



Freedom of Assembly: The right to protest

Grade Levels: 9-12

Number of Class Periods: 2 (About 60 minutes) with options for extension

Lesson Overview

This lesson will focus on freedom of assembly, as found in the First Amendment. Students will consider the importance of the right to assemble and protest by analyzing cases where First Amendment rights were in question. Using the case *National Socialist Party of America v. Village of Skokie*, students will consider if the government is ever allowed to control the ability to express ideas in public because viewpoints are controversial, offensive, or painful. Students will use primary sources and Supreme Court cases to consider whether the courts made the correct decision in the *National Socialist Party v. Skokie* case. Students will be able to form an opinion on the essential question: Is the government ever justified to restrict the freedom to assemble?

The second part of the lesson can be an add-on or stand-alone activity. Students will examine various protest movements in American history to analyze how freedom of assembly was used to communicate a message and push for change. Students will determine how the right to assemble helped the groups advance their cause.

Objectives

Students will be able to infer how the struggle to balance freedom of assembly and keeping the peace has been a constant challenge for the U.S. government throughout its history.

Students will be able to evaluate the reasons for government restriction of freedom of assembly and use historical empathy in considering the opinions of citizens who fought against the rights of hate groups to assemble.

Students will be able to analyze primary sources to identify the point of view, purpose, and audience of a source. They will also use primary sources to analyze historical arguments.

Students will be able to use historical thinking to analyze patterns and connections between historical events and developments.

Students will be able to compare and contrast primary sources to determine similarities between key ideas and Supreme Court cases.

Students will be able to support a position by using and applying primary sources to determine if the U.S. Supreme Court and Illinois Supreme Court made the correct decisions in the *National Socialist Party v. Skokie* case.

Students will be able to evaluate the importance of freedom of assembly in helping social movements obtain their goals.

Materials

- [Film](#): “Freedom of Assembly: National Socialist Party v. Skokie”
- Worksheet #1 – The Importance of Freedom of Assembly
- Worksheet #2 – Did the Courts Make the Correct Decision in *National Socialist Party v. Skokie*?
- Worksheet #3 – City of Skokie Primary Sources
- Worksheet #4 – How did Freedom of Assembly Help Social Movements Unite and Advance Toward Their Goals?

Supplemental Materials from Annenberg Classroom

- [Freedom of Assembly](#): chapter in Our Rights book
- The Annenberg Guide to the United States Constitution: What It Says, What It Means [The First Amendment](#)
- First Amendment [timeline](#)

Essential Questions

- Is the government ever justified to restrict the freedom of assembly?
- How has freedom of assembly assisted protest movements to communicate their message and push for change?

Procedure

DAY 1:

- Begin by writing this section of the First Amendment on the board.
“Congress shall make no law... abridging...the right of the people peaceably to assemble...” – United States Constitution, First Amendment.

Ask students what “peaceably assemble” means to them? What are appropriate times and locations for groups to protest or promote issues? Continue the conversation with the following questions:

Under what situations, if any, should the government be allowed to place reasonable restrictions on protests and demonstrations?

Follow up by asking why they think the founders put freedom of assembly in the First Amendment.

- Hand out Worksheet #1 – The Importance of Freedom of Assembly and discuss with students.
- Play the [film “Freedom of Assembly: National Socialist Party v. Skokie”](#) (29 minutes)
- Explain to students that they are going to have a debate (or write an essay or opinion piece) on whether the courts made the correct decision in *National Socialist Party v. Skokie*. Divide students into two groups: one in favor of the courts’ decision and one against.
- Students can either read the Supreme Court cases and Skokie primary sources for homework or at the start of the next class in their group if they will be having a debate. Worksheet #2 consists of Supreme Court cases and Worksheet #3 includes primary sources dealing with the Skokie case. Worksheets can be used for both the debate and a student essay.

DAY 2:

- Option #1 – Debate: Students will debate if the U.S. Supreme Court and Illinois Supreme Court made the right decision in the *National Socialist Party v. Skokie* case.
- Option #2 – Essay: Assign students to read the worksheet and write an essay on if they agree with the U.S. Supreme Court’s and Illinois Supreme Court’s decision in the *National Socialist Party v. Skokie* case. Students should use precedent (past cases) and the Skokie primary sources in their response.
- Extension: Students can discuss their findings in the next class.

Option for Extension Activity: Worksheet #4

- Students will be assigned a social movement to research individually or in group to create a presentation or report. Presentations/reports will focus on how social movements used the right to assemble as a means to unite, magnify their voice, and get their message across to the public and politicians.

