

LAW ★ DAY  
2019



FREE SPEECH

FREE PRESS

FREE SOCIETY

PLANNING GUIDE

# THE 2019 LAW DAY THEME

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2019



## FREE SPEECH, FREE PRESS, FREE SOCIETY

The 2019 Law Day theme—Free Speech, Free Press, Free Society—focuses on these cornerstones of representative government and calls on us to understand and protect these rights to ensure, as the U.S. Constitution proposes, “the blessings of liberty for ourselves and our posterity.”

In the United States and around the world, freedom of speech and the press are among the most important foundations for a free society. Free speech and free press are prominent topics in public discourse and litigation. It is impossible to imagine a free society without these individual liberties, yet historical and current debates surrounding them continually challenge us to consider their boundaries and resilience. Changes in technology have reshaped how free speech and free press work in the everyday world.

Law Day 2019 offers the opportunity to explore this pair of freedoms by probing their history and considering their future. Should all speech be “free?” What is the role of government in regulating or protecting the press? Should speech or the press be constrained through laws or norms? Can a free society exist without free speech and free press?

# WHAT IS LAW DAY?



Law Day, held annually on May 1, is a national day set aside to celebrate the rule of law. Law Day provides an opportunity to understand how law and the legal process protect our liberty, strive to achieve justice, and contribute to the freedoms that all Americans share.

## HOW DID LAW DAY BEGIN?



**1957:** American Bar Association president Charles S. Rhyne envisioned a special day for celebrating our legal system.



**1958:** President Dwight D. Eisenhower established Law Day as a day of national dedication to the principles of government under law.



**1961:** Congress designated May 1 as the official date for celebrating Law Day. This program continues today and has grown to many countries around the globe.

## WHEN IS LAW DAY CELEBRATED?

May 1 is the official date for Law Day, but many celebrations take place the week(s) before or after that date. Some organizations celebrate a Law Week or Law Month in April or May.

## WHO CONDUCTS LAW DAY PROGRAMS?

Law Day programs are conducted by bar groups, courts, schools, youth groups, and community organizations, to name a few. Any person or group that wants to spread the important message of the rule of law and its critical role in society may put on a program.

## WHY IS A THEME SELECTED?

An annual theme is chosen to spotlight a particular aspect of law or the legal process and its impact on our daily lives.

## HOW IS LAW DAY CELEBRATED?

Thousands of Law Day programs are conducted each year for youth and adults across the country. In addition, the president of the United States has issued a Law Day proclamation recognizing the importance of the rule of law every year since 1958.

# 25 IMPORTANT MOMENTS IN FREE

1735

## Trial of John Peter Zenger

New York printer John Peter Zenger is charged with seditious libel for publishing criticism of the royal governor. English law prohibited any published criticism of the government that would incite public dissatisfaction. Zenger's lawyers, Andrew Hamilton and William Smith, convince the jury that Zenger should be acquitted because the articles were, in fact, true, and that New York libel law should not be the same as English law.

1864

## Newspapers Shut Down

President Abraham Lincoln orders the *New York Journal of Commerce* and the *New York World* to stop publication after they publish a forged presidential proclamation calling for another military draft. After the authors of the forgery are arrested, the newspapers can resume publication.

1925

## First Amendment Applies to the States

In *Gitlow v. New York*, the Supreme Court concludes that the Free Speech Clause of the First Amendment applies not only to laws passed by Congress, but also to those passed by the states.

1931

## Court Protects a Free Press

A Minnesota law that prohibited publication of "malicious" or "scandalous" newspapers violates the First Amendment, the Supreme Court rules in *Near v. Minnesota*. The landmark case holds that prior restraint of the press, or pre-publication censorship, is unconstitutional.

1737

## Federalist Papers Advocate for a Free Press

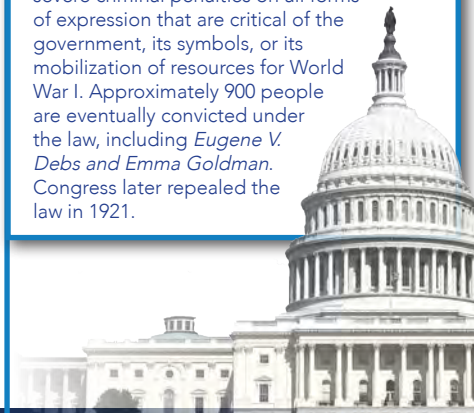
The first of 85 essays written under the pen name Publius by Alexander Hamilton, James Madison, and John Jay begin to appear in the *New York Independent Journal*. The essays, called the Federalist Papers, support ratification of the Constitution approved by the Constitutional Convention on Sept. 17, 1787. In Federalist Paper No. 84, Hamilton discusses "liberty of the press," saying it "shall be inviolably preserved."



1918

## Congress Passes the Sedition Act

Congress passes the Sedition Act, extending the 1917 Espionage Act and imposing severe criminal penalties on all forms of expression that are critical of the government, its symbols, or its mobilization of resources for World War I. Approximately 900 people are eventually convicted under the law, including *Eugene V. Debs* and *Emma Goldman*. Congress later repealed the law in 1921.



1943

## Flag Saluting Not Mandatory in Schools

In *West Virginia State Board of Education v. Barnette*, the Supreme Court overrules its decision in *Minersville School District v. Gobitis* (1940) and decides that a West Virginia law requiring students to salute the American flag violates the free speech clause of the First Amendment. "Compulsory unification of opinion," the Court says, is "antithetical to First Amendment values."

1791

## First Amendment to U.S. Constitution Ratified

The First Amendment is ratified when Virginia becomes the 11th state to approve the first 10 amendments to the Constitution. The amendment, drafted primarily by James Madison, guarantees five basic freedoms: freedom of speech, press, religion, assembly, and petition.

1919

## "Clear and Present Danger" Speech Standard

In *Schenck v. United States*, the Supreme Court upholds the conviction of Socialist Charles Schenck for conspiracy to violate the 1917 Espionage Act by attempting to distribute thousands of antiwar leaflets to U.S. servicemen. While acknowledging that the First Amendment under normal circumstances might protect Schenck's activities, the Court holds that in special circumstances, such as wartime, speech that poses a "clear and present danger" can be restricted. The Court likens the ideas expressed in Schenck's leaflets to "falsely shouting fire in a theatre and causing a panic."

1957

## Obscenity Not Protected Under the First Amendment

In *Roth v. United States*, the Supreme Court decides that it is not a violation of the First Amendment for the government to regulate, or even criminalize, speech that is "obscene," because, just like libel and "fighting words," obscene speech is "utterly without redeeming social importance." The Court says that in defining obscenity, the government must consider "contemporary community standards."

1859

## Free Exchange of Ideas

British philosopher John Stuart Mill publishes the essay "On Liberty" arguing that only through the free exchange of ideas, even offensive ones or ones held by a minority of individuals, can society find "truth."



1919

## Marketplace of Ideas

U.S. Supreme Court Justice Oliver Wendell Holmes, in a dissent from the majority opinion in *Abrams v. United States*, explains the value of freedom of speech. He said that "the ultimate good desired is better reached by free trade in ideas...the best test of truth is the power of the thought to get itself accepted in the competition of the market."

