

Constitutional Literacy Program Curriculum Options

The Constitutional Literacy program has a variety of lessons you can choose from to build your own curriculum. We researched Bill of Rights and citizenship lessons and narrowed them down to what those lessons that should be best suited to meet the Virginia SOL goals and to fully engage the students in an interactive and compelling way. Below is an overview of the possible curriculum topics. Please keep in mind each lesson can be customized to adapt to your class and your educational goals.

The lesson plans are based on the case law method, which means the law students will teach many of the lessons by having the high-school students read edited versions of actual Supreme Court cases and discuss them in class. We believe it is important for students to read the justices' actual reasoning in the case to understand how constitutional law develops. The lesson can be adjusted, however, based on the achievement level of the students, including having the law students read the case with the students and defining terms and concepts as they work through the case together or using summaries. For the middle-school students, we likely will provide case summaries with important quotes.

The curriculum sources include a text used by the Marshall-Brennan Constitutional Literacy Project at American University, *We the Students*, by Jamin Raskin CQ Press, (2003). We also use the novel *Leapholes*, by James Grippando. Both texts are available for your students to use at no cost through our program.

Chapter 1: The Constitution and Courts of the United States:

(Two class sessions required to cover the entire lesson.)

- **What is the Constitution and What Does It Mean?**
 - Discusses the Constitution as “for the people.”
 - Helps students understand the relationship between the branches of government and their roles.
 - Discusses *Marbury v. Madison*, judicial review, and how the Supreme Court interprets broad provisions of the Constitution.
 - Explains the branches of governments and their roles.
- **The Incorporation of the Bill of Rights**

This section asks students to imagine what the Constitution would be like without the addition of the Bill of Rights or later amendments.

- **Federalism and the State Action Requirement**
- **How our Court System Is Structured and How it Works**

Chapter 2: Freedom of Expression

(Two class sessions recommended to cover the entire lesson.)

- **The Rights Protected by the First Amendment**
- **Expressive Conduct and the Right NOT to Speak**
 - This lesson demonstrates how concepts of the Constitution change over time by highlighting the Court's change in position in some school speech cases.
 - Includes the following interactive exercises:
 - Critical discussion of Supreme Court's opinions in this topic area (i.e. the use of the flag in advertising and popular culture and flag burning).

- Students learn to use the Court’s holding in one freedom of expression case to support their client’s position in another freedom of expression case. The client is a student who protested after the school told students they were not allowed to walk out of a classroom when commercial advertising is played by a company that donated televisions to the school.
- **The Right to Speak Freely and Protest (But Not to Disrupt)**
 - Centers on *Tinker v. Des Moines Independent Community School District* in which the Supreme Court upheld students’ right to wear armbands in school to protest the Vietnam War. The case established that students in public schools have constitutional rights, symbolic dress worn for political reasons is expression protected by the First Amendment, and schools can curtail or censure student speech only when it can show that it threatens “material and substantial interference” with the school’s effective operation or rights of other students. The principles in *Tinker* were later limited, but this is explored in Chapter 3.
 - Includes the following interactive exercises:
 - Students examine what role political and nonviolent protests have in schools and ask themselves whether schools are the proper place for this type of protest.
 - Students divide to argue a case in which a school tried to force a student to take off his Pepsi t-shirt and put on a Coca-Cola t-shirt. The fictional school was attempting to win a contest sponsored by the Coca-Cola Company in which Coca-Cola offered to donate thousands of dollars of educational tools to the school that can show the most Coca-Cola pride.
 - Students argue whether students can be suspended for wearing buttons protesting the use of “scab” teachers to replace striking teachers whom the school district fired.
- **The Confederate Flag and Other Racially Provocative Symbols** (This portion of the program may be cut or adapted by the law students, based on time and educational goals)
 - Includes exercises exploring the meaning of the Confederate flag and whether racist or sexist symbols should enjoy less First Amendment protection.
 - Includes an exercise in which students divide and argue whether a school uniform policy violates the First Amendment and the principle laid out in *Tinker*.
- **Do Boys Have the Right to Wear Long Hair?**

Focuses on *Karr v. Schmidt* in which a high-school student brought a First Amendment and Equal Protection challenge to his school’s policy of making boys keep their hair short. The Fifth Circuit Court of Appeals reversed the district court’s finding that “the presence and enforcement of the hair-cut rule causes far more disruption of the classroom instructional process than the hair it seeks to prohibit.”

