reasonably regulate the time, place, and manner of assembly, but those regulations must be content neutral. • The Supreme Court distinguishes between the rights of citizens to assemble in public places and on private property. • The guarantees of assembly and petition include the right of association.

**CONCEPTS:** individual rights and responsibilities, democratic principles

**ENDURING UNDERSTANDINGS:** • The rights of peaceable assembly and petition, basic to democracy, protect the people's right to bring their views to the attention of public officials.

**Checkpoint**  
How has the Supreme Court limited the time, place, and manner of assembly?

**inherent**  
adj. natural to or basic

## BEFORE CLASS

Assign the section, the graphic organizer in the text, and the Reading Comprehension Worksheet (Unit 5 All-in-One, p. 99) before class.

**L2 Differentiate** Reading Comprehension Worksheet (Unit 5 All-in-One, p. 100)

## BELLRINGER

Display Transparency 19G. Have students read the quote and answer the questions in their notebooks.

## Teach

To present this topic using online resources, use the lesson presentations at **PearsonSuccessNet.com**.

## REVIEW BELLRINGER RESPONSES

Discuss students' answers to the Bellringer questions. (1. *Demonstrations may disrupt daily routines and individual freedoms.* 2. *It may cause inconveniences, but limiting the right to assemble would be harmful to democracy.*)

## INTRODUCE THE TOPIC

Display Transparency 19H. Have students complete these statements:

- **Freedom of assembly gives me the right to...**
- **Freedom of assembly does not give me the right to...**

Responses should indicate that freedom of assembly gives people the right to come together in public places to express their opinions on issues and encourage others to join them. This right is limited by time-place-manner regulations, public safety concerns, and public versus private property restrictions. Ask: **What are some examples of assembly?** (*demonstration or march, picketing, prayer vigil*) **What are the advantages of joining a group to protest a policy or express an opinion?** (*A group has more clout than an individual protester. A large group is also more likely to get media coverage.*)

in such activities are often aware of that fact, and they are usually willing to accept the consequences of their conduct.

## Time-Place-Manner Rules

Government can make and enforce reasonable rules covering the time, place, and manner of assemblies. Thus, in *Grayned v. City of Rockford*, 1972, the Court upheld a city ordinance that prohibits making a noise or any other diversion near a school if that action has a disruptive effect on school activities. It has also upheld a State law that forbids parades near a courthouse when they are intended to influence court proceedings, *Cox v. Louisiana*, 1965.

Rules for keeping the public peace must be more than just reasonable, however. They must also be precisely drawn and fairly administered. In *Coates v. Cincinnati*, 1971, the Court struck down a city ordinance that made it a crime for "three or more persons to assemble" on a sidewalk or street corner "and there conduct themselves in a manner annoying to persons passing by, or occupants of adjacent buildings." The Court found the wording of the ordinance much too vague and therefore unconstitutional.

Government's rules must be **content neutral**. That is, although government can regulate assemblies on the basis of time, place, and manner, it cannot regulate gatherings on the basis of what might be said there. Thus, in *Forsyth County v. Nationalist Movement*, 1992, the Court threw out a Georgia county's ordinance that levied a fee of up to \$1,000 for public demonstrations.

The law was contested by a white supremacist group seeking to protest the creation of a holiday to honor Martin Luther King, Jr. The Court found the ordinance not to be content neutral, particularly because county officials had unlimited power to set the exact fee to be paid by any group.

## Public Property

Over the past several years, most of the Court's freedom of assembly cases have involved organized demonstrations. Demonstrations are, of course, assemblies.

Most demonstrations take place in public places—on streets and sidewalks, in parks or public buildings, and so on. This is the case because it is the *public* the demonstrators want to reach.

Demonstrations almost always involve some degree of conflict. Most often, they are held to protest something, and so there is an **inherent** clash of ideas. Many times there is also a conflict with the normal use of streets or other public facilities. It is hardly surprising, then, that the tension can sometimes rise to a serious level.

Given all this, the Supreme Court has often upheld laws that require advance notice and permits for demonstrations in public places. In an early leading case, *Cox v. New Hampshire*, 1941, it unanimously approved a State law that required a license to hold a parade or procession on a public street.

Right-to-demonstrate cases raise many difficult questions. How and to what extent can government regulate demonstrators? Does the Constitution require that police officers allow an unpopular group to continue to demonstrate even when its activities have excited others to violence? When, in the name of public peace and safety, can police order demonstrators to disband?

