

GOVERNMENT-IMPOSED RESTRICTIONS ON RIGHTS

SS.912.CG.2.5 Analyze contemporary and historical examples of government-imposed restrictions on rights.

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2023 BENCHMARK UPDATES
<ul style="list-style-type: none"> Updated from SS.912.C.2.6 and SS.912.C.2.7 <ul style="list-style-type: none"> Changed from “Evaluate, take, and defend positions about rights protected by the Constitution and Bill of Rights.” and “Explain why rights have limits and are not absolute.” to “<u>Analyze contemporary and historical examples of government-imposed restrictions on rights.</u>” Depth of Knowledge Changes within Benchmark <ul style="list-style-type: none"> Changed from “Evaluate, take and defend” and “Explain” to “Analyze” Addition of Benchmark Clarifications <ul style="list-style-type: none"> Benchmark clarifications are an addition to the 2023-2024 high school civics and government benchmarks. Benchmark clarifications are listed in the lesson summary below.

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. Ex parte Merryman (1861)
3. *Schenck v. U.S* (1919)
4. The Priorities and Allocation Act of 1940

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. National 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. 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.

3. *Schenck v. U.S*

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 13th 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. 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. The *Schenck* decision and subsequent test was updated in 1969 by the Supreme Court’s decision in *Brandenburg v. Ohio*.

4. 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

BENCHMARK			
SS.912.CG.2.5 Analyze contemporary and historical examples of government-imposed restrictions on rights.			
BENCHMARK CLARIFICATIONS			
<ul style="list-style-type: none"> Students will identify historical examples of government-imposed restrictions on rights (e.g., suspension of habeas corpus, rationing during wartime and limitations on speech). Students will examine the rationale for government-imposed restrictions on rights (e.g., inciting a crime, campaign contributions, defamation, military secrets). 			
FLORIDA CIVIC LITERACY EXAM COMPETENCY CONNECTION			
<p>Competency 1: Understanding of the basic principles and practices of American democracy and how they are applied in our republican form of government</p> <p>Competency 4: Understanding of landmark Supreme Court cases, landmark legislation, and landmark executive actions and their impact on law and society</p>			
OVERVIEW			
In this lesson, students will analyze historical examples of government-imposed restrictions on rights and the constitutional rationale behind those restrictions.			
ESSENTIAL QUESTION			
Under what circumstances may your rights be limited by the government?			
GOVERNMENT CONTENT VOCABULARY			
<ul style="list-style-type: none"> defamation, espionage, First Amendment, habeas corpus, public interest, rationing, rights, sedition, writ 			
INSTRUCTIONAL STRATEGIES			
Guided reading	Document analysis	Directed note-taking	Student-led learning
MATERIALS			
<ul style="list-style-type: none"> <i>Cohen v. California</i> slide Habeas Corpus activity sheet Rationing image National Archives Document Analysis Worksheet (optional; external link) Rationing activity sheet First Amendment slide Civics in Real Life: Sedition reading Contemporary Court Case Analysis activity sheet U.S. Supreme Court Case Database (external link) Civics in Real Life: The Docket Series (optional; external link) 			

- Student digital device

B.E.S.T. STANDARDS

The grade in which this lesson is taught will determine the specific B.E.S.T. standards correlation.

Thematically, this lesson aligns to:

- ELA.R.2.3 Author's Purpose and Perspective
- ELA.R.3.2 Paraphrase and Summarize
- ELA.C.4.1 Researching and Using Information

Suggested Student Activity Sequence & Pace

DAY	ACTIVITY SEQUENCE
DAY 1	<ol style="list-style-type: none"> 1. To begin this lesson, project the “<i>Cohen v. California</i>” slide. 2. Explain to students that the quote on the slide comes from a U.S. Supreme Court case decision. The case involved the arrest of a 19-year-old department store worker who wore a jacket with a message on it that offended many people in the neighborhood. 3. Ask students to write out a short summary of what they think the quote means. 4. Ask for responses. Responses will vary but lead students to an understanding that throughout U.S. history, it has always been difficult to figure out where ‘the line’ is for rights. Individual rights are protected by the U.S. Constitution, but they are not unlimited. 5. Ask students: Can you think of any examples of times or situations where rights may be limited or even taken away from citizens? (felony convictions, inciting crime, limits to campaign contributions, national security/military secrets, defamation) Teacher Note: If you have already taught SS.912.CG.2.2, some of this may be a review. 6. Explain to students that over the course of this lesson, they are going to examine three historical examples of government-imposed restrictions on rights and analyze the rationale and constitutionality for each. 7. Pass out the “Habeas Corpus” activity sheet to each student. 8. As a class, read through the first section ‘What Was Happening?’ together, modeling text marking strategies. 9. Provide students time to craft a summary for that section. 10. Call on a few students to share their summaries, allowing others to amend theirs if needed. 11. Continue all together to the next section ‘What Rights Were Restricted?’ 12. After reading, complete the two questions below all together. 13. Finally, work through the last section ‘What Did The Courts Say?’ by helping students analyze the quotes from <i>Ex Parte Merryman</i> to determine whether this historical example of government imposed restrictions on rights was constitutional. Teacher Note: Use the answer key provided to help guide student discussion for all sections of the activity sheet. 14. Next, display the “Rationing” image. 15. Ask students to observe the photo and share what they see. Teacher Note: If you need help facilitating photograph primary source analysis, use some of the questions provided on this “National Archives Document Analysis Worksheet” 16. Explain to students that this photo brings us to our second historical example of restrictions on rights: rationing. 17. Distribute a “Rationing” activity sheet to each student. 18. Instruct students to read and complete this second activity sheet in the same manner as the “Habeas Corpus” one just completed. They will complete this one individually. 19. Provide students time to complete the second activity sheet. Teacher Note: While students work, circulate around the classroom to monitor for engagement and help students who are struggling. 20. When students are finished, review responses as a whole class. Teacher Note: Use the answer key provided to help guide student discussion.

