Lesson 4: The First Amendment

Lesson Abstract: The First Amendment is one of the most well-known of all the amendments in the Bill of Rights. It contains some of the most familiar phrases in political discussions and contains five fundamental rights essential to our constitutional democracy. These include freedom of religion, speech, press, association, and petition. In this lesson, students explore freedom of expression cases in order to draft their own free speech narrative.

Content Expectations: C2.2.5; C3.2.1; C3.2.2; C3.2.3; C3.2.4; C3.4.4; C5.3.1; C5.3.5; C5.3.6; C5.3.9

Common Core State Standards for Literacy in History and Social Studies: RH.9-10.1, 2, 4, 6, 9 and 10; WHST.9-10.4, 5, 9, and 10.

Key Concepts:

- constitutional supremacy
- dual sovereignty
- government (state) action
- individual rights
- judicial review
- precedent
- rule of law

Teacher Note: The previous lesson introduced students to the rights in the Bill of Rights in general and provided an overview of each amendment. While students will be introduced to all First Amendment rights, this lesson focuses on the freedom of speech.

Lesson Sequence:

1. Begin the lesson by explaining to the class that they will be examining the First Amendment more closely in this lesson. Have students stop and jot down the rights they associate with the First Amendment. Then have them turn and talk with a partner, comparing their responses.

2. Distribute the handout, **"Analyzing the First Amendment,"** located in the *Supplemental Materials (Unit 5, Lesson 4),* to students. Display the text of the First Amendment to the class, which can be found in the *Supplemental Materials (Unit 5, Lesson 4)*. Read the text of the amendment out loud to the class:

   > "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."

   Instruct students to use the handout to record information about the First Amendment during the teacher-led introduction in the next step.

3. As you read, discuss each line of the text, beginning with "Congress shall make no law." Be

sure students understand that this prohibition is a limit on Congress (federal government). Use the following information to guide the class overview of the First Amendment:

The o*pening phrase* of the First Amendment says **"Congress shall make no law."** This specifically prohibits Congress from making laws interfering with the rights mentioned in this amendment. It did not originally, however, prohibit the states from making such laws. Following the adoption of the Fourteenth Amendment, however, the Court has made the First Amendment applicable to the states. The First Amendment does not prohibit individuals from restricting these rights to those who may be under their influence.

- *Religion*:
    - The Establishment Clause is the part of the First Amendment that says Congress shall make no law **"respecting an establishment of religion."** This is a very crucial part of the American Constitution. It prohibits the government from establishing a state religion or denomination and from directing people what they must believe or how they can express those beliefs. Without the Establishment Clause, the government could choose a state religion and force everyone to participate in it. It could also punish anyone who didn't adhere to its chosen religion.
    - The Free Exercise Clause is the part of the First Amendment that says Congress shall make no law respecting the establishment of religion or **"the free exercise thereof."** This phrase deals with the restriction on Congress to regulate anyone's religious practices. In general, Congress cannot tell people how they can or cannot express their religious beliefs. Such things as telling people when or how to pray, when they should go to church or to whom they should pray, are off limits to lawmakers.
- *Speech:* "**Congress shall make no law... abridging the freedom of speech."** The protection of freedom of speech allows people to speak out against government policies they don't like. It also allows people to express the religious beliefs of their choosing. Generally, freedom of speech is considered to be not only the words people speak, but any type of expression that is used to convey an idea. Such things as picketing, wearing symbols or burning the flag are considered protected forms of speech because they are expressing the ideas of the people participating in them.
- *Press:* The freedom of the press clause states that **"Congress shall make no law... abridging the freedom... of the press."** This was a very important principle to the Founding Fathers of America because of the importance the press played during the Revolutionary War. Without the press, the Founding Fathers would have found it very difficult to distribute their views to people in other parts of the country. The press turned out to play a very important role in getting Americans to consolidate their views against England and in spreading the concepts that would justify a break with England.
- *Assembly:* The freedom of assembly clause is the part of the First Amendment that reads **"Congress shall make no law... abridging... the right of the people peaceably to assemble..."** This clause is also sometimes referred to as the “freedom of association clause.” This clause protects the right to assemble in peace to all Americans. Freedom of assembly was very important to early Americans because without the right to assemble,

they could not coordinate their opposition to the British government. The freedom of assembly was recognized to be of utmost importance if the Americans were to be successful in establishing a government of the people. This right also includes the right of the people to form groups and associations found in civil society.

