

ANSWER KEY

Unit 1: The Bill of Rights and the Founders

LESSON 1: WHAT ARE THE ORIGINS OF THE BILL OF RIGHTS?

Handout A: Background Essay - What Are the Origins of the Bill of Rights? Comprehension Questions

1. At least three of the following: right of Protestants to practice their faith; protections of property; rights of the accused; rights of criminals.
2. As a result of his violation of the rights of Englishmen, King Charles I was beheaded in 1649.
3. The fundamental reason why, according to Locke, government's main purpose must be to protect the rights of individuals is that all men are by nature free and equal.
4. At least three of the following: forced quartering of troops; weapons were taken away; restrictions on speech, press, and assembly.
5. The Articles of Confederation established the first attempt of the former American colonies to organize a united government.

Handout B: Rights Attitude Inventory

1. Answers will vary. Accept well-reasoned responses.
2. The principles of limited government and individual rights reinforce each other because limits on government can keep it from invading people's rights.

Handout C: Foundations of Our Rights

Magna Carta: 1st, 3rd, 4th, 5th, 6th, 8th

Petition of Right: 4th, 5th, 6th, 8th

Massachusetts Body of Liberties: 1st, 5th, 6th, 8th

Declaration of Right and Toleration Acts 1st, 2nd, 4th, 5th, 6th, 8th

Rights violated in the colonies: all

Two Treatises of Government (1690) - Explains the concept of natural rights and the purposes of government—primarily to protect rights.

Declaration of Independence (1776) - Explains why people must demand that government protect rights; announces and justifies formal separation of the colonies from Great Britain.

United States Constitution (1787) - Framework of system for providing a limited central government that would protect individual rights as well as preserving the powers of state and local government.

Handout D: Founding Documents and Philosophies

1. Both John Locke's *Two Treatises of Civil Government* and the Declaration of Independence are explanations of why people should expect government to protect individual rights. Jefferson used ideas from Locke in drafting the Declaration of Independence.
2. The documents were written about 100 years apart, on different continents. "Life,

liberty, and property” became “life, liberty, and pursuit of happiness”

3. The Founders wrote the Constitution to provide a stronger central government than that provided under the Articles. The Bill of Rights was an attempt to protect against a potentially overbearing central government.
4. Each document reflected concern about the biggest abuses of its time period.
5. Answers will vary. Accept well-reasoned responses.

LESSON 2: WHY A BILL OF RIGHTS? WHAT IMPACT DOES IT HAVE?

Handout A: Background Essay - Why A Bill of Rights? What Impact Does It Have? Comprehension Questions

1. Federalists believed a bill of rights was unnecessary because the Constitution itself limited government’s powers. They believed it could be dangerous because it would be impossible to list every right, and they did not want rights to be ignored or violated just because they were not specifically listed.
2. Madison changed his mind because he corresponded with colleagues whose opinions he valued, and they all supported the addition of a bill of rights.
3. The Bill of Rights did not strongly affect most citizens’ lives because it only limited the actions of the federal government and did not apply to the states until after the Fourteenth Amendment was ratified in 1868. In the 1920s the Supreme Court began to interpret the Fourteenth Amendment’s Due Process Clause to

protect certain liberties from action by the states.

Handout B: Understanding Positions of Federalists and Anti-Federalists

Federalists

- A bill of rights was not needed because the Constitution created a government of limited powers.
- Composing a list of rights might endanger any rights not listed.
- A strong central government is needed to protect rights of minorities.
- State constitutions already included declarations of rights.

Anti-Federalists

- The central government could not be trusted—it might grow too strong and suppress freedoms.
- Several states (MA, SC, NH, VA, NY, NC) approved the new Constitution only on the condition that a list of rights be added.
- Popular opinion supported development of a bill of rights.

Handout C: Federalists and Anti-Federalists Venn Diagram

Federalists

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- Popular opinion supported development of a bill of rights.

Both Federalists and Anti-Federalists.

- The purpose of government is to protect unalienable rights (life, liberty, pursuit of happiness).
- Both central authority and some level of state authority was needed.
- A somewhat stronger form of government than that provided under the Articles of Confederation was needed.
- Certain founding principles were essential: separation of powers, checks and balances, federalism, rule of law, due process, limited government, majority

rule/minority rights, popular sovereignty, representative government.

Handout D: Classifying Quotes

1. Federalist
2. Federalist
3. Anti-Federalist
4. Anti-Federalist
5. Anti-Federalist
6. Federalist

Unit 2: The Bill of Rights and Religion

LESSON 1: THE ESTABLISHMENT CLAUSE - HOW SEPARATE ARE CHURCH AND STATE?

Handout A: Background Essay - The Establishment Clause: How Separate Are Church and State?

1. The Founders believed that the Establishment Clause prohibited the involvement of the national government in religion, as well as the establishment of a national church. They believed that the clause permitted the existence of state-supported religions.
2. These tests include the Lemon Test, the

Endorsement Test, and the Coercion Test.

3. Accept all reasoned responses.
4. Accept all reasoned responses.
5. The Founders would be more inclined to support the “picket fence” image since they all believed that religious belief and practice would strengthen and support republican government and civil society. The “wall” metaphor implies no interaction between church and state while the “picket fence” metaphor implies that, while there are barriers between religion and government, there are also appropriate opportunities for one to influence the other.

Handout B: Religion at My School

1. Answers will vary.

Handout C: Interpreting the Establishment Clause

1. Accepted reasoned answers. Students should give significant thought to the Founders' purpose for the Establishment and Free Exercise Clauses and should determine the interpretations of both by the Supreme Court over time.

LESSON 2: WHAT IS THE SIGNIFICANCE OF THE FREE EXERCISE CLAUSE?

Handout A: Free Exercise Anticipation Guide

1. The Court held that Cantwell could not be barred from giving out his materials because they were religious in nature. General rules for solicitation were valid, but restrictions on religion were not. Since local laws allowed government officials to decide what causes should be called "religious," the law violated the First Amendment.
2. The Court ruled that the state government did not have to pay unemployment benefits to the individual who lost his job. The state could turn down benefits to anyone who lost their job because of illegal activity.
3. The Court said that these laws actually targeted the Santeria religion, which uses animal sacrifice in prayer. Since they targeted a specific religious group, the laws were unconstitutional.

4. A famous 1972 ruling (*Wisconsin v. Yoder*), concluded that Amish teens could be excused from mandatory school attendance laws since their religion says they must live apart from the world and worldly influence.

Handout B: Background Essay - What Is the Significance of the Free Exercise Clause?

1. The government can never restrict freedom of belief because it is a natural right.
2. Most free-exercise cases are about people who feel they've been treated unfairly because of their religion. Examples include denying unemployment benefits because an individual cannot work on Saturdays; denying similar benefits to someone who lost their job because they smoked illegal drugs in a religious service; denying a scholarship to a student because he planned to study theology.
3. The Court asks whether or not "a reasonable" exception can be made to the general laws.
4. Accept all reasoned responses while encouraging students to focus on the fundamental right to religious liberty.
5. Accept all reasoned responses. Guidelines which might help resolve the conflict include the general exception principle and must articulate constitutional principles.

