

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

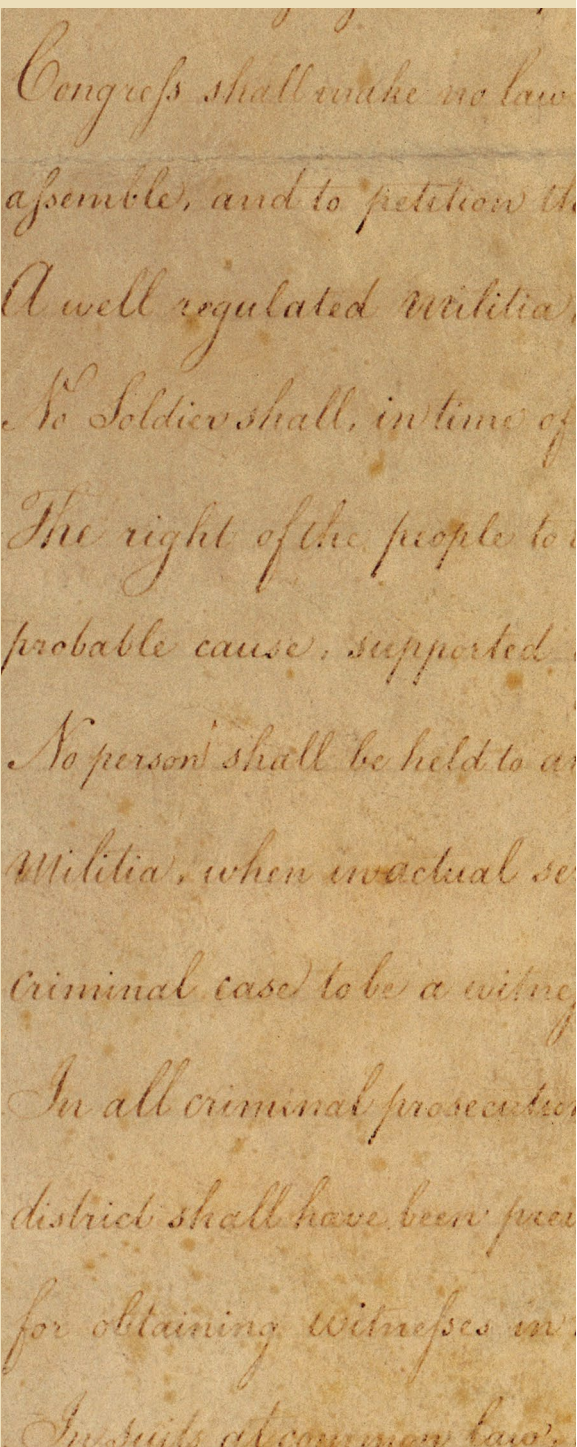
No Soldier shall, in time of peace be quartered in any house, without the consent of the owner.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

No person shall be held to answer for a capital, or otherwise infamous crime, unless by a presentment or indictment of a Grand Jury, except in cases arising in the land or naval Militia, when in actual service in time of War or public danger; nor shall a person be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; and in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district where the crime shall have been previously ascertained by law, and to be informed of the charges against him, and to have the assistance of Counsel for his defense; and to have the assistance of Counsel for his defense.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact shall be tried by a jury, unless by consent of the parties, and no trial shall take place without the presence of the jury.

FREE SPEECH IN US HISTORY, 1917-1988



Cover image and above: Detail, Bill of Rights, 1789 (National Archives)

FREE SPEECH IN US HISTORY, 1917–1988

by **John McNamara and Ron Nash**

(created 2020, revised 2023)

John McNamara and Ron Nash taught social studies in New York and New Jersey high schools for over thirty years. They are project consultants for the Gilder Lehrman Institute of American History.

Contents

Lesson 1	5	Lesson 1 Handouts	18
Lesson 2	7	Lesson 2 Handouts	24
Lesson 3	8	Lesson 3 Handouts	30
Lesson 4	10	Lesson 4 Handouts	37
Lesson 5	12	Lesson 5 Handouts	41
Lesson 6	14	Lesson 6 Handouts	45
Lesson 7	16	Lesson 7 Handouts	48

Grade Levels

9–12

Recommended Time for Completion

Five 45-minute class periods for historical material. Five 45-minute class periods for civic engagement.

Overview

This unit is one of the Gilder Lehrman Institute’s Teaching Civics through History™ (TCTH) resources, designed to align with the Common Core State Standards. These units were developed to provide students with foundational knowledge of the historical roots of current civic and social issues facing their communities and the nation while building their literacy, research, and critical thinking skills. Through incorporating and linking history and civics, this unit will

- 1) enable students to understand the historical foundations of current political, economic, social, and cultural issues
- 2) encourage students to use their historical literacy, document

analysis, and critical thinking skills to connect past and present

- 3) empower students to develop their civic voices

Over one to two weeks, students explore how legislation and the courts shaped the twentieth-century history of free speech in the United States and the history of free speech in schools. They will read and assess primary and secondary sources, analyze articles written from different perspectives, and develop knowledgeable and well-reasoned points of view.

Students will demonstrate their comprehension through their oral and written assessment of the primary sources and responses to the essential

questions, and how they choose, plan, and implement the civic engagement project.

Students will be able to

- Demonstrate an understanding of a scholarly essay
- Analyze primary source documents using close-reading strategies

- Understand how protections for and limitations on speech have changed over time
- Distinguish between facts and opinions and identify their proper use in visual and written source materials
- Compare and contrast opinions expressed by modern sources
- Develop a viewpoint, present it, and write a response based on textual and visual evidence

Essential Questions

- What claims did twentieth-century legislators and judges make about the importance of free speech?
- How and when have Congress and the Supreme Court restricted and regulated speech?
- What has the Supreme Court ruled about the protections for and limitations on free speech in schools?
- When have Americans found it especially challenging to maintain a commitment to freedom of speech?
- What should the protections for and limitations on speech be?

Common Core State Standards

CCSS.ELA-Literacy.RH.11-12.1: Cite specific textual evidence to support analysis of primary and secondary sources, connecting insights gained from specific details to an understanding of the text as a whole.

CCSS.ELA-Literacy.RH.11-12.2: Determine the central ideas or information of a primary or secondary source; provide an accurate summary that makes clear the relationships among the key details and ideas.

CCSS.ELA-Literacy.RH.11-12.7: Integrate and evaluate multiple sources of information presented in diverse formats and media (e.g., visually, quantitatively, as well as in words) in order to address a question or solve a problem.

CCSS.ELA-Literacy.RL.9-10.4: Determine the meaning of words and phrases as they are used in the text, including figurative and connotative meanings; analyze the cumulative impact of specific word choices on meaning and tone (e.g., how the language evokes a sense of time and place; how it sets a formal or informal tone).

CCSS.ELA-Literacy.RL.11-12.1: Cite strong and thorough textual evidence to support analysis of what the text says explicitly as well as inferences drawn from the text, including determining where the text leaves matters uncertain.

CCSS.ELA-Literacy.SL.9-10.1.C: Propel conversations by posing and responding to questions that relate the current discussion to broader themes or larger ideas; actively incorporate others into the discussion; and clarify, verify, or challenge ideas and conclusions.

CCSS.ELA-Literacy.SL.11-12.1: Initiate and participate effectively in a range of collaborative discussions (one-on-one, in groups, and teacher-led) with diverse partners on grade-level topics, texts, and issues, building on others' ideas and expressing their own clearly and persuasively.

CCSS.ELA-Literacy.W.9-10.1 and 11-12.1: Write arguments to support claims in an analysis of substantive topics or texts, using valid reasoning and relevant and sufficient evidence.

