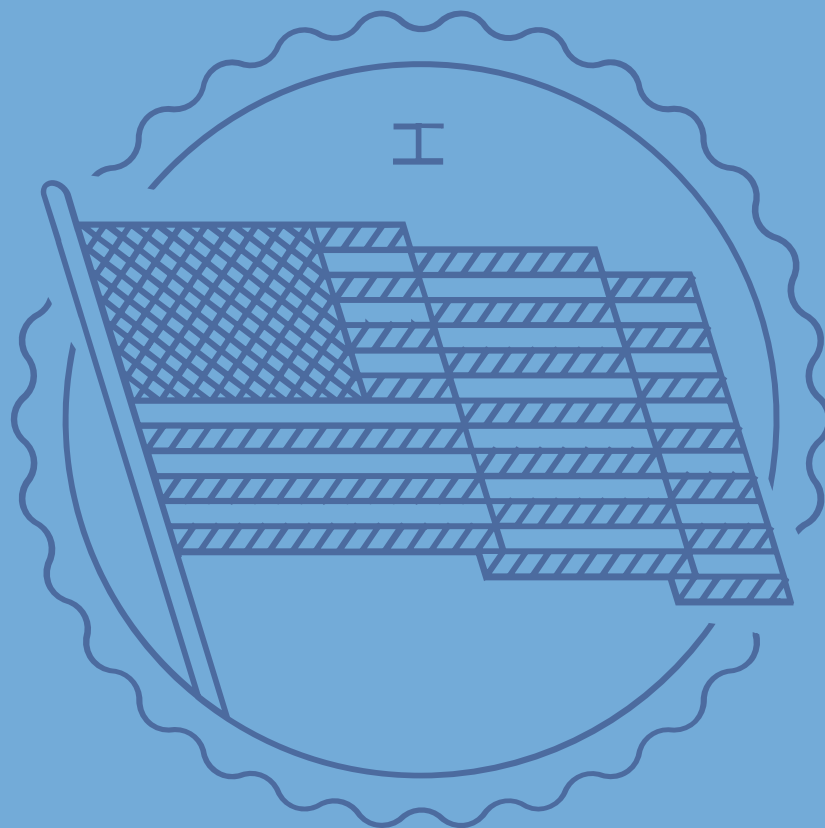


# CONSTITUTION

## MODULE 10

# THE FIRST AMENDMENT



## CONSTITUTION 101

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### Module 10: The First Amendment Lesson Plan

# THE FIRST AMENDMENT

The First Amendment protects some of our most cherished rights, including religious liberty, free speech, a free press, the right to assemble, and the right to petition our government for a redress of grievances. Together, these essential rights are connected to the freedom of conscience—protecting our ability to think as we will and speak as we think. As we examine the First Amendment’s text and history, we will explore debates over the First Amendment’s five freedoms, analyze landmark Supreme Court cases, and examine how the First Amendment has been used by groups of all perspectives to promote their vision of a more perfect Union.

## Learning Objectives

At the conclusion of this module, you should be able to:

1. Identify the five freedoms protected by the First Amendment.
2. Discuss the First Amendment’s speech-protective rule.
3. Examine contexts in which the government has some additional leeway to regulate speech.
4. Analyze the First Amendment’s religion clauses and explore how the Supreme Court has interpreted them over time.
5. Explore landmark free speech and press cases and examine famous quotes.
6. Examine historical examples of different people and groups asserting their petition and assembly rights and reflect on the methods available to you today.

## 10.1 Activity: Five Freedoms

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### Purpose

In this activity, you will discuss the five freedoms enshrined in the First Amendment.

### Process

As a class, list the first words that come to mind when you hear the words “First Amendment.” What freedoms are enshrined in it?

Read the text of the [Primary Source: The First Amendment](#) as a class and identify the five freedoms. Highlight, circle, and label the key freedoms and key information along with your classmates.

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### Module 10: The First Amendment Lesson Plan

Your teacher will lead you through a discussion on the First Amendment as a group.

In small groups, answer the following questions:

- Why do you think that these five freedoms were included in the First Amendment? Why are they important? Why might the Founding generation have valued them? Are there any principles (or broader theories) that connect the First Amendment's five freedoms?
- How does each freedom offer something distinct?
- How do these freedoms overlap and/or reinforce one another?
- What are some ways that you might exercise your First Amendment freedoms today?

Be prepared to discuss your answer as a class.

### **Activity 10.1 Notes & Teachers Comments**

#### **Launch**

Begin by asking students what they know about the First Amendment and what freedoms are in it. Next, display the First Amendment's text or provide copies for all students to view. Read the words out loud.

#### **The First Amendment**

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

As a class, have the students identify the five freedoms, circle them, and label them for the whole group.

Guiding Question:

- What freedoms are in the First Amendment?

Discuss examples of how someone might exercise their First Amendment rights. This does not have to be exact, and some informal examples are great, as well. Possible examples:

- I don't agree with the time my school starts, and I speak up at a school board meeting.
- I have a different place to worship than my friends do, or I don't go to a place of worship at all.
- I am going to start my own blog to discuss changes I want to see in Congress.
- Our courthouse does not allow skateboarders. I am going to write a letter and then protest.

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### Module 10: The First Amendment Lesson Plan

#### Activity Synthesis

In small groups, have students reflect on why the First Amendment's five freedoms are grouped together. Highlight any comments that identify the freedom of belief, expression, or conscience. Talk about how these five freedoms give us all the right to develop our own ideas (and cultivate our own beliefs); worship (or not) freely; communicate our ideas to other people; get together with others to discuss issues, plan activities, and engage in expressive acts like protests and parades; and petition the government. Throughout American history, many of these First Amendment rights have often been important to unpopular groups, those representing minority groups with little political power or voice from all perspectives.

Guiding Questions:

- Why do you think that these five freedoms were included in the First Amendment? Why are they important? Why might the Founding generation have valued them? Are there any principles (or broader theories) that connect the First Amendment's five freedoms?
- How does each freedom offer something distinct?
- How do these freedoms overlap and/or reinforce one another?
- What are some ways that you might exercise your First Amendment freedoms today?

#### Activity Extension (Optional)

Now that students have a better understanding of the five freedoms protected by the First Amendment, ask them what would happen if these freedoms were not protected by the Constitution? What are some of the dangers?

## 10.2 Video Activity: Big Ideas Behind the First Amendment

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### Purpose

In this activity, you will learn more about the big ideas behind the First Amendment.

### Process

Watch [the video](#) about the First Amendment.

Then, complete the [Video Reflection: Big Ideas Behind the First Amendment](#) worksheet.

Identify any areas that are unclear to you or where you would like further explanation. Be prepared to discuss your answers in a group and to ask your teacher any remaining questions.

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### Module 10: The First Amendment Lesson Plan

#### **Activity 10.2 Notes & Teachers Comments**

##### **Launch**

Have students watch the video, answer the questions, and complete the Video Reflection: Big Ideas Behind the First Amendment worksheet.

The goal is to make sure the students understand these four key principles of the First Amendment:

1. Freedom of conscience is an unalienable right because people have the right and duty to think for themselves.
2. Free speech makes representatives accountable to “We the People.”
3. Free speech is necessary for the discovery of truth and the rejection of falsehood.
4. Free speech allows the public discussion necessary for democratic self-government.

