

SAFEGUARDING AND LIMITING INDIVIDUAL RIGHTS
SS.912.CG.3.2 Explain how the U.S. Constitution safeguards and limits individual rights.

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2023 BENCHMARK UPDATES
<ul style="list-style-type: none"> ● Updated from SS.912.C.3.11 <ul style="list-style-type: none"> ○ Changed from “Contrast how the Constitution safeguards and limits individual rights.” to “<u>Explain</u> how the U.S. Constitution safeguards and limits individual rights.” ● Depth of Knowledge Changes within Benchmark <ul style="list-style-type: none"> ○ Changed from “Contrast” to “Explain” ● 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. Individual Rights in the Constitution
3. The 14th Amendment and Incorporation
4. The Role of the Supreme Court

1. Addressing the Conflict Between Protecting and Limiting Rights

Stemming from a genuine fear of monarchy, the Framers of the Constitution wrote specific conditions into the document that serve as safeguards against authoritarian rule. These safeguards include components such as federalism, separation of powers, checks and balances, popular sovereignty, and rule of law. These elements of the U.S. government allow the government itself to remain limited, power to stay in the hands of the people, and individual rights to remain protected.

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 ensure stability of that system.

2. Individual Rights in the Constitution

Individual rights are secured through the U.S. Constitution and were furthered with the ratification of the Bill of Rights, the 14th Amendment, and subsequent amendments. Individual rights are also continuously advanced through the interpretations of the Supreme Court, the legislation created by Congress, and the enforcement of laws and executive orders enacted by the President of the United States. Protected rights are commonly referred to in the broader categories of civil rights and civil liberties. Civil liberties are documented as specific protections against government action. Civil rights are government actions taken to ensure equal conditions for all American citizens.

Article I, Section 9 of the U.S. Constitution establishes valuable civil liberties. Suspending the writ of habeas corpus is prohibited, as well as restrictions against bills of attainder and ex post facto law. These safeguards, or limits on government action, are a direct response to the grievances against the King of England written into the Declaration of Independence.

Additional protections from the government include the 4th Amendment's policy against unreasonable search and seizure and the due process clause and defense against self-incrimination established in the 5th Amendment. The rights of individuals who have been accused of committing a crime are preserved in Amendments 5 through 8. Rules against double jeopardy ensure individuals are protected against being tried twice for the same crime. A "fair and speedy" trial is guaranteed for all, not just citizens. The right to counsel, or a lawyer, is promised to anyone regardless of wealth, prior record, or the nature of the accusation. The final protection is against cruel and unusual punishment. Even when guilt is determined, the punishment must fit the crime.

Many other amendments, such as the first and second, emphasize individual freedoms. Citizenship is redefined through the 13th, 14th, 15th, and 19th Amendments in order to reflect the significant social evolutions throughout the history of the United States to enfranchise citizens fully.

3. The 14th Amendment and Incorporation

The Due Process clause of the 14th Amendment states, *"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws."* Due process is found in both the 5th and the 14th Amendments and comes in two forms. Substantive due process refers to the protection of rights from government interference. Procedural due process refers specifically to the requirements that must be followed if the government is attempting to deny a citizen their right to life or liberty, for example, because they have potentially committed a crime.

Prior to the passage of the 14th Amendment, the Supreme Court had consistently ruled that the Bill of Rights only applied to the national government. After the passage of the 14th Amendment, the Supreme Court ruled that the Due Process Clause allowed for parts of the Bill of Rights to be applied to the states. This is known as selective incorporation. Incorporation may apply to both substantive and procedural due process. Over the course of history, the Supreme Court has fully incorporated the 1st, 2nd, 4th, and 8th Amendments. They have partially incorporated the 5th and 6th Amendments, and they have never incorporated the 3rd, 7th, 9th, or 10th Amendments.

4. The Role of the Supreme Court

"It is a fair summary of constitutional history that the landmarks of our liberties have often been forged in cases involving not very nice people." - Justice Felix Frankfurter.

After *Marbury v. Madison* (1803) established the court's role in judicial review, countless historic cases have come before the Court in which they have had to weigh the constitutionality of safeguarding and/or limiting rights. At times, the Court has had to develop "tests" like in *Schenck v. United States* (1919) to determine how to protect individual rights but also protect the safety of the rest of American citizens from "a clear and present danger". Other times, like in *Groff v. DeJoy* (2023), the Court has had to find the balancing line where one individual's rights begin and another's end. From *Plessy v. Ferguson* (1896) to *Brown v. Board of Education* (1954), *Tinker v. Des Moines* (1969), *Hazelwood v. Kuhlmeier* (1988), and *New York Times v. U.S.* (1971), the Supreme Court has played a significant role in further defining the safeguards and limits of constitutional rights.