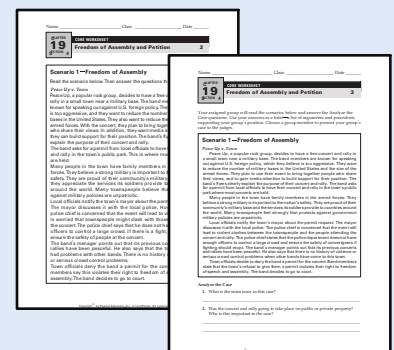
**Gregory v. Chicago** A leading and illustrative case is *Gregory v. Chicago*, 1969. While under police protection, comedian Dick Gregory and others marched while singing, chanting, and carrying placards, from city hall to the mayor's home some five miles away. Marching in the streets around the mayor's house, they demanded the firing of the city's school superintendent and an end to de facto segregation in the city's schools.

A crowd of several hundred people, including many residents of the all-white neighborhood, quickly gathered. Soon, the bystanders began throwing insults and threats, as well as rocks, eggs, and other objects. The police tried to keep order, but after about an hour, they decided that serious violence was about to break out. At that point, they ordered the demonstrators to leave the area. When Gregory and others failed to do so, the police arrested them and charged them with disorderly conduct.

## Differentiated Resources

The following resources are located in the All-in-One, Unit 5, Chapter 19, Section 4:

- L3** Reading Comprehension Worksheet (p. 99)
- L2** Reading Comprehension Worksheet (p. 100)
- L3** Core Worksheet (p. 101)
- L2** Core Worksheet (p. 105)
- L3** Quiz A (p. 109)
- L2** Quiz B (p. 110)
- L3** Chapter Test A (p. 111)
- L2** Chapter Test B (p. 114)



## Answers

**Checkpoint** Possible answers: if the assembly disrupts school or courthouse activities; permits must be obtained for public demonstrations



The right to peacefully demonstrate in public is constitutionally guaranteed. In some situations, however, preventing a protest from becoming violent can be used as an excuse to prevent speech. The line between crowd control and thought control can be very narrow.

Demonstrations on private property are not constitutionally guaranteed, yet many State constitutions encourage businesses to allow petition. In that event, there is no violation of the property owners' rights, *PruneYard Shopping Center v. Robins*. **Why has the Court ruled differently on public and private property demonstrations?**

The convictions of the demonstrators were unanimously overturned by the Court. It noted that the marchers had exercised their constitutional rights of assembly and petition. The bystanders, not the demonstrators, had caused the disorder. As long as the demonstrators acted peacefully, they could not be punished for disorderly conduct.

**Recent Cases** Over recent years, many of the most controversial demonstrations have been those held by anti-abortion groups. For the most part, their efforts have been aimed at discouraging women from seeking the services of abortion clinics, and those efforts have generated many lawsuits.

There have been two particularly notable cases to date. In the first one, *Madsen v. Women's Health Services, Inc.*, 1994, the Supreme Court upheld a Florida judge's order directing protesters not to block access to an abortion clinic. The judge's order had drawn a 36-foot buffer zone around the clinic. The

High Court found that to be a reasonable limit on the demonstrators' activities.

The other major case is *Hill v. Colorado*, 2000. There, the Court upheld, 5–4, a State law that limits “sidewalk counseling” at clinics where abortions are performed. That statute creates an eight-foot buffer zone around anyone who wants to enter. No one may make an “unwanted approach” to talk, hand out a leaflet, or wave a sign.

The Court found that the Colorado law does not deal with the content of abortion protesters' speech. It is aimed, instead, at *where*, *when*, and *how* their message is delivered.

### Private Property

What about demonstrations on private property—at shopping centers, for example? The Court has said that the rights of assembly and petition do not give people a right to trespass on private property, even to express political views.

### IDENTIFY TIME-PLACE-MANNER RULES

Ask a volunteer to define what is meant by “time, place, and manner.” (*reasonable government limits on when, where, and how an assembly may be conducted*) Read aloud the situations below, and have students identify whether they follow a time-place-manner restriction or are unconstitutional.

