

The First Amendment

Amy B. Davies
Taylor Allderdice High School

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Overview

This unit is designed to be used with the ninth grade civics curriculum. *The First Amendment* attempts to instill in students knowledge of the Constitution, the Bill of Rights and specifically, the First Amendment. To further examine the First Amendment, the unit introduces and examines topics that directly impact or relate to students. Religious liberty will include a look at the Pledge of Allegiance and the controversy that has surrounded it regarding the words “under God.” Issues relevant to freedom of expression will include censorship of student publications, the use of the internet and internet filters. Curfews will be examined as a topic of freedom of assembly. This unit also devotes time to learning about the Patriot Act and its impact on First Amendment freedoms. This unit gives students the opportunity to embrace the First Amendment and become responsible citizens who understand the basic freedoms on which our free society is based.

Rationale

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.

In a recent study conducted by the University of Connecticut, the results showed that high school students today do not know about the very basic rights outlined in the First Amendment. The two year, \$1 million research project, titled “The Future of the First Amendment,” was commissioned by the John S.

and James L. Knight Foundation. The results of the study were shocking. Most students surveyed knew little or nothing about the First Amendment. Over one third believed that the First Amendment went too far in the rights it guarantees. Only half of the students felt that newspapers should be allowed to publish stories that did not have the government's approval. Seventy-five per cent mistakenly believe that flag burning is illegal and half believe the government can censor the internet, which it cannot.

The study offered several reasons for student ignorance concerning the First Amendment. First and foremost, teachers are not teaching about it and schools are not making it a priority. The study suggested that students embrace First Amendment freedoms if they are taught about them and given a chance to practice them. One place where students have the chance to practice these freedoms is in a journalism class or through working on the school newspaper. Unfortunately, in recent years, school journalism programs have been cut by schools. More than one in five schools offer no media opportunities; of the high schools that do not offer student newspapers, 40 percent have eliminated them in the last five years (NewsMax.com). Since many students do not have the opportunity to embrace their freedoms in school, they lose sight of, or in fact, never realize the protections that are offered to them by the First Amendment.

According to Hodding Carter III, CEO and President of the Knight Foundation, the results of the study "are not only disturbing; they are dangerous. Ignorance about the basics of this free society is a danger to our nation's future." Our society has been able to survive this long because of the efforts of our founding fathers in writing a plan of government that balanced the need for a limited government, rights of the people and the ability to change over time. The Anti-federalists vehemently argued for the addition of a Bill of Rights to the Constitution in 1787. They wanted the people to fully understand their rights and they wanted the government to be aware of its limits on restricting the rights of the people. Each generation must be educated on the factors that make our system work. As a civics teacher, I strive to educate students about the very freedoms that are outlined in the Constitution so that they can be well-informed and responsible citizens. Our government also shares this goal for young people. U.S. Senator Robert C. Byrd of West Virginia has pushed through a mandate that requires all schools to teach about the Constitution on September 17, the date it was signed in 1787. According to Byrd, "Without constant study and renewal of our knowledge of the Constitution and its history, we are in peril of allowing our freedoms to erode...The Constitution is a fragile, almost intangible thing that cannot survive without the dedication and constant support of citizens."

The origins of the First Amendment can be traced back to colonial times when the Pilgrims reached the Massachusetts coast in their pursuit of religious freedom. Prior to reaching land, the Mayflower Compact was signed giving the people the power to make “just and equal” laws for the “general good of the colony.” This agreement was a bold step toward self-government. The United States of America would ultimately be born out of this commitment to self-government and the protection of individual rights.

Direct democracies, created by the Athenians, were rooted in the premise that citizens should have the power to directly make laws. They met frequently to discuss ways to keep order, make laws and improve life. Most colonial governments mirrored the direct democracies of the Athenians. Citizens (defined as white, male property owners) met regularly in town meetings to vote on local issues. The early colonial legislatures were also republics in that they elected representatives to make laws. Both of these models were viewed by the colonists as ways to prevent tyranny, even though both had previously been suppressed by force.

In addition to the models offered by Greece and Rome, colonial governments were influenced by documents such as the Magna Carta and the English Bill of Rights. In 1215, the English nobles forced King John to sign the Magna Carta which listed rights that even the English monarch could not take away. Among these were the right to a fair trial and the right to travel freely. Although originally intended to protect the nobles, these rights were eventually extended to all English citizens, including the colonists. Naturally following the limitation of the king’s power, a representative government was formed. In 1689, Parliament passed the English Bill of Rights. Many of the original ideas in the English Bill of Rights would eventually make their way into American government however, only after a bitter war for independence was fought.

