



In Partnership with the National Constitution Center

AP[®] U.S. Government and Politics

The Development and Application of the First Amendment



The Development and Application of the First Amendment

Lesson Overview

This lesson will provide students the opportunity to analyze the development of the First Amendment using the National Constitution Center's *Writing Rights: The Bill of Rights* interactive site. Students will also analyze how the Supreme Court of the United States (SCOTUS) has interpreted and applied the First Amendment in cases brought before it.

Essential Questions:

1. Why did the Founders choose to protect certain rights?
2. How have Supreme Court interpretations of citizens' rights reflected changes in our political culture?

Stage 1: Plan

Curriculum Alignment to AP U.S. Government and Politics

Course Objectives

Students successfully completing this course will be able to:

- ▶ Explain typical patterns of political processes and behavior and their consequences (including the components of behavior, the principles used to explain or justify various government structures and procedures, and the political effects of these structures and procedures);
- ▶ Interpret basic data relevant to U.S. government and politics (including data presented in charts, tables, and other formats);
- ▶ Critically analyze relevant theories and concepts, apply them appropriately, and develop their connections across the curriculum.

Content Outline

Course Topics	Essential Content Knowledge
▶ Constitutional Underpinnings of U.S. Government	▶ Considerations that influenced the formulation and adoption of the Constitution
▶ Public Policy	▶ The role of institutions in the enactment of policy
▶ Civil Rights and Civil Liberties	▶ The development of civil liberties and civil rights by judicial interpretation
	▶ Knowledge of substantive rights and liberties

Prerequisite Knowledge

Prior to teaching this lesson, what content should be covered?

- ▶ The *Declaration of Independence* – both its content and its structure as an argument.
- ▶ Key strengths and weaknesses of the *Articles of Confederation*
- ▶ Federalist and Anti-Federalist arguments regarding the Constitution and the Bill of Rights (e.g., *Federalist 84*, *Brutus I*, *George Mason's objections to the Constitution*, *John DeWitt 2*) – both the content and structure as arguments.

Focus Areas

Chief Reader Commentary

Students need to learn how to synthesize ideas and apply them to understandings of American politics.

Students need to learn how to think conceptually and express concepts in writing.

Higher Education Commentary

Q: What are the skills and concepts that you expect students to develop in your Introductory U.S. Government and Politics course so that they can succeed in subsequent political science courses?

A: Applicable skills and concepts most often rated absolutely essential:

- ▶ Critical thinking
- ▶ Critical reading/analysis
- ▶ Understanding Constitutional foundations
- ▶ Effective writing and argumentation

AP Teacher Commentary

Skills and practices identified by teachers as challenging for students:

- ▶ Analyze and assess political information and perspectives, including quantitative and qualitative data, to derive supportable conclusions.
- ▶ Develop arguments about institutions/social behavior and interactions related to political science.
- ▶ Compose an accurate, logically organized, evidence-based argument that analyzes selected political policies, institutions, or behaviors.

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This lesson will provide you the opportunity to analyze the development of the First Amendment using the National Constitution Center's Writing Rights: The Bill of Rights interactive site. You will then have the opportunity to analyze how the Supreme Court of the United States (SCOTUS) interprets the First Amendment and applies the rights and liberties included therein in cases brought before it.

National Constitution Center

The National Constitution Center was established by Congress to "disseminate information about the United States Constitution on a non-partisan basis in order to increase the awareness and understanding of the Constitution among the American people." The Center hosts interactive exhibitions, constitutional debates, and other activities to increase awareness and understanding of the United States Constitution.

At the end of this lesson:

You will be able to...

- ▶ Compare political values and events which influence interpretations of civil liberties and civil rights.
- ▶ Interpret documents and data relevant to the application of civil rights and liberties.
- ▶ Apply foundational documents to contemporary political behavior and policy making and support connections and conclusions with evidence from documents.

You will know...

- ▶ Ideas and events which influenced the addition of the Bill of Rights to the Constitution.
- ▶ Specific liberties associated with the Bill of Rights.
- ▶ The role of the Supreme Court in interpreting the Constitution and Bill of Rights.

At an appropriate point, share the lesson overview handout with students, noting which skills and knowledge the lesson intends to build. Be sure to explain this lesson is just one part of their exploration of this content and development of these skills.

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Part I

Introduction

The Occupy Wall Street movement began in September 2011 in New York's Zuccotti Park as a protest against social and economic inequality and the perceived greed, corruption, and undue influence of corporations on government. Over several months, the protesters in Zuccotti Park set up tents and refused to leave the park, while the movement also spread beyond New York City. By November, however, the city and the company that owned Zuccotti Park determined that it was unsanitary and unsafe for protesters to remain in the park. New York City police removed protesters, who then asked the court to intervene to prevent their eviction from the park.

Read the Wall Street Journal article and watch the corresponding video (<http://www.wsj.com/articles/SB10001424052970204190504577039253668863814>). We will discuss the questions that follow.