Handout C: Ten Commandments on Public Property Scenario

1. Accept reasoned answers.

Handout D: Restrictions on the Free Exercise of Religion

- A. Public employees may display religious symbols in their personal workspace, unless the supervisor bans all symbols/photos/etc. from personal workplaces. Public employees may not be singled out for their religious displays.
- B. Some Christian Science parents have been tried and convicted for failure to provide their children with medical care.
- C. Legislation passed in 1965 exempts Old Order Amish from paying Social Security taxes.
- D. In *Goldman v. Weinberger* (1986), the Court ruled that the various military services could ban non-uniform headcoverings.
- E. Most witnesses today are required to “affirm” that they will tell the truth, and do not need to swear an oath upon a

sacred book.

- F. Each of these books was used by at least one new member of Congress during the most recent swearing-in ceremonies.
- G. In *Christian Legal Society v. Martinez* (2010), the Court ruled that a Christian society must open membership to individuals who do not espouse its religious beliefs.
- H. This issue has not been reviewed by the Supreme Court. Individual local jurisdictions have passed different regulations about this issue.
- I. This is an on-going debate between advocates of the Affordable Care Act and members of various religious institutions.
- J. Several states have legalized gay marriage as a secular ceremony. To this date, no state requires members of the clergy to perform religious services for gay couples.

Unit 3: The Bill of Rights and Free Speech

LESSON 1: THE BILL OF RIGHTS AND FREEDOM OF SPEECH: WHY IS FREE SPEECH ESSENTIAL TO SELF-GOVERNMENT?

Handout A: Background Essay - Why is Free Speech Essential to Self-Government?

- 1. Madison felt that man “owned,” as a natural right, both his opinions and the ability to express them freely. These natural rights are protected in the Bill of Rights because the British had repeatedly censored political speech, key to the concepts of liberty and self-government.

- 2. Free speech acts as a “safety valve,” giving citizens a way to share and debate their thoughts, lessening the chance that people turn to violence as a way of having their opinions heard.
- 3. Free speech allows citizens to challenge their government and leaders, share ideas, and take part in the political process. The free exchange of ideas and criticism lessens the chance for corruption in government, and can act to force government to serve the best interests of the people.
- 4. The First Amendment does not protect speech that encourages people to

commit “imminent lawless action” (immediate illegal behavior), false speech, or speech that maliciously puts other people in harm’s way or threatens public safety. It also does not necessarily protect things such as certain types of obscenity and pornography, speech deemed to be offensive, or indecent things uttered on the public airwaves. Government may also place reasonable time/place/manner restrictions on speech.

5. Answers will vary. Accept all reasoned answers.

Handout C: Speech Scenarios

Scenario 1: Yes/Protected. The group has a political message and is calling people to exercise their right to vote.

Scenario 2: No/Not Protected. The man’s call for people to throw rocks at the corporate headquarters is a call to imminent lawless action or immediate illegal behavior.

Scenario 3: Yes/Protected. While the group is calling for the overthrow of the government, they are not inciting people to imminent lawless action. Their goal of overthrow is “eventual,” not immediate.

Scenario 4: Yes/Protected. While the students may be in violation of the new dress code, both their message and method of convincing others is peaceful, non-disruptive, and poses no threat to the safety of others.

Scenario 5: No/Not Protected. When one of the students called in a bomb threat as a method of drawing attention to their protest, he posed a threat to the safety of others, maliciously putting the assembled students in harm’s way.

Scenario 6: Yes/Protected. While his speech may be offensive to others, it is political speech (preferred speech) that does not promote imminent lawless action or put others in harm’s way, and does not qualify as obscene.

LESSON 2: HOW HAS SPEECH BEEN BOTH LIMITED AND EXPANDED, AND HOW DOES IT APPLY TO YOU AND YOUR SCHOOL?

Handout A: Background Essay – How Has Speech Been Both Limited and Expanded, and How Does it Apply to You and Your School?

1. The “marketplace of ideas” is the idea that the widest possible range of speech must be allowed and that citizens must be left free to choose a voice among many to believe. This concept broadens liberty in that it expands Americans’ ability to express themselves and leaves us “free to think for ourselves.”
2. Government can pass laws restricting speech if:
 - the law is clearly defined
 - limits only unprotected speech
 - limits speech as little as possible
 - limits speech for reasons other than its content
3. The First Amendment now protects things such as: materials that have serious literary, artistic, political or scientific value; “indecent” photos on the internet; computer-generated child pornography; campaign spending by individuals and corporations on political causes or candidates; symbolic speech, such as

burning a flag or cross, as a method of communicating a message.

4. The Supreme Court has said that students DO have speech rights in school, but that this right may be limited in ways that would not be acceptable in general society. Schools may limit speech that disrupt the educational environment, contain vulgar or offensive language, or promote illegal drug use.
5. Answers will vary. Some students might say that the First Amendment demands that citizens accept a nearly unlimited range of ways people speak, and the things they wish to express. Others might argue that while the First Amendment requires citizens to accept a wide range of speech, it does not necessarily require that we accept ALL messages and methods people may employ to express themselves. Students should not lose sight of the Amendment's initial purpose – protecting political speech to enable self-government.

Handout B: What Do I Believe About the Freedom of Expression?

1. Answers will vary.

Handout C: Student Code of Conduct

1. Student should cite the following cases: *Tinker v. Des Moines* (students have constitutional protections of expression at school, symbolical speech through armbands/clothing, restrictions based on “substantial disruption” only); *Bethel v. Fraser* (“appropriate conduct,” restrictions based on “substantial disruption” only); *Morse v. Frederick* (“expression constitutes a health or safety hazard”); *West Virginia v. Barnette* (“the right to

refrain from expressing themselves”).

2. Students should reference the following forms/reasons of expression: speaking, writing, distributing, wearing or displaying symbols (buttons, badges, emblems, armbands); modes of dress or grooming; expressing ethnic, cultural or political values.
3. Students should reference the following administrative reasons for regulating expression: involves a legitimate educational concern; has a factual basis for believing the expression is causing, or will cause, a substantial disruption of school activities; the expression poses a health or safety hazard.
4. Answers will vary. Accept all reasoned answers.

Handout D: Schools and the Marketplace of Ideas – 4 Scenarios

SCENARIO 1:

Context: Scenario one is entirely based on the facts of *Tinker v. Des Moines* (1969). It is anticipated that students will recognize the fact pattern, as described in **Handout A**.

1. Students should reference the following instance(s) of speech/expression: the wearing of an armband, as a method of symbolic expression, to communicate a political message. Students may point to specific portions of **Handout B: Student Code of Conduct**. Students are likely to answer that the speech in question is directly protected in both the First Amendment and the Conduct Code.
2. Answers will vary, but students are likely to plot their opinion on the far left (least disruptive) end of the continuum. Students will likely state that the speech in question posed no substantial

disruption to school activities, and was not likely to, and that the principal was not justified in limiting the expression or the method by which it was expressed.