The colonies had always been considered part of England; however, as time went on, the colonies began to resent Parliament’s lack of understanding of their needs. They felt they were better represented by their colonial legislatures. Several factors combined to lead the colonies to declare their independence from the crown. First, the colonies and the English government had differing views on trade. England wanted the colonies to trade exclusively with them; the colonies wanted to be free to trade with whomever they wanted. To pay for the French and Indian War, the English government levied new taxes on the colonies. The Stamp Act was passed by Parliament in 1765. A tax was placed on all printed materials: newspapers, books, pamphlets, legal and business documents. This enraged the colonies because the taxes were levied by a government in which they had no representation. The manner in which the Stamp Act was enforced also angered the colonists. British customs inspectors

with “writs of assistance” from Parliament, randomly searched and ransacked people’s belongings in search of contraband. These warrantless searches enraged the colonists. “Taxation without representation is tyranny” echoed throughout the thirteen colonies and forced the colonies to communicate with each other about England’s abuses. Prior to this, the colonies were not united for a common goal; rather, they quarreled over boundaries and trade. Seeing the need to unite, the colonies called for a formal meeting of representatives from all the colonies.

The First Continental Congress was held in Philadelphia in 1774. The 12 delegates pledged to cut off trade with England to force the English government to respect the rights of the colonists. They agreed to meet the following year if things did not improve.

In 1775, the situation actually worsened. Despite the fighting that had already broken out in Massachusetts between the colonists and the English soldiers, many colonies were fearful of independence. They feared a future without the security of being a part of a strong nation like England. Thomas Paine’s *Common Sense* helped to sway the colonists toward rebellion. His argument was poignantly outlined in *Common Sense* as follows:

“To be always running 3,000 or 4,000 miles with a tale or a petition, waiting four or five months for an answer which, when obtained, requires five or six more [months] to explain it in, will in a few years be looked upon as folly and childishness – there was a time when it was proper, and there is a proper time for it to cease. There is something absurd in supposing a continent to be perpetually governed by an island. England [belongs] to Europe. America to itself.”

With an increase in support from the colonies, the delegates to the Second Continental Congress voted in support of separation from England. To outline their rationale for separation, and to convince the doubting colonists, a committee was formed to write a declaration of independence. Thomas Jefferson wrote most of the actual text which started with a statement of natural rights “that among these are life, liberty, and the pursuit of happiness.” Jefferson described these rights as “unalienable” meaning that no government could take them away. Jefferson also outlined the purpose of government, which was to protect these rights. If government abuses their power or fails to protect rights then the people have the power to replace it. The Declaration of Independence also included a list of ways England had ignored the rights of the colonists and ruled with “absolute tyranny.”

Once independence had been declared, the colonies needed to focus on a plan of government. Each state had or developed their own constitution and in essence, the colonies were actually 13 autonomous states. A national plan of government was needed to unify their interests.

During the Revolutionary War, the delegates to the Second Continental Congress heatedly debated the role of a national government. They drew up a plan for a loose confederation of the states known as the Articles of Confederation. Fearing a too powerful executive, the Articles included only a legislative branch in which each state would have one vote. This congress was given the power to declare war, make treaties and regulate trade between the states. Congress did not have the power to collect taxes or enforce any of the laws it made. The 13 states, hesitant to agree to a central government, ratified the Articles of Confederation. They felt it was needed in order to win the war.

After the war ended, the new central government faced the test of dealing with the nation's struggling economy. The true weaknesses and ineffectiveness of the government were revealed. James Madison studied history and political theories to try to come up with a solution for the failing government. He was convinced that the "league of friendship" amongst 13 independent states was inadequate. Madison argued for the formation of a stronger central government with more powers which could provide order and stability. A meeting was held in Annapolis in 1786 to discuss commercial problems. While there, Madison and Alexander Hamilton issued a report and asked Congress to summon delegates from all the states to a meeting in Philadelphia for the sole purpose of revising the Articles of Confederation.

This famous meeting in Philadelphia became known as the Constitutional Convention, for it was here that influential men, like James Madison, realized that the Articles could not be revised. Instead, they embarked on an adventure that would establish the foundation of our government, the writing of the United States Constitution.