9TH – 10TH GRADE COMMON CORE STANDARDS

CCSS.ELA-LITERACY.RH.9-10.1

Cite specific textual evidence to support analysis of primary and secondary sources, attending to such features as the date and origin of the information.

CCSS.ELA-LITERACY.RH.9-10.2

Determine the central ideas or information of a primary or secondary source; provide an accurate summary of how key events or ideas develop over the course of the text.

CCSS.ELA-LITERACY.RH.9-10.6

Compare the point of view of two or more authors for how they treat the same or similar topics, including which details they include and emphasize in their respective accounts.

CCSS.ELA-LITERACY.RH.9-10.8

Assess the extent to which the reasoning and evidence in a text support the author's claim.

CCSS.ELA-LITERACY.RH.9-10.9

Compare and contrast treatments of the same topic in several primary and secondary sources.

11TH – 12TH GRADE COMMON CORE STANDARDS

CCSS.ELA-LITERACY.RH.11-12.1

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

CCSS.ELA-LITERACY.RH.11-12.2

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

CCSS.ELA-LITERACY.RH.11-12.7

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.

Worksheet #1 – The Importance of Freedom of Assembly

Name _____

In 1831, a French writer named Alexis de Tocqueville toured the United States and began to wonder why the American Revolution had resulted in a democracy when the French Revolution had failed. When he returned to France, he wrote a book called *Democracy in America* that explained reasons for the success of American democracy and self-government. One of the traits of Americans that de Tocqueville considered important to the establishment of a democracy was the act of joining associations or groups.

“Americans of all ages, all stations in life, and all types of dispositions are forever forming associations.” – Alexis de Tocqueville

Why do you think de Tocqueville remarked about Americans forming associations? Is this important to democracy today?

Read the following primary sources and, in your own words, explain the point of view of the author.

1. “If I lived in China or even Russia, or any totalitarian country maybe I could understand some of these illegal injunctions. ... But somewhere I read of the freedom of assembly. Somewhere I read of the freedom of speech. Somewhere I read of the freedom of the press. Somewhere I read that the greatness of America is the right to protest for right.” – Martin Luther King Jr., 1968
2. “Once a government is committed to the principle of silencing the voice of opposition, it has only one way to go, and that is down the path of increasingly repressive measures, until it becomes a source of terror to all its citizens and creates a country where everyone lives in fear.” – Harry Truman, 1950
3. “Every man – in the development of his own personality – has the right to form his own beliefs and opinions. Hence, suppression of belief, opinion and expression is an affront

to the dignity of man, a negation of man's essential nature." – Thomas Emerson, First Amendment scholar

4. "We are not afraid to entrust the American people with unpleasant facts, foreign ideas, alien philosophies, and competitive values. For a nation that is afraid to let its people judge the truth and falsehood in an open market is a nation that is afraid of its people." – President John F. Kennedy, 1963

5. "Without freedom of thought there can be no such thing as wisdom; and no such thing as public liberty without freedom of speech." – Benjamin Franklin, 1722

Worksheet # 2 – Did the Courts Make the Correct Decision in *National Socialist Party v. Skokie*?

Below is a list of Supreme Court cases involving freedom of assembly with opinions from the justices.

1. ***Schenck v. United States* (1919), unanimous decision**

During World War I, Charles Schenck, a socialist, was arrested for distributing leaflets urging men to avoid the draft. Schenck said his First Amendment rights were violated. The Supreme Court ruled against Schenck, saying his words caused a “clear and present danger” to the war effort and therefore, the country.

“The most stringent protection of free speech would not protect a man in falsely shouting fire in a theater and causing panic. The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent.” – Justice Oliver Wendell Holmes Jr.

2. ***De Jonge v. Oregon* (1937), unanimous decision**

The Supreme Court ruled that Dirk De Jonge (a communist leader who called for a violent revolution) had a First Amendment right to protest and assemble freely.

“The right of peaceable assembly is a right cognate (connected) to those of free speech and free press and is equally fundamental... It follows from these considerations that, consistently with the Federal Constitution, peaceable assembly for lawful discussion cannot be made a crime.” – Chief Justice Charles E. Hughes

3. ***Chaplinsky v. New Hampshire* (1942), unanimous decision**

Walter Chaplinsky was arrested under a state law that prohibited offensive speech. The Supreme Court ruled against him, considering Chaplinsky’s speech “fighting words” that would create direct harm and a breach of the peace. “Fighting words” are not protected by the First Amendment.