3. See answers to Questions 1 & 2 above for potential summary arguments in support of the student speech. It is highly likely that the Supreme Court would agree with your students' summary arguments. The Supreme Court ruled in favor of the students and their speech in *Tinker v. Des Moines* (1969), stating that "students... [do not] shed their...rights to freedom of speech or expression at the schoolhouse gate," and that schools may not restrict students speech unless there is a factual basis for believing it will cause a substantial disruption.

SCENARIO 2:

Context: Scenario two is not directly the subject of a Supreme Court case, but is a real scenario that occurred in a suburban Iowa school in 2002. It is included to pose a more challenging and less obvious application of the principles applied in Court's ruling in *Tinker v. Des Moines* (1969) regarding substantial disruption. No lawsuits resulted from this scenario.

1. Students should reference the following instance(s) of speech/expression: the wearing of a shirt, as a method of symbolic expression, to communicate a cultural or political message. Students may point to specific portions of Handout B: Student Code of Conduct. Students are likely to answer that the speech in question is directly protected by the First Amendment, and is SEEMINGLY protected in the Conduct Code, though answers will vary on this point.
2. Answers will vary. Some students may plot their opinion on the left (least

disruptive) end of the continuum, and others may plot on the right (most disruptive) end of the continuum. Students will likely state that the message of the speakers is clearly protected by the First Amendment, but the method they chose to communicate it could easily pose a substantial disruption to school activities due to the reactions by other students to the graphic image used on the shirt. Some may argue that the principal is justified in limiting the expression due to the method used to communicate the message, while others may argue that the message should not be limited simply because others are bothered by the method.

3. See answers to Questions 1 & 2 above for potential summary arguments in support of the student speech. Answers will vary as to whether the Supreme Court would agree with your students. However, in light of *Tinker's* "substantial disruption" principle, it is likely that the Court would agree with a restriction of the expression due to the likelihood that the chosen method would prove controversial enough to rise to a disruptive level.

SCENARIO 3:

Context: Scenario three is entirely based on the facts of *Bethel School District No. 403 v. Fraser* (1986). It is anticipated that students will recognize the fact pattern, as described in **Handout A**. NOTE: see OPTIONAL HANDOUT E if you wish to expose students to the controversial speech in question; at your discretion.

1. Students should reference the following instance(s) of speech/expression: speaking to communicate a political message regarding an election to student government. Students may

point to specific portions of **Handout B: Student Code of Conduct**. Students are likely to answer that the speech in question is directly protected by the First Amendment and MAY be protected in the Conduct Code, though answers will vary on this point.

2. Answers will vary. Some students may plot their opinion on the left (least disruptive/offensive/obscene) end of the continuum, and others may plot on the right (most disruptive/offensive/obscene) end of the continuum. Answers will vary as to whether the principal is justified in limiting the expression. Some students will argue that the innuendo contained in the speech was disruptive to the assembly due to raucous crowd reaction to it; they may also add that some in the crowd exhibited discomfort, clearly finding the speech offensive and/or obscene. Others may argue that the speech did not actually disrupt the assembly, as it continued on as normal after his speech and the student in question was not spoken to and punished by administration until the day after his speech; they may also argue that they do not view the speech as obscene or offensive.
3. See answers to Questions 1 & 2 above for potential summary arguments in support of the student speech. It is highly unlikely that the Supreme Court would agree with your students' summary arguments. The Supreme Court ruled in favor of the school administration and the restriction of speech in *Bethel School District No. 403 v. Fraser* (1986), stating that the First Amendment did not require school officials to allow "vulgar and offensive" speech. The Supreme Court also drew a line between the type of political speech communicated in *Tinker* (Scenario 1) with

other forms of speech that schools are free to prohibit.

SCENARIO 4:

Context: Scenario four is not directly the subject of a Supreme Court case, but is a real scenario that occurred in an urban California school in 2010. It is included to pose a more challenging and less obvious application of the principles applied in the following Court rulings: *Tinker v. Des Moines* (1969; substantial disruption), *Bethel School District No. 403 v. Fraser* (1986; substantial disruption; offensive speech or conduct), and *Morse v. Frederick* (2007; substantial disruption; student health and safety concerns). NOTE: As of this writing (2013), a Federal District Court has reviewed the students' First Amendment challenge to the actions of the principal. The District Court upheld the principal's restriction of the students' speech, citing legitimate substantial disruption and school safety concerns. It is currently on appeal.

1. Students should reference the following instance(s) of speech/expression: the wearing of a shirt, as a method of symbolic expression, to communicate a cultural or political message. Students may point to specific portions of Handout B: Student Code of Conduct. Students are likely to answer that the speech in question is directly protected by both the First Amendment the Conduct Code.
2. Answers will vary. Some students may plot their opinion on the left (least likely to pose a substantial disruption or a health/safety hazard) end of the continuum, and others may plot on the right (most likely to pose a substantial disruption or health/safety hazard) end of the continuum. Answers will vary as to whether the principal is justified in limiting

the expression. Some students will argue that, given past Cinco de Mayo clashes on campus and the hostility encountered by the students earlier in the morning, the speech is likely to pose a substantial disruption and/or pose a health or safety hazard and the principal is justified in limiting it. Others may argue that the speech is no more disruptive or likely to pose a health/safety hazard than the expression of those celebrating Cinco de Mayo and the principal is not justified; students may also point out that Cinco de Mayo celebrants were allowed by the principal to speak freely while detractors were not.

3. See answers to Questions 1 & 2 above for potential summary arguments in support of the student speech. It is entirely unknown whether the Supreme Court would agree with your students' summary arguments. However, as noted above, a Federal District Court upheld the principal's restriction of the students' speech, citing legitimate substantial disruption and school safety concerns, and the case is, at time of writing, on appeal.

Unit 4: The Bill of Rights and Freedoms of the Press, Assembly, and Petition

LESSON 1: WHY DOES A FREE PRESS MATTER?

Handout A: Background Essay – Why Does A Free Press Matter?

1. Press freedom is a traditional right, though its practical definition has changed over time. Nearly all of the American colonies protected the freedom of the press. At the time, freedom of the press was understood to mean that government could not censor the publication of material in advance, known as "prior restraint." The Founders valued newspapers themselves, because they helped support an informed citizenry.
2. Accept reasoned answers.
3. In a unanimous decision, the Supreme Court ruled in favor of the New York Times. In order to prove libel, a "public

official" must know that the newspaper acted with "'actual malice' – that is, with knowledge that it was false or with reckless disregard" for the truth. The Court asserted America's "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open." Free and open debate about the conduct of public officials, the Court reasoned, was more important than occasional, honest factual errors that might hurt or damage officials' reputations.

4. The result of the *Sullivan* decision is that, generally speaking, it is very difficult for public officials to win in court if they accuse a publisher of libel. The Court ruled in 1987 that public officials cannot sue for emotional distress in libel cases unless the publication contained a false statement made with "actual malice."
5. Accept reasoned answers.