In May, 1787 fifty five men converged to begin the secret meetings in Philadelphia. The cobblestone street in front of the Pennsylvania State House was covered with dirt to muffle the sound of passing carriages and carts. Guards stood at the entrances to keep the public at bay. The curtains were drawn and the windows were closed; no press or public was allowed.

The first order of business was to select a president of the convention. Governour Robert Morris of Pennsylvania, nominated General George Washington, who won unanimously. George Washington humbly accepted the

nomination even though his decision to attend the convention was rather last minute. Aides had warned Washington that his reputation would be ruined if he attended the convention; especially if it failed. He was also suffering from rheumatism and mourning the loss of a brother. Fearing his absence would send a negative message, he decided at the last minute to attend.

After the vote to scrap the Articles of Confederation was official, the delegates began the task of writing a new plan of government. The first draft of the Constitution was accepted on August 6, 1787. It was based on the Virginia Plan and was written in Article format. It included a stronger central government consisting of an executive, legislative and judicial branch. Several controversies arose over the regulation of commerce which was linked with the issue of slavery. While compromises were worked out over the issues of commerce and slavery, staunch opposition to the Constitution began to emerge.

This opposition arose from men who believed slavery should be outlawed altogether. Samuel Hopkins of Connecticut claimed it was hypocritical to create a constitution that allowed enslavement of fellow human beings. He considered the Constitution a “document fit for the flames.” George Mason bitterly exclaimed that he “would sooner chop off his right hand than put it to the Constitution as it now stands.” He felt a bill of rights needed to be added to ensure individual liberties. While this debate over a bill of rights was not over, the Constitution was approved by members of the convention on September 15, 1787. Edmund Randolph proposed that states have the chance to amend the Constitution and then turn it back over to another convention for final approval. He was joined by George Mason and Elbridge Gerry. His proposal was denied and the six page document was sent to the printer to be duplicated and sent to the states for approval. Now, the nation would debate ratification of the United States Constitution and would basically follow two ways of thinking, the Federalists and the Anti-Federalists.

The Federalists supported ratification of the Constitution. They were in agreement that the Articles of Confederation were too weak and that a stronger central government was necessary. The Federalists were mainly wealthier men who owned property and had commercial interests. The Federalists believed that the Constitution was sufficient in protecting individual liberties. They felt that if a bill of rights were added, that might be misinterpreted as the only rights that people had. James Wilson maintained “that a bill of rights was superfluous because all power not expressly delegated to the new government was reserved to the people.” The Anti-Federalists disagreed.

The Anti-Federalists were fearful of losing power to a stronger central government whom they feared would not be sensitive to state interests. They

also wanted a bill of rights to ensure individual liberties. Although joined by some influential men, this group was mainly farmers. They believed that a list of rights was essential to protecting liberties. They claimed that the list would not be exhaustive; rather, it would be up to the judiciary to interpret and expand the meaning of the rights. In general, Thomas Jefferson supported the Constitution; however, he wrote to Madison that a bill of rights was “what the people are entitled to against every government on earth.”

The task of drafting the Bill of Rights fell to James Madison. It was decided that the list of rights would be added as amendments rather than to the text of the Constitution to avoid another painful process of re-ratification. Madison came up with a list of 17 amendments which was later trimmed to 12 in the Senate. These 12 amendments were submitted to the states for ratification in September 1789. On December 15, 1791, Virginia ratified 10 amendments which satisfied the requirement of approval by three-fourths of the states and the Bill of Rights became part of the law of the land. The two amendments not ratified dealt with changing the apportionment of Congress and forbidding congressional pay raises to take effect until after the next election. Over 200 years later, the congressional pay raise amendment would be ratified to become the 27th amendment to the constitution.

The purpose of a Bill of Rights was to protect individual liberties. The people believed in democratic rule but wanted a list of rights that no majority would be able to take away. Originally, the Bill of Rights only applied to the national government not the states. With the passage of the fourteenth amendment in 1868, the Supreme Court began applying the provisions of the Bill of Rights to the states.

The First Amendment is often considered the most important amendment in the Bill of Rights. The First Amendment protects rights essential to democratic government and those rights Americans hold most dear: freedom of religion, of speech, of the press, of assembly, and of petition. Being the foundation on which liberties are based, it is essential that students understand the First Amendment and its impact on them as citizens and students.

