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FIRST AMENDMENT FREEDOMS

*Featuring Educational Tools for Civics,
Government, History, and Law Classrooms*

Winter 1998 / VOL. 22 NO. 1

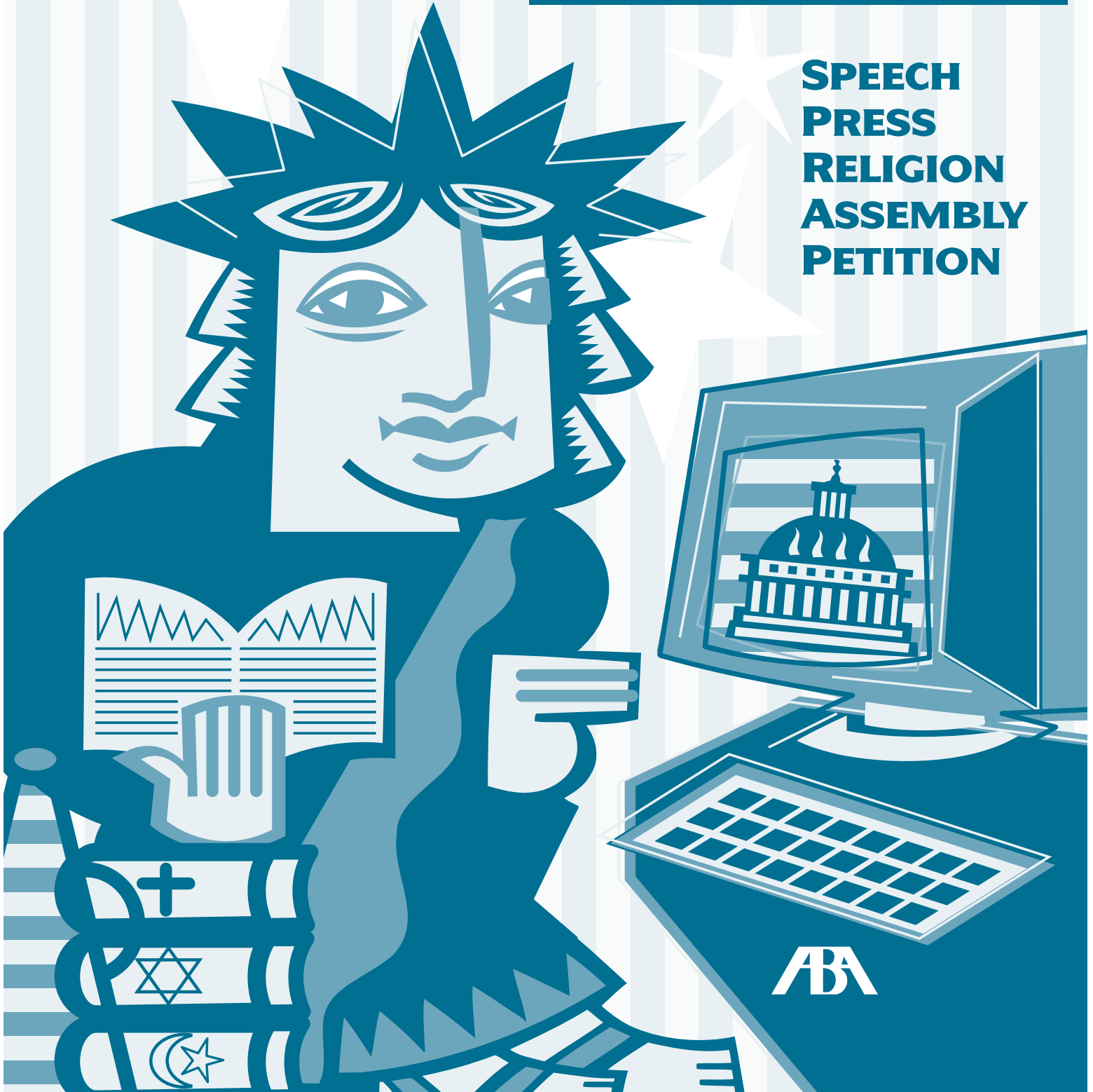
UPDATE

LAW-RELATED

EDUCATION

American Bar Association Division for Public Education

**SPEECH
PRESS
RELIGION
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PETITION**



ABA

What's Inside?

According to the results of The Freedom Forum's recent public opinion poll on First Amendment issues, few Americans are able to name all the First Amendment freedoms—speech, religion, press, assembly, and petition—even though most feel that these rights are not just important but essential to Americans. This edition of *Update on Law-Related Education* is dedicated to supporting the continuing efforts in schools not only to teach students what our First Amendment freedoms are, but to prepare young people to exercise these rights in informed and productive ways.

The contributions of staff at three key associations were invaluable to the development of the edition's content. Special thanks go to Paul McMasters, First Amendment Ombudsman at The Freedom Forum World Center, for overseeing the adaptation of materials for both teachers and students from the center's poll and its report "State of the First Amendment." We also acknowledge with much appreciation the efforts of Charles Haynes and Marcia Beauchamp at The Freedom Forum First Amendment Center, and of Shabbir Mansuri and staff at the Council on Islamic Education, all of whom put in many hours to furnish classrooms with materials that reinforce an understanding of

the free exercise and establishment clauses of the First Amendment by applying them to the religious needs and requirements of Muslims attending public schools.

We are greatly indebted to Bob Peck and Ginny Sloane at Citizens for the Constitution for sharing prepublication information with us about the guidelines their organization has developed for use when proposing to amend the Constitution. The historical insights and thoughtful, balanced approach in these materials support two excellent strategies on amending the Constitution by Keith Pittman and by Kathleen S. Roberts and David T. Naylor. Finally, acknowledgments would be incomplete without thanking regular contributors Wanda Routier and Margaret Fisher for their respective contributions of a student survey modeled after that of The Freedom Forum, and a perspective on religious freedom, prisons, and the recently struck down Religious Freedom Restoration Act.



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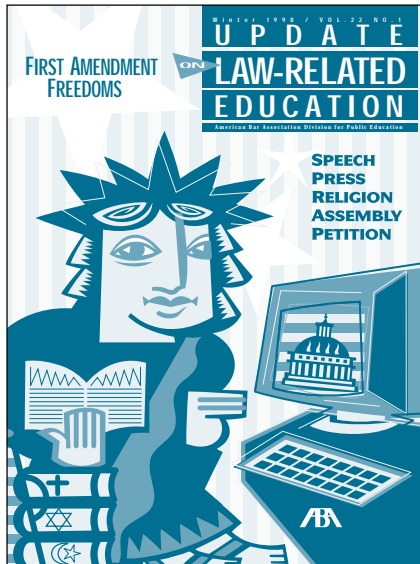
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and the Law

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The Freedom Forum First Amendment Poll: An Analysis

Americans speak up about their First Amendment rights.

Update on Law-Related Education, 22.1, 1998, pp. 4–5, 8, 16. © 1998 American Bar Association.

A Note to Teachers: You might find it useful to clarify with students that legal restrictions on speech are actually possible in the United States—but not by governmental bodies. For example, while the Constitution bars U.S. Congress and state legislatures from “abridging the freedom of speech,” private businesses, schools, and clubs are not so prohibited for staff and members.

Elections and campaigns, significant international events, terrorism, political scandals, corporate mergers, natural disasters, and high-profile crimes are common topics of public opinion polls. They are events that most often have a beginning and an end. Their high visibility in the news and their public interest make polls on these topics newsworthy in and of themselves. Public opinion polls on enduring, more abstract issues not generally discussed at dinner, at work, or in the news are far less common. Such is the case with polls on the First Amendment: It is unusual to find extensive public opinion polls on First Amendment issues.

Known as the Bill of Rights, the first ten Amendments were adopted in 1791 as a condition of the ratification of the U.S. Constitution because

Americans were concerned about a strong central government without guarantees of fundamental individual freedoms. For more than two centuries now, the First Amendment has been one of the pillars of the remarkable liberties that U.S. citizens enjoy. It has served this democracy and its citizens well.

For the most part, major threats to First Amendment rights and values have not been successful, whether through public resistance or action by the courts. Yet these threats persist, proving First Amendment freedoms have to be won over and over again.

See Teaching Strategy for this article on page 35.

The Freedom Forum poll measured public opinion on a wide variety of First Amendment issues. It is the first significant inquiry into public opinion on the First Amendment since 1991, when Robert Wyatt reported on a series of polls, finding that, from the perspective of the American public, “it is apparent that free expression is in very deep trouble.”

The Freedom Forum poll on the First Amendment was conducted by telephone between July 17 and August

Amendment 1

*Freedom of religion, speech, and the press;
rights of assembly and petition*

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.

The establishment clause of the First Amendment forbids the U.S. Congress to in any way found or provide for an official national church. The clause has been interpreted to forbid the government’s endorsement or funding of any religious doctrine. Further, the First Amendment forbids Congress from passing any laws that limit worship, speech, or the press, or that prevent people from meeting (assembling) peacefully or asking (petitioning) the government for relief from unfair treatment. First Amendment rights have limits; for example, some speech, such as libel or obscenity, is not protected, and some religious practices, such as those that may jeopardize public safety, can be regulated.

1, 1997, by the Center for Survey Research and Analysis at the University of Connecticut; 1,026 adults were surveyed. Sampling error is $\pm 3\%$ at the 95% level of confidence. The Freedom Forum sought to provide a comprehensive picture of contemporary American

The Freedom Forum sought to provide a comprehensive picture of contemporary American opinion on the First Amendment. ...

opinion on the First Amendment and to trace changes in opinion wherever possible. The survey addressed these First Amendment issues:

- How important are First Amendment freedoms to Americans?
- How do First Amendment freedoms compare in importance to other constitutionally protected rights?
- Is support for the First Amendment holding steady, or is it changing?
- Would Americans vote to ratify the First Amendment if they were voting on it today?
- What do Americans feel about the amount of freedom currently afforded by the First Amendment's protections of religion, speech, press, assembly, and petition?
- Do Americans think they have too much, too little, or about the right amount of freedom in each of these areas?
- To what extent would Americans restrict First Amendment freedoms?
- Are Americans more protective of their own rights than the rights of others?
- How do Americans feel about amending the First Amendment?
- What are Americans' experiences with and opinions about First Amendment education in the schools?

- How free do Americans feel to express themselves in different situations, such as at work and in the classroom?

Freedoms Largely Supported

The Freedom Forum poll found that, on the whole, the First Amendment is alive and well—at least from the perspective of the American people, who express strong support for the freedoms it guarantees. While some of the findings suggest that Americans have actually become more supportive of First Amendment rights over the past two decades, there are other findings indicating less-than-wholehearted endorsement of certain rights when confronted with specific instances of the First Amendment in action.

Most Americans feel that First Amendment freedoms—religion, speech, press, assembly, and petition—are not just important but essential American rights. Eight in 10 feel this way about freedom to practice religion, seven in 10 about freedom of speech and the right to practice no religion, six in 10 about freedom of the press, and more than five in 10 about the right to assemble and petition. Fewer than 10 percent say that any

First Amendment freedom is not important. Ninety-three percent say they would ratify the First Amendment if they were voting on it today.

Americans express strong skepticism about having the government place restrictions on any First Amendment freedom.

For example, 90 percent of Americans say they should be allowed to express unpopular opinions, and majorities feel that companies ought to have the right to advertise tobacco and alcohol products. Fifty percent of those polled believe

that government should not be involved in rating television programs, compared with 46 percent who thought it was all right. Nearly 90 percent of those polled showed a firm appreciation for the “slippery slope”

Most Americans feel that First Amendment freedoms—religion, speech, press, assembly, and petition—are not just important but essential American rights.

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State of the First Amendment Report

In December 1997, The Freedom Forum released *State of the First Amendment*, a report by lawyer and author Donna Demac that included an analysis of “The Freedom Forum Poll,” a comprehensive measure of public opinion on First Amendment issues and the first significant inquiry of its type since 1991. The present article presents portions of the analysis, which was written by Kenneth Dautrich, director of the Center for Survey Research and Analysis at the University of Connecticut. The poll was conducted by Professor Dautrich for The Freedom Forum.

The Freedom Forum is a nonpartisan international foundation dedicated to free press, free speech, and free spirit for all people. The full text of the poll and the analysis, as well as other information of use to classrooms, can be accessed on line at <http://www.freedomforum.org/newsstand/reports/sofa/printsofa.asp>

Source: State of the First Amendment, Donna Demac (Arlington, Va.: The Freedom Forum, 1997), by permission of the publisher.

First Amendment Reflections

Update on Law-Related Education, 22.1, 1998, pp. 6–7. © 1998 American Bar Association.

[T]here is nothing inconsistent between the First Amendment and many of the other values we most hold dear. The First Amendment has been the most important civil rights act ever passed. It has been the most important political reform ever passed. You can go down the list of other things that we value, and again, we would submit that the First Amendment, first and foremost, has protected those rights. ... We can all be speaking at the same time. We might not hear each other at that moment, but there is nothing to stop us from doing so. There is no limit to the avenues, sentiments, range of ideas that can be spoken.

—**Robert S. Peck**, *First Amendment attorney and director of legal affairs and policy research, Association of Trial Lawyers of America (ATLA)*



First Amendment principles are affirmed and embraced at a level of generality which has no contact with the way in which people actually live and think. ... [T]he First Amendment is a good in and of itself ... a bunch of words, whether wonderfully or lamentably vague, which are then filled with a substantive content of whatever group manages to get its preferred vocabulary into the First Amendment. That is why I never recommend jettisoning the First Amendment, although I write about its incoherences all the time. My advice is always get a hold of it and rewrite it so that it will generate the agendas, inclusions, and exclusions you desire, rather than the ones that are now being generated by your enemies.

—**Stanley Fish**, *arts and sciences professor of English, Duke University*

Source: "Free Speech Roundtable," State of the First Amendment (Arlington, Va.: The Freedom Forum, 1997), pages 19–27.

[T]here really has been a dramatic change [in] thinking about the First Amendment as allowing the government some affirmative role, or even the First Amendment as demanding an affirmative role, in terms of equalizing opportunities for participation in democratic decision making. ... The idea that the First Amendment would allow, encourage, maybe even demand [regulation] is just out of the picture. ... It is a mistake to think just in terms of "We can't trust the government to draw any lines." ... [T]here is a set of issues ... about a broader notion of democracy and free speech than simply stopping government from being able to censor. That debate is largely gone today, and I think that is a real pity.

—**Lee C. Bollinger**, *president, University of Michigan*

This is all that we have been hearing recently in education or in libraries: "We have to protect the children." They want the government to step in. ... You say, "Well, it is the responsibility of the parents to guide their children in what they read." Then they say, "We can't guide them when it's print. How are we going to deal with the Internet?" So they are pushing the government to get involved in an area that the government had really begun to move substantially away from. I don't find this at all heartening as we move into the 21st century.

—**Judith Krug**, *director, Office for Intellectual Freedom, American Library Association*





Related activities can be found
on page 35.

In many attempts to protect the First Amendment, a number of fine First Amendment defenders have defanged it, or attempted to defang it. They've said, "No, this speech is really not dangerous. It's safe; we really should allow it." I disagree. I want to protect it precisely because it's dangerous. It seems to me if the First Amendment is to have any real viable force, then sometimes we will have to just bite our lips and say: "This [speech] is dangerous. This really is risky. This really is an experiment. This experiment can really fail, but, nonetheless, we commit ourselves to this experiment for better or worse." And the reality is, it may be for worse.

—*Ronald K. L. Collins, First Amendment project director,
Center for Science in the Public Interest*

If you have networks ... who together provide services to over 12 million Internet subscribers in the U.S., and if they as a policy matter decide to impose some sort of mandatory blocking, so that the default is always that the block is on, then you turn on your computer, and all sorts of speech are blocked. ... [W]hy is that situation any less problematic than one in which the government is involved? ... [I]f we have a victory that seemingly keeps the government out of regulating the Internet, it is a totally hollow victory if your average person ... is privately censored.

—*Ann Beeson, attorney, American Civil Liberties Union*



We are seeing a repeat of the issues that were around in 1910 and 1920. ... That's what we see in the Communications Decency Act. That is what we see on a whole range of issues like TV ratings and tobacco advertising regulation. ... It is sort of a cultural McCarthyism, where you are not debating whether there is a Red under every bed, but whether or not the government ought to act like our parents. ... Free speech has always been dangerous to people in authority. ... That's why printing presses were licensed. That's exactly why the Internet is under siege, because people in authority see this as a way of getting around them, of challenging their positions of power. ... Censorship is reverse engineered. Once you allow it for a more advanced medium, it tends to end up bleeding all over.

—*Robert Corn-Revere, First Amendment attorney*



Instructional Idea

Have 14 student volunteers pair up to prepare oral arguments, one pro and one con, for each of the seven excerpts. Classmates will determine the winners of each debate. In researching their arguments, students should first consult the source document, *State of the First Amendment*, available through The Freedom Forum World Center, 1101 Wilson Blvd., Arlington, VA 22209, (703) 528-0800, www.freedomforum.org, or by calling (800) 830-3733.

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argument; they understand that, once restrictions are placed on these rights, it becomes easier to place further restrictions on them.

In the area of speech rights, most Americans are quick to support restrictions, particularly when sexually explicit and/or offensive material is at issue. For example, most Americans disagree with allowing nudity to be

One sign that the First Amendment is healthy is that the majority do not support two constitutional amendments that would alter it.

broadcast by the media or sexual material to be available on the Internet. Also, on a right-to-petition issue, seven in 10 do not think that groups should be allowed to hire people to influence government officials or policies. On free

press, strong majorities disagree that the use of hidden cameras should be allowed. And, on religion, while most Americans are willing to extend freedom to worship to groups regardless of how extreme their beliefs are, most also are willing to agree with allowing practices that blur the line between church and state.

One sign that the First Amendment is healthy is that the majority do not support two constitutional amendments that would alter it. While most Americans disagree with flag-burning as a form of political speech, only 49 percent would amend the Constitution to prohibit the practice; and while majorities would permit prayer in schools under some circumstances, only 42 percent would favor a school-prayer amendment to the Constitution.

The perceived importance and support for the First Amendment reflect Americans' sense that current applications of the freedoms are neither too restrictive nor too lax, but about right.

Interesting Research Facts

- Fifty percent of Americans name free speech as the right or freedom most important to Americans, with freedom to practice religion second at 14 percent.
- When read a list of rights and asked which were "essential," Americans responded in these percentages: right to a fair trial (86%), right to practice religion (81%), right to privacy (78%), right to speak freely (72%), right to practice no religion (66%), right to be informed by a free press (60%), right to assemble (56%), and right to own firearms (33%).
- Forty-nine percent of survey respondents had not heard or read of the recent U.S. Supreme Court ruling regarding the Internet.
- When speech is considered indecent or offensive or when it debases the flag, most Americans are strongly opposed to it.
- Over 70 percent of Americans oppose the use of words in public that might be offensive to racial minorities, sexually explicit material on the Internet, and the broadcast of nude or partially clothed persons.
- While more than three-quarters of Americans are opposed to burning or defacing the American flag as a political statement, they are evenly divided over amending the Constitution to make it illegal to burn or desecrate the flag.
- Sixty-eight percent of Americans are opposed to television networks being allowed to project winners of an election while many people are still voting.
- Those who believe jailing reporters is justified have increased significantly in the past 20 years, from 21 to 36 percent.
- Fifty-seven percent of Americans believe that teachers or other public school officials should be allowed to lead prayers in school; 81 percent believe that it is proper for a prayer to be said at a high school graduation ceremony if a majority of the graduating class favors it.
- Sixty-five percent of Americans do not believe that a group should be able to hire lobbyists to influence government officials or policies.
- Seventy-eight percent believe that curfews do not violate young people's First Amendment rights.
- Almost two-thirds of Americans report that the American educational system is doing only fair to poor when it comes to teaching about First Amendment freedoms.

Some 70 percent of those polled said that Americans have the right to speak freely, and the same number think that we have the right amount of religious freedom. In both these areas, 20 percent say there should be more freedom and 10 percent say there should be less.

Opinion is less favorable to the press, with about half saying the press has about the right amount of freedom and 38 percent saying it has too much. On the other hand, strong majorities hold that tabloid news should have the same protections as more traditional

continued on page 16

PERSPECTIVE

Prisons and the Religious Freedom Restoration Act

Margaret E. Fisher

Update on Law-Related Education, 22.1, 1998, p. 9. © 1998 American Bar Association.

“No, you can’t touch my medicine bag,” says one Native American inmate.

“I can only eat a Kosher diet,” says one Jewish inmate.

“I request to use peyote, a hallucinogenic drug, as part of my religious services,” says another inmate.

“Officer Mary cannot do a pat search of me because my religion forbids me to be touched by females other than my mother or wife,” says a Muslim inmate.

“I have the right to wear a crucifix around my neck,” says a Christian inmate.

“I have the right to circulate racist religious literature,” says another inmate.

Prison and jail inmates have filed civil rights cases in all of the examples above and many more, claiming that their rights to practice religion were violated. The important legal question is what standard or test will the courts use to decide whether or not inmates have these rights.

In 1993, the Religious Freedom Restoration Act (RFRA) was passed by Congress, granting people greater rights to practice their religion. Congress considered making an exception

that the law would not apply to prisoners. This it refused to do.

As an attorney who has conducted training of correctional administration, staff, and inmates for over 20 years and served as a court-appointed expert in several prison cases, I was involved in many discussions with administration and staff fearing the security problems that might arise if inmates were allowed greater leeway in practicing their religion within the institution.

The statute stated that anytime government substantially burdened religion, it had to justify its action by showing that it had a compelling state interest in doing so and that it was restricting religion in the least restrictive way. As the Legal Issues curriculum of one state training academy for corrections officers stated, “Virtually all the case law dealing with restrictions on religious practices in jails and prison is now effectively reversed! overturned! reopened to be litigated all over again, because of RFRA!”

But it never happened! During the four years when RFRA was the law of the land, inmates brought many cases claiming their rights to practice religion under RFRA were violated. Surprisingly, the outcomes of these cases were pretty much as they had been before RFRA was law. There was a rare situation in which security was shown not be threatened by the religious practice, as in the statewide ban

of the wearing of crucifixes by inmates. Because the ban applied to all inmates, including those in a minimum security setting where inmates were not likely to use them as weapons, one court struck down the statewide ban, stating that the department of corrections had not used the least restrictive means in restricting this religious practice. Courts generally determined that security is a compelling state interest and refused to expand the scope of inmate rights to practice religion from what was already protected by the First Amendment’s freedom of religion. ♦

Instructional Idea

Have students think about how a judge decides what is a valid religion. Are there some features that all religions have in common? If possible, arrange a tour of a local correctional facility or invite a corrections officer to class to talk about the benefits and challenges presented by inmates in the practice of their religions within an institution.

A Note to Teachers: Many legal issues involving religious freedom are controversial. This *Update* perspective gives background information, and the Instructional Idea provides an opportunity for you and your students to explore religious freedoms within institutions.

Margaret Fisher is an attorney with 21 years’ experience in educating the public in the law. She lives in Seattle, Washington.



State of the First Amendment: Freedom of Religion

The pressures on religious freedom are increasing.

Update on Law-Related Education, 22.1, 1998, pp. 10–16. © 1998 American Bar Association.

Today, there are disturbing signs in the United States that religious liberty—the freedom to believe or not to believe and to practice one’s faith openly and freely without government interference—is in danger. People undermining religious liberty include both those who seek to establish in law a “Christian America” and those who seek to exclude religion from public life entirely.

