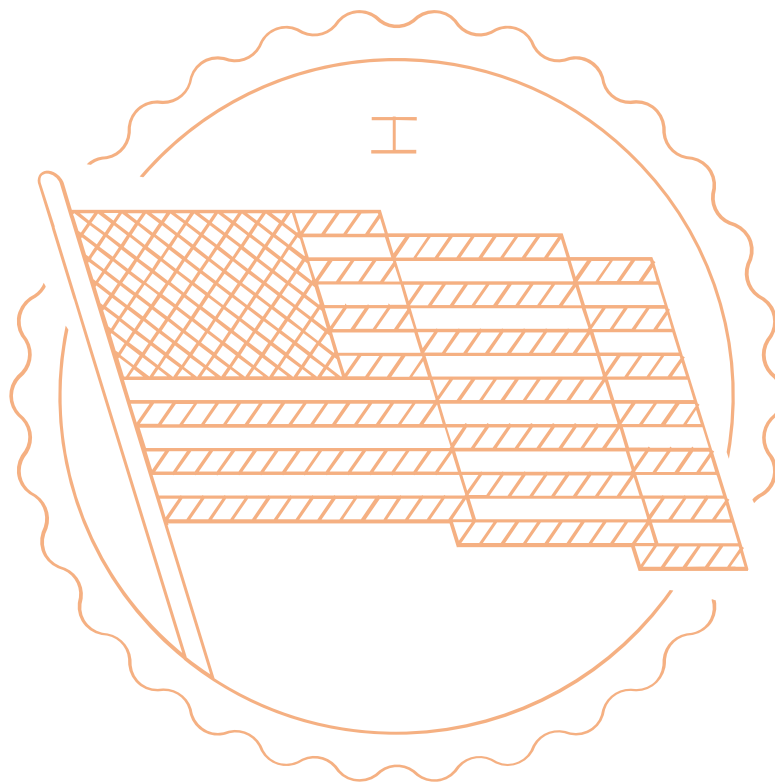


INTERACTIVE
CONSTITUTION

FREEDOM OF SPEECH

LESSON PLAN



FREEDOM OF SPEECH LESSON PLAN

GRADE LEVELS:

6th through 8th

NUMBER OF CLASS PERIODS:

1-2 (approximately 55 minutes)

AUTHOR:

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INTRODUCTION/LESSON OVERVIEW:

In the United States, freedom of speech is one of the most protected rights through the Constitution, and has been protected now more than ever by the Supreme Court. It is an essential part of Americans' daily lives. Many Americans struggle with understanding the language and subsequent interpretation of the Constitution, especially when it comes to the rights listed in the First Amendment. While many Americans agree that speech should be protected and why, they often disagree over when, why, and how speech should be limited or restricted. This lesson encourages students to examine their own assumptions and to deepen their understanding of the currently accepted interpretation of free speech rights under the First Amendment.

Essential Questions:

- How does the First Amendment of the U.S. Constitution protect the freedom of speech?
 - Why did the founding generation value free speech?
 - What types of speech can be limited by the government?
 - How has the Supreme Court's approach to the protection of speech changed over time?
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Objectives:

- Students will be able to state the importance of the First Amendment's free speech clause to self-government.
 - Students will be able to explain why the founding generation protected free speech.
 - Students will be able identify conditions under which speech can be limited.
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Materials:

- Warm up Worksheet of Speech Hypotheticals
- Access to the *Interactive Constitution* or printed copies of the excerpt of Common Interpretation "Freedom of Speech and of Press" by Geoffrey R. Stone and Eugene Volokh
- Common interpretation graphic organizer
- Find a full version of the Common Interpretation [here](#).
- Article Questions
- Exit Ticket

PROCEDURES:

Warm up/Activation of Prior Knowledge (10 minutes):