According to the Supreme Court, students do not “lose their constitutional rights at the schoolhouse gates.” Students possess many rights in school. They can join clubs, write for the school newspaper, distribute literature, and petition school officials. Although students possess these rights, a greater standard of government control applies to our public schools. The government has greater authority to restrict First Amendment rights in public schools as it strives to maintain a balance between exercising rights and maintaining a proper educational environment. Although Erwin Chemerinsky

said “Schools cannot teach the importance of the First Amendment and simultaneously not follow it,” the courts have generally upheld restrictions on First Amendment rights imposed upon students in public schools.

One of the most fundamental rights of the First Amendment is the right to speak freely, specifically regarding political issues. The court has held that political speech occupies a preferred position and must be protected, even in public schools. In 1969, the Supreme Court ruled that school officials violated the rights of students when they suspended them for wearing black armbands in protest of the Vietnam War. *Tinker v. Des Moines Independent Community School District* established that the wearing of the armbands to protest the war was a form of symbolic speech “akin to pure speech.” The court referred to the wearing of the armbands as a “nondisruptive, passive expression of a political viewpoint.” As a result of *Tinker*,

“The Supreme Court established a protective standard for student expression in *Tinker*, which says that school officials cannot censor student expression unless they can reasonably forecast that the expression will cause a substantial disruption of school activities or will invade the rights of others.”

A substantial disruption of school was cited as the reason for limiting a student’s speech in the case *Bethel School District v. Fraser* (1986). A student was suspended for giving a vulgar and lewd speech with sexual innuendos during a school assembly. The court ruled that the school was correct in suppressing his speech because speech in schools must be balanced against society’s interest in teaching students the boundaries of socially appropriate behavior.

Federal courts have ruled that schools have the same power in dealing with dress codes and uniforms. Generally, the school can set guidelines for student clothing but the school officials do not have *carte blanche* to regulate all student dress.

School publications such as newspapers and yearbooks do not have the same freedom as other publications. *Hazelwood School District v. Kuhlmeier* (1988) ruled that public school officials can censor school-sponsored student expression as long as they have a valid educational reason for doing so.

With the rise of the internet as a forum for student expression, the courts have granted it the highest level of protection. The Supreme Court has declared internet censorship unconstitutional. One major issue regarding cyberspeech and young people is the use of filters. At the federal level, the Children’s

Internet Protection Act requires public schools and libraries to install filtering software in order to receive federal monies for Internet hook-ups. Opponents to internet filtering argue that filters are imprecise and often block access to constitutionally protected materials.

While the founding fathers clearly intended for separation between church and state, many issues in public school can be seen as a test to that principle. The courts have decided many issues dealing with the First Amendment freedoms and public schools. The courts have ruled that school districts can provide bus transportation for students to attend parochial schools; schools cannot sponsor religious classes in the school building but students must be granted release time to go and study religion elsewhere if they choose; a moment of silence at the beginning of the school day is unconstitutional; and prayers may not be said at sporting events or graduation ceremonies. These are just a few of the instances where the Supreme Court got involved and set a precedent.

A current issue that affects children in public schools is the Pledge of Allegiance. There are two aspects to this debate. The first concerns the requirement of schools to force students to stand and pledge the flag. Reasoning that the First Amendment free-speech clause includes the right not to speak, the Supreme Court ruled that students could not be forced to salute the flag if it violates their religious beliefs. This case, *West Virginia State Board of Education v. Barnette* (1943) overturned a precedent set just three years earlier.

The second debate over the Pledge of Allegiance involves the words "Under God." The phrase, added in 1954, is believed by some to violate the establishment clause of the First Amendment. A California Atheist, Michael Newdow, sued to have the words "under God" removed from the pledge. On appeal, a three-judge panel of the 9th Circuit ruled that the words were unconstitutional. This decision conflicted with an earlier opinion from the 7th Circuit. In *Sherman v. Community Consolidated School District 21* (1992) the panel decided that "the Pledge is a secular rather than sectarian vow." References were made to the mention of God in history, such as: James Madison's proclamations of religious fasting and thanksgiving; taking oaths on the Bible; opening of court sessions with "God save the United States and this honorable court"; Jefferson's references in the Declaration of Independence; Lincoln's Gettysburg Address and the words "In God We Trust" on all U.S. currency. The court concluded that the words "under God" like these other instances, represented a "ceremonial deism" that does not endorse or coerce religious belief. When the case came before the Supreme Court, the Court decided that Newdow did not have standing to sue because he did not have legal custody of the child. This is probably not the last we will hear about this issue;

since the Supreme Court has not made a definitive ruling on whether or not the words “under God” violate the establishment clause of the first amendment. Since lower courts have disagreed on this, it is only a matter of time before the Supreme Court will be forced to address the issue.