In our time, religion has become a source of divisiveness as people spar and sometimes resort to violence over issues of conscience and belief such as abortion, school prayer, and public school curricula. On the one side are those who think that religious fundamentalists and organizations such as the Christian Coalition are trying to impose their beliefs on society and thus undermine the secular tradition in institutions such as the public schools. On the other side are those who complain that this society allows insufficient attention, and accords no priority, to religious beliefs, especially in instruction and textbooks. Oliver Thomas, a lawyer who works for a number of different church organizations, says that “there is a bias against religion in academia and the media,

Adapted from “Freedom of Religion,” State of the First Amendment, Donna Demac (Arlington, Va.: The Freedom Forum, 1997), by permission of the publisher.

although it is not a conscious hostility.” The situation is made more complicated by the fact that the religious composition of the United States is becoming more diverse than ever. Along with many groups of Christians and Jews, this country is now home to growing numbers of Muslims, Hindus, Buddhists, and other believers, as well as nonbelievers.

The 1997 Supreme Court decision in *Agostini v. Felton*, 117 S.Ct. 1997, is an indication that the court’s position regarding the establishment clause is changing. By a 5–4 vote, the court held that publicly paid teachers can go into sectarian schools to provide Title I educational services without running afoul of the principle of separation of church and state.

Religion and Public Schools

One of the critical arenas for the issue of religious freedom in this country has been public education. It is in public schools that the conflict between private religious beliefs and the tradition of public secularism plays out with the most fervor, given that this is where the attitudes of the next generation of American adults are being shaped.

The issue of religion in public schools has sparked a variety of controversies throughout our history. In recent decades, two of the more contentious issues have involved whether evolution or creationism should be

Information in this article is used in the Teaching Strategy on page 41. Also the Student Forum on page 52 offers a technique to help students debate the issue of school prayer.

given precedence in teaching about the origins of the human race and whether there is a place for prayer in public schools. Prayer remains a major controversy. The proponents of creationism, after losing in court, *Edwards v. Aguillard*, 482 U.S. 578 (1987), have refocused their campaign to have creationism included in school curricula and evolution stricken and to make it financially easier for parents to send their children to private religious schools. That effort has given rise to the current debate over school vouchers.

School Prayer

Almighty God, we acknowledge our dependence on Thee and beg Thy blessings upon us, our parents, our teachers, and our country.

The Supreme Court declared in 1962 that this school prayer—which had been endorsed by the New York State Board of Regents—was state-sponsored establishment of religion, in violation of the establishment clause of the First Amendment, *Engel v. Vitale*, 370 U.S. 421 (1962). The issue of prayer in public schools has been

Historical Perspective

The First Amendment guarantee of religious freedom is a key element of the boldest political experiment the world has ever known. Many of this nation's early settlers came to this country to escape laws that compelled them to support government-favored churches. Yet, before the American Revolution, in many parts of the colonies, residents were required to support established churches with their tax money, and religious dissenters were punished. These practices generated strong resentment among many of the freedom-loving colonials. Yet it was not until after the Revolution that the principle of religious freedom was firmly established. The turning point was the successful crusade by Thomas Jefferson and James Madison to get Virginia to adopt the Statute of Religious Liberty in 1786. That law prohibited a state tax in support of all Christian churches in Virginia, but it also declared: "That no man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever, nor shall be enforced, restrained, molested, or burdened in his

body or goods, nor shall otherwise suffer on account of his religious opinions or belief. ..." (Virginia Bill for Religious Liberty, 1786)

The Virginia statute helped create a climate favoring religious freedom that encouraged Madison to include a similar provision in the Bill of Rights. Madison opposed every form and degree of official relation between religion and civil authority. For him, religion was a matter of individual conscience beyond the scope of civil power either to restrain or support. Of particular relevance to our time, Madison viewed state aid and taxation as no less obnoxious to the pursuit of religious freedom than other forms of state interference. Because of Madison, these sentiments found a secure place as the first freedoms written into the First Amendment—as the establishment clause, requiring the government to remain neutral concerning religion, and the free exercise clause, guaranteeing the right of all citizens to reach, hold, exercise, or change beliefs without government interference.

causing political and social brushfires ever since.

After the *Engel v. Vitale* decision, some complained that the Supreme Court had removed God from the classroom and that the ruling was anti-Christian and anti-American. Nevertheless, the court soon upheld two challenges to school prayers in Pennsylvania and Maryland. The first involved review of a Pennsylvania law that required the reading of at least 10 verses of the Bible at the start of each school day; a Maryland law called for Bible reading or the recitation of the Lord's Prayer.

When it became clear that the Supreme Court was not going to budge from its position barring school-sponsored prayer, 25 state legislatures adopted laws providing for a "moment of silence" at the beginning of each school day. These state statutes have led to a succession of Supreme Court decisions striking down laws whose "sole purpose" was to foster prayer in public schools.

Despite its strict stand against state-sponsored prayer in public schools, the

Supreme Court has indicated in several decisions over the last decade that teaching about religion in public schools is constitutional. In addition, a number of Supreme Court and lower court decisions have supported a variety of religious liberty rights for students. For example, the Supreme Court has ruled that the Ten Commandments might be capable of being integrated into a curriculum, *Stone v. Graham*, 449 U.S. 39 (1980). The court also has said that schools may not forbid students acting on their own from expressing their personal religious beliefs and must give them the same right to engage in religious activity as students have to engage in other activities. In 1995, President Clinton issued a directive concerning religious liberty and the rights of students, and the importance of religion in the public schools (see pages 12–13).

In spite of the growing consensus about the current state of the law, many public school administrators and teachers remain confused about what kinds of religious expression are permissible in school. Even more confu-

sion exists in the area of student-initiated prayer at graduation ceremonies. Seizing upon the current confusion surrounding school prayer, some members of Congress propose to amend the Constitution and modify the First Amendment's establishment clause. Rep. Ernest Istook Jr. (R-Okla.) has introduced the Religious Freedom Amendment, which he says is intended to address "a systematic campaign to strip religious symbols, references and heritage from the public stage." [A similar bill died in the previous congressional term because different sides could not agree on wording. Most conservative religious groups supporting the amendment did not want to return state-sponsored religion to public schools and opposed language that might lead school officials to be involved in religion. The amendment's proponents argued that their intent was to protect the right of students to practice their faith (presumably even in front of a captive audience).]

According to the ACLU, which strongly opposes Istook's measure, the

Christian Coalition has pledged \$2 million to lobby Congress for passage of the bill. The amendment's real effect, according to the ACLU, would be to allow government officials to make decisions that favor particular faiths over others. The amendment also would make it easier for public funds to go to religious institutions through school vouchers and other programs. The amendment would thus pit religious groups against each other for public dollars. Religious groups, including the National Council of Churches, the American Jewish Congress, and the Joint Baptist Conference, citing such potential negative effects, have voiced their opposition to such an amendment. They and other opponents believe it amounts to no more than religious coercion and that the First Amendment, as is, fully protects student religious liberties. At the same time, state legislators have continued to introduce school prayer amendments to state constitutions. In West Virginia, State Sen. Randy Schoonover has proposed to amend the state constitution to allow two minutes of daily voluntary prayer in public schools. Opponents of the Schoonover bill are puzzled by the necessity to include voluntary school prayer in the state constitution. Even if they are enacted, these state measures face serious challenges in the courts.

School Facility Use

Judges have become more tolerant of the use of school facilities for religious activities that are not part of the school's curriculum. At one time, schools concerned with potential establishment-clause violations tended to bar student religious groups from using school facilities. Early court decisions on this issue upheld the schools' actions because allowing access would create an "impermissible appearance of official support of religion," *School District of Grand Rapids v. Ball*, 473 U.S. 373 (1985). Courts also feared that allowing

Religious Expression in Public Schools

In 1995, President Clinton directed Secretary of Education Richard W. Riley to provide every U.S. school district with a statement of principles addressing the extent to which religious expression and activity are permitted in public schools. This statement of principles resulted.

Student prayer and religious discussion: The establishment clause of the First Amendment does not prohibit purely private religious speech by students. Students therefore have the same right to engage in individual or group prayer and religious discussion during the school day as they do to engage in other comparable activities. For example, students may read their Bibles and other scriptures, say grace before meals, and pray before tests to the same extent they may engage in comparable nondisruptive activities. Local school authorities possess substantial discretion to impose rules of order and other pedagogical restrictions on student activities, but they may not structure or administer such rules to discriminate against religious activity or speech.

Generally, students may pray in a nondisruptive manner when not engaged in school activities or instruction, and subject to the rules that normally pertain in the applicable setting. Specifically, students in informal settings, such as cafeterias and hallways, may pray and discuss their religious views with each other, subject to the same rules of order as apply to other student activities and speech. Students may also speak to, and attempt to persuade, their peers about religious topics just as they do with regard to political topics. School officials, however, should intercede to stop student speech that constitutes harassment aimed at a student or group of students.

Students may also participate in before or after school events with religious content, such as "see you at the flagpole" gatherings, on the same terms as they may participate in other noncurriculum activities on school premises. School officials may neither discourage nor encourage participation in such an event.

The right to engage in voluntary prayer or religious discussion free from discrimination does not include the right to have a captive audience listen or to compel other students to participate. Teachers and school administrators should ensure that no student is in any way coerced to participate in religious activity.

Graduation prayer and baccalaureates: Under current Supreme Court decisions, school officials may not mandate or organize prayer at graduation nor organize religious baccalaureate ceremonies. If a school generally opens its facilities to private groups, it must make its facilities available on the same terms to organizers of privately sponsored religious baccalaureate services. A school may not extend preferential treatment to baccalaureate ceremonies and may, in some instances, be obliged to disclaim official endorsement of such ceremonies.

Official neutrality regarding religious activity: Teachers and school administrators, when acting in those capacities, are representatives of the state and are prohibited by the establishment clause from soliciting or encouraging religious activity and from participating in such activity with students. Teachers and administrators also are prohibited from discouraging activity because of its religious content and from soliciting or encouraging antireligious activity.

Teaching about religion: Public schools may not provide religious instruction, but they may teach about religion, including the Bible or other scripture. The history of religion, comparative religion, the Bible (or other scripture)-as-literature, and the role of religion in the history of the United States and other countries all are permissible public school subjects. Similarly, it is permissible to consider religious influences on art, music, literature, and social studies. Although public schools may teach about religious holidays, including their religious aspects, and may celebrate the secular aspects of holidays, schools may not observe holidays as religious events or promote such observance by students.

Student assignments: Students may express their beliefs about religion in the form of homework, artwork, and other written and oral assignments free of discrimination based on the religious content of their submissions. Such home and classroom work should be judged by ordinary academic standards of substance and relevance and against other legitimate pedagogical concerns identified by the school.

Religious literature: Students have a right to distribute religious literature to their schoolmates on the same terms as they are permitted to distribute other literature that is unrelated to school curriculum or activities. Schools may impose the same reasonable time, place, and manner or other constitutional restrictions on distribution of religious literature as they do on non-school literature generally, but they may not single out religious literature for special regulation.

Religious excusals: Subject to applicable state laws, schools enjoy substantial discretion to excuse individual students from lessons that are objectionable to the student or the students' parents on religious or other conscientious grounds. School officials may neither encourage nor discourage students from availing themselves of an excusal option. ...

Released time: Subject to applicable state laws, schools have the discretion to dismiss students to off-premises religious instruction, provided that schools do not encourage or discourage participation or penalize those who do not attend. Schools may not allow religious instruction by [anyone] on school premises during the school day.

Teaching values: Though schools must be neutral with respect to religion, they may play an active role with respect to teaching civic values and virtue and the moral code that holds us together as a community. The fact that some of these values are held also by religions does not make it unlawful to teach them in school.

Student garb: Students may display religious messages on items of clothing to the same extent that they are permitted to display other comparable messages. Religious messages may not be singled out for suppression but rather are subject to the same rules as generally apply to comparable messages. When wearing particular attire, such as yarmulkes and head scarves, during the school day is part of students' religious practice, under the Religious Freedom Restoration Act schools generally may not prohibit the wearing of such items.

ensure that student religious groups would be on equal footing with secular groups. The act has withstood the scrutiny of the Supreme Court, which has ruled that allowing access to religious groups does not violate the establishment clause because there is no government endorsement of religion. If a school allows other noncurricular student groups to use its facilities, it must allow religious student groups to do so (but a school may keep out religious student groups if it keeps out all noncurricular student groups), *Westside Community Schools v. Mergens*, 496 U.S. 226 (1990). Despite the support of Congress and the courts, the EAA has had a limited effect on the firmly entrenched belief of some school officials and teachers that the First Amendment prohibits any form of religious expression on public school grounds. Students are often surprised to learn that they have the right to carry a Bible, wear a religious message on a T-shirt, and meet with other students to discuss their faith on school grounds. The Supreme Court also has ruled in *Rosenberger v. University of Virginia*, 115 S.Ct. 2510 (1995), that if a public university subsidizes other student publications, it cannot exclude a religious magazine.

School Vouchers

Many of the proponents of religion-oriented school instruction have turned their attention from influencing public school curricula to helping like-minded parents get their children into private religious schools. This brings the debate to the tricky issue of money. Supporters of private schools argue that they should be able to take the money that would be used to educate their children in public schools and apply it to the tuition charged by religious schools. This would be accomplished by a system of vouchers. The resulting controversy is not limited to the question of religious education; it is entangled with the larger question of school choice. Some

access would excessively "entangle" schools in religious affairs. As a result of these rulings, religious groups were placed at a distinct disadvantage to

secular groups that were allowed to use the same facilities. Responding to these decisions, Congress passed the Equal Access Act (EAA) of 1984 to

advocates of vouchers believe such a system should allow only parents in neighborhoods with subpar public schools to send their children to better public schools in other areas. It's not surprising that support for vouchers runs high in minority communities. The First Amendment comes into play with those voucher plans—including ones that have been tested in several states—that allow parents to use public funds at religious or private schools. Voucher opponents say proposals of this kind could result in large shifts of resources away from public education.

There are other problems associated with voucher systems. Test programs in Milwaukee and Cleveland have come under fire not only for violating the establishment clause of the First Amendment, but also for encouraging fraud among private schools competing for tax dollars.

In 1996, the National School Boards Association conducted a nationwide survey of school board members on such issues as vouchers and school prayer. Fewer than one-third supported a constitutional amendment allowing prayer in the public schools; only 31 percent supported voucher plans that permit parents to choose private and religious schools in addition to public schools. Only 20 percent said parents who send their children to private and religious schools should receive tuition tax credits from the government.

RFRA

Congress passed the Religious Freedom Restoration Act (RFRA) in 1993, responding to an unprecedented display of unity among diverse religious organizations. RFRA lowered the hurdle for plaintiffs who claimed that a government agency was imposing an excessive limitation on religious activities. Once a court determined that a government action had placed a substantial burden on religion, the state needed to show both that it had a com-

Supreme Court Establishment Clause Interpretations, 1947–97

1947 *Everson v. Board of Education of the Township of Ewing*, 330 U.S. 1, 29 (1947)

Everson was the first time that the Supreme Court determined what an establishment of religion was, with the justices unanimously supporting the principle that church and state should be separate (called strict separation). All the justices agreed with Thomas Jefferson that “the clause against establishment of religion by law was intended to erect a wall of separation between church and state.” At the same time, they held that public money could be used to pay transportation costs for children to attend sectarian schools.

1962 *Engel v. Vitale*, 370 U.S. 421

The Court declared that a school prayer endorsed by the New York State Board of Regents was state-sponsored establishment of religion, in violation of the establishment clause. Prayer in public schools became a hot issue that continues today.

1971 *Lemon v. Kurtzman*, 403 U.S. 602, 612

With *Lemon*, the previous consensus began to erode, with the majority opinion repeatedly saying the establishment clause’s meaning is unclear. The three-part *Lemon* test was developed to determine whether the establishment clause has been violated: For a law or government policy or practice not to do so, (1) it must have a secular purpose, (2) its principal effect must neither advance nor inhibit religion, and (3) it must not foster excessive government entanglement with religion.

1980 *Stone v. Graham*, 449 U.S. 39

The Court ruled that the Ten Commandments might be capable of being integrated into a curriculum.

1984 *Lynch v. Donnelly*, 465 U.S. 668, 687-689

Justice O’Connor wanted to refine the *Lemon* test with the endorsement test, which would focus on whether government actions endorse religion. She dropped *Lemon*’s excessive entanglement part and rephrased its purpose and effect tests, with her approach asking two questions: Is the government’s purpose to endorse religion? Does the statute actually convey a message of endorsement?

1985 *Wallace v. Jaffree*, 472 U.S. 38, 109

The Court used the *Lemon* test to hold an Alabama silent prayer law unconstitutional because it had no secular purpose and was intended to advance religion. In a long dissent, Justice Rehnquist rejected the *Lemon* test in its entirety in a full-blown attack on its foundations.

1989 *County of Allegheny v. American Civil Liberties Union*, 492 U.S. 573, 660

Justice Kennedy proposes a coercion test, whose purpose is to clarify the border between what is government accommodation of religion and establishment of religion, with the implication being that accommodation is constitutional, while establishment is not. Under this test, government may not

(1) coerce anyone to support or participate in any religion or its exercise, or (2) give direct benefits to religion in such a degree as to establish religion or tend to do so.

1990 *Westside Community Schools v. Mergens*, 496 U.S. 226

While schools concerned with potential establishment-clause violations at one time tended to bar student religious groups from using school facilities, this decision upheld the Equal Access Act (EAA) of 1984, created to ensure that student religious groups would be on equal footing with secular ones. The Court held that allowing school-facility access to religious groups does not violate the establishment clause because there is no government endorsement of religion.

1992 *Lee v. Weisman*, 505 U.S. 577

In a case in which the Court might have rejected *Lemon* and the wall of separation, substituting the coercion test that appeared to allow government to support religion, the justices surprisingly voted 5–4 that graduation prayers violated the establishment clause, effectively stopping the accommodationist momentum.

1994 *Board of Education of Kiryas Joel Village School District v. Grumet*, 512 U.S. 687

The Court struck down a special New York school district formed for disabled Satmar Hasidic Jewish children who would experience “panic, fear, and trauma” in the public school to which they would otherwise have to go on the grounds that such favoritism violated the establishment clause. Three justices concurred, however, that there was not a bit of evidence to show that any other religious group had been disfavored and that the establishment clause should not be used to repeal a national tradition of religious toleration.

1995 *Rosenberger v. Rector and Visitors of the University of Virginia*, 115 S.Ct. 2510

The Court held that the University of Virginia could not deny monies from its student activity fund to a religious group for publication expenses because doing so constituted viewpoint discrimination in violation of the group’s free-speech rights.

1997 *City of Boerne, Texas v. Flores*, 117 S.Ct. 293

The 1993 Religious Freedom Restoration Act (RFRA), which had lowered the hurdle for plaintiffs who claimed that a government agency was imposing an excessive limitation on religion activities, was struck down by the Court, which held the act unconstitutional because the extensive reach of the legislation was disproportionate to the scope of the claimed injuries; the RFRA intruded both on the Court’s authority to interpret the Constitution and on the sovereignty of the states.

1997 *Agostini v. Felton*, 117 S.Ct. 1997

In a 5–4 vote overturning two 1985 decisions and holding that the establishment clause is not violated when public school teachers provide Title I educational services in both sectarian and nonsectarian private schools during school hours. The Court held that publicly paid teachers may go into sectarian schools to provide instruction without running afoul of the principle of separation of church and state.

elling government interest and that it had used the least restrictive means to further that interest. The law was criticized by other legal experts as an act of overreaching by Congress, in violation of the separation of powers.

The issue of RFRA’s constitutionality was presented to a court after the archbishop of San Antonio sought to tear down an old church in Boerne, Texas, in order to build a larger facility. The city wouldn’t allow the demolition, claiming that it would violate a local historic-preservation ordinance. The archbishop argued that the ordinance violated free-exercise rights protected under RFRA and took the city to court. This case reached the Supreme Court in the spring of 1997. The court held that RFRA was unconstitutional because the extensive reach of the legislation was disproportionate to the scope of the claimed injuries, *City of Boerne, Texas v. Flores*, 117 S.Ct. 293 (1997). A growing number of states are working on “state RFRA’s” to keep alive its heightened burden on government in situations involving religious practice.

Reconciliation

As parents, educators, and others wrestle with the problems surrounding religion today, America remains a nation deeply committed to the freedom to choose in matters of faith without government interference. The most promising developments of recent years are the attempts to work out differences in religious beliefs through communication rather than confrontation.

The commitment by a number of religious groups to working out their differences has led to a series of public dialogues in a number of communities. These meetings have brought various stakeholders to the table, including conservative and moderate religious organizations, school administrators, teachers, and parents, as well as groups such as the Christian Legal Society, People for the American

More for Teachers . . .

For an award-winning analysis of the Supreme Court's interpretations of the establishment clause through 1994, and an accompanying teaching strategy, see *Update on Law-Related Education*, 18.2 (spring 1994): 14-31. Ordering information is available at (312) 988-5735, <http://www.abanet.org/publiced>, or E-mail at abapubed@abanet.org.

Way, the American Association of School Administrators, and the National Education Association. There are numerous examples of forums, which have been sponsored by various organizations. The success of such events has been due to the mutual recognition of the serious social damage that could result from prolonged antagonism. Such efforts are part of a series of steps taken in the last decade of the century to advance religious liberty. They show that the principles of the First Amendment can be used to find new solutions to contentious issues surrounding religious liberty. In June 1988, leaders representing many segments of American life signed the Williamsburg Charter, which addresses the dilemmas and opportunities posed by religious liberty in American public life. The charter calls for a renewed national compact as a foundation for forging agreement by both religious and nonreligious organizations.

Conclusion

Religious freedom is at the heart of this country's experiment with democracy. The continuing controversies are proof of continued passion for liberty of conscience, even as debates rage about whether religion receives sufficient attention from the media, educators, and the government. Disputes involving religious liberty reflect

America's ambivalence about the limits of individual liberty. At present, the country's internationally recognized commitment to tolerance of all cultures and faiths is being tested and torn. The question to be answered is whether we can sustain this commitment to the religion clauses of the First Amendment into the next century. ♦

The Freedom Forum . . .

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newspapers, that news sources should be kept confidential, and that the media should be permitted to publish government secrets.

Inadequate Education?

The poll suggests cause for concern about how well Americans are educated about First Amendment topics. Only half of Americans say they ever had a class on the subject, and only 30 percent think that schools are doing

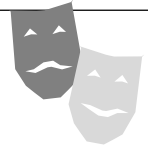
an adequate job of educating youngsters in their rights. Few Americans are able to name all five of the First Amendment freedoms.

Americans Able to Name First Amendment Rights

Right	Percent
Speech	49
Religion	21
Press	11
Assembly	10
Petition	2

Three in 10 of those surveyed said they have found themselves in situations when they did not voice their opinion because they thought they might in some way be punished or penalized for doing so. While the majority of people do feel that they may express themselves without fear, it appears that a substantial minority feel otherwise. ♦

Barnyard Ballyhoo



Office dust-up gets beastly

Sometimes when he's at work, Memphis attorney George Rich claims to hear strange noises. Though the noises are similar to those of a pig or a mule, sometimes even a hyena, Rich says they are made by a creature with two legs, not four.

More than a year ago, Rich shared a practice with Gary Jewel. Since the partnership broke up, Rich maintains that Jewel has been trying to run him out of the office with the bestial cacophony, among other distractions.

He has filed suit in the state Chancery Court to decide how the former partners' debts and assets should be divided. Rich also seeks unspecified damages for intentional infliction of emotional distress.

Jewel claims he and his two assistants have merely been trying to foster a lighthearted atmosphere around the office. "We horse around a little bit," he says. "There are some animal sounds we make occasionally."