“Allowing the broadest scope to the language and purpose of the Fourteenth Amendment, it is well understood that the right of free speech is not absolute at all times and under all circumstances. There are certain well defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem. These include the lewd and obscene, the profane, the libelous, and the insulting or “fighting” words – those which, by their very utterance, inflict injury or tend to incite an immediate breach of the peace....It has been well observed that such utterances are no

essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality.” – Justice Frank Murphy

4. *Edwards v. South Carolina* (1963), 8-1 decision

The Supreme Court overturned a conviction of a segregation protest group. The Court argued that the members had been arrested solely on the expression of unpopular views, which are protected by the First Amendment.

“If...the petitioners had...violated a law regulating traffic, or had disobeyed a law reasonably limiting the periods during which the State House grounds were open to the public, this would be a different case The Fourteenth Amendment does not permit a State to make criminal the peaceful expression of unpopular views.” – Justice Potter Stewart, majority opinion

“The question...seems to me whether a State is constitutionally prohibited from enforcing laws to prevent breach of the peace in a situation where city officials in good faith believe, and the record shows, that disorder and violence are imminent, merely because the activities constituting that breach contain claimed elements of constitutionally protected speech and assembly. To me, the answer under our cases is clearly in the negative.” – Justice Tom Clark, dissenting opinion

5. *Brandenburg v. Ohio* (1969), per curiam opinion

Clarence Brandenburg, a Klu Klux Klan leader was arrested at a rally after giving a speech that targeted government and people of color. An Ohio law prohibited speech that advocated illegal activities. The Supreme Court ruled that Brandenburg’s First Amendment rights were violated and that government cannot punish speech unless it meets two criteria: First, if it is “directed at inciting or producing imminent lawless action,” and second, if it is “likely to incite or produce such action.”

“Freedoms of speech and press do not permit a State to forbid advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.” – Supreme Court

6. *Cohen v. California*, (1971), 5-4 decision

A teenager, Paul Cohen expressed his opposition to the Vietnam War by wearing a jacket with “F— the draft” on it at a Los Angeles courthouse. Cohen was charged under a state law that prohibited offensive conduct and disturbing the peace. The Court ruled in favor of Cohen, saying people would not be disturbed by the words on his jacket and therefore, his First Amendment rights were violated.

“Those in the Los Angeles courthouse could effectively avoid further bombardment of their sensibilities simply by averting their eyes...One man’s vulgarity is another’s lyric... because government officials cannot make principled distinctions in this area that the Constitution leaves matters of taste and style so largely to the individual.” – Justice John Harlan, majority opinion

7. *Texas v. Johnson*, (1989), 5-4 decision

The Supreme Court ruled that the burning of the American flag was a form of symbolic speech that is protected by the First Amendment.

“If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.” – Justice William J. Brennan, Jr., majority opinion

8. *Snyder v. Phelps*, (2011), 8-1 decision

The Supreme Court ruled that the Westboro Baptist Church, which insulted deceased soldiers and inflicted emotional distress on their families, had a First Amendment right to assemble and protest outside military funerals.

“Speech is powerful. It can stir people to action, move them to tears of both joy and sorrow, and – as it did here – inflict great pain. On the facts before us, we cannot react to that pain by punishing the speaker. As a Nation we have chosen a different course – to protect even hurtful speech on public issues to ensure that we do not stifle public debate.” – Chief Justice John G. Roberts Jr., majority opinion

“Our profound national commitment to free and open debate is not a license for the vicious verbal assault that occurred in this case. It does not follow, however, that they may intentionally inflict severe emotional injury on private persons at a time of intense emotional sensitivity by launching vicious verbal attacks that make no contribution to public debate.” – Justice Samuel Alito, dissenting opinion

Worksheet #3 – City of Skokie Primary Sources

In 1977, a neo-Nazi group applied for a permit to march in Skokie, Ill. – a town with a large number of Jewish residents, many of them Holocaust survivors. The town of Skokie responded with ordinances that required the group to pay an insurance bond and banned printed materials that promoted hate and marching in military uniforms. The Nazi group argued that these laws violated their First Amendment rights. The American Civil Liberties Union (ACLU) defended the neo-Nazis. After the Illinois Supreme Court refused to expedite the case or stay the injunction ordered by a county court, the case went to the U.S. Supreme Court. The Court overturned the denial of a stay and ordered the Illinois Supreme Court to hold a hearing, saying that "if a State seeks to impose a restraint on First Amendment rights it must provide strict procedural safeguards, including immediate appellate review." The Illinois Supreme Court subsequently ruled that the neo-Nazi Party could not be banned from marching in Skokie peacefully because of the content of its views.