##### **Activity Synthesis**

Engage in a classroom discussion on how free speech and religion, assembly, and petition are all connected to the overarching idea of the Freedom of Conscience. Why is it so important for us to exercise our freedom to think? How are we as members of this democracy engaging in this practice in our lives? How do we stretch our perspectives by exposing ourselves to others' ideas and other viewpoints?

##### **Activity Extension (Optional)**

Now that students have a better understanding of the freedom of conscience, ask the students to examine your own school or community. How much diversity of thought is in your after school clubs, community centers, or even in the choices of books in your local library. Write a short review of our community's freedom of conscience.

What other questions do you have about the courts and their process for hearing cases?

### **10.3 Activity: Religion Clauses**

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##### **Purpose**

The First Amendment has two clauses related to religion: one preventing the government establishment of religion (the Establishment Clause) and the other protecting the ability to freely exercise religious beliefs (the Free Exercise Clause). In this activity, you will review these clauses, why they were included in the Bill of Rights, the issues they address, and how the Supreme Court has interpreted them over time.

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### Module 10: The First Amendment Lesson Plan

#### Process

Read your assigned interpretations:

- [Text of the Constitution](#)
- [Common Interpretation: The Establishment Clause](#)
- [Common Interpretation: Free Exercise Clause](#)

Complete the [Activity Guide: Religion Clauses](#) worksheet. Your teacher will lead you in a group, explain your assigned clause, and build a deeper understanding of both clauses and how they work together or in conflict with one another.

Finally, as a class read [Info Brief: Kennedy v. Bremerton School District Case](#) then join in a group discussion on modern cases today and [constitutional hypotheticals](#).

#### Activity 10.3 Notes & Teachers Comments

##### Launch

Divide the class into small groups of three to four students and assign half the groups to read the Establishment Clause Common Interpretation Essay and assign the other half of the groups to read the Free Exercise Clause Common Interpretation Essay. Students will work in groups to complete the worksheet and prepare to share a summary.

##### Activity Synthesis

Jigsaw the groups, have them share their summaries and collectively identify the big idea behind each clause, then discuss as a class. Questions include:

- How do the big ideas found in the essays connect or compare to one or all of the four big ideas from the video?
- How are these two clauses in the Constitution at odds? Can you give examples?
- What modern cases have come to light that are testing one or both of these clauses?

##### Large Group Discussion: Hypos

This is a great class to engage in hypotheticals and a civil dialogue. After students complete the sections up to this part, engage in a large class discussion on the following constitutional question presented in the Kennedy case. Assign students to read about *Kennedy v. Bremerton School District*. Then, lead a discussion with the following hypothetical questions. This is a great opportunity to explore discussion methods that allow for student voice and agency with techniques like the Fishbowl method or the Harkness method. See the [civil dialogue toolkit](#) for more tools to build this skill.

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#### *Kennedy Case Scenario(s):*

- Under this ruling, can a teacher give a brief, silent prayer before eating a snack at the front of the classroom?
- What if the teacher prays aloud?
- What if the students are not in the classroom?
- What if a group of students stopped back in the classroom during recess?
- What if the teacher invites students to join the teacher in prayer on a voluntary basis?
- What if students join the teacher voluntarily without the teacher asking them? Can they join the teacher? Does the teacher have a constitutional obligation to tell them not to join?
- What if the teacher prays in the teachers' lounge?
- Does the age of the students and/or audience affect how you consider these hypotheticals?

#### **Activity Extension (Optional)**

Now that students have a better understanding of the religion clauses of the First Amendment, answer the following questions:

- Why did the Founding generation include the Establishment Clause and the Free Exercise Clause in the Bill of Rights?
- How have the Establishment Clause and Free Exercise Clause shaped the role of religion in our government and society over time?

## 10.4 Activity: Speech Quotation Analysis

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### **Purpose**

In this activity, you will examine free speech quotes from landmark Supreme Court cases and compare them with the big ideas shared in the video.

### **Process**

For background on the legal framework for analyzing First Amendment Speech and Press Clauses, read the following interpretation:

First Amendment: Speech Clause and the Press Clause

- [Text of the Constitution](#)
- [Common Interpretation](#)

Analyze the [First Amendment Quotes](#) provided to you and explore longer excerpts in the [Founders' Library](#) to better understand the context for them and the development of free speech and a free press in America.

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### Module 10: The First Amendment Lesson Plan

In your group, complete the following tasks on the [Activity Guide: Speech Quotation Analysis](#) worksheet.

- Define any words that you do not understand.
- Summarize each quotation and write one to two sentences explaining it in your own words.
- Explain how the quote connects to the broader conclusion that the Supreme Court reached in the case.

Think about the big ideas from the First Amendment instructional video. Draw any connections to the four First Amendment principles highlighted in the video. Explain the connections.

As a reminder, here are the four big ideas:

- Freedom of conscience is an unalienable right because people have the right and duty to think for themselves.
- Free speech makes representatives accountable to “We the People.”
- Free speech is necessary for the discovery of truth and the rejection of falsehood.
- Free speech allows the public discussion necessary for democratic self-government.

Be prepared to share key point(s) and draw connections to what you explored in the videos and primary sources.

### **Activity 10.4 Notes & Teachers Comments**

#### **Launch**

Divide the class into groups prior to class and have them complete the readings.

Students will analyze the quotations supplied and explore longer excerpts in the Founders' Library to better understand it in the context of free speech over time in America. Teachers can project the quote on the board for all to view and/or provide students with a copy of the [First Amendment Quotes](#) handout. Using the provided [Activity Guide: Speech Quotation Analysis](#) worksheet, students will share key points of the longer excerpts with their classmates and draw connections to what they explored in the videos and primary sources from each group that were examined.

- [Schenck v. United States \(1919\)](#)
- [Abrams v. United States \(1919\)](#)
- [West Virginia Board of Education v. Barnette \(1943\)](#)
- [New York Times Co. v. Sullivan \(1964\)](#)
- [Tinker v. Des Moines Independent Community School District \(1969\)](#)
- [Brandenburg v. Ohio \(1969\)](#)
- [New York Times Co. v. United States \(1971\) \(The Pentagon Papers Case\)](#)



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- [Hazelwood School District v. Kuhlmeier \(1988\)](#)
- [Texas v. Johnson \(1989\)](#)

#### Activity Synthesis

The Founding generation believed that

*“freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth; that without free speech and assembly discussion would be futile; that with them, discussion affords ordinarily adequate protection against the dissemination of noxious doctrine; that the greatest menace to freedom is an inert people; that public discussion is a political duty; and that this should be a fundamental principle of the American government.”*

Justice Brandeis, *Whitney v. California*

Ask students the following questions:

- Why does the First Amendment protect free speech and a free press?
- How does free speech ensure democratic self-governance?
- How does this quote relate to Justice Holmes’s account of a “marketplace of ideas” and its importance to free speech?
- Are you persuaded by Brandeis and Holmes? What are the strengths of their visions? What are the weaknesses?
- Does free speech promote tolerance? Why or why not?
- How does social media influence your assessment of the First Amendment visions of Holmes and Brandeis?

#### Activity Extension (Optional)

Now that students have a better understanding of the First Amendment’s protections for free speech and a free press, ask the following question:

- When does the government have greater leeway to regulate speech? Hint: Check out the [Common Interpretation essay on Freedom of Speech and Press](#).

## 10.5 Activity: Assembly and Petition

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### Purpose

But wait, there is more in the First Amendment! The First Amendment also protects the right to assemble and the right to petition the government for a redress of grievances. These are two distinct rights. First, the right to assemble protects our right to gather together with others in groups—whether as part of a political meeting, religious gathering, street protest, or parade.