1961

## Verbal Expression Need Not Be Spoken

In *Garner v. Louisiana*, the Supreme Court overturns the convictions of five African Americans for disturbing the peace when they staged a sit-in at an all-white restaurant to protest segregation. Justice John Harlan explains that a sit-in demonstration "is as much a part of the free trade of ideas as is verbal expression."

# SPEECH & FREE PRESS U.S. HISTORY

1964

## Actual Malice Standard

In *New York Times Co. v. Sullivan*, the U.S. Supreme Court establishes the "actual malice" standard when it reverses a civil libel judgment against the *New York Times*. The newspaper was sued for libel by Montgomery, Alabama's police commissioner after it published a full-page ad criticizing anti-civil rights activities there. The Court rules that debate about public issues and officials is central to the First Amendment, so public officials cannot sue for libel unless they prove that a statement was made with "actual malice," meaning it was made "with knowledge that it was false or with reckless disregard of whether it was false or not."

1971

## Publishing the Pentagon Papers

The *New York Times* and the *Washington Post* obtain secret Department of Defense documents that detail U.S. involvement in Vietnam in the years leading up to the Vietnam War. Citing national security, the U.S. government gets temporary restraining orders to halt publication of the documents, known as the Pentagon Papers. The Supreme Court finds that the restraint on publishing the documents violates the First Amendment.

1991

## Limiting Press Coverage of War

The Pentagon imposes rules for media coverage of the Persian Gulf War, citing the possibility that some news—including information on downed aircrafts, specific troop numbers, and names of operations—may endanger lives or jeopardize U.S. military strategy. Nine news organizations file a lawsuit questioning the constitutionality of limiting media access to the battleground. The case is later dismissed when the war ends before it is decided.

1966

## Freedom of Information Act Signed

President Lyndon Johnson signs the Freedom of Information Act (FOIA), requiring that government records, except those relating to national security, confidential financial data, and law enforcement, be made available to the public upon request. The law is signed after an 11-year fight led by Democratic Representative John Moss of California and a handful of newspaper editors to reduce secrecy in government.

1973

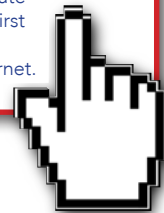
## Redefining Obscenity

The U.S. Supreme Court establishes a 3-part test in the ruling of *Miller v. California* to determine what is obscene. The three parts include: (1) whether the average person would find contents obscene (community standards); (2) whether the work describes certain content in an obscene way; and (3) whether the work lacks serious literary, artistic, political, or scientific value.

1997

## First Amendment Meets the Internet

The Supreme Court rules in *Reno v. American Civil Liberties Union* that anti-indecency provisions in the 1996 Communications Decency Act violate the First Amendment. The Act was the first major attempt by Congress to regulate distribution of pornography via the internet.



1969

## Imminent Lawless Action Standard

In *Brandenburg v. Ohio*, the Supreme Court reverses the conviction of a Ku Klux Klan leader under an Ohio law prohibiting speech that calls for crime or violence as a way of winning political change. The Court holds that unless the speaker incites his listeners to "imminent lawless action," the speech is protected by the First Amendment.

1988

## School Administrators May Censor Speech

In *Hazelwood School District v. Kuhlmeier*, the U.S. Supreme Court rules that public school administrators can censor speech by students in publications (or activities) that are funded by the school—such as a yearbook, newspaper, play, or art exhibit—if they have a valid educational reason for doing so.

2010

## Corporations and Free Speech

In *Citizens United v. FEC*, the Supreme Court rules to remove limits on corporate spending on elections, and that the First Amendment right to free speech extends to corporations. The decision overturns rules that governed the campaign finance and sparked fears that a flood of money into politics would dramatically alter campaigns in the future.

1969

## Student Rights Not Shed "at the Schoolhouse Gate"

In *Tinker v. Des Moines Independent Community School District*, the Supreme Court rules that the school board was wrong to suspend three students who wore black armbands to school to protest the Vietnam War. The Court finds that the students' passive protest posed no risk of disrupting school activities. "It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."

1989

## Flag-Burning Is Protected Speech

The Supreme Court rules in *Texas v. Johnson* that burning the American flag, which was, at that time, prohibited in 48 of 50 states, constitutes "speech" protected under the First Amendment. The following year, Congress would pass the Flag Protection Act, which made desecrating the flag a federal crime. That law was ruled unconstitutional by the Court in 1990 (*United States v. Eichman*). Congress subsequently considered a Flag Desecration Amendment to the U.S. Constitution, but never achieved the requisite number of votes to move it forward.

2018

## The Future of Free Speech

A Knight Foundation survey of high school students and their teachers in the United States found that 72% of students and 45% of adults believe that there should be a "government," or policy, response to the prevalence of fake news. In the same survey, 60% of students believed print and online newspapers should be allowed to publish any story without government censorship.



# TALKING POINTS



## FIRST AMENDMENT 101 — FREEDOM OF EXPRESSION

The Bill of Rights, as the first ten amendments to the United States Constitution are called, enumerates fundamental rights. The First Amendment protects some of our most important freedoms:

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**.

These freedoms serve as a model for constitutional democracies around the globe.

Among the most cherished protections of the First Amendment is freedom of the press, which guarantees the right to publish and distribute information in all media, including books, magazines, and newspapers, without government interference. Freedom of the press protects the rights of **journalists, who some refer to as the fourth branch of government**, so that the public can be informed about government and society. As Thomas Jefferson insisted, "Our liberty depends on the freedom of the press and that cannot be limited without being lost."

The Universal Declaration of Human Rights, drafted by the United Nations General Assembly in December 1948, recognized freedom of thought in Article 18 and freedom of opinion and expression in Article 19.<sup>1</sup> These historical milestones marking freedom of speech and freedom of the press as human rights, are essential to ensuring an informed, democratic society.



Photo Credit: UN Photo/x

## WHO IS THE PRESS?

Journalism, according to the American Press Institute, is the practice of collecting and presenting news and information. The purpose of journalism is “to provide citizens with the information they need to make the best possible decisions about their lives, their communities, their societies, and governments.” Though news and information may be interesting or even entertaining, the foremost value of news is to empower informed citizens by providing them with factual information.<sup>2</sup>

Journalists, professionals in the field of journalism, are often collectively known as “the press” and sometimes, they are also referred to as “the media.” The press employs various forms of communication: from reporting to commentary and opinion to advocacy journalism. Often the distinctions between these different forms of communication are blurred. Recognizing reliable media sources today can be challenging—whether on web pages or on social media—because “the press” seems to include almost anyone. Being a part of the press used to require affiliation with a publishing company or a TV or radio broadcasting station, but in the 21st century, virtually anyone can act as a journalist thanks to digital communication tools. Bloggers, podcasters, and social media mavens can all author articles, snap noteworthy photos, and record videos that go viral.

Freedom of speech and freedom of the press protect journalists and other people from interference by the government in the dissemination of information. But people, including the press, have a responsibility not to communicate false information. Disinformation, including “fake news,” has become increasingly prevalent in recent years as a weapon in public discourse, and it is a source of serious concern. While partisan political foes attack news reports as being unfounded, false, or irrelevant, “fake news” has permeated the social media environment in ways it never has before. The spread of false information that may seem credible challenges even savvy consumers to recognize it.

