

## THE U.S. CONSTITUTION AND INDIVIDUAL RIGHTS

**SS.7.CG.2.4** Explain how the U.S. Constitution and the Bill of Rights safeguard individual rights.

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### 2023 BENCHMARK UPDATES

- Updated from SS.7.C.2.5
  - Changed from, “~~Distinguish~~ how the Constitution safeguards ~~and limits~~ individual rights.” to “Explain how the U.S. Constitution and the Bill of Rights safeguard individual rights.”
- Depth of Knowledge Changes within Benchmark
  - Changed from, “Distinguish” to “Explain”
- Benchmark Clarification Changes
  - Changed from “Students will recognize that rights are protected, ~~but are not unlimited.~~” to “Students will recognize that rights are protected but some rights are limited (e.g., property rights, civil disobedience).”
  - Changed from “Students will examine rationales for limiting individual rights.” to “Students will examine rationales for government-imposed limitations on individual rights (e.g., forced internment in wartime, limitations on speech, rationing during wartime, suspension of habeas corpus).”
  - Changed from “Students will use scenarios to examine the impact of ~~limits on individual rights on social behavior.~~” to “Students will use scenarios to examine the impact of limiting individual rights.”
  - Changed from “Students will examine the role of the judicial branch of government in protecting individual rights.” to “Students will examine the role of the judicial branch of government in protecting individual rights and freedoms.”
- Vocabulary Changes
  - Addition of “civil disobedience”, “internment”, “rationing”, “habeas corpus”

## Essential Teacher Content Background Information

[Teacher Content Notes Not Appropriate For Student Use]

### This section addresses the following topics:

1. Addressing the Conflict Between Protecting and Limiting Rights
2. Balancing Individual Rights with the Public Interest

### 1. Addressing the Conflict Between Protecting and Limiting Rights

The First Amendment to the U.S. Constitution includes five freedoms or rights; these freedoms include religious exercise, speech, press, peaceable assembly and petitioning the government for redress of grievances. That the language of the First Amendment emphasizes freedom does not guarantee absolute freedom in any of these five areas. Individuals may not exercise these freedoms to the full extent that they might like because doing so would threaten the public interest. Federal and state laws, and U.S. Supreme Court decisions have all placed limitations on First Amendment freedoms in order to protect the public interest.

The public interest was argued and discussed at length by the Framers of the U.S. Constitution. Their debates did not result in one clear definition or set of criteria for determining its presence or absence. However, the Framers deemed the public interest worthy of attention and protection because upholding it would create and foster a stable society. Consequently, rights and freedoms have been both protected and limited; protected because they form the foundational ideals of the U.S. political system, and limited in order to insure stability of that system.

### 2. Balancing Individual Rights with the Public Interest

#### A. Limitations on Speech

The U.S. Supreme Court developed a “test” for evaluating questions that pitted individual rights, such as those guaranteed in the First Amendment, against the public interest, in 1919. In *Schenck v. U.S.* 249 U.S. 47 (1919), the U.S. Supreme Court upheld the Espionage Act of 1917 even though it limited speech. Charles Schenck was Secretary of the Socialist Party of America who printed and distributed 15,000 leaflets to potential draftees encouraging them not to abide by the draft during World War I. These leaflets told potential draftees: “If you do not assert and support your rights, you are helping to deny or disparage rights which it is the solemn duty of all citizens and residents of the United States to retain.” In essence, Schenck suggested that the draft was a form of involuntary servitude that violated the 13<sup>th</sup> Amendment.

Schenck argued that the Espionage Act of 1917 violated his free speech rights guaranteed by the First Amendment. The U.S. Supreme Court upheld Schenck’s criminal conviction because the First Amendment does not protect speech encouraging insubordination. According to U.S. Supreme Court Justice Oliver Wendell Holmes, who authored the unanimous decision, “When a nation is at war many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight, and that no Court could regard them as protected by any constitutional right.” Further, “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.” and “The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic. [...]”

*Schenck v. U.S.* established that the government may limit free speech when that speech represents a “clear and present danger”. A clear and present danger is a threat to the public interest. In the present case, encouraging potential draftees to refuse to defend the nation during World War I would threaten the public interest because it would handicap the nation’s ability to defend itself and its interests. Thus, Schenck’s actions constituted a “clear and present danger” that justified limiting free speech.