Handout B: A Free Press and the Candidates

1. Answers will vary based on the candidates researched and resources used.

Handout C: Letter From A Friend

1. Accepted reasoned responses.

LESSON 2: WHY ARE THE RIGHTS TO ASSEMBLY AND PETITION IMPORTANT TO LIBERTY?

Handout A: Background Essay - Where Did the Rights to Petition and Assembly Come From, and How Do Americans Exercise Them?

1. The *Magna Carta* (1215) first provided a right to assemble and petition the king for small groups of barons, but it was very limited. This right was then expanded to all citizens, and the limitations lifted, in the English Bill of Rights (1689). These rights influenced our Founding generation in the various petitions they made to the king, such as the Stamp Act Congress and the Olive Branch Petition, culminating in the Declaration of Independence.
2. Americans petitioned the Congress and their states from very early on, regarding issues ranging from slavery, to child labor to prohibition. Civil Rights leaders, such as Martin Luther King, urged citizens to petition and protest in favor of expanded political and civil rights. Americans today exercise this right through petition drives, organized protests, emailing and calling government officials, and through social media outlets, such as Facebook and

Twitter.

3. In *National Socialist Party of America v. Village of Skokie* (1977), the Supreme Court ruled that government cannot, through its laws, prevent an assembly from occurring simply because it disagrees with the message. The content of the speech an assembly produces cannot be a reason for restricting them from assembling in the first place.
4. Reasonable time, place, and manner restrictions on assemblies are acceptable, so long as they are not made on the basis of the message. Suggested examples of acceptable time/place/manner restrictions: assemblies cannot occur on private property without the permission of the property owner; a “buffer zone” around abortion clinics; assemblies that threaten the rights or safety of others.
5. Students are likely to say that assembly and petition both go hand-in-hand with other protections of the First Amendment, such as the right to free speech. The ability to come together with others is what gives power to an individual’s right to speak, and one without the other would be less effective.

Handout B: Assembly and Petition True/False Challenge

1. True.
2. True.
3. False. In *Lloyd v. Tanner* (1972), the Court held that protest groups do not have the right to gather in private shopping malls. The First Amendment applies only to government restrictions on speech/assembly, not that of private companies or individuals.

4. True. In *Coates v. Cincinnati* (1971), the Court held that an assembly on a public sidewalk, even if it annoys passersby, is protected by the First Amendment. So long as others are still able to use the sidewalk, the assembly is constitutional.
5. False. In *Grayned v. City of Rockford* (1972), the Court held that protests near schools that are intended to disrupt classes are not protected by the First Amendment.
6. False. In *Gregory v. City of Chicago* (1969), the Court held that the government cannot stop protestors from demonstrating because their cause is unpopular. In *National Socialist Party of America v. Village of Skokie* (1977), the Supreme Court extended this principle by holding that governments could not stop an assembly because a majority of citizens find the content of the demonstration to be "offensive to the core."
7. False. Courts have routinely upheld local night-time noise and/or peace ordinances of residential neighborhoods

as a reasonable time, place or manner restriction.

8. True. General rules of public, government-provided parks that apply to all visitors equally are generally not considered restrictions on speech or assembly.
9. True. In *Meyer v. Grant* (1988), the Court held that states could not prevent groups from hiring and paying people to circulate petitions.
10. False. In *Snyder v. Phelps* (2011), the Court held that those who stage a peaceful protest on an issue of public concern near a soldier's funeral are shielded by the First Amendment, protecting them from civil lawsuits, or lawsuits by private individuals, for reasons such as pain and suffering.

Handout C: A Petition

1. Accept reasoned responses.

Unit 5: The Bill of Rights and Guns

LESSON 1: WHAT ARE ORIGINS AND INTERPRETATIONS OF THE RIGHT TO KEEP AND BEAR ARMS?

Handout A: Background Essay - What Are Origins and Interpretations of the Right to Keep and Bear Arms?

1. The *English Bill of Rights* (1689) also gave gun rights only to some people. While the English Bill of Rights said Protestant individuals could own guns, it denied that right to the Catholic minority.
2. Some scholars argue that the militia of the Second Amendment means state armies, like today's National Guard. According to this argument, the Second Amendment does not grant an individual's right when it refers to "the right of the people to keep and bear arms." Instead, they say the Second Amendment simply protects state militias from the federal government as the Anti-Federalists had insisted. Others believe "militia" referred to a group of citizens. Since there was no official army or police force, some scholars argue that the "militia" was individual citizens who could be called to protect themselves and their neighbors.
3. In *United States v. Verdugo-Urquidez* (1990), the Supreme Court said it the Second Amendment means "individuals" when it says "people." The individual right to bear arms was affirmed in *United States v. Emerson* (1999).

Handout D: Group Discussion Guide

1. Answers will vary. Accept reasoned answers.

Handout E: Town Council Discussion Guide

1. Answers will vary. Accept reasoned answers.

LESSON 2: HOW HAS THE SECOND AMENDMENT BEEN INTERPRETED?

Handout A: Background Essay – How Has the Second Amendment Been Interpreted?

1. In *Presser v. Illinois* (1886), the Court held that states could not disarm citizens, because that would interfere with the federal government's ability to raise a militia.
2. In *United States v. Miller* (1939), the Supreme Court held that the Second Amendment did not protect the right to possess all types of weapons. The Court upheld a federal law that regulated sawed-off shotguns. The Court reasoned that since that type of weapon was not related to keeping up a militia, the Second Amendment did not protect the right to own it. In other words, the Second Amendment protected a right to own weapons. The question was how far that right went.
3. *District of Columbia v. Heller* (2008) was the first time the Supreme Court interpreted the Second Amendment in terms of what it meant for an individual's right to possess weapons for private uses such as self-defense. The Court reasoned that the right to own weapons for self-defense was an "inherent" (natural) right of all people.

Handout B: Total Ban on Handguns?

1. Answers will vary.

Handout C: *District of Columbia v. Heller* (2008)

1. Answers will vary.

Unit 6: The Bill of Rights and Property

LESSON 1: WHAT IS PROPERTY? WHY PROTECT IT?

Handout A: Property or Not?

1. Property
2. Property
3. Property
4. Property
5. Property
6. Property
7. Property

Handout B: Background Essay - What Is Property? Why Protect It?

1. Ownership means one has the legitimate right to control and direct the use of an object or idea. Self-ownership means a person has control and directs the use of him or herself, as long as it does not harm another or interfere with others' rights to do the same.
2. Madison believed that man has a property in not just his body and possessions. He also has property (an interest) in the maintaining and exercising of opinions and religious beliefs.
3. Accepted reasoned answers.

Handout C: Understanding the Third, Fourth, Fifth, Seventh, and Eighth Amendments

Third: Recognizes the right of people to control the property in their homes.

Fourth: Recognizes the right of people to control ("be secure") in their persons (self-ownership) and homes (physical property).

Fifth: Safeguards private property ownership by ensuring due process when the government tries to take property. The Fifth Amendment also provides for government to pay property owners in those times when it does take their property.

Seventh: Ensures a jury trial to safeguard property rights in disputes.

Eighth: Protects property rights (money) by prohibiting excessive bail and fines.