DAY 2

1. To begin class, project the “First Amendment” slide.
2. Review the 5 freedoms of the First Amendment.
3. Ask students: Can you think of any examples when the rights guaranteed in the First Amendment may be restricted? (Examples: defamation, violent protest, hate speech)
4. Explain to students that when it comes to restrictions of rights, some of the toughest decisions for where to draw ‘the line’ pertain to First Amendment cases.
5. Place students in pairs.
6. Pass out the “Civics in Real Life: Sedition” reading.
7. In pairs, have students work through the reading.
8. Together, they should craft a one paragraph response to the ‘To Think and To Do’ prompt.
9. Once all pairs have completed the reading and prompt, discuss as a whole class.
10. Explain to students that over the course of this lesson, they have examined three well known historical examples of government-imposed restrictions on rights. But the question of rights restrictions comes up over and over again. So with the time remaining today, they are going to research a contemporary example.
11. Ensure student pairs have access to digital technology.
12. Pass out a “Contemporary Court Case Analysis” activity sheet to each pair.
13. Instruct pairs to navigate to the “[U.S. Supreme Court Case Database](#)” from Oyez.
14. Using the various search features and tools on the left hand side of the page, have students filter and search through the cases. Instruct them to look for a contemporary (within the last few years) example of a case that dealt with restriction of rights.
15. Once the student pair has selected a case, have them work to complete the activity sheet.
16. Once all pairs are finished, allow students time to briefly share their examples with the rest of the class.

Alternative Suggestion: If you do not feel comfortable allowing students to research and select their own case, you could pre-select a contemporary example from The Lou Frey Institute’s “[Civics in Real Life: The Docket](#)” series. (Filter search by ‘The Docket’)

Government Content Vocabulary

Word/Term	Definition
defamation	the act of damaging someone's reputation
espionage	the practice of spying or using spies to obtain military or political information
First Amendment	an amendment to the U.S. Constitution prohibiting Congress from establishing a religion, and from interfering with freedom of religious exercise, press, speech, assembly, or petition
habeas corpus	the principle that the government has to provide a cause or reason for holding a person in jail
public interest	common benefit, the general benefit of the public
rationing	allowing a person to only have a fixed amount of a commodity
rights	an entitlement to something
sedition	language intended to incite insurrection against a governing authority
writ	law

ADDITIONAL RESOURCES

[Florida Department of Education: Florida Civic Literacy Exam Homepage](#)

Florida Department of Education's Civic Literacy Reading List

- N/A

ANSWER KEYS

Sample Answers: Habeas Corpus activity sheet

Sample Answers: Rationing activity sheet

Written Response: Sample Scoring Rubric

SOURCES

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

http://www.usconstitution.net/consttop_resp.html,

http://www.fjc.gov/history/home.nsf/page/talking_ji_tp.html

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>.

Limitations on speech: *Schenck v. United States*

[Schenck v. United States | The First Amendment Encyclopedia \(mtsu.edu\)](#)

Rationing during wartime:

[The Two-Price System: U.S. Rationing During World War II - Foundation for Economic Education \(fee.org\)](#)

<https://www.nationalww2museum.org/war/articles/rationing#:~:text=Black%20market%20trading%20>

[Executive Order 8875 Establishing the Supply Priorities and Allocations Board. | The American Presidency Project \(ucsb.edu\)](#)

Cohen v. California Quote from Oyez: <https://www.oyez.org/cases/1970/299>

Ex Parte Merryman decision from Teaching American History:

<https://teachingamericanhistory.org/document/ex-parte-merryman/>

Photograph Primary Source Document Analysis Worksheet from the National Archives:

<https://www.archives.gov/education/lessons/worksheets/analyze-a-photograph-intermediate>

First Amendment text:

<https://www.archives.gov/founding-docs/bill-of-rights-transcript#:~:text=Bill%20of%20Rights.%22-.Amendment%20I,for%20a%20redress%20of%20grievances>.

Civics in Real Life from the Lou Frey Institute: <https://floridacitizen.org/civics-in-real-life/>

U.S. Supreme Court Case Database from Oyez: <https://www.oyez.org/cases/2022>

The Legal Mechanism of Rationing from Marquette Law Review:

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

Images sourced on slides