#### **B. Individual Rights During Wartime**

In *Youngstown Sheet & Tube Co. v Sawyer* 343 US 579 (1952), Justice Robert Jackson wrote: “In the practical working of our government we already have evolved a technique within the framework of the Constitution by which normal executive powers may be considerably expanded to meet an emergency. Congress may and has granted extraordinary authorities which lie dormant in normal times but may be called into play by the Executive in war or upon proclamation of a national emergency.”

Justice Jackson's words are a reminder that in extraordinary situations, the president of the United States may need to limit the rights of the people to protect the common good of the nation. Suspension or limitations of rights does not happen often, but when it does, it is often left to the U.S. Supreme Court to decide whether or not the president has the power under The Constitution to do so. The following are instances in which the president of the United States limited the rights of the people during wartime.

#### **C. Ex parte Merryman (1861)**

Fifteen days after the Civil War began, President Abraham Lincoln suspended the writ of habeas corpus, a right guaranteed to the people under Article I, Section 9 of the U.S. Constitution. Article I, section 9 states, “the Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.”

It is the later phrase that led President Lincoln to believe he had the power to suspend the great writ, so as commander-in-chief, he issued an executive order granting his military commanders the power to arrest and detain individuals they deemed threatening to public safety.

John Merryman was arrested and detained under Lincoln’s order. He filed suit against Lincoln, and Chief Justice Roger Taney found in favor of Merryman, deciding that the president did not have the authority to suspend the writ of habeas corpus, that only Congress could because of its placement in the Constitution by the Framers.

President Lincoln largely ignored the chief justice’s decision, instead taking his case directly to Congress. In a July 4th address, President Lincoln said, “*Now it is insisted that Congress, and not the Executive, is vested with this power; but the Constitution itself is silent as to which or who is to exercise the power; and as the provision was plainly made for a dangerous emergency, it cannot be believed the framers of the instrument intended that in every case the danger should run its course until Congress could be called together, the very assembling of which might be prevented, as was intended in this case, by the rebellion.*”

Despite the ruling in Merryman, Lincoln continued suspending the writ of habeas corpus. In 1863, Congress granted the president the authority to suspend the writ “when the public safety may require it,” for as long as the war lasted.

#### **D. Korematsu v. United States (1944)**

At the beginning of the United States’ entry to World War II, President Franklin D. Roosevelt signed Executive Order 9066. This order authorized the Secretary of War and the armed forces to remove people of Japanese ancestry from military and surrounding areas on the west coast of the United States.

This displaced more than 120,000 Japanese people to internment camps in mostly remote locations throughout the United States.

A Japanese- American citizen, Fred Korematsu, refused to comply with the order to leave his home and his job. Korematsu was arrested by the FBI about six months later for failure to report to a relocation center. He decided to let the ACLU represent him to challenge the constitutionality of Executive Order 9066.

Korematsu was tried in federal court in San Francisco and convicted of violating military orders. He was given five years of probation and sent to an Assembly Center in San Bruno, California. His case was then appealed to the U.S. Court of Appeals, which agreed with the previous ruling. The case then reached the Supreme Court and on December 18, 1944, a 6-3 decision ruled that the detention was a “military necessity” not based on race.

*Korematsu v. United States* is still on the case books and legal precedent; however, since the Court’s decision in 1944, it has been rebuked as bad jurisprudence, most recently in *Trump v Hawaii* (2018). In his opinion for the Court, Chief Justice John Roberts wrote, “The forcible relocation of U.S. citizens to concentration camps, solely and explicitly on the basis of race, is objectively unlawful and outside the scope of Presidential authority... The dissent’s reference to Korematsu, however, affords this Court the opportunity to make express what is already obvious: Korematsu was gravely wrong the day it was decided, has been overruled in the court of history, and—to be clear—“has no place in law under the Constitution,”

#### E. **The Priorities and Allocation Act of 1940**

During times of war, the American people have been called upon to sacrifice in the name of victory. A way in which the American people have been asked to sacrifice is through rationing. Rationing is a limitation placed on goods by the government to reallocate resources needed to produce goods for the war effort. During World War I and World War II, Americans were asked to ration.

During World War II, Congress passed the Priorities and Allocation Act of 1940. This Act limited the purchase of any material or resource by civilians that could be used to produce goods for the war effort and provide for the national defense. Examples of items rationed included: rubber, metals, and paper.