A national campaign to have the motto “In God We Trust” displayed in every public school classroom in the United States has been introduced by the American Family Association. When the law was introduced in Mississippi, the ACLU threatened to sue if a school displayed the poster. The posters were donated by a printer from Pearl, Mississippi and the law was enacted. U.S. District Judge Sam A. Chow threw out the ACLU lawsuit which he called “patently frivolous without any basis in law.”

Several states already have laws that would protect the display of the national motto. Pennsylvania does not currently have any laws on the books; however, House Bill 1012 is currently in the Pennsylvania General Assembly. It was referred to the education committee in March 2005. This bill would make it a law in Pennsylvania to display the motto in every public school classroom.

In 2001, in response to the terrorist attacks on the United States, Congress overwhelmingly passed the USA PATRIOT ACT (Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism). The House voted 357-66 in favor of the measure, while the Senate voted 98-1. The massive, 342 page bill was signed into law by President Bush on October 26, 2001. In addition to amending previous laws, the Patriot Act permits roving wiretaps and “sneak and peek” warrants, adds new terrorist crimes, improves communications between intelligence agencies, defines domestic terrorism and makes many other changes.

Critics of the Patriot Act claim that it violates constitutional rights. According to the Fourth Amendment, the government is prohibited from engaging in unreasonable searches and seizures. Critics of the act claim that the Patriot Act lessens the standard needed for law enforcement to conduct a search and even allows warrantless searches that would normally be unconstitutional.

Critics also claim that the Patriot Act infringes on First Amendment freedoms. Section 215 of the Patriot Act gives the FBI the authority to obtain records from libraries, bookstores, businesses and other entities. This could include an Internet service provider being asked to turn over records relating to individuals who engage in political speech critical of the government. It could also include forcing a mosque to turn over records of members who are being targeted by law enforcement. The Patriot Act also makes it illegal to provide

material support for terrorist groups. Material support includes expert assistance and advice.

In July 2003, the ACLU filed a lawsuit on behalf of six groups, many of which provide some form of support to Muslims in America. *Muslim Community Association of Ann Arbor v. Ashcroft* contends that Section 215 violates the First Amendment.

Supporters of the Patriot Act claim that it is necessary in the post-9/11 world. They say that it protects us from the very real threat of domestic and international terrorism.

As the expiration date for several of the provisions approach, Congress is looking at several bills that have been introduced that would revoke or modify certain powers granted to law enforcement by the Patriot Act. Local communities have also passed resolutions opposing parts of the Patriot Act. On April 26, 2004, the Pittsburgh City Council passed a detailed resolution which included the following: “Recommends that all persons in local businesses and institutions, and particularly booksellers, be advised to refrain when possible from keeping records that identify the name of the purchaser, and to regularly destroy such records that are maintained, in order to protect intellectual privacy rights.” The debate over the Patriot Act is certain to intensify as the expiration date on several sections approaches.

Another issue that falls under protection of the First Amendment is the use of teen curfews. Many cities have adopted curfews in recent years. The Supreme Court has not taken a stand on curfews but has left the decision about creating and enforcing curfews up to local communities.

Objectives

The overarching objective of this unit is to expose students to the First Amendment. Student will examine aspects of the First Amendment that relate directly to them as students. As part of this unit, students will be able to:

- Identify First Amendment freedoms and discuss current issues related to the First Amendment.
- Take a position and defend it on the Pledge of Allegiance controversy.
- Research landmark Supreme Court cases dealing with the First Amendment freedom of religion.
- Research a bill currently in the Pennsylvania General Assembly.
- Discuss limits on student expression in public schools.

- Support an argument in favor of or opposed to the renewal of provisions of the Patriot Act.
- Identify arguments in support of or opposed to the use of internet filters in public libraries.

Strategies

Specific strategies will be used to carry out the objectives of this unit. Students will apply several civics skills, including: communication skills, cooperative learning, research skills, decision-making, problem solving and critical thinking skills in the completion of this unit.

Specific social studies content standards are addressed throughout the unit. The standards encompass citizenship, communications, and mathematics. A list of social studies content standards addressed in this unit is included in Appendix F.

Classroom Activities

The following lessons are designed to complement the civics curriculum. They should be included when appropriate into the study of the First Amendment.

