

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)