Lesson Summary

BENCHMARK		
SS.912.CG.3.2 Explain how the U.S. Constitution safeguards and limits individual rights.		
BENCHMARK CLARIFICATIONS		
<ul style="list-style-type: none"> Students will identify the individual rights protected by the U.S. Constitution, the Bill of Rights and other constitutional amendments. Students will describe the role of the Supreme Court in further defining the safeguards and limits of constitutional rights. 		
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 2: Understanding of the United States Constitution and its application</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 explain how the U.S. Constitution provides safeguards for individual rights, but also how and when those rights may be limited.		
ESSENTIAL QUESTION		
How does the U.S. Constitution safeguard and limit individual rights?		
GOVERNMENT CONTENT VOCABULARY		
<ul style="list-style-type: none"> 1st Amendment; 14th Amendment, bill of attainder, Bill of Rights, censor, civil liberties, civil rights, ex post facto law, habeas corpus, judicial review, prior restraint, rights, safeguards, selective incorporation, Supreme Court 		
INSTRUCTIONAL STRATEGIES		
Primary source analysis	Quick write responses	Small group debate
MATERIALS		
<ul style="list-style-type: none"> Highlighters Safeguards and Limitations slides Protecting Rights activity sheet Constitutional Amendments reading The Role of the Supreme Court slides Right vs. Right Case Study 		
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.10.R.2.2 Central Idea
- ELA.9.R.2.4 Argument
- ELA.10.V.1.1 Academic Vocabulary

Suggested Student Activity Sequence & Pace

DAY	ACTIVITY SEQUENCE
DAY 1	<ol style="list-style-type: none"> 1. Begin class by projecting slide 1 of the “Safeguards and Limitations” slides. Read the three quotes together as a class. 2. Have students complete a quick write in which they answer the following question: According to these three quotes, what is one of the main purposes of government? 3. Ask for responses. Further the discussion by asking students to hypothesize what might happen to individual rights if no government existed. 4. Lead students to the understanding that the Founders believed that individuals possessed God-given rights and that governments are instituted to protect these rights. This concept was outlined in detail in the Declaration of Independence, with the colonists pointing out all of their rights that had been violated or not protected, and therefore their right to abolish government. 5. Pass out a “Protecting Rights” activity sheet to each student. 6. Ask students to read the ‘Introduction’ text and underline or highlight the central idea. 7. Project slide 2 of the “Safeguards and Limitations” slides. Explain to students that when the term ‘individual rights’ is used, that often encompasses two slightly different things: civil rights and civil liberties. 8. Review the definitions with students. Have them translate the information to their own words and record on their activity sheet. 9. Place students into pairs. 10. In their pairs, have students continue to the next section of the activity sheet ‘Protections in the Constitution’ where they should read, highlight central ideas, and fill in the corresponding organizer. 11. When students have completed the organizer, they should raise their hand to signal they are ready for you to check them off and allow them to move on. Move around the room checking each pair’s work for accuracy. 12. If a pair’s work is complete, hand them a “Constitutional Amendments” reading. 13. Instruct pairs to read each of the amendments that have been added to the U.S. Constitution. The task is to highlight or note any protected rights they can identify. 14. Towards the end of the class, bring everyone back together to review. Check for understanding by asking students to provide either out loud or on an exit ticket the following: <ul style="list-style-type: none"> ■ An example of how the Constitution safeguards a civil liberty ■ An example of how the Constitution safeguards a civil right ■ An example of how the Constitution protects individuals from government ■ An example of how the Constitution protects the rights of someone accused of a crime <p>Teacher Note: Use the answer key provided to guide checking of student work and discussions.</p>

DAY 2	<ol style="list-style-type: none"> 1. Explain to students that today, you will be examining the role of the Supreme Court in further defining the safeguards and limits of constitutional rights. 2. Project “The Role of the Supreme Court” slides. 3. Tell students that you are going to begin today with a short game called ‘Is That Right?’ 4. Work through slides 2-8 in the presentation. For each one, read the statement to the class.
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Have students show a thumbs up if they think the statement sounds ‘right’ or a thumbs down if they think the statement sounds ‘not right’.