Questions

1. Were the city police justified in removing Occupy Wall Street protesters from Zuccotti Park? Why or why not?

Answers will vary. Students may say yes because the protesters were making the park and its surrounding area unsanitary. From a public health and safety standpoint, the city protected all of its citizens even if it had to end the protest. Or students might say no because the protesters were not violent or causing direct harm to anyone. They had a right to protest.

2. Why did protesters object to being removed from the park? On what did the protesters base their claim?

Answers will vary. Protesters claimed that they had a right to be in the park. Protesters believed that they had a First Amendment right to free speech and assembly, and they were practicing that right by camping in the park. In other words, they based their claim on the Constitution, specifically the Bill of Rights, and the principles of free speech and assembly.

3. Why did the judge side with the city?

The judge determined that camping in the park was not protected free speech. He allowed protesters to return to the park, but did not allow them to stay in the park overnight.



Engage & Focus

Part I

Begin the lesson with a question to the class: Why do you think the First Amendment was added to the Constitution, particularly those sections prohibiting Congress from making laws “abridging the freedom of speech...or the right of the people peaceably to assemble, and to petition the government for a redress of grievances”? Draw out student responses about the prevailing political culture after our separation from England, the Revolutionary War, and formation of a new U.S. government. Guide students to consider what lingering concerns there might have been about power being held by a few and whether the people would be able to tell the government when it engages in wrongdoing. Conclude this short opening discussion by asking whether similar concerns exist today.

Show students the video from the *Wall Street Journal* article found at <http://www.wsj.com/articles/SB10001424052970204190504577039253668863814>. Lead students in a brief discussion about what they saw in the video. Why were the protesters in the park? What were they protesting? What happened to them? Then, share the handout and the corresponding *Wall Street Journal* article.

Direct students to read the article. Then, lead a discussion of the questions on the handout.

The article, video and questions ask students to consider the rights of free speech and assembly and whether those rights were violated in the given situation. Students also have the opportunity to consider the court’s decision not to allow protesters to camp out in the park.

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Part II

Individual rights and liberties, like the rights to free speech and assembly, are protected by the Constitution and the Bill of Rights. However, there are often tensions between different interpretations of those rights and between different rights and the common good. The courts, including the Supreme Court of the U.S., consider many factors when determining how to resolve tensions like the one in the Occupy Wall Street protests (i.e., free speech/assembly v. public health and safety). One thing that they may consider is the original intent of the legislators who wrote a law or, in this case, an amendment. Determining intent can involve looking at what influenced the founders and their thinking. In this lesson we will look at some of the historical sources that helped shape the First Amendment and then at some Supreme Court cases involving the rights included in the amendment. We will use this information to determine the extent to which the Supreme Court has protected the individual rights contained in the First Amendment.

Our investigation of the sources of the First Amendment will focus on Madison and his proposals. As the architect of the Constitution and the government it created, Madison's ideas are important for understanding the Founders' intent.

To conduct our investigation, we will use the National Constitution Center's *Writing Rights: The Bill of Rights* interactive site (<http://webii.net/billofrightsWeb/home/writing>). The Center's site provides the opportunity for us to read and compare historical sources that influenced Madison, as well as the final product that was approved by Congress.

Directions:

Complete the following graphic organizer using information from the texts on the National Constitution Center's *Writing Rights: The Bill of Rights* interactive site (<http://webii.net/billofrightsWeb/home/writing>). Then respond to the questions below.

Remember - when considering similarities and differences between documents, focus on the specific characteristic we have identified for comparison. In this case, the characteristic refers to the rights represented by the proposal or amendment.

 Acquisition & Meaning:

Part II

Explain to students that while our rights are included in the Constitution and the Bill of Rights, there are often tensions between different interpretations of those rights and between different rights and the common good. The courts, including the Supreme Court of the U.S., consider many factors when determining how to resolve tensions like the one in the Occupy Wall Street protests (i.e., free speech/assembly v. public health and safety). One thing that they may consider is the original intent of the legislators who wrote a law or, in this case, an amendment. Determining intent can involve looking at what influenced the founders and their thinking. In this lesson students will look at some of the historical sources that helped shape the First Amendment and then at some Supreme Court cases involving the rights included in the amendment. They will use this information to determine the extent to which the Supreme Court has protected the individual rights contained in the First Amendment.

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Part II

Declarations and Resolves of the First Continental Congress (1774)	People can assemble and petition the king. They cannot be punished for doing so.				✓	✓	Colonists petitioned the king.
Declaration of Independence (1776)	The colonists have repeatedly petitioned the king to fix what was wrong. They have repeatedly been punished for doing so.					✓	Colonists petitioned the king.
New Hampshire Constitution (1783)	People can peacefully assemble and can petition the legislature to fix something that is wrong.					✓	Includes the right to petition but to petition the legislature, not the government.
Madison's Proposal 6 (1789)	People can peacefully assemble and can petition the legislature to fix something that is wrong.					✓	Includes the right to petition but to petition the legislature, not the government.
First Amendment (1789)	Congress can't make a law establishing a religion or preventing the exercise of religion. It can't prohibit free speech, freedom of the press, or the rights of people to assemble or petition the government.	✓	✓	✓	✓		
Summary							
Freedom of Religion		✓					
Freedom of Speech		✓					
Freedom of the Press		✓					
Right to Assembly					✓		



