

Constitutionally
Speaking
presents

A Teacher's Guide

**Money, Democracy,
and the Constitution**

**Lessons on the
Nation's Founding Document and
Its Application in 21st Century America**

**By Chris Herr and Tristan Black-Ingersoll,
Concord High School**

A collaboration of

**NH Humanities • NH Supreme Court Society
NH Institute of Politics at Saint Anselm College • NH Institute for Civics Education
UNH School of Law • Rockefeller Center at Dartmouth College**

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RELEVANT STANDARDS

The lessons and assessments in this guide cover to various degrees the New Hampshire and national standards listed below.

K-12 Social Studies New Hampshire Curriculum Framework

THEMES

Theme A: Conflict and Cooperation
Theme B: Civic Ideals, Practices, and Engagement
Theme H: Individualism, Equality, and Authority
Theme I: Patterns of Social and Political Interaction

SS:CV:1: The Nature and Purpose of Government

Students will demonstrate an understanding of the nature of governments, and the fundamental ideals of government of the United States.

SS:CV:12:1.1: Identify the structures and functions of government at various levels, e.g., county—role of the sheriff's office, or nation—role of providing the defense of the country. (Themes: A: Conflict and Cooperation, B: Civic Ideals, Practices, and Engagement)

SS:CV:12:1.2: Examine how institutions and individuals make, apply, and enforce rules and laws, e.g., the Federal Communications Commission regulations on television broadcast standards or local public hearings on zoning regulations. (Themes: B: Civic Ideals, Practices, and Engagement, E: Cultural Development, Interaction, and Change)

SS:CV:12:1.3: Evaluate how the purposes of government have been interpreted , e.g., promoting the general welfare or protection of private property. (Themes: B: Civic Ideals, Practices, and Engagement, D: Material Wants and Needs)

SS:CV:2: Structure and Function of United States and New Hampshire Government

Students will demonstrate an understanding of major provisions of the United States and New Hampshire Constitutions, and the organization and operation of government at all levels including the legislative, executive, and judicial branches.

SS:CV:12:2.1: Describe how the fundamental ideals and principles of American government are incorporated in the United States Constitution and the New Hampshire Constitution, e.g., the rule of law or individual rights and responsibilities. (Themes: H: Individualism, Equality and Authority, I: Patterns of Social and Political Interaction, J: Human Expression and Communication)

SS:CV:12:2.2: Analyze the evolution of the United States Constitution as a living document, e.g., the Bill of Rights or Plessy v. Ferguson. (Themes: E: Cultural Development, Interaction, and Change, H: Individualism, Equality and Authority, I: Patterns of Social and Political Interaction)

SS:CV:12:2.3: Describe the roles and responsibilities of the United States and New Hampshire judicial systems, e.g., resolution of conflict between states or New Hampshire Legislature's use of advisory opinions from the New Hampshire Supreme Court. (Themes: A: Conflict and Cooperation, E: Cultural Development, Interaction, and Change)

SS:CV:12:2.4: Evaluate how individual rights have been extended in the United States, e.g., Truman's integration of the Armed Services or the Miranda decision. (Themes: H: Individualism, Equality and Authority, I: Patterns of Social and Political Interaction)

College, Career, and Civic Life C3 Framework For Social Studies State Standards

Dimension 2

D2.Civ.4.9-12. Explain how the U.S. Constitution establishes a system of government that has powers, responsibilities, and limits that have changed over time and are still contested.

D2.Civ.6.9-12. Evaluate citizens' and institutions' effectiveness in addressing social and political problems at the local, state, tribal, national, and/or international level.

D2.Civ.8.9-12. Evaluate social and political systems in different contexts, times, and places, that promote civic virtues and enact democratic principles.

D2.Civ.9.9-12. Use appropriate deliberative process in multiple settings.

D2.Civ.10.9-12. Analyze the impact and the appropriate roles of personal interests and perspectives on the application of civic virtues, democratic principles, constitutional rights, and human rights.

D2.Civ.13.9-12. Evaluate public policies in terms of intended and unintended outcomes, and related consequences.

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.11-12.3](#)

Evaluate various explanations for actions or events and determine which explanation best accords with textual evidence, acknowledging where the text leaves matters uncertain.

[CCSS.ELA-LITERACY.RH.11-12.5](#)

Analyze in detail how a complex primary source is structured, including how key sentences, paragraphs, and larger portions of the text contribute to the whole.

[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.11-12.7](#)

Integrate and evaluate multiple sources of information presented in diverse formats and media (e.g., visually, quantitatively, as well as in words) in order to address a question or solve a problem.

[CCSS.ELA-LITERACY.RH.11-12.8](#)

Evaluate an author's premises, claims, and evidence by corroborating or challenging them with other information.

[CCSS.ELA-LITERACY.RH.11-12.9](#)

Integrate information from diverse sources, both primary and secondary, into a coherent understanding of an idea or event, noting discrepancies among sources.

[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.

UNIT 1

Separation of Powers & the Debt Ceiling

ABSTRACT

The Constitution created a federal government based on the principle of separation of powers among the branches in order to prevent the abuse of power so feared by our Founders. That separation of powers provides Congress with the power to tax, spend and borrow money while execution of those policies falls on the President. In addition, Congress has created a statutory debt ceiling that limits federal government borrowing, while at the same time passing spending policies that can and sometimes do exceed the very debt ceiling Congress has established, creating conflicting orders for the executive to enforce. Further complicating matters is the meaning of Section 4 of the Fourteenth Amendment regarding the validity of the public debt of the United States and the burdens Section 4 imposes on Congress and the President. These Constitutional issues could intersect and put the President in the precarious position of deciding the constitutionality and necessity of continuing to borrow money on behalf of the federal government in excess of the debt ceiling in order to avoid default.

ESSENTIAL QUESTIONS

Does the Constitution give the President the authority to continue borrowing money in excess of the debt ceiling in order to avoid default?

Should the President continue borrowing money in excess of the debt ceiling in order to avoid default even if the Constitution does not expressly grant the President authority to do so?

UNIT 1: LEARNING ACTIVITIES & ASSESSMENTS

Lesson 1: Good Governance

Driving Question: What does good governance look like and what role does separation of powers play in ensuring good governance?

Step 1: Opening Activity

Using the think-pair-share strategy, students will explore the meaning and characteristics of *good governance* (as an alternative you could substitute the term *good government* or *effective government*). You may need to help students understand the relationship between the terms *governance* and *government*. Map student ideas on the board as students share their thinking with the class and help students identify similarities and differences in their ideas in order to arrive at a class understanding of the term *good governance*.

Step 2: Analysis of the Declaration of Independence

Share with students that one way to view [the Declaration of Independence](#) is as a statement on good governance. In this activity students will use their inferencing skills to understand how the Founders viewed *good governance* based on the Founders' complaints against the British government contained in the Declaration of Independence. Depending on the level of existing knowledge of the Declaration, you may want to have students briefly explore or review the history of the Declaration using one or more of the resources listed in the *Additional Resources* section.

Students will:

- A. read the complaints contained in the Declaration of Independence;
- B. create a list of those complaints in their own words, defining unknown vocabulary as they work;
- C. suggest solutions to those complaints, i.e. ways to organize a government that would "fix" that problem. Example: A solution to "He has made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries." would be an independent federal judiciary; and
- D. share their solutions with the class and analyze patterns that emerge.