- The mayor rejected a rally permit for the local chapter of the Ku Klux Klan. (*unconstitutional*)
- The State's highest court ruled that shopping malls are not public places where citizens can distribute political pamphlets as they please. (*time-place-manner restriction*)
- Various injunctions have barred youths identified by the authorities as gang members from sitting in parks. (*unconstitutional*)
- A permit to march against police brutality was denied by New York City, citing rush hour congestion. (*time-place-manner restriction*) Yet the entire area was closed to traffic to celebrate the World Series victory. (*This knowledge makes the denial of the permit unconstitutional.*)

### COMPLETE CORE WORKSHEET

Organize students into these six groups:

- Group 1: Peace Up, plaintiff
- Group 2: Town, defendant
- Group 3: Parents Against Violent Video Games (PAVVG), plaintiff
- Group 4: Mall Owner, defendant
- Group 5: Three judges, Peace Up v. Town
- Group 6: Three judges, PAVVG v. Mall Owner

Distribute the Chapter 19 Section 4 Core Worksheet (Unit 5 All-in-One, p. 101). Each group will analyze a scenario in which the rights of assembly and petition must be weighed against the government's responsibility to protect the rights of the community or private property. Have Groups 1–4 study their scenarios and answer the questions. These will be used as briefs explaining the facts in the case, the constitutional issue, precedents that support their position, and counterarguments. Groups 5 and 6 should also study their scenarios and identify precedents for the judgments they will make after hearing the cases. Have Groups 1–4 choose “attorneys” to present their briefs to the Group 5 or Group 6 judges. Each attorney has five minutes to present arguments. The judges can interrupt to ask questions. After hearing the cases, Groups 5 and 6 will write opinions on their cases, explaining their reasons.

### Answers

**Caption** Assembly and petition guarantees for public demonstrations do not give people a right to trespass on private property.

## Background

**RIGHT OF ASSOCIATION CASES** In 1995, the Court ruled that a Boston veterans' group did not have to include gay marchers in its St. Patrick's Day parade. The justices ruled that being forced to do so would interfere with the group's social and religious purposes. Other Supreme Court decisions have made associations more inclusive. Court decisions in the 1980s opened many formerly all-male civic organizations, such as the Rotary Club and Jaycees, to women. In these cases, the Court ruled that admitting women would not prevent these groups from carrying out their educational, charitable, and community service goals. There is no absolute right of association, however. For example, Congress can forbid federal employees to do such things as engage in partisan election campaigns or hold a leadership position in a political party organization, *Harris v. United States*, 1954.



## EXTEND THE LESSON

**L3 Differentiate** Have students go online or to the office of their mayor or city manager to find the local regulations for obtaining a demonstration permit. Ask students to analyze the regulations for constitutionality.

## Assess and Remediate

**L3** Collect the Core Worksheets and assess the students' class participation using the Rubric for Assessing Performance of an Entire Group (Unit 5 All-in-One, p. 241).

**L3** Assign the Section 4 Assessment questions.

**L3** Section Quiz A (Unit 5 All-in-One, p. 109)

**L2** Section Quiz B (Unit 5 All-in-One, p. 110)

Have students complete the review activities in the digital lesson presentation and continue their work in the **Essential Questions Journal**.

## REMIEDIATION

If Your Students Have Trouble With	Strategies For Remediation
Protections on the rights to assemble and petition (Questions 2, 3, 4, 5)	Have students list the cases identified in this section. Next to each case, students should write the effect of the ruling on the rights to assemble and petition.
Limits to the freedoms of assembly and petition (Questions 1, 6)	Have students use the textbook to find and list time-place-manner rules applied to organized demonstrations to keep the public peace.

## Answers

**Checkpoint** right to join with others to promote political, economic, and social causes

## Assessment Answers

1. The Court applies time-place-manner restrictions to assembly and petition cases. It has upheld laws that require advance notice and permits for demonstrations. Government's rules must be content neutral. Demonstrators cannot be punished for disorder if they act peacefully. Protesters may not block access to abortion clinics or approach people entering. Demonstrators do not have the right to trespass on private property. Guarantees of freedom of assembly and petition include the right of association.

- the right of people to organize to influence public policy and to bring their views to the attention of public officials
- (a) the act of purposefully but nonviolently disobeying the law as a means of expressing an opinion on some particular law or public policy (b) No; it is not considered part of the right of assembly or petition.
- It stipulates the right to associate with others to promote political, economic, and social causes.
- (a) Assembling to promote causes is a

Privately owned shopping centers are not "places of public assembly." Thus, no one has a constitutional right to do such things as hand out political leaflets or ask people to sign petitions in those places.

These comments are based on the leading case here, *Lloyd Corporation v. Tanner*, 1972. However, since that case the Court has held this: A State supreme court may interpret the provisions of that State's constitution in such a way as to require the owners of shopping centers to allow the reasonable exercise of the right of petition on their private property.