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### Module 10: The First Amendment Lesson Plan

And second, the right to petition goes to our right to join together with others to share our collective views with the government—often by highlighting problems and suggesting ways of fixing them.

#### Process

Examine the primary source assigned to you and your partner, and complete the [Activity Guide: Assembly and Petition](#) worksheet.

Review your responses with a classmate who examined the same primary source and be prepared to share with your class the connection to assembly and petition.

### **Activity 10.5 Notes & Teachers Comments**

#### Launch

Break students into pairs and assign each team a primary source. Have each student examine the primary source and then discuss with their partner and complete the worksheet.

Information Sheet with All Excerpts:

- Petition from the Pennsylvania Society for the Abolition of Slavery to the First Congress (1790)
- The Gag Rules Debate (1835–1840)
- Seneca Falls Declaration (1848)
- Proceedings of the State Convention of Colored People, Held at Albany, New York (1851)
- Frederick Douglass, Plea for Freedom of Speech in Boston (1860)

#### Activity Synthesis

Once each team has completed the worksheet, have them share with the larger group some key concepts from the reading.

- Identify the author(s) and year.
- Answer how the author(s) use assembly or petition rights to promote change.
- Describe the types of changes the author(s) advocate.
- Cite one to two quotes as evidence for the argument. Why did you pick these two?

Note for the class when there are similarities between groups that had the same primary source and differences. Ask students if they can find any connections between these sources and a modern-day debate in our country.

#### Activity Extension (Optional)

Now that students have a better understanding of assembly and petition, ask students to explore news articles or segments in media that present the Assembly Clause in action. Is it presented as negative or positive? What was the group and what was their main message? What part of the government were they appealing to?

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### Module 10: The First Amendment Lesson Plan

#### 10.6 Activity: Exit Ticket Reflection

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##### Process

To complete this module, write a short paragraph about free speech as it relates to social media and be prepared to share it in class.

Remember the rule from *Brandenburg v. Ohio*: Generally speaking, the government may punish if it is intended to and likely to cause imminent lawless action. In this activity, you will reflect on whether such a speech-protective rule works in the age of social media.

Read this article from *The Atlantic* by Jeffrey Rosen: [Elon Musk Is Right That Twitter Should Follow the First Amendment](#).

Write a short paragraph in response to the following question: Do you think that social media companies should follow the same guidelines of the First Amendment as the government does? As a reminder, social media companies do not have to follow standard First Amendment rules because the First Amendment only applies to the government, not to private companies, which can create their own guidelines or policies with respect to how their platform is used and how their business is run. List three pros and three cons as part of your short paragraph response.

#### 10.7 Test Your Knowledge

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##### Purpose

Congratulations for completing the activities in this module! Now it's time to apply what you have learned about the basic ideas and concepts covered.

##### Process

Complete the questions in the following quiz to test your knowledge.

- [Test Your Knowledge: First Amendment: Speech, Press, Religion, Assembly, and Petition](#)

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Module 10: First Amendment: Speech, Press, Religion, Assembly, and Petition

10.1 Primary Source

# **THE FIRST AMENDMENT**

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

**NATIONAL CONSTITUTION CENTER**

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## **CONSTITUTION 101**

Module 10: First Amendment: Speech, Press, Religion, Assembly, and Petition  
10.2 Video Reflection

### **BIG IDEAS BEHIND THE FIRST AMENDMENT**

In this activity, you will learn more about the big ideas behind the First Amendment.

Watch the [video](#) and answer the following questions.

What are the main goals of the First Amendment?

What were the reasons for adding these freedoms to the First Amendment?

How do the First Amendment's freedoms affect our lives today?

## **CONSTITUTION 101**

### Module 10: First Amendment: Speech, Press, Religion, Assembly, and Petition

#### 10.2 Video Reflection

Based on the information from the video, provide evidence to support the following statements about the First Amendment.

Statement	Supporting Evidence
Freedom of conscience is an unalienable right because people have the right and duty to think for themselves.	
Free speech makes representatives accountable to “We the People.”	
Free speech is necessary for the discovery of truth and the rejection of falsehood.	
Free speech allows the public discussion necessary for democratic self-government.	

Additional Statement	Supporting Evidence
The right to the free exercise of religion protects people's beliefs and how they gather and worship from government abuse.	
Freedom of assembly is an important means through which people can gather together to share their ideas with one another, plan collective action, and engage in collective acts of expression like parades, protests, and picketing.	
The right to petition ensures a right for all of us to share our ideas (and complaints) with the government, often about how to solve a problem, right a wrong, or change a policy.	

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Module 10: First Amendment: Speech, Press, Religion, Assembly, and Petition  
10.3 Info Brief

# RELIGIOUS LIBERTY (THE “PRAYING COACH” CASE) — KENNEDY V. BREMERTON SCHOOL DISTRICT OPINION JUNE 27, 2022

### CORE CONSTITUTIONAL QUESTION(S):

Did a public school violate the First Amendment by firing a high school football coach for praying at school football games?

### FACTS:

- Joseph Kennedy, a high school football coach, engaged in prayer with a number of students during and after school games.
- His employer, the Bremerton School District, asked that he discontinue the practice in order to protect the school from a lawsuit based on violation of the Establishment Clause, but Kennedy refused.
- After being suspended by the school district, Kennedy sued it for violating his rights under the First Amendment and Title VII of the Civil Rights Act of 1964.

### RULE:

The Free Exercise and Free Speech Clauses of the First Amendment protect an individual engaging in a personal religious observance from government reprisal and the Constitution neither mandates nor permits the government to suppress such religious expression.

### DECISIONS:

- In a 6-3 ruling, the Supreme Court held that Bremerton School District’s discipline of high school football coach Joseph Kennedy for praying after football games violated Kennedy’s rights to free exercise and free speech under the First Amendment.
- The majority opinion by **Justice Gorsuch**, joined by the five other conservative justices, rejected the district’s argument that allowing Kennedy’s prayers to continue would have violated the Constitution’s Establishment Clause.
  - Justice Gorsuch argued that Kennedy’s prayers were private speech that was not “ordinarily within the scope” of his duties as a coach.
  - He rejected the district’s concerns that Kennedy’s actions coerced students to pray due to a lack of evidence.
- The majority effectively announced the overruling of the *Lemon* test—a test created by the 1971 case *Lemon v. Kurtzman*.

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### Module 10: First Amendment: Speech, Press, Religion, Assembly, and Petition

#### 10.3 Info Brief

- Under the *Lemon* test, a law or practice that involves religion or religious elements was constitutional under the Establishment Clause if: 1) it has a secular purpose, 2) its principal effect does not advance or inhibit religion, and 3) it does not create an “excessive entanglement with religion.”
- Some justices have long criticized *Lemon* (like the late Justice Scalia), and here Gorsuch expressly dismissed *Lemon* as having been “long ago abandoned.”
- The new test announced by Justice Gorsuch says that courts should determine whether a law or practice violates the Establishment Clause by looking at history and the understanding of the drafters of the Constitution.
- **Justice Sotomayor** wrote the dissenting opinion, joined by Justices Breyer and Kagan, criticizing the majority for privileging the Free Exercise Clause at the expense of the Establishment Clause.
  - She argued that allowing a school district employee to “incorporate a public, communicative display of the employee’s personal religious beliefs into a school event” violates the First Amendment’s Establishment Clause.
  - She also disputed the majority’s portrayal of the facts of the case and its claim that Kennedy’s speech was private. She argued that Kennedy’s prayers occurred while he was on duty as the coach.
  - She also argued that Kennedy’s prayer, which was visible to students, would improperly coerce or pressure students into joining him, since coaches are mentors and role models to students.