- Students will read the First Amendment excerpt at the top of the Warm up Handout. The teacher should discuss with students what they believe it means. The teacher can follow up with questions to assess students' prior knowledge around freedom of speech.
- Students will then interpret the meaning of the First Amendment's free speech clause in 10 hypothetical controversial situations, using the graphic organizer provided. Students should complete the graphic organizer individually.
- The teacher can ask the whole class some of the hypotheticals, asking students to move to different sides of the classroom for an "Agree" or "Disagree" answer.
- The teacher should discuss varying interpretations of the First Amendment's free speech clause.
 - This discussion should include some historical context of why the founding generation thought the freedom of speech was important.
- Additionally, students should be able to brainstorm reasons why free speech is important to democracy.
 - Citizens need to be able to speak freely in order to make effective electoral decisions, oversee government actions, participate in the policy making process and public discourse, and hold politicians accountable to their actions.
 - Having a diverse set of public opinions, known as the marketplace of ideas, leads to an informed search for truth and understanding on a topic.
 - Self-expression and cultivating yourself as an individual can inform your political understanding and actions as a citizen.

Class and Individual Investigation (15 minutes):

- Students will access the *Interactive Constitution* or will be provided printed copies of the following articles to answer questions on the graphic organizer included. Students will read the Common Interpretation essay, "Freedom of Speech and of the Press" written by both Geoffrey R. Stone and Eugene Volokh.
- The class will read the several paragraphs together, through question #4, stopping to answer the guiding questions. At this point, the teacher will assign students to read and answer one of the questions #5-9 and be prepared to share out their answers with the class. Students will focus on one particular example of how the government has limited free speech.
- After students have read the entire article and answered their assigned question, they will meet in groups made up of students who each answered a different question. Each student will share the answer to their assigned question, as well as discuss the questions below:
 1. According to the article, why is it important to protect speech, even if that speech is unpopular or offensive? Provide evidence.
 2. According to the article, when is it acceptable under the First Amendment to limit or punish speech? Provide evidence.
- When students have completed the reading, have them revisit the hypotheticals. If any answers have changed, the students should mark their new answers with a check mark.

Whole Class Review/Debrief (15-20 minutes):

- Small groups should report out on their conversations.
 - o When can speech be limited?
 - o Which of the hypotheticals remained unclear or difficult to determine?
 - o How has the Supreme Court's approach to the protection of speech changed over time?
- To conclude, have students share out answers on the following question: When is it most pressing or important to limit free speech? When is it most important to protect free speech?

Optional Extension Activity: Take a Stand:

Choose one hypothetical or one broad statement such as "Hate speech should be limited." Have one student take a stand for the statement. Have another student take a stand against the statement. Each of the students will make a brief speech in support of his or her statement. Other students, one at a time, will join the two sides, making additional arguments to support or refute the statements until all students are standing. Students are allowed and encouraged to switch sides as they are swayed.

Closure/Exit Ticket (5-10 minutes):

On the way out the door, have students record answers to the following:

1. When, where, or how can speech be regulated or limited?
 - a. Answers may include time, place, and manner restrictions.
 - b. Answers may include distinctions between high and low value speech or between political and commercial speech.
 - c. Answers may vary but must address issues discussed in the articles.
2. Explain one way in which your understanding of the speech provision of the First Amendment has changed over the course of today's lesson.
 - a. Students who are stuck may use their warm up worksheets to check how their attitudes changed after reading the article and/or after talking to others.
 - b. Students may explain any way in which their understanding has changed including differences between commercial and political speech, the lack of protection that citizens have against corporations or employers, the actions that have been interpreted as speech, or anything else they may have learned over the course of the lesson.

6th-8th grade Common Core StandardCCSS.ELA-LITERACY.RH.6-8.1

Cite specific textual evidence to support analysis of primary and secondary sources.

CCSS.ELA-LITERACY.RH.6-8.2

Determine the central ideas or information of a primary or secondary source; provide an accurate summary of the source distinct from prior knowledge or opinions.

CCSS.ELA-LITERACY.RH.6-8.4

Determine the meaning of words and phrases as they are used in a text, including vocabulary specific to domains related to history/social studies.