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To conduct their investigation, students will use the National Constitution Center's Writing Rights: The Bill of Rights interactive site (<http://webii.net/billofrightsWeb/home/writing>). The National Constitution Center was established by Congress to "disseminate information about the United States Constitution on a non-partisan basis in order to increase the awareness and understanding of the Constitution among the American people." The Center hosts interactive exhibitions, constitutional debates, and other activities to increase awareness and understanding of the United States Constitution. The Center's site provides the opportunity for students to read and compare historical sources that influenced Madison, as well as the final product that was approved by Congress.

Introduce the National Constitution Center's *Writing Rights: The Bill of Rights* interactive site (<http://webii.net/billofrightsWeb/home/writing>) to students.

Ask students to describe what they see. Ask them to explain what they think the site shows them and what they can tell from the way the information is presented. Ask what they believe the site is illustrating. Discuss how the lines demonstrate which historical sources are linked to Madison's proposals and different proposals of the House and the Senate. Discuss how the site provides a visual of the law-making process and the process of writing the Bill of Rights. Then, demonstrate for students how to use the site.

- ▶ In the top left-hand corner, click on the icon next to the name of the amendment.
- ▶ Read the text of the First Amendment. Explain it in your own words and identify the rights included in the amendment (i.e., freedom of religion, speech, press, assembly, and redress of grievances).

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Part II

Questions

1. How did Madison incorporate different aspects of the Historical Sources into his proposal? In what ways(s) was Madison's proposal ultimately incorporated into the First Amendment?

Madison used very similar wording in his proposal to some of the historical sources, especially the First Continental Congress and the New Hampshire Constitution. All three documents stated people can assemble peacefully and petition the government to fix what is wrong. Because this idea appeared in different documents, Madison may have believed it was important to the citizens of the colonies and it would be an important right for the new constitution to protect. These ideas were ultimately incorporated into the First Amendment almost exactly as Madison proposed them with only minor changes, specifically changing the king and legislature to the government.

2. What is missing from Madison's Proposal 6 and from the Historical Sources that we read? Why is it important to know what is not included?

Madison and the other sources did not include the rights of free speech and the press. They also did not include the freedom of religion. What is missing is just as important as what is included. There was a reason that Madison did not include all of the rights in one proposal, which may have been because he believed them each to be too important to put them all together. It may have also been because as he looked at other sources he found the rights separated, and so he followed the same pattern.

3. Thinking about the Occupy Wall Street situation, would Madison's Proposal 6 and the Historical Sources we read lead to an interpretation of the First Amendment that would support the protesters or the city? Explain your response.

Students may point to the right to assemble that was included in all of the sources except the Declaration of Independence. Based on these sources, they might interpret the First Amendment as protecting the protesters' right to be in the park. However, none of the sources explain what assembly means, so some students may say they need more information to make a determination about whether the protesters or the city was correct.

Using *Madison's Proposal 6*, demonstrate for students how to compare two texts.

- ▶ Click on *Madison's Proposal 6*. Point out both the text of the proposal and the First Amendment appear at the top of the screen.
- ▶ Show students where the website indicates for students how much the language in the two texts match.
- ▶ Also point out how the other highlighted documents are related and how students can compare the text from those documents with the text of the First Amendment.
- ▶ Remind students comparison requires they first identify the characteristic(s) upon which they will base the comparison, and then they can explain how the documents are similar and different with respect to that characteristic. In this case, the identified characteristics are the rights included in the First Amendment.

Read aloud the text of *Madison's Proposal 6*. Explain the proposal in your own words. Ask students to explain the proposal in their own words on their graphic organizer (in the column marked *Madison's Proposal 6*) and then share with a partner to check for understanding.

- ▶ Ask students to note if any of the rights included in the First Amendment are also included in *Madison's proposal*. Direct students to place a check mark in the "Madison's Proposal 6" column of their graphic organizers if the right is included. Also direct students to note if there are any differences in the language used by *Madison* and that which is included in the *First Amendment*. If so, they should describe the difference. Students should then share with a partner to check for understanding.

Repeat the above procedures for the *Declarations and Resolves of the First Continental Congress*.

Direct students to complete the same procedure for the *Declaration of Independence* and the New Hampshire Constitution to complete the organizer.

Students should share their responses with one of their neighbors and discuss any questions they have about the documents before whole-class sharing of responses.

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Part III

Directions:

Now it is your turn to investigate the other proposals from Madison that are associated with the First Amendment. Half of you will investigate Madison's Proposal 4 and the other half will investigate Proposal 5. Complete the following graphic organizer using information from the texts on the *Writing Rights: The Bill of Rights* interactive site (<http://webii.net/billofrightsWeb/home/writing>). Then, answer the questions using the website, what you have learned about the First Amendment, and your knowledge about the debate surrounding the ratification of the Constitution.