These circumstances raise important questions: How should we protect speech and press rights in the digital age, when anyone with a smartphone can speak to thousands (or even millions) of people with a tweet or a post? Must the same rules that governed what is called “the press” in the First Amendment apply to every social media user? Should there be more regulation of today’s forms of digital speech?

## IMPACT OF FREE SPEECH IN A DIGITAL AGE

In 1997, during the early years of internet usage among the public, the Supreme Court recognized in *Reno v. American Civil Liberties Union* that the First Amendment rights of free speech and free press applied to this new communication frontier. The Court’s ruling supported the ACLU’s position in the case that the internet is a “free-speech zone.”<sup>3</sup>

Today, important issues, such as “fake news” and cyberbullying, heighten concern over what speech should and should not be protected under the First Amendment. Most major social media sites—such as Facebook, YouTube, Twitter, and Instagram—have content and privacy policies meant to police their sites. However, these same policies, many argue, have led to the suppression of activist speech that support causes perceived to be unpopular. And these standards are generally outside any review under the First Amendment because they are imposed by private companies and not by government. What does it mean that private, for-profit companies have so much power to control speech that is critical to a free society?

### Limits of the Law on First Amendment Freedoms

A 2015 Pew Research Center poll report showed that Americans favor protecting information freedoms over government actions to restrict false news online. However, 56% of adults support steps from technology companies to address fake news, even if it means some limits on publishing and accessing information.<sup>4</sup>

As reported in Law Wise in October of 2018, prior to a shooting at a Pittsburgh synagogue that resulted in 11 deaths, the shooter had posted on Gab, a social media site popular among white supremacists and extreme nationalists, among others. In the aftermath of this shooting, several service providers, including PayPal, Joyent, and GoDaddy, refused to do business with Gab, which shut down for a week as a result of these actions. The ACLU asserted that this outcome is comparable to persons losing their phone or internet service for posting racist or offensive speech online.<sup>3</sup> Still, PayPal is not the government but rather a private company, that can generally choose who it wishes to do business with free of legal concerns about the First Amendment. And even if government could restrict anti-Semitic public speech, should it? Or should First Amendment values mean that we let hateful ideas be stifled only in the marketplace of ideas? It brings to mind Voltaire, who proclaimed in 1770, “I detest what you write, but I would give my life to make it possible for you to continue to write.”

### Censorship

Some may believe it is reasonable to restrict hate speech—speech that is offensive or harmful to a specific group—especially in a climate in which social tensions run high. It begs the question, should all speech be free?



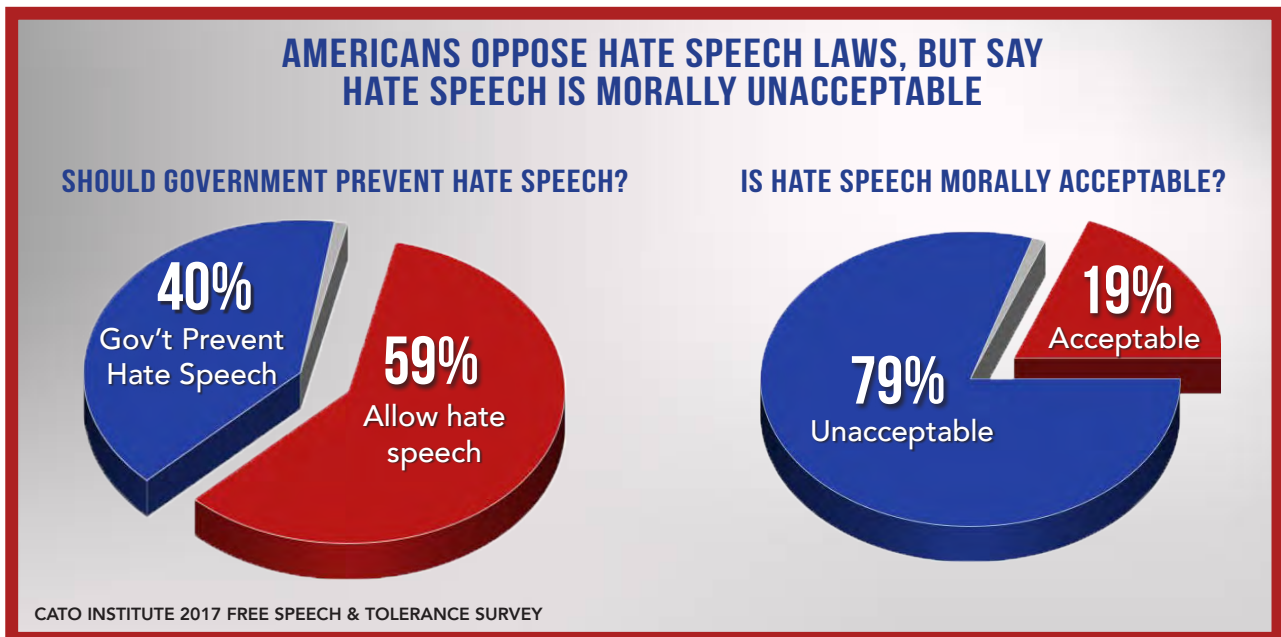
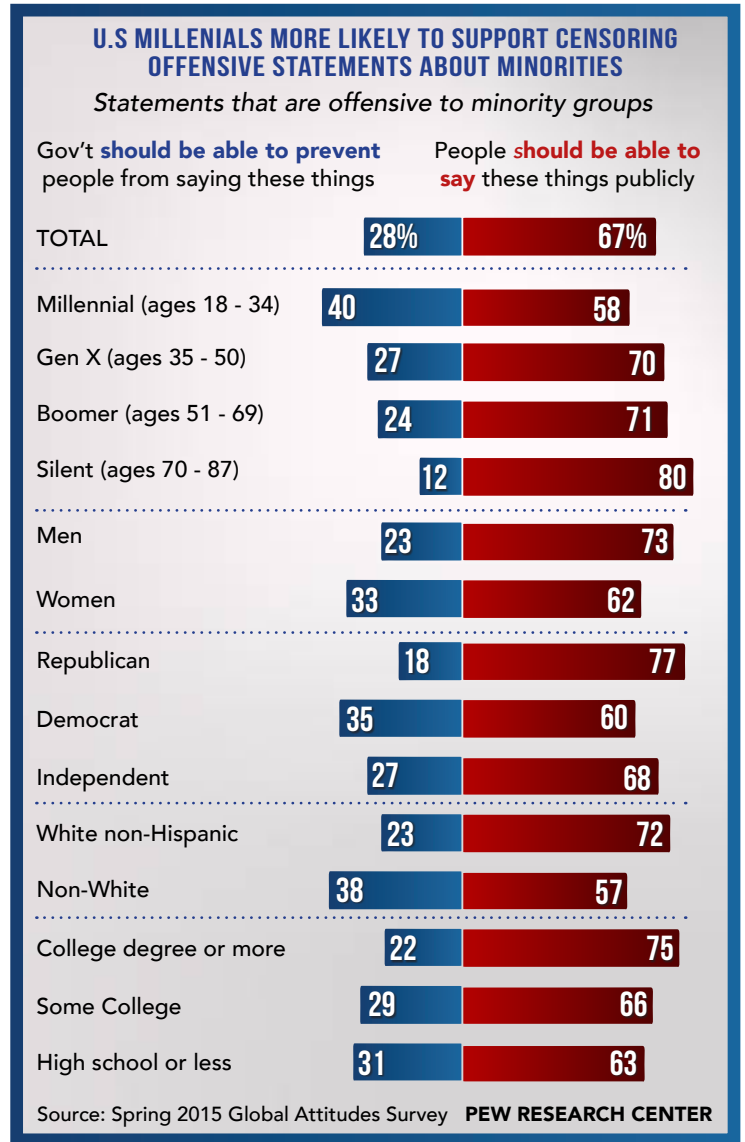
According to the 2015 Pew Research Center poll, 40% of Americans, ages 18-35, felt that the government should be able to suppress speech that is offensive to minority groups. In contrast, only 12% of individuals ages 70-87 agreed with offensive speech suppression. Percentages were less extreme among 35-50 year-olds and Baby Boomers (ages 51-69) with 27% of the former group agreeing with speech suppression and 24% of the latter group.<sup>4</sup> These results suggest there may be a generational divide on the appropriate role of government in dictating what speech should be regulated.