Materials

- Source 1: “Free Speech,” by Signe Wilkinson, August 18, 2017. Signe Wilkinson Editorial Cartoon used with the permission of Signe Wilkinson, the Washington Post Writers Group and the Cartoonist Group. All rights reserved.
- Source 2: “Uncle Sam Bound and Gagged,” by Angelo Lopez, October 1, 2017, with the permission of the artist
- Activity Sheet 1: Analyzing a Cartoon
- Source 3: The First Amendment and the Fourteenth Amendment, Section 1, of the US Constitution, The Bill of Rights: A Transcription, *America’s Founding Documents*, National Archives, [archives.gov/founding-docs/bill-of-rights-transcript](https://www.archives.gov/founding-docs/bill-of-rights-transcript)
- Activity Sheet 2: Free Speech Situations and Statements with Answer Key
- Source 4: Historical Background 1: “A History of Free Speech in the United States, Part 1: From the Bill of Rights to Civil Rights,” by Bruce Allen Murphy, Fred Morgan Kirby Professor of Civil Rights, Lafayette College
- Activity Sheet 3: Analyzing Historical Background 1
- Source 5: Historical Background 2: “A History of Free Speech in the United States, Part 2: Three Levels of Judicial Scrutiny,” by Bruce Allen Murphy, Fred Morgan Kirby Professor of Civil Rights, Lafayette College
- Activity Sheet 4: Analyzing Historical Background 2
- Source 6: Excerpt from the Espionage Act (1917), Act of June 15, 1917, Public Law 24 (Espionage Act), “An Act to Punish Acts of Interference with the Foreign Relations, the Neutrality, and the Foreign Commerce of the United States, to Punish Espionage, and Better to Enforce, the Criminal Laws of the United States, and for Other Purposes,” Record Group 11: General Records of the United States Government, Enrolled Acts and Resolutions of Congress, 1789–2013, National Archives, catalog.archives.gov/id/5721240
- Source 7: Excerpt from the Sedition Act (1918), An Act to Amend Section Three, Title One, of the Act Entitled, “An Act to Punish Acts of Interference with the Foreign Relations, the Neutrality, and the Foreign Commerce of the United States, to Punish Espionage, and Better to Enforce, the Criminal Laws of the United States, and for Other Purposes,” May 16, 1918, *US Statutes at Large*, vol. 40 (1917–1919), 65th Congress, pp. 553–554, [loc.gov/item/llsl-v40/](https://www.govitem.gov/item/llsl-v40/)
- Activity Sheet 5: Document Analysis for the Espionage Act (1917) and Sedition Act (1918)
- Source 8: Excerpts from the Dissenting Opinion in *Abrams v. United States*, 250 US 616 (1919), Library of Congress, [loc.gov/item/usrep250616/](https://www.loc.gov/item/usrep250616/), pp. 627–628 and 629–631
- Activity Sheet 6: Document Analysis for *Abrams v. United States* (1919)
- Source 9: Excerpts from the US Supreme Court Decision in *Brandenburg v. Ohio*, 395 US 444 (1969), Library of Congress, [loc.gov/item/usrep395444/](https://www.loc.gov/item/usrep395444/), pp. 444–449
- Activity Sheet 7: Document Analysis for *Brandenburg v. Ohio* (1969)
- Source 10: Excerpts from the US Supreme Court Decision in *Hazelwood School District et al. v. Kuhlmeier et al.*, 484 US 260 (1988), Library of Congress, [loc.gov/item/usrep484260/](https://www.loc.gov/item/usrep484260/), pp. 260–261 and 277–291
- Activity Sheet 8: Document Analysis for *Hazelwood v. Kuhlmeier* (1988)
- Articles from AllSides.com linked on the Gilder Lehrman Institute’s Teaching Civics through History web page, [gilderlehrman.org/tcth](https://www.gilderlehrman.org/tcth) (Click on the “Free Speech” tile at the bottom of the page.)
- Activity Sheet 9: Analyzing a News Article
- Source 11: Civil Discourse Guidelines. The guidelines provided here are adapted from “Managing Difficult Classroom Discussions,” Center for Innovative Teaching and Learning, Indiana University Bloomington, citl.indiana.edu/teaching-resources.
- Activity Sheet 10: Civic Engagement Project Proposal

LESSON 1: MOTIVATING ACTIVITIES

by John McNamara and Ron Nash (created 2020, revised 2023)

Overview

This lesson motivates students to explore the role freedom of speech in American democracy, as well as the protections and limitations that might enable or inhibit that freedom. Students will examine modern political cartoons and take a provocative quiz. They will demonstrate their understanding of the value of free speech through class discussion.

Students will be able to

- Analyze primary source documents using close-reading strategies
- Distinguish between facts and opinions and identify their proper use in visual and written source materials

John McNamara and Ron Nash taught social studies in New York and New Jersey high schools for over thirty years. They are project consultants for the Gilder Lehrman Institute of American History.

Grade Levels: 9–12

Time for Completion: One 45-minute period

Unit Overview: This unit is one of the Gilder Lehrman Institute’s Teaching Civics through History™ (TCTH) resources, designed to align with the Common Core State Standards. These units were developed to provide students with foundational knowledge of the historical roots of current civic and social issues facing their communities and the nation while building their literacy, research, and critical thinking skills. Students will explore how legislation and the courts shaped the twentieth-century history of free speech in the United States and the history of free speech in schools.

Essential Question

- What should the protections for and limitations on speech be?

Materials

- Source 1: “Free Speech,” by Signe Wilkinson, August 18, 2017. Signe Wilkinson Editorial Cartoon used with the permission of Signe Wilkinson, the Washington Post Writers Group and the Cartoonist Group. All rights reserved.
- Source 2: “Uncle Sam Bound and Gagged,” by Angelo Lopez, October 1, 2017, with the permission of the artist
- Activity Sheet 1: Analyzing a Cartoon
- Source 3: The First Amendment and the Fourteenth Amendment, Section 1, of the US Constitution, The Bill of Rights: A Transcription, *America’s Founding Documents*, National Archives, [archives.gov/founding-docs/bill-of-rights-transcript](https://www.archives.gov/founding-docs/bill-of-rights-transcript)
- Activity Sheet 2: Free Speech Situations and Statements with Answer Key

Procedure

1. Distribute the two twenty-first century political cartoons that address free speech and freedom of expression in American society with Activity Sheet 1: Analyzing a Cartoon. Ask the students to examine the two cartoons and complete the activity sheet for both cartoons.
2. Ask students how the content of these political cartoons relates to the essential question for this lesson: What should the protections for and limitations on speech be?
3. Explain that the US Constitution guarantees freedom of speech. Display and distribute Source 3 with the First Amendment and Section 1 of the Fourteenth Amendment, which prohibit the federal government from abridging American citizens’ right to freedom of expression, including speech, and prohibit any state from depriving citizens of their right to due process of law and equal protection of the laws.

4. You may choose to have the students read the amendments to themselves or “share read” the text with the class. If you choose to share read the text, have the students follow along silently while you begin to read aloud, modeling prosody, inflection, and punctuation. Then ask the class to join in with the reading after a few sentences while you continue to read aloud, still serving as the model for the class. This technique will support struggling readers as well as English language learners (ELL).
5. Ask the students to explain how the US Constitution addresses citizens’ right to free speech and other related modes of expression.
6. Display and distribute Activity Sheet 3, the list of statements and situations that highlight controversies surrounding the Constitution and citizens’ lawful exercise of free speech in American society today. The students may work as individuals or collaborate in pairs or small groups to discuss the situations and statements and determine the accuracy of each by indicating whether it is True or Untrue. An answer key is provided. You may choose to distribute the answer key to the class or discuss each of the answers.
7. The students can then share their viewpoints on these situations and statements, which can serve as a springboard for a brief class discussion. It is likely that they will consider some of the correct answers surprising. Encourage them to consider how the Supreme Court explains its decisions and builds on precedent.

LESSON 2: HISTORICAL BACKGROUND

by John McNamara and Ron Nash (created 2020, revised 2023)

Overview

This lesson investigates how the definition of “free speech” has changed over time. It also introduces the ways that judicial scrutiny is used by the Supreme Court to evaluate whether an act of speech or expression is protected.

Students will read two essays that are written by a historian. These essays discuss important historical legislation and court decisions. Students will demonstrate their understanding of this content by completing activity sheets.

Students will be able to

- Demonstrate an understanding of a scholarly essay
- Understand how protections for and limitations on speech have changed over time

John McNamara and Ron Nash taught social studies in New York and New Jersey high schools for over thirty years. They are project consultants for the Gilder Lehrman Institute of American History.

Grade Levels: 9–12

Time for Completion: One 45-minute period

Unit Overview: This unit is one of the Gilder Lehrman Institute’s Teaching Civics through History™ (TCTH) resources, designed to align with the Common Core State Standards. These units were developed to provide students with foundational knowledge of the historical roots of current civic and social issues facing their communities and the nation while building their literacy, research, and critical thinking skills. Students will explore how legislation and the courts shaped the twentieth-century history of free speech in the United States and the history of free speech in schools.

Essential Questions

- What claims did twentieth-century legislators and judges make about the importance of free speech?
- When have Americans found it especially challenging to maintain a commitment to freedom of speech?
- How and when have Congress and the Supreme Court restricted and regulated speech?