Both parties like the office and want to stay, though Jewel says Rich originally agreed to move. "He broke the partnership," Jewel says, adding that the issue of who goes could be decided simply by a coin toss.

"I can't see this going down to the court," Jewel says. "What's the judge going to do? Make me stand up and oink for him?"

Adapted from ABA Journal, January 1998, p. 16.



Muslim Students' Needs in Public Schools

Can public schools accommodate the religious needs of students?

Charles Haynes

Update on Law-Related Education, 22.1, 1998, pp. 17–21. © 1998 American Bar Association.

There are now millions of American Muslims. Within the next 20 years, Islam will become the second largest religion, after Christianity, in the United States. Worldwide, there are over one billion Muslims. Many American educators are finding it necessary to overcome the common lack of familiarity with Islam as growing Muslim communities across the nation express their needs and make their contributions in the public school environment.

Islam in America

There are records of Muslims in America as early as the 18th century, and there is evidence that settlers from Spain may have included persons of Muslim heritage before that. Archival materials indicate that many slaves brought to the Americas were Muslims. In the late 19th and early 20th centuries, significant numbers of Mus-

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Adapted from Charles Haynes, "The Needs and Requirements of Muslim Students in Public Schools," in Religion in American History: What to Teach and How (Alexandria, Va.: Association for Supervision and Curriculum Development, 1990), by permission of the publisher.

lims began to migrate to the United States from the Middle East, despite restrictive and discriminatory immigration laws. From the middle of the 20th century on, Muslim immigrants arrived from other Muslim regions, such as South Asia, Africa, and Arab countries. Today, by some estimates, 14 percent of all immigrants entering the United States are Muslims.

According to the American Muslim Council in Washington, D.C., as many as 40 percent of the Muslims in the United States are African Americans whose families converted to Islam in the 20th century. This growing Muslim community is adapting to and flourishing in the American environment. Its vitality can be seen in the more than 1500 mosques and Islamic centers across the country.

American Muslims face a variety of challenges as they practice their faith in this pluralistic society, and they are meeting these challenges by becoming more organized and visible. Highly supportive of education and cooperation between parents and the schools, local and national Muslim organizations nevertheless have important issues to address regarding their communities' effective participation in public schools. Among these organizations is the Council on Islamic Education, a national, scholar-based resource organization that provides information to teachers, education officials, and textbook publishers.

See the Teaching Strategy for this article on page 41.

Islamic Beliefs and Practices

Islam means "peace through submission to God," and a *Muslim* is "one who submits to the will of God." Muslims recognize a continuous line of prophets and revelations, beginning with Adam and extending through Noah, Abraham, Moses, and Jesus, ending with Muhammad as the last prophet, who completed God's message to humankind. The Qur'an is the sacred scripture of Islam, which Muslims hold to be the literal word of God revealed to Muhammad through the angel Gabriel.

Muhammad's role, in addition to being the vessel of revelation, is viewed as providing a model behavior in accord with the guidance given in the Qur'an. Thus, the two sources of the principles and practices that make up a Muslim way of life are the Qur'an and Muhammad's example or precedent, recorded in various authentic sources. Interpretation and application of these two sources constitute the evolving body of Islamic law. This includes guidelines affecting prescribed modes of worship, family, social and financial relations, diet and dress, among others.

The basic practices of Muslims are identified as the "Five Pillars," acts of

worship with broad implications for individual and communal life:

1. Acceptance and repetition of the creed: "There is no god but God, and Muhammad is the prophet of God." This confession of faith and its repetition constitute the first step in being a Muslim. The concept of unity stated in the creed is central to the Islamic model for spiritual and social life.
2. Prayer: Every pious Muslim sets aside time each day for five acts of devotion and prayer at dawn, at midday, at midafternoon, at sunset, and after nightfall.

Friday is the special day of community prayer. The faithful assemble in the *masjid* (mosque) for prayers.

3. Almsgiving: Muslims who have the means to do so are required to give to those who are less fortunate. Almsgiving is considered an act of worship both for offering thanks to God for material well-being and as purification of wealth.
4. Fasting during the sacred month of Ramadan: During Ramadan, all healthy Muslims are required to abstain from food, drink, and conjugal relations from dawn to sunset. The first day of the next month is *Eid Al-Fitr*, "the Festival of Ending the Fast." This festival is a joyous celebration.
5. Pilgrimage: Every Muslim hopes to be able to make the *Hajj* (pilgrimage) to the holy city of Makkah, in Saudi Arabia, at least once in a lifetime. Pilgrimage takes place during *Dhu al-Hijjah*, the twelfth month of the lunar Islamic calendar.

The pilgrimage rites commemorate the Abrahamic heritage of Ka'bah and other sites. The Ka'bah is the focal point of Muslims' daily prayer and a symbol of unity and continuity of faith. On the tenth of *Dhu al-Hijjah*, Muslims celebrate *Eid al-Adha*, the Festival of the Sacrifice. Muslims around the world observe this holiday simulta-

neously with the pilgrims at Makkah.

Among the practices required by Islamic law that distinguish Muslims wherever they live are teachings concerning modest dress for Muslim men and women in public, as well as required decorum concerning mixing together of the two sexes and standards of personal hygiene. The Muslim diet excludes alcohol and pork products in any form and requires certain procedures in the slaughter of animals.

Students' Religious Needs and the First Amendment

The Council on Islamic Education (CIE) and other organizations have identified the basic needs and requirements of Muslim students in public schools, as they seek to uphold their faith. They also raise vital church-state issues public schools are now struggling to resolve. These organizations appeal to religious freedom. In the American context, of course, this is a reference to the free exercise clause of the First Amendment.

Local and national organizations have urged public schools to make accommodations for Muslim students so that they may practice their faith. These accommodations, already implemented to some degree in many states, help practicing Muslims attending public schools meet very real religious needs. However, some schools, as state-sponsored institutions, may find some of the identified accommodations difficult to make.

At issue is a question that runs through public education history: To what extent may the state accommodate the needs and requirements of religious communities represented in schools? Or, in a broader context, *when does the establishment clause of the First Amendment prohibit the state from accommodating free exercise claims of religious groups?*

The requirements of religious belief protected under the free exercise

clause of the First Amendment can come into tension with the establishment clause when the practice of one's belief is conducted in a state institution such as a public school. The requirement not to hinder belief must be balanced by a sensitivity not to provide inadvertent state support for a particular belief. Some Americans argue that state support is valid if it is nonpreferential, while others argue that no state support is allowable.

Many accommodations may be easily made by sensitive and thoughtful public school administrators without raising constitutional questions. Muslim students should be able to wear modest clothing or refrain from attending social activities without violating school policies, for example.

Students in most public schools are routinely allowed excused absences for religious holidays. Such a policy is generally considered a reasonable accommodation to the religious needs of a religiously diverse school population. Accordingly, several state and local districts with large Muslim populations have placed Muslim holidays alongside other religious holidays on the school calendars for teachers' information and planning.

Many schools have excusal policies that allow students to opt out of limited portions of the curriculum that offend their religious beliefs. If focused on a specific discussion, assignment, or activity, such requests should be routinely granted in order to strike a balance between the students' religious freedom and the school's interest in providing a well-rounded education. The easiest requests to grant are accommodations focused on activities connected with such holidays as Halloween or Valentine's Day. If opt-out requests cover significant academic portions of the curriculum, however, schools may be unable to excuse students on educational grounds.

Physical education presents a number of difficulties, especially in school districts that require coeducational

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Muslim Students' Religious Needs

Terminology

Those who practice the faith of Islam are known as Muslims, literally “those who submit” to God. The spelling *Muslim* is considered more accurate than *Moslem*, and the term is preferable to *Islamic* when referring to people. The terms *Muhammadanism* and *Muhammadan* are inappropriate as references to the faith and its adherents, respectively.

The adjective *Islamic* should be used only for what pertains to the religion itself (Islamic beliefs, Islamic law, etc.), while *Muslim* should be used to denote the works and acts of Muslims or groups of people and their institutions (such as Muslim women or men, Muslim population, Muslim countries or civilization, Muslim art, etc.).

Fulfilling Religious Obligations

Muslims become thoroughly accountable for fulfilling religious obligations upon reaching puberty, although many Muslim children learn and perform the various duties at an earlier age. Muslim students in public schools may express a desire to adhere to certain religious principles or fulfill certain religious requirements. It is important to note that many of the religious needs outlined here can be met through the individual initiative of students and/or their parents, in which the main accommodation by the school lies in creating a supportive atmosphere of tolerance and respect for freedom of individual choice. Over the past 10 years, many schools and school systems have found practical and mutually acceptable solutions to meeting the needs outlined below.

Daily Worship (*Salah*)

Muslims engage in formal worship or prayer (*salah* in Arabic) five times daily. Depending upon seasonal time changes and school schedules, one or two of the worship times (midday and afternoon) may fall during typical school hours, and thus some suitable arrangement should be made for students who wish to fulfill this obligation. Teachers should provide Muslim students who are conscientious about observing their prayers with an unused area for a few minutes during lunchtime or afternoon break for this purpose.

Suggestion: Allow students to conduct their daily prayers in an empty room on campus during lunchtime and/or breaks.

Friday Congregational Worship (*Jumah*)

For Muslims, Friday is a day of congregational worship. The Friday prayer takes the place of the midday worship performed on other days and occurs close to most students' lunch hour. The sermon and worship typically

require 30 to 45 minutes to complete. Some Muslim students may wish to make arrangements to leave campus temporarily to attend congregational prayers at a local *masjid* (mosque), while others may ask to use an empty classroom to conduct the worship service themselves.

Suggestions: Allow students to perform the Friday worship in an empty room on campus during lunchtime.

Allow students to be excused for the time required to attend a local *masjid* and to make up any missed work.

Dietary Needs

The Qur'an specifies which foods are lawful and unlawful for Muslims to eat. Islam prescribes a particular method for slaughtering lawful animals for meat, designed to minimize suffering for the animal. The meat of lawful animals, such as cows, goats, and chickens, among others, that are slaughtered in this prescribed manner is commonly designated *halal*, or lawful. Seafood is exempt from rules for slaughter.

The Qur'an states that the food of Jews and Christians is lawful for Muslims, provided that certain conditions of method, cleanliness, and purity have been fulfilled. Some Muslims eat meat of lawful animals available commercially in American society, while others, believing the above-mentioned conditions have not been met, eat only meat from animals that have been slaughtered in the prescribed way by a Muslim butcher.

The meat of swine is prohibited in Islam. Muslims do not eat pork or foodstuffs made with pork derivatives such as gelatin, lard, and certain enzymes. Examples of such foods include pepperoni pizza, pork hot dogs, and certain brands of refried beans, tortillas, gelatin desserts, candy, and marshmallows, unless these contain kosher gelatin. Consumption of alcoholic beverages is prohibited in Islam. Muslims avoid foodstuffs prepared with alcohol as well.

Suggestions: Muslim students can be asked to bring *halal* meat dishes for parties, picnics, and potlucks.

Vegetarian alternatives can be provided for Muslim students who only eat meat available directly from Muslim sources.

Baked goods made with vegetable shortening should be requested for such events in order to avoid products or foods containing lard or animal shortening. Teachers should be made aware of gelatin as a source of pork derivatives when they provide treats.

Fasting (*Sawm*)

During the Islamic month of Ramadan (a lunar month of 29 or 30 days), Muslims abstain from all food and drink from dawn to sunset. This religious duty is known as *sawm* in Arabic. Many Muslim students observe the fast.

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Consequently, they will be unable to participate in meals or refreshments during the daylight hours. In addition, they will not be able to engage in heavy physical exertion often required in physical education classes during this time.

Suggestions: If students eat lunch in a common cafeteria, Muslim students should be allowed to spend lunchtime during Ramadan fasting in an alternative location, such as a study hall or library.

Physical education teachers should provide alternatives to rigorous physical exercise during Ramadan.

Additional Issues

Mixing of the Sexes

As a general principle, Muslim men and women minimize casual mixing of the sexes in society, emphasizing strong adherence to the marital bond. Dating, mixed-sex dancing, or any form of premarital intimacy are not allowed in Islam. Consequently, conscientious Muslim students are likely not to participate in proms and dances or similar events. In terms of mixing in physical education classes, segregated sports and activities are preferred by Muslim parents. This is especially true for swimming classes.

Suggestions: Well-meaning school personnel should avoid putting unnecessary stress on youngsters by encouraging them to participate in what they consider “normal” socializing activities such as dances or giving the impression that a student who is not involved in these activities is antisocial or socially immature and needs to be coerced into participation.

Modesty and Muslim Modes of Dress

Islam places great emphasis on modesty in dress and behavior for both sexes. Men and women are expected to dress in clothing that does not reveal the features of the body. As part of their Islamic dress, many Muslim women and girls wear what is termed *hijab*, commonly used in reference to a scarf or head covering, but more broadly meaning appropriate covering of the entire body except for hands and face.

Physical education classes can pose certain problems for Muslim children, since such courses typically require students to wear shorts and tank tops. Such attire is not permissible for Muslim women and girls, and men and boys must wear shorts that reach at least to the knees.

Muslims of both sexes are required to be modest even in front of persons of the same sex. Therefore, situations requiring nudity in front of others, such as using the toilet and taking showers in an open area devoid of partitions or curtains, present serious problems for a Muslim child.

Suggestions: During P.E. activities allow female Muslim students to wear long-sleeved T-shirts and sweat pants,

instead of tank tops and shorts, and male students to wear long shorts. Also, Muslim girls who observe *hijab* must be allowed to wear appropriate modest attire and head covering in mixed classes. Moreover, swimwear that covers more of the body than most swimsuits should be allowed for Muslim students.

Islamic Holidays

Muslims observe two major religious holidays during the year. *Eid al-Fitr* (Festival of Ending the Fast) is the celebration that occurs after Ramadan, while *Eid al-Adha* (Festival of the Sacrifice) is the celebration that coincides with the end of the *Hajj*. On the day of *Eid*, a worship service is held in the morning at a local *masjid* or designated site. Afterwards, Muslims visit each other’s homes to celebrate, share meals, and exchange gifts. These Muslim holidays are of similar importance and significance to Muslims as are Christmas and Easter to Christians and Hanukkah and Passover to Jews.

Eid celebrations (like other important dates in Islam) occur within the Islamic lunar calendar and thus take place roughly eleven days earlier each year in relation to the standard Gregorian calendar. Schools can consult a local *masjid* for information on the *Eid* dates each year.

Suggestions: Muslim students should be given excused absences to participate in the two major religious holidays in Islam.

School officials and teachers are requested not to schedule standardized testing or exams on these holidays and to allow for makeup time on important assignments so that Muslim students can avoid any adverse effects upon their academic efforts.

Curriculum Issues

Teaching About Religions

Instructional materials and classroom activities should adhere to the civic framework and approaches to teaching about religion. As it is very common for such materials to contain major errors and misconceptions that contradict the guidelines for accurate and authentic portrayal of Islam, Muslim students should be allowed the opportunity to prepare research reports and state their opinions regarding errors they have identified in mandated material. (These guidelines are described in detail in Chapter 7, Haynes and Thomas, eds., *Finding Common Ground: A First Amendment Guide to Religion and Public Education*, The Freedom Forum First Amendment Center, 1994.)

Art/Art History

Some aspects of Western culture are viewed with reticence by Muslims, as they differ from Islamic values and principles. For example, much of Western art focuses on

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the human form, and nudes are a prominent component of paintings. The concept of modesty in Islam makes viewing such works a strange exercise for some Muslims, though doing so may seem quite ordinary for others. Moreover, the emphasis on the human form appears to reflect a human-centered view of the world rather than the God-centered one found in Islam and to contradict the injunctions against representative art to which many Muslims adhere.

Dance

After the age of puberty, classes necessitating mixed dancing are not appropriate for Muslim students, whether cultural or other types of dances are involved. There are varying views among Muslims about single-sex folk or cultural dancing for older children. Some Muslims also disapprove of music. It is desirable to give Muslim students the opportunity to opt out or participate in an alternative activity if they so choose.

Drama

Drama classes or exercises involving performance of scenes from the Nativity or acting as deities, gods, or god-

esses of mythology may be objectionable to Muslims. Other dramatic roles and classroom role-plays are generally acceptable, as long as the concerns regarding modest dress, mixing of the sexes, and physical contact are taken into consideration.

Field Trips/Camping

Regarding school outings, Muslim parents may not allow participation in overnight mixed-sex outings, though some would permit single-sex outings of similar nature. Day-long field trips typically meet with approval. Organizers of such events should keep in mind the needs of Muslim students, such as allowing time for worship during breaks (Islamic worship accommodates travel with increased flexibility), allowing them to gracefully opt out of communal experiences involving prohibited foods, the need for privacy in showers and bathrooms, and appropriate forms of interaction between boys and girls.

From Teaching About Islam and Muslims in the Public School Classroom: A Handbook for Educators, 1995, Council on Islamic Education, 9300 Gardenia St., #B-3, Fountain Valley, CA, 92708; (714)839-2929.

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P.E. classes. Here the public school's interest in developing a particular physical education curriculum may come into conflict with religious practices of Muslims and others.

More difficult still is the question of whether the state should construct separate, private showers or provide enclosed toilets. Since such accommodations would involve spending tax money to meet the needs of a particular religious group, some will argue that the public schools are prohibited by the establishment clause from making these changes. Others might appeal to the free exercise clause, claiming that by not providing these facilities the state is forcing Muslims to choose between public education and obedience to the strictures of their faith. Here again, a third position might be that the schools are not required to provide such facilities but may do so without "establishing" religion, especially if schools provide a secular reason for doing so that benefits many students, such as recognizing the possible benefit of a privacy

option for any student who so chooses. For schools with large Muslim populations, this last position may prove the only practical alternative.

Religious dietary restrictions have led to requests concerning the labeling and preparation of food. Meeting these requests may raise First Amendment, as well as practical, questions for some school officials. Schools, especially those with few Muslim students, may resist investing the time and money required to make these accommodations. And it is unlikely that the courts will compel school cafeterias to take into account the religious requirements of all students. Nevertheless, some schools do label food and provide a variety of selections in an effort to accommodate the health, dietary, and, in some cases, religious needs of their students.

Two accommodations concern the obligation to pray. Excusal for Friday prayer off campus may present some practical problems for class scheduling, but there should be no legal barrier if it is construed as a "released time" program. In *Zorach v. Clausen*

(1952), the Supreme Court ruled that schools may release students during school hours to participate in off-campus religious programs.

Schools may find it more difficult to excuse students for 15 minutes of afternoon prayer in a designated area. Since the time for prayer is somewhat flexible (mid-afternoon), schools may expect students to find time in their schedule to pray without interrupting class time (this may be possible only at the high school level). Public schools will certainly be challenged on constitutional grounds if a particular area of the school is designated as a place for prayer. The most an administrator may be able to do is to indicate what rooms, if any, are available to students for study or other activities between classes.

As reflection shows, questions involving religious needs are challenging but not insurmountable—especially if practical and constitutional solutions are sought in light of the promise of American pluralism and the principles that lie behind the American system of religious liberty. ♦



Developing Standards for Constitutional Change

Standards can provide guidelines for thinking about proposed amendments to the Constitution.

Citizens for the Constitution (CFTC)

Update on Law-Related Education, 22.1, 1998, pp. 22–27. © 1998 American Bar Association.

A Note to Teachers: Portions of this article have been adapted for use with the strategy on page 44. See that strategy for these materials, which can be reproduced for classroom use: a compendium of constitutional amendments, a listing of the eight standards discussed in this article, and a web site where the constitutional amendment proposals considered by the 104th and 105th Congresses can be found. Also see the strategy on page 48.

No newly proposed constitutional amendment has been adopted since 1971. Nonetheless, there has been a sudden rash of proposed amendments that have moved farther along in the process than ever before and that, if enacted, would revise fundamental principles of governance such as free speech and religious liberty, the criminal justice protection contained in the Bill of Rights, and the methods by which Congress exercises the power

Reprinted with permission of The Century Foundation/Twentieth Century Fund, New York; these standards will appear in spring 1998 as “Great and Extraordinary Occasions”: Developing Standards for Constitutional Change. For more information, contact the publisher at 1755 Massachusetts Avenue, NW, Washington, DC 20036, www.citcon.org.

of the purse. Within the last few years, five proposed constitutional amendments—concerning a balanced budget, term limits, flag desecration, campaign finance, and procedures for imposing new taxes—have reached the floor of the Senate, the House, or both bodies. Two of these—the balanced budget amendment and the flag desecration amendment—passed the House, and a version of the balanced budget amendment twice failed to win Senate passage by a single vote. Still other sweeping new amendments—including a “victim’s rights” amendment, a “religious equality” amendment, and an amendment redefining United States citizenship—have considerable political support.

There are many explanations for this new interest in amending the Constitution. Some Republicans, in control of both Houses of Congress for the first time in several generations, want to seize the opportunity to implement changes that many of them have long favored. Some Democrats, frustrated by a political system they view as fundamentally corrupted by large campaign contributions, want to revisit the relationship between money and speech. Some members of both parties have blamed what they consider to be the Supreme Court’s judicial activism for effectively revising the Constitution, thereby necessitating resort to the amendment process to restore the document’s original meaning.

Unfortunately, however, very little attention has been devoted to the wisdom of engaging in constitutional change, even to advance popular and legitimate policy outcomes. The Citizens for the Constitution (CFTC) believes that the plethora of proposed amendments strongly suggests that the principle of self-restraint that has marked our amending practices for the past two centuries may be in danger of being forgone.

There are several good reasons for attempting to reaffirm this self-restraint. Restraint is important because constitutional amendments bind not only our own generation, but

Article V of the U.S. Constitution

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by Congress.

future generations as well. Constitutional amendments may entrench policies or practices that seem wise now, but that end up not working in practice or that reflect values that become no longer widely shared. Contested policy questions should generally be subject to reexamination in light of the experience and knowledge available to future generations. Enshrining a particular answer to these questions in the Constitution obstructs that opportunity.

Our experience with three previously proposed amendments, one that was adopted and later repealed, and two others that moved far along in the process but were not adopted, serve to illustrate these points:

First, when the Prohibition Amendment was adopted in 1919, many Americans thought that it embodied sensible social policy. Yet within a short time, there was broad agreement that the experiment had failed, in part because enforcing it proved enormously expensive in dollars and social cost. Had prohibition advocates been content to implement their policy by legislation, those laws could have been readily modified or repealed when the failure became apparent. Instead, the country had to undergo the arduous and time-consuming process of amending the Constitution to undo the first change. This is an experience the CFTC is not eager to see repeated.

The second example might have had far more serious consequences. On the eve of the Civil War, both Houses of Congress adopted an amendment that would have guaranteed the property interest of slaveholders in their slaves and would have forever prohibited repeal of the amendment. Fortunately, the proposed amendment was overtaken by events and never ratified by the states. Had it become law, the result would have been a constitutional calamity.

Finally, in our own time, there is the failed effort to add to the Constitution an Equal Rights Amendment, prohibiting denial or abridgment of rights

Historical Perspective

When the Constitution's framers met in Philadelphia, they decided to steer a middle course between establishing a constitution that was so fluid as to provide no protection against the vicissitudes of ordinary politics, and one that was so rigid as to provide no mechanism for orderly change. An important part of the compromise they fashioned was embodied in Article V.

The old Articles of Confederation could not be amended without the consent of every state—a system that was widely recognized as impractical, producing stalemate and division. Accordingly, Article V provided for somewhat greater flexibility: The new Constitution could be amended by a proposal adopted by two-thirds of both Houses of Congress or by a convention called by two-thirds of the states, followed in each case by approval of three-fourths of the states.