Lesson 1

As an introductory activity to the unit, provide students with current articles that deal with First Amendment rights. Since this unit is focused on the impact of the First Amendment on students choose articles that have some direct impact on young people. Break the class into small groups of 4-5 students. Provide each with a copy of an article dealing with First Amendment rights. Have each group read the article and summarize their findings for the rest of the class. This generates some good discussion to get the unit rolling. A good source for current articles on the First Amendment is firstamendmentcenter.org.

Lesson 2

Public schools across the nation begin each day with recitation of the Pledge of Allegiance. In this lesson, students have the chance to voice their opinion on the controversy over the words “under God” in the Pledge of Allegiance. Students should begin the lesson by brainstorming arguments on both sides of the issue. These lists should be kept on the blackboard/overhead as the lesson continues. A sample list of arguments is included in Appendix A. Students should then be given background information on the Pledge of Allegiance and the actions taken by the courts in dealing with this controversy. Discussion should include Supreme Court decisions and their rationale. As an assessment, students should

write a five paragraph editorial in which they argue for or against removal of the words “under God” in the Pledge of Allegiance.

Lesson 3

Students should research Supreme Court cases dealing with religion in public schools. Have each student conduct research on the case, write a brief and report the information to the class. A list of possible cases to research is included in Appendix B.

Lesson 4

House Bill No. 1012 is currently before the PA General Assembly. It would require a mandatory display of the motto “In God We Trust” in all public schools. Have students visit the Pennsylvania General Assembly website at <http://www.legis.state.pa.us/> and research the bill.

Lesson 5

Students will examine two court cases that define limits on student expression in public schools. The cases are *Bethel School District v. Fraser* (1983) and *Hazelwood School District v. Kuhlmeier* (1988). Students should use various resources to complete the worksheets in Appendix C. The questions can guide a discussion on censorship in public schools.

Lesson 6

Have students research the Patriot Act and describe some of the provisions that deal with the First Amendment. Students should complete the worksheet in Appendix D. In addition to the worksheet, students can write letters to their senators and representatives stating whether or not they support renewal of the provisions of the Patriot Act that are set to expire.

Lesson 7

Have students conduct a mock meeting of city council. City council is trying to decide whether or not to install mandatory filtering devices on all computers in public libraries in the city. Identify 9 students to serve as city council members. (In a smaller class, reduce the number of council members.) So that city council can make a decision, they must meet with five interest groups who offer their views on the subject. Arrange students into various interest groups and give them time to read about their position. They should plan what they are going to say to each city council member to sway their vote. Have each city council

member meet with each interest group for a few minutes. At the end of the meetings, hold a vote of city council. Have council members explain what influenced their decisions and which arguments they found most compelling. A list of possible interest groups to use is found in Appendix E.

Lesson 8

Students tend to have strong opinions on teen curfews. Have them brainstorm various arguments in support of and against teen curfews. Encourage them to look at the issue from various viewpoints. Research teen curfews and find out how the courts have ruled on them.

Annotated Bibliography/Resources

<http://www.firstamendmentcenter.org>

A comprehensive web site with up to date information on the First Amendment.

<http://www.oyez.org/oyez/frontpage>

A multimedia resource on the Supreme Court that includes summaries of most landmark Supreme Court decisions.

<http://caselaw.lp.findlaw.com/data/constitution/amendment01/>

A legal resource of Supreme Court decisions.

<http://www.rcfp.org/handbook/>

An updated handbook that contains information on laws affecting reports' rights, key definitions and court cases.

<http://www.firstamendmentschools.org/>

This is a national initiative designed to help schools affirm First Amendment principles and put them into action. In addition to student resources, the website contains lesson plans and resources for teachers.

http://www.epic.org/free_speech/censorship/

Current information on censorship at the local, state and national level.

<http://news.bbc.co.uk/2/hi/americas/4225013.stm>

A BBC news article about the First Amendment survey.

<http://www.aclj.org/>

The American Center for Law and Justice (ACLJ) based in Washington D.C. offers legal aid as well as vast resources on constitutional law.

<http://www.crf-usa.org>

Website for the Constitutional Rights Foundations that includes lesson plans about constitutional issues.

<http://www.aclu.org/>

The official website of the American Civil Liberties Union.

Gottfried, Ted. Homeland Security Versus Constitutional Rights. Brookfield: Twenty-first Century Books, 2003.

This book examines both sides of the debate over national security in the wake of September 11th 2001. The Constitutionality of the USA PATRIOT ACT is also examined.