Remember - when considering similarities and differences between documents, focus on the specific characteristic we have identified for comparison. In this case, the characteristic refers to the rights represented by the proposal or amendment.

	First Amendment (1789)	Madison's Proposal 4 (1789)	New York Ratification Convention (1788)	Laws of West New Jersey (1681)
Summary	<i>Congress can't make a law establishing a religion or preventing the exercise of religion; it can't prohibit free speech, freedom of the press, or the rights of people to assemble or petition the government.</i>	<i>No national religion and people cannot be punished or lose their civil rights because of their religion.</i>	<i>People have an equal and natural right to practice whatever religion they want. No established religion.</i>	<i>Grants liberty of conscience in matters of faith and worship; no one should be prevented from holding office because of their faith or worship.</i>
Freedom of Religion	✓	✓	✓	✓
Freedom of Speech	✓			
Freedom of the Press	✓			
Right to Assembly	✓			
Right to Petition	✓			

 Practice & Transfer:

Part III

Divide the class in half and assign each half one of Madison's other proposals, along with the corresponding Historical Sources. In pairs, have students read the proposal, as well as the documents noted on the graphic organizer. Students complete the organizer with the appropriate information.

Then, ask students to find a different partner who completed the organizer for the other proposal (i.e., a student who read Madison's Proposal 5 should find a student who read Madison's Proposal 4). Students share their responses in the organizer with each other.

Students then respond to the questions which follow the organizer.

Check for understanding by asking students to share the information in the organizer, as well as their responses to the questions that follow the chart.

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Part III

	First Amendment (1789)	Madison's Proposal 5 (1789)	North Carolina Declaration of Rights (1776)	Massachusetts Body of Liberties (1641)
Summary	<i>Congress can't make a law establishing a religion or preventing the exercise of religion; it can't prohibit free speech, freedom of the press, or the rights of people to assemble or petition the government.</i>	<i>People can say, write, and publish what's on their minds. Freedom of the press cannot be held back; it is important to liberty.</i>	<i>Freedom of the press is one of the key parts of liberty and therefore should not be limited.</i>	<i>Every man has the right to put forth a question, motion, or grievance at a public meeting either in writing or by speaking, as long as it is done appropriately.</i>
Freedom of Religion	✓			
Freedom of Speech	✓	✓ <i>Includes speaking, as well as writing and publishing.</i>		✓ <i>Allows for free speech under the appropriate conditions during a public meeting.</i>
Freedom of the Press	✓	✓ <i>Notes the importance of the freedom of the press for liberty.</i>	✓ <i>Notes the importance of the freedom of the press for liberty.</i>	
Right to Assembly	✓			
Right to Petition	✓			

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Part III

Questions

1. How did Madison incorporate different aspects of the Historical Sources into his proposals? In what way(s) were Madison's proposals incorporated into the First Amendment?

Madison proposed the freedom of religion and the freedom of speech and the press, all of which were included in at least one of the historical sources. However, Madison and the First Amendment expanded the freedom of speech beyond what was in the Massachusetts Body of Liberties. All three rights were included in the First Amendment, however, Madison was more explicit with his description of what the freedom of speech meant.

2. Thinking about the Occupy Wall Street situation, would Madison's Proposal 4 or 5 and the Historical Sources we read lead to an interpretation of the First Amendment that would support the protesters or the city? Explain your response.

Students might point to the right to free speech, which was included in Madison's Proposal 5 to support an interpretation that the protesters had a right to be in the park. The judge agreed that the protesters could be in the park, but sided with the city in that camping in the park was not part of free speech. While Madison expanded what was meant by speech, he did not go as far as the protesters might have wanted.

3. What rationale might the Founders have had for merging Madison's three proposals into one amendment?

All of the rights in the First Amendment are important and involve people's ideas and thoughts. They all protect against the government punishing you because of what you believe, think, or say. So, rather than passing several separate, but similar, amendments, the legislators combined them into one. It is also possible that the Founders thought these rights were so important that they wanted them to be together as the first amendment.

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Part IV

U.S. v. Eichman (1990)

Directions:

One of the roles of the courts, particularly the Supreme Court, is to interpret and determine the constitutionality of laws. There have been numerous cases brought before the Court involving the First Amendment and the tensions that are created by different interpretations of the amendment and/or when the government's need to protect the common good may infringe on an individual's rights. Together, we will use what you have learned about the First Amendment and its origins to review the case of *U.S. v. Eichman* and evaluate the Court's reasoning. Then, you will answer the questions which follow.

Conflict of Principles:

Freedom of Expression and Respect for National Symbols

Brief Description of the Case	Under the Flag Protection Act of 1989, it is illegal to destroy the American flag, except when properly disposed of due to wear and tear. During a protest, Eichman burned the American flag on the steps of the U.S. Capitol. He was prosecuted under the Flag Protection Act.
Question	Did the Flag Protection Act violate the First Amendment's protection of the freedom of expression?
Petitioner	U.S. government
Responder	Shawn Eichman
Court's Decision	5-4 in favor of Eichman
Explanation of Court's Majority Decision	The Court struck down the Flag Protection Act because it was intended specifically to suppress expressive conduct. Because the Act contained a provision allowing burning in an appropriate disposal ceremony, a 5-4 majority of the Court viewed it as evidence that the real intent was to suppress the content of certain types of expression, in this case symbolic political speech.