 - **Double Entendres and Double Standards: Lewd and Suggestive Language in a Student Government Campaign Speech and on T-Shirts**

- *Bethel School District No. 403 v. Fraser* – The Court of Appeals of the First Circuit had to determine whether students’ freedom of expression was abridged when the school did not allow them to wear t-shirts with messages that school officials deemed to be in violation of its dress code.

- *Pyle v. South Hadley School Committee* – The Supreme Court upheld the school district’s discipline of a student who made a speech supporting his friend’s candidacy for student government that was laden with double entendre and sexual metaphor. Includes exercises that examine what was wrong with the student’s speech, the other ways the school could have handled the situation, and whether this type of speech is somehow more insulting to girls than to boys, as Chief Justice Burger suggested in his opinion in *Pyle*.

- **Coed Naked Civil Liberties**

Discusses how the Supreme Court sets only a floor to constitutional rights and how states are free to grant greater rights and liberties under state law than the Constitution grants them. The lesson focuses on a Massachusetts case of two brothers who were punished for wearing t-shirts to school with such messages as, “Coed Naked Band. Do It to the Rhythm.” The Massachusetts Supreme Judicial Court held that state law absolutely protected the students’ freedom of expression, as long as it did not materially disrupt the educational program. Students examine whether the t-shirts in question were offensive, whether students should be allowed to wear “offensive” clothing, who determines what is offensive, and whether it matters that no students complained about the t-shirts.

- **Thought Control or Quality Control? --The Problem of Library Book Removal**

- **Viewpoint Neutrality and Religious Speech**

Good News Club v. Milford Central School In a case about a school that denied use of its facilities to a religious after-school group for children, the Supreme Court held that the denial violated the group’s free speech rights and that there was no Establishment Clause concern that justified the violation. Covers a string of Supreme Court cases and the Equal Access Act to define what access different groups must be given to school facilities.

Chapter 3: All the News Fit to Print at School: Freedom of the Student Press

- **Freedom of the Student Press in Official School-Sponsored Activities**

Hazelwood School District v. Kuhlmeier – The Supreme Court held that schools may act as the editor of student speech in school newspapers, magazines, and yearbooks and may censor school-sponsored student expression for reasonable educational purposes.

- **Squelching Debate: A Different Sort of Blair Witch-Hunt**

Addresses a case that was dropped when the school board reversed its decision not to air a student-produced television show debating gay marriage on the school district’s television station.

- **Cyber Censors: Rising Conflicts over Internet Homepages**

Killion v. Franklin Regional School District – A school suspended a student for ten days for posting disparaging comments about the school’s athletic director on the Internet, and a federal district court granted summary judgment for the student. The court held that the suspension violated the student’s First Amendment Rights.)

Chapter 4: Public Schools and Religion under the Constitution

- **Freedom of Establishment of Religion at School**

Engel v. Vitale – The Supreme Court found it unconstitutional for school officials to lead students in organized school prayer. Explores the tests proposed to determine whether a practice violates the Establishment Clause. Students will discuss why school prayer might make some students uncomfortable and whether Virginia’s “moment of silence” violates the Establishment Clause (noting that the Fourth Circuit has upheld the law).

- **Saying a Benediction for Invocation**

- *Lee v. Weisman* – The Supreme Court held that public school officials could not invite clergy members to open graduation with an invocation prayer or to close it with a benediction.

- *Sante Fe Independent School District v. Doe* – A high school established a policy allowing students to elect a student to give a solemnizing statement or prayer before school football games. The Supreme Court held the policy invalid, because it violated the Establishment Clause.