Americans seem to oppose hate speech bans, but they tend to agree that hate speech is morally wrong. The 2017 Cato Institute Free Speech and Tolerance survey report found that 82% of Americans agree that it would be difficult to ban hate speech because people can't agree what speech is hateful and offensive.

The Cato survey also notes that 59% of Americans think people should be allowed to express unpopular opinions in public, even those deeply offensive to other people, while 40% think that the government should prevent hate speech in public. An overwhelming majority, 79%, agree that it is "morally unacceptable" to engage in hate speech against racial or religious groups.<sup>5</sup> Thus, the public appears to distinguish between allowing offensive speech and endorsing it.

During a five-hour Congressional hearing in 2018, Senator Ben Sasse (R-Neb.) asked Facebook CEO Mark Zuckerberg to define hate speech that would be regulated on the platform. Several Republican senators expressed concern that Facebook might feel pressure to censor conservatives.

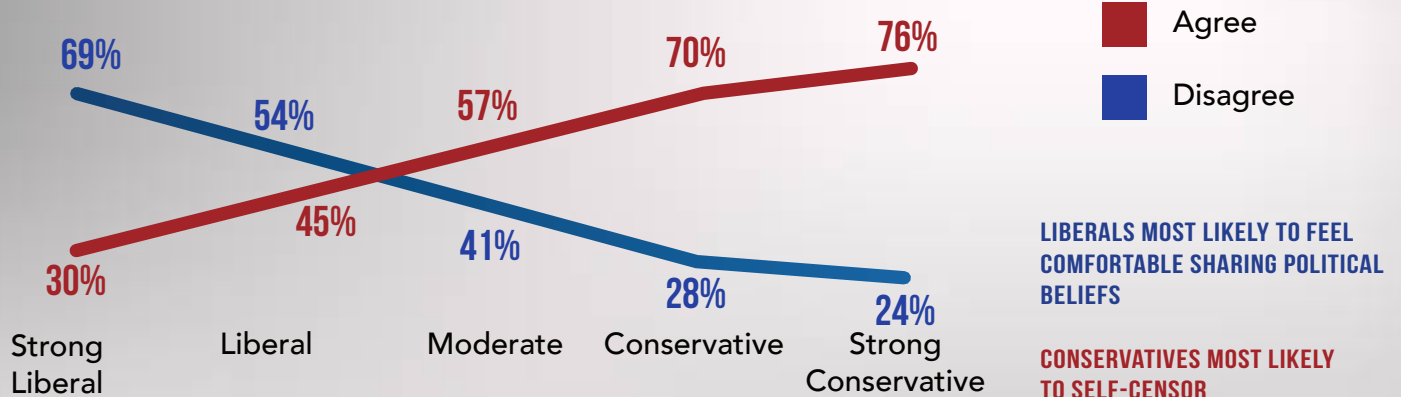
The 2017 Cato Institute Survey found that 71% of Americans think that political correctness has done much to silence important discussions our society needs





## THE POLITICAL CLIMATE PREVENTS ME FROM SAYING WHAT I BELIEVE...

Agree/Disagree: The political climate these days prevents me from saying things I believe because others might find them offensive.



CATO INSTITUTE 2017 FREE SPEECH & TOLERANCE SURVEY

to have. Consequently, 58% of Americans feel that the political climate today prevents them from saying things they believe.<sup>5</sup>

### Right to Information

Americans have significant rights, under both the First Amendment and laws passed by Congress, to access information about their government's work, including the courts.

The Supreme Court held, for example, in *Press-Enterprise Co. v. Superior Court of Cal., County of Riverside* (1986), a case pertaining to a company's request for a criminal court hearing transcript that what happens in American courts is public—it belongs to the people.

The federal **Freedom of Information Act (FOIA)**, enacted in 1967, extends to the public the right to request access to records from any government agency. It is often described as the **law that keeps citizens informed about their government**. Federal agencies are required to disclose information requested under the FOIA, unless it compromises protected interests, such as personal privacy, national security, and law enforcement.<sup>6</sup>

Libraries are one of the largest repositories of information and clearinghouses of data and reports. In 1969, the American Library Association founded the Freedom to Read Foundation to support the First Amendment, defending the right of libraries to collect—and individuals to access—information.<sup>7</sup>

Similarly, Banned Books Week, established in 1982 as an initiative of the American Library Association, was launched in response to a surge in challenges to books in schools, bookstores, and libraries. Typically held during the last week of September, Banned Books Week brings

together librarians, booksellers, publishers, journalists, teachers, and readers of all types, in support of the freedom to seek and to express ideas, even those considered unorthodox or unpopular.<sup>8</sup>

The right to access information extends to people who might face impediments to standard delivery mechanisms. Media access refers to how digital and broadcast content can be used, read or viewed by people with disabilities, particularly those who are vision or hearing impaired, or who have a cognitive condition or mobility disability.



## POLITICAL SPEECH IN THE MARKETPLACE OF IDEAS

Freedom of political speech protects the right to criticize political leaders without fear of punishment or retaliation. This applies to favorable or unfavorable comments on political decisions, as well as the right to disagree with others. Individuals have the freedom to express their opinions, even if they are not in favor of the majority. However, there is often pressure from political parties or individuals to influence delivery of information or slant the way in which information is portrayed.

Tension exists today between the media and the government and the extent to which individuals can exercise speech and press rights. President Trump has referred to the press as “enemies of the people.” Hundreds of newspaper and media outlets joined together in defense of journalism and the right to a free and independent press.

This raises the question of what role, if any, the government should have in regulating the press? Should political speech be constrained through laws or norms? Would such limitations violate the First Amendment? [Click here](#) for a look at what the nation’s founding fathers had to say regarding free press.

## STUDENT SPEECH & STUDENT JOURNALISTS

In *Tinker v. Des Moines* (1969), the U.S. Supreme Court ruled that constitutional rights to freedom of speech or expression are not shed at the schoolhouse gate, meaning that young people do not lose their fundamental rights because they are students.