TIPS

- Allow students to work in groups and assign 4-5 complaints to each group. There are a lot of complaints and it can become overwhelming if students are working individually.
- Define challenging vocabulary in the margin of the copy of the Declaration given to all students to speed up the activity.
- Have students use a graphic organizer that includes columns for complaints, solutions, and vocabulary.
- During class sharing ensure that the class discusses both a variety of types of complaints AND at least some complaints that can be solved by separation of powers (in order to ensure connection to the focus of the unit).

Formative Assessment

Consider using one or more of the following questions to track student understanding. The questions can be used individually or in groups, in class or for homework:

- What were the biggest concerns for the Founders? What trends emerged in the complaints?
- What solutions seem to reappear more than once? What does that tell you about the Founders' views on good governance?
- Describe the Founders ideal government based on the complaints contained in the Declaration.
- How does your view (or the class's view) of good governance compare to that of the Founders? How were they similar and/or different?

Lesson 2: The Constitution and Separation of Powers

Driving Question: How does the Constitution separate the power of government among the three branches?

Step 1: Opening Activity - Power vs Authority

Students will explore the difference between *power* and *authority* by developing definitions and examples for each in small groups. Encourage students to initially focus on definitions and examples that apply in an everyday context, i.e. in a family, at school, etc...before switching towards a more political focus. One way to view the difference between power and authority is as a difference between having the *ability* to act and having *permission* (or authorization) to act. Put another way, an abuse of power occurs when a person's actions exceed the person's authority - and any person or entity (government, corporation, etc...) is capable of abuse of power. Have students brainstorm examples of government power/authority using their existing knowledge (don't worry about the distinction for now unless an obvious opportunity presents itself). Identify for students the three branches of government: executive, judicial, and legislative. Briefly explain to students that these three branches are systems of political authority because the Constitution authorizes them to take action and places limits on those actions, and then have students organize as much as they can the list of government power/authority based on the three branches.

TIP: Depending on students' existing level of knowledge of separation of powers, the 2nd part of the opening activity and step 2 below may not be necessary.

Step 2: Analysis of Separation of Powers under the Constitution

In this activity students will explore in small groups the powers and limitations of the three branches of government as stated in [the Constitution](#). The *Additional Resources* section has text and videos that students can use to learn the background history of the Constitution.

In small groups students will:

- A. read their assigned articles in the Constitution;

- B. complete a graphic organizer that maps the powers and limitations of each branch of government;
- C. identify where in the Constitution the power or limitation was located (i.e. Article I, Section I);
- D. define all relevant and new vocabulary; and
- E. present findings to the class and complete a graphic organizer summarizing the powers and limitations contained in all the articles.

TIPS

- Consider assigning groups divided by articles and/or powers/limitations.
- It is important for students to understand what is meant by the Constitutional phrase “executive power” and what presidential enforcement of the law actually looks like.

Formative Assessment

Consider using one or more of the following questions to track and expand student understanding and analysis. The questions can be used individually or in groups, in class or for homework:

- Which branch of the US government is strongest under the Constitution? On what evidence are you basing this claim?
- Which branch of the US government is weakest under the Constitution? On what evidence are you basing this claim?
- How do the Founders’ complaints contained in the Declaration of Independence connect to the separation of powers in the US Constitution?

Lesson 3: Overview of the Debt Ceiling

Driving Question: What is the debt ceiling and what are the consequences if the U.S. defaults?

NOTE: The learning activities below may or may not be necessary depending on students’ existing understanding of the federal budget and federal debt.

Step 1: Overview of the Federal Budget

Ask students to review their graphic organizer on powers and limitations from the preceding lesson and identify the powers and limitations connected to collecting, spending and/or borrowing money. Students will probably quickly identify the taxing, spending and borrowing power of Congress but may struggle to make connections to the Executive and Judicial branches. This is a good time to explain that while Congress controls the purse that the president maintains significant discretion in deciding how allocated funds are spent.

Next students should investigate the federal budget to gain a basic understanding of the process, taxation, spending, and borrowing/debt. [The National Priorities Project has an excellent overview of the federal budget](#) that includes explanations of the budget process, where the money comes from, where the money goes, federal borrowing and debt, and a

glossary of federal budget terminology. Consider using the information on the website as an overview or review for your students - either by printing off some of the information or having students explore it by designing a simple webquest. USASpending.gov is another great resource with visuals for helping students understand where the money goes. For more detailed information on the budget, consider using some of the [Summary Tables in the President's Proposed FY16 Federal Budget](#), particularly Table S-1 and S-5, for a more challenging primary document activity.

Formative Assessment

Assign groups of students to explore individual topics - the budget process (including specifically the role of Congress and the President - this is important for future learning), taxation, and spending - and have the student groups report back to the class on their assigned topic so that all students gain a basic understanding of the federal budget. As an extension, ask students to reflect on the following questions:

- Should the federal government be allowed to spend more money than it collects? Why or why not?
- Would you change anything about the budget process and/or the spending, taxing and borrowing powers delegated to Congress and/or the President? Why or why not?

Step 2: The Debt Ceiling

In this short activity students will learn the basics of the debt ceiling. Students should explore one or more of the resources below and answer the questions that follow:

RESOURCES

- [“Everything you need to know about the debt ceiling in one post”](#) from the Washington Post’s Wonkblog
- [“Q&A: What is the US debt ceiling?”](#) from the BBC
- [Video summary](#) from the Wall Street Journal

QUESTIONS

- What is the debt ceiling and why was it created?
- Why has it become more of a national issue in the last few years?
- How does the debt ceiling connect to the Constitution?

Step 3: Consequences of a US Default

In this activity students will explore various perspectives on the consequences to America should the US government default on its debt. Distribute the three articles below to students. Students should read the articles, identify and define key terms, and answer the questions below. Students can work independently, in pairs or small groups, and/or using cooperative learning strategies like [jigsaw](#).

- What does it mean to default?
- How does the government default on its debt?

- What are the short term consequences of defaulting?
- What are the long term consequences of defaulting?
- Should the government be allowed to default on its debt, or should the government be forced to continue borrowing if possible to pay for debts it has already incurred? Explain your response.

[“What happens when a country goes bust?”](#) at The Economist

[“Nightmare Scenario: What happens if we actually, truly default?”](#) at New York Magazine

[“What happens in a US debt default?”](#) at The BBC

Lesson 4: Constitutionality

Driving Question: Does the President have the constitutional authority under Section 4 of the Fourteenth Amendment to continue borrowing money in excess of the debt ceiling in order to avoid default?

Step 1: Section 4 of the Fourteenth Amendment

In this activity students will investigate the meaning of Section 4 of the Fourteenth Amendment. First students should read the Fourteenth Amendment, particularly focusing on Section 4, and state the meaning of Section 4 in their own words. Students should respond to the prompt below and share their responses and reasoning. It may be helpful for students to briefly explore [the history of the Fourteenth Amendment](#) to add context to their analysis.

Does Section 4 of the Fourteenth Amendment force the US government to pay all of its debts?