- *Petition:* The freedom of petition clause of the First Amendment reads: **"Congress shall make no law... abridging the freedom... of the people... to petition the Government for a redress of grievances."** The freedom to petition the government was very important to early Americans because of their experience with trying to get King George III and Parliament to respond to their grievances. The colonists were so angry about the Monarchy's refusal to acknowledge their grievances that they mentioned this fact in the Declaration of Independence. The freedom to petition the government for redress of grievances has come to include the right to do such things as picketing, protesting, conducting peaceful sit-ins or boycotts and addressing government officials through any media available.

Explain to students that although there are five distinct rights within the First Amendment, they will be focusing on the freedom of speech and what that means for the remainder of the lesson.

4. Once students have an understanding of the five parts of the First Amendment, explain to students that they will examine several Supreme Court rulings on the First Amendment in an effort to determine ***the scope and limits to free speech***. Distribute the **"First Amendment Cases Handout"** located in the *Supplemental Materials (Unit 5, Lesson 4).* Ask students the following questions and write them on the board:
    - How is speech defined?
    - How would you describe the scope and limits to free speech?

    Have students turn and talk with a partner to prepare an answer to these questions using the handout. Allow about 3-5 minutes and then discuss students' ideas with the whole class. Use the questions below to expand the discussion. Be sure to encourage students to use the information on the handout as evidence to support their positions.
    - Under what conditions can speech be limited?
    - Does the definition of freedom of speech change when you are in school? When the country is at war?
    - Do you think the scope and limit of free speech has changed over time? Why or why not? What cases make you think so?
    - How might restrictions on the time, place, and manner of the speech factor into the scope and limit of free speech? How might these restrictions differ than those based on what the speaker is saying?
    - Time, manner, and place restrictions must be "content-neutral," meaning that they must apply regardless of the subject of the speech. They merely regulate time, manner, and place of the speech, but do not consider what the speaker says. For instance, government can have a permit process for holding a parade. However, if the speaker goes through the approved process, the government cannot deny the permit based on

what the parade is about (KKK protests, etc.). Why might it be important that regulations on speech are "content neutral"?

- What are the kinds of speech that the government may regulate? Why might this be so, even if it tends to restrict certain content? How are these different from the types of speech that the government cannot regulate?

5. Next, divide students into groups of three or four. Distribute the "**Guide for Creating a Free Speech Narrative"** located in the *Supplemental Materials (Unit 5, Lesson 4)* to each group. Review the directions on the "Guide for Creating a Free Speech Narrative" with the whole class and answer any questions students may have. Be sure students understand that their job is to create a narrative (a story) in which a free speech question is raised. The free speech question ***must be one that has not been clearly decided*** in the cases they have in their handouts. Be sure to direct students to the handout **"First Amendment Cases Handout"** from Step 4 for some basic guidance. Then distribute the handout **"Case Details"** located in the *Supplemental Materials (Unit 5, Lesson 4)* to each team. These cases are included to give students an idea of the range of First Amendment cases and to help spark creativity for their own narrative. The challenge is to write a narrative describing a "gray area" of free speech. As part of the narrative, students must include the language of the regulation or law that will face a free speech challenge. **Teacher Note**: In order to assist students in brainstorming a scenario, encourage them to think how a difference in a few facts may change the case. You also might suggest one of the following:
    - Speech involving social media (Facebook, Twitter, blogs, etc.)
    - School cyber-bullying policy
    - School newspaper article criticizing a newly formed club at school (gay/straight alliance, religious groups, political club, etc.)
    - School dress code or other school policy involving dress
    - Student participation in demonstration outside of school

6. Allow time for the groups to write their narratives as the teacher circulates around the room during this activity, answering any questions that students may have. Give groups 15-20 minutes to brainstorm and draft their narratives on a separate piece of paper. This may also be assigned as homework. **Teacher Note**: This portion of the lesson could take several days if you let students be creative with it. However, in the interests of time, it is recommended to limit this portion. This also provides a great opportunity to work with English teachers.

