Welcome to Constitution Hall Pass! I'm Katie Stahl here at the National Constitution Center in Philadelphia. We're here to talk about the Bill of Rights—those first ten amendments to the Constitution that protect so many of our most cherished freedoms and individual rights.

We’re going to look at what the text of the Bill of Rights says, but that’s not all we’re going to talk about: we’re going to look at where these rights come from, how we realize their potential freedoms, and how we work through our legal system to protect them. That’s right – as much as the Bill of Rights is what gives shape to much of what we identify as “American”, the Bill of Rights also depends on you and me – living, breathing Americans who choose to continue to protect it and shape it, generation after generation.

The Bill of Rights recognizes those freedoms that are inherent in all of us, but it only becomes real through our actions. These actions are things we often take for granted, like speaking our minds and feeling private in our homes – places and deeds we don’t always think of as legally defined. How we embody rights gives definition to what we expect from rights. But our actions are more than just individual or social. They are essential parts of preserving the Bill of Rights as law.

So how does the Bill of Rights really work? How does it protect us, if we have to protect it? How do the courts—including the highest court in the land, the Supreme Court of the United States—make their decisions about our rights? And what part do We the People play in defining our rights?

Let's start by going back to the beginning...the Declaration of Independence and the Revolutionary War.

We’re at the Declaration House, just a few blocks away from the National Constitution Center. This house was built in 1775 by a local bricklayer named Jacob Graff, Jr. One year later, Thomas Jefferson came here to write the Declaration of Independence—our statement to the world that we were to be free and independent from Great Britain!

The Declaration of Independence says that individual rights are inherent in all people by virtue of our being human. No government or king can grant them—they come from nature and belong to everyone. As such, they also can’t be removed by Kings or Sovereigns – they are unalienable. Listen to the language: “We hold these truths to be self-evident: That all men are created equal; that they are endowed by their Creator with certain unalienable rights. . .”

In drafting the Declaration, Jefferson was building on ideas that many of his compatriots had been considering for years. But by suggesting that a nation might break free and form a new government in defense of unalienable rights – a kind of right which would presume a limited government - the document also suggested something which was breathtakingly new.

New, but reflecting practical sentiment. Jefferson’s writing gave voice to American colonists’ concern with the British rule. Many colonists shared the sense that under the British, colonists might lose their rights. This made many realize just how dear their individual rights really were – and how inviolable they ought to be under law.
In the years leading up to the Revolutionary War, the British government had begun to impose more taxes, place more troops in American cities, restrict access to legal review, and profess other restrictions on the colonists' ability to live, work, and govern themselves. The Declaration was a breaking point. The colonists had had enough, and took up arms. As armed battles broke out in places like Lexington, Concord, and Bunker Hill, it became clear that there would be no turning back.

The war wasn’t just being waged on battlefields. It was also being fought with law, and through forms of government. War was everywhere, even in words: after declaring independence, many referred to their ‘territories’ as ‘states’. Conventions got together in these different states and tried something altogether new in the history of the world – the declaration wasn’t the only first. Citizens created written constitutions for their newly independent states. These were designed to set limits on government and to define the specific powers that the governments had to exercise in order to protect basic liberties and keep things functioning smoothly. Many of these constitutions grouped together these protections in lists called “bills of rights.” Bills of Rights quite literally: bills were pieces of paper that had legal weight; rights were what the words upon the bills enshrined.

While the state constitutions protected liberty through bills of rights, on a state by state basis, there was no real system of protecting those rights across all thirteen states there couldn’t be! Because the Framers had not yet drafted our federal Constitution yet, national rights – rights against the federal government - were still a work in progress. The first attempt at creating a national government, to have power throughout the states, came with the formation of the Articles of Confederation, written in 1777 and approved by the states in 1781. But that document was less a “constitution” than it was a treaty of friendship among sovereign and independent states. Under the Articles of Confederation, the central government possessed no power to require that each state respect the rights of its citizens or that the states be required to cooperate with one another for the good of the new American nation as a whole. As a consequence, the thirteen independent states often found themselves disagreeing over fundamental issues that affected individual rights as much as they impacted government, such as the precise definition of their boundaries, the raising of revenue, reciprocal law, or the maintenance of a citizens’ militia.