Food was also rationed to aid the war effort. Beginning in May of 1942, the government limited the amount of sugar, coffee, meats, fats, canned fish, cheese, and canned milk civilians could buy. Rationing was based on a point system and impacted almost every American family. Of course, during the war, families were understanding of the rationing system and wanted to help provide for the common good, by helping provide for our national defense.

## Lesson Summary

ESSENTIAL QUESTION			
How does the U.S. Constitution and the Bill of Rights safeguard individual rights? How and why are individual rights sometimes limited?			
BENCHMARK			
SS.7.CG.2.4 Explain how the U.S. Constitution and the Bill of Rights safeguard individual rights.			
CIVICS EOC REPORTING CATEGORY			
N/A			
OVERVIEW			
In this lesson, students will understand how the U.S. Constitution and the Bill of Rights safeguard individual rights, but that while rights are protected, they are not unlimited.			
BENCHMARK CLARIFICATIONS			
<ul style="list-style-type: none"> <li>Students will recognize that rights are protected but some rights are limited (e.g., property rights, civil disobedience).</li> <li>Students will examine rationales for government-imposed limitations on individual rights (e.g., forced internment in wartime, limitations on speech, rationing during wartime, suspension of habeas corpus).</li> <li>Students will use scenarios to examine the impact of limiting individual rights.</li> <li>Students will examine the role of the judicial branch of government in protecting individual rights and freedoms.</li> </ul>			
BENCHMARK CONTENT LIMITS			
N/A			
CIVICS CONTENT VOCABULARY			
<ul style="list-style-type: none"> <li>appellate process, civil disobedience, <i>ex post facto</i>, <i>ex post facto</i> law, <i>habeas corpus</i>, independent judiciary, internment, precedent, privacy, property rights, public interest, rationing, safeguard, writ</li> </ul>			
INSTRUCTIONAL STRATEGIES			
Guided reading	Defining terms in context	Directed note taking	Inquiry-based learning
MATERIALS			
<ul style="list-style-type: none"> <li>Highlighters</li> <li>First Amendment slide</li> <li>The United States Constitution: Safeguarding Individual Rights activity sheet</li> <li>Rights Listed in Amendments reference sheet</li> <li>Individual Rights Quotes slides</li> <li>Gallery Walk Placards</li> </ul>			

- Gallery Walk Graphic Organizer

### **B.E.S.T. STANDARDS**

- ELA.7.R.2.1- Explain how individual text sections and/or features convey a purpose in texts.
- ELA.7.R.3.2- Paraphrase content from grade-level texts.
- ELA.V.1.3- Apply knowledge of context clues, figurative language, word relationships, reference materials, and/or background knowledge to determine the connotative and denotative meaning of words and phrases, appropriate to grade level.
- ELA.K12.EE.1.1- Cite evidence to explain and justify reasoning.

## Suggested Student Activity Sequence & Pace

DAY	ACTIVITY SEQUENCE
DAY 1	<ol style="list-style-type: none"> <li>1. To begin this lesson, place students into pairs and project the “First Amendment” slide.</li> <li>2. Ask students to summarize the meaning of the First Amendment independently.</li> <li>3. Have students share out.</li> <li>4. Pose the following questions for discussion: Do you think the rights outlined in the First Amendment are important? Why? Do you think that they are unlimited or are there situations where rights should be limited?</li> <li>5. Pass out the “The United States Constitution: Safeguarding Individual Rights” activity sheet.</li> <li>6. Explain to students that they will read about how the U.S. Constitution safeguards rights, the role the judicial branch plays in that process, and how sometimes rights are limited.</li> <li>7. Read the introductory paragraph aloud to the whole class.</li> <li>8. Instruct students to read the second paragraph and then answer Questions 1 and 2.</li> <li>9. Project the “Rights Listed in Amendments” reference sheet and review the rights listed in the Bill of Rights and other amendments provided.  <b>Teacher Note:</b> If this lesson is done after you have taught the lessons for SS.7.CG.2.3 and SS.7.CG.3.6, this can be a quick review. If additional support is needed, see the lesson plan for both of those benchmarks.</li> <li>10. Instruct students to answer Question 3 on their activity sheet. Have students share out.</li> <li>11. Students will read the rest of the reading and complete the questions on their activity sheet.</li> <li>12. When completed, have students share out their answers for Questions 7 and 8. Call on enough students so that all of the different criteria are shared. Instruct students to take notes on their activity sheet on the criteria they did not choose.</li> <li>13. To wrap up the activity, ask students: What is the importance of the judicial branch in protecting individual rights and freedoms?</li> </ol>