7. When each group has finished writing their narrative have them exchange their narrative with another group. The task of each group is to review the handout "**Guide for Creating a Free Speech Narrative**" and make sure all criteria/requirements are met. Groups should give feedback based on the criteria and should note if anything in the narrative does not make sense or is unclear. Give students 7-10 minutes to complete this. Then have groups return the narratives.

8. Next, have each group review the feedback they were given and make any necessary changes to their narrative. Depending on the amount of revisions needed allow an

appropriate amount of time for this activity (groups may need time to rewrite the final draft of their narrative). When revisions (or final drafts) are complete, the teacher will ask each group to briefly summarize their narrative (in a sentence or two). For example: Our case is about X.

9. After hearing the range of narratives, provide an opportunity for students to consider a scenario created by their classmates. To do so, place students in triads with one student serving as the judge, another as the government and the third as the party challenging the free speech restriction. Display **"Triad Questions"** located in the *Supplemental Materials (Unit 5, Lesson 4),* for the class and review them with the class. Then, distribute the narratives to different groups. **Teacher Note:** If some narratives are too poorly constructed for students to use, have several groups address the same scenario. Alternatively, if there are one or two scenarios that are really stellar, you might just want to use those for the triad activity for all students.

10. Allow time for students to read and argue the narratives in a triad. After the members of the triad have had the opportunity to read the narrative, allow each student no more than two minutes to present his/her arguments to the judge. After all arguments are presented, the judge makes a ruling on the narrative and shares his/her reasoning with the small group.

11. Debrief the activity by having a few judges summarize their cases and rulings. Discuss the reasoning with the class, having students support, extend or challenge the judge's decisions based on prior case law. Push students to use evidence found in the case law handouts used throughout this lesson.

12. Conclude the lesson by having students write reflectively in their Citizenship Notebook in response to the following questions:
    - To what extent is speech "free" in the United States?
    - While we might all agree that freedom of speech is fundamental to our democracy, why are free speech cases so difficult to resolve?

Assessment

The group narratives may serve as an assessment of student understanding. Alternatively, students could write an explanation of the First Amendment's freedom of speech clause using the narrative they created or evaluated as evidence of the scope and limits of free speech. Students also could research a current free speech issue and write a decision based on their knowledge of the First Amendment.

Reference Section

Content Expectations

C2.2.5: Use examples to investigate why people may agree on constitutional principles and fundamental values in the abstract, yet disagree over their meaning when they are applied to specific situations.

C3.2.1: Explain how the principles of enumerated powers, federalism, separation of powers, bicameralism, checks and balances, republicanism, rule of law, individual rights, inalienable rights, separation of church and state, and popular sovereignty serve to limit the power of government.

C3.2.2: Use court cases to explain how the Constitution is maintained as the supreme law of the land (e.g., Marbury v. Madison, Gibbons v. Ogden, McCulloch v. Maryland).

C3.2.3: Identify specific provisions in the Constitution that limit the power of the federal government.

C3.2.4: Explain the role of the Bill of Rights and each of its amendments in restraining the power of government over individuals.

C3.4.4: Describe considerations and criteria that have been used to deny, limit, or extend protection of individual rights (e.g., clear and present danger, time, place, and manner restrictions on speech, compelling government interest, security, libel or slander, public safety, and equal opportunity).

C5.3.1: Identify and explain personal rights (e.g., freedom of thought, conscience, expression, association, movement and residence, the right to privacy, personal autonomy, due process of law, free exercise of religion, and equal protection of the law).

C5.3.5: Explain considerations and criteria commonly used in determining what limits should be placed on specific rights.

C5.3.6: Describe the rights protected by the First Amendment and using case studies and examples explore the limit and scope of First Amendment rights.