Haynes, Chaltain, Ferguson, Hudson and Thomas. The First Amendment in Schools. 2003

A look at First Amendment rights in public schools.

Lieberman, Jethro. Free Speech, Free Press, and the Law. New York: Lothrop, Lee and Shepard Books, 1980.

A legal authority defines freedom of speech and the press, and shows how the law has interpreted it through fifty Supreme Court cases.

Meltzer, Milton. The Bill of Rights. New York: Thomas Y. Crowell, 1990.

A history of the Bill of Rights traced back to its roots in England in 1215. The book also examines the first ten amendments 200 years later through court cases that have expanded and contracted these rights.

Student Readings

Hudson, David, "Pledge of Allegiance and religious liberty in public schools." First Amendment Center.org.

Nieves, Evelyn, "Judges Ban Pledge of Allegiance From Schools, Citing 'Under God'." The New York Times, June 27, 2002.

"Lawmakers Blast Pledge Ruling." CNN.com, June 27, 2002.

"Federal court strikes down part of Patriot Act." The Associated Press, September 30, 2004.

McDonald, Heather. "In Defense of the Patriot Act." Washington Post.com, August 24, 2003.

Appendices-Standards

Appendix A

Lesson 2 Handout

Arguments FOR and AGAINST reciting “under God” in the Pledge of Allegiance in public schools

For

- Saying “under God” is not a ‘religious act’ but rather a tradition and is ceremonial. If it is unconstitutional to recite the Pledge, then the Constitution, the Declaration of Independence, ‘In God We Trust’ and other similar references to a divine being would be unconstitutional. Clearly, this is not the intent behind the First Amendment.
- The way the laws are written, the recitation of the pledge is a voluntary act. No students are forced to swear allegiance to the flag, the country or to God. There is no coercion.
- The First Amendment prohibition against “establishment of religion” originally was intended to protect citizens against the establishment of a national church, or the favoring of one religious denomination over another.
- To bar the recitation of the pledge in public schools violates the free expression rights of the students who want to say the pledge. The rights of the many are sacrificed for the rights of the few.
- If “under God” is a religious expression, it is voluntary under these circumstances, and to bar that expression is a violation of students’ right to “free exercise” of religious beliefs.
- The expression of “under God” does not in any way harm non-believing students.

Against

- In adding the First Amendment to the U.S. Constitution, the Founders intended to protect freedom of conscience, which includes freedom not to believe in God.
- To include “under God” in the pledge and require that it be recited daily in public school classrooms is a government endorsement of a religious belief, monotheism.
- Students are a captive and impressionable audience: if the school sanctions even a voluntary recitation of the words “under God” it is sending a message that students should believe in God, which is a violation of the First Amendment.

- Congress added the words “under God” to the Pledge in 1954 with the clear intent of distinguishing the United States from atheistic, Communist countries. This is “establishment” of religion over non-religion.
- The Bill of Rights is intended to protect the rights of the few in the face of conflicting rights of the many.

Appendix B

Lesson 3 Handout

Landmark Supreme Court Cases
Religion in Public Schools

Everson v. Board of Education (1947)

Walz v. Tax Commission (1970)

McCollum v. Board of Education (1948)

Zorach v. Clausen (1952)

Engel v. Vitale (1962)

Abington School District v. Schempp (1963)

Wallace v. Jaffree (1985)

Reynolds v. United States (1879)

Minersville School District v. Gobitis (1940)

West Virginia State Board of Education v. Barnette (1943)

Lee v. Weisman (1992)

Santa Fe Independent School District v. Doe (2000)

Braunfeld v. Brown (1961)

Sherbert v. Verner (1963)

Epperson v. Arkansas (1968)

Bob Jones University v. United States (1983)

Church of Jesus Christ of Latter Day Saints v. United States (1890)

Lyng v. Northwest Indian Cemetery Protective Association (1988)

Appendix C

Lesson 5 Handout

Bethel School District v. Fraser

Facts of the Case

Issues

Decision of the Court

Rationale

Dissenting Opinion(s)

Discussion Questions:

1. Where does a student's right to free speech end and a school's right to teach appropriate behavior begin?
2. Does the right of free speech depend on the audience? Does it make a difference that the audience in this case was a student audience? Does it make a difference that the students at Bethel School were required to come to this assembly?
3. Does it make a difference that Matthew Fraser was warned by two teachers that the speech may be inappropriate?
4. Was the punishment too harsh?