CCSS.ELA-LITERACY.RH.6-8.6

Identify aspects of a text that reveal an author's point of view or purpose (e.g., loaded language, inclusion or avoidance of particular facts).

CCSS.ELA-LITERACY.RH.6-8.10

By the end of grade 8, read and comprehend history/social studies texts in the grades 6-8 text complexity band independently and proficiently.

WARM UP SCENARIO WORKSHEET

DIRECTIONS:

Read the text of the First Amendment of the U.S. Constitution as it refers to speech. Read each of the hypothetical situations and **decide if the government can restrict a person from these First Amendment actions**. Place an X in the box that best matches whether or not you think the government can limit the speech in that situation.

“Congress shall make no law ... abridging the freedom of speech.”

HYPOTHETICAL SITUATION	YES	NO
A person burns an American flag in protest of government policies.		
A person creates a website asking people to support an anti-war agenda.		
A person writes and publishes an essay about the superiority of his or her race.		
A person criticizes the U.S. president on a blog about public policy.		
A law is passed prohibiting violent video games from being sold to children.		
A public school student criticizes the principal and teachers on social media while off campus.		
A public school student wears a pin every day in opposition to the current president.		
A public school student starts a website for students to say hateful things about other students.		
A student threatens violence against his school on social media in the form of a poem.		
A person posts online that someone should assassinate Supreme Court justices.		
A city passes a law prohibiting a rally against the mayor in a public park.		

ARTICLE QUESTIONS:

TO BE ANSWERED INDIVIDUALLY

1. According to the article, why is it important to protect speech, even if that speech is unpopular or offensive? Provide evidence.

2. According to the article, what kinds of actions, words, or things are included in the term “speech” as it is found in the First Amendment? Provide evidence.

3. According to the article, when is it acceptable under the First Amendment to limit or punish speech? Provide evidence.

TO BE ANSWERED IN SMALL GROUPS

What is the most protected type of speech?
When is it most pressing or important to limit free speech?

EXIT TICKET

Identify at least three ways in which speech can be regulated or limited.

1)

2)

3)

Explain one way in which your understanding of the speech provision of the First Amendment has changed over the course of today's lesson.

GRAPHIC ORGANIZER

FREEDOM OF SPEECH AND THE PRESS

BY GEOFFREY R. STONE AND EUGENE VOLOKH

*Geoffrey R. Stone is Edward H. Levi Distinguished Service Professor of Law, University of Chicago Law School.
Eugene Volokh is Gary T. Schwartz Professor of Law, UCLA School of Law.*

“Congress shall make no law . . . abridging (limiting) the freedom of speech, or of the press.” What does this mean today? Generally speaking, it means that the government may not jail, fine, or impose civil liability on people or organizations based on what they say or write, **except in exceptional circumstances.**

Although the First Amendment says “Congress,” the Supreme Court has held **that speakers are protected against all government agencies and officials: federal, state, and local, and legislative, executive, or judicial. The First Amendment does not protect speakers, however, against private individuals or organizations, such as private employers, private colleges, or private landowners.** The First Amendment restrains only the government.

The Supreme Court has interpreted **“speech” and “press” broadly as covering not only talking, writing, and printing, but also broadcasting, using the Internet, and other forms of expression. The freedom of speech also applies to symbolic expression, such as displaying flags, burning flags, wearing armbands, burning crosses, and the like.**

1. What do you think these “exceptional circumstances” might be?

2. What types of people are protected under the First Amendment? What groups might not be protected?

3. What exactly are “speech” and “press”?

The Supreme Court has held that restrictions on speech because of its content — that is, when the government targets the speaker’s message — generally violate the First Amendment. Laws that prohibit people from criticizing a war, opposing abortion, or advocating high taxes are examples of unconstitutional content-based restrictions. Such laws are thought to be especially problematic because they distort public debate and contradict a basic principle of self-governance: that the government cannot be trusted to decide what ideas or information “the people” should be allowed to hear.

THERE ARE GENERALLY THREE SITUATIONS IN WHICH THE GOVERNMENT CAN CONSTITUTIONALLY RESTRICT SPEECH UNDER A LESS DEMANDING STANDARD.