However, courts have placed limits on what can be said in certain spaces, including public schools. Some might argue that students today have fewer rights to speak freely under the assumption that free speech can disrupt the classroom environment.

Speech rights for student journalists are hotly debated. In *Hazelwood School District v. Kuhlmeier* (1988), the Supreme Court ruled that school administrators can censor student speech in school-sponsored publications or activities, such as newspapers and plays. Consequently, a school newspaper is not subject to as much First Amendment protection as an extracurricular student opinion forum. Read more about free speech and free press-related cases and important points in history on pages 6-7.

The Student Press Law Center (SPLC), founded in 1974, works at the intersection of law, journalism, and education to promote, support, and defend the rights of student journalists and their advisers at the high school and college levels. To advance and further protect student press freedom, New Voices, a student-powered bipartisan movement of SPLC, was recently organized.

As of fall 2018, **New Voices laws** had been enacted in 14 states: Arkansas, California, Colorado, Illinois, Iowa, Kansas, Maryland, Massachusetts, Nevada, North Dakota, Oregon, Rhode Island, Vermont, and Washington. Legislation varies by state, but several of these New Voices laws prohibit the termination of, disciplinary action to, or retaliation against, faculty advisers and teachers who, while protecting students’ rights under the New Voices law, fail to comply with demands to censor their students’ reporting. Additionally, there are codes to protect the rights of student journalists in the District of Columbia and Pennsylvania. Read details about these [laws and regulations](#). Bills have been introduced in 2019 in Nebraska, New York, and Virginia.<sup>9</sup> Under the First Amendment, undergraduate [college students can produce pieces such as this one](#), regardless of whether they are popular or offensive to others.

The scholar Erasmus, wrote in “Education of a Christian Prince” more than 500 years ago, “In a free state, tongues too should be free.” In the centuries since then, the ideas of the freedom of speech and freedom of the press have been a source of constant debate as people have disagreed on how to create “a more perfect” and free society.

## ENDNOTES

1. United Nations, Universal Declaration of Human Rights <http://www.un.org/en/universal-declaration-human-rights/>
2. American Press Institute, “What makes journalism different than other forms of communication?”
3. Law Wise, November/December 2018, Issue 3; Kansas Bar Association [https://cdn.ymaws.com/www.ksbar.org/resource/dynamic/blogs/20181126\\_165628\\_31540.pdf](https://cdn.ymaws.com/www.ksbar.org/resource/dynamic/blogs/20181126_165628_31540.pdf) <https://www.americanpressinstitute.org/journalism-essentials/what-is-journalism/makes-journalism-different-forms-communication/>
4. Pew Research Center, November 2015 <http://www.pewresearch.org/fact-tank/2015/11/20/40-of-millennials-ok-with-limiting-speech-offensive-to-minorities/>
5. Cato Institute Free Speech and Tolerance Survey Report 2017 <https://www.cato.org/survey-reports/state-free-speech-tolerance-america>
6. Freedom of Information Act online <https://www.foia.gov/>
7. Freedom to Read Foundation, About Us <https://www.ftrf.org/page/About>
8. Banned Books Week, About <https://bannedbooksweek.org/about/>
9. Student Press Law Center <https://splc.org/> and New Voices <https://splc.org/new-voices/>

# SUGGESTED RESOURCES

## BOOKS, ARTICLES & MULTIMEDIA



## FIRST AMENDMENT RESOURCES

### **Free Speech on Public College Campuses Overview**

By David Hudson, Freedom Forum Institute, March 2018

<https://www.freedomforuminstitute.org/first-amendment-center/topics/freedom-of-speech-2/free-speech-on-public-college-campuses-overview/>

### **K-12 Public School Student Expression Overview**

By David L. Hudson Jr., First Amendment Scholar, March 2018

<https://www.freedomforuminstitute.org/first-amendment-center/topics/freedom-of-speech-2/k-12-public-school-student-expression/>

### **Public school free speech: A Primer**

By Scott Bomboy, March 2018

<https://constitutioncenter.org/blog/public-school-student-free-speech-a-primer>

### **Disinformation, 'Fake News' and Influence Campaigns on Twitter**

Knight Foundation, 2018

<https://knightfoundation.org/reports/disinformation-fake-news-and-influence-campaigns-on-twitter>

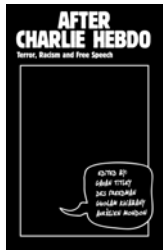
### **2018 State of the First Amendment Survey Report, First Amendment Center of the Freedom Forum Institute**

<https://www.freedomforuminstitute.org/first-amendment-center/state-of-the-first-amendment/>

### **Law Wise November/December 2018, Issue 3, Kansas Bar Association**

[https://garage.vice.com/en\\_us/article/d3qm9j/for-freedoms-norman-rockwell](https://garage.vice.com/en_us/article/d3qm9j/for-freedoms-norman-rockwell)

# BOOKS



***After Charlie Hebdo: Terror, Racism and Free Speech*, Gavan Titley (Editor), Des Freedman (Editor), Gholam Khiabany (Editor), Aurélien Mondon (Editor), 2017**

*After Charlie Hebdo* brings together an international range of contributors to assess the symbolic and political impact of the Paris attacks in Europe and beyond. The essays place these events in a wider international context, exploring such key issues as the shifting meanings of secularism in postcolonial France, the role of the media, the politics of free expression, and how best to combat racism and Islamophobia.

<https://www.zedbooks.net/shop/book/after-charlie-hebdo/>

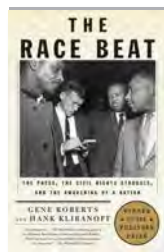


***Free Speech on Campus*, Erwin Chemerinsky and Howard Gillman, 2017**

Can free speech coexist with an inclusive campus environment? In this book, a university chancellor and a law school dean—both constitutional scholars who teach a course in free speech to undergraduates—argue that campuses must provide supportive learning environments for an increasingly diverse student body but can never restrict

the expression of ideas. This book provides a background for understanding the importance of free speech on campus and offers clear prescriptions for what colleges can and can't do when dealing with free speech controversies.

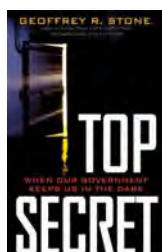
<https://yalebooks.yale.edu/book/9780300226560/free-speech-campus>



***The Race Beat: The Press, the Civil Rights Struggle, and the Awakening of a Nation*, Gene Roberts and Hank Klibanoff, 2007**

*Race Beat* is an examination of how news stories, editorials and photographs in the American press—and the journalists responsible for them—profoundly changed the nation's thinking about civil rights in the South during the 1950s and '60s.

<https://www.penguinrandomhouse.com/books/155579/the-race-beat-by-eugene-l-roberts-and-hank-klibanoff/9780679735656/>



***Top Secret: When Our Government Keeps Us in the Dark*, (Free Expression in America), Geoffrey R. Stone, 2007**

This book, the first in the Free Expression in America series, addresses four critical issues: a public employee's right to disclose classified information to a journalist, the government's right to punish the press for publishing classified information, the government's right to punish a journalist for soliciting

such information, and a journalist's right to keep his sources anonymous.

