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# FIRST AMENDMENT: SPEECH

## LESSON PLAN

WHEN DOES THE FIRST AMENDMENT  
ALLOW THE GOVERNMENT TO LIMIT SPEECH?

**NATIONAL CONSTITUTION CENTER**



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## FIRST AMENDMENT: SPEECH LESSON PLAN

**Grade Levels:** 11th and 12th

**Number of class periods:** 1 (Approximately 55 minutes)

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### INTRODUCTION/LESSON OVERVIEW

Many Americans struggle with understanding the language and subsequent interpretation of the Constitution, especially when it come to the rights encapsulated in the First Amendment. While many Americans can agree that speech should be protected, there are disagreements over when, where, and how speech can be limited or restricted. This lesson encourages students to examine their own assumptions and to deepen their understanding of current, accepted interpretations of speech rights under the First Amendment including when and where speech is protected and/or limited. It should reinforce the robustness of the First Amendment protections of speech.

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### 11TH-12TH GRADE COMMON CORE STANDARDS

**CCSS.ELA-LITERACY.RH.11-12.1**

Cite specific textual evidence to support analysis of primary and secondary sources, connecting insights gained from specific details to an understanding of the text as a whole.

**CCSS.ELA-LITERACY.RH.11-12.2**

Determine the central ideas or information of a primary or secondary source; provide an accurate summary that makes clear the relationships among the key details and ideas.

**CCSS.ELA-LITERACY.RH.11-12.4**

Determine the meaning of words and phrases as they are used in a text, including analyzing how an author uses and refines the meaning of a key term over the course of a text (e.g., how Madison defines *faction* in *Federalist* No. 10).

**CCSS.ELA-LITERACY.RH.11-12.6**

Evaluate authors’ differing points of view on the same historical event or issue by assessing the authors’ claims, reasoning, and evidence.

**CCSS.ELA-LITERACY.RH.11-12.10**

By the end of grade 12, read and comprehend history/social studies texts in the grades 11-CCR text complexity band independently and proficiently.

## BIG QUESTION

### WHEN DOES THE FIRST AMENDMENT ALLOW THE GOVERNMENT TO LIMIT SPEECH?

#### ESSENTIAL QUESTIONS

- ★ How does the First Amendment of the US Constitution protect the Freedom of Speech?
- ★ When and why can the government limit certain types of speech?
- ★ How has the protection of speech changed over time?

#### OBJECTIVES

- ★ Students will be able to analyze controversies involving the First Amendment provision protecting freedom of speech.
- ★ Students will be able to evaluate competing interpretations of the First Amendment provision protecting freedom of speech.
- ★ Students will be able to apply varying interpretations of the First Amendment provision protecting freedom of speech to controversial issues involving speech.
- ★ Students will be able to identify high and low value varieties of speech.
- ★ Students will be able to identify conditions under which speech can be limited.

#### MATERIALS

- ★ Warm Up Worksheet of Speech Hypotheticals (included)
- ★ Access to the *Interactive Constitution* (online) or printed copies of the following essays:
  - ★ Common Interpretation “Freedom of Speech and of Press” by Geoffrey R. Stone and Eugene Volokh (VŌ-luck)
  - ★ “Fixing Free Speech” by Geoffrey R. Stone
  - ★ “Free Speech Frontiers” by Eugene Volokh(Essays accessible at: [constitutioncenter.org/interactive-constitution/amendment-amendment-i/the-freedom-of-speech-and-of-the-press-clause/interp/33](https://constitutioncenter.org/interactive-constitution/amendment-amendment-i/the-freedom-of-speech-and-of-the-press-clause/interp/33))
- ★ Essay Analysis Questions (included)
- ★ Exit Ticket Prompt (included)

#### PROCEDURE:

##### WARM UP/ACTIVATION OF PRIOR KNOWLEDGE

Students will read the First Amendment provision that protects Freedom of Speech and interpret its meaning in 10 hypothetical controversial situations. In each situation, they will decide if the government is able or unable to limit the speech in question. To do this, they will use a five-point scale assigning values in the following way:

- ★ 1 = unable to limit the speech
- ★ 2 = rarely able to limit the speech
- ★ 3 = [students are truly unsure]
- ★ 4 = usually able to limit the speech
- ★ 5 = always able to limit the speech

Students should mark an “X” in the appropriate column. Each student will total her or his score at the bottom of the page. (See worksheet on page 6)

After approximately 5-7 minutes, students will use the totals to line up from least restrictive interpretation (lowest total score) to most restrictive interpretation (highest total score) of the First Amendment provision protecting speech. Students may be asked to explain their reasoning. After lining up, students should be divided into three evenly sized groups: lowest scores, middle scores, and highest scores.