## Freedom of Association

The guarantees of freedom of assembly and petition include a **right of association**—to join with others to promote political, economic, and social causes. That right is not set out in so many words in the Constitution. However, in *National Association for the Advancement of Colored People v. Alabama*, 1958, the Supreme Court said, "it is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect" of the Constitution's guarantees of free expression.

The case just cited is one of the early right-to-associate cases. There, a State law required the Alabama branch of the NAACP to disclose the names of all its members in

that State. When the organization refused a court's order to do so, it was found in contempt of court and fined \$100,000.

The Supreme Court overturned the contempt conviction. It said that it could find no legitimate reason why the State should have the NAACP's membership list.

A person cannot be fired from a job because of political associations—for example, membership in a political party, *Brown v. Socialist Workers 74 Campaign Committee*, 1982. And a person cannot be required to disclose his or her political associations to be licensed to practice law, *Gibson v. Florida*, 1966.

There is no absolute right of association, however. In *Boy Scouts of America v. Dale*, 2000, the Supreme Court held that the Boy Scouts have a constitutional right to exclude gays from their organization. The Court noted that opposition to homosexuality is a part of the Boy Scout organizations' "expressive association"—that is, what they stand for.

The decision overturned a ruling by the New Jersey Supreme Court. That court had applied the State's anti-discrimination law against the Scouts. It ordered a New Jersey troop to readmit James Dale, an Eagle Scout, whom the troop had dismissed when it learned he was gay. The Court ruled that a State cannot force an organization to accept members when that action would contradict what the organization professes to believe.

**Essential Questions Journal** To continue to build a response to the chapter Essential Question, go to your **Essential Questions Journal**.

## SECTION 4 ASSESSMENT

1. **Guiding Question** Use your completed graphic organizer to answer this question: How has the Supreme Court ruled on assembly and petition cases?

### Key Terms and Comprehension

- What do the guarantees of freedom of assembly and petition intend to protect?
- (a) What is **civil disobedience**? (b) Is it constitutionally protected? Why or why not?
- How does the **right of association** extend the right of assembly?

### Critical Thinking

- Draw Conclusions** (a) Why are the freedom to assemble peacefully and the freedom of association important to a democratic society? (b) What might happen if people were denied these rights?
- Demonstrate Reasoned Judgment** Why do you think the government can regulate assemblies based on time, place, and manner, but not on the basis of what might be said there?

### Quick Write

**Persuasive Essay: Provide Elaboration** In a persuasive essay, you can build a strong case for your position by stating facts, providing statistics, and including details. Conduct research to find this information on the topic you chose in Section 1. Take notes on index cards to help you organize your essay.

**Guiding Question**  
**Section 2** How does the 1st Amendment protect the freedom of religion?

**Guiding Question**  
**Section 3** What are the limits on the guarantees of free speech and free press?

**Guiding Question**  
**Section 1** How does the Constitution protect the rights of individuals against government?

**CHAPTER 19**  
**Essential Question**  
How can the judiciary balance individual rights with the common good?

**Guiding Question**  
**Section 4** How has the Supreme Court ruled on assembly and petition cases?

## Decisions Relating to the Due Process Clause

The 14th Amendment's Due Process Clause says that no State can deny to any person any right that is essential to liberty.

*Gitlow v. New York*, 1925: Freedom of speech and the press cannot be denied by the National Government.

*Fiske v. Kansas*, 1927, and others: Struck down State laws that denied freedom of speech.

*Near v. Minnesota*, 1931, and others: Struck down State laws that denied freedom of the press.

*DeJonge v. Oregon*, 1937: Struck down State laws that denied freedom of assembly and petition.

*Cantwell v. Connecticut*, 1940: Struck down State laws that denied freedom of religion.