DAYS 2-3	<p><b>Planning Note:</b> For the next portion of the lesson, you will need to print and post the “Gallery Walk Placards” throughout the classroom.</p> <ol style="list-style-type: none"> <li>1. To begin the lesson, project the first quote (slide 1) from the “Individual Rights Quotes” slides.</li> <li>2. Have students brainstorm with a partner to determine what is meant by this quote, and how it relates to safeguarding and limiting rights.</li> <li>3. Discuss student responses and lead students to an understanding that rights and freedoms have been both protected and limited; protected because they form the foundational ideals of the U.S. political system, and limited in order to insure the stability of that system.</li> <li>4. Next, explain to students that extraordinary circumstances, such as wartime, may lead to temporary limits on rights.</li> <li>5. Project the quote on slide 2 from Justice Robert Jackson.</li> <li>6. Read the quote aloud and ask students: Why would executive powers need to be expanded during emergencies? How would expanded government powers limit individual rights and freedoms?</li> <li>7. Explain to students that they will conduct a Gallery Walk to explore additional historical examples of safeguarding and limiting rights.</li> <li>8. Pass out the “Gallery Walk Graphic Organizer” for the students to complete as they work through the placards.</li> </ol>
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**Teacher Note:** You will want to pre-determine how many students you want at each station, and for how long, giving students a cue to rotate.

9. Divide students into small groups and assign a starting placard.
10. As students read, discuss, and fill in their graphic organizers the teacher should circulate to ensure groups stay on task and assist when necessary.
11. After a chosen allotment of time, instruct groups to rotate stations/placards in a direction chosen by the teacher and continue the same process.

**Teacher Note:** Based on class time, you may need to have students do some of the placards on Day 2 and then finish the rest of the placards on Day 3. If this will be the case, ensure students note on their graphic organizers which station they should start at the next day.

12. To wrap up the Gallery Walk activity, have students review their graphic organizers to answer the following questions either independently or as a whole-class: What conclusions can you draw about limiting rights? In instances where rights were limited, were someone else's rights safeguarded? Why does the government/judicial branch have the ability to limit peoples' rights in these situations? Can you think of another example of when people's rights may be limited?

13. Checking for Understanding (Formative Assessment):

Instruct students to write a well-crafted response to one of the following prompts:

Prompt 1

Explain how the U.S. Constitution safeguards rights and explain how rights can be limited. Cite specific examples from the lesson activities to support your explanation.

Prompt 2

Explain the role of the judicial branch in safeguarding and/or limiting individual rights and freedoms. Does the role of the judicial branch in protecting or limiting individual rights emphasize the need for an independent judiciary? Explain your answer.



## Civics Content Vocabulary

Word/Term	Definition
<b>appellate process</b>	the process of asking a higher court to decide whether a trial was conducted properly
<b>civil disobedience</b>	a peaceful protest to illustrate the refusal to comply with certain laws or injustice
<b><i>ex post facto</i></b>	a Latin term meaning “after the fact”
<b><i>ex post facto</i> law</b>	a law that makes an act a crime after the crime has been committed
<b><i>habeas corpus</i></b>	the principle that the government has to provide a cause or reason for holding a person in jail
<b>independent judiciary</b>	the principle that decisions from the courts are fair and impartial and are not influenced by the other branches of government
<b>internment</b>	the state of being confined as a prisoner, especially for military or political reasons
<b>precedent</b>	a court decision in an earlier case with facts and legal issues similar to those in a case currently before a court
<b>privacy</b>	not in public
<b>property rights</b>	the exclusive authority to own property and determine its use
<b>public interest</b>	common benefit, the general benefit of the public
<b>rationing</b>	allowing a person to only have a fixed amount of a commodity
<b>safeguard</b>	to protect
<b>writ</b>	law

## ADDITIONAL RESOURCES

### [Civics 360 Resources](#)

Florida Department of Education's Civic Literacy Reading List

- *The Rights of the Colonists* by Samuel Adams

## ANSWER KEYS

Sample Answers: The United States Constitution: Safeguarding Individual Rights activity sheet