Acquisition & Meaning:

Part IV

Remind students about the Occupy Wall Street protest and the tension between protesters' rights to free speech and assembly and the city's obligation to promote public health and safety. Did the city violate protesters' rights to free speech and assembly? Or was the city justified since the park was being destroyed and a public health issue was being created? Based on what students have learned about the First Amendment and Madison's Proposals, was the court's interpretation of the First Amendment appropriate?

Discuss the potential for the courts to be the body that decides if protesters' rights were violated. Explain how SCOTUS has often heard cases in which First Amendment rights may have been violated.

Remind students that one of the Court's roles is to interpret laws and determine the constitutionality of laws.

- ▶ There have been numerous cases brought before the Court, some of which were controversial.
- ▶ There are situations in which it is not always clear if a law violates someone's First Amendment rights, and it is the Court's job to decide if rights were violated.

After discussing one case together, students will have the opportunity to review a case and evaluate the reasoning for the ruling.

Share the example of *U.S. v. Eichman* (1990) on the student handout.

- ▶ For information about the case, visit The Oyez Project (www.oyez.com), the Legal Information Institution (www.law.cornell.edu), and/or the First Amendment Center (www.firstamendmentcenter.org).

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Part IV

Conflict of Principles:	
Explanation of Court's Interpretation of the First Amendment	The Court interpreted the First Amendment protection of speech to include expression. Although the Court may have seen value in protecting a national symbol, the Court reasoned that the Flag Protection Act specifically sought to suppress speech rather than to protect the flag.
Explanation of the Dissenting Opinion(s)	The government can put limited restrictions on expression if there is a legitimate reason for them that is unrelated to the ideas being expressed and alternative methods of expression are available. (Justice John Paul Stevens)

Questions

- Given what you know about the development of the First Amendment, why might expression be protected? Why might it not be protected?

The First Amendment protects the freedom of speech, which is one type of expression. Also, Madison's proposal was broader and shows that the intention may have been to include all types of speech and expression. However, a strict reading of the amendment does not include expression explicitly. In fact, Congress removed parts of Madison's broader definition, which could indicate an intention to limit the right.

- The Supreme Court ruled the Flag Protection Act violated the right of freedom of expression protected by the First Amendment. Should all freedom of expression be protected by the First Amendment? Why or why not?

Expression and/or speech which is violent or incites violence or injury to others is not protected.

- Does it matter what Eichman was protesting or whether anyone agreed with him? Under what circumstances could the type of protest or the message itself justify arrest?

Students may say that it shouldn't matter what Eichman was protesting or if anyone agreed with him. His free speech should be protected. Other students may say that under some circumstances it would be justified to arrest Eichman, especially if his actions threatened the safety of others and/or became violent or caused others to become violent.

- ▶ Explain the background of the case and the different principles involved.
- ▶ Identify the individuals involved.
- ▶ Summarize the Court's Majority Opinion. In particular, note the Supreme Court's use of the O'Brien Test (from *U.S. v. O'Brien*, 1968) to resolve issues relating to draft card and flag burnings. Explain to students the test involves two steps (represented by two sets of questions):
 - › Is this expressive conduct? Did the person intend to convey a message through their actions?
 - › If so, is the government's purpose in punishing that conduct something other than suppressing the expression or showing hostility to the idea being expressed?
- ▶ In *Eichman*, the Court's majority found burning the flag was expressive conduct. The government's purpose in punishing the conduct was suppression of expression.
- ▶ Explain the Dissenting Opinion.
- ▶ Direct students to work in pairs to answer the questions that follow the chart. Then, lead a discussion in which students share their responses to the questions.
- ▶ **Note:** if the protest or content of speech led to or threatened a breach of the peace, then the arrest and conviction might well have been upheld. Also, in the original flag burning case, *Texas v. Johnson* (1989), William Rehnquist and two other justices dissented with the majority, citing the "uniqueness" of the flag, justifying governmental prohibition against flag burning in the way the respondents did.

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Part IV

4. Evaluate the Supreme Court's ruling and judicial reasoning in this case? Support your response with evidence from the First Amendment and the case.

Answers will vary. Students may decide the Supreme Court was wrong in both its ruling and reasoning. Others may decide the Supreme Court was right in its ruling but wrong in its reasoning. Still others might say that it was correct on both accounts. Students should use evidence from the case and the judicial reasoning to defend their positions.

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Part V

Directions:

Using resources available to you, including your textbook and the websites below, investigate your assigned cases from the list below. Complete the graphic organizer and answer the questions which follow.