If the independence our forebears fought for in the Revolution was to survive, something needed to change. States fighting with states over law meant the new nation would be weak – an easy target for foreign sovereigns. At the same time, states granting different rights to different inhabitants would cause domestic turmoil among individual citizens, an unequal treatment at odds with the principles the Declaration had professed and many colonists had died for.

Fearing the collapse of the fragile new union, some of the most dedicated and farsighted men in the country got together in Philadelphia in the summer of 1787 to make changes to the Articles of Confederation. Led by James Madison and George Washington of Virginia, and by James Wilson and Gouverneur Morris of Pennsylvania, the delegates to the Constitutional Convention decided they would need to start over. Creating a document truly up to the task of protecting all that colonists had fought for meant an entirely new document— and an entirely new system of government.
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When we come back, you’re going to see how that new system of government was received by We the People.

Structured around principles of popular sovereignty, the Constitution said that government itself was bound by law, and that that law was ours. That also meant that “we” had to approve it. The Constitution of the United States made its debut to the American people on September 19, 1787, two days after it was signed by the Framers who had created it. When it appeared on the streets of Philadelphia in a newspaper called the Pennsylvania Packet, the people of the city immediately started discussing and debating its content – in coffee shops, on the weekend, in pamphlets, on the street - It wasn’t long before post riders and sailing ships carried the words of the Constitution to other cities and towns all across the U.S. And in all those places, as the American people began to get wind of what the Constitution said, they began to engage in an intense debate over the many of the powers granted to the proposed new government.

The Constitution didn’t become the supreme law of the land when the framers signed it on September 17. In fact, it was just getting started. To be embraced by We the People, it had to be ratified, or approved, by nine of the thirteen states. Each state called a convention which was supposed to decide whether or not to ratify the Constitution. And the people of the states would use those ratifying conventions to make their voices heard when it came to the new Constitution.

Many Americans expressed their concerns about the powers granted to the new government. Having just defeated a King, many were suspicious that the new system with its strong President and a Congress that could pass a wide range of laws, was a return to the kind of centralized power monarchy stood for. Americans worried that federal power would restrict individual people’s rights and liberties. They wondered, wrote, and suggested: “why did we wage a bloody war for our independence, if we were going to give up the liberty we just fought for?”

At the heart of the debate was the problem of enumerated powers: the new government was a government of listed, or enumerated, powers. This presumed that any power left over, power not listed, was reserved to the States and the People. Putting the new government’s powers on paper was an exciting new step, but it also posed the problem: if government powers were enumerated – written down and specified – did rights need to be too? Or if rights were listed, would it limit rights too far – restricting our liberties to those only on paper? Citizens didn’t just keep these thoughts to themselves. They made their views known in printed pamphlets and newspaper articles, and they gave the people they’d elected to the state ratifying conventions a piece of their minds. They let everyone know what they wanted to see added, removed, or changed in the Constitution. They made sure that their voices were heard.

It was individual concerns, concerns of citizens like you and me that set the stage for the Bill of Rights. At the state ratifying conventions, the perceived failure to protect individual liberties and states’ rights caused the ratification campaign to slow to a crawl. While some of the states, like Delaware and New Jersey, ratified the document quickly, several other key states saw long, drawn-out disputes over
whether or not to approve. In Massachusetts, John Hancock and Samuel Adams only agreed to vote for ratification if “subsequent amendments” were added after the Constitution became the supreme law of the land. In Virginia, where the fiery Patrick Henry led the opposition to ratification, those who supported the Constitution were only able to secure victory by a narrow margin. And even after that, Virginia still supported Henry’s push for a limit on the federal government’s powers and more protection for states’ rights.

The Constitution finally became the supreme law of the land after New Hampshire became the ninth state to ratify it on June 21, 1788. At that point, nearly every state had submitted at least a few amendments for the First Congress of the United States to consider.

In all, over 200 changes were proposed by the ratifying conventions. Not all of the original suggestions made the cut. And in order to put the best of those suggestions into effect, someone would have to collect them and refine them into constitutional amendments. One Founding Father in particular took charge and made the Bill of Rights a reality...

COMMERCIAL BREAK

When we return, we’ll talk about what’s actually listed in those ten amendments.

So if you had to guess—which Founding Father do you think is referred to as “the Father of the Constitution?”