In the ratification debate that ensued, Article V played an important role. The new, more flexible amendment process served to reassure potential opponents who favored adding a bill of rights or who worried more generally that the document might ultimately prove deficient in unanticipated ways. It also reassured the Constitution's supporters by making it more unlikely that a second constitutional convention would be called to undo the work of the first.

Precisely because the legal constraints on the amendment process had been loosened somewhat from those contained in the old Articles, many of the framers also believed that the legal constraints should be supplemented by self-restraint. Although the new system made it legally possible to change our foundational document even when there was opposition, the framers believed that even dominant majorities should hesitate before using this power. As James Madison, a principal author of both the Constitution and the Bill of Rights, argued in *Federalist 49*, the constitutional road to amendment should be "marked out and kept open" but should be used only "for certain great and extraordinary occasions."

For the first two centuries of our history, this reliance on self-restraint has functioned well. Although over 11,000 proposed constitutional amendments have been introduced in Congress, only 33 of these have received the requisite congressional supermajorities, and only 27 have been ratified by the states. The most significant of these amendments, accounting for half of the total, were proposed during two extraordinary periods in American history—the period of the original framing, which produced the Bill of Rights, and the Civil War period, which produced the Reconstruction amendments. (The Twenty-seventh Amendment, relating to changes in congressional compensation, was part of the original package of amendments proposed by the first Congress but was not ratified by the states until 1992.) Aside from these amendments, the Constitution has been changed only 13 times.

Most of these 13 amendments either expanded the franchise or addressed issues relating to presidential tenure. Only four amendments have ever overturned decisions of the Supreme Court, and the only amendments not falling within these categories—the Prohibition Amendments—also provide the only example of the repeal of a previously enacted amendment.

on account of sex. Within three months of congressional passage in 1972, 20 states had ratified the amendment. Thereafter, the process slowed, and even though Congress extended the deadline, supporters ultimately fell short of the three-fourths of the states necessary for ratification. The struggle for and against ratification produced much dissension and consumed a great deal of political energy. Yet today, even some of the amendment's former supporters believe that the amendment was not necessary. Moreover, the amendment would have added to the Constitution a controversial and broadly worded provision of uncertain and contested meaning, with the Supreme Court given the unenviable job of providing its content. Instead of years of judicial wrangling concerning its application, we have seen Congress pass ordinary legislation, and the Court engage in the familiar process of explicating existing constitutional text, to achieve many of the goals of the amendment's proponents. This process has been more sensitive and flexible, while also less contentious and divisive, than what we could have expected had the amendment become law.

Restraint is also important in order to preserve the Constitution as a symbol of our nation's democratic system and of its cherished diversity. In a pluralistic democracy, in which people have many different religious faiths and divergent political views, maintaining this symbol is of central importance. The Constitution's unifying force would be destroyed if it came to be seen as embodying the views of any temporarily dominant group. It would be a cardinal mistake to amend the Constitution so as to effectively "read out" of our foundational charter any segment of our society.

The Constitution's symbolic significance might also be damaged if it were changed in order to control political outcomes with the detailed specificity of an ordinary statute. The Con-

stitution's brevity and generality serve to differentiate it from ordinary law and so allow groups that disagree about what ordinary law should be to coalesce around the broad principles it embodies.

Finally, restraint is necessary because proposed amendments to the Constitution often put on the table fundamental issues about our character as a nation and so bring to the fore the most divisive questions on the political agenda. Two centuries ago, James Madison warned of the "danger of disturbing the public tranquility by interesting too strongly the public passions" through proposed constitutional change. It is not only unwise to trivialize the Constitution by cluttering it with measures embodying no more than ordinary policy, it is also risky to lightly reopen basic questions of governance. Occasional debates about fundamental matters can be cleansing and edifying, but no country can afford to argue about these issues continuously. Our ability to function as a pluralistic democracy depends upon putting ultimate issues to one side for much of the time so as to focus on the quotidian questions of ordinary politics. As Madison argued shortly after the Constitution's drafting, changes in basic constitutional structure are "experiments ... of too ticklish a nature to be unnecessarily multiplied."

None of this is to suggest that the Constitution should never be amended or that its basic structural outlines are above criticism. There have been times in our history when arguments for restraint have been counterbalanced by the compelling need for reform. Some individuals may believe that this is such a time, at least with regard to particular issues, and if they do, there is nothing illegitimate about urging constitutional change.

Some constitutional amendments are designed to remedy perceived judicial misinterpretations of the Constitution. Some earlier constitutional amendments, for example, the

Eleventh Amendment, making states immune from being sued in federal court, and the Sixteenth Amendment, authorizing an income tax, fall into this category. There is nothing per se illegitimate about amendments of this sort, although here, as elsewhere, their supporters need to think carefully about the precise legal effect of the amendment in question and about how the amendment will interact with other, well-established principles of constitutional law.

More generally, advocates of amendments of any kind should focus not only on the desirability of the proposed change but also on the costs imposed by attempts to achieve that change through the amendment process and through the available alternatives. In the standards that follow, the CFTC proposes some general guidelines for how to think about these matters. We do not pretend that the standards can be mechanically applied. If the circumstances are extraordinary enough, all of these warnings might be overcome. Nor do we imagine that the standards alone are capable of resolving all disputes about currently pending proposals for constitutional change. We ourselves are divided about some of these proposed amendments, and no general standards can determine the ultimate trade-offs among the benefits and costs of change in individual cases.

Instead, the CFTC's hope is that the standards will draw attention to some aspects of the amending process that have been ignored too frequently, provide some guidelines for when resorting to it is appropriate, and suggest a process that will ensure all relevant concerns are fully debated.

At the very moment when this country was about to embark on the violent overthrow of a prior, unjust constitutional order, even Thomas Jefferson, more friendly to constitutional amendments than many of the founders, warned that "governments long established should not be

changed for light and transient causes.” In the calmer times in which we live, there is all the more reason to insist on something more before overturning a constitutional order that has functioned effectively for the past two centuries. The standards that follow attempt to guide the inquiry into whether such causes exist and how to respond to them.

Standards With Commentary

The following abridged commentary briefly explains the CFTC standards. Note that they alone cannot determine whether any amendment should be adopted or rejected. Instead, they are designed to raise concerns that should be carefully weighed against the perceived desirability of the changes embodied in proposed amendments. The full text of the standards with commentary are available from Citizens for the Constitution at The Century Foundation/Twentieth Century Fund, 1755 Massachusetts Avenue, NW, Washington, DC 20036, or at www.citcon.org.

1. Constitutional amendments should address matters of more than immediate concern that are likely to be recognized as of abiding importance by subsequent generations.

James Madison, one of the principal architects of Article V of the Constitution, which contains the amendment procedures, cautioned against making the Constitution “too mutable” by making constitutional amendment too easy. He insisted that any constitutional amendment command not only majority, but supermajority support. Implicit in Madison’s caution is the view that stability is one of the Constitution’s key virtues and that excessive change will undercut one of the main reasons for having a Constitution in the first place. Thus, the Constitution should not be amended solely on the basis of short-term political considerations. Of course, no one can be certain

whether future generations will come to see a policy as merely evanescent or as truly fundamental. Still, legislators have an obligation to do their best to avoid amendments that are no more than part of a momentary political bargain, likely to become obsolete as the social and political premises underlying their passage wither or collapse. To be enduring, amendments, as the Constitution itself, should be cast in general language, with exceptions being made only when specificity is required, such as in the Twenty-second Amendment, which changed the presidential inauguration date.

2. Constitutional amendments should not make our system less politically responsive except to the extent necessary to protect individual rights.

Of the 27 constitutional amendments, 17 either extend the franchise to new groups or protect the rights of vulnerable individuals such as criminal defendants and religious and political minorities. There is an obvious tension between these twin goals of majority rule and individual protection—a tension that this standard does not seek to resolve. In a constitutional democracy, most policy questions should be decided by officials elected by a majority of the people who will be affected by the policies in question. It follows that the Constitution’s main thrust should be to ensure that our political system is more, rather than less, democratic. The Constitution guarantees democratic processes precisely so that the preferences of the people can be vindicated through ordinary legislation, which, under some circumstances, may be possible only through the enactment of amendments that eliminate constitutional barriers to its passage. Such was the case in the amendments enabling both our federal income tax and wide-sweeping civil rights legislation.

3. Constitutional amendments should be utilized only when there are significant practical or legal obstacles to the achievement of the same objectives by other means.

The force of the Constitution depends on the ability to see it as something that stands above and outside day-to-day politics. The very idea of a constitution turns on the separation of the legal and the political realms. It is a perversion of the Constitution’s great purposes to use the amendment process instead of the legislative process, which allows the enactment of ordinary laws that are better suited to the goals of groups proposing popular changes. The more the Constitution is filled with specific directives, the more it resembles ordinary legislation; and the more the Constitution looks like ordinary legislation, the less it looks like a fundamental charter of government, and the less people will respect it.

A second reason for forgoing constitutional amendments when their objectives can otherwise be achieved is the greater flexibility that political solutions have to respond to changing circumstances over time. Amendments that embody a specific and perhaps controversial social or economic policy allow one generation to tie the hands of another, entrenching approaches that ought to be more easily revisable by future generations in light of their own circumstances. Such amendments convert the Constitution from a framework of governing into a statement of contemporary public policy. For these reasons, advocates of a constitutional amendment should make certain that they have exhausted every other means of political redress for a problem before they seek to solve it by amending the Constitution. History counsels that the Constitution should continue to be altered sparingly and only as a last resort, and only amendments that are absolutely necessary should be proposed and enacted.

4. Constitutional amendments should not be adopted when they would damage the cohesiveness of constitutional doctrine as a whole.

Because the Constitution gains much of its force from its cohesiveness as a whole, it is vital to ask whether an amendment would be consistent with mainstream constitutional doctrine or would create an anomaly in the law. This is especially likely to happen when the proposed amendment is offered to overrule a Supreme Court decision, although the danger exists in other circumstances as well.

To be sure, every amendment changes constitutional doctrine. That is, after all, the function amendments serve. Difficulties occur when the change has the unintended consequence of failing to mesh with aspects of constitutional doctrine that remain unchanged. This problem arises most often when framers of amendments focus narrowly on specific outcomes, without also thinking more broadly about general legal principles. It does not arise when whole areas of constitutional law are reformulated. For example, the Sixteenth Amendment, permitting Congress to enact an income tax, was necessitated by the Court's ruling in *Pollock v. Farmers Loan & Trust Co.*, 157 U.S. 429 (1895), that a specific limitation on the taxing power in the Constitution precluded a tax on income. That provision was grounded in our history as colonies and was included to ensure that each state would pay taxes to the national government only in proportion to its elected representatives, regardless of its wealth. This approach is inconsistent with a tax based on the incomes of the individuals and corporations in each state.

The Sixteenth Amendment reflected a repudiation of the framers' original decision and is precisely the kind of broad change in policy for which the amendment process was designed. The amendment did not create an

anomalous exception to other principles in the Constitution.

It does not follow, however, that an amendment must always overrule an entire body of law in order to comport with this standard. Although the *Dred Scott* decision was embedded in the law of property, Congress did not revisit all of property law when it enacted the Thirteenth Amendment, and its failure to do so in no way damaged the coherence of constitutional doctrine.

5. Constitutional amendments should embody enforceable, and not purely aspirational, standards.

The Constitution is not a theoretical enterprise. It is a legal document that spells out a coherent approach to government power and processes while also guaranteeing our most fundamental rights. More than two centuries of experience underscore the wisdom of continuing with that approach. The addition of purely aspirational statements, designed for solely symbolic effect, would lead interest groups to attempt to write their own special concerns into the Constitution. It follows that advocates of amendments should think carefully about how the amendment will be enforced. Everyone, regardless of social station or political rank, must follow the law. A provision susceptible of being ignored because no one can feasibly require its observance permits the kind of executive or legislative discretion that our founders wished to control. A provision that may be willfully ignored when those charged with observing it find the result inconvenient or undesirable undermines the rule of law, the government's own legitimacy, and the Constitution's special stature in our society.

6. Proponents of constitutional amendments should attempt to think through and articulate the consequences of their proposals,

including the ways in which the amendments would interact with other constitutional provisions and principles.

When the Constitution was drafted, the delegates to the Constitutional Convention regarded the new document as a unified package. Much energy was directed to considering how the various parts of the Constitution would interact with one another and to the political philosophy expressed by the document as a whole. The amendment process is necessarily much more ad hoc. Consequently, proponents of new amendments need to be especially careful to think through the legal ramifications of their proposals, explaining, for example, how their proposals might shift the balance of shared and separated power between the branches of the federal government or might affect the distribution of responsibilities between the federal and state governments. They should also explore how their proposals mesh with the Constitution's fundamental commitment to popular sovereignty and to the guarantees of liberty, justice, and equality. Finally, they should decide whether the principles they seek to establish will apply in contexts beyond those immediately affected by the amendments.

7. To ensure full and fair debate as part of the constitutional amendment enactment process, procedures must be designed and used.

The requirement that amendments must be approved by supermajorities makes it more difficult to amend the Constitution than to enact an ordinary law. In theory, this requirement should produce a more deliberate process, which, in turn, should mean that the issues are more fully ventilated in Congress. Unfortunately, reality does not always comport with theory. Congress should adopt procedures to ensure that full consideration is given to all proposals to amend the Constitution before votes are taken either in

committee or on the floor. For most amendments, there are two types of questions: (a) the policy questions, which include whether the basic idea is sound and whether the amendment is the type of change that belongs in the Constitution, and (b) the operational questions, including whether there are problems in the way that the amendment will work in practice. Generally, it is appropriate for Congress to hold at least two sets of hearings, one for each set of issues. At each set of hearings, both the prime hearing time (normally at the start of the day) and overall hearing time should be equally divided between proponents and opponents.

Careful deliberation by congressional committee is essential, and committees should ensure that modifications to proposed amendments receive full consideration and a vote before they reach the floor, with a committee report explaining the options considered and the reasons for their adoption or rejection. Perhaps a two-thirds committee vote should be required to send a proposed constitutional amendment to the floor, thereby mirroring the requirement for final passage. If two-thirds of those who are most knowledgeable about a proposed constitutional amendment do not support it, the amendment probably should never be considered by the full House or Senate.

Although the relevant committees may have the greatest expertise regarding a proposed constitutional amendment, floor debates should not be cut short, and there should be opportunities for full discussion and votes on additions, deletions, and modifications to the reported language. To ensure that floor votes are taken only on language that has been previously scrutinized, each House should adopt rules requiring that only changes to a proposed constitutional amendment that have been specifically considered in committee are eligible for adoption on the floor, with two

exceptions: (1) votes on clarifying language should be permitted with the consent of the committee chair and ranking member, or by a waiver of the rules passed by a supermajority vote, and (2) substantive changes not previously considered, but approved by a majority vote on the floor, should be referred back to committee for such further proceedings, consideration, and possible modification as needed to ensure that they have been thoroughly evaluated, followed by a second vote on the floor.

8. Constitutional amendments should have a nonextendable deadline for ratification by the states so as to ensure that there is a contemporaneous consensus by Congress and the states that the amendment is desirable.

If the ratification process is lengthy, ultimate approval by three-quarters of the states may no longer reflect such a consensus. If extensions are permitted at all, they should be adopted by the same two-thirds vote

that approved the amendment originally. Moreover, states that ratified the amendment during the initial time period should be allowed to rescind their approval, thereby assuming a continuing consensus.

Congress's decision to extend the ratification period for the Equal Rights Amendment on the eve of the expiration of the allotted time illustrates problems that this Standard addresses. Although many states ratified the amendment in the period immediately after initial congressional approval, there had been a shift in public opinion by the time that Congress extended the deadline. It was far from clear that the legislatures in all the ratifying states would have approved the amendment if it had been presented to them again after the ratification extension. The perception that the amendment might be adopted, despite the absence of a contemporary consensus supporting it, contributed to the divisiveness that surrounded the struggle over the adoption of the amendment. ♦

Don't Mess With Barney



Mock beatings bring lawsuit

They say it's big news when man bites dog, so when chicken punches out dinosaur, it's bound to create a stir.

Texas-based Lyons Partnership, which owns the rights to Barney, the popular purple dinosaur, has filed a copyright and trademark infringement lawsuit against Ted Giannoulas, also known as The Famous San Diego Chicken, a red-and-yellow mascot who became famous by performing at professional baseball and basketball games.

The lawsuit states that "Giannoulas would punch, flip, stand on, and otherwise assault the putative Barney."

The company seeks a permanent injunction against Giannoulas' use of the dinosaur costume, as well as a minimum of \$100,000 for each time he has performed a skit with the Barney look-alike.

"I used to think that Barney was a lovable character," Giannoulas says, "but now I think he's just the biggest bully on the block."

Adapted from ABA Journal, January 1998, p. 16.



Update on the Courts

Case Study: First Amendment

Arkansas Educational Commission v. Ralph P. Forbes

Docket No. 96-779

Adapted from Preview of United States Supreme Court Cases, no. 1 (September 18, 1997): 40–44.

Petitioners: Arkansas Educational Television Commission

Respondent: Ralph P. Forbes

Freedom of speech is at the center of a case argued before the Supreme Court in October 1997. The Court was asked to decide whether a state-owned television station can exclude a candidate from participation in a televised debate.

FACTS

The Arkansas Educational Television Commission operates the five-station Arkansas Educational Television Network (AETN). Members of the commission are appointed by the governor with approval by the state senate. The noncommercial, educational network receives state funds and, as a state-owned network, is subject to the First Amendment.

In 1992, AETN produced and broadcast a debate between Democratic and Republican candidates for the Third Congressional District in Arkansas. After the station invited the candidates to debate, Ralph Forbes qualified to appear on the ballot as an independent candidate. Forbes then requested to be included in the debate. His request was denied because AETN's producers did not believe Forbes was a newsworthy or viable candidate for the office. They noted that Forbes had failed to raise much money, had not scheduled many events, and had not generated much media or public interest in his campaign.

Forbes sued the station in federal district court, saying that it had violat-

ed his free speech rights. He asked for a court order requiring his participation in the debate. However, the debate took place without him when the district court and the Eighth Circuit, on Forbes' appeal, refused to order his inclusion.

Forbes' suit for damages proceeded. After a jury trial in district court, a judgment was entered for AETN. The jury did not find that AETN had excluded Forbes because of his viewpoint or because it had been pressured to do so by government officials.

The Eighth Circuit reversed the decision on Forbes' appeal. The appeals court held that the AETN debate was a limited public forum for all ballot-qualified candidates. As a result, to exclude Forbes, the station had to have a higher standard of justification than if the debate had been a nonpublic forum. The court concluded that Forbes had been excluded because the station did not consider him a viable candidate. The court indicated that the station could not determine the viability of a candidate. That decision belonged to the people. AETN appealed the circuit court's decision to the Supreme Court.

AETN argued that when it excluded Forbes, it was acting as a news programmer making decisions about the scope of and participation in the debate. It insisted that its editorial organization is structured to be independent of the state. As such, it should not be held to higher standards than

privately owned stations that are not required to open their facilities on a nonselective basis to all persons. The network stated that the debate was a nonpublic forum, and its decision to exclude Forbes was reasonable and not based on his viewpoints.

Forbes insisted that state-owned networks must have objective standards for excluding candidates from televised debates. They should not rely on subjective judgments concerning viability. He also contended that excluding candidates because of viability discriminates against candidates whose views are unpopular or outside the mainstream. He stated that his exclusion was viewpoint discriminatory because it was based on the fact that he was not a major-party candidate.

SIGNIFICANCE

Should the Supreme Court decide in Forbes' favor, third party and independent candidates would increase their ability to participate in televised debates. Although the ruling would apply only to government stations, almost two-thirds of the noncommercial, educational television and radio stations are owned or operated by state or local government entities. A decision for Forbes might make it more difficult for stations to control the makeup of debates. Some stations might resolve the problem by no longer sponsoring debates.



Case Study: First Amendment

National Endowment for the Arts and Kathryn Higgins as Acting Chairperson v. Karen Finley et al.

Docket No. 97-371

Petitioners: National Endowment for the Arts and Kathryn Higgins as Acting Chairperson

Respondent: Karen Finley et al.

Adapted from Preview of United States Supreme Court Cases, no. 6 (March 12, 1998): 382–87.

On March 31, 1998, the Supreme Court heard arguments about whether decency conditions placed on the funding of projects by the National Endowment for the Arts censors freedom of expression.

FACTS

According to statute, the National Endowment for the Arts (NEA) is charged with providing grants to “individuals of exceptional talent engaged in or concerned with the arts.” The NEA’s chairperson is the final decision maker in approving or disapproving grants. But the chairperson cannot approve a grant application disapproved by the National Council on the Arts and must rely on the recommendations of various advisory panels.

In 1990, Karen Finley and other artists applied for artistic grants from the NEA for performance art involving nudity, urination, and AIDS. The chairperson of the NEA at the time denied the grants despite the recommendations of the National Council on the Arts. The grant applicants later sued the NEA for the funding in federal district court. Shortly thereafter, a decency-consideration provision became law. This provision required the NEA chairperson to ensure that “artistic excellence and artistic merit are the criteria by which applications are judged, taking into consideration general standards of decency and respect for the beliefs and values of the

American public,” 20 U.S.C. § 954(d). The applicants then amended their complaint to challenge the provision on due process and First Amendment grounds. They were joined in the litigation by the National Association of Artists’ Organizations.

The government appealed the district court’s decision that declared the decency-consideration provision unconstitutionally vague. That means that the provision was not clear enough to indicate to NEA grant applicants what is prohibited. The Ninth Circuit upheld the district court’s ruling by a majority ruling. The majority also noted that the decency-consideration provision violated the First Amendment because it had content and viewpoint restrictions. The Supreme Court reviewed the case at the request of the government.

Arguing before the Supreme Court, the government focused on the language of the decency-consideration provision. According to the government, the provision did not require that each grant application conform to general standards of decency. It states that decency must be considered, but decency is not a test for accepting or rejecting a grant application. The government also noted that the diversity of the advisory panel members satisfied the decency-consideration provision. The diversity represented by panel members helped ensure that the diverse beliefs and values of the American public were considered when reviewing applications.

The grant applicants claimed that the indeterminate nature of the provision is contrary to due process and established First Amendment principles. These require that regulations must be specific enough to allow a person of reasonable intelligence to understand what is prohibited. The government responded that the grant process is not regulatory. The applicants claimed that the provision is regulatory because it restricts the chairperson’s ability to approve applications. The NEA stated that decency was only one of many considerations in the approval process.

SIGNIFICANCE

The government is not free to censor artists or to prohibit them from expressing themselves indecently or disrespectfully on their own time and with their own resources. It also cannot impose viewpoint limitations when it provides generally available public funds for expressive activities. But the government is free to fashion its own spending programs. The essential question for the Court to consider in this case is whether NEA funding is like an entitlement after neutral criteria are satisfied or a highly coveted prize. For some, the answer is provided by the history of the NEA. Less than 100 of more than 5,000 applications have received NEA funding in recent years. This seems to indicate that the NEA’s grant process is not a public forum.



Case Study: Line Item Veto

William J. Clinton et al. v. City of New York et al.

Docket No. 97-1374

Petitioners: William J. Clinton et al.
Respondent: City of New York et al.

Adapted from Preview of United States Supreme Court Cases, no. 7 (April 8, 1998): 364–69.

In 1996, the Congress passed and the President signed the Line Item Veto Act, U.S.C. §§ 691-692 (Supp. II 1996), which went into effect in January 1997. The act enables the President to cancel specific dollar amounts of discretionary budget authority, an item of new direct spending, or a limited tax benefit affecting a small number of voters. The President must determine that the cancellation will reduce the budget deficit, will not impair government function, and will not harm the national interest. The President must also submit to Congress a message stating the reasons for the cancellation. Congress does have the right to disapprove the cancellation of any item.