Supreme Court Cases Involving the First Amendment

- ▶ *Reynolds v. U.S.* (1878)
- ▶ *Schenck v. U.S.* (1919)
- ▶ *Engel v. Vitale* (1962)
- ▶ *Tinker v. Des Moines Independent Community School District* (1969)
- ▶ *New York Times Company v. U.S.* (1971)
- ▶ *Lemon v. Kurtzman* (1971)
- ▶ *Wisconsin v. Yoder* (1972)
- ▶ *Employment Division (Oregon) v. Smith* (1989)
- ▶ *Citizens United v. Federal Election Commission* (2008)

Helpful Websites:

The Oyez Project: <http://www.oyez.org/>

Legal Information Institute: <https://www.law.cornell.edu/>

First Amendment Center: <http://www.firstamendmentcenter.org/>


Practice & Transfer

Introduce students to the list of SCOTUS cases which involve the First Amendment. Explain it is their turn to review the facts of the cases and evaluate the Supreme Court's rulings and judicial reasoning.

Have each student investigate two cases and prepare to present them to the class during the next class session. You may choose to have students investigate two cases involving the same right (e.g., two cases about the freedom of speech) to see how the Supreme Court interpreted the right at different times and in different cases. You may also choose to have students investigate two cases involving different rights (e.g., one case about religion and one about speech) to see if their judicial reasoning is similar or different based on the right. Be sure to assign each case to at least one student.

Students should present one of their cases using their graphic organizers to guide their sharing of information during the next class. All students should note the information from the cases based on their classmates' presentations. Prompt students to respond to the questions on the handout to check for understanding.

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Part V

Case:

Conflict of Principles:

Brief Description of the Case

Question

Petitioner

Responder

Court's Decision

Explanation of Court's Majority Opinion

Explanation of Court's Interpretation of the First Amendment

Explanation of the Dissenting Opinion(s)

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Part V

Questions

1. Which conflict of democratic or social values exists in each of your assigned cases?

Answers will vary depending on the case. Students must include evidence from the Supreme Court's opinions to support their responses.

2. How did the Supreme Court justify its protection or control of certain political behaviors? Support your response with evidence.

Answers will vary depending on the case. Students must include evidence to support their claims.

3. Evaluate the Supreme Court's ruling and its reasoning in each case. Support your response with evidence.

Answers will vary depending on the case. Students must include evidence from the Supreme Court's opinions to support their responses.

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Part V

Directions:

Using what you have learned about the origins of the First Amendment and the Supreme Court cases involving the amendment, develop an argument that addresses the prompt below. Remember, a strong argument includes relevant and specific evidence. Use the graphic organizer below before you write to indicate the case or cases related to the right and the Court's reasoning regarding the right.

Prompt: To what extent has the Supreme Court protected the individual rights of freedom of speech, of religion, and of the press contained in the First Amendment?

	Case(s) Related to the Right	Judicial Reasoning
Freedom of Religion		
Freedom of Speech		
Freedom of the Press		

✓ **Checking for Understanding**

Direct students to write an argument that includes a thesis supported with evidence that addresses the prompt. Provide students with the chart to collect their evidence and remind them to use it as they develop their arguments. Remind students to use the information they have gathered in their graphic organizers and their notes in their responses.

Prompt: To what extent has the Supreme Court protected the individual rights of freedom of speech, of religion, and of the press contained in the First Amendment?

Stage 3: Assess

You may choose to use one of the former AP U.S. Government and Politics Exam Free Response Questions as a summative assessment. A summative assessment would most likely occur after additional lessons and/or at the end of the unit. Immediately following this lesson, students would not be expected to answer the questions as they were originally written. However, modified versions of applicable free response questions are included at the end of this lesson plan.

Scoring guidelines for the original questions are available at: http://apcentral.collegeboard.com/apc/members/exam/exam_information/2086.html

Stage 4: Act

Supplemental Resources

These resources may be used with students that need additional support understanding the U.S. Constitution, the Bill of Rights, the Federalists and Anti-Federalists, and the Supreme Court, the websites below are available. You may wish to have students explore these websites for more information and additional interpretations of the Bill of Rights.

Annenberg Classroom: <http://www.annenbergclassroom.org/page/a-guide-to-the-united-states-constitution>

Constitution Society: <http://www.constitution.org/>

National Constitution Center: <http://constitutioncenter.org/>

The Oyez Project: <http://www.oyez.org/>

SCOTUS Blog: <http://www.scotusblog.com/>

Teaching American History: <http://teachingamericanhistory.org/bor/fed-antifed-debate/>

**Practice AP® US Government & Politics Exam Questions
Based on the 2014 Exam Free Response Question #1**

The United States Constitution's ratification resulted from a political process which required compromise between the Federalists and Anti-Federalists. Many of the debates in government today continue to reflect the concerns of each perspective.

- a. Compare the positions of Federalists and Anti-Federalists regarding the power of the national government.
- b. Explain how the First Amendment to the Constitution addressed Anti-Federalist concerns.
- c. Explain how many of the debates in government today reflect similar concerns and the role of the Supreme Court in resolving those debates.

Practice AP® US Government & Politics Exam Questions Based on the 2007 Exam Free Response Question #2

The First Amendment includes two clauses relating to the freedom of religion.