Materials

- Source 4: Historical Background 1: “A History of Free Speech in the United States, Part 1: From the Bill of Rights to Civil Rights,” by Bruce Allen Murphy, Fred Morgan Kirby Professor of Civil Rights, Lafayette College
- Source 5: Historical Background 2: “A History of Free Speech in the United States, Part 2: Three Levels of Judicial Scrutiny,” by Bruce Allen Murphy, Fred Morgan Kirby Professor of Civil Rights, Lafayette College
- Activity Sheet 3: Analyzing Historical Background 1
- Activity Sheet 4: Analyzing Historical Background 2

Procedure

1. Distribute Source 4, which is Part 1 of Bruce Allen Murphy’s essay “A History of Free Speech in the United States,” and Activity Sheet 3.
2. Depending on the students’ experience with examining texts, you may choose share read the essay as described in Lesson 1 and to complete the document analysis as a whole-class activity or model the selection and analysis of the first phrase and the first answer in the critical thinking section. For the rest of the activity sheet, you may choose to have the students work individually, as partners, or in small groups of three or four.
3. Reconvene the class and discuss the responses and interpretations developed by individuals or groups.
4. Distribute Source 5, Part 2 of Bruce Allen Murphy’s essay, with Activity Sheet 4. Once the students have read the essay and completed the activity sheet, reconvene the class to discuss their responses.
5. You may choose to expand the discussion to include the essential questions for this lesson.

LESSON 3: FREE SPEECH AND WORLD WAR I, 1917–1919

by John McNamara and Ron Nash (created 2020, revised 2023)

Overview

This lesson introduces students to the problem of tension between national interests and free speech, especially during times of war. As a case study, students will examine legislation and the Supreme Court’s assessment of this legislation’s constitutionality. They will demonstrate their understanding of the value and challenges of free speech by completing intermediate learning activities that prepare them for a class discussion.

Students will be able to

- Analyze primary source documents using close-reading strategies
- Understand how protections for and limitations on speech have changed over time

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Grade Levels: 9–12

Time for Completion: One 45-minute period

Unit Overview: This unit is one of the Gilder Lehrman Institute’s Teaching Civics through History™ (TCTH) resources, designed to align with the Common Core State Standards. These units were developed to provide students with foundational knowledge of the historical roots of current civic and social issues facing their communities and the nation while building their literacy, research, and critical thinking skills. Students will explore how legislation and the courts shaped the twentieth-century history of free speech in the United States and the history of free speech in schools.

Essential Questions

- What claims did twentieth-century legislators and judges make about the importance of free speech?
- When have Americans found it especially challenging to maintain a commitment to freedom of speech?
- How and when have Congress and the Supreme Court restricted and regulated speech?

Materials

- Source 6: Excerpt from the Espionage Act (1917), Act of June 15, 1917, Public Law 24 (Espionage Act), “An Act to Punish Acts of Interference with the Foreign Relations, the Neutrality, and the Foreign Commerce of the United States, to Punish Espionage, and Better to Enforce, the Criminal Laws of the United States, and for Other Purposes,” Record Group 11: General Records of the United States Government, Enrolled Acts and Resolutions of Congress, 1789–2013, National Archives, catalog.archives.gov/id/5721240
- Source 7: Excerpt from the Sedition Act (1918), An Act to Amend Section Three, Title One, of the Act Entitled, “An Act to Punish Acts of Interference with the Foreign Relations, the Neutrality, and the Foreign Commerce of the United States, to Punish Espionage, and Better to Enforce, the Criminal Laws of the United States, and for Other Purposes,” May 16, 1918, *US Statutes at Large*, vol. 40 (1917–1919), 65th Congress, pp. 553–554, [loc.gov/item/llsl-v40/](https://www.govinfo.gov/item/llsl-v40/)
- Activity Sheet 5: Document Analysis for the Espionage Act (1917) and Sedition Act (1918)
- Source 8: Excerpts from the Dissenting Opinion in *Abrams v. United States*, 250 US 616 (1919), Library of Congress, [loc.gov/item/usrep250616/](https://www.loc.gov/item/usrep250616/), pp. 627–628 and 629–631
- Activity Sheet 6: Document Analysis for *Abrams v. United States* (1919)

Procedure

1. Display the Essential Questions as the framework for the lesson. The students will explore the evolution and exercise of free speech and landmark federal legislation restricting free speech in times of war. Throughout this part of the lesson, students may work individually or collaboratively.

2. Explain to students that the Supreme Court issues decisions that are more than “yes” or “no.” Typically one justice writes an opinion explaining the majority position. Justice Holmes’s dissenting opinion explains why he thinks that the majority of justices are incorrect. Both types of opinions are part of the case’s record.
3. Distribute Sources 6 and 7, the excerpts from the Sedition and Espionage Acts enacted during World War I, along with Activity Sheet 5. The students should read and discuss the texts and complete the activity sheet.
4. Upon completion, the students should share and discuss their responses in the critical thinking section, leading to a teacher-facilitated class discussion, ensuring that the class stays focused on evidence-based responses.

The following question could be used to focus and sustain the discussion:

- a. Were these sedition and espionage laws consistent with the federal government’s obligation to protect public safety and national security?
- b. Were these sedition and espionage laws unconstitutional violations of citizens’ First Amendment right to freedom of speech and expression?

5. Students will now read, analyze, and assess the decisions in one landmark US Supreme Court case addressing the extent of free speech in the United States. Source 8 and Activity Sheet 6, focusing on *Abrams v. United States* (1919).
6. Once they complete the reading and the activity sheet, they should share and discuss their responses in the critical thinking section as you facilitate class discussion on this topic.

Examples of questions you could use to direct the conversation and elicit student responses:

- a. How did the Supreme Court define what types of speech are not protected? What does this have to do with “clear and present danger”?
- b. How have the courts explained the relationship between freedom of speech and democracy?
- c. How have the opportunity for full discussion, the likelihood of impending violence, and the degree of likelihood of immediate danger be balanced and prioritized to determine the appropriate exercise and extent of free (protected) speech?

Students’ responses and viewpoints should be based on evidence in the documents.

LESSON 4: BRANDENBURG V. OHIO (1969)

by John McNamara and Ron Nash (created 2020, revised 2023)

Overview

This lesson encourages students to explore how the Supreme Court has defined free speech. In the case of *Brandenburg v. Ohio*, the Supreme Court considered whether speech that was obviously racist and praised violence was either constitutionally protected or a “clear and present danger” for which the speakers could be convicted of criminal syndicalism.

Students will examine excerpts from the 1969 decision in *Brandenburg v. Ohio* and investigate how the justices explained their decision. They will demonstrate their understanding of the value and challenges of free speech by completing intermediate learning activities that prepare them for a class discussion.

Students will be able to

- Analyze primary source documents using close-reading strategies
- Understand how the protections for and limitations on speech have changed over time

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Grade Levels: 9–12

Time for Completion: One 45-minute period

Unit Overview: This unit is one of the Gilder Lehrman Institute’s Teaching Civics through History™ (TCTH) resources, designed to align with the Common Core State Standards. These units were developed to provide students with foundational knowledge of the historical roots of current civic and social issues facing their communities and the nation while building their literacy, research, and critical thinking skills. Students will explore how legislation and the courts shaped the twentieth-century history of free speech in the United States and the history of free speech in schools.

Essential Questions

- What claims did twentieth-century legislators and judges make about the importance of free speech?
- When have Americans found it especially challenging to maintain a commitment to freedom of speech?
- How and when have Congress and the Supreme Court restricted and regulated speech?

Materials

- Source 9: Excerpts from the US Supreme Court Decision in *Brandenburg v. Ohio*, 395 US 444 (1969), Library of Congress, [loc.gov/item/usrep395444/](https://www.loc.gov/item/usrep395444/), pp. 444–449
- Activity Sheet 7: Document Analysis for *Brandenburg v. Ohio* (1969)

Procedure

1. Display the Essential Questions for the class as the framework for the lesson.
2. Students will now read, analyze, and assess the opinions in one landmark US Supreme Court case addressing the extent of free speech in the United States. Distribute Source 9 and Activity Sheet 7, which focus on *Brandenburg v. Ohio* (1969). Students may work individually or collaboratively.
3. Once the students complete the reading and the activity sheet, they should share and discuss their responses in the critical thinking section, leading to a teacher-facilitated class discussion, ensuring that the class stays focused on evidence-based responses.