## First Amendment Freedoms

**1st Amendment:** "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."

### Freedom of Religion

- Creates a separation of church and state (Establishment Clause)
- Protects people's right to believe what they wish in matters of religion (Free Exercise Clause)

### Freedom of Speech and Press

- Guarantee the right to speak, write, and symbolically communicate most ideas
- Ensure people's right to hear those ideas

### Freedom of Assembly and Petition

- Protect people's right to assemble peaceably to express their views
- Ensure people's right to bring their views to public attention

## Political Dictionary

**Bill of Rights** p. 547  
**civil liberties** p. 547  
**civil rights** p. 547  
**alien** p. 548  
**Due Process Clause** p. 549  
**process of incorporation** p. 549  
**Establishment Clause** p. 551  
**Free Exercise Clause** p. 551  
**parochial** p. 552  
**libel** p. 559  
**slander** p. 559  
**sedition** p. 560  
**sedition speech** p. 560  
**prior restraint** p. 562  
**injunction** p. 562  
**shield law** p. 563  
**symbolic speech** p. 565  
**picketing** p. 565  
**assemble** p. 569  
**civil disobedience** p. 569  
**content neutral** p. 570  
**right of association** p. 572

Have students download the digital resources available at Government on the Go for review and remediation.

## STUDY TIPS

**Cornell Notes** The Cornell note-taking strategy involves several distinct and easy steps. First, students should divide their paper into 3 sections, with horizontal lines near the top and bottom of the page, and a vertical line running from the top horizontal line to the bottom horizontal line that divides the main body of the paper into a narrow and a wide column. Write "First Amendment Freedoms" and the date at the top of the paper. Next, use the "5Rs": record, reduce, recite, reflect, and review. **Record:** Have students use the wide column for taking notes as they read the chapter, using abbreviations and shorthand whenever possible. **Reduce:** Have students identify main ideas, key points, dates, people, and vocabulary in their notes and write them in the narrow column. They will use these to write a summary of the main points in the bottom section of the paper. **Recite:** Direct students to study their notes. Cover up the wide column and respond to the key points listed in the narrow column and the summary. **Reflect:** Are there any parts of their notes that students don't understand? **Review:** Suggest that students spend 10 minutes per week reviewing their notes.

## ASSESSMENT AT A GLANCE

### Tests and Quizzes

Section Assessments  
Section Quizzes A and B, Unit 5 **All-in-One**  
Chapter Assessment  
Chapter Tests A and B, Unit 5 **All-in-One**  
Document-Based Assessment  
Progress Monitoring Online  
ExamView Test Bank

### Performance Assessment

Essential Questions Journal  
Debates, pp. 548, 554  
Dramatize Freedom of Press Cases, p. 563  
Assessment Rubrics, **All-in-One**

## For More Information

To learn more about civil liberties, refer to these sources or assign them to students:

- L1** **Smith, Rich.** *First Amendment: The Right of Expression*. ABDO & Daughters, 2007.
- L2** **Dudley, William, ed.** *The Bill of Rights—Freedom of Speech*. Greenhaven Press, 2005.
- L3** **Gottfried, Ted.** *Homeland Security vs. Constitutional Rights*. Lerner Publishing Group, 2003.
- L4** **Lewis, Anthony.** *Freedom for the Thought That We Hate: A Biography of the First Amendment*. Basic Books, 2007.

# Chapter Assessment

## COMPREHENSION AND CRITICAL THINKING

### SECTION 1

1. (a) life, liberty, and the pursuit of happiness (b) by legalizing them in the Bill of Rights
2. (a) must not infringe on others' rights (b) the right to freedom of speech would not protect a person who falsely shouts "fire" in a crowded theater (c) right to a fair trial versus freedom of the press
3. (a) Federalism means that restrictions on the National Government concerning individual rights do not apply to the States. (b) The 14th Amendment applied the restrictions of the National Government to the States. (c) The Court declared many State laws unconstitutional as a violation of the 14th Amendment's Due Process Clause.
4. (a) that rights exist beyond those listed in the Constitution (b) because the Framers realized that the Constitution could not possibly list all the rights retained by the people

### SECTION 2

5. Nearly all property of and contributions to religious sects are free from federal, State, and local taxation. Chaplains serve with each branch of the armed forces. Most public officials take an oath of office in the name of God. Sessions of Congress, most State legislatures, and many city councils open with prayer. The nation's anthem and its coins and currency make reference to God.
6. (a) parochial schools enroll large numbers of students who would otherwise have to be educated at public expense; to relieve parents who pay taxes to support the public schools their children do not attend (b) parents who send their children to parochial schools should accept the financial consequences of that choice; it is impossible to draw clear lines between secular and sectarian courses in parochial schools
7. (a) Prayers have been offered in the nation's legislative bodies "from colonial times through the founding of the Republic and ever since." Legislators, unlike schoolchildren, are not "susceptible to religious indoctrination or peer pressure." (b) Answers will vary.
8. Religious practices must not violate criminal laws, offend public morals, or threaten community safety.