Questions have arisen about the constitutionality of the Line Item Veto Act. In *William J. Clinton et al. v. City of New York et al.*, the Supreme Court considers its constitutionality.

FACTS

In this case, two sets of plaintiffs are contesting two different cancellations of spending items by the President. One set of plaintiffs includes the city of New York, two hospital associations, and two unions of health-care workers. They are contesting the cancellation of a spending provision that gave New York State preferential treatment in Medicaid payments. The President had canceled an item in the Balance Budget Act of 1997 (Pub. L. No. 105-33, § 4722(c), 111 Stat. 251 515. The item would have relieved

New York from repaying Medicaid overpayments.

The second set of plaintiffs includes members of an Idaho potato growers cooperative. They are contesting the cancellation of a section of the Taxpayer Relief Act of 1977, Pub. L. No. 105-34, 111 Stat. 788. This section would have allowed the stock owners of an agricultural processor to sell its facilities to the cooperative without paying tax on any capital gain.

On February 12, 1998, a district court ruled that both the New York and Idaho challengers had standing. The ruling meant that the challengers are qualified to sue and to challenge the constitutionality of the Line Item Veto Act because they are directly affected by its use. The district court also held that the act violated Article 1, Section 7 of the Constitution, which identifies how bills may become law, and the general principle of separation of powers.

The district court found that the canceled items made the bills signed by the President different from the bills passed by the Congress. Therefore, according to the court, the bills were not validly enacted. The court also concluded the Congress could not delegate essentially legislative powers to the President because such delegation violates the plan of the government as described in the Constitution.

On April 27, 1998, the Supreme Court heard arguments in the case. The government contested the standing of the Idaho plaintiffs, saying that the plaintiffs were not directly benefited by the canceled item and could only

speculate that its cancellation harmed them. The government also questioned the standing of the New York plaintiffs. It said that the state of New York has more standing than the city and hospitals. The state has not filed suit but has applied for a waiver. As a result, the line item cancellation is not yet in effect. So the government concluded no injury claimed by the challengers can be traced to the cancellation of the line item.

In terms of the act's constitutionality, the government insisted that the act's veto procedures coincided with the President's discretion over the actual spending of funds appropriated by Congress. The Government supported its position with historical documents.

SIGNIFICANCE

If the Supreme Court upholds the Line Item Veto Act as constitutional, presidents will continue to cancel items, subject to Congress' approval. Congress could repeal the act, but that repeal would be subject to the presidential veto. Of course, Congress could override the veto. If the court declares the act unconstitutional, the Constitution would have to be amended to permit line item vetoes. Amending the Constitution is not an easy process. In over 200 years, it has been amended only 27 times.



Update on Congress

A Review of Current Issues Facing Congress

Update on Law-Related Education, 22.1, 1998, pp. 31–32. © 1998 American Bar Association.

Religious Bias Legislation Proposed

The U.S. Equal Employment Opportunity Commission (EEOC) is the government agency charged with investigating complaints about job discrimination. In recent years, the EEOC has received a growing number of complaints about religious discrimination in the workplace. Between 1993 and 1997, complaints alleging religious discrimination increased more than 18 percent. Even as the EEOC is investigating an increasing number of complaints, Congress is considering legislation that would require employers to do more to accommodate workers' religious beliefs.

Today, freedom from religious bias in the workplace is protected by Title VII of the Civil Rights Act. It requires employers to make reasonable accommodations for employees' religious beliefs as long as doing so would not be an undue hardship. However, in the 1977 case *TWA v. Hardison* (432 U.S. 63), the Supreme Court defined *undue hardship* as anything more than a minimal effort or expense.

The Workplace Religious Freedom Act, as the pending legislation is known, would considerably raise the standard for what constitutes an undue hardship. In the act, *undue hardship* is defined as something that requires "significant difficulty or expense."

Co-sponsored by a liberal Democratic senator John Kerry of Massachusetts and a conservative Republican

senator Dan Coats of Indiana, the legislation has vocal critics and supporters. Critics say that the proposed legislation is not needed because the law already works. Supporters state that the act simply requires that requests for religious accommodations be subject to a balancing test between employees' needs and employer's requirements. They also note that the definition of *undue hardship* in the proposed legislation matches the definition of that term in the Americans with Disabilities Act, thus giving consistency to the language of laws. According to one supporter, the act makes it clear that religious discrimination will not be tolerated in the workplace.

Should this legislation pass through Congress, it could result in an even greater number of religion-bias cases filed with the EEOC.

Adapted from ABA Journal, April 1998, pp. 30–31.

Campaign Finance Reform Voted Down

On Monday, March 30, 1998, the majority leadership of the House of Representatives engineered the introduction of an unpopular campaign-reform bill for vote on the floor. The leadership introduced the bill under restrictive rules that required a two-thirds vote for the bill to pass. In addition, amendments could not be added to the bill, and only limited debate was allowed. The bill, advocated by

Information in this article is used in the Teaching Strategy on page 41.

Republican leaders, was soundly defeated by a vote of 337–74. Its defeat may have virtually killed any chance for campaign reform this year.

The defeated bill included provisions that many representatives could not support. One such provision would have required unions to obtain the written permission of their members to spend any union funds for political purposes.

Critics of the defeated bill hoped to garner enough support to introduce a popular reform bill co-sponsored by Christopher Shays, a Republican representative from Connecticut, and Martin Meehan, a Democrat from Massachusetts. To get the Shays/Meehan bill before the House, however, would require a petition signed by House members. In the past, few such petitions have been successful. It appears that campaign finance reform will have to wait until after the new congressional session in January.

Adapted from USA Today, March 31, 1998.

More Money for Education?

President Clinton has proposed a major education program costing \$7.3 billion over five years as part of a \$15 billion education initiative. The \$7.3 billion would be used to recruit and train elementary and secondary school

teachers. The remainder of the \$15 billion initiative would be allocated for other purposes. About \$5 billion would go for school construction; \$2.5 billion would help promote the importance of staying in school; \$200 million would be for programs to assist Latino students; and \$20 million would be set aside to help set up more than 1,300 charter schools.

Clinton's plan helps push education and training programs to the top of his domestic agenda. Polls show that spending increases for school construction and teachers—meaning smaller class sizes—are popular with voters. The plan's \$200 million for Latinos, a growing voting bloc, highlights spending increases for bilingual education, educational aid for migrant children, and colleges serving Latinos.

While Republicans are likely to support some of these proposals, they traditionally have argued that school-funding issues are best left to states and local governments. The Clinton plan hopes to bring an end to the school voucher controversy by funding the start-up costs for 1,300 charter schools—those free from most school board regulations. At present, there are more than 700 charter schools in the United States. Republicans, while not opposed to charter schools, have generally pushed for vouchers instead.

Vouchers would provide parents assistance in paying for private schools of their choice.

The most costly proposal is the \$7.3 billion teacher recruitment and training program, which would help reduce class size—particularly in poor and inner city areas—to 15 to 18 students. The President also seeks to spend \$1.5 billion over five years to create “educational opportunity zones.” Fifty poor, low-achieving districts would receive funds to institute reforms to help boost grades and test scores and finance programs allowing parents to choose which public school their children will attend.

Another proposal, called “College-School Partnerships,” would allocate \$2.5 billion over five years to match college students and educators with more than 1.6 million high school and grade school children. This mentoring program, targeted at about 3,300 poverty-area schools, would be designed to inform the younger students of the advantages of a college education and how to obtain financial aid for college.

The plan further proposes to make available more spending to introduce computers into classrooms and train teachers in the appropriate technology. It would also provide additional funds for the “Safe and Drug-Free Schools”

program and for students who have disabilities.

Adapted from The Wall Street Journal, January 13, 1998, pp. A3–A6.

Tobacco Legislation Under Fire

Senator John McCain, a Republican from Arizona, proposed a legislative package aimed at reducing smoking in the United States. The legislation, with support from Republicans and Democrats alike, would result in price increases of \$1.10 for a pack of cigarettes over five years. It would impose penalties on tobacco companies if the number of teen-aged smokers did not decrease by indicated levels. It would severely restrict cigarette advertising, allow the Food and Drug Administration (FDA) to regulate tobacco, and include no limits on private lawsuits against cigarette manufacturers.

McCain's bill did limit, however, the amount of civil damages cigarette manufacturers would have to pay out in any one year. According to the legislation, the manufacturers would not have to pay more than \$6.5 billion to settle claims in a single year. Claims that surpassed the \$6.5 billion limit could be paid in following years. The McCain legislation includes stronger measures than the settlement agreements that the tobacco industry reached with state attorneys general in June of last year.

Both the tobacco industry and public health officials have criticized the proposed legislation. The tobacco industry wants protection from lawsuits. According to one industry spokesperson, the legislation was likely to bankrupt tobacco firms. On the other hand, some public health officials protested that the legislation offers antismoking programs that are too weak and tobacco-industry protections that are too strong. Despite the wide criticism, the proposed legislation is likely to serve as the basis for any tobacco bill passed by the Senate.

Adapted from New York Times, March 31, 1998.

Benefits—Legal Help

The American Bar Association has coordinated volunteer lawyers nationwide to donate legal help to families with disabled children appealing Supplemental Security Income's decision to eliminate their benefits.

“We feel confident that with the help of our pro bono lawyers, these families will have a far greater chance for benefits returned to them,” says Julie Justicz, director of the ABA Children's SSI Project.

Of the more than one million children receiving SSI funds in 1997, 264,000 were reviewed by the Social Security Administration. Following those reviews, the agency terminated aid to more than 60 percent of the mentally disabled and mentally retarded children and their families. Appeals to continue benefits are possible but require legal help. For more information, contact the ABA at (312) 988-6148.





LRE Project Exchange

Washington's Judges in the Classroom

Krista Goldstine-Cole

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Judges in the Classroom (JITC), a statewide program administered by the Washington State Office of the Administrator for the Courts (OAC), brings judges and teachers together in order to promote better understanding of the law and the judiciary. Established in 1991 by Barbara Durham, chief justice of the Washington State Supreme Court, JITC paired 75 judges and commissioners with teachers in just five years.

Teaching everything from the mediation process to buying a used car, 52 volunteer judges visited 57 classrooms during the 1995-96 school year. The Herschel C. Lyon Mock Trial is most popular among elementary students, while search and seizure has proven to be most popular and enduring among secondary students. The program maintains 35 professionally developed lesson plans to support participants in JITC.

Generally, teachers initiate pairings by contacting the Office of the Administrator for the Courts and requesting a judge. Teachers are asked to identify the topic area of interest to them. Most requests at the elementary level are related to introductory due process, the nature of the appellate process, and issues of illicit drugs. Secondary teachers tend to be interested in civil rights, often in response to recent events at their school. Locker searches, protected speech, and religious activities at school are common concerns.

Depending on the location of the school, the age of the students, and the topic, the JITC program administrator will



Photo courtesy of the Yakima Herald Republic, photographer Gordon King

approach a judge. In most cases, the judge has been involved in the past or has volunteered during a judicial education event. Most judges are eager to work in the schools, though many have a clear preference for a particular age group.

Each partner is given the name, address, and phone number of the other as well as a set of relevant lesson plans. The teacher and judge must contact each other to set a time and to discuss the specific lesson to be taught.

On occasion, judges will request a pairing. This occurs for a variety of reasons from the need to be visible in the community to a personal commitment to law-related education. It can be difficult to match a judge with a school if the program administrator is unfamiliar with the schools in the geographic area of interest to the judge. Most teachers, however, welcome guests in their classrooms and are easy to work with when offered a partnership. OAC provides lesson plans and facilitates direct communication in this case.

Once established, partnerships can take on a life of their own. For example, Judge Michael Hurtado of Seattle Municipal Court recently received a call from a teacher whose classroom he had previously visited. There had been a drug arrest at the school stemming from a locker search. The teacher hoped the judge would address an assembly of

Krista Goldstine-Cole is a high school teacher serving as Judges in the Classroom project manager in the Washington State Office of the Administrator for the Courts in Olympia, Washington.

Adapted from Krista Goldstine-Cole, "Judges in the Classroom: Judicial Education Outreach," NASJE NEWS (spring 1996): 8-9, 11, by permission of the publisher, the National Association of State Judicial Educators.

students to help quiet the storm. (Locker searches are remarkably disturbing to privacy-conscious adolescents.)

However the partnership begins, Judges in the Classroom provides relevant teaching materials. The 35 JITC lesson plans were developed by Margaret Fisher of the Seattle University School of Law's Institute for Citizen Education in the Law. The lessons are educationally sound, legally accurate, and developmentally appropriate.

There are lessons for all grades, and they are available at the OAC's Web site (www.wa.gov/courts/educate.home.htm). Two of the lessons for grades 9-12 are particularly appropriate for teaching about the First Amendment. "Religion in the Schools" identifies the requirements of the Equal Access Act, how the act is applied, and the tension between the First Amendment's free exercise clause and the establishment clause. "Freedom of Expression in Special Places" analyzes application of the First Amendment to school newspapers, the limitation of First Amendment rights in school settings, and the process of judicial decision making.

Lesson plans make Judges in the Classroom both unique and successful. Many judges are hesitant to participate without the guidance and security a lesson plan provides. Each plan establishes learning objectives at grade level,

provides general instructions to the judge, and includes any handouts.

Teachers appreciate the topics because they are keyed to standard public school curriculum. Third grade teacher Barbara Williams requested a pairing when she learned that several primary school lessons focus on problem solving, the theme for social studies in her classroom. Williams recently reported, "Commissioner Jasprica was a little worried because this was her first time to teach. But she delivered, I think, a remarkably effective lesson."

Volunteer judges in Washington made 204 visits to public school classrooms in five years. Judges like Michael Hurtado continue to make a difference. During his talk on drugs in the school, a student asked, "You mean, if you're holding a joint—just a joint—THAT'S possession?"

"Yes," replied the judge, knowing he had educated at least one student that day.

For more information about Judges in the Classroom, contact Krista Goldstine-Cole, Office of the Administrator for the Courts, 1206 S. Quince St., P.O. Box 41170, Olympia, WA 98504-1170, 360/705-5315, E-mail: krista.goldstine.cole@courts.wa.gov, Web:

www.wa.gov/courts/educate.home.htm.

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Teaching Strategy

First Amendment Survey

Wanda J. Routier

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Background

This lesson gives students an opportunity to conduct and analyze their own survey and compare it with the national survey conducted by The Freedom Forum. The survey included here contains excerpts from The Freedom Forum survey. In addition to conducting the survey, students will compile the results and turn raw data into meaningful statistical information (percentages, etc.).

Results from the national survey are discussed in the article on page 4. The complete survey and results are available from The Freedom Forum as listed in this article’s Resource section. Before beginning this lesson, it is recommended that you obtain a copy of the survey and results and become familiar with them.

This lesson works best with interdisciplinary collaboration among social studies, English/journalism, and math teachers. An English or journalism teacher can share effective ways to conduct impartial, unbiased interviews and surveys, including how to ask a question and write down the response. A math teacher can share methods to calculate and analyze data gathered in the results of the survey.

Wanda J. Routier is a faculty associate at Johns Hopkins University in Baltimore, Maryland, teaching in the Graduate Special Education Department.

Objectives

As a result of this lesson, students will

- Learn about First Amendment rights
- Conduct and analyze a survey about First Amendment rights
- Compare their results with those from the national survey conducted by The Freedom Forum

Target Group: Secondary

Time Needed: 5–6 classes plus time outside of class to conduct survey

Materials: Student Handouts 1 and 2

Procedures

1. Ask students to answer the following questions: What are the five rights protected by the First Amendment? What are the three rights you think are most important? Why? If you were voting today, would you vote to ratify the First Amendment? Do you think you learn enough about First Amendment rights in school? Do you feel you are free to express yourself in different situations, such as at work or at school? Discuss student responses to these questions. Compare their responses to the first question with responses in the table (Americans Able to Name First Amendment Rights) on page 16.
2. Introduce The Freedom Forum and discuss the poll it recently conducted about the First Amendment. Tell students they will be

See the article, “The Freedom Forum First Amendment Poll: An Analysis,” on page 4 for background information.

conducting their own poll and will be analyzing and comparing their results with the results of The Freedom Forum poll. Decide whether students will work individually or in pairs. Decide on the population to be surveyed (it must be adults to compare with The Freedom Forum results). Possibilities include parents, other adult family members, teachers, or neighbors. Decide how many adults each student will survey.

3. Distribute Handout 1 to students and discuss each point in preparation for the survey. Review the tips for conducting a good survey. Alternatives to students writing responses would be to have the interviewees write their own responses or to tape-record the interview for later transcription.
4. Distribute Handout 2. Spend time reviewing each question so students understand the vocabulary, what the question is asking, how to ask the question and write responses, and what answers might be expected. Have students work in pairs and practice conducting the survey, each taking a turn asking the questions and writing the responses.

5. Distribute enough copies of the survey so each student has one survey per adult to interview plus a few extra. Give students enough time to conduct the survey. This will depend upon the population selected and the number of adults to be surveyed.

6. When students are finished conducting their surveys, begin the scoring process. Distribute one copy of the survey for students to use to compile their results. On the top of the page, they should write "Scoring Copy" and their name in red ink. Students will add all the responses for each question from all of their surveys. They will write a tally mark for each response next to the answer on the page. When finished, they count the tally marks and write the number next to the response. Students can write extra comments on the scoring copy by the appropriate question. When finished, they should staple all surveys to their scoring copy. Assist students as necessary. For example, question #2 of the survey:

As you may know, the First Amendment is part of the U.S. Constitution. Can you name any of the specific rights that are guaranteed by the First Amendment? (check all that are mentioned and write others that are not listed)

20 Freedom of the press

|||| |||| |||| ||||

17 Freedom of speech

|||| |||| |||| ||

9 Freedom of religion

|||| ||||

4 Right to petition ||||

3 Right of assembly/Right to association |||

2 Other: *Right to own a gun* ||

2 Don't Know/No Comment ||

7. Once students are finished, assign them to groups of three or four. Distribute another blank copy of the survey. Assign a group leader to guide the group through the survey to tally results. Assign a

recorder to record and tally all scores. On top of this survey, the recorder should write "Group Scoring" in red ink and list group names. Groups should record all the scores for each response and total them when finished as they did individually. Then each group should staple all surveys to the group scoring sheet.

8. Use one copy of the survey to tally responses from groups. This should be the copy with the final results from all students. Ask each group to give the total number of responses for each question as you go through the survey. Review the final totals with students. You may wish to make transparencies of the survey and write the totals on the transparencies so students can see the totals during their discussion. When finished, collect all group scoring sheets. Later, you may wish to spot check tallies to check for accuracy.

9. Convert the raw data into percentages and other statistical information. For example:

The question: "Name the rights guaranteed by the First Amendment."

Number of people surveyed: 50
Number of people who named each right and converted numbers to percentages:

speech	48	=	96%
press	50	=	100%
religion	36	=	72%
assembly	10	=	20%
petition	8	=	16%

10. With the information gathered from the analysis of your data, discuss the results of your survey. Be careful not to make broad, sweeping assumptions by interpreting the results incorrectly.

11. Make comparisons of your results and the results from The Freedom Forum poll. Ask students the following questions: How is your survey similar to and different from The Freedom Forum poll? Why do

you think that is so? What topics do people need to be more informed about?

12. As a wrap-up, ask students the following questions: What have you learned about the First Amendment as a result of doing the survey? Do you think you know more about the First Amendment now than you did before the survey?

13. Divide students into small groups. Have them make a list of what students should be taught in school in order to become informed citizens as a result of what they learned from their survey. Discuss their suggestions and ways to informally incorporate the ideas into the curriculum.

Resource

The Freedom Forum, World Center, 1101 Wilson Blvd., Arlington, VA 22209; (703) 528-0800; To order publications, call 1 (800) 830-3733.

The Freedom Forum World Wide Web address: <http://www.freedomforum.org/newsstand/reports/sofa/printsofa.asp>

Items available at the web site:

"The Freedom Forum Poll"

"State of the First Amendment" and analysis of the poll

Orders for hard copies

Comparison to the original survey

Puzzle Answers for Page 63

Across

2. expression

5. five

8. Constitution

10. assembly

11. religion

12. speech

Down

1. freedom

3. petition

4. Bill of Rights

6. amendment

7. first

9. press



Student Handout 1

Conducting a Survey

1. In order to compare your results with The Freedom Forum survey, you must poll adults. Possibilities include parents, other adult family members, teachers, or neighbors. What is the population you will survey?
2. How many adults will you interview for the survey?
3. Remember the three guidelines for conducting a survey:
 - Be objective. Don't make comments, state your opinion, or use voice inflections or body language to influence the person you are interviewing.
 - Don't judge, ridicule, or make fun of any answer.
 - Record and report only the facts (what the person says).
4. Other guidelines:
 - Write down exactly what the person says. Don't put it into your own words.
 - Ask the person to repeat an answer or go slower if you cannot keep up with writing his or her response.
 - Respect other people's opinions even though they may be different from yours. The First Amendment protects their opinions and yours opinions.
 - Don't drive the interview toward any one topic. Stick with the questions as stated on the survey.
 - Watch good news interviews on television (network evening news shows or specials) to get an idea of how to ask questions and conduct an interview.
 - Be sure you make the person feel free to give his or her own opinion, not what you want to hear.



Student Handout 2

Survey—American Attitudes About the First Amendment

Directions: Interview an adult about his or her knowledge of the First Amendment. Read the bold print aloud. Check the line(s) that match his or her answer. If the person says a different answer or other things, write it down in the margin.

Hello. My name is _____. I'm from (teacher's name and class or school name and class). We are conducting a survey on important issues facing the nation and would like your opinions.

I. KNOWLEDGE AND OPINIONS ABOUT FIRST AMENDMENT AND AMERICAN SOCIETY

1. As you know, the U.S. Constitution provides many individual rights and freedoms. Are there any particular rights or freedoms that you feel are most important to American society?

- _____ Freedom of the press
- _____ Freedom of speech
- _____ Freedom of religion/not to practice religion
- _____ Freedom from unreasonable search and seizure
- _____ Right to petition
- _____ Right of assembly/Right to association
- _____ Right to bear arms/own guns
- _____ Right to trial by jury/fair trial
- _____ Right to privacy
- _____ Right to protest
- _____ Other: _____
- _____ Don't know/No comment

2. As you may know, the First Amendment is part of the U.S. Constitution. Can you name any of the specific rights that are guaranteed by the First Amendment? (check all that are mentioned and write others that are not listed)

- _____ Freedom of the press
- _____ Freedom of speech
- _____ Freedom of religion
- _____ Right to petition
- _____ Right of assembly/Right to association
- _____ Other: _____
- _____ Don't Know/No comment

3. The U.S. Constitution protects certain rights, but not everyone considers each right important. I am going to read you some rights guaranteed by the U.S. Constitution. Please tell me how important it is that you have that right.

A. How important is it that you have the right to assemble, march, protest, or petition the government about causes and issues? Is it essential that you have this right, important but not essential, or not that important?

- _____ Essential
- _____ Important but not essential
- _____ Not that important
- _____ Don't know/No comment

B. How important is it that you have the right to speak freely about whatever you want? Is it essential that you have this right, important but not essential, or not that important?

- _____ Essential
- _____ Important but not essential
- _____ Not that important
- _____ Don't know/No comment

C. How important is it that you have the right to practice the religion of your choice or no religion? Is it essential that you have this right, important but not essential, or not that important?

- _____ Essential
- _____ Important but not essential
- _____ Not that important
- _____ Don't know/No comment

II. FREEDOM OF SPEECH

1. I'm going to read you some ways people might exercise their First Amendment right of free speech. For each, tell me if you agree or disagree that someone should be free to do it.