(If the classroom lacks space to line up students, this may be done in seats, with the totals being used to mathematically divide the class into three groups for the small group investigation step. Students with total scores of 10-25 will be Group A. Students with total scores of 25-35 will be Group B. Students with total scores of 35+ points will be Group C. Ranges can be adjusted as needed to make three evenly-sized groups.)

### PREPARING FOR INDIVIDUAL INVESTIGATION

Assign each student a letter and a number. Numbers can simply be sequential to represent a third of the class. For example, a class of 27 students will have 1A-9A, 1B-9B, and 1C-9C. These numbers and letters will be used to assign groups and tasks for the small group investigation later in the class.

The teacher should discuss varying interpretations of the First Amendment Speech Provision. This discussion should include some historical context of why the Founding Generation thought that the freedom of speech was important. Additionally, students should be able to brainstorm reasons that free speech is important to democracy — citizens need to be able to speak freely in order to make effective electoral decisions, oversee government actions, participate in the policy making process, and hold politicians accountable to their actions. The teacher should reinforce the idea that speech is considered a fundamental liberty under American law and that even speech that is hateful or offensive is protected unless it leads to “imminent lawless action.” (*Brandenburg v. Ohio*, 1968)



## INDIVIDUAL INVESTIGATION

Students will access the *Interactive Constitution* online or will be provided printed copies of the following essays from the *Interactive Constitution* in order to answer the questions below. All students will independently read and annotate the Common Interpretation essay, “Freedom of Speech and of the Press,” by constitutional law scholars Geoffrey R. Stone and Eugene Volokh.

While reading the essays students will individually respond to the following questions and prompts (also found in the materials section at the end of the lesson):

1. According to the essay, why is it important to protect speech, even if that speech is unpopular? Provide evidence.
2. According to the essay, what kinds of actions are included in the term “speech” as it is found in the First Amendment? Provide evidence.
3. How has the understanding of what is protected speech changed as technology has changed? Provide evidence.
4. According to the essay, when is it acceptable under the First Amendment to limit or punish speech? Provide evidence.
5. According to the essay, how has the Supreme Court addressed free speech during the 100 years since the end of World War I, and what is the status of free speech protections today? Provide evidence.

When students have completed the reading, have them revisit the hypotheticals. If any answers have changed, the students should mark their new answers with a check mark.

## SMALL GROUP INVESTIGATION/DISCUSSION

Students will meet in triads in which each viewpoint on appropriate restriction of speech is represented. This can easily be accomplished by asking students to report to their “number groups.” In other words: 1A, 1B, and 1C will form a group; 2A, 2B, and 2C will form a group, etc.

- ★ All As should be directed to or provided with the essay “Fixing Free Speech” by Geoffrey R. Stone.
- ★ All Cs should be directed to or provided with the essay “Free Speech Frontiers” by Eugene Volokh.
- ★ All Bs should re-read the Common Interpretation essay (“Freedom of Speech and of the Press”) and be prepared to act as group discussion leaders and note-takers.

Students will discuss the answers to the questions, noting areas of agreement between student answers and filling in any individual areas of weakness. Students should scan the Stone and Volokh essays for areas of agreement and disagreement in order to answer the question below. As a small group, the students should answer the final essay analysis question:

Why is it difficult for scholars, judges, and lawmakers to balance robust speech protections with the necessity of maintaining a peaceful society? Provide evidence.

As a group students should revisit the hypotheticals a third time, marking with a circle any answer that has changed for each student from the previous two rounds. Students in small groups should place a star or an asterisk near the hypotheticals on which the team disagrees.

### WHOLE CLASS REVIEW/DEBRIEF

Small groups should report out on their conversations. What were the points of agreement? What were the points of disagreement? Which of the hypotheticals remained unclear or difficult to determine? Why is it difficult?