- In an interactive exercise, students are asked to advise the principal on his legal obligations when the school valedictorian, who is a Muslim, wants to discuss the importance of Mohammed in her life during her valedictory speech.

- **Government Aid to Private Religious Schools: Crossing the**

Establishment Line?

Everson v. Board of Education of the Township of Ewing – The Supreme Court assessed whether the Town of Ewing’s policy of reimbursing parents for the costs of sending their children to private school, including religious schools, violated the Establishment Clause. The reimbursement included the costs of public bus transportation to school. The Court held that the policy did not violate the First Amendment.

- **The First Amendment and the Ten Commandments**

Stone v. Graham – The Supreme Court held that states cannot require public school teachers to hang a copy of the Ten Commandments in their classrooms.

- **The Court’s Agonizing Ambivalence over Christian Nativity Displays**

Discusses the different standards the Supreme Court has applied to determine whether government-sponsored holiday displays violate the Establishment Clause.

- **One Nation, under Canada, with Constitutional Controversy for All**

Newdow v. U.S. Congress – A three-judge panel of the Ninth Circuit Court of Appeals determined that “under God” in the Pledge of Allegiance was a violation of the Establishment Clause. The Supreme Court never reached the merits of the case, so the issue is yet to be settled.

- **The Free Exercise Rights of Religious Americans**

Wisconsin v. Yoder – The Supreme Court upheld the right of Amish families to stop sending their children to school after the eighth grade as a free exercise of their religion.

- **The Theory of Evolution and the Story of Creation**

- Traces the cases concerning teaching evolution and creationism in the classroom, from statutes that forbid teaching evolution to those that imposed a requirement to give equal time to creationism.

- Includes an exercise in which students divide into two groups. One side argues that a student has a free exercise right to opt out of the evolution section of a biology class and the other argues that the student must complete the curriculum or fail.

Chapter 5: The Fourth Amendment: Searches of Students and Their Belongings

- **The Reduced Right of Students to Expect Privacy of Their Belongings**

- *New Jersey v. T.L.O.* The Supreme Court eliminated the need for a school to show probable cause and get a search warrant when they want to search students' property in the school, but required schools to have "reasonable suspicion" of an individual and to restrict the search to those things related to the objects of suspicion.

- Students discuss whether they think this rule should extend to students' cars in the school parking lot.

- Students apply a balancing test to several examples of school policy and determine the "Level of Privacy Intrusion" compared with the "Nature of the Government Interest."

- **Drug Tests and Strip Searches**

Board of Education of Independent School District No. 92 of Pottawatomie County v. Earls – The Supreme Court upheld the constitutionality of the school district's policy of requiring all students who participate in extracurricular activities to submit to drug testing, because the testing reasonably serves the district's important interest in detecting and preventing drug use among the students. Incorporates a discussion of the latest Supreme Court case, in which a strip search of a student under a suspicion that she may have prescription-strength ibuprofen was held to be unreasonable and unconstitutional.

- **The Crime of Hanging out with Gang Members**

"Loitering with No Apparent Purpose" in *Chicago City of Chicago v. Morales* – The Supreme Court struck down a Chicago ordinance against "loitering" by "criminal street gang members" as vague in violation of the Due Process Clause of the Fourteenth Amendment. Students will discuss whether citizens have a constitutional right to "hang out" in public places and whether there must be an apparent purpose. Students will evaluate several prohibitions to determine whether they are vague and therefore unconstitutional.

Chapter 6: Discipline and Punishment: Due Process and the Eighth Amendment

- **Due Process**

Goss v. Lopez – The Supreme Court struck down a school district's suspension of several students who began protesting in school. The Court held that a school must give a student a fair hearing before suspending or disciplining a student.

- **Corporal Punishment**

Ingraham v. Wright – In a case about children being paddled in school, the Supreme Court found that the Eighth Amendment ban on cruel and unusual punishment does not apply to corporal punishment in schools. Students will discuss whether corporal punishment would be considered cruel and unusual punishment today and whether it is a good discipline policy for a school district.