Use the following primary sources in your argument on whether the courts made the correct decision in the case *National Socialist Party v. Skokie*.

1. "It has come to my attention that on May 1 there is going to be a Nazi parade held in front of the village hall. As a Nazi survivor during the Second World War, I'd like to know what you gentlemen are going to do about it. . . . There are thousands of Jewish survivors of the Nazi Holocaust living here in the suburbs. We expect to show up in front of Village Hall and tear these people up if necessary." – April 25, 1977, a group of Holocaust survivors before the Board of Trustees of the Village of Skokie, Ill.
2. "We want to reach the good people – get the fierce anti-Semites who have to live among the Jews to come out of the woodwork and stand up for themselves ... Good. I hope they're terrified. I hope they're shocked. Because we're coming to get them again. I don't care if someone's mother or father or brother died in the gas chambers. The unfortunate thing is not that there were six million Jews who died. The unfortunate thing is that there were so many Jewish survivors." – Frank Collin, the leader of the National Socialist (Nazi) Party of America in response to the town of Skokie trying to cancel its march
3. "It reminds me. It reminds me of my closest family who were sent to death by the swastika, and it reminds me of a threat that I am not safe with my life. It reminds me that my children are not safe with their lives.... should the Nazis appear with a swastika I don't know if I could control myself." – Testimony of Sol Goldstein, resident of Skokie and Holocaust survivor
4. "Since when is the killing of six million people to be considered 'free speech'? Do we not abhor pornography and other obscenities?" – Ruth Schaffner, resident of Skokie at Village Board Meeting, June 1977

5. "We loathe the Nazis and are disgusted by all that they stand for. But as Americans, and especially as Jews, we recognize the paramount importance of preserving the rights of free expression – we recognize, as does the ACLU, that the rights of individuals are inextricably tied to the rights of all. The ACLU has fought and won many battles to protect the rights of Jews and other minorities...." – Letter of support from Jewish businesses and professionals. September 4, 1977 in *The Skokie Life*
6. Decision of the Illinois Supreme Court (1978), *National Socialist Party v. Skokie*

"In summary, as we read the controlling Supreme Court opinions, use of the swastika is a symbolic form of free speech entitled to First Amendment protections. Its display on uniforms or banners by those engaged in peaceful demonstrations cannot be totally precluded solely because that display may provoke a violent reaction by those who view it. Particularly is this true where, as here, there has been advance notice by the demonstrators of their plans so that they have become, as the complaint alleges, 'common knowledge' and those to whom sight of the swastika banner or uniforms would be offensive are forewarned and need not view them."

Worksheet #4 - How did Freedom of Assembly Help Social Movements Unite and Advance Toward Their Goals?

The freedom of assembly clause in the First Amendment was and continues to be important to groups who seek to make changes in society. Ever since the American Revolution, protests have been an important part of American history.

Students will be assigned one of the social movements below to research individually or in group to create a presentation or report. Presentations/reports should answer the questions below and focus on how the social movements used the right to assemble as a means to unite, magnify voices, and get their message across to the public and politicians.

In a group or individually, students will research one of the following social movements and marches.

- Civil rights movement – The March on Washington, 1963
- Vietnam War protests, 1969
- Occupy Wall Street, 2011
- March for Science, 2017
- Women's March, January 2017 and 2018
- March for Our Lives, 2018
- Black Lives Matter – George Floyd protests, 2020

Students will answer the following questions in their presentations:

- 1) How did the social movement use assembly or protests to get their message across? Were they successful? Why or why not? Include important events and marches that the group organized.
- 2) How did the social movement attempt to gather more members?
- 3) Did the government try to prevent or limit any of the social movement's demonstrations in some way? (The government is permitted to make reasonable restrictions on the time, place and manner of gatherings to maintain law and order, reduce noise and traffic, and protect property.) Did the government impose time, place and manner restrictions on any protest organized by the movement?
- 4) What methods did the group use to protest? (marching, picketing, etc.)
- 5) Did the social movement lead to changes in U.S. policy? Discuss how can large, organized, peaceful demonstrations be effective in promoting a cause in society.