Teacher Note: Use the speaker notes to reveal answers. Please note that this is not meant to be a class discussion into the why and these statements are overly simplified and do not address the nuances of these cases. It is meant to be an introduction to the role of the Supreme Court in safeguarding and/or limiting rights.

5. Ask students: What are the powers and responsibilities of the Supreme Court?
6. Solicit responses based on prior knowledge from previous grades. Use slide 9 to review. Ask students to take notes if you deem appropriate or necessary.
7. Lead students to the understanding that in a majority of cases that the Supreme Court hears, their decision will either safeguard a right, or limit a right. Oftentimes, by safeguarding one side’s rights, they are limiting the other’s and vice versa. Further defining constitutional rights is not an easy task.
8. (Slide 10) Explain to students that today, they will get an opportunity to see that and experience the role of the Supreme Court in a case study: *New York Times Company v. United States* (1971).
9. Divide students into pairs.
10. Pass out a copy of the “[Right vs. Right Case Study](#)” to each student.
11. Explain to students that today’s case pitted the free press rights of the New York Times against the national security interests of the United States. It was up to the Supreme Court to determine whether freedom of the press should be safeguarded or limited in this instance.
12. Assign half of the pairs to the New York Times sides, and the other half to the United States side.
13. As a pair, the students should read the case summary looking for and thinking about legitimate arguments for their assigned side of the case.
14. Students should make a list of those arguments in the appropriate column of the handout.
15. Walk around the room while students work to monitor for engagement and assist when necessary.
16. When all pairs have finished, instruct students to form groups of 4, ensuring that they are joining with a pair who had the opposing side as them.
17. Provide each set of pairs time to share their arguments with one another. Students should record the other side’s arguments in the appropriate column of the handout.
18. Allow time for debate amongst the group members and then instruct them to form a consensus and answer the question ‘Did the government’s attempt to censor the press violate the First Amendment?’
19. Come back together as a whole group and have students share responses. Then share the decision of the court (Slide 12). The 1st Amendment, freedom of the press, was safeguarded in this decision.
20. Have students return to their individual seats.
21. To finish the lesson, have students individually interpret and explain the three quotes on the second page of the “Right vs. Right Case Study” handout. All three quotes come from the majority opinion of the *New York Times Company v. United States* case.

Teacher Note: Use the answer key provided to guide checking of student work and discussions.

Government Content Vocabulary

Word/Term	Definition
1st 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
14th Amendment	(1868) established that all people born in the United States are citizens entitled to the same privileges and immunities as other citizens, due process of law, and equal protection of the laws
bill of attainder	laws that declare or punish a specific set of individuals or groups who would otherwise have judicial protections
Bill of Rights	(1791) the first ten amendments to the U.S. Constitution establishing guaranteed rights of American citizens
censor	to prohibit or suspend language that is considered a threat or to be obscene
civil liberties	protections against government actions that may restrict individual rights
civil rights	actions taken by the government to ensure equal rights for all Americans
ex post facto law	a law that makes an act a crime after the crime has been committed
habeas corpus	the principle that the government has to provide a cause or reason for holding a person in jail
judicial review	the power of the judicial branch to review the actions of the executive and legislative branches and determine whether or not they are unconstitutional (this includes laws passed by Congress); the U.S. Supreme Court case <i>Marbury v. Madison</i> established this power such actions are consistent with the U.S. Constitution
prior restraint	government action that prohibits speech or other expression before it happens
rights	a power or privilege held by the general public and often protected by a constitution, laws, and/or judicial decisions
safeguards	protections
selective incorporation	refers to parts of the Bill of Rights being made applicable to the states
U.S. Supreme Court	the highest court of the United States; it sits at the top of the federal court system

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: Protecting Rights activity sheet](#)

[Sample Answers: Constitutional Amendments reading](#)

[Sample Answers: Right vs. Right Case Study](#)

SOURCES

Incorporation Doctrine and Prior Restraint information from Cornell Law School:

https://www.law.cornell.edu/wex/incorporation_doctrine

U.S. Constitution text from the National Archives:

<https://www.archives.gov/founding-docs/constitution-transcript>

Amendment Summaries from the University of Minnesota:

<https://www.mnsu.edu/constitution-day/the-constitution/constitutional-amendments-summary/>

All Supreme Court case information from Oyez: <https://www.oyez.org/>