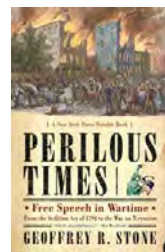
<https://rowman.com/ISBN/9781461711537/Top-Secret-When-Our-Government-Keeps-in-the-Dark>



***Free Speech Century*, Lee Bollinger and Geoffrey Stone (editors), Oxford University Press, 2018**

In the spring of 1919, the Supreme Court issued its first major decision on the meaning of the First Amendment—*Schenck v. United States*. The opinion, written by Oliver Wendell Holmes, helped to transform freedom of speech in America into a reality rather than an ideal. This volume serves as an essential overview for anyone interested in how our understanding of the First Amendment has transformed over the past century, and continues to change to this day.

<https://www.amazon.com/Free-Speech-Century-Geoffrey-Stone/dp/0190841389>



***Perilous Times: Free Speech in Wartime: From the Sedition Act of 1798 to the War on Terrorism 1st Edition*, Geoffrey R. Stone, 2005**

Geoffrey Stone's *Perilous Times* investigates how the First Amendment and other civil liberties have been compromised in America during wartime. Stone delineates the consistent suppression of free speech in six historical periods from the Sedition Act of

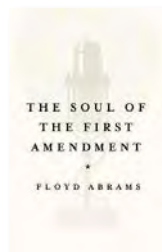
1798 to the Vietnam War, and ends with a coda that examines the state of civil liberties in the Bush era.



***The Schoolhouse Gate: Public Education, the Supreme Court, and the Battle for the American Mind*, Justin Driver, 2018**

Judicial decisions assessing the constitutional rights of students in the nation's public schools have consistently generated bitter controversy. From racial segregation to unauthorized immigration, from antiwar protests to compulsory flag salutes, from economic inequality to teacher-led prayer—these are but a few of the cultural anxieties dividing American society that the Supreme Court has addressed in schools.

<https://images.penguinrandomhouse.com/cover/9781101871652>



***The Soul of the First Amendment*, Floyd Abrams, 2017**

Floyd Abrams, a noted lawyer and award-winning legal scholar specializing in First Amendment issues, examines the degree to which American law protects free speech more often, more intensely, and more controversially than is the case anywhere else in the world, including democratic nations such as Canada and England.

<https://yalebooks.yale.edu/book/9780300190885/soul-first-amendment>

## MULTIMEDIA

### ***Civics 101: A Podcast, IRL 1–Free Speech in Schools***

This is the first in a series called Civics 101 IRL; special episodes that explore the historic moments connected to regular podcast topics. This podcast looks at four incredibly important Supreme Court cases that have shaped how we interpret the meaning of free speech in public schools. Is political protest allowed in class? Is lewd speech covered by the First Amendment? Can school administrators determine what students can and can't say in the school newspaper?

<https://www.civics101podcast.org/civics-101-episodes/irl1>



### ***Civics 101: A Podcast, Episode 70: The 1st Amendment–Freedom of the Press***

This episode explores the First Amendment with a conversation about the freedom of the press. What does this freedom guarantee to publishers and journalists? Why did the Framers include it in the Constitution? And what does it mean in the era of digital media?

<https://www.civics101podcast.org/civics-101-episodes/ep70>

### ***C-Span Landmark Cases, Tinker v. Des Moines (1969)***

Archived video interviews, case overview, and discussion of the legacy that *Tinker* had on student free speech in public schools.

<http://landmarkcases.c-span.org/Case/24/Tinker-v-Des-Moines>

### ***Freedom Forum Institute, The First Five Podcast***

Can your boss fire you because of your political views? Can a journalist publish stolen information? Can a university ban a controversial speaker? Learn the answers to these questions and more by listening to *The First Five*. Hosts Lata Nott and Gene Policinski talk to the experts and cut through the jargon to explain how the five freedoms of the First Amendment work, and what you can do to protect them.

<https://www.freedomforuminstitute.org/first-amendment-center/podcast/>

### ***National Constitution Center Podcast: Libel, Media, and Constitutional Legitimacy***

Cries of "defamation" came from the White House following the publication of in-depth reporting on President Donald Trump and his finances by *The New York Times*, but this is not the first time the president has expressed criticism of the press or U.S. libel laws. Adam Liptak of *The New York Times* and NYU Law Professor Richard Epstein join Jeffrey Rosen to explain what libel is and how laws against libel and slander fit within the First Amendment's protections of free speech and the free press. This wide-ranging discussion also delves into how facts play a role in the law and media in a "post-truth society," and how online platforms filter news.

<https://constitutioncenter.org/debate/podcasts/libel-the-media-and-constitutional-legitimacy>

### ***National Constitution Center, Interactive Constitution – Freedom of Speech and Press***

In this series of articles, Geoffrey R. Stone and Eugene Volokh discuss the common interpretations and matters of debate surrounding the First Amendment protections of freedom of speech and freedom of the press.

<http://goo.gl/8DrRCC>



The story of we, the people.

### ***New York City Bar Association, the First Amendment in 21st Century America***

Archived recording of the NYC Bar Association's program held on December 3, 2018.

Constitutional law experts and attorneys discuss freedom of speech, including topics on hate speech, social media regulation, controversial college campus speakers, and White House media access. Speakers include former ACLU President Nadine Strossen and attorneys Floyd Abrams, Daniel Kornstein, and Alex Abdo.

<https://www.c-span.org/video/?454506-1/york-city-bar-association-hosts-forum-freedom-speech>

### ***Policy Ed Free Speech Series***

This short, animated video provides a basic overview of the First Amendment right to free speech and the limits on free speech.

<https://www.policyed.org/intellections/limitsoffreespeech>

### ***The Federalist Society Animated Video Series, New York Times Co. v. Sullivan***

Are political ads protected under the First Amendment? In this short animated video, Professor Eugene Volokh of the UCLA School of Law explains how *New York Times Co. v. Sullivan* (1964), a landmark Supreme Court case, transformed our understanding of libel law.

<https://www.youtube.com/watch?v=QeZ1mFTtn8s>

## QUIMBEE ANIMATED VIDEO SERIES

### ***New York Times Co. v. Sullivan***

This animated vignette provides a quick overview and case brief for the landmark Supreme Court case *New York Times Co. v. Sullivan* (1964).

<https://www.youtube.com/watch?v=jmxlHwh-0Jc>

### ***Texas v. Johnson (1989)***

This animated vignette provides a quick overview and case brief for the landmark Supreme Court case *Texas v. Johnson* (1989).

<https://youtu.be/DxRCvNM3yts>

# CRASH COURSE GOVERNMENT & POLITICS

## ***Freedom of Speech, Episode 25***

This video explores the definition of free speech, reviews several significant Supreme Court cases, and explains that not all speech is protected equally under the First Amendment.  
<https://www.youtube.com/watch?v=Zeeq0qaEaLw>

## ***Freedom of Press, Episode 26***

This video continues a discussion on the First Amendment with an overview of important free press Supreme Court cases to provide an understanding of the role of the press in informing the public as well as the role of citizens to stay informed.  
<https://www.youtube.com/watch?v=Vtpd0EbaFoQ>

## EDUCATIONAL RESOURCES FOR TEACHING

### ***American Bar Association Division for Public Education Insights on Law & Society: Exploring Free Speech***

*Insights* is a magazine for high school educators of civics, government, history, and law. This issue features scholarly articles and lesson plans on themes related to free speech.  
[www.ambar.org/insightsmagazine](http://www.ambar.org/insightsmagazine)

### ***Constitution USA with Peter Sagal, Should there be limits on freedom of speech?***

In this video viewers are asked to reflect on the freedom of speech. Have we gone too far in claiming rights not enumerated in the Constitution? Or have we simply been following in the spirit of the document? In segments from episode two, It's a "Free Country," Peter Sagal learns more about the right to free speech.