Sample Answers: Gallery Walk Graphic Organizer

Written Response: Sample Scoring Rubric

## SOURCES

The U.S. Constitution: Limiting & Safeguarding Individual Rights:

[http://www.usconstitution.net/consttop\\_resp.html](http://www.usconstitution.net/consttop_resp.html),

[http://www.fjc.gov/history/home.nsf/page/talking\\_ji\\_tp.html](http://www.fjc.gov/history/home.nsf/page/talking_ji_tp.html)

*Adderley v. Florida*: <https://www.history.com/topics/black-history/civil-rights-movement-timeline>,

<https://www.famu.edu/about-famu/index.php>, <https://www.oyez.org/cases/1966/19>,

<https://www.floridamemory.com/items/show/112868>, and

<https://constitution.congress.gov/constitution/amendment-1/>

*Adderley* image source: [https://www.mtsu.edu/first-amendment/images/AP\\_6307190360\\_0.jpg](https://www.mtsu.edu/first-amendment/images/AP_6307190360_0.jpg)

*Korematsu v. U.S.*: <https://catalog.archives.gov/id/5730387>,

<https://www.archives.gov/historical-docs/todays-doc/?dod-date=219>,

<https://www.loc.gov/pictures/collection/manz/>, [https://biotech.law.lsu.edu/cases/pp/korematsu\\_II.htm](https://biotech.law.lsu.edu/cases/pp/korematsu_II.htm),

<https://www.aclu.org/about-aclu>, [https://www.law.cornell.edu/wex/writ\\_of\\_certiorari](https://www.law.cornell.edu/wex/writ_of_certiorari),

<https://korematsuinstitute.org/freds-lifetime-awards/>, <https://www.britannica.com/topic/Civil-Liberties-Act>

*Korematsu* image source: “Exclusion order posted at First and Front Streets in San Francisco directing removal of persons of Japanese ancestry from the first section of the city to be affected by evacuation. Evacuees will be housed in War Relocation Authority centers for the duration.” from the National Archives

Limitations quote: <https://ethicsunwrapped.utexas.edu/glossary/harm-principle>

Rationing during Wartime:

<https://scholarship.law.marquette.edu/cgi/viewcontent.cgi?article=3556&context=mulr>

<https://www.nationalww2museum.org/war/articles/rationing>

Ration image source: “Ration Coupon for Meat, Fish, and Cheese” from the National Archives

Ration image source: “To learn how to shop with point stamps, these youngsters in a Fairfax County, Virginia, grade school have set up a play store, complete with point value table and informational material on point rationing.” from the National Archives

Justice Jackson quotation: <https://supreme.justia.com/cases/federal/us/343/579/>

Suspension of Habeas Corpus:

<https://www.history.com/this-day-in-history/lincolns-suspension-of-habeas-corpus-is-challenged#:~:text=On%20April%2027%2C%201861%2C%20Lincoln,deemed%20threatening%20to%20military%20operations.>

Habeas Corpus image source: “Presidential Proclamation 94 of September 24, 1862, by President Abraham

Lincoln suspending the writ of Habeas Corpus” from the National Archives/DocsTeach

*Hazelwood School District v. Kuhlmeier* Reading and Summary Points:

<https://www.landmarkcases.org/cases/hazelwood-v-kuhlmeier> and

<https://www.uscourts.gov/educational-resources/educational-activities/facts-and-case-summary-hazelwood-v-kuhlmeier>

Hazelwood image source:

[https://www.mtsu.edu/first-amendment/images/Hazelwood\\_\\_student\\_editor\\_with\\_newspaper\\_0.jpg](https://www.mtsu.edu/first-amendment/images/Hazelwood__student_editor_with_newspaper_0.jpg)

*Kohl v. United States*: <https://www.thoughtco.com/eminent-domain-cases-4176337>,

[https://www.law.cornell.edu/wex/eminent\\_domain](https://www.law.cornell.edu/wex/eminent_domain), and

<https://www.lexisnexis.com/community/casebrief/p/casebrief-kohl-v-united-states>

Kohl image source:

<https://s3.amazonaws.com/s3.timetoast.com/public/uploads/photo/7135269/image/8c37d1e01327d3c619b6f8b8018ff0c4>