Handout D: English Origins of Property Protections

Magna Carta

1. The *Magna Carta* protects money, chattels, horses, carts, and wood.

Blackstone

1. Blackstone says the king and his privy council cannot arbitrarily give or remove land from citizens unless determined by a court.

2. Blackstone says that only the courts or the course of law have power over lands or goods.

Locke

1. Locke said that people join societies to preserve their property rights.
2. Locke believed that people need government to protect their property.

Handout E: Samuel Adams, James Madison, and Property

Adams

1. The government cannot justly take from any man any part of his property, without his consent in person or by his representative.

Madison

1. Madison believed property included: a man's land, merchandise, money. He also believed that a man has property in his opinions and the free communication of them including religious opinions, and the free use of his faculties. Property can also be found in the safety and liberty of one's self.
2. See previous answer and accept reasoned answers.

Handout F: The Bill of Rights and Property

Real property examples:

- The right of the people to keep and bear arms.
- No soldier shall, in time of peace, be quartered in any house, without the consent of the Owner.

- The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.
- Nor be deprived of life, liberty, or property, without due process of law.
- Nor shall private property be taken for public use without just compensation.
- Excessive bail shall not be required.

Other property examples:

- 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.
- No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury.
- Nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb.
- Nor shall be compelled in any criminal case to be a witness against himself.
- The accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed.
- To be informed of the nature and cause of the accusation; to be confronted with the witnesses against him.
- In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States.

LESSON 2: HOW DOES THE FIFTH AMENDMENT PROTECT PROPERTY?

Handout A: The Takings Clause

Due Process: Due process means the government must act fairly and obey legal procedures when it tries to take property.

Taking: The government can sometimes seize or restrict the use of property. It can take property in the name of the public good.

Eminent Domain: Eminent domain refers to the government's right to acquire private property for public use.

Public Use: The use of land for the benefit of the public.

Just Compensation: The just compensation clause of the Fifth Amendment means the federal government must pay for any private property it does take for public use.

Examples of things that could be considered "public use": roads, schools, post offices, military bases, railroads, interstate highways, canals.

Handout B: Background Essay - How Does the Fifth Amendment Protect Property?

1. The Fifth Amendment guarantees that people have the right to their life, liberty, and property. The government cannot randomly decide to meddle with those things without a reason, or without following due process.
2. The Court ruled that this was a taking even though the land had not literally been taken away, because the state took away all of the economic value of the land.
3. *Lucas v. South Carolina Coastal Commission* was considered a taking because the state had taken away the value of the land because owners were not allowed to build on it.
4. *Kelo v. New London* (2005) became the landmark case surrounding the government's ability to exercise eminent domain and changed the concept of public use versus private use forever.

Handout C: Property and the Supreme Court

1. Accept reasoned answers.

Unit 7: The Bill of Rights and Due Process

LESSON 1: HOW DO DUE PROCESS PROTECTIONS FOR THE ACCUSED PROTECT US ALL?

Handout A: Background Essay - How Do Due Process Protections for the Accused Aim to Protect Us All?

1. The Fourth, Fifth, Sixth, and Eighth Amendments of the Bill of Rights address a variety of protections for the accused. These were included in the Bill of Rights by the Founders because they knew, from experience, that if specific safeguards were not in place for those who commit crimes, the government could exercise unlimited power and liberty would be endangered.
2. Fourth Amendment: no unreasonable searches and seizures by government without a warrant; warrant only issued upon probable cause; warrant must be specific to who will be searched, the place to be searched, and the items to be searched/seized. Fifth Amendment: the accused cannot be forced by government to self-incriminate (right to remain silent); no double jeopardy/cannot be tried for the same crime twice.
3. The Sixth Amendment protects the accused after having been charged with a crime in the following ways: a speedy and public trial by a citizen jury; trial must occur where the alleged crime was committed; know the specific crimes/accusations/evidence; confront accuser; call witnesses in defense; right to a lawyer.
4. Answers will vary, but students should point out that the protections of

the Fourth, Fifth, Sixth, and Eighth Amendments require government to follow the rule of law as well; if government is not bound by law, the principle of due process is no more; the government cannot commit crimes or disregard its own rules while trying to enforce laws.

5. Answers will vary, but students should explain the principle that justice and due process require that the rights of all individuals – even those who are ostracized as suspected criminals – are likely to be protected and laws be enforced equally.

Handout B: Criminal Procedure Protection

Fourth Amendment:

2. “No warrants shall issue, but upon probable cause.” Police must show probable cause to a judge in order to get a search warrant.
3. “. . .describing the place to be searched and the persons or things to be seized.” The warrant must name the place or person that police will search, as well as what they are looking for.

Fifth Amendment:

2. People may not be put on trial more than once for the same crime.
3. “No person . . . shall be compelled to be a witness against himself.” People do not have to give evidence that may make them appear guilty.

4. "No person shall be deprived of life, liberty or property without due process of law." If the government wants to take away someone's life, liberty, or property, it must follow duly-enacted laws and apply them in the same way to everyone.

Sixth Amendment:

1. People accused of crimes have the right to a trial by jury in a timely and open manner.
3. "To be confronted with witnesses against him."
Defendants have the right to know who the witnesses are against them and to ask them questions.
4. "...to have compulsory process for obtaining witnesses in his favor..."
Defendants have the right to legally demand witnesses who might help their case to testify at their trials.
5. "...and to have the assistance of counsel for his defense."
Defendants have the right to a lawyer to help defend them.

Seventh Amendment:

1. All cases with \$20 or more at stake should be decided by a jury.
2. "No fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law."
Courts will not decide on a case after a jury has declared a verdict.

Eighth Amendment:

1. Bail cannot be unreasonably high.
2. "...nor excessive fines imposed."
Bail cannot be unreasonable.
3. "...nor cruel and unusual punishments

inflicted."

Punishments may not be brutal or bizarre.

Handout C: Defining Cruel and Unusual

1. Accept reasoned answers

Handout D: Cruel and Unusual?

SCENARIO 1

1. Answers will vary, but students may suggest: the murder was planned in advance; Christopher bragged about his role in it, both before and after; he is very close to 18 and his decisions show adult-like behavior. Some may also suggest that sentencing someone to death for intentionally causing the death of another is neither cruel nor unusual.
2. Answers will vary, but students may suggest: Christopher is a minor, and sentencing a minor to death is cruel and unusual; he showed child-like immaturity in bragging about it both before and after; he showed child-like immaturity in convincing other, even younger friends to go along with him. Some may also suggest that sentencing someone to death is always cruel and unusual, no matter the crime they commit.
3. Answers will vary as to each group's ruling; accept reasoned answers. The U.S. Supreme Court, in *Roper v. Simmons* (2002), ruled that both American and international "standards of decency" have evolved so that executing individuals who were legally minors when their crime was committed is now both cruel and unusual. In its ruling, the Court cited that the vast majority of state legislatures have done away with the death penalty for minors, and that it is a disproportionate punishment for juveniles.