Madison was committed to bridging a glaring gap that had developed among America’s citizens. Some of them, remembering the restrictions of the British colonial regime, wanted to make sure that the new government couldn’t interfere with the rights protected in the state constitutions. Others, remembering the problems caused by the weak government under the Articles of Confederation, wanted to make sure that the new government could protect the country’s independence over the long haul. Madison knew that the country needed a bridge that would allow the two sides to meet in the middle—one that would empower the government to meet the country’s needs while it still protected the rights and freedoms of individual citizens.

Madison didn’t want to stop contributing once the Constitution had been signed—he wanted to be just as active in building the new government. Even if he wasn’t on board with the idea of a bill of rights, he still wanted to make sure that the people who opposed a bill of rights couldn’t stop the process of ratification. He originally wanted to represent Virginia in the Senate, but his political enemies in the state government, like Patrick Henry, shut him out. So instead, he ran for election to the House of Representatives.

He soon realized that most of the people in his district really wanted a Bill of Rights. So he promised that, if he were elected, he’d draw on those suggested changes and introduce a set of amendments
based on the suggestions from the ratification conventions. Madison won his election, and as a member of the First Congress of the United States, he soon got down to business.

In June 1789, he gave a speech proposing 19 changes to be inserted into the document at various places. It took the House a while to get around to looking at them, but in August they approved 17 of them and sent them to the Senate. The Senate did some rearranging and editing, and settled on 12 proposed amendments, which a joint committee of representatives and senators then tweaked into something that was acceptable to both houses.

On September 25, 1789, the 12 amendments were approved and sent to the states for ratification. Out of those 12, 10 were ratified by the necessary number of states, and on December 15, 1791, when Virginia ratified those 10, the Bill of Rights officially became a part of the supreme law of the land!

So now that we’ve seen a little bit about the creation of the Bill of Rights, let’s take a look at what’s actually in the amendments. So what do we get from the Bill of Rights? Like we said, there are ten amendments which make up the Bill of Rights.

The First Amendment protects our freedom of expression and the free exercise of religion. These rights allow us to be who we are and to think what we want, allowing us to share our opinions with everyone. These freedoms aren’t absolute—we can’t use our free speech to put other people in harm’s way, or to make up harmful lies about others. But within the scope that prevents us from harming each other, our rights remain unalienable and fundamental, just as we declared so long ago. They have to be— it is by using our five First Amendment freedoms responsibly that we take an active role in shaping our country every single day. Only by using our rights do we govern ourselves.

The Second Amendment deals with the people’s right to bear arms. Remembering the importance of a “citizens’ militia” in the struggle to protect American liberties during the Revolutionary War, the voices speaking through the Bill of Rights wanted to include a guarantee that “the right of the people to keep and bear arms” would not be threatened. Today, the precise meaning of the Second Amendment raises a lot of strong opinions on both sides—some see it as a social right, the right of a group of people to bear arms; others maintain it is an individual right, the right of individual citizens to keep the same, but it remains an important part of our Constitution.

The Third, Fourth, and Fifth Amendments protect our privacy at home, on the move, and even in the courtroom.

These three amendments interact with each other to protect our right to privacy. Sometimes amendments work on their own; other times we have to read them next to each other to see what else they protect. The Third Amendment stops the government from forcing us to keep soldiers in our homes without our permission. The Fourth Amendment protects us from unreasonable searches and seizures, meaning that police investigating a crime have to follow certain rules when they’re searching for evidence to make sure they don’t violate our reasonable expectation of privacy. And the Fifth Amendment says that there are certain procedures—called “due process”—that the government has to follow when charging people with crimes. We don’t have to testify against ourselves if we’re placed on
And the government can’t take away people’s private property for public use without compensating the owners. It’s all about protecting people from unlawful acts against “life, liberty, and property.”

Amendments 5, 6, 7, and 8 all interact as well. These amendments deal with the justice system. The Fifth Amendment says some things in addition to what we just talked about. It also protects us from being charged with the same alleged crime twice, and from being charged with major crimes without a grand jury indictment. The Sixth Amendment guarantees the right to a speedy public trial by a jury of our peers, and promises that every citizen charged with a crime has the right to be represented by an attorney. The Seventh Amendment says that even civil cases—disputes between parties where no crime has been committed—can be heard by juries too. And the Eighth Amendment protects us from cruel and unusual punishments, making sure that if we are convicted of breaking the law, the punishment has to fit the crime.