<http://www.pbs.org/tpt/constitution-usa-peter-sagal/limits-free-speech/#.W-Sd79VKiUk>

### ***National Constitution Center***

How to have a civil dialogue on the First Amendment. When does the First Amendment allow the government to limit speech? This lesson encourages students to examine their own assumptions and to deepen their understanding of current accepted interpretations of speech rights under the First Amendment, including when and where speech is protected and/or limited. It should reinforce the robustness of the First Amendment protections of speech. Includes toolkit for having a civil dialogue with students.

[https://constitutioncenter.org/learn/constitutional-exchanges/first-amendment-conversations?mc\\_cid=52dd6ef8bc&mc\\_eid=23d918ae57](https://constitutioncenter.org/learn/constitutional-exchanges/first-amendment-conversations?mc_cid=52dd6ef8bc&mc_eid=23d918ae57)

### ***Newseum EdCollection Free Speech Essentials***

Sixteen case studies in this EDCollection explore free speech debates ranging from the founding of our nation to recent headlines to illustrate what free speech actually means, where it comes from, and its limits. The critical debate case studies ask students to grapple with free speech-related conflicts and controversies using real-life scenarios, as they deepen their understanding by taking a position and supporting their arguments with evidence from a gallery of print and visual sources. Lesson plans and access to download all student materials are available when you create a login on the Newseum website.

<https://newseumed.org/free-speech-essentials>

### ***Annenberg Classroom***

#### ***A Conversation on the Constitution: Freedom of Speech***

In this video Justice Breyer, Justice Kennedy, and Justice O'Connor discuss the foundation of the freedom of speech. Why did the framers value free speech? What is speech? Their focus then turns to student free speech in the Supreme Court cases *Tinker v. Des Moines Independent Community School District* and *Morse v. Frederick*.

<http://www.annenbergclassroom.org/page/a-conversation-on-the-constitution-freedom-of-speech>

### ***C-Span Classroom Deliberations***

Should Hate Speech Be Protected by the First Amendment?

<http://c-spanclassroomdeliberations.org/issues/should-hate-speech-be-protected-by-the-first-amendment/>

### ***iCivics***

Supreme Decision

Analyze the First Amendment right to freedom of speech and expression with this online game scenario.

<https://www.icivics.org/games/supreme-decision>

### ***Jack Miller Center***

Explore the history, law, and theory of free speech.

<https://www.jackmillercenter.org/resource-category/overview-law/#explore>

### ***Street Law, Inc.***

Landmark Cases of the U.S. Supreme Court: *Tinker v. Des Moines*. This online resource provides an overview of the case along with planning guidelines for implementing teaching activities in the classroom.

[http://landmarkcases.org/en/landmark/cases/tinker\\_v\\_des\\_moines#Tab=Teaching](http://landmarkcases.org/en/landmark/cases/tinker_v_des_moines#Tab=Teaching)

### ***United States Court***

What does free speech mean?

<http://www.uscourts.gov/about-federal-courts/educational-resources/about-educational-outreach/activity-resources/what-does?fbclid=IwAR3fbJ5qqFOWuDdli-3xW4PdEMBSkCE9OGyLsbywOoctVuTwmhd8zVWUYHU>

# MIDDLE SCHOOL LESSON PLAN



## GOVERNMENT SPEECH UNDER THE FIRST AMENDMENT

BY STEVEN D. SCHWINN

This lesson is designed to teach students about basic free speech ideas, specifically government speech and government-sponsored Confederate monuments. The exercises focus on the *remembering* and *understanding* elements of [Bloom's Taxonomy](#).

**TIME NEEDED:** 60-90 minutes

### **MATERIALS NEEDED:**

- Chalkboard, whiteboard, or flip chart, with writing utensils
- Copies of handouts for each student, for Parts 1-3, as needed:
  - Part 1—Small Group Handouts
  - Part 2, Option 1—Interest Group Handouts
  - Part 2, Option 2—Debate Handouts

The activities and times listed in this lesson are a suggestive guide, and not a rigid agenda. You should adapt the lesson plan to your own classroom, your students, your classroom resources, your time constraints, and, most importantly, your own style.

### **PART 1: INTRODUCTION TO BASIC FREE SPEECH PRINCIPLES (10 TO 15 MINUTES)**

This lesson examines free speech and the government speech doctrine under the First Amendment—that is, whether, when, and how the Free Speech Clause restricts what the government can say.

1. Ask students briefly about their own experiences with the law or the Constitution, for example:
  - Raise your hand if you know a lawyer. Who? How did you meet her or him? What does she or he do?
  - Who can tell me a fact about the Constitution? Who can tell me something that is in the Constitution? Who can tell me where they've seen the Constitution referenced in the news?
2. Divide students into five small groups. Assign each group one purpose of free speech, and distribute the corresponding Small Group Handouts:
  - a. to discuss and advocate politics and public policy
  - b. to discover the truth (through the give-and-take of a "marketplace of ideas")
  - c. to learn, explore, and develop as individuals and as a society
  - d. to express our individuality and define ourselves
  - e. to promote tolerance for unpopular views by protecting the expression of those views.

*This introductory discussion could also be conducted as a full class, with the class considering the five purposes of speech.*

3. Ask each group, or the class, to think of three or four examples of speech that correspond to each purpose. Ask students to share these examples with the rest of the class, and collect responses on the board.
4. Ask students to rank these broad purposes of free speech. You might ask students to raise their hands for each option; or you might ask them to move to a designated part of the room to indicate their choices.
5. Ask students if they can think of examples of when the government speaks. You may need to prompt them with examples. See full lesson for examples. Discuss with students:
  - Does government speech have the same purposes as other speech?
  - Should government have more freedom in speaking, or less freedom, than other speakers?
  - Should the government have any restraints on its speech?

[View the full lesson plan for the remainder of this Part 1 activity.](#)

## **PART 2: CONFEDERATE MONUMENTS (40 TO 50 MINUTES)**

This exercise looks at government-sponsored Confederate monuments that have been in the news, and many students will have strong views, one way or the other. Views may differ by region, area, and even within an individual classroom. Please be sensitive to the students' various views so as to engage your entire class and not alienate any portion of it.

If you'd like to catch up on the Confederate-monuments debate, google "Confederate monuments," "Jefferson Davis monuments," "Civil War statues," and the like. This is a fast-moving issue.