4. Answers will vary, but students may state the following factual changes might have made their ruling different: if Christopher had been an adult, not a minor; if the murder had not been planned in advance. Some may also voice continued opposition to the death penalty, no matter the circumstances.

SCENARIO 2

1. Answers will vary, but students may suggest: Evan intentionally caused the death of his friend Cole; they went back to the crime scene to cover up the evidence of their crime, showing adult-like behavior. Some may also suggest that a sentence of life in prison without parole for an extreme crime is neither cruel nor unusual.
2. Answers will vary, but students may suggest: Evan, while guilty of murder, did not originally set out or plan to murder Cole; that he is very clearly a minor at age 14, and exhibited a variety of child-like, immature actions throughout the scenario; that Evan had a long history of a troubled life that should be taken into consideration as mitigating factors. Some may also suggest that a sentence of life in prison without parole for someone so young is cruel and unusual.
3. Answers will vary as to each group's ruling; accept all reasoned answers. The U.S. Supreme Court, in *Miller v. Alabama* (2012), ruled that children are constitutionally different than adults and should be treated differently when sentencing them for their crimes. While a life sentence for such a crime by an adult does not violate the Eighth Amendment, the Court ruled it is disproportionate for a child, amounting to cruel and unusual punishment.

4. Answers will vary, but students may state the following factual changes might have made their ruling different: if Evan had been an adult, not a minor; if the murder had been planned in advance; if Evan did not have a history of physical and/or drug/alcohol abuse.

SCENARIO 3

1. Answers will vary, but students may suggest: careful medical considerations have been taken to ensure the condemned do not suffer; the method is quick and painless, particularly in comparison to past methods of execution; medical personnel who are trained in the administration of drugs are responsible for preparing the conditions of the execution. Some may also suggest that sentencing someone to death for intentionally causing the death of another is neither cruel nor unusual.
2. Answers will vary, but students may suggest: the process, if not followed exactly, can lead to prolonged suffering and death; the actual execution, while set up by medical personnel, is conducted by the warden, who is not himself trained in medicine and the administration of drugs. Some may also suggest that sentencing someone to death is always cruel and unusual, no matter how it is carried out.
3. Answers will vary as to each group's ruling; accept all reasoned answers. The U.S. Supreme Court, in *Baze and Bowling v. Rees* (2008), ruled that Kentucky's lethal injection process and procedures similar to it in other states, did not amount to cruel and unusual punishment. The Court noted a lack of evidence supporting the claim that even an incorrect administration of drugs would lead to

unconstitutional pain and/or suffering. The Court did suggest, however, that a state may violate the Eighth Amendment if it continued to use method(s) that have been shown to produce needless pain or suffering and/or an unnecessarily prolonged process of death.

- Answers will vary, but students may state the following factual changes might have made their ruling different: if it can be shown that the lethal injection process does indeed cause pain and suffering, and/or needlessly prolongs the execution if not carried out in an exact medical manner; if there have been a number of “botched” lethal injection procedures, as has been the case for the electric chair throughout history; if there is no doctor/medical personnel willing to oversee the execution.

LESSON 2: WHAT IS A REASONABLE EXPECTATION OF PRIVACY?

Handout A: Background Essay - How Have the Protections of the Fourth Amendment Been Interpreted, Applied, and Enforced?

- The Fourth Amendment’s warrant requirement provides for one of the most important individual protections: freedom from unreasonable searches and seizures.
- The Exclusionary Rule means that government is not allowed to use evidence against a suspect at trial that was gained as a result of an illegal search.
- Accept reasoned answers. The Court has held that school officials need only “reasonable suspicion” to search students. The Court has upheld policies of drug-testing public school students

who play sports or participate in extra-curricular activities because the tests “reasonably serve the School District’s important interest in preventing drug use among students.”

- Due process ensures that our government establishes justice and secures the blessings of liberty for future generations.
- Accept reasoned answers. Some students may say that the numerous and varied exceptions the Supreme Court has carved out - or that citizens allow by passively accepting them - violate the letter and spirit of the Fourth Amendment, and that the promise of greater security is not worth the threat to liberty. Others may say that the exceptions, while numerous, strike a good balance between the requirements of the Fourth Amendment and the need for effective law enforcement to maintain a safe and orderly society. Still others may say that the variety of exceptions are appropriate in a large, diverse society, and that the need to identify criminals or terrorists before they do harm is sometimes more important than individual liberty and freedom from searches, even if they are unreasonable.

Handout B: Attitude Inventory

- Answers will vary.

Handout C: Interpreting the Fourth Amendment

Students may suggest:

- “Persons”: one’s body, clothing, blood/bodily fluid, etc.
- “Houses”: one’s home; apartment, residence, mobile home, dwelling place, etc.

3. "Papers": personal documents (whether paper or electronic) such as contracts, letters, receipts, financial statements, bills, notes, diaries, books, hard drives, emails, etc.
4. "Effects": one's property contained in one's home, one's belongings outside the home, all other property, etc.
5. "Unreasonable": having no just or reasoned cause, not fair or acceptable, irrational, etc.
6. Characteristics of "seizure": something is taken from you, something is closely examined with or without your presence, you are not free to leave or walk away, you are not able to take your property back from whomever has seized it, etc.
7. Facts that might convince someone of a crime: actually witnessing a crime; seeing/smelling evidence of a crime; receiving information/evidence about a crime from someone else; etc.

Handout D: Should You Expect Privacy?

1. Yes, schools retain ownership of the locker and can search it. Police officers do need a warrant to search a specific locker.
2. Accept reasoned answers. This type of information can go into privately-owned databases. While these databases are not owned or maintained by government, telecommunication companies who have been asked by government to provide the information have at times handed it over. Courts have upheld a U.S. law granting telecoms immunity from lawsuits by citizens whose information was given over to government without a warrant.
3. Accept reasoned answers. In *U.S. v.*

Warshak (2010), the Sixth Circuit Court of Appeals ruled that there is a "reasonable expectation of privacy" in emails both sent by an individual and stored on third party servers (e.g. Google's Gmail servers). The issue has not been addressed by the U.S. Supreme Court.

4. Yes, regardless of steps one may feel one has taken (such as limiting the visibility of activities to "friends").
5. Accept reasoned answers. In *U.S. v. Jones* (2012), the Court ruled that one's daily travel on public thoroughfares possesses a "reasonable expectation of privacy." (In this case, police put a GPS unit on Jones' car to trace his movements – without a warrant – for 28 days.)
6. Accept reasoned answers. While the issue has yet to be addressed by the Supreme Court, some lower courts have ruled that a cell phone is the equivalent of a "closed, non-see-through container," and therefore its physical contents are private, absent additional probable cause to conduct a search of it. Other lower courts have disagreed.
7. No, police need a warrant to tap land-line phones.
8. Yes. In *California v. Greenwood* (1988), the Court ruled that a trash bag at the curb is "readily accessible to animals, children, scavengers, snoops, and other members of the public," so there was no expectation of privacy.
9. Yes. In *California v. Ciraolo* (1986), the Court held that a police fly-over was "nonintrusive" and "took place within public navigable airspace," therefore there was no reasonable expectation of privacy.