#### ANALYSIS:

- The Supreme Court decided 6-3 in favor of Kennedy. The majority stated that whether under the Free Exercise Clause or Free Speech Clause, the burden was upon the government and school district here that its restrictions on the plaintiff’s protected rights satisfy the “strict scrutiny” test and serve a compelling interest and are narrowly tailored to that end.
- The Court added that even under a lower, intermediate standard, Kennedy’s speech and exercise of religion was protected.
- The Court majority abandons the *Lemon* (*Lemon v. Kurtzman*) test for Establishment Clause cases. To survive an Establishment Clause challenge under this test, the government had to show that the challenged law, action, or practice had a “legitimate secular purpose,” that its “primary effect” was “one that neither advances nor inhibits religion,” and that it did not result in an “excessive entanglement with religion.” Instead, the Court endorsed an approach to its Establishment Clause cases relying on “original meaning and history.” The majority suggests that the Court long ago abandoned the



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### Module 10: First Amendment: Speech, Press, Religion, Assembly, and Petition

#### 10.3 Info Brief

*Lemon* approach and its endorsement test, because its “shortcomings” were apparent and the test was “ambitious, abstract and ahistorical.”

- The dissent, written by Justice Sotomayor and joined by Justices Breyer and Kagan, asserts that the case is about whether public schools “must permit” a school official to say a prayer “at the center of a school event” and they find that the Constitution does not authorize or require public schools to embrace this conduct. They say that any official-led prayer “strikes at the core” of First Amendment religious liberty under the Establishment and Free Exercise Clauses.

#### CONCLUSION:

- The majority concludes that Kennedy’s prayer at midfield was quiet and that he did not compel student athletes to join. The Court argued that while some people would have witnessed this religious exercise and may have heard him pray, “learning how to tolerate speech or prayer of all kinds is ‘part of learning how to live in a pluralistic society’” and “respect for religious expression is indispensable to life in a free and diverse Republic.”

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Module 10: First Amendment: Speech, Press, Religion, Assembly, and Petition

10.3 Activity Guide

### RELIGION CLAUSES

The First Amendment has two clauses related to religion: one preventing the government establishment of religion (the Establishment Clause) and the other protecting the ability to freely exercise religious beliefs (the Free Exercise Clause). In this activity, you will review these clauses, why they were included in the Bill of Rights, the issues they address, and how the Supreme Court has interpreted them over time.

In this activity, you will read the *Interactive Constitution* Common Interpretation essays on the [Establishment Clause](#) or the [Free Exercise Clause](#). Complete the chart below with information from what you read.

Which essay did you read?	
List at least <b>three</b> big ideas from the essay.	
Provide details about the historical background for the clause.	

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### Module 10: First Amendment: Speech, Press, Religion, Assembly, and Petition 10.3 Activity Guide

What are some key constitutional issues that have arisen under the clause?

Using the information you listed above, create a one-paragraph summary of your essay.

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Module 10: First Amendment: Speech, Press, Religion, Assembly, and Petition

10.4 Primary Source

### **FIRST AMENDMENT QUOTES**

#### **[Schenck v. United States \(1919\)](#)**

Excerpt from Justice Oliver Wendell Holmes's Majority Opinion:

- “[T]he character of every act depends upon the circumstances in which it is done. . . . The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic.”

#### **[Abrams v. United States \(1919\)](#)**

Excerpt from Justice Oliver Wendell Holmes's Dissenting Opinion:

- “Persecution for the expression of opinions seems to me perfectly logical. If you have no doubt of your premises or your power, and want a certain result with all your heart, you naturally express your wishes in law, and sweep away all opposition. To allow opposition by speech seems to indicate that you think the speech impotent, as when a man says that he has squared the circle, or that you do not care wholeheartedly for the result, or that you doubt either your power or your premises. But when men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas – that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out. That, at any rate, is the theory of our Constitution. It is an experiment, as all life is an experiment. Every year, if not every day, we have to wager our salvation upon some prophecy based upon imperfect knowledge. While that experiment is part of our system, I think that we should be eternally vigilant against attempts to check the expression of opinions that we loathe and believe to be fraught with death, unless they so imminently threaten immediate interference with the lawful and pressing purposes of the law that an immediate check is required to save the country.”
- “It is only the present danger of immediate evil or an intent to bring it about that warrants Congress in setting a limit to the expression of opinion where private rights are not concerned. Congress certainly cannot forbid all effort to change the mind of the country.”

## **CONSTITUTION 101**

### Module 10: First Amendment: Speech, Press, Religion, Assembly, and Petition

#### 10.4 Primary Source

#### **[West Virginia Board of Education v. Barnette \(1943\)](#)**

Excerpt from Justice Robert H. Jackson's Majority Opinion:

- “If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.”
- “Any spark of love for country which may be generated in a child or his associates by forcing him to make what is to him an empty gesture and recite words wrung from him contrary to his religious beliefs is overshadowed by the desirability of preserving freedom of conscience to the full. It is in that freedom and the example of persuasion, not in force and compulsion, that the real unity of America lies.”

#### **[New York Times Co. v. Sullivan \(1964\)](#)**

Excerpts from Justice William Brennan's Majority Opinion:

- “[W]e consider this case against the background of a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.”
- “‘For a representative democracy ceases to exist the moment that the public functionaries are by any means absolved from their responsibility to their constituents; and this happens whenever the constituent can be restrained in any manner from speaking, writing, or publishing his opinions upon any public measure, or upon the conduct of those who may advise or execute it.’ An unconditional right to say what one pleases about public affairs is what I consider to be the minimum guarantee of the First Amendment.”

#### **[Tinker v. Des Moines Independent Community School District \(1969\)](#)**

Excerpts from Justice Abe Fortas's Majority Opinion:

- “It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”
- “The classroom is peculiarly the ‘marketplace of ideas.’ The Nation's future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth ‘out of a multitude of tongues, (rather) than through any kind of authoritative selection.’”

## **CONSTITUTION 101**

### Module 10: First Amendment: Speech, Press, Religion, Assembly, and Petition

#### 10.4 Primary Source

##### **[Brandenburg v. Ohio \(1969\)](#)**

Excerpt from the Per Curiam Opinion:

- “[T]he constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.”

Excerpt from Justice Hugo Black’s Concurring Opinion:

- “Every idea is an incitement. It offers itself for belief and if believed it is acted on unless some other belief outweighs it or some failure of energy stifles the movement at its birth. The only difference between the expression of an opinion and an incitement in the narrower sense is the speaker’s enthusiasm for the result. Eloquence may set fire to reason. But whatever may be thought of the redundant discourse before us it had no chance of starting a present conflagration. If in the long run the beliefs expressed in proletarian dictatorship are destined to be accepted by the dominant forces of the community, the only meaning of free speech is that they should be given their chance and have their way.”

##### **[New York Times Co. v. United States \(1971\) \(The Pentagon Papers Case\)](#)**

Excerpts from Justice Hugo Black’s Concurring Opinion:

- “[P]aramount among the responsibilities of a free press is the duty to prevent any part of the government from deceiving the people and sending them off to distant lands to die of foreign fevers and foreign shot and shell.”