Examples of questions you could use to direct the conversation and elicit student responses:

- a. How did the Supreme Court define what types of speech are not protected? What does this have to do with “clear and present danger”?
- b. How have the courts explained the relationship between freedom of speech and democracy?
- c. How have the opportunity for full discussion, the likelihood of impending violence, and the degree of likelihood of immediate danger been balanced and prioritized to determine the appropriate exercise and extent of free (protected) speech?

Students’ responses and viewpoints should be based on evidence in the documents.

5. As a class, discuss different responses to the Essential Questions.

LESSON 5: HAZELWOOD V. KUHLMEIER (1988) AND FREE SPEECH IN SCHOOLS

by John McNamara and Ron Nash (created 2020, revised 2023)

Overview

In this lesson, students will read, discuss, and assess a landmark US Supreme Court ruling that specifically applies to freedom of expression for students in schools: *Hazelwood School District et al. v. Kuhlmeier et al.* (1988). The students' comprehension will be evaluated through class discussion, completed activity sheets, and responses to an essential question.

Students will be able to

- Analyze primary source documents using close-reading strategies
- Understand how the protections for and limitations on speech have changed over time

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Grade Levels: 9–12

Time for Completion: One 45-minute period

Unit Overview: This unit is one of the Gilder Lehrman Institute's Teaching Civics through History™ (TCTH) resources, designed to align with the Common Core State Standards. These units were developed to provide students with foundational knowledge of the historical roots of current civic and social issues facing their communities and the nation while building their literacy, research, and critical thinking skills. Students will explore how legislation and the courts shaped the twentieth-century history of free speech in the United States and the history of free speech in schools.

Essential Questions

- What claims did twentieth-century legislators and judges make about the importance of free speech?
- How and when have Congress and the Supreme Court restricted and regulated speech?
- What should the protections for and limitations on speech be?
- When have Americans found it especially challenging to maintain a commitment to freedom of speech?
- What has the Supreme Court ruled about the protections for and limitations on free speech in schools?

Materials

- Source 3: First Amendment and Section 1 of the Fourteenth Amendment
- Source 10: Excerpts from the US Supreme Court Decision in *Hazelwood School District et al. v. Kuhlmeier et al.*, 484 US 260 (1988), Library of Congress, loc.gov/item/usrep484260/, pp. 261–262 and 277–280 and 290
- Activity Sheet 8: Document Analysis for *Hazelwood v. Kuhlmeier* (1988)

Procedure

1. Introduce and display the lesson's Essential Questions or a question that directly addresses the issues presented in *Hazelwood v. Kuhlmeier*: To what extent should administrators and faculty be empowered to censor or limit students' oral and written viewpoints in a school setting?
2. Display and review Source 3 from Lesson 1, the First Amendment and Section 1 of the Fourteenth Amendment. These two amendments refer to actions by the government to guarantee citizens' free speech and other related modes of expression and to determine the extent of permissible restrictions on free speech and expression to protect public interest and security.
3. Explain to the students that the landmark US Supreme Court case they will examine in this lesson has affected students' free speech and freedom of expression in a school setting. Students have different amounts and types of freedom in public and in schools.

4. Distribute Source 10 and Activity Sheet 8, focusing on *Hazelwood School District et al. v. Kuhlmeier et al.* The students may work individually or collaboratively in pairs or small groups of three.
5. Once the students have completed the reading and activity sheet, reconvene the class and facilitate a discussion on this topic. Focus the discussion around an Essential Question or the alternative question.
6. As a concluding exercise, ask students to mobilize their historical knowledge to support well-reasoned responses to the unit's final essential question: What should the protections for and limitations on speech be?

Additional Resources

For a different perspective on student free speech, see *Tinker v. Des Moines Independent Community School District*, 393 US 503 (1969), Library of Congress, cdn.loc.gov/service/ll/usrep/usrep393/usrep393503/usrep393503.pdf, pp. 505–526.

LESSON 6: MODERN PROBLEMS IN FREE SPEECH

by John McNamara and Ron Nash (created 2020, revised 2023)

Overview

Students will read, analyze, and assess news articles on free speech issues facing Americans today building on the historical knowledge gained in the previous lessons. They will learn how to use the link to AllSides.com on the Gilder Lehrman Institute’s Teaching Civics through History web page. AllSides.com is a website that identifies articles written from right, center, and left perspectives.

Students will be able to

- Distinguish between facts and opinions and identify their proper use in visual and written source materials
- Compare and contrast opinions expressed by modern sources

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Grade Levels: 9–12

Time for Completion: One or two 45-minute periods

Unit Overview: This unit is one of the Gilder Lehrman Institute’s Teaching Civics through History™ (TCTH) resources, designed to align with the Common Core State Standards. These units were developed to provide students with foundational knowledge of the historical roots of current civic and social issues facing their communities and the nation while building their literacy, research, and critical thinking skills. Students will explore how legislation and the courts shaped the twentieth-century history of free speech in the United States and the history of free speech in schools.

Essential Questions

- When have Americans found it especially challenging to maintain a commitment to freedom of speech?
- How and when have Congress and the Supreme Court restricted and regulated speech?
- What has the Supreme Court ruled about the protections for and limitations on speech in schools?
- What should the protections for and limitations on speech be?

Materials

- Articles from AllSides.com linked on the Gilder Lehrman Institute’s Teaching Civics through History web page, gilderlehrman.org/tcth (Click on the “Free Speech” tile at the bottom of the page.)
- Activity Sheet 9: Analyzing a News Article
- Source 11: Civil Discourse Guidelines. The guidelines provided here are adapted from “Managing Difficult Classroom Discussions,” Center for Innovative Teaching and Learning, Indiana University Bloomington, citl.indiana.edu/teaching-resources.

Procedure

1. Introduce the scope and purpose of this lesson. A demonstration of the AllSides resources will allow students to begin to research materials that reflect right, center, and left perspectives on the political spectrum. You might need to explain the terms *right*, *center*, and *left*.
2. Students will then explore (either in groups or individually) some of the current articles on issues reflecting free speech and freedom of expression.
3. You may assign three articles from AllSides representing different points on the political spectrum (right, center, left) or allow students to select their own three articles.
4. Students will read the three articles and complete Activity Sheet 9: Analyzing a News Article for each.
5. Facilitate a class discussion among the students about their responses to the questions in the activity sheet. To help maintain civil discourse throughout the discussion, you may ask the students to develop guidelines to follow

as they discuss potentially divisive issues that affect them and their families or communities. Student input is important, and helping them create the rules for civil discourse themselves will give them greater commitment to follow those rules. Sample guidelines have been provided in Source 11.

6. Students will develop an oral or written response to the following question:

How do the important issues presented in the articles about free speech and freedom of expression reflect, refute, and/or compare with the historical development of free speech and freedom of expression in the United States?

Make sure that the students cite evidence from the articles and use their historical knowledge to support their viewpoints.

LESSON 7: CIVIC ENGAGEMENT PROJECT

by John McNamara and Ron Nash (created 2020, revised 2023)

Overview

The final component of the unit is the design, development, and evaluation of a student civic engagement project. The projects will be supported by the historical background; the ability to discuss, analyze, and assess articles on current issues; and the students' interest in issues that affect their communities. They will choose engagement activities, formulate action steps for implementation, and present on the effectiveness of their projects.

Students will be able to

- Develop a viewpoint, present it, and write a response based on textual and visual evidence

Essential Question

- What should the protections for and limitations on speech be?

Materials

- Activity Sheet 10: Civic Engagement Project Proposal
- Teachers' Resources: Civic Engagement Project Pacing Guidance and a Student Rubric available on the Gilder

John McNamara and Ron Nash taught social studies in New York and New Jersey high schools for over thirty years. They are project consultants for the Gilder Lehrman Institute of American History.

Grade Levels: 9–12

Time for Completion: One to four 45-minute periods

Unit Overview: This unit is one of the Gilder Lehrman Institute's Teaching Civics through History™ (TCTH) resources, designed to align with the Common Core State Standards. These units were developed to provide students with foundational knowledge of the historical roots of current civic and social issues facing their communities and the nation while building their literacy, research, and critical thinking skills. Students will explore how legislation and the courts shaped the twentieth-century history of free speech in the United States and the history of free speech in schools.

