

CELEBRATING THE CONSTITUTION!

Engaging Students about the Constitution and their Rights

ACLU San Diego and
Imperial Counties

Speaker Introduction

My name is _____.

In recognition of Constitution Day, I volunteered to create this video about the Constitution as a part of a program organized by the ACLU Foundation of San Diego & Imperial Counties.

Optional.: I got involved in this work because....

Note: Please be brief with your story/connection to volunteering to speak about the Constitution. If your experiences relate and add to the explanation of a point or provide an example of the Constitution or amendments at work, be mindful to incorporate them where you can throughout the presentation.



U.S. CONSTITUTION AND BILL OF RIGHTS

What is Constitution Day?



The U.S. Constitution was signed into law on **September 17, 1787**, by the Continental Congress.

Constitution Day is a national holiday established by Congress in 2004 to celebrate the anniversary of the signing of the U.S. Constitution.

The Constitution was adopted on September 17, 1787, by the Constitutional Convention in Philadelphia, Pennsylvania, and ratified by conventions in each U.S. state in the name of "The People".

Constitution Day was established as a national holiday in 2004. Congress mandated (made it law) that any school receiving federal funds must provide educational material about the Constitution on or near the anniversary of the date it was signed, back in 1787.

What is the U.S. Constitution?



Copyright Courtesy Credit: Alison Shelley/ACLU

- It is the highest law of the nation.
- It lays out the structure of the U.S. government.
- It grants **every individual** in the U.S certain fundamental rights and freedoms.

The Constitution is the Supreme or Highest Law of the United States of America.

- The Constitution grants all people in the United States certain freedoms and protections under U.S. laws, whether citizen or noncitizen, documented or undocumented.
- The fundamental protections of due process and equal protection embodied in our Constitution and Bill of Rights apply to every person and are not limited to citizens. Similarly, an immigrant who is criminally prosecuted enjoys the right against self-incrimination and the right to a jury trial, as guaranteed by the Fifth and Sixth Amendments.
- There are, however, a few rights reserved for citizens, such as the right to vote and the right to run for elected office.

Separation of Powers

The first three articles of the Constitution:

- Establish the three branches of the U.S. government; and
- Specify the powers and duties of each.



The Constitution Lays out the Structure of our Government

- The Constitution has seven articles.
- The first three articles established the three branches or parts of the federal government.
- The three branches of government are:
 - 1), the legislative, which is the Senate and House of Representatives;
 - 2) the executive branch led by the President; and
 - 3) the judicial branch headed by the Supreme Court.
- These articles also specify the powers and duties of each branch.

Separation of Powers = Balance of Powers

This means that no one branch controls the federal government.



- Makes laws
- Approves presidential appointments
- Two senators per state
- Number of congresspeople is based on population

- Signs laws
- Vetoes laws
- Pardons people
- Appoints federal judges
- Elected every four years

- Decides if laws are constitutional
- Appointed by president
- Senate confirms appointments
- Can overturn other judges' rulings

In our “divided” government, no one branch has absolute power. This is known as the “separation of powers” or “balance of powers.”

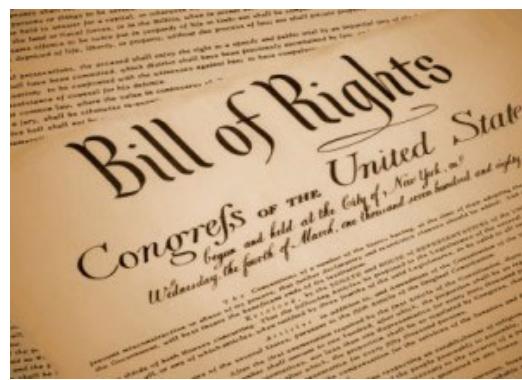
For example, this means...

- Congress passes laws...but the president can veto.
- Congress can override a veto...with 2/3 approval from both houses.
- Congress declares war...but the president is Commander-in-Chief.
- President appoints federal judges and cabinet members...but the Senate must confirm them.
- Supreme Court can strike down congressional and presidential acts and laws as unconstitutional.

All other powers are reserved to the states and the people, thereby establishing the federal system of government.

What is the Bill of Rights?

- It is the name for the first 10 amendments made to the U.S. Constitution (added in 1791).
- It limits the power of the federal government.
- It originally protected white men only.