A. Do you agree or disagree that people should be allowed to express unpopular opinions? Do you strongly or mildly (agree/disagree)?

- _____ Strongly agree
- _____ Mildly agree
- _____ Mildly disagree
- _____ Strongly disagree
- _____ Don't know/No comment

B. Do you agree or disagree that people should be allowed to place sexually explicit material on the Internet? Do you strongly or mildly (agree/disagree)?

- _____ Strongly agree
- _____ Mildly agree
- _____ Mildly disagree
- _____ Strongly disagree
- _____ Don't know/No comment

C. Do you agree or disagree that people should be allowed to burn or deface the American flag as a political statement? Do you strongly or mildly (agree/disagree)?

- _____ Strongly agree
- _____ Mildly agree
- _____ Mildly disagree
- _____ Strongly disagree
- _____ Don't know/No comment

2. Please tell me if you agree or disagree with the following statement: It's dangerous to restrict freedom of speech because restricting the freedom of one person could lead to restrictions on everybody. Do you strongly or mildly (agree/disagree)?

- _____ Strongly agree
- _____ Mildly agree
- _____ Mildly disagree
- _____ Strongly disagree
- _____ Don't know/No comment

III. FREEDOM OF THE PRESS

1. Please tell me whether you agree or disagree with the following statement: Tabloid newspapers such as *The Star* and *The National Enquirer* should have the same freedom to publish what they want as other newspapers such as *The New York Times* and *The Wall Street Journal*. Do you strongly or mildly (agree/disagree)?

- _____ Strongly agree
- _____ Mildly agree
- _____ Mildly disagree
- _____ Strongly disagree
- _____ Don't know/No comment

2. I'm going to read you some ways that freedom of the press may be exercised. For each, tell me if you agree or disagree that the press should be free to do it.

A. Do you agree or disagree that newspapers should be allowed to publish freely without government approval of a story? Do you strongly or mildly (agree/disagree)?

- _____ Strongly agree
- _____ Mildly agree
- _____ Mildly disagree
- _____ Strongly disagree
- _____ Don't know/No comment

B. Do you agree or disagree that journalists should be allowed to keep a news source confidential? Do you strongly or mildly (agree/disagree)?

- _____ Strongly agree
- _____ Mildly agree
- _____ Mildly disagree
- _____ Strongly disagree
- _____ Don't know/No comment

C. Do you agree or disagree that television networks should be allowed to project winners of an election while people are still voting? Do you strongly or mildly (agree/disagree)?

- _____ Strongly agree
- _____ Mildly agree
- _____ Mildly disagree
- _____ Strongly disagree
- _____ Don't know/No comment

IV. FREEDOM OF RELIGION

1. I'm going to read you some ways people might exercise their First Amendment right of freedom of religion. For each, tell me if you agree or disagree that someone should be free to do it.

A. Do you agree or disagree that people should be allowed to display religious symbols on government property? Do you strongly or mildly (agree/disagree)?

- _____ Strongly agree
- _____ Mildly agree
- _____ Mildly disagree
- _____ Strongly disagree
- _____ Don't know/No comment



B. Do you agree or disagree that teachers or other public school officials should be allowed to lead prayers in school? Do you strongly or mildly (agree/disagree)?

- Strongly agree
- Mildly agree
- Mildly disagree
- Strongly disagree
- Don't know/No comment

2. Please tell me if you agree or disagree with the following statement: It's dangerous to place restrictions on freedom of religion because restrictions on one type of religious activity could lead to restrictions on others. Do you strongly or mildly (agree/disagree)?

- Strongly agree
- Mildly agree
- Mildly disagree
- Strongly disagree
- Don't know/No comment

V. OTHER QUESTIONS

1. To the best of your recollection, have you ever taken classes in either school or college that dealt with First Amendment freedoms?

- Yes—Would that have been in grade school, high school, or college?
 - Grade school (grades 1–8) (check all that apply)
 - High school
 - College
 - Don't know
- No
- Don't know/No comment

2. Overall, how would you rate the job that the American educational system does in teaching students about First Amendment freedoms—excellent, good, fair, or poor?

- Excellent
- Good
- Fair
- Poor
- Don't know/No comment

VI. DEMOGRAPHICS

Now just a few questions to help classify your answers.

1. In which age group are you?

- 18–29
- 30–44
- 45–59
- 60+
- Don't know/No comment

2. Are you male or female?

- Male
- Female
- Don't know/No comment

3. What was the last grade of school you completed? Grade school or less, some high school, high school, some college, college grad, postgraduate work?

- Grade school or less
- Some high school
- High school
- Some college
- College grad
- Postgraduate work
- Don't know/No comment

4. Are you white, black, Hispanic, Asian, or something else?

- White
- Black
- Hispanic
- Asian
- Other: _____
- Don't know/No comment

5. Politically speaking, do you consider yourself to be liberal, moderate, or conservative?

- Liberal
- Moderate
- Conservative
- None of these
- Don't know/No comment

Thank you very much for participating in this survey. Your cooperation is greatly appreciated.



Teaching Strategy

Accommodating Students' Religious Needs

Update on Law-Related Education, 22.1, 1998, pp. 41–43. © 1998 American Bar Association.

Background

In “State of the First Amendment: Freedom of Religion,” Donna Demac reviews the history of religious freedom in the United States and identifies issues involving this First Amendment freedom. Charles Haynes reflects on how Muslim students can meet their religious obligations while attending public schools in “Muslim Students’ Needs in Public Schools.” He considers whether the schools can accommodate students’ religious needs without violating the establishment clause of the First Amendment. This strategy offers students an opportunity to weigh the establishment clause against the free exercise clause of the First Amendment. They check their understanding about the role of public schools in religious expression and consider how or if schools can accommodate the religious needs of students.

Objectives

As a result of this lesson, students will

- Reflect on the historical background of the impact of religious freedom on schools
- Determine what role religious expression can play in public schools

Adapted from Charles Haynes, “The Needs and Requirements of Muslim Students in Public Schools,” in Religion in American History: What to Teach and How (Alexandria, Va.: Association for Supervision and Curriculum Development, 1990), by permission of the publisher.

- Identify the challenges schools face in balancing the establishment and free exercise clauses of the First Amendment
- Examine the religious obligations of Muslim students as a case study for accommodating various religious practices

Target Group: Secondary

Time Needed: 3–4 classes

Materials Needed: Articles “State of the First Amendment: Freedom of Religion” and “Muslim Students’ Needs in Public Schools,” Student Handout, answers to Student Handout questions provided by The Freedom Forum First Amendment Center

Optional Resources: *Finding Common Ground: A First Amendment Guide to Religious and Public Education* (Nashville, Tenn.: The Freedom Forum First Amendment Center, revised, 1996), and the films *Free to Be?* (New York City: Anti-Defamation League, distributor), and *Religious Diversity* (New York: Phoenix Films)

Procedures

1. To introduce the concept of religious freedom in relation to the First Amendment, have students read “State of the First Amendment: Freedom of Religion” by Donna Demac on page 10. Briefly discuss the article and encourage students to list on the chalkboard dos and don’ts related to religious expression in public schools. Explain that schools must carefully

See the articles on pages 10 and 17 for background information.

balance the establishment and free exercise clauses of the First Amendment.

2. Organize the class into small groups of three to four students and distribute copies of the Student Handout to the groups. Allow time for group members to record a response to each question. After groups have prepared their responses, discuss each question and provide answers with the background information available from The Freedom Forum First Amendment Center. (You can find the answers, with discussion, at <http://www.fac.org/publicat/parents/parents.htm> or by contacting The Freedom Forum First Amendment Center at Vanderbilt University, 1207 18th Avenue, South, Nashville, TN 37212; (615) 321-9588. You may wish to have students obtain the forum’s answers to these questions as part of the activity, or you might obtain the answers before beginning the activity.)
3. Explain to students that in the United States there is a rich diversity of religious communities. Each has its own teachings and practices. Tell students that sometimes religious obligations and practices impact the schools. For example, students may be absent from school as they observe religious holidays. In this activity, students will examine the

religious practices and obligations of Muslims and their impact on schools as a case study. To build background for the activity, students should read the article “Muslim Students’ Needs in Public Schools” by Charles Haynes on page 17.

4. After discussing the background information about Islam, divide the class into groups. Each group is to serve as a committee appointed by the superintendent of schools to recommend a response to the suggestions for accommodating the needs of Muslim students identified in “Muslim Students’ Religious Needs” on page 19. Give groups a week to draft their responses. Which suggestions can be accommodated? Which requests cannot be granted? Responses must be supported by practical and constitutional arguments. Provide time for the groups to present their responses.
5. Assign a group of students to represent school administrators. Have them research the policies of the school and school district concerning special requests from religious groups. Assign another group to represent Muslim parents. Ask them to formulate ideas that could accommodate the religious needs of their children and arguments to support the policy of accommodation. Have the two groups role-play in class a meeting between the administrators and the parents in which the accommodations the school can make are discussed. Students should use the information acquired in steps 2–4 as a resource for the role play. After the role play, have the class discuss whether administrators were able to meet most needs and whether parents understood limitations facing the school as it tries to meet the needs of all students.
6. Ask the class to identify existing school practices that accommodate

special needs unrelated to religion (for example, medical excusal and absentee policies, facilities for those with physical disabilities). Discuss the differences, if any, between these accommodations and accommodations based on religious belief. Have the class consider existing school policies and practices as applied to religion. Do these policies and practices favor some religious groups over others, or are they neutral toward religion in general?

7. If time permits, show a video that focuses on the challenges and opportunities presented by pluralism in the United States. Help students identify the major emphasis of the film, suggest ways that society can show respect for and accommodate differences, and identify potential benefits that may accrue to schools when they accommodate religious needs. Two excellent films are *Free to Be?* distributed by the Anti-Defamation

League and *Religious Diversity*, a production of Phoenix Films.

Free to Be? New York City: Anti-Defamation League, distributor. Asks the viewer to think about questions raised by diversity and conformity in American life: What are the values of ethnic and religious group loyalty and identification, and what degree of assimilation is desirable in order to foster a united nation?

Religious Diversity. New York: Phoenix Films. Points out that religious liberty has allowed religions to flourish in the United States. Young people from a number of major faiths describe how they understand their religious beliefs and practices.

8. Conclude the activity by summarizing ways in which schools can accommodate religious needs. Then ask students to suggest ways that they as students can show respect for the beliefs and traditions of all students.



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Student Handout

Understanding Students' Religious Liberty Rights

Consider these questions regarding religious expression and practices in schools. You can find the answers, with discussion, at <http://www.freedomforum.org> or by contacting The Freedom Forum First Amendment Center at Vanderbilt University, 1207 18th Avenue, South, Nashville, TN 37212; (615) 321-9588.

Did the Supreme Court rule against student prayer in public schools?

May students pray together in public schools?

May students offer prayers at graduation ceremonies and baccalaureate services?

Is it constitutional to teach about religion in public school?

May students form religious clubs in public schools?

May students wear religious garb and display religious symbols in public schools?

May students distribute religious literature in public schools?

May students be released for off-campus religious instruction during the school day?

Adapted from "A Parent's Guide to Religion in the Public Schools," Nashville, Tenn.: The Freedom Forum First Amendment Center at Vanderbilt University, (no date), with permission of the publisher.



Teaching Strategy

Amending the Constitution

Keith A. Pittman

Update on Law-Related Education, 22.1, 1998, pp. 44–47. © 1998 American Bar Association.

A Note to Teachers: This strategy's student handouts have been adapted for classroom use from the article on pages 22–27. See that article for further clarification of the handouts' content. The strategy can also be used with the lesson on page 48.

Objectives

As a result of this lesson, students will

- Consider historical forces that have shaped the U.S. Constitution via the amendment process
- Examine the constitutional amending process, focusing upon why the amendment process should be approached with particular deliberation and care
- Discuss the freedoms of expression guaranteed by the First Amendment (speech, religion, press, assembly, petition)
- Address whether any recently proposed amendment is appropriate for consideration as an amendment
- Consider whether any recently proposed amendments could impact upon rights guaranteed by the First Amendment

Target Group: Secondary

Time Needed: 6–8 classes plus time for research

Materials Needed: Article on pages 22–27, Student Handouts 1–2, access to historical research materials

Keith A. Pittman, a former high school teacher, is now an associate with Butler, Wooten, Overby, Pearson, Fryhofer & Daughtery, a plaintiffs' firm with offices in Atlanta and Columbus, Georgia.

Procedures

1. Introduce the lesson by establishing students' background knowledge of the Constitution. Focus the discussion on these points:
 - a. When and how was the Constitution drafted and implemented?
 - b. What are the purposes of the Constitution?
 - c. How well has the Constitution met its purposes?
2. Give each student a copy of the article "Developing Standards for Constitutional Change" and assign the article for reading, or summarize the article's main ideas.
3. After classroom discussion of the article's main topics, give each student a copy of Handout 1. Briefly discuss the general types of amendments that have been passed.
4. Divide the class into four groups to examine in detail the four periods of constitutional history reflected by the amendments (if possible, create groups so that there is one student per amendment):
 - Group 1: Bill of Rights, 1791 (Amendments 1–10)
 - Group 2: Early Constitutional History, 1798–1870 (Amendments 11–15)
 - Group 3: Early Twentieth Century, 1913–33 (Amendments 16–21)
 - Group 4: Modern Amendments, 1951–92 (Amendments 22–27)Each group (and/or individual student) is to
 - a. Research the intent of the amendments and the historical forces that impacted upon and/or resulted in the passage of each. (For

example, the Reconstruction amendments grew out of the need for the Constitution to address issues raised by the Civil War.)

- b. Rate the amendments for each period using selected questions/standards in Handout 2. Give each amendment a score of 1 to 8 based on how many standards it meets. Ratings should enable analysis of whether amendments have been passed that should not have been, and, if so, why not.

- c. Deliver a class presentation on the findings in (a) and (b).

5. At <http://www.thomas.loc.gov>, as well as at magazine and newspaper web sites or in printed materials, have student groups research constitutional amendment proposals considered by the 104th and 105th Congresses. Ask each group to prepare a report on one or more proposed amendments. Groups will report in detail about the amendments to the class, including whether it seems that the proposals, if adopted, would affect any of the five First Amendment freedoms. (See page 4 for the text of the amendment and an explanation. You may wish to copy the information for students.) Copies of their reports should be made available to the class.

6. Have student teams pair off to build and present arguments for and against any amendments affecting the First Amendment freedoms, using the questions/standards, as appropriate, on Handout 2.



Student Handout 1

Constitutional Amendments: A Compendium

I. Bill of Rights, 1791 (Amendments 1–10)

Amendment 1 (1791). Prohibits establishment of religion; guarantees freedom of religion, speech, press, assembly, and petition.

Amendment 2 (1791). Prohibits infringement of the right of the people to keep and bear arms.

Amendment 3 (1791). Prohibits the quartering of soldiers in any house during times of peace without consent of owner or during time of war in manner not prescribed by law.

Amendment 4 (1791). Protects against unreasonable searches and seizures; requires that warrants be particular and issued only on probable cause supported by oath or affirmation.

Amendment 5 (1791). Requires presentment to grand jury for infamous crimes; prohibits double jeopardy; prohibits compelled self-incrimination; guarantees due process of law; requires that property be taken only for public use and that owner be justly compensated when property is taken.

Amendment 6 (1791). Guarantees right to speedy and public trial by impartial jury, compulsory process, and counsel in criminal prosecutions.

Amendment 7 (1791). Guarantees right to jury trial in suits at common law when value in controversy exceeds twenty dollars.

Amendment 8 (1791). Prohibits excessive bail or fines; prohibits cruel and unusual punishment.

Amendment 9 (1791). Guarantees that unenumerated rights are retained by the people.

Amendment 10 (1791). Reserves to the states or the people rights not delegated by the U.S. Constitution to the federal government or prohibited to the states by the Constitution.

II. Early Constitutional History, 1798–1870 (Amendments 11–15)

Amendment 11 (1795; proclaimed 1798). Prohibits suits in U.S. courts against a state by citizens of another state.

Amendment 12 (1804). Provides for separate electoral college voting for president and vice-president

Amendment 13 (1865). Prohibits slavery; authorizes congressional enforcement of the amendment's provisions.

Amendment 14 (1868). Defines U.S. and state citizenship and prohibits state infringement; requires reduction of representation in Congress when right to vote infringed; prohibits public officers who participated in rebellion from holding public office; prohibits questioning of public debt; makes void any debt incurred in aid of rebellion against the United States; authorizes congressional enforcement of the amendment's provisions.

Amendment 15 (1870). Prohibits abridgment of the right to vote on account of race; authorizes congressional enforcement of the amendment's provisions.



Student Handout 1 (*continued*)

III. Early Twentieth Century, 1913–33 (Amendments 16–21)

Amendment 16 (1913). Authorizes income tax.

Amendment 17 (1913). Provides for popular election of senators.

Amendment 18 (1919). Establishes Prohibition; grants to Congress and the states concurrent power to enforce the amendment's provisions.

Amendment 19 (1920). Prohibits denial of right to vote on account of sex; authorizes congressional enforcement of the amendment's provisions.

Amendment 20 (1933). Provides that presidential term ends on January 20; provides rules covering situations in which president-elect or vice-president-elect dies before inauguration.

Amendment 21 (1933). Repeals Prohibition; prohibits importation of intoxicating liquors into a state in violation of that state's laws.

IV. Modern Amendments, 1951–92 (Amendments 22–27)

Amendment 22 (1951). Prohibits president from serving more than two terms.

Amendment 23 (1961). Grants District of Columbia right to vote in presidential elections; authorizes congressional enforcement of the amendment's provisions.

Amendment 24 (1964). Prohibits poll taxes for federal elections; authorizes congressional enforcement of the amendment's provisions.

Amendment 25 (1967). Provides that in case of removal or death of president, the vice-president shall become president; provides mechanism for filing vacancies in office of vice-president; provides mechanism for dealing with presidential disability.

Amendment 26 (1971). Prohibits denying right to vote on account of age to citizens over eighteen; authorizes congressional enforcement of the amendment's provisions.

Amendment 27 (1992). Provides that no law changing compensation for members of Congress shall take effect until after next House election.

V. Constitutional Amendment Proposals, 104th and 105th Congresses

Go to the web site <http://thomas.loc.gov> to research what happened to constitutional amendment proposals in the 104th and 105th Congresses regarding any of these issues: balanced budget, birthright citizenship, campaign finance, flag desecration, line-item veto, religious equality (school prayer), tax increase, term limits, victims' rights. Report on your selection, defining it and explaining its current status.

Adapted from Citizens for the Constitution, "Developing Standards for Constitutional Change," 1998, by permission of the publisher.

Student Handout 2

Constitutional Amendment Standards

- 1. Standard:** Constitutional amendments should address matters of more than immediate concern that are likely to be recognized as of abiding importance by subsequent generations.

Ask yourself: Does this amendment proposal address an issue that will continue to be of importance for many, many years?
- 2. Standard:** Constitutional amendments should not make our system less politically responsive except to the extent necessary to protect individual rights.

Ask yourself: Does this amendment proposal reflect a sensitivity on the part of its framers to the necessary constitutional balance between the power of the majority and the protection of the individual?
- 3. Standard:** Constitutional amendments should be utilized only when there are significant practical or legal obstacles to the achievement of the same objectives by other means.

Ask yourself: Is there no other, simpler way (for example, through the passage of a law or executive action) to achieve this amendment proposal's objectives?
- 4. Standard:** Constitutional amendments should not be adopted when they would damage the cohesiveness of constitutional doctrine as a whole.

Ask yourself: Does this amendment proposal seem to be in conflict with important constitutional principles?
- 5. Standard:** Constitutional amendments should embody enforceable, and not purely aspirational, standards.

Ask yourself: Can this amendment proposal be enforced and, if so, how likely is it to be enforced?
- 6. Standard:** Proponents of constitutional amendments should attempt to think through and articulate the consequences of their proposals, including the ways in which the amendments would interact with other constitutional provisions and principles.

Ask yourself: Have the consequences of the amendment proposal been fully explored in light of the rest of the Constitution?
- 7. Standard:** Constitutional amendments should be enacted using procedures designed to ensure full and fair debate.

Ask yourself: Has Congress exhaustively and fairly deliberated the amendment proposal?
- 8. Standard:** Constitutional amendments should have a nonextendable deadline for ratification by the states so as to ensure that there is a contemporaneous consensus by Congress and the states that the amendment is desirable.

Ask yourself: Has a limit been set on state consideration of the amendment proposal to allow against possible changes in congressional and public points of view regarding its desirability?

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Teaching Strategy

Putting the “You” in “We the People”

Kathleen S. Roberts and David T. Naylor

Update on Law-Related Education, 22.1, 1998, pp. 48–51. © 1998 American Bar Association.

A Note to Teachers: This strategy is based on a lesson Kathleen S. Roberts taught to 10th grade U.S. history students at Hughes Center High School in Cincinnati. It can be used with the article on page 22 and as either a warm-up or follow-up lesson to the strategy on page 44.

Background

The Preamble to the Constitution of the United States holds key elements to the study of American democracy. In essence, the Preamble functions as a mission statement setting forth the purposes that undergird our system of representative government. By beginning with the phrase, “We the people of the United States ...,” the Preamble makes clear that it is “the people” who give our government its legitimacy.

The notion of who “we the people” are has changed since the Preamble was written, however, and the Constitution, as well as some of our law, also had to change to accommodate groups who had to vote in order for our government to be truly representative. The groups included African Americans, women, Native Americans, and per-

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sons ages 18–21, as well as people of many backgrounds who for various reasons could not qualify to vote in their states. “The vote,” Jethro Lieberman writes, “is the means by which the people retain the power they have delegated to their government and by which strong popular sentiment is translated into law—subject to important constitutional restrictions against abridging fundamental rights. Without the vote, representative democracy collapses” (*The Enduring Constitution: A Bicentennial Perspective*, West 1987, p. 159).

In 1788, the franchise was limited mostly to white propertied males. This lesson allows students to recognize and deepen their understanding not only of how the “we” in the Preamble came to have a much more inclusive meaning, but how the enfranchisement process was carried across several generations in a well-deliberated and highly effective way that did not need to be, and was not, limited to constitutional amendment alone. Beginning with a short mission statement-building activity, the lesson next has students clarify the reasons for government stated in the Preamble. Then, in jigsaw format, students share how specific groups gained the right to vote, plotting key events on a time line. The lesson concludes by having students consider additional possibilities for extending the right to vote to other groups.

See the article on page 22.

Objectives

As a result of this lesson, students will

- Define what a mission statement is
- Explain how the Preamble functions as a mission statement for our system of government
- Explain in their own words the meanings of key phrases in the Preamble
- Name at least four groups that have gained the right to vote since the adoption of the Constitution in 1788
- Identify at least two ways those changes occurred
- Place in correct chronological order milestone events that expanded the right to vote
- Decide whether the right to vote should be extended to any other groups

Target Groups: Secondary students in U.S. history or American government classes. Also, with some adaptations, middle school students.