Excerpt from Justice William O. Douglas’s Concurring Opinion:

- “Secrecy in government is fundamentally anti-democratic, perpetuating bureaucratic errors. Open debate and discussion of public issues are vital to our national health. On public questions there should be ‘uninhibited, robust, and wide-open’ debate.”

##### **[Hazelwood School District v. Kuhlmeier \(1988\)](#)**

Excerpt from Justice Byron White’s Majority Opinion:

- “A school need not tolerate student speech that is inconsistent with its basic educational mission, even though the government could not censor similar speech outside the school.”

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#### 10.4 Primary Source

Excerpt from Justice William Brennan’s Dissenting Opinion

- “If mere incompatibility with the school’s pedagogical message were a constitutionally sufficient justification for the suppression of student speech, school officials could censor each of the students or student organizations in the foregoing hypotheticals, converting our public schools into ‘enclaves of totalitarianism,’ *id.*, at 511, 89 S.Ct., at 739, that ‘strangle the free mind at its source,’ *West Virginia Board of Education v. Barnette*, *supra*, 319 U.S., at 637, 63 S.Ct., at 1185. The First Amendment permits no such blanket censorship authority. While the ‘constitutional rights of students in public school are not automatically coextensive with the rights of adults in other settings,’ *Fraser*, *supra*, 478 U.S., at 682, 106 S.Ct., at 3164, students in the public schools do not ‘shed their constitutional rights to freedom of speech or expression at the schoolhouse gate,’ *Tinker*, *supra*, 393 U.S., at 506, 89 S.Ct., at 736. Just as the public on the street corner must, in the interest of fostering ‘enlightened opinion,’ *Cantwell v. Connecticut*, 310 U.S. 296, 310, 60 S.Ct. 900, 906, 84 L.Ed. 1213 (1940), tolerate speech that ‘tempt[s] [the listener] to throw [the speaker] off the street,’ *id.*, at 309, 60 S.Ct., at 906, public educators must accommodate some student expression even if it offends them or offers views or values that contradict those the school wishes to inculcate.”

#### [Texas v. Johnson \(1989\)](#)

Excerpt from Justice William Brennan’s Majority Opinion:

- “If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.”

Excerpt from Justice Anthony M. Kennedy’s Concurring Opinion:

- “Allowing the broadest scope to the language and purpose of the Fourteenth Amendment, it is well understood that the right of free speech is not absolute at all times and under all circumstances. There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem. These include the lewd and obscene, the profane, the libelous, and the insulting or ‘fighting’ words—those which by their very utterance inflict injury or tend to incite an immediate breach of the peace. It has been well observed that such utterances are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality.’

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#### 10.4 Activity Guide

## SPEECH QUOTATION ANALYSIS

In this activity, you will examine free speech quotes from landmark Supreme Court cases and compare them to the big ideas shared in the video.

Review the [quotations from famous Free Speech Court Cases](#), then fill in the chart below.

Principle: Freedom of conscience is an unalienable right because people have the right and duty to think for themselves.			
Identify a quotation that connects with this principle.	Summarize the quotation and write one to two sentences explaining it in your own words.	Identify and define any words that you do not understand.	Explain how the quote connects to the broader conclusion that the Supreme Court reached in the case.
Principle: Free speech makes representatives accountable to “We the People.”			
Identify a quotation that connects with this principle.	Summarize the quotation and write one to two sentences explaining it in your own words.	Identify and define any words that you do not understand.	Explain how the quote connects to the broader conclusion that the Supreme Court reached in the case.



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Principle: Free speech is necessary for the discovery of truth and the rejection of falsehood.			
Identify a quotation that connects with this principle.	Summarize the quotation and write one to two sentences explaining it in your own words.	Identify and define any words that you do not understand.	Explain how the quote connects to the broader conclusion that the Supreme Court reached in the case.
Principle: Free speech allows the public discussion necessary for democratic self-government.			
Identify a quotation that connects with this principle.	Summarize the quotation and write one to two sentences explaining it in your own words.	Identify and define any words that you do not understand.	Explain how the quote connects to the broader conclusion that the Supreme Court reached in the case.

## **PETITION FROM THE PENNSYLVANIA SOCIETY FOR THE ABOLITION OF SLAVERY TO THE FIRST CONGRESS (1790)**

In February 1790, the Pennsylvania Society for the Abolition of Slavery—headed by Benjamin Franklin—submitted an anti-slavery petition to the First Congress. The Society was the first abolitionist society in the United States, founded by the Quakers in 1775. A decade later, Franklin was elected the Society’s president. Franklin turned to the abolitionist cause late in life. He had befriended anti-slavery activists during his time in Britain and France, and he had long been exposed to the abolitionist views of the Quakers in Philadelphia. Following the ratification of the U.S. Constitution, Franklin became an outspoken critic of slavery, publishing several essays calling for slavery’s abolition. In his final public act, he sent this petition to the First Congress. In it, the Society urged Congress to pay “serious attention to the subject of slavery” and to “step to the very verge” of its powers to end both the international slave trade and the institution of slavery itself. The petition was introduced in the House and the Senate—sparking our nation’s first debates over slavery within Congress. Franklin died two months later.

### **Excerpt**

To the Senate & House of Representatives of the United States,

The Memorial of the Pennsylvania Society for promoting the Abolition of Slavery, the relief of free Negroes unlawfully held in bondage, & the Improvement of the Condition of the African Races.

Respectfully Sheweth,

**The anti-slavery movement is growing in early America.** That from a regard for the happiness of Mankind an Association was formed several years since in this State by a number of her Citizens of various religious denominations for promoting the Abolition of Slavery & for the relief of those unlawfully held in bondage. A just & accurate Conception of the true Principles of liberty, as it spread through the land, produced accessions to their numbers, many friends to their Cause, & a legislative Co-operation with their views, which, by the blessing of Divine Providence, have been successfully directed to the relieving from bondage a large number of their fellow Creatures of the African Race. They have also the Satisfaction to observe, that in consequence of that Spirit of Philanthropy & genuine liberty which is generally diffusing its beneficial Influence, similar Institutions are gradually forming at home & abroad.

**All people are formed by God; this is consistent with the Declaration of Independence; and slavery runs against both God and America’s Founding creed.** That mankind are all formed by the same Almighty being, alike objects of his Care & equally designed for the

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Enjoyment of Happiness the Christian Religion teaches us to believe & the Political Creed of America fully coincides with the Position.

**Congress has broad powers; they should be used to help African Americans.** Your Memorialists, particularly engaged in attending to the Distresses arising from Slavery, believe it their indispensable Duty to present this Subject to your notice. They have observed with great Satisfaction that many important & salutary Powers are vested in you for “promoting the Welfare & Securing the blessings of liberty to the People of the United States.” And as they conceive, that these blessings ought rightfully to be administered, without distinction of Colour, to all descriptions of People, so they indulge themselves in the pleasing expectation, that nothing, which can be done for the relive of the unhappy objects of their care, will be either omitted or delayed.

**Our goal is to abolish slavery and promote freedom; Congress should push for the same goal; only then will America live up to the promise of the Declaration of Independence.** From a persuasion that equal liberty was originally the Portion, It is still the Birthright of all men, & influenced by the strong ties of Humanity & the Principles of their Institution, your Memorialists conceive themselves bound to use all justifiable endeavours to loosen the bounds of Slavery and promote a general Enjoyment of the blessings of Freedom. Under these Impressions they earnestly entreat your serious attention to the Subject of Slavery, that you will be pleased to countenance the Restoration of liberty to those unhappy Men, who alone, in this land of Freedom, are degraded into perpetual Bondage, and who, amidst the general Joy of surrounding Freemen, are groaning in Servile Subjection, that you will devise means for removing this Inconsistency from the Character of the American People, that you will promote mercy and Justice towards this distressed Race, & that you will Step to the very verge of the Powers vested in you for discouraging every Species of Traffick in the Persons of our fellow men.