Unit 8: The Bill of Rights and Liberty

LESSON 1: HOW DOES THE CONSTITUTION PROTECT LIBERTY?

Handout A: Background Essay - How Does the Constitution Protect Liberty?

1. The First Amendment guarantees that you can associate with whomever you like. The Third and Fourth Amendments promise that the government cannot intrude into your home arbitrarily and without legal cause. The Fifth Amendment assures that you can keep silent if accused of a crime. The Founders believed that these rights should be protected so they decided to list them in the Bill of Rights.
2. Due process rights protect personal liberty in that they check government power, and it entitles all citizens to fair treatment by the government. Due process rights that are protected include: the right to a speedy, public trial by a jury; no person shall be tried for the same crime twice; no person should be forced to testify against himself; no person shall be deprived of life, liberty, or property; and all persons should be equally protected under the law.
3. Answers will vary. Accept reasoned responses.

Handout B: *Pierce v. Society of Sisters* (1925)

1. The Act required that all students attend public school through eighth grade. Private and parochial schools were concerned that they would lose students, their jobs, and their businesses because

of this law. They also believed that it was a parent's right to choose where the student went to school.

2. The First Amendment could have been discussed in this case, too. It could have been argued that the state of Oregon was infringing upon the freedom of religion.

Handout C: *Pierce v. Society of Sisters* (1925) Unanimous Opinion

Answers will vary. Accept reasoned answers.

Handout D: Newspaper Story Guideline

Answers will vary. Accept reasoned answers.

LESSON 2: WHAT IS THE SCOPE OF THE BILL OF RIGHTS?

Handout A: Background Essay – What Is the Scope of the Bill of Rights?

1. The Ninth Amendment ensures that the rights actually listed in the Bill of Rights are not assumed to be more important than rights not listed. The Ninth Amendment does not list any specific rights, but it raises many possibilities. It has been read to protect all natural rights not specifically listed in the First through Eighth Amendments.
2. In *Griswold v. Connecticut* (1965), the Court determined that the Ninth Amendment protects privacy within marriage. The Court cited the First, Third, Fourth, and Fifth Amendments as creating a "zone of privacy."

3. In *Bowers v. Hardwick* (1986), the Court said states could outlaw homosexual activity, but reversed this decision in *Lawrence v. Texas* (2003). In the *United States v. Windsor* (2013) case, the Court determined that the Defense of the Marriage Act was unconstitutional. The decision asserted that the federal government must recognize same-sex marriages and same-sex spouses equally. Accept reasoned answers.

Handout B: Supreme Court Personal Liberty Decisions

1. *Griswold v. Connecticut* (1965):
 - a. Privacy in marriage
 - b. Court's Opinion: "We deal with a right of privacy older than the Bill of Rights...To hold that a right so basic and fundamental and so deep-rooted in our society as the right of privacy in marriage may be infringed because that right is not guaranteed in so many words by the first eight amendments... is to ignore the Ninth Amendment and to give it no effect whatsoever."
 - c. Accept reasoned answers.
 - e. Accept reasoned answers.
 - f. Accept reasoned answers.
2. *Roe v. Wade* (1973)

- a. Abortion rights
- b. "This right of privacy, whether it be founded in the Fourteenth Amendment's concept of personal liberty and restrictions upon state action, as we feel it is, or, as the District Court determined, in the Ninth Amendment's reservation of rights to the people, is broad enough to encompass a woman's decision whether or not to terminate her pregnancy."
- c. Accept reasoned answers.
- e. Accept reasoned answers.

4. *Bowers v. Hardwick* (1986)
 - a. Homosexual activity
 - c. Accept reasoned answers.
 - e. Accept reasoned answers.
 - f. Accept reasoned answers.
5. *Lawrence v. Texas* (2003)
 - a. Homosexual activity
 - c. Accept reasoned answers.
 - e. Accept reasoned answers.
 - f. Accept reasoned answers.
6. *United States v. Windsor* (2013)
 - a. Defense of Marriage Act
 - c. Accept reasoned answers.
 - e. Accept reasoned answers.
 - f. Accept reasoned answers.

Unit 9: The Bill of Rights and Federalism

LESSON 1: WHAT IS A FEDERAL REPUBLIC?

Handout A: Background Essay - What is a Federal Republic?

1. Federalism is the principle that people delegate certain powers to the national government in the Constitution. All those powers not delegated to the national government remain with the states and the people.
2. All those powers not delegated to the national government remain with the states and the people.
3. The Fourteenth Amendment limited the types of laws states could pass. Eventually, the Supreme Court began applying Bill of Rights limitations to state governments via the Fourteenth Amendment. The Seventeenth Amendment ended state representation in the U.S. Congress.
4. Accept reasoned answers.

Handout C: James Madison and Federalism - Excerpts from *Federalist # 39*

1. According to Madison, the Constitution provided for a nation that is both a nation of people and a nation of states.
 - Yellow: Its foundation is federal.
 - Green: The sources of its powers are partly federal and partly national.
 - Blue: In its operation it is national.
 - Yellow: In the extent of its powers it is federal.

- Green: In the amendment process it is both federal and national.

2. Accept reasoned answers.

Handout D: Federalism Venn Diagram

1. Accept reasoned answers.

Handout E: Article I, Sections 8, 9, and Amendment Ten of the Constitution

1. Answer will vary.
2. The decision to divide power among (federalism) and within (checks and balances) several governments positioned the American people to enjoy the benefits of a large republic (e.g., strong defense against foreign encroachments, national system of commerce, etc.) while still retaining significant control over their day-to-day affairs within the states.
3. Accept reasoned answers.
4. Suggested titles:

Article I, Section 8: "Powers given to Congress" or "The things Congress can do"

Article I, Section 9: "Some things Congress cannot do" or "Some powers denied to Congress"

Article I, Section 10: "The things states cannot do" or "The powers denied to states"

Handout F: State Power - Criticisms and Responses

1. Answers will vary. Accept reasoned responses.

LESSON 2: WHAT IS THE COMMERCE CLAUSE?

Handout A: Background Essay –What is the Commerce Clause?

1. The Commerce Clause was intended create a common commercial policy between the various state governments, encouraging free trade within the continental U.S. and with foreign markets.
2. The case of *Gibbons v. Ogden* established that the national government had the power to make rules for commerce between more than one state.
3. The Court began interpreting the Commerce Clause as permitting national regulation of wide variety of activities that had not previously been understood as “interstate commerce.”