The Bill of Rights – is the common name for first 10 amendments made to the Constitution

- What makes the Constitution unique is that it gives rights to the people. Known as the Bill of Rights, the first 10 amendments were written to secure liberty, equality, and justice for individuals. These amendments were added to the Constitution in 1791.
- The Constitution and Bill of Rights set the ground rules for individual liberty, which include the freedom of speech, association and religion, freedom of the press, the right to privacy, and equal protection.
- They were introduced by James Madison to the 1st United States Congress as a series of legislative articles, were adopted by the House of Representatives on August 21, 1789, formally proposed by joint resolution of Congress on September 25, 1789 and came into effect as Constitutional Amendments on December 15, 1791, through the process of ratification by three-fourths of the States.
- Originally, the Bill of Rights included legal protection for white men only, excluding African Americans , Native Americans, women and others. It required additional constitutional amendments and numerous Supreme Court cases to extend the same rights to all U.S. citizens...and none without public dissent about the status quo.



FIRST AMENDMENT

First Amendment

The **First Amendment** protects several rights that are crucial to people's ability to freely express their thoughts and concerns, particularly to (and of) the government.



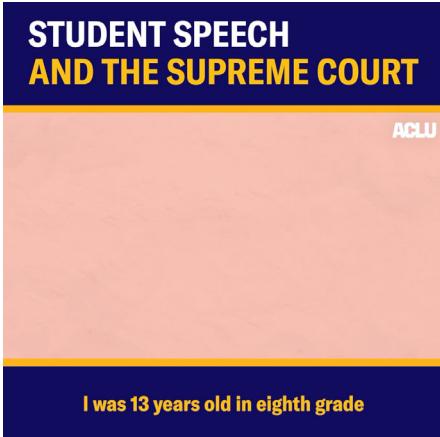
Often, the “First Amendment” is used as shorthand for freedom of speech or freedom of expression. But, the First Amendment protects several rights that are crucial to our freedom of conscience and ability to express our thoughts and concerns, particularly to (and of) the government.

1st Amendment

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the **freedom of speech**, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Free Speech & Expression in Schools

Tinker v. Des Moines helped to define students' 1st Amendment rights



- In 1965, 13-year-old Mary Beth Tinker helped organize a silent demonstration against the Vietnam War.
- They wore black armbands to school to protest the fighting.
- Mary Beth was sent home when she refused to remove it.
- The ACLU represented her and others in a suit that lasted 4 years.

Please Note: the blue and pink image is a short video on Tinker v. Des Moines.

Tinker v. Des Moines (1969) was a U.S. Supreme Court case that resulted in a decision defining the constitutional rights of students in U.S. public schools.

Free Speech & Expression in Schools

Tinker v. Des Moines helped to define students' 1st Amendment rights

In 1969, the U.S. Supreme Court ruled in a landmark decision that students don't "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."

On February 24, 1969 the Court ruled 7-2 that students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."

The Tinker Test

The Tinker says that school officials may only prohibit student speech that causes, or reasonably could be expected to cause, material and substantial **disruption** of the school's operations or that "invades" the rights of others.

The most important outcome is that **school officials may not punish or prohibit speech merely because they disagree with the ideas expressed**. Nor may they act to suppress or punish speech because of a generalized fear of disruption.

The Tinker Test is used by courts today to determine whether a school's disciplinary actions violate students' First Amendment rights.

School officials may, however, enforce reasonable regulations limiting the time, place and manner of student expression as long as the regulations are necessary for the school to perform its educational function.

The Tinker Test



Today, you're able to make your voices heard at school because of Mary Beth and John Tinker's determination.

You have the right to speak out...

As long as you're not disrupting the functioning of school.

The key word here is
“disrupting.”



Courtesy credit: Molly Kaplan/ACLU

And Walkout...

- Schools can discipline students for missing class, but it can't punish your ideas.
 - ✓ Discipline for walking out CANNOT be a response to the content of your protest.
- Punishments for missing class will vary, so find out the policies that govern your school.



Schools can discipline you for missing class, but they can't discipline you for more harshly because of the nature of the political view you are expressing or because school administrators don't support your message.

Before deciding whether to join a political walkout, you might want to find out what policies govern discipline for absences in your state, school district, and your particular school so that you're aware of the potential consequences.

What do YOU think?

QUESTION: Do students have the right to paint political messages on a school bench?



QUESTION: Do school teachers and administrators have the right or responsibility to protect students from negative or controversial subjects?