**\*Bold sentences give the big idea of the excerpt and are not a part of the primary source.**

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### THE GAG RULES DEBATE (1835–1840)

Infuriated by the anti-slavery petitions by groups like the American Anti-Slavery Society, pro-slavery members of the House of Representatives adopted rules prohibiting the House from officially receiving (and considering) any petition calling for the abolition of slavery. The rule, ultimately abandoned in 1840, prompted members including former President John Quincy Adams to accuse slavery advocates of violating the federal Bill of Rights and the First Amendment's declared right to petition government for redress of grievance.

The episode had the effect of making Northern Americans increasingly aware that slavery was no longer an issue confined to the South, but increasingly affected the rights of all citizens of the United States, rights enumerated in the federal Bill of Rights.

#### Excerpt

**Pinckney was an advocate of slavery.** The House resumed the consideration of the report of Mr. Pinckney, from the select committee on the subject of abolition. . . .

The preamble and third resolution were then read as follows:

*And whereas it is extremely important and desirable that the agitation of this subject should be finally arrested, for the purpose of restoring tranquility to the public mind, your committee respectfully recommend the adoption of the following additional resolution, viz:*

**This resolution would prevent the discussion of any anti-slavery petitions in Congress.**  
*Resolved, That all petitions, memorials, resolutions, propositions, or papers, relating in any way, or to any extent whatever, to the subject of slavery, or the abolition of slavery, shall, without being either printed or referred, be laid upon the table, and that no further action whatever shall be had thereon.*

. . .

Mr. PHILLIPS then moved to lay the preamble and third resolution on the table.

**The resolution survived.** Mr. GRENNELL asked for the yeas and nays, which were ordered, and the motion to lay on the table was negated—yeas 69, nays 118.

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The question recurring upon the adoption of the preamble and third resolution, the Clerk proceeded to call the roll.

**John Quincy Adams opposed the resolution, arguing that it violated the First Amendment.** When the name of Mr. Adams was called, that gentleman rose and said: I hold the resolution to be a direct violation of the Constitution of the United States, the rules of this House, and the rights of my constituents.

**Members of Congress yelled at Adams.** Mr. A. resumed his seat amid loud cries of “Order!” from all parts of the Hall.

**Congress passed the Gag Rule resolution.** The third resolution was then agreed to—yeas 117, nays 68.

**\*Bold sentences give the big idea of the excerpt and are not a part of the primary source.**

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### SENECA FALLS DECLARATION (1848)

The first American Women’s Rights Convention was held in Seneca Falls, New York, on July 19–20, 1848. Over the course of two days, convention members discussed and ultimately adopted a “Declaration of Sentiments,” which described the unjust and unequal treatment of women and presented 12 “resolutions” demanding legal and cultural reform. Initially drafted by Elizabeth Cady Stanton, the Declaration echoed the language and cadence of the Declaration of Independence. It then included a long list of grievances: the restrictions that coverture placed on married women; the denial of other rights, particularly the vote, to all women, be they married or unmarried; and structural inequalities that limited women’s opportunities generally. Most of these inequalities were not addressed until the 1900s.

Although Black suffrage was secured by the adoption of the 15th Amendment in 1870, women’s suffrage would not be obtained until the passage of the 19th Amendment in 1920. The 14th Amendment’s protections of civil rights did not extend to questions involving discrimination on the basis of sex or gender until the 1970s. Even then, the long history of legal restrictions noted in the Declaration of Sentiments continued to shape women’s claims to constitutional protections.

#### Excerpt

**This is a rewriting of the Declaration of Independence to support women’s rights.** When, in the course of human events, it becomes necessary for one portion of the family of man to assume among the people of the earth a position different from that which they have hitherto occupied, but one to which the laws of nature and of nature’s God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes that impel them to such a course. We hold these truths to be self-evident: that all men and women are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness; that to secure these rights governments are instituted, deriving their just powers from the consent of the governed. Whenever any form of government becomes destructive of these ends, it is the right of those who suffer from it to refuse allegiance to it, and to insist upon the institution of a new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate that governments long established should not be changed for light and transient causes; and accordingly all experience hath shown that mankind are more disposed to suffer while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their duty to throw off such government, and to provide new

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guards for their future security. Such has been the patient sufferance of the women under this government, and such is now the necessity which constrains them to demand the equal station to which they are entitled.

**Women have been abused by men over time; and here's the evidence.** The history of mankind is a history of repeated injuries and usurpations on the part of man toward woman, having in direct object the establishment of an absolute tyranny over her. To prove this, let facts be submitted to a candid world.

...

**Man denies her civil rights and the right to vote.** He has withheld from her rights which are given to the most ignorant and degraded men—both natives and foreigners. Having deprived her of this first right of a citizen, the elective franchise, thereby leaving her without representation in the halls of legislation, he has oppressed her on all sides. He has made her, if married, in the eye of the law, civilly dead.

...

**She has no property rights or rights to her wages.** He has taken from her all right in property, even to the wages she earns.

...

**She can't pursue many professions, and she is paid poorly.** He has monopolized nearly all the profitable employments, and from those she is permitted to follow, she receives but a scanty remuneration.

...

**He has degraded her and made her dependent on him.** He has endeavored, in every way that he could to destroy her confidence in her own powers, to lessen her self-respect, and to make her willing to lead a dependent and abject life.

...

**Women are entitled to the rights and privileges of American citizenship.** Now, in view of this entire disfranchisement of one-half the people of this country, their social and religious degradation,—in view of the unjust laws above mentioned, and because women do feel themselves aggrieved, oppressed, and fraudulently deprived of their most sacred rights, we insist that they have immediate admission to all the rights and privileges which belong to them as citizens of these United States.

**\*Bold sentences give the big idea of the excerpt and are not a part of the primary source.**

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### PROCEEDINGS OF THE STATE CONVENTION OF COLORED PEOPLE, HELD AT ALBANY, NEW YORK (1851)

Even as Northern states abolished slavery in the decades following the Revolution and the abolition movement gained momentum, the legal status of free blacks remained uncertain and, in key instances, deteriorated. It was not just federal legislation, such as the Fugitive Slave Act. States and localities enacted restrictions on free Blacks and, in the process, made race (white or black) as important as status (slave or free). In response, Black men and women organized, gathering to strategize in meetings advertised as “Colored Conventions.”

The attendees of this meeting in Albany, New York, were concerned about an array of restrictions at all levels of government: the Fugitive Slave Act of 1850; voting restrictions that had been written into New York’s state constitution in 1821 and reaffirmed in 1846; and local measures that barred Black children from attending schools. They were also concerned about the American Colonization Society, which sought to resettle Black Americans in Africa. Once billed as a way to remove Black Americans from racism, colonization had fallen out of favor with Black activists, who saw it as accommodating the goals white supremacy: denying Black Americans claims to citizenship, forcing them from their own country, and leaving racial inequalities in place, instead of addressing them.

The debates at these conventions defined and shaped issues that ultimately found their way into the U.S. Constitution, through the Reconstruction Amendments, which granted the federal government the authority to address the kinds of restrictions at the state and local level that concerned these conference attendees.