Time Needed: 2–3 classes

Materials Needed: Transparency (or copies) of the Preamble, teacher-prepared time line, Student Handout, scenes (from textbook or other source) depicting the signing of the Constitution and the Declaration of Independence, article “Developing Standards for Constitutional Change” pp. 22–27

Procedures

1. Before class begins, prepare a time line large enough to be easily seen by all students. Using equidistant segments, divide the time line into decades or 20-year blocks of time. Put 1780 at the left end of the time line and 2000 at the right end, with appropriate time markings above each time segment. Display the time line at the front of the room.
2. As students enter the room, display on the chalkboard or an overhead transparency three ideas for clubs students could form (e.g., “School Spirit Club,” “Protect the Environment Club,” “Computer Games Club”).
3. Divide the class into five groups. Explain that the groups of students are to pretend that they are going to form one of these clubs. They will need to describe, in writing, what the purpose of their chosen club will be. Give them approximately five to seven minutes for this task.
4. Encourage students to share what they have written. Relate this to the concept of a mission statement. Then indicate you are going to introduce them to another mission statement, one written over 200 years ago. Display the Preamble on an overhead transparency. Have students compare it to what they have written.
5. Clarify the meaning of the first two phrases in the Preamble (“We the people” and “in order to form a more perfect union”). Then assign each group one of five phrases and ask the groups to explain what the phrase means in their own words and to identify at least one example of how our government does this. The phrases are (1) “establish justice,” (2) “ensure domestic tranquility,” (3) “provide for the common defense,” (4) “promote the general welfare,” and (5) “secure the blessings of liberty to ourselves and our posterity.” Set a time limit for group deliberations. Provide access to dictionaries for difficult words.
6. Debrief in a large group setting, calling on each group to explain the meaning of the phrase assigned and the example(s) identified. Clarify and record each group’s responses.
7. Call attention again to the phrase, “We the people of the United States.” Refer students to pictures in their textbook (or other source) depicting the signing of the Declaration of Independence and the Constitution. Ask students to describe what they see, especially the characteristics of the people (e.g., males, white, well dressed). Point out that when the Constitution was ratified in 1788, the right to vote was very limited. In most instances, “We the people” referred to propertied white males. But the situation is different today. Indicate that the next part of this lesson will focus on how other groups got the right to vote.
8. As a reading assignment, provide each student with a copy of the article “Developing Standards for Constitutional Change” on pages 22–27. In a classroom discussion later, emphasize the meaning and purpose of each standard listed. Explain that the successful enfranchisement to date of many Americans will be discussed within the framework of how well the process has conformed with these standards.
9. Give students a copy of the Student Handout. Assign each student one of the five reading selections—A, B, C, D, or E. Explain that each reading reveals how the right to vote was expanded for a particular group of people, thus expanding the meaning of “We the people.” Provide time for students to read the directions at the top of the handout and their selection individually. Then tell them they will be meeting again in small groups in which they will (1) clarify what they have read, (2) summarize in no more than five words how voting rights increased, (3) identify the method or process used for this, and (4) list the standards with which the method or process complied.
10. As a group finishes, have a member come to the front of the room, write at the appropriate place on the time line the summary words (no more than five) based on the group’s reading selection, and pass out the final list of standards decided upon by the group.
11. Extend the discussion by having students consider other groups that currently lack the right to vote. For example, a 1997 statewide issue in Maine asked voters to consider extending the right to vote to some groups of mentally ill persons. In many states, teenagers can drive but not vote. Resident aliens cannot vote, no matter how long they have lived in this country.
12. Conclude by having students write a position paper indicating why they feel one of the groups discussed in this segment should or should not have the right to vote, and how the question should be deliberated and finally answered.

Answers for Page 57

1. Assembly, Speech
2. Petition
3. Press
4. Speech
5. Speech
6. Religion, Assembly



Student Handout

Tracing the Growth of Voting Rights

When the United States Constitution was adopted in 1788, the meaning of the phrase “We the People” was different than it is today. In most of the states, only white adult males over 21 years of age who owned property could vote. Over the years, that situation has changed. These readings reveal how voting rights have been enlarged for particular groups of voters. After reading your assigned selection, identify the group, the time period, and the main way voting rights expanded. In no more than five words, summarize how voting rights increased for this group. Be prepared to write this information on the time line at the front of the room.

Reading Selection A

The Civil War (1861–1865) helped African Americans gain important rights. On January 1, 1863, President Lincoln issued the Emancipation Proclamation. It declared that “all persons held as slaves within any state ... in rebellion against the United States, shall be ... forever free.” This action helped change the war to a crusade against slavery. Following the Civil War, three amendments were added to the U.S. Constitution. The Thirteenth Amendment, ratified in 1865, made slavery illegal throughout the United States. The Fourteenth Amendment, ratified in 1868, made former slaves citizens of both the United States and the state in which they lived and guaranteed to all persons “the equal protection of the laws.” The Fifteenth Amendment, ratified in 1870, provided that no citizen may be denied the right to vote on account of race.

Reading Selection B

Throughout the 1800s and early 1900s, women struggled to obtain the right to vote. At that time, many people believed the primary role of women was to maintain the home and family. They felt women should not vote or become involved in politics. To do so, they argued, would cause women to ignore their duties in the home and to be corrupted by the evils of society. Despite strong opposition, women’s organizations fought for and won the right to vote in various states. Prior to 1920, women had secured full or partial voting rights in most but not all states. Twenty states still denied women the right to vote. That situation changed when the Nineteenth Amendment was ratified in 1920. It provides that “The right of citizens ... to vote shall not be denied or abridged ... on account of sex.” Since then, women have become an increasingly important force in American politics.

Reading Selection C

As originally written, the U.S. Constitution does not specify a required age to vote. This decision was left to the states. Prior to 1971, most states required persons to be at least 21 years of age to vote. The Vietnam War (1957–1975) helped change that situation. Eighteen-year-olds were drafted, and thousands of Americans under the age of 21 died in that conflict. Many Americans argued that if 18-year-olds were old enough to fight and die for their country, they should also be able to have a say in how it is governed. Supporters of lowering the voting age gave other reasons as well. They pointed out, for example, that 18-year-olds could

Student Handout *(continued)*

raise families, hold jobs, be taxed, and be tried in adult courts. The Twenty-sixth Amendment, ratified in 1971, lowered the voting age to 18. Since then, all citizens who are at least 18 years of age are eligible to vote in all federal and state elections.

Reading Selection D

Constitutionally, Native Americans are considered to be separate nations, with distinct political rights. But in practice they have long been treated as outsiders in their native land. European settlers frequently regarded Native Americans as a nuisance and an obstacle to white migration and settlement. They forced Native Americans to sign treaties giving up rights to their lands and relocate on specially designated reservations. Until the 1900s, most Native Americans were not considered to be American citizens. That situation changed after World War I. In 1924, Congress passed the Snyder Act, which made all Native Americans citizens and gave them the right to vote.

Reading Selection E

The Fifteenth Amendment, ratified in 1870, provided that no citizen could be denied the vote on account of race in any state or federal election. Yet states used a variety of other means to prevent African Americans from voting. They set requirements for voting that appeared to apply to all people but, in reality, did not. For example, some states required all voters to pay a poll tax (a special tax to vote) and to pass a literacy test (to demonstrate knowledge of the Constitution). In passing these laws, they also adopted a “grandfather clause.” Any man whose father or grandfather had been eligible to vote prior to January 1, 1867, did not have to pay the tax or pass the test. Since African Americans were not eligible to vote at that time, this meant that they, but not most white citizens, were required to pay the tax and pass the test. In addition to legal restrictions, terrorist groups such as the Ku Klux Klan used threats and violence to intimidate African Americans and keep them from voting.

Dramatic changes occurred during the Civil Rights Movement of the 1950s and 1960s. In 1964, the Twenty-fourth Amendment abolished the poll tax in all federal elections. Two years later, the U.S. Supreme Court held that poll taxes could not be used in state elections either because they discriminated against the poor. In 1965, Congress passed the Voting Rights Act. It gave the federal government wide powers to oversee elections in states that had a record of discriminating against voters. This law did much to eliminate voting abuses. African-American voter registration increased dramatically. In 1975, Congress banned the use of literacy tests for all elections.



Student Forum

Should Public School Prayer Be Allowed?

Update on Law-Related Education, 22.1, 1998, pp. 52–55. © 1998 American Bar Association.

A Note to Teachers: This forum is a student-organized role play that will extend student thought on the growing controversy about whether prayer should be allowed in public schools. Students will be asked to incorporate information provided in the *Update* articles with independent research to form opinions about this controversy.

Students are responsible for the forum. Your role is to provide copies of materials and serve as a consultant. Roles have been developed to bring out diverse perspectives and illustrate the complexity of this issue. You might want to select relevant readings and use teaching strategies that will give students the background needed to participate in the forum. Articles about this issue can be found in recent newspapers and magazines.

The forum should take from two to five class periods, depending on the number of roles and the amount of discussion, and whether or not the class chooses to invite guest speakers. Independent research will elevate the quality of student presentations and overall scholarship. You or your students may elect to use all the sample roles provided, or you may revise or replace them. Make sure that the roles represent diverse philosophical viewpoints.

To the Student

This forum will give you an opportunity to take responsibility for your own learning. It is similar to a panel discussion in which people come together to debate issues. The activity will help you explore other people's views on the complex controversy of whether prayer should be allowed in public schools.

Freedom of religion is the right of persons to believe in and practice whatever faith they choose; it is also the right to have no religious beliefs at all. These rights are found in the First Amendment of the U.S. Constitution. Various court rulings have interpreted this amendment clause to mean that the government, which includes agen-

cies such as schools, may not promote or give special treatment to any religion. For example, the courts have struck down different school prayer programs, as well as programs that teach the Bible.

In the last decade, there have been signs that the Supreme Court may be rethinking its stand on whether teaching about religion in public schools is constitutional, and various decisions have supported the religious liberty rights of students wanting, for example, to hold meetings of religious clubs on school grounds. The result has been considerable confusion about just what students' religious rights might be at school. Is religious freedom denied when students are not permit-

ted to have a graduation invocation and benediction? Is the freedom to have no religion violated if nonbelievers have to listen?

Here are some questions you might consider during the discussion:

- What exactly does the First Amendment say regarding freedom of religion?
- To what extent should the beliefs of the nation's founders influence today's interpretations of religious freedom?
- Why might public attitudes tend toward supporting prayer in public schools?
- Should public attitudes influence courts' interpretations about freedom of religion?
- What are the subtle inconsistencies in the facts you learn during the forum? For example, (1) the American public overwhelmingly supports freedom of religion, even for the most extreme groups, and (2) four-fifths of Americans would allow prayers at graduation, and almost two-thirds believe teachers should be allowed to lead prayers at school.

How to Conduct the Forum

1. The class selects 10 students to serve on the panel.
2. All students complete the forum ballot and submit it to the panel.
3. Students form groups to develop or adapt forum character roles.
4. Students identify community

members to invite to participate in the forum. Community members may represent themselves, serve as coaches for the panelists, or play one of the roles. Include your teacher in making plans to invite guest speakers.

5. The panel selects a facilitator and clerk from among student volunteers. The facilitator coordinates speakers and maintains order if necessary. The clerk records key ideas expressed.
6. The panel conducts the forum.
7. All students should once again complete the forum ballot. Then the panel should review, compare, summarize, and report the results to the class.
8. Students discuss how the forum presentation might have affected their opinions.

Getting Ready

To prepare for this forum, read all the articles in this *Update* edition that have to do with freedom of religion, and review materials available through resources such as those listed on page 58. Contact professionals who can help you prepare for the forum or who might agree to participate; for example, your school principal, school lawyer, and counselors; clergy members; professors specializing in First Amendment issues; local representatives of organizations such as the American Civil Liberties Union (ACLU); and local lawyers, judges, and other legal professionals.

Background

In societies with official state religions, school can be much different than in societies where church and state are separated by law. Such is the case when comparing colonial America to the United States today. During colonial times, church officials performed many of the roles that our schools play. Ministers often held classes in their homes for students who could afford a fee. Those who

couldn't were taught at home. Lessons in religious beliefs and obedience were common for all young people.

Even though American colonists were deeply religious and came here for religious freedom, they were often intolerant of other groups and would impose penalties on those who did not follow a colony's official religion. Roman Catholics and Jews could not vote in most colonies. To be a citizen in Georgia, a colonist had to belong to the Anglican Church. Thomas Jefferson, James Madison, and most of the founders favored separation of church and state, and this was guaranteed by the Constitution's First Amendment.

Eventually, the nation's educational efforts evolved into a public system that more and more eliminated reference to religious subjects as well as religious rites such as prayer. Yet church and state aren't entirely separated in America, starting with our nation's motto: In God We Trust. With public opinion and the courts recently seeming to become more tolerant of certain religious activities in public schools, this forum will explore contemporary opinions about how far, and in what manner, prayer might be protected there. The opinions are largely taken from the arguments of Justices Kennedy, Scalia, Blackmun, and Souter in *Lee v. Weisman*, 505 U.S. 577 (1992).

Introduction

Roles The following people have agreed to discuss their views and positions in a panel discussion. They represent the interests of various individuals who are involved in debate about school prayer. Students playing the roles should have five minutes to present their positions and to answer questions from the audience. Students in the audience may play the role of reporters covering the discussion and residents of the community. When questioned by the audience, the students should answer in a manner consistent with their roles.

Role 1: Ahmed Beloian Hi! I'm Ajay Beloian, a senior at this high school, and I don't see why it is unconstitutional to allow prayers both in the classroom and at school activities, as long as participation is voluntary and the prayers are nonsectarian. Everyone can join in if no one faith is sponsored, and students who for some other reason don't want to pray can just quietly wait for the prayer to finish. I've never met anyone offended by prayer, have you? In my grandparents' day, morning prayer came from the Book of Psalms, and they don't remember a single complaint either. It's not as if any school would prepare a book of its own prayers for everyday use, and any clergy composing a special prayer for a school function will be a professional who knows what's right for a non-denominational setting. To cover any objections, all that is needed is an announcement prior to the prayers saying that, while everyone is asked to rise during the prayer, no one has to join in, and just because they've stood up doesn't mean anyone will assume that they have joined in.

Role 2: Ira Ellis My name is Ira Ellis, and I have some real problems with the idea of having any religious observance whatever at the public school, even though, as a rabbi, I'm very interested in the spiritual development of the students in this community. Look at it this way. Are school administrators in any position to choose who should lead prayers at school and what the content of those prayers should be? And yet, this is what we, in fact, force them to do when we ask for prayer in the classroom or at school events. School administrators are employees of our local government. An important First Amendment principle is that it is not the part of government to arrange for or to compose prayers for anyone. Nothing could be clearer. Instead, what I'm hearing is that, in order to avoid establishing religion in the schools, but to make sure religion

takes place there in the form of prayer, at its own discretion the government may establish a nonsectarian civic religion of its own choosing. This argument defies logic and the First Amendment.

Role 3: Sanford Cole My name is Sanford Cole, and I'm a counselor working in the inner-city schools as part of the Building Better Youth program. I'm for prayer, and history backs me up. There's a precedent for nonsectarian prayer in many government ceremonies and actions in our country. The Declaration of Independence appeals to "the Supreme Judge of the World" and vows reliance on "the protection of divine providence." We've had prayer at presidential inaugurations and at congressional and Supreme Court opening sessions since George Washington, the First Congress, and John Marshall. We need to interpret the establishment clause in ways that do not invalidate long-standing traditions of our nation and compromise the classroom as a environment for developing high moral values. To deprive our schools of the unifying mechanism of public prayer to spare nonbelievers what is a minimal inconvenience of standing or sitting in respectful nonparticipation is senseless. If there is a person whose religious faith and values have been compromised by waiting through a prayer, then how strong could that faith and those values be?

Role 4: Frances Lara I'm Frances Lara, a psychology professor at a nearby state university. It simply isn't true that people cannot be coerced by being forced to passively sit by while prayers are spoken. School sponsorship and supervision of prayer place public as well as peer pressure to participate, and this may violate what a student believes, constituting pressure. Even though that pressure may be indirect, it still has a coercive effect because peers and teachers are pre-

sent, and, at times, the prayers represent long-held community beliefs and traditions that government, under the First Amendment, may not require attendees to conform to in any manner. What's more, the First Amendment obligates government to guard and respect the diversity of religious beliefs and to respect the lack of belief too, which it cannot do if it sanctions prayer prepared by anyone of any denomination for use in the school. The question doesn't turn on how likely it is that someone's beliefs will be compromised because government may not compromise them at all; it turns, instead, on what is allowable governmental activity, and sponsoring prayer simply is not.

Role 5: Angelica Thomas I'm Angelica Thomas, and my six children attend the public schools of this community. To me, prayer is just like free speech—Americans have always had that right, and they should be able to pray at school if they want. Besides, we are used to hearing the views of all sorts of people—we're taught right in school that it's good for us. If all students—believers, agnostics, and atheists alike—are expected to tolerate information and ideas their families don't agree with in their textbooks and other media, which teachers are allowed to use for instruction, then why can't they be expected to tolerate prayer? I'm very concerned about how our community is going to fight the unsolicited electronic filth that is coming into our homes. One of our greatest tools is our school system, which can help frame students' activities in a devotion to the high ethical principles that all religions have in common. What is more likely to harm these kids—pornography on the Internet, videos about drug abuse and venereal disease, photos of the mangled war dead in Europe and Africa, or prayer? End of story.

Role 6: Gertrudis Cruz My name is Gertrudis Cruz. As a debate teacher, I'm deeply disturbed by some of the faulty reasoning being used here. The First Amendment protects our freedoms of speech and religion differently. Freedom of speech is protected by allowing its fullest expression and government participation. Religion is protected by disallowing any government intervention. And to say that students have a choice of whether to pray in school or attend school functions with prayer is preposterous. What affords government the power to deprive them, without just cause, of the opportunity to participate in any school activity? What if the government does have precedents of religious ceremonies and actions? It also has precedents of institutionalized slavery and disenfranchisement of women, African Americans, and Native Americans. Might we ever consider repeating these mistakes because they happened before? A precedent doesn't necessarily have the compelling force of a good argument based in sound logic.





Forum Ballot

Should Prayer Be Allowed in Public Schools?

Circle the choice that best answers how you feel about the issue of prayer in public schools.

	strongly agree				strongly disagree
1. Religious freedom is impossible unless government guards and respects individuals' religious beliefs.	1	2	3	4	5
2. Starting each school-day morning with a prayer is consistent with the religion clauses of the First Amendment, so long as the prayer is non-sectarian and no one is forced to say it.	1	2	3	4	5
3. School prayer should be allowed only if an ecumenical council of local clergy works with parents to develop a program acceptable to all denominations as well as to nonbelievers.	1	2	3	4	5
4. If school prayer is banned as offensive and/or coercive with respect to some students' beliefs, then all ideas and materials, in any medium, that offend any student's beliefs should be banned, including scientific theories that contradict the Bible, graphically violent images, nude art, music, and dance.	1	2	3	4	5
5. Students feel peer pressure to participate in school prayer both in the classroom and at school events, so their beliefs can be coerced if they are forced to do so.	1	2	3	4	5
6. If students' beliefs prohibit them from attending school events at which prayer is spoken, it is fair to expect them not to attend those events.	1	2	3	4	5
7. Having nonsectarian invocations and benedictions only at school events is consistent with the religion clauses of the First Amendment, so long as professional clergy prepare and present those prayers.	1	2	3	4	5
8. It is unconstitutional for school officials or their agents to preserve or transmit religious beliefs in any school setting at any time.	1	2	3	4	5
9. The Constitution should be amended to give prayer the same kind of protection as free speech.	1	2	3	4	5
10. Prayer should be abolished at all governmental functions, including presidential inaugurations and openings of congressional and Supreme Court sessions.	1	2	3	4	5

Write a short answer. How do you interpret what the First Amendment says about freedom of religion?
What is the government's role in religion?



Teaching Strategy

Using the First Amendment Freedoms Poster

Update on Law-Related Education, 22.1, 1998, pp. 56–57. © 1998 American Bar Association.

Background

In a sense, the five freedoms protected in the First Amendment of the Constitution—freedom of speech, press, religion, assembly, and petition—are the heart of American democracy. Yet many people do not understand how important these constitutional freedoms are to the American way of life. The greatest threat to a democratic society is to let the government or the majority dictate what people are allowed to believe, think, or say. Throughout this lesson on the First Amendment, encourage students to think about what their lives, both now and in the future, would be like without the First Amendment freedoms.

Objectives

- To paraphrase the content of the First Amendment
- To identify and explain the five freedoms included in the First Amendment
- To recognize how the provisions of the First Amendment have been challenged throughout American history and are still being challenged today

Materials: poster “First Amendment Freedoms,” Student Handout

Definitions

Freedom of speech—the right to speak one’s mind, whether privately or publicly, without fear of government restriction or retribution

Freedom of the press—the right to report on government actions and events without fear of official censorship or retribution

Freedom of religion—the right to believe or not to believe and to practice one’s faith without government interference

Freedom of assembly—the right of people to act in groups

Freedom of petition—the right of people to hold the government accountable for its actions

Procedures

1. Display the poster and have a student volunteer read the title. Explain that the freedoms of speech, press, religion, assembly, and petition are protected by the First Amendment of the Bill of Rights in the Constitution. Read aloud the First Amendment. (A copy of the text can be found on page 4.)
2. Have a student volunteer read the five freedoms listed on the poster—speech, press, religion, assembly, petition. Ask students what they think each of these freedoms means. You may wish to have them write their answers and then add to those answers during the class discussion. Have them keep their answers for future reference.
3. Have students study the poster and identify the objects used to symbolize First Amendment freedoms. Ask them how the objects are related to these freedoms.
4. Encourage students to offer any examples they are familiar with that demonstrate challenges to the freedoms of the First Amendment (for example, attempts to censor the Internet, book bannings in school or public libraries, opposition to Ku Klux Klan rallies). Ask students

The “First Amendment Freedoms” poster identifies the five freedoms that comprise the First Amendment of the Constitution—speech, press, religion, assembly, and petition. Use the poster as a teaching tool to introduce and reinforce the First Amendment and how it protects freedom of expression. Also, see “First Amendment Reflections” on page 6.

which of the five freedoms applies to each of the examples. More than one freedom may apply to each. (Internet—freedom of speech, freedom of the press; book bannings—freedom of speech; rallies—freedom of assembly, freedom of speech)

5. Distribute copies of the Student Handout. Read through the scenarios with students. Then ask them to identify which of the First Amendment freedoms might apply in each situation. Point out that more than one freedom might apply. You may wish to have students work in pairs or small groups. Explain that they must be able to explain why they chose the freedom(s) they did. When finished, discuss as a class the scenarios and students’ choices and reasoning. (Possible answers appear on page 49.)
6. At the conclusion of the lesson, suggest that students summarize their thoughts by writing a paragraph explaining why they think First Amendment freedoms are or are not important.



Student Handout

First Amendment Freedoms in Action

Read each scenario. Circle the First Amendment freedoms—speech, press, religion, assembly, petition—that you think apply to the situation. One or more freedoms may apply. Then explain why you chose the freedom(s) you did.

1. To protest a local developer's plans to build a shopping mall, a community group organizes a demonstration at the town hall.

Speech Press Religion Assembly Petition

2. A person who is concerned about harassment by the Internal Revenue Service requests access to that agency's records.

Speech Press Religion Assembly Petition

3. During a murder trial, the court issues a subpoena allowing police to search the office of a newspaper reporter who interviewed the defendant in the case.

Speech Press Religion Assembly Petition

4. An artist paints a wall mural that shows, among other things, the founders of the nation in the nude.

Speech Press Religion Assembly Petition

5. A group of people concerned about the sexual and violent content of television programs wants the government to regulate the content of television programs.

Speech Press Religion Assembly Petition

6. Muslim students who have formed an after-school group want to use a classroom in their school for their weekly meetings.

Speech Press Religion Assembly Petition



Resources for Teaching

Multimedia Resources on the First Amendment

Paula A. Nessel

Update on Law-Related Education, 22.1, 1998, pp. 58–61. © 1998 American Bar Association.