In San Diego, CA, La Jolla High School administration allowed students to paint messages on the “senior benches” about numerous topics, including Associated Student Body election slogans, support for presidential candidates, birthday wishes, football victories and love notes.

On February 15, 2011, the day after massive popular protests erupted in Iran, two LJHS students painted "Freedom for Iran" and "Down with Dictator" on the benches to express their support for freedom and democracy in Iran. The student author of those messages came to the U.S. with her parents "to escape the oppression in Iran" and be "educated in an environment where freedom of expression was respected and valued."

LJHS administration chose to whitewash her messages and declared that the benches are reserved only for "positive messages about students and school activities." The administration also declared that students would need administration approval prior to posting messages on a nearby bulletin. **The principal declared, "If we can't figure it out, we paint it out."**

The ACLU Foundation of San Diego & Imperial Counties and Bostwick & Jassy LLP filed a complaint on behalf of several LJHS students.

Later, the ACLU sent a letter to the principal and school district seeking to resolve the matter without litigation. More than two months later, the district responded on the merits, refusing to acknowledge any problem and leaving no option but to litigate.

In May 2011, La Jolla High's principal ordered the senior benches to be removed. SDUSD immediately ordered the principal not to remove the benches prior to a hearing scheduled the following week. At the June hearing, the judge ordered LJHS to stop whitewashing students' political messages from the benches.

After months of settlement talks, the case closed, with the district agreeing to preserve the benches for at least five years and to rewrite its student speech policies as requested by the ACLU.



FOURTH AMENDMENT

Fourth Amendment

The **Fourth Amendment** establishes a right to privacy by protecting people and their belongings from unreasonable searches and seizures.



The Fourth Amendment protects us against unreasonable search or seizure by the government.

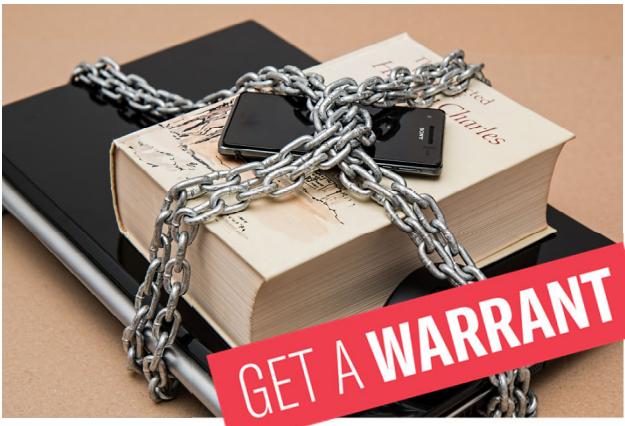
Probable Cause

The **4th Amendment** prevents police and other government agents from conducting searches and seizures without **probable cause**.

Probable cause means that police cannot search you unless **they believe you have committed a crime**.

Specifically, it stops the police and other government agents from searching us or our property without "probable cause" to believe that we have committed a crime.

Search and Seizure



Generally, a warrant signed by a judge is needed before you or your property can be searched.

In *Riley v. California* (2014), the U.S. Supreme Court held unanimously that the **warrantless search and seizure of digital content on a cell phone during an arrest is unconstitutional**.

Generally, a warrant, which is a legal document signed by a judge, is required before the police can search you or your property. This includes your digital devices.



What do YOU think?

QUESTION: Do students have a right to privacy when at school?

Yes and no. Since public schools are run by the government, they must obey the Constitution. However, you do have fewer privacy rights in school than outside of school.

On campus, school officials may search you or your property without a warrant, but must have a reasonable suspicion that you broke the law or a school rule. This means that school officials can only search you or your property, including your cell phone and backpack, to find evidence of a violation of the law or school rule you are suspected of breaking. Any search beyond that may be illegal. Searches can't be based on a hunch, curiosity, or rumor. For example, just because you use your phone when not allowed, does not mean school officials can search your phone for evidence of violations unrelated to you using the phone.

NOTE: There are exceptions. For instance, in some districts, school lockers are considered school property, therefore, they can be searched.



What do YOU think?

QUESTION: Are students granted privacy rights when utilizing school district issued technology?