#### Excerpt

**We are exercising our assembly right to chart a path forward for the African American community.** The paramount object of this Convention is, to assemble the disfranchised and aggrieved portion of the people of the State of New-York, to deliberate upon, and propose, then and there, the course to be pursued in the future and onward prosecution of our interests and rights.

**The discrimination we face conflicts with the Declaration of Independence.** And most solemnly are we impressed with this truth also, that the denial of our rights is the overthrow of the rock foundation principles of the country; for the Declaration of Independence, in the language of the late and lamented John Quincy Adams, recognizes no despotism, monarchical, aristocratic, or democratic, declares that individual man is possessed of rights which no government can deprive him.

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**We are concerned about a range of issues: the Fugitive Slave Act of 1850, the push to send African Americans back to Africa, and efforts to keep our children out of the schools.** With this view and understanding, two great questions present themselves for adjustment, the first of which is the recent edict enacted and sent forth by Congress, called the “Fugitive Slave Law;” and the second in character is the coercive and barbarous Colonization Scheme; either of questions is characterized with infamy sufficient to libel christianity or sink a nation. There are other questions of local and State character that demand our immediate attention, viz: “the School-Questions;” a system of law of the State for the general education of all classes of children, without distinction or proscription. This philanthropic and far-seeing law has been suspended in its natural and defined course, and hundreds of children are thereby violently ejected from schools, and this in open violation of the law, and for no reason save that of God’s giving them a different complexion from those in power.

**We are also concerned about restrictions on African American voting rights.** A second subject for consideration, but first in importance, is the “Suffrage Question.” A special law of the State requires every colored voter to be in possession of two hundred and fifty dollars worth of real estate as a qualification. These local and general subjects require the people to act with promptness, union and energy, to effect the desire ends.

**Their goals. NO PROSCRIPTION—NO SLAVES—UNION—FREEDOM AND EQUALITY !**

**\*Bold sentences give the big idea of the excerpt and are not a part of the primary source.**

## **FREDERICK DOUGLASS, PLEA FOR FREEDOM OF SPEECH IN BOSTON (1860)**

On December 3, 1860, Frederick Douglass and a group of fellow abolitionists met at the Tremont Temple Baptist Church in Boston for a discussion centered around the following question: “How Can Slavery Be Abolished?” They scheduled this meeting on the one-year anniversary of John Brown’s death. It occurred at a time of great peril for the nation. One month earlier, Abraham Lincoln was elected as the first anti-slavery president in American history. But following Lincoln’s election, South Carolina quickly declared its intention to secede from the Union. And many assumed that other Southern States would soon follow suit. In this context, the Boston abolitionist meeting was greeted by a violent mob. The mob took the stage and shut down the meeting. Six days later, Douglass delivered a previously scheduled lecture at Boston’s Music Hall. Following his prepared remarks, Douglass ended with an admonition to his audience—and to the nation—about the importance of free speech and the exchange of ideas in a democratic society.

### **Excerpt:**

#### **Even in an enlightened city like Boston, mob violence threatens abolitionist assemblies.**

Boston is a great city and Music Hall has a fame almost as extensive as that of Boston. Nowhere more than here have the principles of human freedom been expounded. But for the circumstances already mentioned, it would seem almost presumption for me to say anything here about those principles. And yet, even here, in Boston, the moral atmosphere is dark and heavy. The principles of human liberty, even if correctly apprehended, find but limited support in this hour of trial. The world moves slowly, and Boston is much like the world. We thought the principle of free speech was an accomplished fact. Here, if nowhere else, we thought the right of the people to assemble and to express their opinion was secure. Dr. Channing had defended the right, Mr. Garrison had practically asserted the right, and Theodore Parker had maintained it with steadiness and fidelity to the last.

**Mob violence takes away our free speech rights.** But here we are to-day contending for what we thought we gained years ago. The mortifying and disgraceful fact stares us in the face, that though Faneuil Hall and the Bunker Hill Monument stand, freedom of speech is struck down. No lengthy detail of facts is needed. They are already notorious; far more so than will be wished ten years hence.

**A mob closed down our meeting, and the mayor didn’t protect us; it wasn’t a mob of the lowly, but instead a mob of gentlemen.** The world knows that last Monday a meeting assembled to discuss the question: “How Shall Slavery Be Abolished?” The world also knows that that meeting was invaded, insulted, captured by a mob of gentlemen, and thereafter broken up and dispersed by the order of the mayor, who refused to protect it, though called upon to do

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so. If this had been a mere outbreak of passion and prejudice among the baser sort, maddened by rum and hounded on by some wily politician to serve some immediate purpose, – a mere exceptional affair, – it might be allowed to rest with what has already been said. But the leaders of the mob were gentlemen. They were men who pride themselves upon their respect for law and order.

**Slavery conflicts with free speech and assembly rights.** These gentlemen brought their respect for the law with them and proclaimed it loudly while in the very act of breaking the law. Theirs was the law of slavery. The law of free speech and the law for the protection of public meetings they trampled under foot, while they greatly magnified the law of slavery. . . .

**The Founders valued free speech above all; it is the key to making society better, preventing tyranny, and ending slavery.** No right was deemed by the fathers of the Government more sacred than the right of speech. It was in their eyes, as in the eyes of all thoughtful men, the great moral renovator of society and government. Daniel Webster called it a homebred right, a fireside privilege. Liberty is meaningless where the right to utter one's thoughts and opinions has ceased to exist. That, of all rights, is the dread of tyrants. It is the right which they first of all strike down. They know its power. Thrones, dominions, principalities, and powers, founded in injustice and wrong, are sure to tremble, if men are allowed to reason of righteousness, temperance, and of a judgment to come in their presence. Slavery cannot tolerate free speech. Five years of its exercise would banish the auction block and break every chain in the South. They will have none of it there, for they have the power. But shall it be so here?

**Some attack our meeting as poorly timed and unwise.** Even here in Boston, and among the friends of freedom, we hear two voices: one denouncing the mob that broke up our meeting on Monday as a base and cowardly outrage; and another, deprecating and regretting the holding of such a meeting, by such men, at such a time. We are told that the meeting was ill-timed, and the parties to it unwise.

**We need to defend free speech rights now (and firmly).** Why, what is the matter with us? Are we going to palliate and excuse a palpable and flagrant outrage on the right of speech, by implying that only a particular description of persons should exercise that right? Are we, at such a time, when a great principle has been struck down, to quench the moral indignation which the deed excites, by casting reflections upon those on whose persons the outrage has been committed? After all the arguments for liberty to which Boston has listened for more than a quarter of a century, has she yet to learn that the time to assert a right is the time when the right itself is called in question, and that the men of all others to assert it are the men to whom the right has been denied?

**Free speech rights are for everyone, not just the elite.** It would be no vindication of the right of speech to prove that certain gentlemen of great distinction, eminent for their learning and ability, are allowed to freely express their opinions on all subjects – including the subject of

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slavery. Such a vindication would need, itself, to be vindicated. It would add insult to injury. Not even an old-fashioned abolition meeting could vindicate that right in Boston just now. There can be no right of speech where any man, however lifted up, or however humble, however young, or however old, is overawed by force, and compelled to suppress his honest sentiments.