- a. Select one of the following cases and identify the First Amendment clause upon which the United States Supreme Court based its decision.
 - › Engle v. Vitale (school prayer)
 - › Lemon v. Kurtzman (state funding for private religious schools)
- b. Describe the Supreme Court's decision in the case that you selected in (a).
- c. Choose one other First Amendment case and describe the Supreme Court's decision.
- d. Many of these decisions have caused controversy in the United States. Describe two ways in which other political institutions might limit the impact of Supreme Court decisions.

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Lesson Overview

The Development and Application of the First Amendment

This lesson will provide you the opportunity to analyze the development of the First Amendment using the National Constitution Center's Writing Rights: The Bill of Rights interactive site. You will then have the opportunity to analyze how the Supreme Court of the United States (SCOTUS) interprets the First Amendment and applies the rights and liberties included therein in cases brought before it.

National Constitution Center

The National Constitution Center was established by Congress to “disseminate information about the United States Constitution on a non-partisan basis in order to increase the awareness and understanding of the Constitution among the American people.” The Center hosts interactive exhibitions, constitutional debates, and other activities to increase awareness and understanding of the United States Constitution.

At the end of this lesson:

You will be able to...

- ▶ Compare political values and events which influence interpretations of civil liberties and civil rights.
- ▶ Interpret documents and data relevant to the application of civil rights and liberties.
- ▶ Apply foundational documents to contemporary political behavior and policy making and support connections and conclusions with evidence from documents.

You will know...

- ▶ Ideas and events which influenced the addition of the Bill of Rights to the Constitution.
- ▶ Specific liberties associated with the Bill of Rights.
- ▶ The role of the Supreme Court in interpreting the Constitution and Bill of Rights.

Part I

Introduction

The Occupy Wall Street movement began in September 2011 in New York's Zuccotti Park as a protest against social and economic inequality and the perceived greed, corruption, and undue influence of corporations on government. Over several months, the protesters in Zuccotti Park set up tents and refused to leave the park, while the movement also spread beyond New York City. By November, however, the city and the company that owned Zuccotti Park determined that it was unsanitary and unsafe for protesters to remain in the park. New York City police removed protesters, who then asked the court to intervene to prevent their eviction from the park.

Read the Wall Street Journal article and watch the corresponding video (<http://www.wsj.com/articles/SB10001424052970204190504577039253668863814>). We will discuss the questions that follow.

Questions

1. Were the city police justified in removing Occupy Wall Street protesters from Zuccotti Park? Why or why not?

2. Why did protesters object to being removed from the park? On what did the protesters base their claim?

3. Why did the judge side with the city?

Part II

Individual rights and liberties, like the rights to free speech and assembly, are protected by the Constitution and the Bill of Rights. However, there are often tensions between different interpretations of those rights and between different rights and the common good. The courts, including the Supreme Court of the U.S., consider many factors when determining how to resolve tensions like the one in the Occupy Wall Street protests (i.e., free speech/assembly v. public health and safety). One thing that they may consider is the original intent of the legislators who wrote a law or, in this case, an amendment. Determining intent can involve looking at what influenced the founders and their thinking. In this lesson we will look at some of the historical sources that helped shape the First Amendment and then at some Supreme Court cases involving the rights included in the amendment. We will use this information to determine the extent to which the Supreme Court has protected the individual rights contained in the First Amendment.

Our investigation of the sources of the First Amendment will focus on Madison and his proposals. As the architect of the Constitution and the government it created, Madison's ideas are important for understanding the Founders' intent.

To conduct our investigation, we will use the National Constitution Center's *Writing Rights: The Bill of Rights* interactive site (<http://webii.net/billofrightsWeb/home/writing>). The Center's site provides the opportunity for us to read and compare historical sources that influenced Madison, as well as the final product that was approved by Congress.

Directions:

Complete the following graphic organizer using information from the texts on the National Constitution Center's *Writing Rights: The Bill of Rights* interactive site (<http://webii.net/billofrightsWeb/home/writing>). Then respond to the questions below.

Remember - when considering similarities and differences between documents, focus on the specific characteristic we have identified for comparison. In this case, the characteristic refers to the rights represented by the proposal or amendment.

Part II

Declarations and Resolves of the First Continental Congress (1774)	Declaration of Independence (1776)	New Hampshire Constitution (1783)	Madison's Proposal 6 (1789)	First Amendment (1789)	Summary
					Freedom of Religion
					Freedom of Speech
					Freedom of the Press
					Right to Assembly

Part II**Questions**

1. How did Madison incorporate different aspects of the Historical Sources into his proposal? In what ways(s) was Madison's proposal ultimately incorporated into the First Amendment?

2. What is missing from Madison's Proposal 6 and from the Historical Sources that we read? Why is it important to know what is not included?

3. Thinking about the Occupy Wall Street situation, would Madison's Proposal 6 and the Historical Sources we read lead to an interpretation of the First Amendment that would support the protesters or the city? Explain your response.

