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.

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.

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
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.

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).

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.

Have you ever heard of Walter Barnette? How about Toyoaburo 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. Toyoaburo 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:

—Declaration of Independence

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

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.”
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 these 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 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

Differentiated Resources

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

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

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)

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?

Differentiate Have students create an acrostic 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)

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.
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).

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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.¹

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**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.²

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 to all persons.

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¹ 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—An example, in jail or on bail awaiting trial.

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

³ The Supreme Court first held that the provisions of the Bill of Rights restrict only the National Government in *Dartmouth v. Madison*, 1819. This was the first case in which the point was raised. The Supreme Court has followed that holding (practically) ever since.

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**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 Corntrn, 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.”

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**Checkpoint** Possible response: The right to free speech does not allow one person to slander another.
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
  
  1st AMENDMENT
  - Freedom of speech
  - Freedom of press
  - Freedom of assembly, petition
  - Free Exercise Clause
  - Establishment Clause

  4th AMENDMENT
  - No unreasonable searches, seizures

  5th AMENDMENT
  - No self-incrimination
  - No double jeopardy

  6th AMENDMENT
  - Right to counsel
  - Right to confront and obtain witnesses
  - Speedy trial
  - Trial by jury in criminal cases

  8th AMENDMENT
  - No cruel, unusual punishments

- Provisions of the Bill of Rights NOT INCORPORATED into the 14th Amendment's Due Process Clause
  
  2nd AMENDMENT
  - Right to keep, bear arms

  3rd AMENDMENT
  - No quartering of troops

  5th AMENDMENT
  - Grand jury

  7th AMENDMENT
  - Trial by jury in civil cases

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?

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:

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,

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."

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.

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
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.

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.
Civil Liberties: First Amendment Freedoms

Section 1 Assessment

1. **Guiding Question** Use your completed graphic organizer to answer this question: How does the Constitution protect the rights of individuals against government?

2. **Key Terms and Comprehension**
   1. **What is the Bill of Rights, and why did its omission from the original Constitution raise such an outcry?**
   2. **Compare and contrast civil liberties and civil rights.**

4. **(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?**

5. **Critical Thinking**
   1. **Draw Inferences** (a) Why are individual rights not absolute? (b) Cite two examples to illustrate how rights may come into conflict with one another.
   2. **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?

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.

**Assessment Answers**

1. 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.

2. The Bill of Rights is the first ten amendments to the Constitution. People wanted specific, written protection against abuses of government.

3. 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.

4. (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

5. (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.
**Guiding Question**
How does the 1st Amendment protect the freedom of religion?

**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.4

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 the 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.

4 Also, Article I, 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.

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**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.
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 political 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 purportedly 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 *Eversen 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:

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**PRIMARY SOURCE**

The constitutional prohibition against laws respecting an establishment of religion must at least mean that, in this country, it is no part of the business of government to compose official prayers for any group of the American people to recite as 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
Chapter 19 • Section 2 553

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).

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

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.

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.

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.

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 Pennsylvanian 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 cannot 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

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

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.
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?

1. Secular purpose
2. Neutral toward religion
3. Disentangled from religion

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 parochial 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 v. Allegheny v. ACLU, it held that the

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

Differentiate Have students identify the case associated with each scenario.
Differentiate Ask students to select one of these scenarios and write a paragraph explaining why they agree or disagree with the Court's ruling.

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.

Check Point
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 pay 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.

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
Check Point 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.

endorsement n. approval or backing of
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 course 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, *Barn 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.

**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.)

**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.

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

**Assess and Remediate**

**ELL 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.
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).

Assign the Section 2 Assessment questions.

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

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.

**REMEDICATION**

<table>
<thead>
<tr>
<th>If Your Students Have Trouble With</th>
<th>Strategies For Remediation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Understanding the Establishment Clause and the “wall of separation” (Questions 1, 2, 3, 5)</td>
<td>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.</td>
</tr>
<tr>
<td>Understanding the Free Exercise Clause (Questions 1, 4, 6)</td>
<td>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 Who? What? Where? and When? 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.</td>
</tr>
</tbody>
</table>

**Answers**

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

**Assessment Answers**

1. The 1st Amendment prohibits government from establishing or aiding religion, and guarantees to each person the free exercise of religion.
2. (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.
3. (a) The Lemon test evaluates laws that provide aid to parochial schools. (b) Lemon v. Kurtzman, 1971
4. that each person has the right to believe whatever he or she wants to in matters of religion without interference from government.
5. 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.
6. 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.