**Free speech violations don't just harm the speaker, but also the listener.** Equally clear is the right to hear. To suppress free speech is a double wrong. It violates the rights of the hearer as well as those of the speaker. It is just as criminal to rob a man of his right to speak and hear as it would be to rob him of his money. I have no doubt that Boston will vindicate this right. But in order to do so, there must be no concessions to the enemy. When a man is allowed to speak because he is rich and powerful, it aggravates the crime of denying the right to the poor and humble.

**Again, free speech rights are for everyone.** The principle must rest upon its own proper basis. And until the right is accorded to the humblest as freely as to the most exalted citizen, the government of Boston is but an empty name, and its freedom a mockery. A man's right to speak does not depend upon where he was born or upon his color. The simple quality of manhood is the solid basis of the right – and there let it rest forever.

**\*Bold sentences give the big idea of the excerpt and are not a part of the primary source.**

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#### 10.5 Activity Guide

## ASSEMBLY AND PETITION

But wait, there is *MORE* in the First Amendment! The First Amendment also protects the right to assemble and the right to petition the government for a redress of grievances. These are two distinct rights. First, the right to assemble protects our right to gather together with others in groups—whether as part of a political meeting, religious gathering, street protest, or parade. And, second, the right to petition goes to our right to join together with others to share our collective views with the government—often by highlighting problems and suggesting ways of fixing them.

In this activity, you will examine one primary source relating to assembly and petition. Complete the handout for the primary source you are assigned.

What is the primary source you were assigned?	
Who is the author or who are the significant people involved?	
What year did the author(s) write/speak??	
How did the author(s) use assembly and/or petition rights to push for reform?	
What types of changes are the author(s) advocating?	
Provide at least <b>two</b> quotes from your source as evidence to support your answers.	

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10.7 Test Your Knowledge

# FIRST AMENDMENT: SPEECH, PRESS, RELIGION, ASSEMBLY, AND PETITION

Complete the questions in the following quiz to test your knowledge of basic ideas and concepts covered in this module.

1. Generally speaking, speech in America can only be limited by the government \_\_\_\_\_.
  - a. When the government feels criticized
  - b. When it is intended to and likely to cause lawless action, including violence
  - c. When a joke becomes offensive
  - d. None of the above
2. The First Amendment's text states who shall make no law...abridging the freedom of speech, or of the press?
  - a. Congress
  - b. The president
  - c. The Supreme Court
  - d. State governments
3. Which of these rights is *not* addressed in the First Amendment?
  - a. Freedom of religion
  - b. Right to petition
  - c. Right to assemble
  - d. Right to a jury trial
4. The Supreme Court has said that this type of speech is covered by the First Amendment.
  - a. Talking
  - b. Printed speech
  - c. Speech on the internet
  - d. All of the above
5. According to the Constitution, the First Amendment protects a speaker from abuses by \_\_\_\_\_.
  - a. The government
  - b. Private employers
  - c. Private schools
  - d. All of the above

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#### 10.7 Test Your Knowledge

6. The Supreme Court, which heads this branch of government, has frequently declared that the government cannot regulate speech based on its content.
  - a. Legislative branch
  - b. Executive branch
  - c. Judicial branch
  - d. Electoral branch
  
7. During the early years of our nation, if someone were to criticize a state or local official, the state's governor for example, the First Amendment would not protect that citizen from punishment for that speech. The First Amendment was seen to only apply to \_\_\_\_\_.
  - a. Anti-Federalists
  - b. The federal government
  - c. Loyalists
  - d. State governments
  
8. What is true about the freedom of conscience?
  - a. It can be regulated by the local government only.
  - b. It's an unalienable right because people have a right and a duty to think for themselves.
  - c. It's an alienable right that we give to the national government.
  - d. It has nothing to do with the First Amendment.
  
9. The two clauses central to the protection of the freedom of religion in the First Amendment are the \_\_\_\_\_ Clause and the \_\_\_\_\_ Clause.
  - a. Establishment, Restricted Exercise
  - b. Prayer, Recommended Reading
  - c. Establishment, Free Exercise
  - d. State sponsoring, Church building
  
10. Supreme Court justices do not always agree about constitutional issues, including the freedom of speech. In such cases, justices who do not agree with the majority opinion and would rule differently can write their own opinions, which are called \_\_\_\_\_.
  - a. Concurring opinions
  - b. Dissenting opinions
  - c. Unanimous opinions
  - d. Inflated opinions

## CONSTITUTION 101

### Module 10: First Amendment: Speech, Press, Religion, Assembly, and Petition

#### 10.7 Test Your Knowledge

11. During the presidency of John Adams, the passage of this legislation made it a crime to criticize the president (but not the vice president).
  - a. The Alien and Sedition Acts
  - b. The Bill of Rights
  - c. The Articles of Confederation
  - d. The Neutrality Proclamation
  
12. In which document did Thomas Jefferson write that “the opinions and belief of men depend not on their own will, but follow involuntarily the evidence proposed in their minds”?
  - a. The Virginia Constitution
  - b. The Declaration of Independence
  - c. The Virginia Statute for Religious Freedom Bill
  - d. The Kentucky Resolution
  
13. Fill in the blanks of this famous opinion of the First Amendment by Justice Oliver Wendell Holmes. “The most stringent protection of free speech would not protect a man in \_\_\_\_\_ shouting fire in a theatre and causing a \_\_\_\_\_.”
  - a. Loudly, Disruption
  - b. Truthfully, Orderly Evacuation
  - c. Falsely, Panic
  - d. Not, Fire drill.
  
14. Justice Louis Brandeis articulated his beliefs about the freedom of speech in this Supreme Court case from 1927.
  - a. *Schenck v. United States*
  - b. *Whitney v. California*
  - c. *Tinker v. Des Moines Independent Community School District*
  - d. *Mahanoy Area School District v. B.L.*
  
15. Finish this famous quote about the freedom of speech from Louis Brandeis in 1927: “If there be time to expose through discussion the falsehood and fallacies, to avert the evil by the process of education, the remedy to be applied is\_\_\_\_\_.”
  - a. A suspension of our First Amendment rights
  - b. More speech, not enforced silence
  - c. Enforced silence
  - d. Another Sedition Act
  
16. Fill in the missing word from Justice Robert Jackson’s statement in *West Virginia Board of Education v. Barnette* (1943) “If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in



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politics, nationalism, religion, or other matters of opinion or \_\_\_\_\_ citizens to confess by word or act their faith therein.”

- a. Help
  - b. Beg
  - c. Ask
  - d. Force
17. Today, the Supreme Court protects free speech rights \_\_\_\_\_.
- a. Less than it ever has before
  - b. More strongly than at any time in our history
  - c. About the same as it did during the American Revolution
  - d. When Congress is in recess
18. Which of these is true about freedom of speech?
- a. It makes representatives accountable to “We the People.”
  - b. It’s necessary for the discovery of truth and the rejection of falsehood.
  - c. It allows the public discussion that is necessary for self-government.
  - d. All of the above
19. The First Amendment does *not* protect certain types of “low value speech,” which includes \_\_\_\_\_
- a. Defamation
  - b. True threats
  - c. Fighting words
  - d. All of the above
20. In the *Tinker v. Des Moines Independent Community School District* (1969) case, a group of high school students were disciplined by the school for wearing black armbands in symbolic protest of which war?
- a. The Vietnam War
  - b. World War II
  - c. The Korean War
  - d. The Iraq War

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#### Answer Key

1. B
2. A
3. D
4. D
5. A
6. C
7. B
8. B
9. C
10. D
11. A
12. C
13. C
14. B
15. B
16. D
17. B
18. D
19. D
20. A