We’ll put the last two Bill of Rights amendments into one more group to take us home. The Ninth and Tenth Amendments cover other things that the first eight amendments didn’t talk about, but which the Framers still wanted us to be prepared to deal with.

The Ninth Amendment was written because some people, like James Madison, said that if the Constitution included a list of rights, that list would be final, and no other rights would be guaranteed to citizens. The Ninth Amendment says that the list of freedoms in the Bill of Rights can’t be taken as final—and as we’ll see, our rights and freedoms have expanded throughout our history. The Tenth Amendment says that any power not specifically given to the federal government belongs to the states or to the people themselves. Thanks to this, a lot of people who were opposed to the Constitution because they were afraid it would trample the rights of the states decided to take a chance and support the new government.

So there are a lot of freedoms guaranteed in the Bill of Rights. And they don’t all fit into neat little boxes—sometimes we have to look into a few different amendments to find the rights we’re concerned with.

Most importantly, once we find those rights, we have to put them into action through active citizenship. And it’s been exactly that process that has seen the Bill of Rights become a reality over the years!

Let’s look back at our history 

*after* the Bill of Rights was ratified. Madison’s amendments were a great addition to the Constitution, but for the most part, they weren’t used all that often. In the early years, people still weren’t relying on them all that much. It seemed like those protections that were included in the state constitutions were getting the job done for most people. Furthermore, at first, the Bill of Rights only applied to actions by the federal government, not those of the states.

Think about these powerful words of the Declaration of Independence— “We hold these truths to be self-evident: that all men are created equal.” It was easy for people to use them as justification for defending their rights. Since the federal government wasn’t as active back then as it is now, and since
state governments were still carrying a lot of the load for lawmaking, there didn’t seem to be as many situations in which the Bill of Rights would apply.

But keeping most powers in the state governments, with the understanding that the Bill of Rights didn’t apply to their laws, meant that for some people, there really weren’t any protections for their rights, because their state governments had denied them. What about the enslaved persons in Southern states? Who was watching out for them? Where were their rights?

It took nearly eighty years after the signing of the Constitution before the issue of slavery was finally resolved once and for all. And that resolution only came after a bloody Civil War. But that war would lead to some of the most important developments in making the Bill of Rights come alive.

The first was a pair of landmark amendments to the Constitution. The Thirteenth Amendment makes the practice of slavery unconstitutional, and the Fourteenth Amendment says that everyone born in the United States is a citizen, and that no state can pass laws that infringe on citizens’ rights or deprive persons of life, liberty, or property without due process. The Fourteenth Amendment was meant to make sure that the recently-freed former slaves, who had been granted emancipation by the Thirteenth Amendment, would enjoy the same rights as all other fellow citizens.

The problem was that there was no precedent for applying Constitutional protections to state laws. Spurred on by cases brought before them by individual citizens, the Supreme Court, beginning in the twentieth century, started to explore the doctrine of “incorporation.” This doctrine holds that the Fourteenth Amendment, by guaranteeing due process and equal protection for all citizens, applies the standards of Bill of Rights to state laws. One good example of this is the Supreme Court’s ruling in the 1925 case *Gitlow v. New York*. In this decision, the Court found that the First Amendment’s protection of free speech and freedom of the press applied to laws passed by individual states in addition to the federal government.

Incorporation has been a long process, and the Supreme Court hasn’t ruled that all of the freedoms in the Bill of Rights are incorporated. The Fifth Amendment right to an indictment by a grand jury, and the Seventh Amendment right to a jury trial in civil suits remain unincorporated – for now. But once the Court started applying the Bill of Rights to state laws, they became more and more the main safeguards for guaranteeing our liberties.

Even after the Fourteenth Amendment and the beginning of incorporation, there was still a long way to go. The Jim Crow system of segregation laws in the South deprived African Americans of equal rights and opportunities. In this case, it was direct actions by citizens—using their freedoms under the Bill of Rights, no less—that spurred the change and expanded the rights of citizens.