Next, students should read [the legislative history of Section 4 written by Jack Balkin](#), a constitutional law professor at Yale, **and revisit the prompt above**. At a minimum, students should read the following statement from Ohio Senator Benjamin Wade made during the debates surrounding the proposed amendment in 1866 and quoted in Balkin’s post:

[The proposed amendment] puts the debt incurred in the civil war on our part under the guardianship of the Constitution of the United States, so that a Congress cannot repudiate it. I believe that to do this will give great confidence to capitalists and will be of incalculable pecuniary benefit to the United States, for I have no doubt that every man who has property in the public funds will feel safer when he sees that the national debt is withdrawn from the power of a Congress to repudiate it and placed under the guardianship of the Constitution than he would feel if it were left at loose ends and subject to the varying majorities which may arise in Congress. I consider that a very beneficial proposition, which is not in the original proposition.

This section of my amendment goes further, and secures the pensioners of the country. We ought to do something to protect those wounded patriots who have been stricken down in the cause of their country, and to put the security of their pensions and their

means of support beyond the power of wavering majorities in Congress, who may, at some time, perhaps, be hostile to the soldier. . . . I am anxious to put the pensions of our soldiers and their widows and children under the guardianship of the Constitution of the United States. They ought to be there, along with your public debt. [That is] especially when we are now prosecuting a doubtful war with your Executive [President Andrew Johnson] as to whether open and hostile rebels shall not have seats in Congress. If they are admitted here to act with their sympathizers at the North, who have constantly opposed every policy that looked to the renumeration of those engaged in the war on our part . . . what will be the result? Under the dictation of such a policy, should it prevail, who can guaranty that the debts of the Government will be paid, or that your soldiers and the widows of your soldiers will not lose their pensions?

Step 2: Case Study - [Perry v. United States \(1935\)](#)

In this activity students will complete a case study of the U.S. Supreme Court case *Perry v. United States* (1935) in order to further explore whether or not the President has the constitutional authority to continue borrowing money in excess of the debt ceiling. [Street Law, Inc. has an excellent strategy for using with students in completing case studies.](#) The relevant portion of the majority opinion begins on Page 294 U.S. 350. It is important to note that this portion of the case focuses on the power of Congress to repudiate debts already incurred in connection with Section 4 of the Fourteenth Amendment.

The two important questions for students to consider when completing this case study are:

- Would Congress violate the Constitution by refusing to raise the debt ceiling and allowing the US to default on its debt?; and
- If that happens, can the President step in and continue to borrow money in order to uphold Section 4 of the Fourteenth Amendment, or would this action violate the Constitutional principle of separation of powers?

Lesson 5: Necessity

Driving Question: Should Presidents do what is necessary even when what is necessary is not constitutional?

Step 1: Defining *Necessary* and *Constitutional*

In this opening activity students will explore and compare the meanings of the terms *necessary* and *constitutional*. Using the think-pair-share strategy, students should write definitions for each term, share those definitions with a partner, and then share out to the class. Arrive at a classroom understanding of the meaning of those two terms and how they are different. Conduct a classroom discussion exploring examples and/or hypotheticals of times when it might be necessary for a person (elected official, ordinary citizen, etc...) to violate the Constitution. As an alternative, have students respond to the following prompt in one paragraph and discuss their responses in small groups:

Should elected officials violate the Constitution if they believe it is necessary? Why or why not?

Step 2: Jefferson and Lincoln

In this activity students will explore the perspectives of Thomas Jefferson and Abraham Lincoln regarding presidential action that violates the Constitution. Students should read the documents and answer the questions provided.

[Thomas Jefferson's Letter to John B. Colvin \(1810\)](#)

- Did Jefferson believe that presidents should violate the Constitution when necessary? Why or why not?

["Abraham Lincoln and Power"](#) at Abraham Lincoln's Classroom (use excerpts if necessary)

- How did Lincoln view the power of the executive?
- Did Lincoln believe that presidents should violate the Constitution when necessary? Why or why not?

Students should revisit the prompt in Step 1 to see if their thinking has changed after analyzing these documents.

Step 3: Analysis of Supreme Court Cases

In this activity students will analyze two Supreme Court cases that explore Presidential actions that exceed constitutional authority but are deemed necessary by the executive. It is recommended to use some version of [the case study strategy created by Street Law, Inc.](#)

[Ex Parte Merryman \(1861\)](#)

[Youngstown Sheet & Tube Co. v. Sawyer \(1952\)](#)

Student should continue to explore their thinking on the driving question of the lesson: *Should Presidents do what is necessary even when what is necessary is not constitutional?*

Lesson 6: Exploring Opposing Perspectives

This is a short lesson that explores multiple perspectives on the driving questions for lessons 4 and 5 of this unit. The New York Times has developed an excellent resource for exploring opposing perspectives on an issue called Room for Debate. [In 2013 the Times published a series of articles in this section addressing the question: Can President Obama unilaterally ignore the debt ceiling and issue debt after the limit has been reached to keep the government running?](#) Using the jigsaw technique, students should explore the perspectives presented in the articles by reading, summarizing the arguments, and presenting to their peers as experts on one or more articles. These articles make an excellent capstone to refine and further student thinking on the driving questions of the unit.

Unit 1: Summative Assessments

All summative assessments should address the following question: ***Should the President violate the debt ceiling and continue borrowing money on behalf of the U.S. government in order to avoid default?*** All responses should address the following in their reasoning:

- Would the President's actions be constitutional?
- Would the President's actions be necessary to save the nation from severe harm?
- Would the President's actions align with the Founders' opinions of good governance and separation of powers?

There are many possible assessment formats to assess student learning on the questions above. **Some options include:**

- Students assume the role of the President and are tasked with answering the essential question and then developing and presenting a speech aimed for the American public to explain their decision and the reasoning behind their decision.
- The President has decided to continue borrowing money in excess of the debt ceiling and has been sued for exceeding constitutional executive authority. Students assume the role of a Supreme Court Justice and are tasked with writing the majority opinion on the case.
- Students write an argumentative essay answering the essential question and using evidence gained from class learning activities and possible independent research.
- Students are organized into two opposing viewpoints, prepare for and participate in a class debate on the essential question.
- Students are organized into small groups to create videos answering the question and explaining their rationale.
- Students write a letter to the President explaining what action they believe he or she should take should this situation arise and justify their recommendation with evidence.

UNIT 1: ADDITIONAL RESOURCES

[“What does good governance mean?”](#) from United Nations University

[“Good Governance and Human Rights”](#) from the Office of the UN High Commissioner on Human Rights

[History of the Declaration of Independence](#) at the History Channel ([includes 4 minute video](#))

[History of the Declaration of Independence](#) at The National Archives

[“What you might not know about the Declaration of Independence”](#) at Ted-Ed (3 min video)

[How to understand power](#) at Ted-Ed (7 min video)

["A More Perfect Union": Creation the U.S. Constitution"](#) at The National Archives

["America Gets a Constitution"](#) at the History Channel (4 min video)

[The Constitution, the Articles, and Federalism: Crash Course US History #8](#) (13 min video)

[Separation of Powers and Checks and Balances: Crash Course Government and Politics #3](#) (8 min video)

["Key Constitutional Concepts"](#) at the Leonore Annenberg Institute for Civics (1 hr video)

["Separation of Powers with Checks and Balances"](#) at Documents of Freedom (free teacher accounts with great resources available)

["How is power divided in the US government?"](#) at Ted-Ed (4 min video)

["Separation of Powers"](#) from the Bill of Rights Institute (6 min video)

["Why the Fourteenth Amendment matters in the debt ceiling crisis"](#) at Fortune

["The Gold Clause Cases and Constitutional Necessity"](#) in the Florida Law Review

["National Emergency Powers"](#) from the Congressional Research Service

["Emergency presidential power: From the drafting of the Constitution to the War on Terror"](#) at the Constitution Center.