1. In some circumstances, the Supreme Court has held that certain types of speech are of only “low” First Amendment value, such as:
 - a. Defamation: False statements that damage a person’s reputations can lead to civil liability (and even to criminal punishment), especially when the speaker deliberately lied or said things they knew were likely false (*New York Times v. Sullivan* (1964)).
 - b. True threats: Threats to commit a crime (for example, “I’ll kill you if you don’t give me your money”) can be punished (*Watts v. United States* (1969)).

4. Why is free speech so important to self-government and democracy?

5. The Supreme Court can constitutionally restrict free speech that is “low value” speech. What are three examples of “low value” speech under the First Amendment?

c. “Fighting words”: Face-to-face personal insults that are likely to lead to an immediate fight are punishable (*Chaplinsky v. New Hampshire* (1942)). But this does not include political statements that offend others and provoke them to violence. For example, civil rights or anti-abortion protesters cannot be silenced merely because passersby respond violently to their speech (*Cox v. Louisiana* (1965)).

f. Commercial advertising: Speech advertising a product or service is constitutionally protected, but not as much as other speech. For instance, the government may ban misleading commercial advertising, but it generally can’t ban misleading political speech (*Virginia Pharmacy v. Virginia Citizens Council* (1976)).

Outside these narrow categories of “low” value speech, most other content-based restrictions on speech are presumptively unconstitutional. Even entertainment, vulgarity, “hate speech” (bigoted speech about particular races, religions, sexual orientations, and the like), blasphemy (speech that offends people’s religious sensibilities), and violent video games are protected by the First Amendment. The Supreme Court has generally been very reluctant to expand the list of “low” value categories of speech.

6. Is hate speech free speech? Support your answer with evidence.

2. **The government can restrict speech under a less demanding standard when the speaker is in a special relationship to the government.** For example, the speech of government employees and of students in public schools can be restricted, even based on content, when their speech is incompatible with their status as public officials or students. A teacher in a public school, for example, can be punished for encouraging students to experiment with illegal drugs, and a government employee who has access to classified information generally can be prohibited from disclosing that information (*Pickering v. Board of Education* (1968)).

3. **The government can also restrict speech under a less demanding standard when it does so without regard to the content or message of the speech.** Content-neutral restrictions, such as restrictions on noise, blocking traffic, and large signs (which can distract drivers and clutter the landscape), are generally constitutional as long as they are “reasonable.” Because such laws apply neutrally to all speakers without regard to their message, they are less threatening to the core First Amendment concern that government should not be permitted to favor some ideas over others (*Turner Broadcasting System, Inc. v. FCC* (1994)). But not all content-neutral restrictions are viewed as reasonable; for example, a law prohibiting all demonstrations in public parks or all leafleting on public streets would violate the First Amendment (*Schneider v. State* (1939)).

7. To what extent can relationships affect the freedom of speech?**8. What are content-neutral restrictions? Give two specific examples.**

Courts have not always been this protective of free expression. In the 19th century, for example, courts allowed punishment of blasphemy, and during and shortly after World War I the Supreme Court held that speech tending to promote crime — such as speech condemning the military draft or praising anarchism — could be punished (*Schenck v. United States* (1919)). Moreover, it was not until 1925 that the Supreme Court held that the First Amendment limited state and local governments, as well as the federal government (*Gitlow v. New York* (1925)). But starting in the 1920s, the Supreme Court began to read the First Amendment more broadly, and this trend accelerated in the 1960s. Today, the legal protection offered by the First Amendment is stronger than ever before in our history.

9. In history, can you find an example of when a person's speech has been limited? Explain why it was limited at that time.

AFTER HAVING READ THE ARTICLE, ANSWER THE FOLLOWING QUESTION:

1. According to the article, why is it important to protect speech, even if that speech is unpopular or offensive? Provide evidence.

2. According to the article, when is it acceptable under the First Amendment to limit or punish speech? Provide evidence.