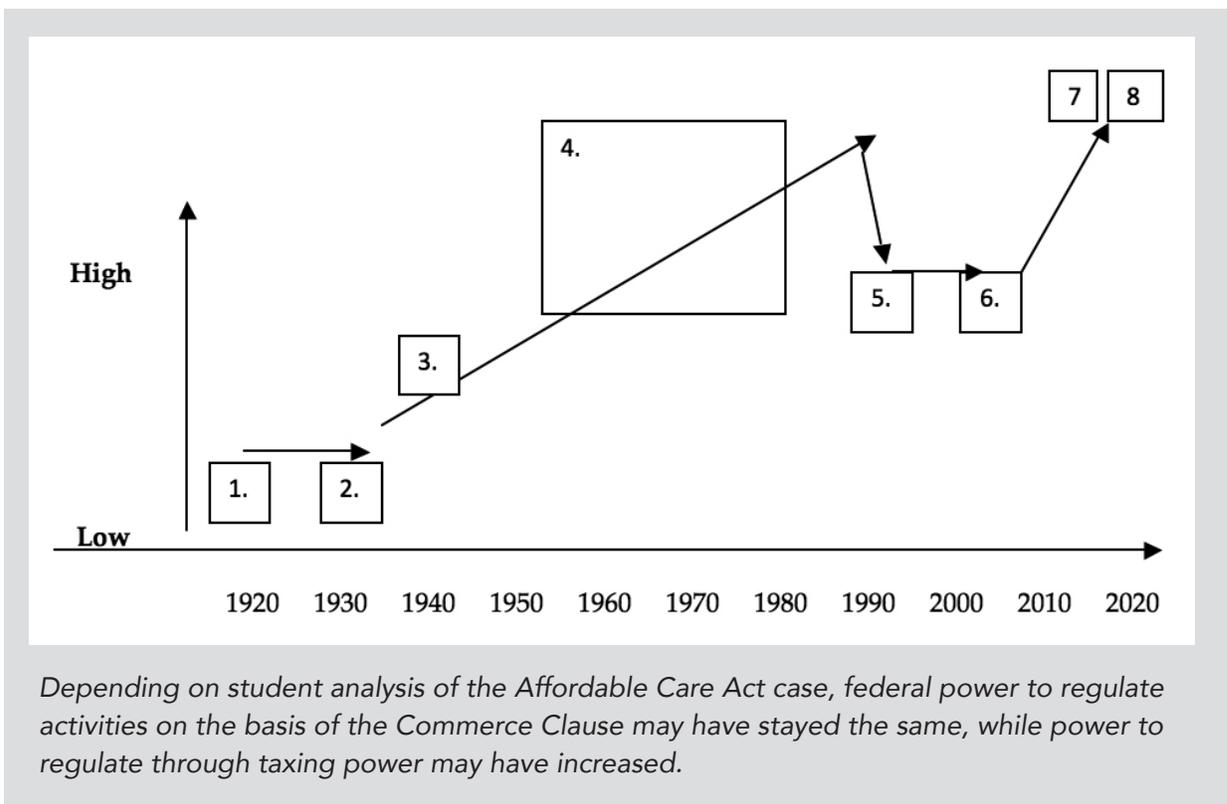
4. Accept reasoned answers.
5. Accept reasoned answers.

Handout B: Federalism – For or Against?

1. Argues against federalism
2. Argues in favor of federalism
3. Argues in favor of federalism
4. Argues against federalism
5. Argues in favor of federalism
6. Argues against federalism
7. Both/neither
8. Both/neither
9. Both/neither

Handout C: Commerce Clause Timeline

Accept reasoned answers; a sample timeline might look like the diagram below.



Unit 10: The Bill of Rights and Incorporation

LESSON 1: WHAT IS INCORPORATION?

Handout A: Background Essay - What Is Incorporation?

1. Any three of these: the definition of citizenship; the “no state” clause; the due process clause; and the equal protection clause.
2. Accept all reasoned responses.
3. Accept all reasoned responses.
4. Some people call the Fourteenth Amendment the “second Bill of Rights” because it ensures that everyone’s basic liberties are protected.
5. Incorporation means that the protections of the Bill of Rights against the federal government are also protections against state or local governments.
6. Accept all reasoned responses.

Handout B: The Nation, the States, and Liberty

1. A veto on state laws is necessary to protect liberties. States shall not interfere with freedom of religion.
2. Madison’s drafts refer to protections against state limitations on liberties; the first amendment refers to protections against congressional limitations on liberties.
3. Anyone born in the United States is a citizen both of the country as well as of the state where they were born. All people are entitled to protections of life, liberty, and property. Each state must

ensure that anybody living within the state is equally protected by the state’s laws.

4. Accept all reasoned responses. Some students may say that state governments, since they are closer to the people, are better protectors of rights. They may argue that the federal government cannot protect people against the federal government. Others may argue that the federal government, which takes a national view of rights and liberties, is best positioned to ensure that anyone, no matter which state they live in, is guaranteed the same basic rights.

LESSON 2: WHO SHOULD PROTECT OUR FUNDAMENTAL FREEDOMS?

Handout A: Background Essay - Who Should Define Our Fundamental Freedoms?

1. A “landmark case” is one which offers directions for future decisions.
2. Total incorporation suggests that every single part of the Bill of Rights be applied against the states. Selective incorporation suggests that only those rights guaranteed in the first eight amendments which are “fundamental and essential in the concept of ordered liberty” be incorporated.
3. Accept all reasoned responses while encouraging students to focus on whether or not these actions violate our fundamental freedoms.
4. Because of incorporation, individuals’ identification with their nation has

increased while their identification with their state has decreased. People expect that the federal government—not the state governments—will be the main protector of individual rights. The federal government now enforces protections instead of being the institution that people needed protection from.

5. Problems could arise since the institution which is protecting individuals (e.g., the federal government) is also the institution that individuals are being protected against. Creates a conflict of interest. This situation also makes the federal government the final determiner of which rights will/will not be protected.
6. Accept all reasoned responses while reminding students both of the Founders' vision of the purpose of the Bill of Rights as well as the potential problems in giving one branch of government the ability to define our rights.
7. Accept all reasoned responses. Most students will likely reference life, liberty, pursuit of happiness, due process (both procedural and substantive), property, conscience, etc.

Handout B: Attitude Inventory

1. Answers will vary.

Handout C: Fundamental Freedoms?

First Amendment

Freedom from establishment of religion
Freedom to practice religion (free exercise)
Freedom of speech
Freedom of the press
Freedom to peaceably assemble

Freedom to petition

Second Amendment

Right to keep and bear arms

Third Amendment

Freedom from quartering of soldiers

Fourth Amendment

Freedom from unreasonable search and seizure

Right to valid search warrants

Fifth Amendment

Right to indictment by a grand jury

Freedom from double jeopardy

Freedom from forced self-incrimination

Right to just compensation when property is taken

Sixth Amendment

Right to a speedy trial

Right to a public trial

Right to an impartial jury

Right to a jury trial selected from residents where the crime was committed

Right to notice of accusations

Right to confront adverse witnesses

Right to process for obtaining witnesses (subpoena)

Right to counsel

Amendment VII

Right to jury trial in civil cases

Freedom from re-examination of facts in trials

Amendment VIII

Freedom from excessive bail

Freedom from excessive fines

Freedom from cruel and unusual punishment

As of 2013, all rights have been incorporated except the Third Amendment; the Fifth Amendment's guarantee to the right

of indictment by a grand jury; the Sixth Amendment's guarantee to a jury trial selected from residents where the crime was committed; and the Eighth Amendment's protections against excessive bail and excessive fines.