Unit 2

Federalism and Conditional Spending Programs

ABSTRACT

The Constitution created a federal government whereby power is shared between the federal and state governments as well as the citizens. The Constitution delegates specific power to the federal government and under the Tenth Amendment reserves the remaining power to the states and to the people. However, over time Congress has attempted to expand federal power by placing conditions on the state receipt of federal funds as an extension of Congress's spending power under Article 1, Section 8 of the Constitution. The Supreme Court has approved these *conditional spending programs* as a valid exercise of Congress's spending power but has placed requirements on them in order to ensure they do not go too far as to make them an unconstitutional exercise of power. Question still exist, however, as to whether or not these programs violate the very principles of federalism that form the foundation of our constitutional system of government.

ESSENTIAL QUESTION

Do federal conditional spending programs violate the principles of federalism embodied in the Constitution?

UNIT 2: LEARNING ACTIVITIES & ASSESSMENTS

Lesson 1: Thomas Jefferson and Alexander Hamilton

Driving Question: Did the Founders agree on the benefits of a strong central government?

Step 1: Opening Activity

Students will address the following questions using the think-pair-share strategy:

- What are the benefits of a strong central government?
- What are the dangers of a strong central government?
- Do you think it is important that we have a strong central government? Why or why not?

Summarize student thinking on the board during class sharing and ask students to try to identify patterns and extend their thinking.

Step 2: Jefferson and Hamilton's Political Views

In this activity students will read investigate the backgrounds and political views of Thomas Jefferson and Alexander Hamilton. Present each student with the profiles for [Thomas Jefferson](#) and [Alexander Hamilton](#) as well as the "[Jefferson & Hamilton Viewpoints](#)" handout. Students should use the profiles and viewpoints handout to answer the following questions about each individual.

- When and where did he live?
- What was his life like in his youth?
- What was his role in the American Revolution?
- What are his famous political writings?
- What different political offices (if any) did he occupy?
- What was his perspective on the role of a national government authority?
- Summarize his political legacy (i.e. what are his most important political ideas?)
- Is there any aspect of his youth, upbringing, or lifestyle that could have influenced the development of his political thinking? If so explain.

After students have completed their initial exploration of Jefferson and Hamilton review the questions as a class for each individual, focusing on their political ideals and the development of those ideals.

Step 2: Jefferson and Hamilton Quotes

Students will identify one quote for [Jefferson](#) and one for [Hamilton](#) that they believe best represents their respective viewpoints using the quote lists provided by *The Federalist Papers Project*. Students should visit the websites, select one quote, and complete a short analysis of the quote in which they explain how the quote best represents the views of Jefferson or Hamilton. As an alternative, assign students Jefferson or Hamilton and/or select 8-10 quotes for

them to choose from to reduce the length of this activity. Students should share their selections and rationale in small groups and/or as a full class in order to further explore and refine their understanding of Jefferson and Hamilton's political views.

Formative Assessment

Students should write a one paragraph reflection in which they argue in support of either Jefferson or Hamilton's views. Encourage students to reflect on whether the ideas of Hamilton or Jefferson could have been well suited to eighteenth century America but perhaps not as well suited for twenty-first century America.

Ask students to share their responses with the class and help them identify if necessary that Jefferson represents the anti-federalist viewpoint and was opposed to a strong central government while Hamilton represents the federalist viewpoint and was in support of a strong central government. Survey the class to see who supported/opposed strong central government at the beginning of the lesson versus who supported Jefferson/Hamilton at the end.

Use these questions to guide a discussion of the results:

- Did students who supported central government end up supporting Hamilton or vice versa? If not why not?
- What points made by Jefferson and Hamilton did you find particularly persuasive? Why?

Lesson 2: Federalism in the Constitution

Driving Question: Does the Constitution create a strong national government or a union of sovereign states?

Step 1: Finding Constitutional Examples

In this activity students will analyze [the text of the Constitution](#) in order to find examples of the power and authority held by the national government, state governments and the citizens. Break students into small groups of three or four for this activity. Each group should read through the Constitution and look for examples of national government, state government or citizen power and authority. Using a graphic organizer, students should list the examples they find and where the examples are located in the Constitution. Consider assigning each group to one or more specific articles of the Constitution to reduce the workload and/or assigning specific groups to look for examples for the national government while other groups look for examples for state governments (and then citizens).

Either as a class or in larger groups, students should compare their findings and address any disagreements over the examples they found. All students should end this step with a robust list of examples.

Additional Resources

- [Federalism: Crash Course Government & Politics #4](#) (9 min video)

- [“Federalism”](#) in Bowdoin College’s *Founding Principles* series (12 min video)

Step 2: Strong National Government or Union of Sovereign States?

In this activity students will analyze the examples they found to determine if the Constitution created a strong national government or a union of sovereign states. Create new groupings of students with no more than five students per group. Working within their groups students will answer the lesson’s driving question using evidence taken from the text of the Constitution to justify their response AND connecting the examples back to the political ideals of Jefferson and/or Hamilton. Each group can present their conclusion and reasoning to the class with a short presentation that could include a visual (poster, PowerPoint presentation, etc...). In addition students can be asked to submit a one paragraph response after all the presentations are complete that contains their position and a summary of their arguments.

As a capstone or to aid in student understanding, consider having students read [this article on federalism from the Bill of Rights Institute](#).

Lesson 3: Constitutionality of Conditional Spending Programs

Driving Question: Do federal conditional spending programs violate the principles of federalism embodied in the Constitution?

Step 1: Opening Activity

This activity is designed to help students explore their conceptions of fairness and morality as it relates to incentives being offered as encouragement for obedience. Begin by using one or more of the following scenarios to model with the class the way in which an institution can use incentives to extend their authority. For each scenario engage students in discussion of whether the scenario is fair or just. If different perspectives on the issue emerge encourage students to debate the issue and outline their rationale for why they believe the incentive program is or is not acceptable. Map the different rationales offered by students on the board.

- All students who wear either a tuxedo or evening gown to school everyday for the year will have their GPA boosted by one point.
- Any person who turns over a handgun to the police will receive a \$500 cash payment. No charges will be pursued against any person who turns in a gun obtained illegally.

Reflective Question: Should governments use incentives to try to get citizens to do things that the government does not have the power to order citizens to do?

Step 2: Introduction to Conditional Spending Programs

In this activity students will be introduced to conditional spending programs and will explore the Constitutional spending power. First explain the concept of a conditional spending program and give the example of [the national minimum drinking age](#). Ensure that students understand that conditional spending programs exist because governments try to use their power to spend to expand their authority to govern.