Lehrman Institute's Teaching Civics through History web page: gilderlehrman.org/tcth

Procedure

1. Based on the knowledge and understanding of the historical roots of current civic and social issues facing their communities and the nation; their literacy, research, and critical thinking skills; and their experience discussing, analyzing, and assessing current articles written from different perspectives, the students will design and develop civic engagement projects on topics that interest them.
2. The students may work collaboratively or independently to plan, implement, and present civic engagement projects that relate to free speech and freedom of expression in the United States today. The class will work collaboratively with you to develop a list of possible projects that could address an issue in their school and/or community. For example:
 - Collaborate with the school administration on the development/revision of editorial and censorship guidelines (digital and print) for student-run school publications, such as the newspaper, yearbook, literary magazine, website, etc
 - Collaborate with the school administration on the development/revision of the school dress code and guidelines on student artistic, cultural, and musical expression and symbolic speech such as student attire
 - Create a "Free Speech Wall" on the school campus that features a new issue, question, or topic each month and invites classmates throughout the school to post (write, draw, etc.) their views and publicly share their ideas and opinions. Students from various school clubs could collaborate on this initiative.

- Create a “Free Speech Wall” at a centralized community location (library, town hall, community center, etc.) that features a new issue, question, or topic each month and invites residents to post (write, draw, etc.) their views and publicly share their ideas and opinions. The monthly results could be published on the community/town website, in a local newspaper, at the community center, etc.
3. Distribute the Project Proposal activity sheet to each student or student group. The student or group will complete the proposal and submit it to you for evaluation and approval. You may return it to them with suggestions and request revisions before signing off.
 4. Based on the time available and your students’ experience, establish a schedule of due dates for implementation and presentation of the projects. You can find Project Pacing Guidelines and a Student Rubric on the Gilder Lehrman Institute’s Teaching Civics through History web page: gilderlehrman.org/tcth.

Guidelines for student projects:

- Identify issues related to the First Amendment right to free speech and freedom of expression that are important to the students’ lives and communities.
 - Select an issue to address.
 - Research the chosen issue and discuss what specific actions could improve the situation.
 - Plan an activity that could effect change, keeping in mind what the specific goal is; who or what body has the power to make the change; how that person or body can be approached; and what steps to take to accomplish the goal.
 - Carry out the plan (write letters, convene meetings with community members or officials, create flyers/exhibitions/websites, etc.) depending on the specific goals of the project.
 - Assess the effort when it is completed in order to understand successes, challenges, and ways to continue learning in the future.
5. Discuss what the challenges were and how the students addressed those challenges; how successful their civic engagement projects were; and what they could do to be more effective in the future.

Source 1: "Free Speech" by Signe Wilkinson, August 18, 2017



Signe Wilkinson Editorial Cartoon used with the permission of Signe Wilkinson, the Washington Post Writers Group and the Cartoonist Group. All rights reserved.

Source 2: "Uncle Sam Bound and Gagged" by Angelo Lopez, October 1, 2017



Used with the permission of the artist.

Activity Sheet 1: Analyzing a Cartoon

Cartoon #

Give your own original title to this cartoon:

What is the significance of the central figure(s) and/or object(s) in this cartoon?

What action is taking place in the cartoon?

What mood or tone is created by the cartoon and what in the image is creating that mood or tone?

Briefly explain the message that the artist is giving to the viewer.

Source 3: US Constitution, First Amendment and Fourteenth Amendment, Section 1

US Constitution, First Amendment

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

US Constitution, Fourteenth Amendment

Section 1: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Source: The Bill of Rights: A Transcription, *America's Founding Documents*, National Archives

Activity Sheet 2: Document Analysis: Free Speech Situations and Statements

Determine whether each statement describing the exercise of free speech is **True (T)** or **Untrue (U)** based on the interpretation of the First Amendment and Fourteenth Amendment in American society today.

- Freedom of speech includes the right not to speak (specifically, the right not to salute the flag).
- Freedom of speech includes the right to burn draft cards as an anti-war protest.
- Freedom of speech includes the right to engage in symbolic speech (e.g., burning the flag in protest).
- Freedom of speech includes the right of students to advocate illegal drug use at a school-sponsored event.
- Freedom of speech includes the right to make or distribute obscene materials.
- Freedom of speech includes the right to use certain offensive words and phrases to convey political messages.
- Freedom of speech includes the right to contribute money (under certain circumstances) to political campaigns.
- Freedom of speech includes the right of students to wear black armbands to school to protest a war.
- Freedom of speech includes the right to incite actions that would harm others.
- Freedom of speech includes the right to advertise commercial products and professional services (with some restrictions).
- Freedom of speech includes the right of students to make an obscene speech at a school-sponsored event.
- Freedom of speech includes the right to permit students to print articles in a school newspaper over the objections of the school administration.

Answer Key for Document Analysis: Free Speech Situations and Statements

- | | | | |
|---|--|---|---|
| <div style="border: 1px solid gray; padding: 2px; display: inline-block; margin-bottom: 10px;">TRUE</div> | 1. Freedom of speech includes the right not to speak (specifically, the right not to salute the flag). | <div style="border: 1px solid gray; padding: 2px; display: inline-block; margin-bottom: 10px;">TRUE</div> | 7. Freedom of speech includes the right to contribute money (under certain circumstances) to political campaigns. |
| <div style="border: 1px solid brown; padding: 2px; display: inline-block; margin-bottom: 10px;">UNTRUE</div> | 2. Freedom of speech includes the right to burn draft cards as an anti-war protest. | <div style="border: 1px solid gray; padding: 2px; display: inline-block; margin-bottom: 10px;">TRUE</div> | 8. Freedom of speech includes the right of students to wear black armbands to school to protest a war. |
| <div style="border: 1px solid gray; padding: 2px; display: inline-block; margin-bottom: 10px;">TRUE</div> | 3. Freedom of speech includes the right to engage in symbolic speech (e.g., burning the flag in protest). | <div style="border: 1px solid brown; padding: 2px; display: inline-block; margin-bottom: 10px;">UNTRUE</div> | 9. Freedom of speech includes the right to incite actions that would harm others. |
| <div style="border: 1px solid brown; padding: 2px; display: inline-block; margin-bottom: 10px;">UNTRUE</div> | 4. Freedom of speech includes the right of students to advocate illegal drug use at a school-sponsored event. | <div style="border: 1px solid gray; padding: 2px; display: inline-block; margin-bottom: 10px;">TRUE</div> | 10. Freedom of speech includes the right to advertise commercial products and professional services (with some restrictions). |
| <div style="border: 1px solid brown; padding: 2px; display: inline-block; margin-bottom: 10px;">UNTRUE</div> | 5. Freedom of speech includes the right to make or distribute obscene materials. | <div style="border: 1px solid brown; padding: 2px; display: inline-block; margin-bottom: 10px;">UNTRUE</div> | 11. Freedom of speech includes the right of students to make an obscene speech at a school-sponsored event. |
| <div style="border: 1px solid gray; padding: 2px; display: inline-block; margin-bottom: 10px;">TRUE</div> | 6. Freedom of speech includes the right to use certain offensive words and phrases to convey political messages. | <div style="border: 1px solid brown; padding: 2px; display: inline-block; margin-bottom: 10px;">UNTRUE</div> | 12. Freedom of speech includes the right to permit students to print articles in a school newspaper over the objections of the school administration. |

Source 4: Historical Background 1

A History of Free Speech in the United States, Part 1: From the Bill of Rights to Civil Rights

by Bruce Allen Murphy, Lafayette College

Although the First Amendment to the United States Constitution was ratified in 1791, it took generations of Supreme Court justices to reshape the meaning of those rights into the protections that we know today. Originally, the text was not only meant to prevent “prior restraint,” or censorship, of speech and writing, but also to allow for punishment after the fact, called “subsequent punishment,” for any harmful actions that resulted from those words. In its first decade of existence, the amendment was undermined by the passage of the 1798 Sedition Act, which punished opponents of President John Adams and the Federalist Party majority in Congress for speaking or writing critically about the government. Only after Thomas Jefferson became president in 1801, and his supporters were freed from prison, had their fines repaid, and were pardoned, were people free to criticize the federal government once again. But they still had no protections at the state level because the First Amendment did not apply to those jurisdictions until the early 1900s.

During World War I, the government arrested people who protested against the military draft and the government’s war policy. In 1919, when appeals from those cases came to the Supreme Court, Justices Oliver Wendell Holmes and Louis D. Brandeis created the “clear and present danger” test, limiting the government’s ability to regulate or ban speech to cases where the actions resulting from the speech presented “a clear and present danger of a substantive evil that Congress had a right to prevent.” This meant that the danger to the government and society had

to be immediate and real. In those early cases, the emergency of being at war permitted regulation. Later that year, Holmes argued that dissenting views should be tolerated to create a “free marketplace of ideas” that functioned without interference from the government.