Hazelwood School District v. Kuhlmeier

Facts of the Case

Issues

Decision of the Court

Rationale

Dissenting Opinion(s)

Discussion Questions:

1. Should the principal have worked with the students rather than just not allowing any part of the articles to be printed?
2. Are school journalists not entitled to the same protection that other journalists enjoy?
3. If the school newspaper allowed advertisements from outside businesses, would the newspaper then be a “public forum?”
4. If the school newspaper was not part of the journalism class, would that make a difference?
5. Should the school be allowed to consider the maturity of the students reading the newspaper in making its decision which articles are suitable for publication?

Appendix D

Lesson 6 Handout

The Patriot Act:

What is the Proper Balance Between National Security and Individual Rights?

1. How does the Patriot Act define “domestic terrorism”? Do you think participants in public protests could ever be accused of “domestic terrorism” under this definition? Why or why not?
2. The Justice Department has proposed that the government should be able to ask a court to revoke the citizenship of any American who provides “material support” to terrorists. Do you support the proposal? Why or why not?
3. Below are two famous quotations. What do they mean? Which, if any, do you agree with? Explain.

Those who would give up essential liberty to purchase a little temporary safety deserve neither liberty nor safety. – Benjamin Franklin (1706-1790)

There is danger that, if the [Supreme Court] does not temper its doctrinaire logic with a little practical wisdom, it will convert the constitutional Bill of Rights into a suicide pact. – Justice Robert H. Jackson, dissenting in *Terminiello v. City of Chicago* (1949)

4. Would you support or oppose the following parts of the Patriot Act? Explain.
 - Section 213 “sneak-and-peek” searches of a person’s property
 - Section 215 orders by the Foreign Intelligence Surveillance Court for searches of a citizen’s “tangible things” based on FBI certification rather than probable cause
 - Section 215 searches of a citizen’s public library records
 - Section 215 requirement that third parties like librarians are prohibited from informing anyone an FBI search has taken place
5. Using information and arguments from the article and your own knowledge, write an essay on this question: What is the proper balance between national security and the protection of individual rights?

Appendix E

Lesson 7 Handout

Interest Groups

American Library Association- opposes using filters in library computers because:

- Internet communications “deserve the same level of Constitutional protection as books, magazines, newspapers, and speaker on a street corner soapbox,”
- Courts support the “importance of enabling individuals to receive speech from the entire world and to speak to the entire world.”
- “Libraries provide opportunities to many who would not otherwise have them.”

Netparenting Group – supports using filters because:

- “Protecting our children online should be our #1 goal.”
- “Adult hate sites are added to the web at an alarming rate.”
- “Hate groups and cults have sites and no child should ever be exposed to these radical beliefs at such a young age.”
- “When young children see bad words on the Net, they begin to think it’s okay.”

Parents Against Pornography – supports using filters because:

- Restricting access to the Internet is the same as refusing to have *Playboy* and *Hustler* in schools and libraries.
- Restricting access to the Internet is similar to placing limits on what can be shown on television.
- It is parents’ responsibility to teach their children about sex, and children should not be exposed to pornography on the Internet.
- Freedom for Research Club – opposes using filters because:
- Filters prevent students from doing research on topics such as breast cancer and AIDS.
- Many students do not have Internet access at home and school and library computers are the only way they can research.

American Civil Liberties Union – opposes Internet censorship because:

- “Blocking software restricts access to valuable, protected speech.”
- “Parents and teachers should provide young people with guidance about accessing the Internet”
- Filters in schools and libraries “prevent children and adults without home computers from realizing the full potential of information available on the Internet.”

Appendix F

Content Standards Addressed

CITIZENSHIP

1. All students demonstrate an understanding of major events, cultures, groups and individuals in the historical development of Pennsylvania, the United States and other nations and describe the patterns of historical development.
3. All students describe the development and operations of economic, political, legal and governmental systems in the United States, assess their own relationships to those systems, and compare them to those in other nations.
4. All students examine and evaluate problems facing citizens in their communities, state, nation and world by incorporating concepts and methods of inquiry of the various social sciences.
5. All students develop and defend a position on current issues confronting the United States and other nations, conducting research, analyzing alternatives, organizing evidence and arguments, and making oral presentations.
7. All students demonstrate their skills of communicating, negotiating and cooperating with others.
8. All students demonstrate that they can work effectively with others.

COMMUNICATIONS

4. All students write for a variety of purposes, including to narrate, to inform and to persuade.
8. All students compose and make oral presentations that are designed to persuade, inform or describe.