- **Corporal Punishment in the Aftermath of *Ingraham v. Wright***

Traces the limits the federal circuit court put on corporal punishment, including allowing money damages in civil cases of excessive physical force against students. The students are asked to discuss how much violence is in the schools in their community and to develop strategies to reduce violence and increase peace in their community.

Chapter 7 Equal Protection: Drawing Lines by Race, Wealth, Gender, Citizenship, and Sexual Orientation

- **The Persistent Legacy of Slavery and Racism**

Brown v. Board of Education of Topeka – The Supreme Court held that “in the field of public education the doctrine of ‘separate but equal’ has no place.” The students will discuss what changed between the Court’s decision in *Plessy v. Ferguson* and *Brown v. Board of Education* and explore why, if the Constitution did not change, how the Court’s interpretation of it made such a reversal?

- **Two Steps Forward, One Step Back: “Massive Resistance” and the Reaction to *Brown***

- *Cooper v. Aaron* – The Supreme Court held that the defiance of government officials to integration was unconstitutional and that states could not exempt themselves from the Equal Protection and Supremacy Clauses, which make the Constitution and federal laws supreme to state laws and power.

- *Griffin v. County School Board of Prince Edward County* – The Supreme Court rejected Prince Edward County, Virginia’s attempt to close its public schools and to reopen them as state-supported, private, for-whites-only schools. Includes an assignment where students are asked to evaluate whether a school set up exclusively to meet the needs of African-American boys is a good idea and whether it would be constitutional.

- **The Right to Love**

Loving v. Virginia – The Supreme Court invalidated Virginia’s law against interracial marriage. The students will discuss the implications of the *Loving* decision..

- **Affirmative Action or “Reverse Discrimination”?**

Gratz v. Bollinger – The Supreme Court upheld the University of Michigan’s affirmative action admissions policy holding that the university asserted a compelling government interest in support of the use of race in admissions and that the measures used were narrowly tailored to serve such interest. The students will discuss whether affirmative action stigmatizes its intended beneficiaries.

- **The Court’s Treatment of “Separate but Equal” School Financing**

The students will engage in discussions concerning the funding of public education and the disparity in resources it creates between schools in different areas.

- **“Suspect” Classes and Sex-Based Segregation**

The students will discuss the level of scrutiny the Supreme Court will apply to sex-based classifications and what the detriments and benefits of same-sex education might be.

- **Separating Citizens from Non-Citizens Under the Law**

Plyler v. Doe – The Supreme Court struck down a Texas law that withdrew state funds for the education of children of illegal aliens and gave schools the power to deny them enrollment. Students discuss the implication of treating aliens differently than citizens.

- **Discrimination against Gays and Lesbians**

Boy Scouts of America v. Dale – The Supreme Court held that the Boy Scouts had a First Amendment right to exclude homosexuals from membership in their organization. Students argue the case of two gay students who were suspended for making out at a school dance when heterosexual students who engaged in the same behavior were not suspended.

Chapter 8: Harassment in the Halls: Sexual Harassment and Bullying at School

- **When Teachers Harass Students**

Gebser v. Lago Vista Independent School District – The Supreme Court found that a school district is liable for damages under Title IX for a teacher’s sexual harassment of a student only if officials higher up in the school actually knew about it and chose to do nothing.

- **When Students Harass Students**

Davis v. Monroe County Board of Education – The Supreme Court found that a school can be held liable for student-on-student sexual harassment only when it knows about the harassment and acts with “deliberate indifference” to its existence. Students suing over student-on-student harassment must show that the harassment “is so severe, pervasive, and objectively offensive that it effectively bars the victim’s access to an educational opportunity or benefit.” Students discuss if the standard for sexual harassment is too broad, or if it isn’t broad enough.