By 1927, Holmes and Brandeis expanded their protective reach by arguing that in order for government to limit speech, “the evil apprehended [must be] so imminent that it may befall before there is opportunity for full discussion.” In 1951, the Court abandoned the clear and present danger test to allow for the punishment of the leaders of the American Communist Party, who were seen as threatening to overthrow the government of the United States. In a balancing test called the “gravity of the evil” test, the justices ruled that the government needed to prove “whether the gravity of the ‘evil,’ discounted by its improbability,” justified limiting free speech in order to “avoid the danger.” Since the Communist Party was seen by the Court as a dire governmental threat, the government would only have to prove that there was the smallest likelihood of their success to justify censorship and imprisonment. It was not until 1969, in a case called *Brandenburg v. Ohio* dealing with a Ku Klux Klan rally where members brought guns and burned a cross, that the Court created the modern, nearly total, protection for free speech. Now speech can only be punished “where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.”

Bruce Allen Murphy is the Fred Morgan Kirby Professor of Civil Rights at Lafayette College. He has written several Pulitzer Prize–nominated biographies of Supreme Court justices, include *Scalia: A Court of One* (2014) and *Wild Bill: The Legend and Life of William O. Douglas* (2003).

Activity Sheet 3: Analyzing Historical Background 1

IMPORTANT PHRASES

In this scholarly essay, which phrases or sentences related to free speech in the United States are the most important or informative? Choose three and give the reason for each choice.

Phrase 1:

Why is this phrase
important or
informative?

Phrase 2:

Why is this phrase
important or
informative?

Phrase 3:

Why is this phrase
important or
informative?

Source 5: Historical Background 2

A History of Free Speech in the United States, Part 2: Three Levels of Judicial Scrutiny

by Bruce Allen Murphy, Lafayette College

The Supreme Court created other tests for judging the limits governing freedom of assembly and symbolic speech rights. In 1942, in the case of *Chaplinsky v. New Hampshire*, a man distributing religious literature on a public sidewalk shouted such horrible and libelous words at a police officer that he was arrested for using “offensive, derisive or annoying word(s).” While the Court at this time was normally very protective of citizens’ rights, here it created a two-level test defining the difference between “speech” and “conduct.” For the justices, speech was normally in a “preferred position,” meaning that it could not be regulated because it had social worth. But the state could ban lewd, obscene, profane, libelous, insulting, or “fighting” words because “by their very utterance, [they] inflict injury or tend to incite an immediate breach of the peace.” In short, they are not a discussion of ideas, but become regulatable conduct. Using this test, speech meant to offend, intimidate, or threaten people, sometimes called “hate speech,” can be banned.

In the last half century, the Supreme Court has created three levels of judicial scrutiny for protecting speech. At the lowest level, if the state’s regulation is “reasonable” or has a “rational basis,” meaning that a “reasonable person,” specifically the judge, would allow it, the Court will nearly always permit state regulation. However, the state’s

power to regulate speech is much weaker if the speech is offered by someone in a “suspect classification,” such as being a member of a “discrete or insular minorit(y),” or if the speech involves a “fundamental interest,” such as being part of the election process or the discussion of a public issue in a public place. In these cases, the Court will judge the regulation using “strict scrutiny,” asking whether it is the only possible means for the state to achieve that law’s purpose, and whether the law was “closely tailored” to restrict only conduct and not speech. Under this test, the individual almost always wins.

In between these two levels, the justices use an intermediate balancing technique by evaluating the importance of the state’s regulatory interests and asking whether the law was “substantially related” to those interests, weighed against the individual’s speech interests. Using this approach, the Court has upheld a law preventing the burning of draft cards to protest a war but has overturned state or federal regulations against burning the American flag in protest. In a public-school setting, the Court allowed students to silently protest the Vietnam War by wearing black armbands, so long as they did not “materially and substantially interfere with the requirements of appropriate discipline in the operation of the school.”

Bruce Allen Murphy is the Fred Morgan Kirby Professor of Civil Rights at Lafayette College. He has written several Pulitzer Prize–nominated biographies of Supreme Court justices, include *Scalia: A Court of One* (2014) and *Wild Bill: The Legend and Life of William O. Douglas* (2003).

Activity Sheet 4: Analyzing Historical Background 2

IMPORTANT PHRASES

In this scholarly essay, which phrases or sentences related to free speech in the United States are the most important or informative? Choose three and give the reason for each choice.

Phrase 1:

Why is this phrase
important or
informative?

Phrase 2:

Why is this phrase
important or
informative?

Phrase 3:

Why is this phrase
important or
informative?

Source 6: Excerpt from the Espionage Act (1917)

Sec. 3. Whoever, when the United States is at war, shall willfully make or convey false reports or false statements with intent to interfere with the operation or success of the military or naval forces of the United States or to promote the success of its enemies and whoever, when the United States is at war, shall willfully cause or attempt to cause insubordination, disloyalty, mutiny, refusal of duty,

in the military or naval forces of the United States, or shall willfully obstruct the recruiting or enlistment service of the United States, to the injury of the service of the United States, shall be punished by a fine of not more than \$10,000 or imprisonment for not more than twenty years, or both. . . .

Source: Act of June 15, 1917, Public Law 24 (Espionage Act), "An Act to Punish Acts of Interference with the Foreign Relations, the Neutrality, and the Foreign Commerce of the United States, to Punish Espionage, and Better to Enforce, the Criminal Laws of the United States, and for Other Purposes," Record Group 11: General Records of the United States Government, Enrolled Acts and Resolutions of Congress, 1789–2013, National Archives.

Source 7: Excerpts from the Sedition Act (1918)

Sec. 3. Whoever, when the United States is at war, shall willfully make or convey false reports or false statements with intent to interfere with the operation or success of the military or naval forces of the United States, or to promote the success of its enemies, or shall willfully make or convey false reports, or false statements, . . . or incite or attempt to incite, insubordination, disloyalty, mutiny, or refusal of duty, in the military or naval forces of the United States, or shall willfully obstruct or attempt to obstruct the recruiting or enlistment service of the United States, and whoever, when the United States is at war, shall willfully utter, print, write, or publish any disloyal, profane, scurrilous, or abusive language about the form of government of the

United States, or the Constitution of the United States, or the military or naval forces of the United States . . . or shall willfully display the flag of any foreign enemy, or shall willfully . . . urge, incite, or advocate any curtailment of production . . . [or] advocate, teach, defend, or suggest the doing of any of the acts or things in this section enumerated, and whoever shall by word or act support or favor the cause of any country with which the United States is at war or by word or act oppose the cause of the United States therein, shall be punished by a fine of not more than \$10,000 or imprisonment for not more than 20 years, or both. . . .

Source: An Act to Amend Section Three, Title One, of the Act Entitled, "An Act to Punish Acts of Interference with the Foreign Relations, the Neutrality, and the Foreign Commerce of the United States, to Punish Espionage, and Better to Enforce, the Criminal Laws of the United States, and for Other Purposes," May 16, 1918, *US Statutes at Large*, vol. 40 (1917–1919), 65th Congress, pp. 553–554.

Activity Sheet 5: Document Analysis for the Espionage Act (1917) and Sedition Act (1918)

IMPORTANT PHRASES

In these laws, which phrases or sentences related to free speech in the United States are the most important or powerful? Choose three and give the reason for each choice.

Phrase 1:

Why is this phrase important or powerful?

Phrase 2:

Why is this phrase important or powerful?

Phrase 3:

Why is this phrase important or powerful?

Source 8: Excerpts from the Dissenting Opinion in *Abrams v. United States* (1919)

Background

After having distributed leaflets opposed to sending US troops to Russia during World War I, the defendants in this case were labeled anarchists and convicted of undermining the war effort. The US Supreme Court was asked to determine if the law in question, the Sedition Act of 1918, was constitutional. The Court decided it was, but Justice Holmes, who had during previous cases argued for limitations on free speech, here refined his position. How?

Excerpts from Justice Oliver Wendell Holmes's Dissenting Opinion

I refer to the First Amendment to the Constitution that Congress shall make no law abridging the freedom of speech.

I never have seen any reason to doubt that the questions of law that alone were before this Court in the cases of *Schenck*, *Frohwerk* and *Debs* were rightly decided. I do not doubt for a moment that by the same reasoning that would justify punishing persuasion to murder, the United States constitutionally may punish speech that produces or is intended to produce a clear and imminent danger that will bring about forthwith certain substantive evils that the United States constitutionally may seek to prevent. The power undoubtedly is greater in time of war than in time of peace because war opens dangers that do not exist at other times.