### OPTIONAL EXTENSION ACTIVITY—TAKE A STAND

Choose one hypothetical or one broad statement such as “Public school students should be able to criticize school personnel and policies on social media.” Have one student take a stand for the statement. Have another student take a stand against the statement. Each of the students will make a brief speech in support of his or her statement. Other students, one at a time, will join the two sides, making additional arguments to support or refute the statements until all students are standing. Students are allowed and encouraged to switch sides as they are swayed.

Before leaving class students should record answers to the following:

1. Identify at least three ways in which speech can be regulated or limited.
  - ★ Answers may include time, place, and manner restrictions.
  - ★ Answers may include distinctions between high and low value speech.
  - ★ Answers may vary but must address issues discussed in the essays.
2. Describe two areas in which there is some debate over whether or not speech can be regulated.
  - ★ Answers may include social media commentary, bullying, and harassment types.
  - ★ Answers may include low value, campaigning, or speech that costs money.
  - ★ Answers may include advocating violence, terroristic threats, and artistic speech.
  - ★ Answers may include speech on high school and college campuses.
3. Explain one way in which your understanding of the speech provision of the First Amendment has changed over the course of today’s lesson.
  - ★ Students who are stuck may use their warm up worksheets to check how their attitudes changed after reading the essay and/or after talking to others.
  - ★ Students may explain any way in which their understanding has changed including differences between high and low value speech, the lack of protection that citizens have against corporations or employers, the actions that have been interpreted as speech, or anything else they may have learned over the course of the lesson.

## WARM-UP

### DIRECTIONS:

Read the text of the First Amendment of the U.S. Constitution as it refers to speech.

Read each of the hypothetical situations and decide whether or not the government can limit or punish the speech contained in each of the situations.

Place an "X" in the box that best matches the amount you think the government can limit the speech.

- ★ 1 means the government may not limit or punish the speech.
- ★ 2 means that the government can limit or punish the speech under rare conditions.
- ★ 3 means you are unsure when and how the government can limit or punish the speech, but you think there may be good arguments on both side.
- ★ 4 means that the government can usually limit or punish this type of speech.
- ★ 5 means that the government can always limit and punish this type of speech.

### "CONGRESS SHALL MAKE NO LAW...ABRIDGING THE FREEDOM OF SPEECH."

HYPOTHETICAL SITUATION	1	2	3	4	5
A person burns an American flag in protest of government policies.					
A person creates a website asking people to support an anti-war agenda.					
A person writes and publishes an essay about the superiority of his or her race.					
A person criticizes the US President on a blog site about public policy.					
A person makes up malicious lies about a political candidate during an election.					
A public school student criticizes the principal and teachers on social media.					
A public school student starts a website for students to say hateful things about other students.					
A student threatens violence against his school on social media in the form of a poem.					
A person posts online that someone should assassinate Supreme Court Justices.					
A person creates a pro-terrorist website that asks people to join terror groups in overthrowing the US government.					
<b>TOTAL POINTS</b>					

## ESSAY ANALYSIS QUESTIONS

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### TO BE ANSWERED INDIVIDUALLY:

1. According to the essay, why is it important to protect speech, even if that speech is unpopular? Provide evidence.

Laws that restrict speech are “thought to be especially problematic because”...

2. According to the essay, what kinds of actions are included in the term “speech” as it is found in the First Amendment? Provide evidence.

“The Supreme Court has interpreted “speech” and “press” broadly as covering”...

3. How has the understanding of what is protected speech changed as technology has changed? Provide evidence.

4. According to the essay, when is it acceptable under the First Amendment to limit or punish speech? Provide evidence.

“There are generally three situations in which the government can constitutionally restrict speech:

★ 1.

★ 2.

★ 3.



5. According to the essay, how has the Supreme Court addressed free speech during the 100 years since the end of World War I, and what is the status of free speech protections today? Provide evidence.

- ★ In 1925, the Supreme Court held that...
  
- ★ “Starting in the 1920s”...
  
- ★ “Today, the legal protections offered”...

**TO BE ANSWERED IN SMALL GROUPS:**

6. Why is it difficult for scholars, judges, and lawmakers to balance robust speech protections with the necessity of maintaining a peaceful society? Provide evidence.



## EXIT TICKET

1. Identify at least three ways or places in which speech can be regulated or limited.
2. Describe two areas in which there is some debate over whether or not speech can be regulated.
3. Explain one way in which your understanding of the speech provision of the First Amendment has changed over the course of today's lesson.