It depends. Many school districts have their own Student Use of Technology Policy or “Acceptable Use Agreements” that do not grant student’s privacy when utilizing district issued technology. As a general rule, all district technology is subject to being searched. San Diego Unified School District (SDUSD), has an [Acceptable Use Agreement](#) which details students’ rights when utilizing district issued technology. At SDUSD, “students shall not have any expectation of privacy in any use of district technology. The district reserves the right to monitor and record all use of district technology, including, but not limited to, access to the Internet or social media, communications sent or received from district technology, or other uses” (2).



FIFTH, SIXTH, SEVENTH AND EIGHTH AMENDMENTS

Due Process Clause

The **Fifth, Sixth, Seventh and Eighth Amendments** protect individuals' due process rights.

They are intended to ensure the accused are treated fairly by the government and in courts of law.

The **due process clause** is reiterated in the **14th Amendment**.

This speaks to the importance of this Constitutional right.

- Have you ever been accused of doing something that you did not do?
- Were you able to explain yourself? Were you able to tell your side of the story?
- How frustrating would you feel if you were accused of doing something but not given an opportunity to explain yourself?

“Due Process” is the right to be heard; the right to explain yourself and the right to require that the person accusing you support their accusations with good evidence.

Several Amendments (the 4th, 5th, 6th, 7th, 8th and 14th) protect individuals' due process rights, ensuring those accused of crimes are not unfairly treated by the justice system.



What do YOU think?

QUESTION: Do undocumented people have Constitutional rights?

FACTS: The Fifth Amendment states that “no person ...shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law.”

The 14th Amendment says the government cannot “deny to any person within its jurisdiction the equal protection of the laws.”

This means undocumented children cannot be prohibited from enrolling in a public school.



What do YOU think?

QUESTION: Is the death penalty cruel and unusual punishment?

QUESTION: Does the method of execution matter?

QUESTION: What about the age of the person facing execution?

Furman v. Georgia (1972), 5-4, held that the death penalty was cruel and unusual because it was implemented in a random and capricious fashion, discriminating against Black people and the poor. Two of the five justices held that the death penalty was itself cruel and unusual.

Four years later, in *Gregg v. Georgia* (1976), the Supreme Court held that changes to the capital punishment laws had fixed the 8th Amendment problems with the death penalty. Those changes included bifurcated trials in which guilt and sentence were determined separately and with greater review by appellate courts.

In recent years, the Supreme Court has held that it is unconstitutional to execute people with intellectual disabilities (*Atkins v. Virginia*, 2002), or who were under 18 years old at the time they committed the crime (*Roper v. Simmons*, 2005).

Although popular support for the death penalty remains relatively high (about 54% for murders as of 2018 - <https://www.pewresearch.org/fact-tank/2018/06/11/us-support-for-death-penalty-ticks-up-2018/>), support has declined as the debate over the death penalty continues, fueled by DNA evidence of actual innocence of people sentenced to death, the cost of prosecuting death penalty cases compared to life sentence cases, and questions of fairness for poor people and people of color. Opinion has also shifted against the belief that the death penalty deters crime.



14th AMENDMENT

Reconstruction Amendments:

All were ratified (approved) at the end of the Civil War

13th Amendment

Ended legal slavery
in the U.S.

14th Amendment

Provided citizenship
to formerly enslaved
people.

15th Amendment

Provided the right to
vote to formerly
enslaved men.

The 14th was among 3 amendments ratified between 1865 and 1870, following end of the Civil War.

The 13th Amendment ended legal slavery in the United States.

The 14th Amendment made all persons born in the United States (including the formerly enslaved Americans) citizens of the nation and prohibited the states from denying anyone the privileges and immunities of American citizenship, due process of law, or equal protection of the law.

The 15th Amendment, ratified in 1870, prohibited the states from denying the franchise to anyone (men only, because women did not yet have the right to vote) based on “race, color, or previous condition of servitude.”

14th Amendment



The **Fourteenth Amendment** is often considered part of the Bill of Rights.

It allows for many of the rights protected by the first 10 amendments to be applied to state and local governments.

The 14th Amendment addresses citizenship rights and equal protection of the laws. It was proposed in response to issues related to the rights of formerly enslaved people following the Civil War. Confederate states were forced to ratify the amendment in order to regain representation in Congress.

Section 1 of the 14th Amendment makes unconstitutional any state law that abridges freedom of speech, freedom of religion, the right to trial by jury, the right to counsel, the right against self-incrimination, the right against unreasonable searches and seizures, or the right against cruel and unusual punishment.