But as against dangers peculiar to war, as against others, the principle of the right to free speech is always the same. It is only the present danger of immediate evil or an intent to bring it about that warrants Congress in setting a limit to the expression of opinion where private rights are not concerned. Congress certainly cannot forbid all effort to change the mind of the country. Now nobody can suppose that the surreptitious publishing of a silly leaflet by an unknown man [which is the case at hand], without more, would present any immediate danger that its opinions would hinder the success of the government arms or have any appreciable tendency to do so. . . .

In this case sentences of twenty years imprisonment have been imposed for the publishing of two leaflets that I believe the defendants had as much right to publish as the Government has to publish the Constitution of the United States now vainly invoked by them. Even if I am technically wrong . . . the most nominal punishment seems to me all that possibly could be inflicted, unless the defendants are to be made to suffer not for what the indictment alleges but for the [anarchism] that they

avow—a creed that I believe to be the creed of ignorance and immaturity when honestly held, as I see no reason to doubt that it was held here, but which, although made the subject of examination at the trial, no one has a right even to consider in dealing with the charges before the Court.

. . . [The national interest] is better reached by free trade in ideas—that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out. That at any rate is the theory of our Constitution. It is an experiment, as all life is an experiment. Every year if not every day we have to wager our salvation upon some prophecy based upon imperfect knowledge. While that experiment is part of our system I think that we should be eternally vigilant against attempts to check the expression of opinions that we loathe and believe to be fraught with death, unless they so imminently threaten immediate interference with the lawful and pressing purposes of the law that an immediate check is required to save the country. I wholly disagree with the argument of the Government that the First Amendment left the common law as to seditious libel in force. History seems to me against the notion. I had conceived that the United States through many years had shown its repentance for the Sedition Act of 1798, by repaying fines that it imposed. Only the emergency that makes it immediately dangerous to leave the correction of evil counsels to time warrants making any exception to the sweeping command, “Congress shall make no law . . . abridging the freedom of speech.” Of course I am speaking only of expressions of opinion and exhortations, which were all that were uttered here, but I regret that I cannot put into more impressive words my belief that in their conviction upon this indictment the defendants were deprived of their rights under the Constitution of the United States.

Source: *Abrams v. United States*, 250 US 616 (1919)

Activity Sheet 6: Document Analysis for *Abrams v. United States* (1919)

IMPORTANT PHRASES

In this US Supreme Court opinion, which phrases or sentences related to free speech in the United States are the most important or powerful? Choose three and give the reason for each choice.

Phrase 1:

Why is this phrase
important or
powerful?

Phrase 2:

Why is this phrase
important or
powerful?

Phrase 3:

Why is this phrase
important or
powerful?

NAME

DATE

PERIOD

CRITICAL THINKING

Cite evidence from the text in your answers.

According to his dissenting opinion in *Abrams v. United States* (1919), how did Justice Holmes redefine the clear and present danger test and advocate a stricter standard?

Source 9: Excerpts from the US Supreme Court Decision in *Brandenburg v. Ohio* (1969)

Background

At a Ku Klux Klan rally in Cincinnati, Ohio, in 1964, Klan leader Clarence Brandenburg delivered a televised speech that Ohio state courts ruled was in violation of the Ohio criminal syndicalism statute. The primary issue brought before the Supreme Court was whether Ohio's criminal syndicalism law infringed upon the defendant's right to free speech. The content of the speech and intent behind Brandenburg's words led the Court to revisit Oliver Wendell Holmes's "clear and present danger" test and reevaluate what speech is protected by the First Amendment.

The US Supreme Court's Per Curiam¹ Decision

The appellant, a leader of a Ku Klux Klan group, was convicted under the Ohio Criminal Syndicalism statute for "advocat[ing] . . . the duty, necessity, or propriety of crime, sabotage, violence, or unlawful methods of terrorism as a means of accomplishing industrial or political reform" and for "voluntarily assembl[ing] with any society, group, or assemblage of persons formed to teach or advocate the doctrines of criminal syndicalism." He was fined \$1,000 and sentenced to one to 10 years' imprisonment. The appellant challenged the constitutionality of the criminal syndicalism statute under the First and Fourteenth Amendments to the United States Constitution, but the intermediate appellate court of Ohio affirmed his conviction without opinion. The Supreme Court of Ohio dismissed his appeal, *sua sponte*, "for the reason that no substantial constitutional question exists herein." It did not file an opinion or explain its conclusions. Appeal was taken to this Court, and we noted probable jurisdiction. We reverse. . . .

The prosecution's case rested on the films and on testimony identifying the appellant as the person who communicated with the reporter and who spoke at the rally. The State also introduced into evidence several articles appearing in the film, including a pistol, a rifle, a shotgun, ammunition, a Bible, and a red hood worn by the speaker in the films.

One film showed 12 hooded figures, some of whom carried firearms. They were gathered around a large wooden cross, which they burned. No one was present other than the participants and the newsmen who made the film. Most of the words uttered during the scene were incomprehensible when the film was projected, but scattered phrases could be understood that were derogatory of Negroes and, in one instance, of Jews. Another scene on the same film showed

the appellant, in Klan regalia, making a speech. The speech . . . was as follows:

"This is an organizers' meeting. We have had quite a few members here today which are—we have hundreds, hundreds of members throughout the State of Ohio. I can quote from a newspaper clipping from . . . five weeks ago Sunday morning. The Klan has more members in the State of Ohio than does any other organization. We're not a revengent organization, but if our President, our Congress, our Supreme Court, continues to suppress the white, Caucasian race, it's possible that there might have to be some revengeance taken.

"We are marching on Congress July the Fourth, four hundred thousand strong. From there we are dividing into two groups, one group to march on St. Augustine, Florida, the other group to march into Mississippi. Thank you."

The second film showed six hooded figures one of whom, later identified as the appellant, repeated a speech very similar to that recorded on the first film. The reference to the possibility of "revengeance" was omitted, and one sentence was added: "Personally, I believe the n——² should be returned to Africa, the Jew returned to Israel." Though some of the figures in the films carried weapons, the speaker did not. . . .

In 1927, this Court sustained the constitutionality of California's Criminal Syndicalism Act [in *Whitney v. California*]. . . . The Court upheld the statute on the ground that, without more, "advocating" violent means to effect political and economic change involves such danger to the security of the State that the State may outlaw it. But

1. Per Curiam: A unanimous ruling that is issued collectively by the group of judges and published as a decision of the Court without identifying the authorship of a specific judge.

2. Word deleted by the Gilder Lehrman Institute due to offensive language.

Whitney has been thoroughly discredited by later decisions. These later decisions have fashioned the principle that 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. . . . A statute which fails to draw this distinction impermissibly intrudes upon the freedoms guaranteed by the First and Fourteenth Amendments. It sweeps within its condemnation speech which our Constitution has immunized from governmental control.

Measured by this test, Ohio's Criminal Syndicalism Act cannot be sustained. The Act punishes persons who "advocate or teach the duty, necessity, or propriety" of violence "as a means of accomplishing industrial or political reform"; or who publish or circulate or display any book or paper containing such advocacy; or who "justify" the

commission of violent acts "with intent to exemplify, spread or advocate the propriety of the doctrines of criminal syndicalism"; or who "voluntarily assemble" with a group formed "to teach or advocate the doctrines of criminal syndicalism." Neither the indictment nor the trial judge's instructions to the jury in any way refined the statute's bald definition of the crime in terms of mere advocacy not distinguished from incitement to imminent lawless action.

Accordingly, we are here confronted with a statute which, by its own words and as applied, purports to punish mere advocacy and to forbid, on pain of criminal punishment, assembly with others merely to advocate the described type of action. Such a statute falls within the condemnation of the First and Fourteenth Amendments. The contrary teaching of *Whitney v. California, supra*, cannot be supported, and that decision is therefore overruled.

Source: *Brandenburg v. Ohio*, 395 U.S. 444 (1969)

Activity Sheet 7: Document Analysis for *Brandenburg v. Ohio* (1969)

IMPORTANT PHRASES

In this Supreme Court decision, which phrases or sentences related to free speech in the United States are the most important or powerful? Choose three and give the reason for each choice.

Phrase 1:

Why is this phrase important or powerful?

Phrase 2:

Why is this phrase important or powerful?

Phrase 3:

Why is this phrase important or powerful?