C5.3.9: Use examples to explain why rights are not unlimited and absolute.

Common Core State Standards for Literacy in History and Social Studies

9-10.RH.1: Cite specific textual evidence to support analysis of primary and secondary sources, attending to such features as the date and origin of the information.

9-10RH.2: Determine the central ideas or information of a primary or secondary source; provide an accurate summary of how key events or ideas develop over the course of the text.

9-10.RH.4: Determine the meaning of words and phrases as they are used in a text, including vocabulary describing political, social, or economic aspects of history/social studies.

9-10RH.6: Compare the point of view of two or more authors for how they treat the same or similar topics, including which details they include and emphasize in their respective accounts.

RH.9-10.10: By the end of grade 10, read and comprehend history/social studies texts in the grades 9-10 text complexity band independently and proficiently.

WHST.9-10.4: Produce clear and coherent writing in which the development, organization, and style are appropriate to task, purpose, and audience.

WHST.9-10.5: Develop and strengthen writing as needed by planning, revising, editing, rewriting, or trying a new approach, focusing on addressing what is most significant for a specific purpose or audience.

WHST.9-10.9: Draw evidence from informational texts to support analysis, reflection, and research.

WHST.9-10.10: Write routinely over extended time frames (time for reflection and revision) and shorter time frames (a single sitting or a day or two) for a range of discipline-specific tasks, purposes, and audiences.

Instructional Resources

Equipment/Manipulative

Computer and Projector

Student Resource

First Amendment to the U.S. Constitution. Legal Information Institute. Cornell University Law School. 7 Jan. 2013 <http://www.law.cornell.edu/constitution/first_amendment>.

LoPiccolo, Angela and Tammy Evans. *Supplemental Materials (Unit 5, Lesson 4).* Teacher-made materials. Oakland Schools, 2012.

Teacher Resource

1st Amendment for All: Lesson Plans for the 1st Amendment. 7 Jan. 2013 <http://1forall.us/teach-the-first-amendment/>.

Bond v. Floyd. Milestone Documents. Schlager Group. 2012. 7 Jan. 2013 <http://www.milestonedocuments.com/documents/view/bond-v-floyd/>.

Brandenburg v. Ohio. Casebriefs. 7 Jan. 2013 <http://www.ecasebriefs.com/blog/law/constitutional-law/constitutional-law-keyed-to-stone/freedom-of-expression/brandenburg-v-ohio-2>.

Cohen v. California. Case Briefs. 7 Jan. 2013 <http://www.ecasebriefs.com/blog/law/constitutional-law/constitutional-law-keyed-to-sullivan/freedom-of-speech-why-government-restricts-speech-unprotected-and-less-protected-expression/cohen-v-california-4/>.

Help Tomorrow's Citizens Find Their Voice. Teach the First Amendment. Knight Foundation. 7 Jan. 2013 <http://www.splc.org/teach/>.

Landmark Supreme Court Cases about Students. United States Courts. Educational Resources. 7 Jan. 2013 <http://www.uscourts.gov/EducationalResources/ConstitutionResources/LegalLandmarks/LandmarkSupremeCourtCasesAboutStudents.aspx>.

Notable First Amendment Court Cases. American Library Association. 1997-2012. 7 Jan. 2013 <http://www.ala.org/ala/aboutala/offices/oif/firstamendment/courtcases/courtcases.cfm#rr>.

Pillars of the First Amendment. United States Courts. Educational Resources. 7 Jan. 2013 <http://www.uscourts.gov/EducationalResources/ClassroomActivities/FirstAmendment/PillarsOfTheFirstAmendment.aspx>.

The First Amendment. Revolutionary War and Beyond. 2008-2012. 7 Jan. 2013 <http://www.revolutionary-war-and-beyond.com/1st-amendment.html>.

What Does Free Speech Mean? United States Courts. Educational Resources. 7 Jan. 2013 <http://www.uscourts.gov/EducationalResources/ClassroomActivities/FirstAmendment/WhatDoesFreeSpeechMean.aspx>.