**GOVERNMENT ONLINE**  
Online Self-Test  
To test your understanding of key terms and main ideas, visit [PearsonSuccessNet.com](http://PearsonSuccessNet.com)

## Comprehension and Critical Thinking

### Section 1

1. (a) For what unalienable rights was the American Revolution fought? (b) How did the Framers of the Constitution guarantee these rights?
2. (a) What general limitation is placed on individual rights? (b) What example does *Schenck v. United States* cite to explain this limitation? (c) To which conflicting rights did *Sheppard v. Maxwell* apply?
3. (a) How does federalism complicate guarantees of individual rights? (b) How does the 14th Amendment address this complication? (c) On what basis did the Supreme Court strike down many State laws after the *Gitlow* case?
4. (a) What does the 9th Amendment provide? (b) Why do you think it was included in the Bill of Rights?

### Section 2

5. List five examples of the ways in which government encourages religion in the United States.
6. (a) Cite two arguments for allowing State aid to parochial schools. (b) Cite two arguments against this practice.
7. (a) Why has the Court allowed legislative prayers but not organized school prayers? (b) Do you agree with the Court's rationale? Why or why not?
8. Identify three ways in which government may properly restrict the exercise of religious belief.

### Section 3

9. What two basic purposes do the guarantees of free expression serve?
10. (a) What does the "clear and present danger" rule say? (b) What case established the rule? (c) How is the Smith Act of 1940 consistent with that rule?
11. (a) What is prior restraint? (b) In what situations does the Supreme Court allow prior restraint?

## Apply What You've Learned

16. **Essential Question Activity** Not all assembly is protected by the 1st Amendment. Suppose you are helping to organize a demonstration for a political cause. Write three to five questions you should ask to determine if the Supreme Court would consider your demonstration to be constitutionally protected.
17. **Essential Question Assessment** Based on the questions you wrote and the content you have learned in the chapter, create a brochure for participants that

helps to answer the Essential Question: **How can the judiciary balance individual rights with the common good?** Consider the freedoms of speech, press, and assembly. Include examples from the chapter of how individual rights are balanced by the courts to ensure relative guarantees for the public (the common good).

**Essential Questions Journal** To respond to the chapter Essential Question, go to your **Essential Questions Journal**.

### SECTION 3

9. to guarantee each person a right of free expression and to ensure all persons a full discussion of public affairs
10. (a) that words can be outlawed if they trigger an immediate danger of criminal acts (b) *Schenck v. United States* (c) The Smith Act makes it a crime to advocate violent overthrow of the government. Such advocacy would create clear and present danger.
11. (a) restricting spoken or written words before they are expressed (b) in such extreme situations as wartime, or when a publica-

tion is obscene or incites its readers to acts of violence

### SECTION 4

12. Government can set limits on when, where, and how assemblies take place. However, government rules must be precisely drawn, fairly administered, and content neutral.
13. Laws can require advance notice and permits for demonstrations in public places.
14. for the boys, because their clubhouse is a private organization



## Writing About Government

15. Use your Quick Write exercises to write a persuasive essay supporting a civil liberties issue. Write an introduction with at least two sides, a body that provides evidence to support your position and refutes the opposing position, and a conclusion that strengthens your argument. See pp. S9–S10 in the Skills Handbook.

# Document-Based Assessment

## Freedom of Speech and Assembly

U.S. citizens burn the American flag in protest, and the Ku Klux Klan parades along Main Street. Both these controversial actions are protected by the 1st Amendment. Some Americans believe such actions should not be protected. Since America's earliest days as a nation, public and judicial opinion has been divided over the extent of free speech and assembly, as shown in the documents below.

### Document 1

We have nothing to fear from the demoralizing reasonings of some, if others are left free to demonstrate their errors and especially when the law stands ready to punish the first criminal act produced by the false reasonings; these are safer corrections than the conscience of the judge.

—Thomas Jefferson, July 3, 1801

### Document 2



### Document 3

... [F]reedom of speech which is secured by the Constitution does not confer an absolute right to speak, without responsibility, whatever one may choose, ... a State in the exercise of its police power may punish those who abuse this freedom by ... tending to incite to crime, disturb the public peace, or endanger the foundations of organized government. ...

—*Whitney v. California*, 1927

### Document 4

[T]he constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe 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. ... [T]he mere abstract teaching ... of the moral propriety or even moral necessity for a resort to force and violence is not the same as preparing a group for violent action and steeling it to such action. ...