### **Option 1: Interest-Group Advocacy**

1. Divide the class evenly into the following four groups, and distribute the corresponding Interest Group Handouts:
  - a. City Council
  - b. Supporters of Confederate Heritage (an interest group)
  - c. Opponents of Racial Oppression (an interest group)
  - d. Advocates for Free Speech for All (an interest group)

### **Option 2: Debate**

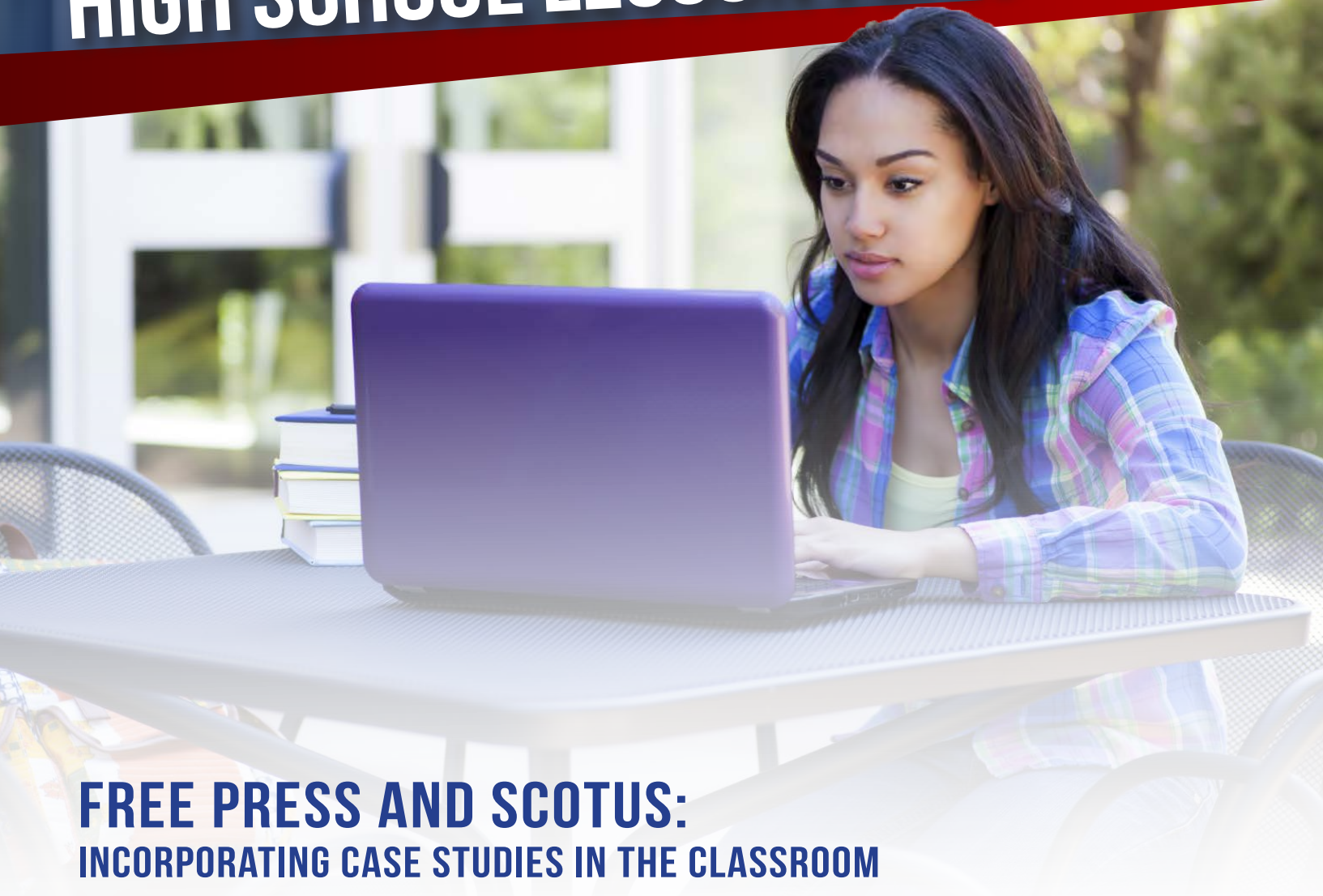
1. Divide the class into an even number of small groups, 4–5 students each. Assign each group to represent monument supporters or monument opponents. Distribute the corresponding Debate Handout to each group.

[View the full lesson plan for the complete instructions to Part 2 activity.](#)

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# HIGH SCHOOL LESSON PLAN



## FREE PRESS AND SCOTUS: INCORPORATING CASE STUDIES IN THE CLASSROOM

This lesson will ask students to engage with landmark freedom of the press case studies exploring how the Supreme Court has ruled on First Amendment issues and has tried to balance competing values in our democracy.

**TIME NEEDED:** 60–90 minutes

### **MATERIALS NEEDED:**

- Free Press and [SCOTUS PowerPoint](#)
- [Case Studies](#)
  - *Near v. Minnesota (1931)*
  - *New York Times Co. v. Sullivan (1964)*
  - *Curtis Publishing Co. v. Butts (1965)*
  - *Branzburg v. Hayes (1971)*
  - *New York Times Co. v. United States (1971)*
  - *Gertz v Robert Welch, Inc. (1974)*

*Note: Depending on the class, you may want to concentrate on only one or several of the case studies at a time.*

## PART 1: INTRODUCTION WITH WALK THE LINE ACTIVITY

Ask students to line up against one wall. Ask students to step forward if they agree with the following statement.

*Note: Have each of the statements ready to display. After each statement, ask several students to share why they agreed or disagreed.*

- First Amendment free press protections should be absolute.
- Private individuals should have a greater right to privacy than celebrities.
- States should have the ability to determine their own protection (shield) laws for journalists.

## PART 2: REVIEWING THE FIRST AMENDMENT

Display text of First Amendment

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

Review the definition with students and ask students to identify the parts of the text that specifically reference free speech and free press. You may want to ask students the following questions:

- Why do you think the founders included free speech and free press in the very First Amendment to the Constitution?
- Do you think that freedom of the press is important to have in a democracy? Why or why not?

## PART 3: FREE PRESS AND THE SUPREME COURT—CASE STUDY JIGSAW

The following case studies reflect how the Supreme Court has grappled to apply “Congress shall make no law... abridging the freedom of speech, or of the press.” These cases show the Court’s considerations when creating protections for speakers and the press in light of the many restrictions placed on speech and the press under principles of English common law. These principles were adopted by the early American republic.

Split the class into six groups and assign each group a case. Give the groups twenty minutes to read and discuss their case. Each group should then present an overview of the facts of the case, the issue before the Court, the Court ruling, and their case-specific focus questions.

*Note: Groups should present cases in chronological order and the teacher should be prepared to help introduce each case by presenting the backgrounds provided in the case studies to the entire class before each group transitions to their part of the presentations.*

### ADDITIONAL RESOURCES:

- Short animated videos on *New York v. Sullivan*
  - Quimbee: <https://www.youtube.com/watch?v=jmxlHwh-0Jc>
  - Federalist Society: <https://www.youtube.com/watch?v=QeZ1mFTtn8s>
- Frontline PBS Interview with Earl Caldwell of *Branzburg v. Hayes* on the Black Panthers and the FBI, <https://www.pbs.org/wgbh/pages/frontline/newswar/interviews/caldwell.html>
- C-Span Landmark Cases: *New York Times v. United States* (1971) <http://landmarkcases.c-span.org/Case/25/New-York-Times-v-United-States>
- Short animated video on *Gertz v. Robert Welch* (1974) <https://www.youtube.com/watch?v=ULFJLBnJG0g>