Next have students read Article 1, Section 8 of the Constitution as well as the Tenth Amendment. Students should answer the following questions while working in pairs:

- Based on Article 1, Section 8 of the Constitution as well as the Tenth Amendment, are conditional spending programs constitutional? Why or why not?
- Do you think it is fair and/or ethical for the federal government to use money as an incentive for state action (or inaction)?

Step 3: Case Studies

In this activity students will analyze two Supreme Court cases in order to understand the constitutional basis and requirements for conditional spending programs. Pair students off and distribute to each pairing [South Dakota v. Dole \(1987\)](#) and [NFIB v. Sebelius \(2012\)](#). Use [the case study strategy developed by Street Law, Inc.](#) or a shortened version thereof. Students should focus on the following basic questions:

- What requirements must be met for a conditional spending program to be constitutional?
- Did the program described in the case meet those requirements? Why or why not?
- Do you agree with the Court's interpretation and application of the Constitution? Why or why not?

TIPS

- If your students need background information on health insurance, these sources are helpful:
 - [“Health Insurance Explained”](#) from the Kaiser Family Foundation (5 min video)
 - [“Medicare and Medicaid at 50”](#) from the Kaiser Family Foundation (16 min video)
 - [“The YouToons get ready for Obamacare”](#) from the Kaiser Family Foundation (7 min video)
 - [“About the law”](#) (brief summary of the Affordable Care Act) from the Department of Health and Human Services
 - Lengthy [“Summary of the Affordable Care Act”](#) from the Kaiser Family Foundation
- Consider analyzing *Dole* together as a class to tease out the requirements before allowing students to independently analyze *Sebelius*.
- The relevant portions of the majority opinion in *Sebelius* begins at Part IV, A.
- The reasoning of the Supreme Court can be lengthy. Consider breaking the relevant parts into pieces and assigning them to pairs or groups of students.
- Justice Ginsburg offers a very eloquent and lengthy dissent to the majority opinion's holding in *Sebelius* that the Medicaid expansion program in the Affordable Care Act was in fact a new program and was unduly coercive. For a more in-depth learning experience, select germane pieces of the dissent ([starting in Section V of her concurrence](#)) and assign them to student groups to contrast with the reasoning in the majority opinion and further deepen their analysis.

Unit 2: Summative Assessment

All summative assessments should focus on the unit essential question: *Do federal conditional spending programs violate the principles of federalism embodied in the Constitution?*

There are many possible assessment formats to assess student learning on the question above. **Some options include:**

Summative Assessment Option 1

Students will analyze No Child Left Behind (NCLB) using the source material provided and determine if the NCLB is constitutional under the requirements for conditional spending programs created by the Supreme Court.

Analyze some or all of the NCLB source material provided below (or students can do independent research) and answer the following questions:

- Does NCLB violate the principles of federalism in the Constitution?
- Based on the majority opinions in *South Dakota v. Dole* and *NFIB v. Sebelius*, does NCLB meet the Supreme Court's standard for a constitutional conditional spending program?
- How would Thomas Jefferson view NCLB? Use quotes from the source material on Hamilton to help support your claim.
- How would Alexander Hamilton view NCLB? Use quotes from the source material on Hamilton to help support your claim.

SOURCES

- ["No Child Left Behind"](#) overview by Atlas
- ["No Child Left Behind: An Overview"](#) by EdWeek
- ["No Child Left Behind Act \(NCLB\) Executive Summary"](#) by the American Speech-Language-Hearing Association
- [The full law](#) from the US Department of Education

Summative Assessment Option 2

Students will compare and contrast the majority opinion with Justice Ginsburg's dissent in [NFIB v. Sebelius \(2012\)](#) and determine which opinion presents a more accurate interpretation and application of the Constitution. The format of the completed assessment could be in the form of an argumentative essay, a class debate, a video or other digital presentation such as an opinion piece on the nightly news, etc...

Unit 2: Additional Resources

[“Federalism”](#) from Cornell’s Legal Information Institute

[“Federalism”](#) at Constitution USA from PBS (5 short videos)

[“What Kind of Government Did the Constitution Create?”](#) from Annenberg Classroom in the book “Our Constitution”

[“State and Local Government”](#) at Documents of Freedom from the Bill of Rights Institute

[“Drama over Medicaid expansion continues in some states”](#) from PBS (6 min video)

[“Cliffs Notes Version of the Affordable Care Act”](#) by Forbes

[United States v. American Library Assn., Inc.](#) 539 U.S. 194 (2003)

[“Legal Limits on Conditional Spending including Recent Challenges to No Child Left Behind”](#) from the Harvard Law Review (good summary of the case law on conditional spending programs and how it applies to NCLB)

Unit 3

Free Speech and Campaign Finance Regulations

ABSTRACT

The First Amendment to the Constitution prohibits Congress from abridging free speech and the Fourteenth Amendment has been interpreted to extend those prohibitions to state and local governments as well. Over time the Supreme Court has interpreted speech to extend to financial contributions to campaigns, political parties and other political organizations engaged in influencing election results. In addition, the Court has extended some rights of personhood to corporations, including protections of corporate speech against government infringement. Starting after the Watergate scandal, Congress has attempted at several junctions to limit the financial contributions of individuals and corporations to political entities. The Supreme Court, in response, has invalidated an increasing number of those restrictions as unconstitutional restrictions of free speech. Campaign finance regulations and the constitutional protection of free speech raise difficult and essential questions about the role and impact of money in elections and what constitutes an effective democracy.

ESSENTIAL QUESTION

Does the danger of corruption justify restricting the use of money as a form of political speech under the First Amendment?

UNIT 3: LEARNING ACTIVITIES & ASSESSMENTS

Lesson 1: The First Amendment and Effective Democracy

Driving Question: Is the First Amendment necessary to an effective democracy?

Step 1: Opening Activity

Using the think-pair-share strategy students should explore their thinking on the following question: *What makes a democracy effective?*

As students share their thinking encourage them to explore the characteristics of a democracy and the meaning of the term *effective*. Consider asking students to come up with a list of criteria that a democracy must meet in order to be considered an effective democracy.

Step 2: Overview of the First Amendment

In this activity students will explore the meaning of the text of the First Amendment. Students should read the full text of the First Amendment, list the rights protected and then attempt to define them. Encourage students to consider what type of behavior is and is not protected by the First Amendment. Have students rotate into five different groups to share their thinking on each of the five rights covered by the First Amendment, discussing each one as a class before moving into the next group. As an alternative provide students with [the annotated explanation of the First Amendment from the National Constitution Center](#) to help them in their interpretation. Each student should create a list of rights protected by the First Amendment along with examples taken from their thinking and the class discussion. Aid the class in creating accurate examples without going into a lot of unnecessary depth at this point.

Additional Resources

- [This video](#) provides a nice overview of First Amendment rights and history in five minutes.
- [“The Story of the Bill of Rights”](#) from Annenberg Classroom (16 min video with linked bookmarks to each Amendment)
- [The US Courts have a good summary](#) of what is included and excluded in the free speech protections within the First Amendment.
- Annenberg Classroom has a good explanation of the First Amendment and the history of its interpretation as part of their online book [“Our Constitution”](#).
- Annenberg Classroom has a lengthy explanation of all of the First Amendment rights as part of their online book [“Our Rights”](#).