Books

Exploring the Constitution: Freedom of Speech, Press, and Assembly by Darien McWhirter

Part of a series for young adults, this book reviews the nineteenth-century discussion of the right to free speech as background to twentieth-century Supreme Court decisions. It proceeds to explore modern interpretations and applications of freedom of speech, press, and assembly; discusses and provides excerpts from significant Supreme Court decisions; and raises questions for discussion. Includes a glossary, bibliography, and full text of the Constitution. (1994) \$29.95. Contact Oryx Press, 800/279-6799.

Exploring the Constitution: The Separation of Church and State by Darien McWhirter

Part of a series for young adults, this book explains the evolution of the concept of the separation of church and state, explores the interpretations and applications of the law, discusses and provides excerpts from significant Supreme Court decisions, and raises questions for discussion. Includes a glossary, bibliography, and full text of the Constitution and “A Bill for Establishing Religious Freedom in Virginia.” (1994) \$34.50. Contact Oryx Press, 800/279-6799.

The First Amendment: Freedom of Speech, Religion, and the Press by Leah Farish

Intended for ages 11 and up, this book examines the historical background of the First Amendment and the meaning of each of its parts. Addresses current controversies and cases relevant to the First Amendment and provides full text of the Constitution and Bill of Rights and a glossary and bibliography. (1998) \$18.95. Contact Enslow Publishers, Inc., 44 Fadem Rd., Box 699, Springfield, NJ 07081, 973/379-8890.

Freedom, Fairness & Equality

Freedom of expression and religion are among the rights explained through easily understood background research about constitutional case law. Intended for both teachers

and lawyers acting as resources in the classroom, this book uses case summaries and text to discuss historically significant information and recent Supreme Court decisions. (1994) \$12.00. Contact Phi Alpha Delta Public Service Center, P.O. Box 3217, Granada Hills, CA 91394-0217, 818/368-8103, E-mail: padpscla@aol.com.

Booklets/Pamphlets

American Civil Liberties Union (ACLU) has a variety of “briefing papers” suitable for high school and above and “briefers” aimed at high school students. Topics include “Church and State,” “Hate Speech on Campus,” “Your Right to Express Yourself Freely,” and “Your Right to Religious Liberty.” Call 800/775-ACLU or find them free on the World Wide Web at www.aclu.org.

The First Amendment: The Amendment That Keeps Us Free

An eight-page booklet explaining each of the freedoms itemized in the amendment. (publication #93-F03) Free. Contact The Freedom Forum First Amendment Center at Vanderbilt University, 1207 18th Avenue South, Nashville, TN 37212, 615/321-9588.

A Parent’s Guide to Religion in the Public Schools

Uses questions and answers to help parents understand the religious liberty rights of students and the appropriate role of religion in the public school curriculum. Free, in limited quantities. Contact The Freedom Forum First Amendment Center at Vanderbilt University, 1207 18th Avenue South, Nashville, TN 37212, 615/321-9588.

Religious Freedom: Belief, Practice, and the Public Interest

Part of the Public Issues series, this booklet (order no. 358-6) and its Teacher’s Guide (order no. 359-4) are intended to help students analyze and discuss the dilemmas related to the issue of religious freedom. Beginning with a definition of religion, the booklet then describes the historical background of religious freedom and reviews significant relevant Supreme Court cases. (1991) \$3.00 student; \$2.00 teacher. Contact Social Science Education Consortium, 5541 Central #205, P.O. Box 21270, Boulder, CO 80308-4270, 303/492-8154.

Paula A. Nessel is program manager for school programs in the ABA Division for Public Education in Chicago.

Teaching About Freedom: A Teacher's Guide to the First Amendment

A 23-page booklet with teaching ideas, discussion questions, and classroom handouts. (publication #94-W28) Free. Contact The Freedom Forum, 800/830-3733.

Curriculums/Lessons

Advertising and Free Speech

Students balance a corporation's right to free speech versus the state's right to regulate commercial speech. (#30110C9) \$5.95. Contact Constitutional Rights Foundation, 800/488-4CRF.

Constitutional Rights of Juveniles and Students: Lessons on Sixteen Supreme Court Cases

Introduces students to landmark cases on religion and the establishment clause, freedom of expression, due process, and other rights of the accused and equal protections of the laws. (1994) \$10.00. Contact ERIC Clearinghouse for Social Studies/Social Science Education, 800/266-3815.

Education for Freedom

Lessons on the First Amendment by the First Amendment Congress for both elementary (K–6) and secondary (6–12) levels. The newest version includes lessons on cyberspace and the separation of church and state. Contact The Freedom Forum First Amendment Center at Vanderbilt University, 1207 18th Avenue South, Nashville, TN 37212, 615/321-9588.

The First Amendment: America's Blueprint for Tolerance

Uses historical and modern examples to explore the First Amendment and three of its most important rights—freedom of religion, of speech, and of the press. (1995) #B1551-95 student text \$7.95; #B1554-95 teacher's resource \$14.95. Contact Close Up Foundation, 800/765-3131.

Freedom of Expression in Special Places

Explains that schools, military bases, and prisons are places where the First Amendment presents special problems and analyzes how the First Amendment applies to school newspapers, using *Hazelwood v. Kuhlmeier* in the discussion. Contact Margaret Fisher, Office of Administrator for Courts, 1206 Quince St., Olympia, WA 98504-1170 or download from Web site: www.wa.gov/courts/educate/home.htm

From the School Newsroom to the Courtroom

Contains a series of interactive lessons on the First Amendment's protection of free expression, taking an in-depth view of the landmark 1987 Supreme Court decision of *Hazelwood v. Kuhlmeier*, in which three high school seniors took their principal to court over censorship of the school newspaper. (1989) \$7.95. (#50030C9) Contact Constitutional Rights Foundation, 800/488-4CRF.

Lesson Plan of the Month—

- “Is There Room for the Menorah, a Nativity Scene, and Other Religious Symbols in the Classroom?” Series V, No. 4 (1996)
- “Newly Free to Hate” Series I, No. 4 (1992)
- “To Pray or Not to Pray” Series III, No. 2 (1994)
- “A Religion? Or a Cult? What's the Difference? And What Rights Do Religious Cults Have?” Series V, No. 8 (1997)
- “Rock & Roll and Freedom of Speech” Series I, No. 3 (1992)
- “TV, or Not TV: Cameras in the Court” Series IV, No. 4 (1995)

Each classroom activity is accompanied by issues for discussion, additional activities, relevant law, and key concepts and vocabulary. \$3.00 each. Contact Phi Alpha Delta PSC, P.O. Box 3217, Granada Hills, CA 91394-0217, 818/368-8103, E-mail: padpscla@aol.com

Religion in the Schools

Identifies the requirements of the Equal Access Act and the tension between the First Amendment's free exercise clause and establishment clause and then uses role play to address the difficulties faced by administrators in deciding whether or not to permit noncurriculum-related groups to meet on campus. Contact Margaret Fisher, Office of Administrator for Courts, 1206 Quince St., Olympia, WA 98504-1170 or download from Web site: www.wa.gov/courts/educate/home.htm

A Teacher's Guide to the Bill of Rights Poster Series

A collection of lessons for elementary, middle, and high school students to learn about Bill of Rights concepts portrayed in a series of posters (see posters below). [The lessons can be used independent of the posters.] The First Amendment topics addressed are freedom of religion, freedom of speech, and the right to assemble. (1991) PC#497-0029. \$5.00. Contact American Bar Association, 800/285-2221.

Tolerance for Diversity of Beliefs: A Secondary Curriculum Unit

Explores issues associated with freedom of belief and expression. Addresses freedom of speech and minority rights through case studies, role playing, simulations, and mock interviews. (1993) Order no. 374-8. \$17.95. Contact Social Science Education Consortium, 5541 Central #205, P.O. Box 21270, Boulder, CO 80308-4270, 303/492-8154.

Mock Trials

Hudson v. The Washington Post

The issue is whether the best interests of a child and a father's right to custody outweigh a reporter's and newspaper's right to maintain the confidentiality of their sources. (PC#317-0120) \$4.00. Contact American Bar Association, 800/285-2221.

Jefferson and Paine v. Liberty High School

At issue—does a school-sponsored newspaper merit the same freedom of the press/First Amendment protections as does a regular newspaper? \$5.00. Contact Marilyn Cover, Classroom Law Project, 6318 SW Corbett Ave., Portland, OR 97201-3606, 503/245-8707, E-mail: cover@lclark.edu

People v. Bell

Conflict between townspeople and a newcomer religious group results in charges of incitement and arson. (#70020C9) \$3.95. Contact Constitutional Rights Foundation, 800/488-4CRF.

People v. Stover

A private security guard's actions during an alleged break-in raise issues about use of force, freedom of expression, and the elements of a hate crime. (#70019C9) \$3.95. Contact Constitutional Rights Foundation, 800/488-4CRF.

People v. Willow

The distribution of an alternative newspaper and an exchange in a parking lot lead to charges of selling drugs and inducing a minor to take drugs. (#70016C9) \$3.95. Contact Constitutional Rights Foundation, 800/488-4CRF.

Periodicals

"The Battle Over the National Endowment for the Arts." *Bill of Rights in Action*, vol. 13, no. 2, spring 1997

Focuses on various controversies surrounding art—ranging from Nazi Germany's suppression of modern art to modern controversies about the National Endowment for the Arts and popular music lyrics. Contact Constitutional Rights Foundation, 800/488-4CRF.

"Free Press vs. Fair Trial: The Lindbergh Baby Kidnapping Case" and "Religious Rights in Conflict." *Bill of Rights in Action*, vol. 10, no. 1, fall 1993

An exploration of the issues relating to the conflict between a free press and fair trial and between the free exercise and establishment clauses of the First Amendment. Contact Constitutional Rights Foundation, 800/488-4CRF.

"Separating Church and State." *Bill of Rights in Action*, vol. 13, no. 4, fall 1997

Explores the issues surrounding the separation of church and state, focusing on the development of the doctrine in the United States; the manner in which the ancient Roman Empire (a multiethnic, multireligious society) handled religious diversity; and the recent U.S. Supreme Court case involving state aid to parochial school students. Contact Constitutional Rights Foundation, 800/488-4CRF.

Posters

Bill of Rights Posters—a series of five awardwinning black-and-white posters (11"H x 28"W)

- "Freedom of Speech" shows Rev. Martin Luther King, Jr. waving to the crowds in Washington, D.C., with the caption, "The Bill of Rights guarantees freedom of speech. Otherwise, it might all have been a dream." (PC#468-0031)
- "Religious Freedom" shows an Amish man in front of a rural background with the caption, "The Bill of Rights guarantees religious freedom. Otherwise, he wouldn't have a prayer." (PC#468-0034)
- "Right to Assemble" shows suffragettes marching and carrying a banner, "I wish ma could vote," with the caption, "The Bill of Rights guarantees the right to assemble. Otherwise, they might still be that one step behind." (PC#468-0030)

See *Teacher's Guide to the Bill of Rights Poster Series* above. \$4.95 each. Contact American Bar Association, 800/285-2221.

"Which One Has Been Censored?—All of Them"

Full color—displays ten popular works censored in the United States, from *Little Red Riding Hood* to *Webster's Dictionary* to *Playboy*. (37"H x 24"W) Item #8010. \$8.95. Contact 800/775-ACLU.

Software

Docket on Disk: A Digest of Supreme Court Decisions from 1977 through 1993

Explore easily searchable summaries of nearly 400 important U.S. Supreme Court cases chosen for their significance to 7–12 grade students. Browse through legal topics via search terms such as "First Amendment," "copyright law," "communications law," and "freedom of information." Or look up specific cases such as *Hazelwood School District v. Kuhlmeier* and *New Jersey v. T.L.O.* PC#497-0080. \$35.00. Contact American Bar Association, 800/285-2221.

Express Yourself

An interactive software program designed to inform students about their First Amendment rights. It utilizes video, animation, graphics, and text. Free (\$10 donation requested). Call the American Civil Liberties Union at 212/549-2560 or download the software from the ACLU Web site: www.aclu.org

Videotapes

"Dangerous" Songs: Censors, Rock, and the First Amendment

Interviews with songwriters, teen-age listeners, parents, and other concerned individuals are used to explore the issues surrounding song lyrics deemed racist, obscene, and sexist and their protection by the First Amendment. (1991) 18

minutes. (RH767V-17) \$67.32. Contact Social Studies School Service, 800/421-4246.

For Which It Stands: Flag Burning and the First Amendment

Presents the stories of two men whose convictions, experiences, and viewpoints set them apart on the issue of flag burning. One is a Vietnam War veteran and former P.O.W., and the other is a man whose flag burning as a form of protest led to a 1989 Supreme Court case. Includes a teacher's guide. (1992) 25 minutes. (B1141T) \$59.95. Contact Close Up Foundation, 800/765-3131.

Free to Be?

Produced by the Anti-Defamation League (ADL) in cooperation with the New York Council for the Humanities, this video raises questions about diversity and conformity in American life. It examines the concepts of ethnic, religious, and political differences and how our society has coped. An open-ended discussion stimulator. Includes a discussion guide. 28 minutes. \$50.00. To order, call 800/343-5540.

One Nation Under God?—School Prayer and the First Amendment

Highlights the 1985 *Wallace v. Jaffree* Supreme Court case and enables students to make their own decisions about the ongoing debate over prayer in the public schools. Includes teacher's guide with history of freedom of religion in the United States. (1995) 30 minutes. (#B1666T) \$59.95. Contact Close Up Foundation, 800/765-3131.

Profiles of Freedom: A Living Bill of Rights

Interviews with key players and audio footage of actual arguments made before the Supreme Court on four landmark cases. Profiled are Mary Beth Tinker, who led an arm-band protest against the Vietnam War at her school; Joey Johnson, who burned the American flag as a form of protest; Ernesto Miranda, who confessed to a crime without being told he had the right to remain silent; and Bridget Mergens, who wanted to hold a Bible study at her school. Includes teacher's guide. (1997) 28 minutes. (#B2018T) \$59.95. Contact Close Up Foundation, 800/765-3131.

Skokie: Rights or Wrong—A Film About Freedom of Speech

This video profiles the turmoil created when the American Nazi Party called upon the ACLU to defend its right to hold a rally in Skokie, Illinois, where many residents were survivors of Nazi concentration camps. (1987) 28 minutes. \$99.00 (Also available for rental). Contact New Day Films, 22D Hollywood Ave., Hohokus, NJ 07423, 201/652-6590.

Web Sites

ACLU Freedom Network

<http://www.aclu.org>

The American Civil Liberties Union's site contains information on student rights (full text of "Ask Sybil Liberty" flyers and free downloading of "Express Yourself" software), news and events, and a wide variety of information on First Amendment and other rights issues.

First Amendment Cyber-Tribune (FACT)

<http://w3.trib.com/FACT/>

The *Casper Star-Tribune* in Casper, Wyoming, hosts this site, which provides information on all the liberties guaranteed by the First Amendment. The site includes a list of over 80 Weblinks for additional sites dedicated to First Amendment issues.

Freedom of Expression at the National Endowment for the Arts

<http://www.csulb.edu/~jvancamp/intro.html>

Julie Van Camp, associate professor of philosophy at California State University, Long Beach, provides course material; an extensive bibliography of books, articles, and legislative materials; and many links to other on-line resources examining related free speech topics.

The Freedom Forum On line

<http://www.fac.org/default.asp>

A wide variety of information on current events and issues involving the First Amendment.

Project Censored

<http://censored.sonoma.edu>

Sonoma State University at Rohnert Park, California, sponsors this site, which explores and publicizes the extent of censorship.

Reporters Committee for Freedom of the Press

<http://www.rcfp.org>

The Reporters Committee for Freedom of the Press in Arlington, Virginia, sponsors this site as a service to reporters. The site includes a First Amendment Handbook with information about a variety of subjects such as access to courts, gag orders, confidential sources, libel, and copyright.

Student Press Law Center

<http://www.splc.org>

The Reporters Committee for Freedom of the Press in Arlington, Virginia, sponsors this site to provide legal help and information to student media and journalism educators.

University of Missouri FOI Center

<http://www.missouri.edu/~foiwww/laws.html>

The School of Journalism of the University of Missouri at Columbia sponsors this site, which provides information about federal and state freedom of information resources and guides.



First Amendment Glossary

Update on Law-Related Education, 22.1, 1998, p. 62. © 1998 American Bar Association.

A

amendment—a revision or change in the law
article—a particular section of the Constitution
authority—the power to enforce rules and laws

B

ballot—a list of candidates and issues to vote for and against in an election
beliefs—certain ideas that people trust are true
bill—a proposed law

Bill of Rights—the first ten amendments to the Constitution

C

candidate—a person running for public office
citizen—a native or naturalized person having the rights and responsibilities of a given country
Constitution—the basic law of the United States, consisting of the Preamble, seven articles, and 27 amendments

D

democracy—government through the people, either directly or through elected representatives

E

election—the selection of an official by vote
equality—the condition of everyone having the same rights and responsibilities

F

First Amendment—the amendment to the Constitution that guarantees freedom of religion, of speech, and of the press, and also protects the right to assemble peacefully and the right to petition the government
freedom—the ability to say what you want, go where you want, and do what you want

G

government—the ruling system of a community, state, or nation

I

issue—a subject being discussed or debated

J

justice—fairness; the idea that everyone deserves to be treated fairly

L

law—a written rule enacted by a legislature
liberty—freedom of action, belief, or expression

P

petition—to make a formal request to the government
preamble—the introduction to a formal document that explains its purpose

R

ratification—approval, as in approval of an amendment to the Constitution
republic—a country governed by its citizens, usually through representatives whom they elect; usually headed by a president
responsibility—a moral, social, and often legal accountability
right—a legal claim

S

separation of church and state—the situation in which the government may not favor any religion or establish an official state religion

V

vote—a formal expression of a person's choice made in an election

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The U.S. Constitution (Pocket Edition), 64 pages. Also includes the Declaration of Independence and fascinating facts about the Supreme Court. PC #317-0033. \$1.25

To order, call (800) 285-2221, fax (312) 988-5568,
<http://www.abanet.org/store/order.html>
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First Amendment Puzzle

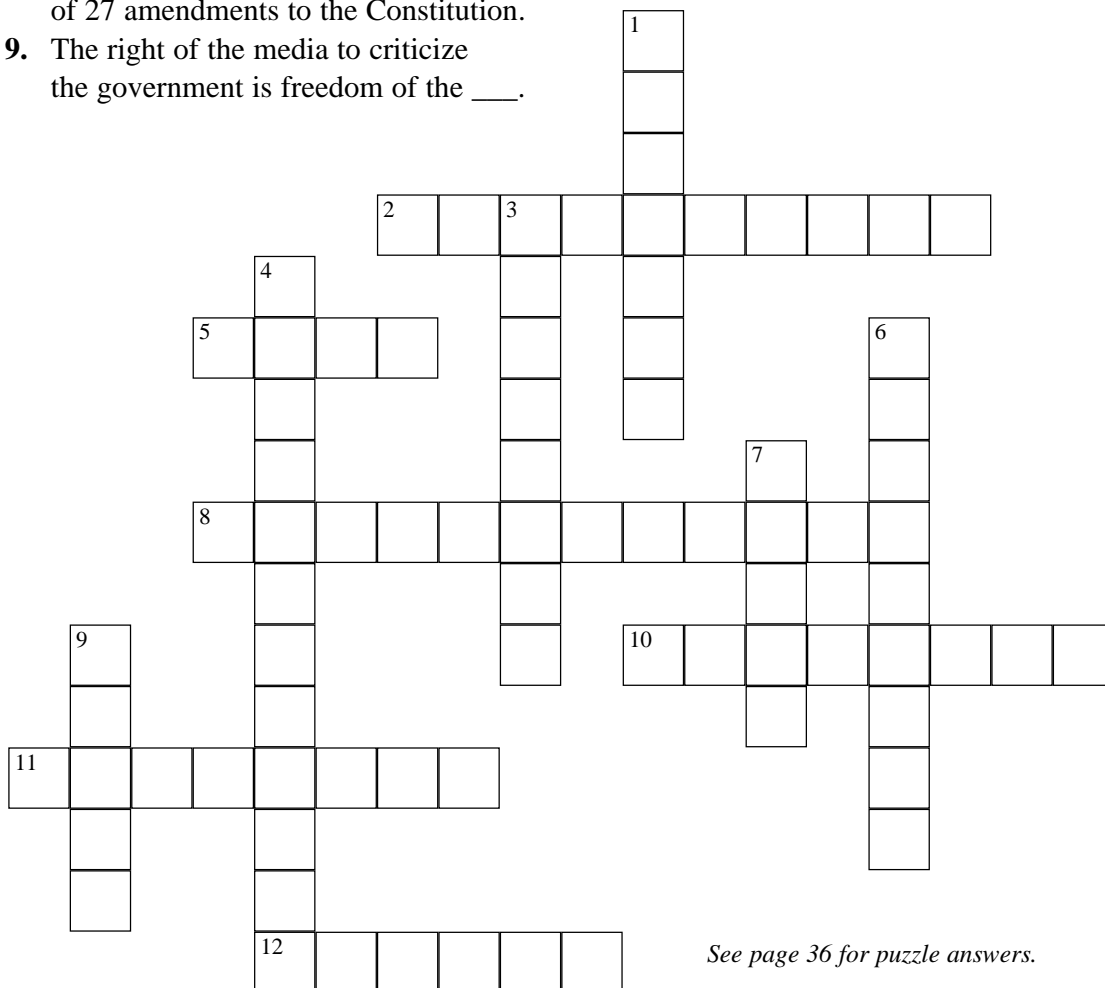
Throughout *Update on Law-Related Education*, you have been introduced to facts and concepts about the First Amendment. Think about those facts and concepts as you complete the puzzle.

Across

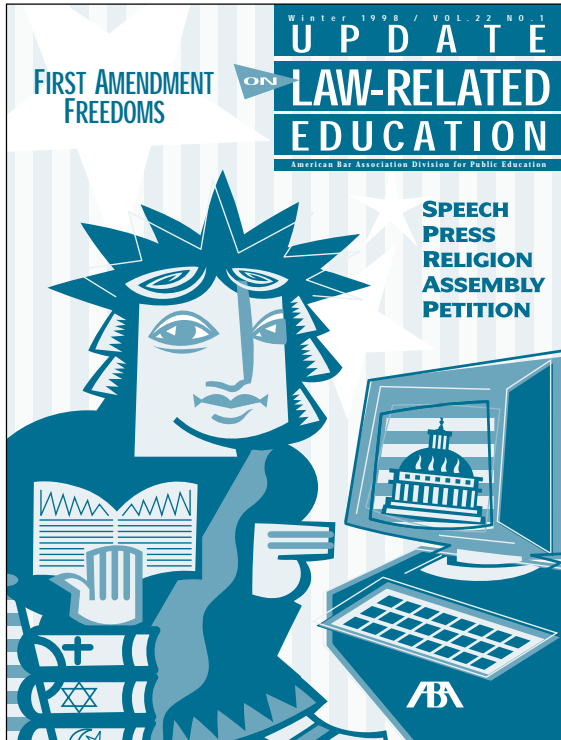
2. The freedoms guaranteed in the First Amendment are all part of freedom of ____.
5. The First Amendment guarantees ____ specific freedoms.
8. The document that establishes the form of government in the United States is the ____.
10. Freedom of ____ is people's right to meet together in groups peacefully.
11. The right to practice any faith or no faith is freedom of ____.
12. The right to speak and write freely is freedom of ____.

Down

1. The ability to do, say, or think as you please is ____.
3. Freedom of ____ is people's right to make a formal request of the government.
4. The first ten amendments of the Constitution are called the ____.
6. A change to the Constitution is an ____.
7. The amendment that protects individuals' freedoms is the ____ of 27 amendments to the Constitution.
9. The right of the media to criticize the government is freedom of the ____.



See page 36 for puzzle answers.



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