The civil rights movement saw ordinary Americans of many races, religions, and backgrounds coming together to protest the injustices of segregation. Among others, the First Amendment gives us the right to freedom of speech, press, and peaceable assembly. Using these freedoms, the civil rights movement brought their message to the public. Driven by the protests and concerned about Americans looking like hypocrites in the eyes of the world, the Supreme Court began to issue rulings that firmed up the
protections of the Bill of Rights for all citizens—think of 1954’s *Brown v. Board of Education*, which said that school segregation was unconstitutional.

The Bill of Rights became a part of the Constitution as a result of our earliest debates about the heart and soul of our nation, and their role in protecting our liberties has been enhanced by further constitutional amendments and civic action in the years since. Now, let’s take a look at how those rights apply to students just like you.

COMMERCIAL BREAK

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We've come a long way from the time of the Revolution and the writing of the words of the Bill of Rights to get to where we are today. But how do these rights work? Constitutional amendments don’t come to life and directly intervene to protect our rights. It's up to people using the process of appeal and the courts applying judicial review to say what laws mean.

Let's look at an example that you might recognize from your own life. We've spent a lot of time trying to figure out what actions are appropriate for schools to take when trying to guarantee the safety of their students—including regulating their speech. Your school probably has policies on what students can and can't say, wear, or do while they're at school. These are designed to keep you safe. But who gets to decide whether it's legal for schools to decide the boundaries of these things? Who decides where and what those boundaries are? And what part do students like you play in this decision-making process?

Freedom of speech in schools got a big boost in 1969, when a girl from Iowa named Mary Beth Tinker stood up for her right to express her political opinion in the hallowed halls. When she wore on school grounds a black armband to protest the Vietnam War, she was suspended. Her case made it all the way to the Supreme Court, which decided that students do not lose “their constitutional rights to freedom of speech or expression at the schoolhouse gate.”

But rights of free speech at school aren’t absolute, as the Court ruled in 1986. When a student named Matthew Fraser gave a speech filled with what were considered crude double meanings, his school suspended him—even though he didn’t use any obscene language. Fraser’s case also made it to the Supreme Court. This time the Court upheld his suspension. It ruled that the type of inappropriate speech he used wasn’t protected.

So the definition of just what is and isn’t protected as free speech is tough to pin down once and for all. We’re going to look at a specific case from just a few years ago to see how ordinary people—including students like you—are involved in trying to find that definition.

So let’s recap: the *Tinker* case says that students have the right to express political opinions at school. The *Fraser* case says that schools can discipline students for speech in school that is disruptive, inappropriate, or obscene. What about speech about school on the internet? And what happens when a piece of speech created outside of school—say, like a fake MySpace profile about your principal—is brought into school? What happens then?
That was the question that the judicial system was trying to answer in 2009, when the United States Court of Appeals for the Third Circuit heard the case of J.S. v. Blue Mountain School District. It all started two years earlier, in 2007, when a girl who was a student at Blue Mountain Middle School in Pennsylvania got upset with her principal over the way he talked to her about a dress code violation. She and a friend of hers decided to get even—on the Internet.

One Sunday, while they were at their homes, they used AOL Instant Messenger to chat back and forth and plan out a fake profile page for their principal on the social media service MySpace. They used a photo of the principal that they found on the school district’s website and created a profile which made the principal sound like a deranged pervert who had no business being around kids.

When they got to school the next day, they found out that the profile was a hot topic of conversation. One of the girls—called J.S. in the court proceedings due to the fact that she was a minor—changed the profile setting to “private” and gave access to about 20 people. But still, plenty of people were already aware of the profile, even though the school’s computers blocked access to MySpace. Remember that fact—it’s going to come up again in a minute.

The next day, a student told the principal about the profile. He was upset—he tried to view the profile from his office computer, which didn’t block MySpace, but couldn’t get to it because of the profile’s privacy setting. The student who tipped off the principal later came back and told him it was J.S. who created it. The principal told the student to print a copy and bring it to school. By Thursday, the principal met with the two girls and their parents and gave the girls each a ten-day suspension.

Meanwhile, other kids at the school kept talking about the profile. A couple of the teachers had to quiet down their classes because they were talking about it too much. And when the girls’ ten-day suspension was up, two of their classmates, in a show of support, decorated their lockers for them with confetti, ribbons, and signs that said “Congratulations.” This only riled the principal even more.

From the principal’s point of view, the fake profile had caused so much disruption that he felt he had to come down with a big punishment. While J.S. and her parents apologized for the profile, they felt that the ten-day suspension was too severe, especially considering that the profile had been made outside of school property and on a weekend. Feeling that their rights were violated, they decided to take their case to the courts.