Step 3: Necessity of the First Amendment

In this activity students will evaluate if the First Amendment is necessary to an effective democracy. First, students should respond to the following prompt in one paragraph: *Is the First Amendment necessary for an effective democracy? Why or why not?* Have students share their

response in small groups and/or with the class. Use the board to summarize student opinions and rationales.

Next have students read the article from the First Amendment Center titled [“The First Amendment in the Colonial Press”](#). Revisit the prompt above with students and ask them to reflect on if their opinion has changed or strengthened and if so, why? Direct students to revisit the Thomas Jefferson quote at the top of the article and ask them to consider why Jefferson made this statement and if Jefferson literally believed in a society of newspapers and no government.

Finally, watch the video titled [“Why the First Amendment is Foremost”](#) from Time Magazine. Give students 10-15 minutes to free write in response to the following prompt: *Why did the Founders believe that the First Amendment was necessary to an effective democracy?*

When time is up, randomly assign students partners and direct students to exchange their work with their partner. Students should read their partner's work and summarize his/her main idea in a single sentence on their own piece of paper. Students should share their summaries to evaluate their accuracy and students should revise their free write using the feedback in order to achieve greater clarity and accuracy. Repeat this activity several times so students can refine their reading, writing and collaborative abilities.

Lesson 2: Money and Elections in America

Driving Question: How does money influence elections in the United States?

Step 1: Opening Activity

As a class brainstorm what students know, or think they know, about elections in the United States. Consider diagramming student input on the board into a system as they see it and identify what students know and feel relatively confident about versus questions students still have about the process.

Step 2: The Structure of Federal Elections

In this activity students will investigate the structure of federal elections in the United States. If students have already explored the federal election system now would be a good time for a quick review. Using the resources below, students will create an annotated map of the federal election process working in groups. It is recommended that you use excerpts of the resources as necessary to suit the level of detail required. Remember that the goal of Step 2 and Step 3 is for students to accurately identify areas of the election/campaign process that can be influenced by money. As an alternative, have students independently research to find their own sources.

RESOURCES

- [“Elections”](#) at Documents of Freedom*
- [“Political Parties”](#) at Documents of Freedom
- [“What is the Electoral College”](#) from the National Archives (article and 4 min video)

- [“Primary Elections Explained”](#) at Ted-Ed (5 min video)

Critical Thinking Question: Is the federal election system used in the United States effective? Why or why not?

Step 3: Campaigns

In this final activity of the lesson, students will investigate and plan a campaign strategy. First, ask students to brainstorm and share things a candidate does during a campaign using the think-pair-share strategy. Next, working individually or in pairs, students should use the resources below to help plan their strategy and should share their strategies with the class. Make sure to help students identify aspects of a campaign that cost money, such as messaging and travel. Consider inviting in a community member who has run for public office or has been involved in running a campaign, or members of the local party organizations to speak about campaign process and strategy. As an alternative, have students independently research to find their own sources.

RESOURCES

- [“How to Run for Political Office”](#) at WikiHow
- [“How to Run a Political Campaign”](#) at CompleteCampaigns.com
- [“11 Things You Need To Do To Win A Political Campaign”](#) at Business Insider

Critical Thinking Questions

- What factors can make a candidate more likely to win an election?
- How can money help or hurt a candidate?

Lesson 3: An Introduction to Campaign Finance Regulations

Driving Question: To what extent should financial donations to political entities be protected as free speech under the First Amendment?

Step 1: Opening Activity on Free Speech

In this opening activity students will explore the extent of free speech protection. First have students brainstorm types of speech that should not be protected by the First Amendment using the think-pair-share strategy and make a list on the board of student responses. As an alternative, divide the class in two and have the groups work to identify examples of speech that are and are not protected. Use [the summary created by the US Courts](#) and/or [“Freedom of Speech: Crash Course Government and Politics #25”](#) (7 min video) as a capstone for this activity and evaluate student responses against those resources.

Step 2: Corporate Personhood

The goal of this activity is for students to explore if corporations should be treated as people. Write, project or handout each of the following scenarios. For each question students need to simply answer yes or no.

- If you are driving your car and an oncoming vehicle crashes into you should you be able to sue the driver of the other vehicle?
- If you are driving your new car and the gas tank explodes and injures you, should you be able sue the corporation that manufactured the car?
- If you are driving your new car and the gas tank explodes and injures you, should you be able to sue the owners of the corporation that manufactured the car?
- Should all American citizens have the right to vote in public elections?
- Should all American corporations have the right to vote in public elections?
- Should all American residents be allowed to donate money to a political campaign?
- Should all American corporations be allowed to donate money to a political campaign?

As a class explore the limits to corporate personhood using the answers to and discussion of the questions above - that is, to what extent should corporations be treated as people under the law? When can and should a corporation act as a person? When can and should a corporation be prohibited from acting as a person? At the end of the discussion ask students to respond to this prompt: *Should corporations ever have the same rights as people? Why or why not?*

TIP: For an more in-depth history of corporate personhood, consider having students read excerpts from [“When Did Companies Become People? Excavating The Legal Evolution”](#) at NPR.

Step 3: Watergate and the BCRA

In this activity students will explore the evolution of campaign finance laws beginning with the Watergate scandal through the Bipartisan Campaign Reform Act (BCRA) of 2002. As a class watch the first 7:10 of the video titled [“The Cost of Campaigns”](#) from the New York Times. This segment of the video gives a historical overview of campaign finance regulations before and after Watergate through the BCRA. Students should answer the questions below while watching the video; stop the video as necessary to discuss the answers and to provide students time to write down their thoughts.

- What campaign finance regulations existed before Watergate?
- How did campaign finance regulations change as a result of Watergate?
- What is “soft money” and how did it provide a loophole for corporate and individual campaign donations after Watergate? When and how was this loophole eliminated?

Next, break students into groups and assign each group a portion of the BCRA [as summarized on the Federal Election Commission website](#). Each group should create a short summary of their assigned portion of the law to share with the class or to share in groups via the jigsaw method. All students should end with a basic understanding of the regulations instituted by the BCRA.

TIP: You may want to provide your students with an overview of organizational forms used to financially support candidates (i.e. Super PACs etc.). [This report](#) by the Brennan Center for

Justice has an excellent summary on pages 11-12. Be aware that Super PACs will only be relevant to students after studying *Citizens United*.

Critical Thinking Question: Did the BCRA go too far in restricting corporate and individual donations to candidates, political parties and other political entities? Why or why not?

Lesson 4: Supreme Court Case Studies

In this capstone activity students will analyze Supreme Court cases to understand the modern evolution of campaign finance laws in light of changing interpretations of the First Amendment.

Break the class into six groups: two groups will analyze [McConnell v. FEC \(2003\)](#), two groups will analyze [Citizens United v. FEC \(2010\)](#), and two groups will analyze [McCutcheon v. FEC \(2014\)](#). Students should use [the case study strategy developed by Street Law, Inc.](#) or a shortened version thereof. After completing the case study groups working on the same case will combine in order to share their analysis and come to a consensus. The analysis should focus primarily on these two questions:

- What aspects of campaign finance regulation were affirmed and/or modified by the Court's decision?
- Do you agree with the Court's interpretation and application of the Constitution in this case? Why or why not?