—*Brandenburg v. Ohio*, 1969

### Use your knowledge of 1st Amendment freedoms and Documents 1–4 to answer these questions.

1. According to Document 1, which of these should be punished?  
A. violent ideas  
B. "demoralizing reasonings"  
C. criminal acts produced by violent ideas  
D. speech whose purpose is to incite fear
2. How does the cartoonist in Document 2 view the Court's rulings on 1st Amendment freedoms?
3. According to Document 3, when may a State exercise its police power to limit freedom of speech and assembly?
4. According to Document 4 (a case that overturned *Whitney*), when may speech and assembly be limited?
5. **Pull It Together** Which documents support tightening limits on speech and assembly? With which documents do you agree? Why?

### GOVERNMENT ONLINE

**Documents**  
To find additional primary sources on 1st Amendment freedoms, visit [PearsonSuccessNet.com](http://PearsonSuccessNet.com)


## DOCUMENT-BASED ASSESSMENT

1. C
2. The cartoonist believes that the Court has trampled on 1st Amendment freedoms, or has allowed others to do so.
3. when someone abuses this freedom by "tending to incite to crime, disturb the public peace, or endanger the foundations of organized government"
4. only when the use of force or of law violation is directed to inciting or producing imminent lawless action and is likely to incite or produce such action
5. Documents 2 and 3. Students should provide valid reasons for their responses.

**L2 Differentiate** Students use all the documents on the page to support their opinion.

**L3 Differentiate** Students include additional information available online at [PearsonSuccessNet.com](http://PearsonSuccessNet.com).

**L4 Differentiate** Students use materials from the textbook, the online information at [PearsonSuccessNet.com](http://PearsonSuccessNet.com), and do additional research to support their views.

 **Go Online to [PearsonSuccessNet.com](http://PearsonSuccessNet.com)** for a student rubric and extra documents.

## WRITING ABOUT GOVERNMENT

15. Have students proofread and refine their persuasive essays before submitting them.

## APPLY WHAT YOU'VE LEARNED

16. Possible questions: Does our action violate any laws? Would our demonstration endanger public safety? Can we ensure that our demonstrators will remain peaceful? Did we get the proper permit? Will we be trespassing on private property?
17. Each part of the brochure should include a conflict between individual rights and the common good, and present a solution to

the conflict that creates a fair balance.

## Introduce the Chapter

### Essential Questions:

#### UNIT 5

What should be the role of the judicial branch?

#### CHAPTER 20

To what extent has the judiciary protected the rights of privacy, security, and personal freedom?

#### ACTIVATE PRIOR KNOWLEDGE

Have students examine the photo and quotation on these pages. Ask: **What does the image represent?** (*justice*) **What is the significance of the scale?** (*fair treatment for all under the law*) **According to Ronald Reagan, what is the government's responsibility toward constitutional rights?** (*to restore rights unjustly denied*) In this chapter, students will learn about constitutional liberties related to legal proceedings. Have students begin to further explore civil liberties by completing the Chapter 20 Essential Question Warmup activity in their **Essential Questions Journal**.

#### BEFORE READING

**L2 ELL Differentiate** Chapter 20 Prereading and Vocabulary Worksheet (Unit 5 All-in-One, p. 126)

#### SUCCESSNET STUDENT AND TEACHER CENTER

Visit **PearsonSuccessNet.com** for downloadable resources that allow students and teachers to connect with government “on the go.”

#### DIGITAL LESSON PRESENTATION

The digital lesson presentation supports the print lesson with activities and summaries of key concepts. Activities for this chapter include:

- **Rights of the Accused: Steps of Justice**

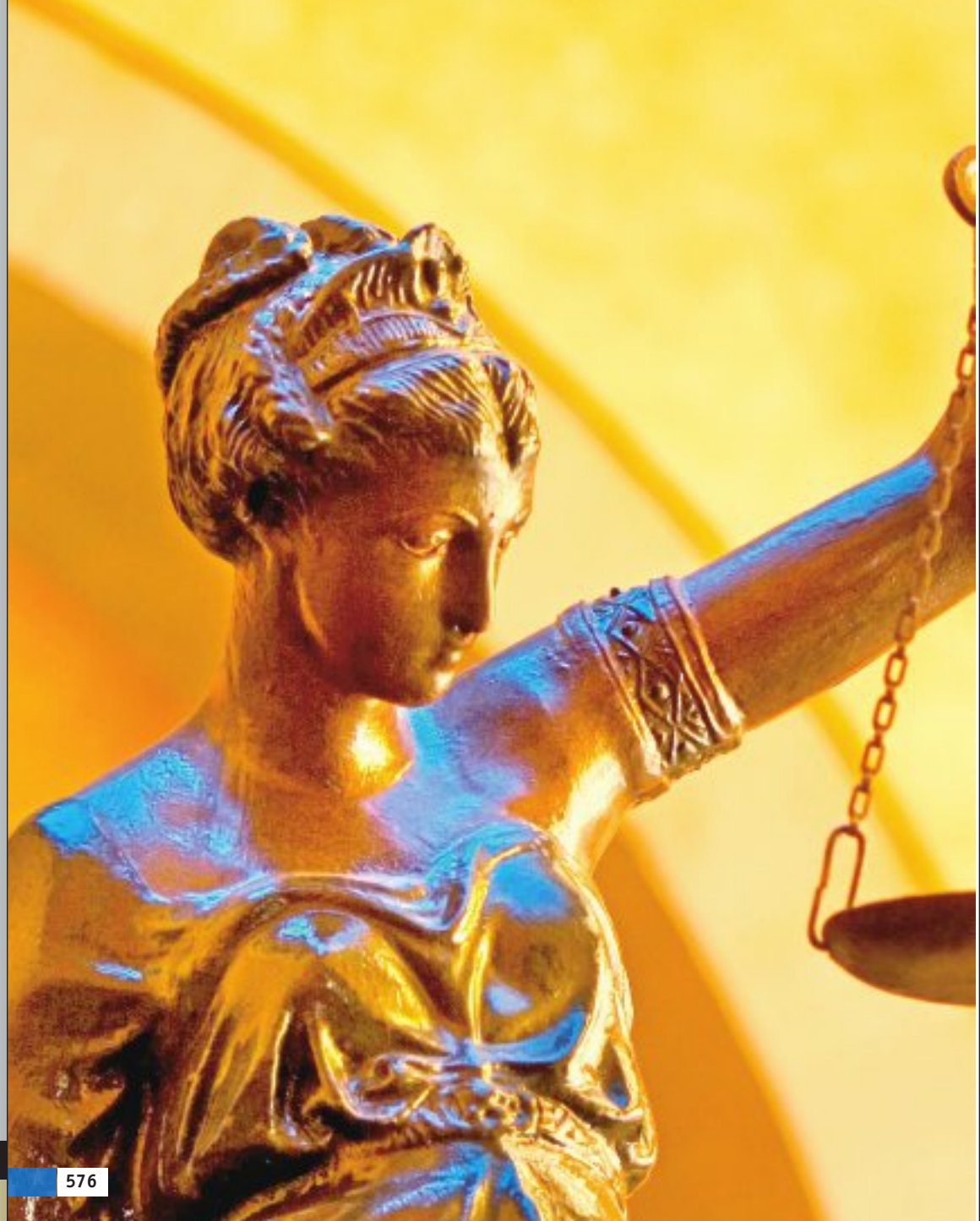
## SKILLS DEVELOPMENT

#### DECISION MAKING

You may wish to teach decision making as a distinct skill within Section 2 of this chapter. Use the Chapter 20 Skills Worksheet (Unit 5 All-in-One, p. 142) to help students learn about decision making. The worksheet asks students to decide whether to vote for or against the USA Patriot Act. For L2 and L1 students, assign the adapted Skill Activity (Unit 5 All-in-One, p. 143).



The chapter WebQuest challenges students to answer the chapter Essential Question by asking them about the judiciary.



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## Block Scheduling

**BLOCK 1:** Teach the Section 1 lesson, including the Bellringer and Due Process activities. Discuss Core Worksheet 20.1. Teach the Section 2 lesson, including the Bellringer (Transparency 20B), Cover Search-and-Seizure Basics, Core Worksheet 20.2, and the Exclusionary Rule activities. Choose one of the Extend options to conclude the lesson.

**BLOCK 2:** Teach the Section 3 lesson, including the Bellringer (Transparency 20E), Clarify Rights of the Accused, Diagram Rights of the Accused (Transparency 20F), and Evaluate the Miranda Rule (Core Worksheet 20.3B). Teach the Section 4 lesson, including the Bellringer (Transparency 20G), Analyze Court Decisions, and Core Worksheets 20.4A and 20.4B. Conclude with the Political Cartoon Mini-Lesson (Transparency 20H).