So how did it all play out? How do you think it got resolved? We can look at the judicial system’s work on J.S. v. Blue Mountain to see how people use the courts to define our rights.

J.S. and her parents filed a lawsuit against the school district in the United States District Court for the Middle District of Pennsylvania. The lawsuit said that among other things, the suspension violated J.S.’s First Amendment free speech rights.

The district courts are the first rung on the ladder of the U.S. courts system. They’re organized by state—bigger states have two, three, or even four districts, while smaller states have one district for the whole state. When people bring cases before the federal judiciary, they start with their district court.
In this case, the District Court accepted that J.S. made the profile at home, and that it didn’t disrupt the school setting so much that J.S. lost her protection from the *Tinker* case. However, they did rule that the school district didn’t violate her First Amendment rights “because the lewd and vulgar off-campus speech had an effect on-campus.” Sounds kind of like the *Fraser* ruling.

But it still hadn’t taken place at school. And remember when I said that the school’s computers couldn’t access MySpace? That means that none of the students were able to view the profile while they were at school. In fact, the only reason the profile ever made its debut on campus was because the principal asked the other student to print out a copy and bring it in. J.S. and her parents weren’t done yet.

I said a moment ago that the district courts are the first rung on the judicial ladder. People can keep climbing that ladder, as long as the next court up agrees to hear their case. Above the district courts are the Courts of Appeals. There are 11 of these courts, organized into regions of the United States called circuits. A person or group that has been ruled against in a district court can appeal to the Court of Appeals for their circuit, and a panel of three judges from the Court of Appeals will re-hear the case and issue a ruling of their own.

J.S. and her parents appealed the ruling to the Court of Appeals for the Third Circuit, which covers Pennsylvania, New Jersey, and Delaware. Three judges heard the case, on June 2, 2009. The Court of Appeals agreed with the District Court, saying that the school could justify J.S.’s suspension because it was reasonable to expect that the profile would cause substantial disruption at school.

But that wasn’t the end of it. The three judges were a part of the Court of Appeals for the Third Circuit, which has 14 judges in all. If one side loses before a three-judge panel, it has the option of asking all 14 judges to sit together to reconsider the case. The full court will agree to do that when it looks like their decision is going to set an important precedent, or if it seems like it conflicts with an earlier decision made by the same court. In the case of *J.S. v. Blue Mountain*, they decided to give it another shot.

On June 3, 2010, the Court ruled *en banc* that J.S.’s First Amendment rights had been violated after all, since the disruption reported wasn’t “substantial”—just some kids talking in class and a bunch of students gathered in a hallway—and because, in their opinion, the school could *not* have expected a substantial disruption. It had been almost three years since she created the profile. But the court still took the time to consider all of the facts before making its decision. It wasn’t a unanimous one, either—the judges that disagreed with the ruling of the court wrote their own opinion, explaining why they thought the decision was wrong. So both sides of the discussion got to have their say—and it’s all available to the public. Anyone can look up the opinions of the court to see how judges are interpreting the law.

The case doesn’t necessarily stop at the circuit level, either. People who still feel wronged can make another appeal—this time to the highest court in the land, the Supreme Court of the United States. The Supreme Court only chooses to hear a small percentage of the cases that are brought to them, but they are the final voice when it comes to the real meaning of the law—and of our rights. When the Supreme Court hands down a ruling, the decision they make is final, and no other appeals can be made.
J.S. and her parents used the courts to explain their vision of the First Amendment. That’s how the Bill of Rights is brought to life—when people bring their cases to the courts, they’re expressing what they think those freedoms really mean, or should mean. The first ten amendments are important for stating the rights that we have, but it’s up to us to make those words a reality.

So know your rights—and know how to exercise them when something doesn’t seem right to you. If not for people like you standing up and saying “This isn’t constitutional,” then nothing changes; or sometimes, change happens that shouldn’t. These rights are part of our supreme law of the land, but the definition of those rights comes from cases brought by the people. And when you hear people say things like, “They should do something about this”—well, guess what—WE are the “they.” You, me, and everyone else has the power and the responsibility to make those rights come to life. Thanks for watching—see you next time on Constitution Hall Pass!