When groups have completed their analysis and come to a consensus, have students summarize the Court's holding on the board. Once each case has been mapped on the board ask students to think-pair-share on the following question: *How has the the interpretation and application of the First Amendment to campaign finance regulations by the Supreme Court changed over time?*

TIPS

- These cases are lengthy...consider assigning different excerpts of the decision to smaller groups that are then combined into a larger understanding of the entire case. Or use the syllabus of each case provided by *Justia* at the same links above (or excerpts of the syllabus).
- The Brennan Center for Justice has relatively short [summary of the holdings in McConnell v. FEC](#) as well as case overviews for [McCutcheon v. FEC](#) and [Citizens United v. FEC](#).
- Street Law, Inc. has a good [summary of McCutcheon v. FEC](#) available as a Word document. Vox has [a good summary](#) as well.
- [The Oyez Project](#) has an extensive list of Supreme Court case summaries.

Unit 3: Summative Assessment

For their summative assessment students will complete a review and analysis of the current campaign finance regulatory system in the United States. The report should address the following questions:

- What is the history of campaign finance regulations since the Watergate scandal?
- How has the Supreme Court changed its interpretation and application of the First Amendment to campaign finance regulations?
- Do you agree with the Supreme Court? Why or why not?
- What rules would you propose that would ensure an effective democracy?
- Would your rules be considered constitutional by the current Supreme Court? Why or why not?
- Would your rules maintain, expand or limit corporate rights? Why?
- How would your rules contribute to a more effective democracy?

Encourage students to complete independent research to add to their understanding of the various perspectives on the issue. The New York Times *Room for Debate* series has an [excellent collection of seven op-eds](#) that argue for various perspectives on the issue.

Students can complete and submit their report in various formats, including as a group presentation (in person, digital video, etc...), as a news segment, as an informative and argumentative essay, etc...

UNIT 3: ADDITIONAL RESOURCES

[Campaign Finance Reform](#) at The Huffington Post

[Campaign Finance Reform](#) at Ballotpedia

[Campaign Finance News](#) at Vox

[“40 charts that explain money in politics”](#) at Vox

[“The Citizens United era of money in politics, explained”](#) at Vox

[“The 2012 Money Race: Compare the Candidates”](#) at The New York Times (comparison and analysis of presidential campaign donations)

[Money in Politics](#) at the Brennan Center for Justice

[“Early Presidential Funding Dominated by Outside Groups”](#) at the Brennan Center for Justice

[Campaign Finance](#) at NPR

[“A Century of US Campaign Finance Law”](#) at NPR (annotated timeline)

Unit 4

The Fourteenth Amendment and Marriage Equality

ABSTRACT

The Thirteenth, Fourteenth, and Fifteenth Amendments slowed (but hardly eliminated) the pervasive racial discrimination that was a principal cause of the Civil War. The principle of equal protection is embodied in the Fifth and

Fourteenth Amendments to the Constitution and in general prohibits governments from passing laws that treat citizens differently without good reason. Racial discrimination has always been viewed under strict scrutiny by the Supreme Court, and other groups have successfully challenged federal and state laws as being indefensibly discriminatory. State laws have historically limited marriage to marriage between a man and a woman, yet over time more and more Americans began to challenge this conception of marriage and demanded marriage equality that allowed equal access to the benefits of marriage for same-sex couples. A series of legal challenges to state laws eventually resulted in the Supreme Court affirming the Constitution's protection of marriage equality under the Fourteenth Amendment.

ESSENTIAL QUESTION

Should marriage equality be protected by the Fourteenth Amendment?

UNIT 4: LEARNING ACTIVITIES & ASSESSMENTS

Lesson 1: Origins of the Fourteenth Amendment

Driving Question: What was the origin and purpose of the Fourteenth Amendment?

Step 1: Opening Activity

Begin the activity with a rendering activity. Have students identify three words they associate with *equality* and three words they associate with *inequality*. Map out the rendering for these two words. Initiate discussion to build on the ideas mapped in the rendering; are there words from either of the renderings that people disagree with? If so why?

Next present students with the following prompt: *Have you ever felt that you have be subjected to unequal treatment, like being denied something that was given to somebody else? Give students ten to fifteen minutes to work on this prompt.*

After students have worked on the prompt encourage a number of students to share their stories. After each student shares, have all students write for five minutes in response to the following prompt: *Should the Constitution protect this individual from being treated differently?*

Step 2: Origin of the Fourteenth Amendment

First, students should read the article [“Causes of the Civil War”](#) and describe the role that slavery played in causing the conflict. Ensure that students understand why slavery was so important in creating the political crisis that lead to the conflict. As an alternative, assign portions of the article to individual students and/or groups.

Next, students should read [the text of the Thirteenth Amendment](#) and attempt to explain what it means. Ensure that students understand that while the Emancipation Proclamation freed slaves in the Confederacy, the Thirteenth Amendment freed slaves in the northern Union states without granting them citizenship. Ask students to write down what sort of problems might be caused by this sudden and large scale change to society. Prompt students to try to think of political, social, economic, and cultural effects. Student should share their thinking with the class.

Finally, students should read the text of the Fourteenth Amendment and attempt to explain what it means. Discuss the following prompt with the class or have students write answers individually to share in small groups: *What potential problems caused by the Thirteenth Amendment may have been solved by the Fourteenth Amendment?*

Step 3: Application of the Fourteenth Amendment

In this activity students will attempt to apply the Fourteenth Amendment to three fictitious laws. In each instance students must examine the text of the Fourteenth Amendment and determine if the fictitious law would violate the Fourteenth Amendment. Students must justify their conclusion by reflecting on what they believe the language of the Fourteenth Amendment to

mean. Discuss each law and map student reasoning on the board. Ask students to reflect at the end of the activity on if and how their thinking has changed.

Law: All parents must complete thirty hours of driving practice under direct supervision of a highway patrol officer in order to earn and keep their driving license.

Law: Persons lesser in height than five feet and six inches are required to wear a reflective vest when crossing the street.

Law: All sick people are required to wear gloves and masks in grocery stores.

Step 4: Meaning of the Fourteenth Amendment

Have students read selections from one or more of the following sources in order to better understand the meaning of the Fourteenth Amendment:

- [Interpretation of the Fourteenth Amendment](#) by Annenberg Classroom and/or Linda Monk
- [Short explanation of the Fourteenth Amendment](#) from Annenberg Classroom’s book “Our Constitution”
- [Long explanation of the Fourteenth Amendment’s Equal Protection Clause](#) from Annenberg Classroom’s book “Our Rights”
- [Short explanation of equal protection](#) from Cornell Law’s *Legal Information Institute*
- [“Equality and the Fourteenth Amendment”](#) from Constitution USA (series of short videos on various related subjects)

Students should compare the stated interpretation in the texts to the meaning they assigned to the Amendment and determine the similarities and differences in the interpretations by addressing the following prompt: *Was your interpretation and application of the Fourteenth Amendment accurate? Why or why not?*

Lesson 2: The Fourteenth Amendment and Racial Discrimination in Schools

Driving Question: How and why did the Supreme Court’s application of the Fourteenth Amendment to racial discrimination in schools change over time?