Part III

Directions:

Now it is your turn to investigate the other proposals from Madison that are associated with the First Amendment. Half of you will investigate Madison's Proposal 4 and the other half will investigate Proposal 5. Complete the following graphic organizer using information from the texts on the *Writing Rights: The Bill of Rights* interactive site (<http://webii.net/billofrightsWeb/home/writing>). Then, answer the questions using the website, what you have learned about the First Amendment, and your knowledge about the debate surrounding the ratification of the Constitution.

Remember - when considering similarities and differences between documents, focus on the specific characteristic we have identified for comparison. In this case, the characteristic refers to the rights represented by the proposal or amendment.

	First Amendment (1789)	Madison's Proposal 4 (1789)	New York Ratification Convention (1788)	Laws of West New Jersey (1681)
Summary				
Freedom of Religion				
Freedom of Speech				
Freedom of the Press				
Right to Assembly				
Right to Petition				

Part III

	First Amendment (1789)	Madison's Proposal 5 (1789)	North Carolina Declaration of Rights (1776)	Massachusetts Body of Liberties (1641)
Summary				
Freedom of Religion				
Freedom of Speech				
Freedom of the Press				
Right to Assembly				
Right to Petition				

Part III

Questions

1. How did Madison incorporate different aspects of the Historical Sources into his proposals? In what way(s) were Madison's proposals incorporated into the First Amendment?

2. Thinking about the Occupy Wall Street situation, would Madison's Proposal 4 or 5 and the Historical Sources we read lead to an interpretation of the First Amendment that would support the protesters or the city? Explain your response.

3. What rationale might the Founders have had for merging Madison's three proposals into one amendment?

Part IV

U.S. v. Eichman (1990)

Directions:

One of the roles of the courts, particularly the Supreme Court, is to interpret and determine the constitutionality of laws. There have been numerous cases brought before the Court involving the First Amendment and the tensions that are created by different interpretations of the amendment and/or when the government's need to protect the common good may infringe on an individual's rights. Together, we will use what you have learned about the First Amendment and its origins to review the case of *U.S. v. Eichman* and evaluate the Court's reasoning. Then, you will answer the questions which follow.

Conflict of Principles:

Brief Description of the Case	
Question	
Petitioner	
Responder	
Court's Decision	
Explanation of Court's Majority Decision	

Part IV

Conflict of Principles:	
Explanation of Court's Interpretation of the First Amendment	
Explanation of the Dissenting Opinion(s)	

Questions

1. Given what you know about the development of the First Amendment, why might expression be protected? Why might it not be protected?

2. The Supreme Court ruled the Flag Protection Act violated the right of freedom of expression protected by the First Amendment. Should all freedom of expression be protected by the First Amendment? Why or why not?

3. Does it matter what Eichman was protesting or whether anyone agreed with him? Under what circumstances could the type of protest or the message itself justify arrest?

Part IV

4. Evaluate the Supreme Court's ruling and judicial reasoning in this case? Support your response with evidence from the First Amendment and the case.

Part V

Directions:

Using resources available to you, including your textbook and the websites below, investigate your assigned cases from the list below. Complete the graphic organizer and answer the questions which follow.

Supreme Court Cases Involving the First Amendment

- ▶ *Reynolds v. U.S.* (1878)
- ▶ *Schenck v. U.S.* (1919)
- ▶ *Engel v. Vitale* (1962)
- ▶ *Tinker v. Des Moines Independent Community School District* (1969)
- ▶ *New York Times Company v. U.S.* (1971)
- ▶ *Lemon v. Kurtzman* (1971)
- ▶ *Wisconsin v. Yoder* (1972)
- ▶ *Employment Division (Oregon) v. Smith* (1989)
- ▶ *Citizens United v. Federal Election Commission* (2008)

Helpful Websites:

The Oyez Project: <http://www.oyez.org/>

Legal Information Institute: <https://www.law.cornell.edu/>

First Amendment Center: <http://www.firstamendmentcenter.org/>

Part V

Case:

Conflict of Principles:

Brief Description of the Case

Question

Petitioner

Responder

Court's Decision

Explanation of Court's Majority Opinion

Explanation of Court's Interpretation of the First Amendment

Explanation of the Dissenting Opinion(s)

Part V

Questions

1. Which conflict of democratic or social values exists in each of your assigned cases?

2. How did the Supreme Court justify its protection or control of certain political behaviors? Support your response with evidence.

3. Evaluate the Supreme Court's ruling and its reasoning in each case. Support your response with evidence.

Part V

Directions:

Using what you have learned about the origins of the First Amendment and the Supreme Court cases involving the amendment, develop an argument that addresses the prompt below. Remember, a strong argument includes relevant and specific evidence. Use the graphic organizer below before you write to indicate the case or cases related to the right and the Court’s reasoning regarding the right.

Prompt: To what extent has the Supreme Court protected the individual rights of freedom of speech, of religion, and of the press contained in the First Amendment?

	Case(s) Related to the Right	Judicial Reasoning
Freedom of Religion		
Freedom of Speech		
Freedom of the Press		

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