Equal Protection Clause

Equal Protection of Laws

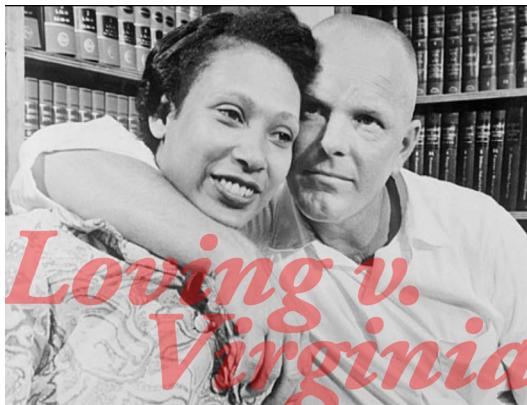
requires that states guarantee the **SAME** rights, privileges and protections to **ALL** people.



The 14th Amendment's "Equal Protection Clause" requires that states guarantee the same rights, privileges and protections to all citizens.

This clause was the basis for the Supreme Court decision in [Brown v. Board of Education](#) (1954) that helped to dismantle racial segregation in public schools and elsewhere. It was also the basis for many other decisions rejecting discrimination against people belonging to various groups.

Loving v. Virginia



In 1958, it was a crime in Virginia — and 15 other states — for a white person to marry a black person.

Richard and Mildred Loving married in Washington, D.C. and when they returned to their home state of Virginia, they were arrested and sentenced to one year in jail.

The Lovings were arrested and sentenced to **1 year in jail** if they stayed in Virginia...just for being married.

The ACLU litigated their case - [Loving v. Virginia](#) - before the U.S. Supreme Court.

In 1967, the **Supreme Court unanimously ruled that laws banning interracial marriages violated the 14th Amendment's equal protection clause** and were therefore, unconstitutional.



What do YOU think?

QUESTION: Does *Obergefell v. Hodges* (2015) remind you of *Loving v. Virginia* (1967)?

Obergefell v. Hodges

- ❖ Plaintiff seeks recognition of his Maryland marriage on his husband's Ohio death certificate.
- ❖ ACLU litigated.
- ❖ Supreme Court rules that the Constitution guarantees a right to same-sex marriage, and that those marriages be recognized by all states.

Does this issue remind you of *Loving v. Virginia*?



19th AMENDMENT

19th Amendment

The **19th Amendment** gave women the right to vote 133 years after the signing of the U.S. Constitution.



- The Nineteenth Amendment prohibits the states and the federal government from denying the right to vote to citizens of the United States **on the basis of gender**.
- It was adopted on August 18, 1920.
- Until the 1910s, most states did not give women the right to vote.



26th AMENDMENT

26th Amendment

The **26th Amendment** prohibits the federal and state governments from denying the right to vote to citizens who are at least 18 years old.



The push to lower the voting age from 21 to 18 grew across the United States during the 1960s, driven in large part by the broader student activism movement protesting the unpopular Vietnam War.

Lowering the voting age to 18 gave young soldiers, some drafted at age 18, a voice in the decisions made by their government.



What do YOU think?

QUESTION: Should there be a **28th** Amendment added to the U.S. Constitution to lower the voting age to 16?

FUN FACT: States are free to let persons under the age of 18 vote if they decide. Seventeen-year-olds are already permitted to participate in primaries and caucuses in 21 states!

The Constitution is never finished. It can be changed by amendment and has already been amended 27 times.

- To amend the Constitution, an amendment must be passed by 2/3 of the House of Reps, 2/3 of the Senate and must be ratified (accepted) by ¾ of the states.

Shall we debate a 28th Amendment: lowering the voting age to 16?

Pro

- People mature earlier
- 16 year olds are better educated
- Should be able to vote for those making decisions that affect them
- Some 16 year olds work, pay taxes

Con

- Most 16 year olds are not mature enough to make such big decisions
- They haven't finished high school
- The age of 18 is generally the age of reason in our laws. That's when they can consent to marry (in some states), make health decisions and serve in the military.

FYI - 17-year-olds - who will reach 18 on or before the general election - can vote in primaries and caucuses in a large number of states, including Alaska, Connecticut, Delaware, Hawaii, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Mississippi, Nebraska, Nevada, North Carolina, Ohio, South Carolina, Virginia, Vermont, Washington, West Virginia, and Wyoming. Seventeen-year-olds may also vote in District of Columbia primaries.



Thank your audience for watching and encourage them to watch other Constitution Day videos.