Step 1: Opening Activity

Begin by asking students to identify and describe instances in American history where the meaning of the terms *equal* and *unequal* have changed over time using the think-pair-share strategy. As an alternative and/or addition, ask students to reflect on how their own understanding of those two terms (or other terms like *fair*) has changed during the course of their lives. In either case, make sure students reflect on *why* they believe those changes had occurred. Lastly, have students reflect on the following question: Can the interpretation of the Constitution change over time? Or does the Constitution only ever have one correct interpretation?

Step 2: *Plessy v. Ferguson* and *Brown v. Board of Education*

Using the case study strategy developed by Street Law, Inc, students will complete case studies of [Plessy v. Ferguson \(1896\)](#) and [Brown v. Board of Education \(1954\)](#) using either the full majority opinions or excerpts thereof.

Students should focus their analysis on the following questions while following the general format of [the case study strategy](#) developed by Street Law, Inc.:

- What were the facts of the case?
- How did the Supreme Court interpret and apply the Fourteenth Amendment?
- What evidence did the Court rely on in making its decision?
- Why do you think the Court's interpretation of the Fourteenth Amendment changed between 1896 and 1954?

To add to their understandings of the cases students may consult one or more of the following sources individually or as a class:

- [“Civil Rights and the 1950s: Crash Course US History #39”](#) (12 min video)(this video is particularly relevant in providing historical background for the change of interpretation)
- [“Plessy v. Ferguson”](#) at The History Channel
- [“Separate but not Equal”](#) at The History Channel (4 min video)
- [“Brown v. Board of Education”](#) overview at PBS: Landmark Cases
- [History of Plessy v. Ferguson through Brown v. Board of Education](#) from the US Courts

Lesson 3: The Fourteenth Amendment and Marriage Equality

Driving Question: Does the Fourteenth Amendment protect marriage equality?

Step 1: The History of Marriage

In this activity students will explore the history of marriage. Begin the lesson by showing the [“The History of Marriage”](#) from Ted-Ed (5 min video) and ask students to reflect on how marriage has changed over time. Teachers should stop the video to review important developments in the history of marriage and ask students to summarize those developments in writing.

Next, have students look at one or both articles on the history of marriage and create an annotated timeline of important developments in the history of marriage using the information in the articles and in the Ted-Ed video.

[“History of Marriage: 13 Surprising Facts”](#) at LiveScience

[“History of Marriage”](#) at About.com

[“How Marriage has Changed over the Centuries”](#) at The Week

Reflective Question: Is the history of marriage what you expected it to be? Why or why not?

Step 2: The Legal Benefits of Marriage

In this activity students will explore the legal benefits of marriage and evaluate whether or not those benefits should be permitted equally under the Fourteenth Amendment. Distribute to students the information on [“Marriage Rights and Benefits”](#) from NOLO. Students should read the article and answer the following question: *Do the benefits of marriage appear to be something that ought to be subject to the protections of the Fourteenth Amendment’s Equal Protection Clause? Why or why not?*

Alternative Resources on the Benefits of Marriage

- [“11 Things You Never Thought Of When You Decided To Get Married”](#) at Forbes
- [“The High Price of Being Single in America”](#) at The Atlantic
- [“Why Marriage Is Good For You”](#) at The City Journal

During a class discussion of the responses track student rationale on the board and require students to create lists of all the arguments for and against protecting marriage equality under the Equal Protection Clause. After the discussion ask students to write the best arguments they heard for and against protecting marriage equality under the Fourteenth Amendment and why those arguments were so convincing.

Step 3: Case Studies of the Fourteenth Amendment and Marriage Equality

In this activity student groups will complete case studies of Supreme Court cases concerning the application of the Fourteenth Amendment to marriage equality.

Break the class into four groups. Each group should be assigned one of the four contemporary Supreme Court cases that connects to marriage equality and the Fourteenth Amendment. Working in team students should complete an analysis of their court case using [the case study strategy developed by Street Law, Inc.](#), or a shortened version thereof. Each team should create a poster or other type of presentation to present their analysis of their case to the class. Ensure that the cases are presented in chronological order to present an accurate picture of Supreme Court perspectives over time. Case summaries and excerpts should be used where appropriate depending on time, student ability and relevance of the text.

[Loving v. Virginia \(1967\)](#)

[Romer v. Evans \(1995\)](#)

[United States v. Windsor \(2013\)](#)

[Obergefell v. Hodges \(2015\)](#)

The case analysis should focus on the following questions:

- What are the facts of the case?
- How did the Supreme Court interpret and apply the Fourteenth Amendment to the facts of the case?

- Did the Supreme Court’s decision change the meaning of the Fourteenth Amendment? If so, how?
- Do you agree with the Supreme Court’s interpretation and application of the Fourteenth Amendment in this case? Why or why not?

Critical Thinking Questions

- How has the Supreme Court’s interpretation of the Fourteenth Amendment changed over time?
- Do you agree with the changes? Why or why not?
- Why do you believe the Supreme Court’s interpretation has changed?
- Is there any connection between [the change in Americans’ attitudes towards marriage equality](#) and the Supreme Court’s interpretation of the Fourteenth Amendment? Why or why not?
 - Also relevant to this question is [Slate’s short video demonstrating the progress of marriage equality around the world](#).

Unit 4: Summative Assessment

Students should read the summary of polygamy below and write an argumentative essay in response to the following question:

Are laws prohibiting polygamy a violation of the Fourteenth Amendment?

Students can choose to complete (or can be required to complete) additional independent research to help in completing the assessment. As an alternative, students can be required to find and use three sources on either side of the debate in their essay.

Summary of Polygamy

Polygamy is marriages in which there are more than two parties to the union. In polygyny one man has multiple wives. In polyandry a woman has multiple husbands. An in group marriage there are multiple wives and husbands all married to one another. Polygamy is illegal in the United States. Polygamy became an issue in the United States in the mid-nineteenth century with the growth of Mormonism, a religion which endorses the practice of polygamy. In *Obergefell v. Hodges* the Supreme Court extended marriage equality to same-sex couples. Proponents of legalizing polygamy claim that it will allow the legal system to recognize individuals who are currently engaged in polygamous relationships and would better offer those individuals legal protections and rights. Critics of legalizing polygamy assert that these relationships have been proven to be harmful and otherwise subvert individuals freedom.

UNIT 4: ADDITIONAL RESOURCES

[“Perfecting the Declaration: The Text and History of the Equal Protection Clause of the Fourteenth Amendment”](#) at the Constitutional Accountability Center

[“The Meaning of Equal Protection”](#) at the American Bar Association

[“Should gay marriage be legal?”](#) at ProCon.org

[“Republican Presidential Candidates Criticize Supreme Court Same-Sex Marriage Ruling”](#) at The Huffington Post (nice summary of statements in opposition to the ruling)

[“For Or Against Marriage Equality, Here’s What Brought People To The Supreme Court”](#) at The Huffington Post (overview of arguments from people gathered outside the Court)

[“How One of the Most Important Edits in US History Paved the Way for Marriage Equality”](#) at Slate (history of the text of the Equal Protection Clause)

[“The President Speaks on the Supreme Court’s Decision on Marriage Equality”](#) from The White House (9 min video)

[“The March of Marriage Equality”](#) from Vox (2 min video)

[“Same sex marriage in the US, explained”](#) from Vox

[“The Supreme Court’s same-sex marriage battle, explained”](#) from Vox