- **The Right of Gay and Lesbian Students Against Harassment**

Discussion Points:

- Laws passed to protect students from harassment based on sexual orientation
- Should gay and lesbian students have the same right to form their own student clubs
- What can be done to prevent the harassment of gay and lesbian students.

Chapter 9: The Health of the Student Body: Disability, Privacy, Pregnancy, and Sexuality

- **The Rights of the “Differently Able” under the Individuals with Disabilities Education Act**

- *Cedar Rapids Community School District v. Garret F.* – The Supreme Court held that the IDEA requires a school district to offer continuous one-on-one nursing services to a ventilator-dependent student in a motorized wheelchair, regardless of the cost.

- *Owasso Independent School District No. 1-011 v. Falvo* – The Supreme Court determined that the Family Education Rights and Privacy Act does not protect peer-graded classroom work and assignments as educational records.

- **The Trimesters: Pregnant at School**

- *Pfeiffer v. Marion Center Area School District* – The Third Circuit Court of Appeals upheld a pregnant student’s expulsion from the school’s National Honor Society for failure to uphold standards of leadership and character.

- *Curtis v. School Committee of Falmouth* -- The Supreme Judicial Court of Massachusetts held that a school program for voluntary distribution of condoms, without parental notification, to students who request them did not violate the family’s or student’s privacy interests.

- Students will discuss how *Pfeiffer* differs with a Seventh Circuit case on the same subject, *Wort v. Vierling*, in which the court held that the school’s dismissal of a pregnant student from her National Honor Society violated both Title IX and Equal Protection.

- The students will also discuss whether public high schools should participate in condom distribution programs and whether there should be parental notification. Also, the students will discuss what schools can do to tackle the problem of teenage pregnancy.

- **Abortion and the Privacy Rights of Teenagers**

- *Planned Parenthood of Southeastern Pennsylvania v. Casey* – The Supreme Court upheld the “core” right of a woman to have an abortion, but also upheld Pennsylvania’s rule that females under the age of eighteen must obtain the consent of either one of their parents or a judge before having an abortion.

- Students will discuss whether this damages the rights of women or simply upholds the rights of parents. They will also discuss why the Court has treated parental notification laws differently than spousal notification laws.

- Includes as exercise in which the students are asked to act as the judge in a state that has a judicial bypass proceedings. The students are given a fact scenario about a pregnant fifteen-year-old girl and asked, as the judge, what they would decide and if they would decide the same way under a few variations of the fact pattern.

Election Law Curriculum

- **How Elections Affect Our Lives**

- How much the government affects daily life and the community
- The idea of representative government and how students select who to represent them.

- The requirements to vote and how these requirements have changed over time.

- **Voting Rights in the United States**

Traces the development of voting rights in the United States, including:

- The African-American experience for suffrage;
- Women’s experience for suffrage;
- The Age Limitation: Should minors be able to vote? At what age should people be allowed to vote?
- The Citizen Limitation: Should non-citizens be able to vote? What would the requirement be, if not a citizen? For example, length of time one has lived in the U.S. or whether one pays taxes?

- **Voter Identification Laws**

This lesson explores how the principle of “one voter, one vote” is implicated by voter identification laws. What is the purpose of requiring voters to identify themselves? Are voter identification laws constitutional?

- **The Electoral College**

In this activity, students will learn why the Electoral College was created, how the Electoral College functions today, and prospects for the future of the Electoral College by debating and voting on the issues.

- **Electronic Voting Machines**

The students explore the pros and cons of the different methods of voting.

Exclusively for Middle Schools

“True or False? Confessions of a Defendant”

- (based on lesson plans by Jack Hanna, Director, ABA Criminal Justice Section and Tiffany Willey, Program Manager and Editor, ABA Public Education Division)

- The lesson components can either stand alone or serve as an enhancement to readers of the book *Leapholes*, by James Grippando (provided by our program).
- The lesson can focus specifically on the false confession, rights, and criminal procedure aspect of the book *Leapholes* or it can incorporate Language Arts lessons about character, theme, etc.