**Quick Write**  Students must gather information about both sides of the issue. Have them ask questions as they research to determine the most relevant facts and data and to anticipate opposing arguments.

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

**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

558 Civil Liberties: First Amendment Freedoms
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.

<table>
<thead>
<tr>
<th>Type of Expression</th>
<th>Limitation</th>
</tr>
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<tbody>
<tr>
<td>Sedulous speech</td>
<td></td>
</tr>
<tr>
<td>Obscenity</td>
<td></td>
</tr>
<tr>
<td>Media</td>
<td></td>
</tr>
<tr>
<td>Movies</td>
<td></td>
</tr>
<tr>
<td>Radio, TV</td>
<td></td>
</tr>
<tr>
<td>Internet</td>
<td></td>
</tr>
<tr>
<td>Symbolic speech</td>
<td></td>
</tr>
<tr>
<td>Commercial speech</td>
<td></td>
</tr>
</tbody>
</table>

Political Dictionary
• libel
• slander
• sedition
• sedulous 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 sedulous 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

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’ 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.5

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 sedulous 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.

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

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.
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.

Seditious Speech

Sedition is the crime of attempting to overthrow the government by force or to disrupt its lawful activities by violent acts. 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 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:

- Reading Comprehension Worksheet (p. 90)
- Reading Comprehension Worksheet (p. 91)
- Core Worksheet (p. 92)
- Extend Worksheet (p. 95)
- Extend Activity (p. 96)
- Quiz A (p. 97)
- 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 Commu-
nist Party leaders had been convicted of
advocating the overthrow of the Federal Gov-
ernment. 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
theirists 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 mod-
ified the Dennis ruling in several cases. In
Yates v. United States, 1957, for example,
the Court overturned the Smith Act convict-
ions 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,
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, be 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 pun-
ish some utterances after they are made—for
example, in cases involving libel or slander, or
obscenity. With almost no exceptions, how-
ever, government cannot curb ideas be free
they are expressed. That is, except in the most
extreme situations, government cannot place

Background

SEDITION 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 RESTRAGT

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.

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.

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?

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 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, in flout in jury 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.”

7 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.
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.”

**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.*

**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 small 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.

**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.
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.

FCC v. Pacifica 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. Pacifica 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

Answers
Freedom of Speech and Press because they both use public airwaves

564 Civil Liberties: First Amendment Freedoms

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.
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. “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...
EXTEND THE LESSON

**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.

**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, seditionary 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.

**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.

**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, 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 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.”

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 expression offensive.

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8 Do not read too much into this. In Maynard v. City of exercising speech.

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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 First and Fourteenth 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 First and Fourteenth Amendments’ guarantee of free speech, B. Lorillard Co. v. Reilly, 2001.

Assessment Answers

1. 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 First Amendment. The FCC regulates radio and television.

2. (a) False and malicious use of printed words (b) false and malicious use of spoken words; libel is printed, whereas slander is spoken.

3. The Supreme Court determined that seditious speech could provide a “clear and present danger” that criminal acts will follow.

4. (a) Laws that give reporters some protection against having to disclose their sources or review other confidential information in legal proceedings (b) to assure confidentiality so that sources will reveal vital information.

5. 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; 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.

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.
**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.

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

**Political Dictionary**
- assemble
- content neutral
- civil disobedience
- 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 peacefully.

**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, Delonge 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

**Focus on the Basics**

**FACTS:** • The 1st Amendment guarantees the right to assemble peaceably 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.

**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. 519. Then have them do the Bellringing activity.
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.

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.)

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

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:

- Reading Comprehension Worksheet (p. 99)
- Reading Comprehension Worksheet (p. 100)
- Core Worksheet (p. 101)
- Core Worksheet (p. 105)
- Quiz A (p. 109)
- Quiz B (p. 110)
- Chapter Test A (p. 111)
- Chapter Test B (p. 114)
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.
PRIVATELY OWNED SHOPPING CENTERS ARE NOT "PLACES OF PUBLIC ASSEMBLY." THIS, 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 THAT 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 ideals 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 organization's "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.
Chapter 19

For More Information

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


Chapter 19 Assessment 573

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
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.

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 publication 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
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**
... Freedom of speech which is secured by the Constitution does not confine 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**
[The 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. . . .] The 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 steering 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?

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.

Go Online to PearsonSuccessNet.com for a student rubric and extra documents.
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**

**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

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**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).