NAME

DATE

PERIOD

CRITICAL THINKING

Cite evidence from the text in your answers.

1. Based on its ruling in *Brandenburg v. Ohio* (1969), briefly explain the Supreme Court's two-pronged "imminent lawless action" standard to determine the extent to which free speech is protected under the First Amendment.

2. Why did the Supreme Court declare the Ohio Criminal Syndicalism Act unconstitutional?

Source 10: Excerpts from the US Supreme Court Decision in *Hazelwood School District et al. v. Kuhlmeier et al.* (1988)

Background

In 1983, a high school principal removed two articles that were to be published in the Spectrum, the school-sponsored student newspaper of Hazelwood East High School in suburban St. Louis, Missouri. The question before the Supreme Court was whether students in schools had identical free speech rights as adults did in other settings. The justices disagreed with each other, and two of the disagreeing decisions are featured below.

Justice Byron White's Majority Opinion (Clerk's Summary)

Held: Respondents' First Amendment rights were not violated.

(a) First Amendment rights of students in the public schools are not automatically coextensive with the rights of adults in other settings, and must be applied in light of the special characteristics of the school environment. A school need not tolerate student speech that is inconsistent with its basic educational mission, even though the government could not censor similar speech outside the school.

(b) The school newspaper here cannot be characterized as a forum for public expression. School facilities may be deemed to be public forums only if school authorities have by policy or by practice opened the facilities for indiscriminate use by the general public, or by some segment of the public, such as student organizations. If the facilities have instead been reserved for other intended purposes, communicative or otherwise, then no public forum has been created, and school officials may impose reasonable restrictions on the speech of students, teachers, and other members of the school community. The school officials in this case did not deviate from their policy that

the newspaper's production was to be part of the educational curriculum and a regular classroom activity under the journalism teacher's control as to almost every aspect of publication. The officials did not evince any intent to open the paper's pages to indiscriminate use by its student reporters and editors, or by the student body generally. Accordingly, school officials were entitled to regulate the paper's contents in any reasonable manner.

(c) The standard for determining when a school may punish student expression that happens to occur on school premises is not the standard for determining when a school may refuse to lend its name and resources to the dissemination of student expression. Educators do not offend the First Amendment by exercising editorial control over the style and content of student speech in school-sponsored expressive activities so long as their actions are reasonably related to legitimate pedagogical concerns.

(d) The school principal acted reasonably in this case in requiring the deletion of the pregnancy article, the divorce article, and the other articles that were to appear on the same pages of the newspaper. . . .

Justice William J. Brennan's Dissenting Opinion

When the young men and women of Hazelwood East High School registered for Journalism II, they expected a civics lesson. Spectrum, the newspaper they were to publish, "was not just a class exercise in which students learned to prepare papers and hone writing skills, it was a . . . forum established to give students an opportunity to express their views while gaining an appreciation of their rights and responsibilities under the First Amendment to the United States Constitution. . . . [At] the beginning of each school year," the student journalists published a Statement of Policy—tacitly approved each year by school authorities—announcing their expectation that "*Spectrum*, as a student-press publication, accepts all rights implied by

the First Amendment. . . . Only speech that 'materially and substantially interferes with the requirements of appropriate discipline' can be found unacceptable and therefore prohibited." The school board itself affirmatively guaranteed the students of Journalism II an atmosphere conducive to fostering such an appreciation and exercising the full panoply of rights associated with a free student press. "School sponsored student publications," it vowed, "will not restrict free expression or diverse viewpoints within the rules of responsible journalism."

This case arose when the Hazelwood East administration breached its own promise, dashing its students' expectations. The school principal, without prior

consultation or explanation, excised six articles—comprising two full pages—of the May 13, 1983, issue of *Spectrum*. He did so not because any of the articles would “materially and substantially interfere with the requirements of appropriate discipline,” but simply because he considered two of the six “inappropriate, personal, sensitive, and unsuitable” for student consumption.

In my view, the principal broke more than just a promise. He violated the First Amendment’s prohibitions against censorship of any student expression that neither disrupts classwork nor invades the rights of others, and against any censorship that is not narrowly tailored to serve its purpose.

Public education serves vital national interests in preparing the Nation’s youth for life in our increasingly complex society and for the duties of citizenship in our democratic Republic. The public school conveys to our young the information and tools required not merely to survive in, but to contribute to, civilized society. It also inculcates in tomorrow’s leaders the “fundamental values necessary to the maintenance of a democratic political system. . . .” All the while, the public educator nurtures students’ social and moral development by transmitting to them an official dogma of “community values.”

The public educator’s task is weighty and delicate indeed. It demands particularized and supremely subjective choices among diverse curricula, moral values, and political stances to teach or inculcate in students, and among various methodologies for doing so. Accordingly, we have traditionally reserved the “daily operation of school systems” to the States and their local school boards. We have not, however, hesitated to intervene where their decisions run afoul of the Constitution.

Free student expression undoubtedly sometimes interferes with the effectiveness of the school’s pedagogical functions. . . .

If mere incompatibility with the school’s pedagogical message were a constitutionally sufficient justification for the suppression of student speech, school officials could

concentrate on censoring each of the students or student organizations . . . converting our public schools into “enclaves of totalitarianism,” that “strangle the free mind at its source.” The First Amendment permits no such blanket censorship authority. While the “constitutional rights of students in public school are not automatically coextensive with the rights of adults in other settings,” students in the public schools do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate,” . . . public educators must accommodate some student expression even if it offends them or offers views or values that contradict those the school wishes to inculcate. . . .

Finally, even if the majority were correct that the principal could constitutionally have censored the objectionable material, I would emphatically object to the brutal manner in which he did so. . . . The principal used a paper shredder. He objected to some material in two articles, but excised six entire articles. He did not so much as inquire into obvious alternatives, such as precise deletions or additions (one of which had already been made), rearranging the layout, or delaying publication. Such unthinking contempt for individual rights is intolerable from any state official. It is particularly insidious from one to whom the public entrusts the task of inculcating in its youth an appreciation for the cherished democratic liberties that our Constitution guarantees. . . .

The Court opens its analysis in this case . . . by denud[ing] high school students of much of the First Amendment protection that *Tinker* itself prescribed. Instead of “teach[ing] children to respect the diversity of ideas that is fundamental to the American system,” and “that our Constitution is a living reality, not parchment preserved under glass,” the Court today “teach[es] youth to discount important principles of our government as mere platitudes.” The young men and women of Hazelwood East expected a civics lesson, but not the one the Court teaches them today.

I dissent.

Source: *Hazelwood School District et al v. Kuhlmeier et al*, 484 US 260 (1988)

Activity Sheet 8: Document Analysis for *Hazelwood v. Kuhlmeier* (1988)

IMPORTANT PHRASES

In these US Supreme Court opinions, which phrases or sentences related to free speech in the United States are the most important or powerful? Choose three and give the reason for each choice.

Phrase 1:

Why is this phrase
important or
powerful?

Phrase 2:

Why is this phrase
important or
powerful?

Phrase 3:

Why is this phrase
important or
powerful?

Activity Sheet 9: Analyzing a News Article

Source (*name of newspaper/magazine/website*):

Date published:

Article title:

1. What did you already know about the topic?

2. Basic information presented:

Who?

What?

When?

Where?

NAME

DATE

PERIOD

Why?

How?

3. Does your article have a right/center/left point of view? What evidence leads you to that conclusion?

4. What audience was this article written for? What evidence supports your conclusion?

5. Reliability of Sources

a. Is there an author's name?

If so, who is the author:

b. What source or sources does the author quote or refer to in the article? Do you think these sources are reliable? Why or why not? What evidence supports your conclusion?

6. Personal Reaction: What do you think of this article? (Include two points made in the text to support your answer.)

Source 11: Civil Discourse Guidelines

- 1. Listen respectfully without interrupting.**
- 2. Allow everyone the opportunity to speak.**
- 3. Criticize ideas, not individuals or groups.**
- 4. Avoid inflammatory language, including name-calling.**
- 5. Ask questions when you don't understand; don't assume you know others' thinking or motivations.**
- 6. Don't expect any individuals to speak on behalf of their gender, ethnic groups, class, status, etc. (or the group(s) you perceive them to be a part of).**
- 7. Base your arguments on evidence, not assumptions.**

NAME

DATE

PERIOD

Activity Sheet 10: Civic Engagement Project Proposal

Project Title:

Project:

Participant(s):

Project Goal:

Steps:

TEACHER'S COMMENTS

Questions
to Consider:

Revisions Needed:

Approved: