

ELECTION 2012

Why Does a Free Press Matter?

CRITICAL ENGAGEMENT QUESTION

Why is a free press essential for republican government?

LEARNING OBJECTIVES

Students will understand:

- A free press is essential for self-government.
- A free press empowers citizens to seek out multiple points of view on issues and make informed choices.
- A free press empowers citizens to make informed decisions about candidates for public office.

MATERIALS

Background Essay: Why Does a Free Press Matter?

Handout A: A Free Press and the Candidates

Handout B: Letter from a Friend

GRADE LEVEL AND TIME

6th-12th grade

2 hours plus time for independent research

STANDARDS

NCHS (5-12): Era III, Standards 1A, 1B, 3A, 3B

CCE (9-12): IIA1, IID1, VB1, VD1

NCSS: Strands 2, 6, and 10

Common Core State Standards for English Language Arts & Literacy in History/Social Studies

8. Delineate and evaluate the reasoning in seminal U.S. texts, including the application of constitutional principles and use of legal reasoning (e.g., in U.S. Supreme Court majority opinions and dissents) and the premises, purposes, and arguments in works of public advocacy (e.g., The Federalist, presidential addresses).
9. Analyze seventeenth-, eighteenth-, and nineteenth-century foundational U.S. documents of historical and literary significance (including The Declaration of Independence, the Preamble to the Constitution, the Bill of Rights, and Lincoln's Second Inaugural Address) for their themes, purposes, and rhetorical features.

OVERVIEW

Students examine the history of press freedom, and, by seeking out information on constitutional issues from multiple sources, begin to understand ways a free press makes self-government possible.

The freedom of the press is one of the great bulwarks of liberty, and can never be restrained but by despotic governments.

—GEORGE MASON, 1776

The basis of our governments being the opinion of the people, the very first object should be to keep that right; and were it left to me to decide whether we should have a government without newspapers or newspapers without a government, I should not hesitate a moment to prefer the latter.

—THOMAS JEFFERSON, 1787

ACKNOWLEDGEMENT

The development of these educational materials was made possible through the generous support of the Kansas Newspaper Foundation

NOTES

BACKGROUND/HOMEWORK

30 minutes the day before

Have students read the **Background Essay: Why Does a Free Press Matter?** and answer the critical thinking questions.

WARM-UP

10 minutes

- A. Brainstorm key issues in the current presidential election. Keep a list on the board as ideas are generated.
- B. For each issue, write at least one question about presidential candidates to determine their approach to the issue. Encourage students to focus their questions on the President's constitutional role. If needed, review Article II of the Constitution. For example:
 - What is [candidate's] approach to foreign policy?
 - What would be the criteria [candidate] would use to appoint Supreme Court justices?
 - What does [candidate] believe should be the federal government's approach to the economy?
 - How did [candidate] conduct himself when he was a legislator/governor?

Decide on the best questions, and have students write them down in the left-hand column of **Handout A: A Free Press and the Candidates**. Note: For this part of the activity, students should all work with the same set of questions.

ACTIVITY

90 minutes (including time for independent research)

- A. Assign half the class to one major candidate and the other half to the other major candidate.
- B. Within each half, have students work in pairs to research answers to the questions using only one type of source. For example, one pair would work to answer the questions using ONLY the candidates' websites. Another pair would answer them using ONLY blogs, and so on. Variation: assign left-of center blogs to one pair, and right-of-center blogs to another pair.
- C. After students have had time to do adequate research, reconvene the class. Read the first question aloud, and have one pair of students who used only the candidate's website share what they learned.
- D. Ask the remaining students if anyone learned anything else or anything different by using any of the other news media sources. Have additional pairs share what they learned until all questions and sources have been covered.

Alternate activity: Have students work individually or in pairs to research answers to a single question from all of the sources. For example, have a pair find out the answer to “Where do you stand on the use of drones?” using the candidate’s website, a mainstream media source, a left- and right-of center blog, and by calling or writing to the candidate’s office. Then have them answer the question, “How would you summarize the differences in the information you received from these various sources?”

WRAP-UP

20 minutes

- A. As a class, discuss the following questions as a large group.
- What does it mean for a candidate to be “vetted” before an election?
 - What is the role of a free press in vetting candidates?
 - Who else participates in vetting candidates?
 - Why is it important to seek out multiple points of view on candidates for public office?
 - How would our lives be different if the only information citizens could access from candidates came from the candidates’ campaigns?
- B. Point out to students how the election is just one event, and that American citizenship requires that they remain informed on political issues. It is critical that citizens are free to publish their ideas and read the ideas of others in order for self-government to succeed. Discuss the following questions as a large group.
- How would our lives be different if the only information citizens could access from candidates—and other matters of public concern—came from official, state-run media?
 - How would our lives be different if the only available information about government activity came from state-run media?
 - Can people govern themselves without press freedom?

HOMEWORK

Have students imagine they are explaining press freedom to a friend living in another country where independent news is censored and only state-run media is allowed to exist. They should complete the activity on **Handout B: Letter from a Friend**.

EXTENSION

Have students do research to understand what political life is like in nations which do not have a free press. Students may begin their research at Reporters Without Borders or Freedom House. Questions students should consider:

- What are some differences between a free press and state-run media?
- Should journalists be exempt from having to testify about the identity of their sources in criminal cases where information is illegally leaked?
- There is a fundamental, inalienable right to speak freely and publish one’s sentiments. Is there a corresponding right to receive information? How, if at all, are these concepts different?

A

BACKGROUND ESSAY

Why Does a Free Press Matter?

First Amendment freedoms like speech and press are essential rights. Self-government is impossible without them. The Founders saw press freedom as a bulwark of liberty and a means of assuring justice in government.

WHAT IS THE HISTORY OF PRESS FREEDOM?

Press freedom is a traditional right, though its practical definition has changed over time. William Blackstone noted in *Commentaries on English Law* (1765–70): “The liberty of the press is indeed essential to the nature of a free state; but this consists in laying no previous restraints upon publication.” Others, like the Enlightenment philosophers of the early 1700s, saw the printed word as a way to fight the abuse of power by making offenses known to a wide audience.

Nearly all of the American colonies protected the freedom of the press. Virginia's Declaration of Rights (1776) states, “the freedom of the press is one of the great bulwarks of liberty, and can never be restrained but by despotic governments.” James Madison echoed the Virginia Declaration during the debate over the Bill of Rights in the House of Representatives, saying, “The people shall not be deprived or abridged of their right to speak, or write, or to publish their sentiments; and the freedom of the press, as one of the great bulwarks of liberty, shall be inviolable.”

The Founders also valued newspapers themselves, because they helped ensure an informed citizenry. Thomas Jefferson wrote in 1787, “The basis of our governments being the opinion of the people, the very first object should be to keep that right; and were it left to me to decide whether we should have a government without newspapers or newspapers without a government, I should not hesitate a moment to prefer the latter.” Newspapers were a means of informing the public in a society dedicated to self-government. The First Amendment, protecting the press from interference from the national government, was ratified in 1791.

The first challenge to the First Amendment would come not even a decade later. In 1798, the Federalist majority in Congress passed the Sedition Act, which punished people for making statements critical of the government: “If any person shall write, print, utter or publish ... with intent to defame [the President or any member of Congress] ... into contempt or disrepute ... [he] shall be punished by a fine not exceeding two thousand dollars, and by imprisonment not exceeding two years.” President John Adams, also a Federalist, claimed the law was needed to avoid war with France and was not politically-motivated. However, all 25 people arrested for breaking the law were members of the opposing political party. Madison and Jefferson each authored criticisms of the law (the Virginia and Kentucky Resolutions, respectively) charging that it violated the First Amendment.

Though some states supported the law, public opposition to the Sedition Acts was so great that many Federalists, including President Adams, were turned out of office, and Thomas Jefferson, head of the Republicans, was elected president in 1800. The Republican-controlled Congress allowed the law to expire. The Supreme Court was never asked to rule on its constitutionality. If it had, a primary defense of the Sedition Act would likely have been that it was not a prior restraint. Citizens were free to publish their thoughts. They were not, however, protected from criminal punishment after the fact. This traditional understanding of press freedom—no prior restraints—may explain the fact that some of the same officials who voted in Congress to approve the First Amendment also voted to approve of the Sedition Act.

A FREE PRESS AND STATE GOVERNMENTS

The First Amendment served to protect the press from federal government censorship. State governments, however, routinely censored newspapers. For example, some Southern states censored abolitionist newspapers, and pro-slavery newspapers were censored in some Northern ones (as well as by President Lincoln) before and

BACKGROUND ESSAY (CONT.)

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during the Civil War. Regulation of the press by state governments continued until 1931 when the Supreme Court applied the First Amendment's protection of press freedom to the states.

The case of *Near v. Minnesota* involved a state policy that required newspapers to get official approval before publication. Publishers had to show "good motives and justifiable ends" for what they were about to print. If they could not, the paper would be censored. The Court held that this kind of prior restraint on publication was "the essence of censorship" and the heart of what the First Amendment was designed to prevent. Except in very narrow circumstances, neither federal nor state governments could stop the publication of materials in advance.

The narrow requirements to justify prior restraints mean that broad claims of national security are not enough for government to stop publication in advance. In the case of *New York Times v. U.S.* (1971), the federal government attempted to prevent the *New York Times* and the *Washington Post* from publishing excerpts from the Pentagon Papers. The Pentagon Papers were illegally-leaked, classified documents that revealed U.S. government misconduct during the Vietnam War. The Nixon Administration claimed that making them public would be dangerous to national security.

The Supreme Court found the prior restraint unconstitutional: "The word 'security' is a broad, vague generality whose contours should not be invoked to abrogate the fundamental law embodied in the First Amendment.... In the First Amendment the Founding Fathers gave the free press the protection it must have to fulfill its essential role in our democracy. The press was to serve the governed, not the governors ... Only a free and unrestrained press can effectively expose deception in government. ... In revealing the workings of government that led to the Vietnam War, the newspapers nobly did precisely that which the Founders hoped and trusted they would do."

In this case, the Supreme Court reasoned that a key reason for the First Amendment was to ensure citizens could keep government accountable to the people. Since there was no specific threat to national security, the government failed to meet the "heavy burden of showing justification for the enforcement of such a [prior] restraint."

WHAT ABOUT LIBEL AND SLANDER?

Like all individual rights, freedom of the press has limits. One example is libelous speech – speech that is false and harms someone's reputation. The legal definition of libel has changed over time, as has the broader definition of press freedom.

In colonial times, truth was not a defense for libel. In the 1804 case of *People v. Croswell*, Harry Croswell was convicted of libel for printing a story critical of President Thomas Jefferson in his newspaper. Alexander Hamilton represented Croswell on appeal and argued that truth should be a defense for libel. Croswell's conviction was upheld, but the case led New York to change its law to permit truth as a defense. Though not decided by the Supreme Court, *People v. Croswell* was a landmark case because Hamilton's arguments led New York to break from English tradition in the definition of libel, resulting in greater press freedom for individuals.

In 1960, the Civil Rights Movement was gaining strength. Civil rights leaders ran a full-page ad in the *New York Times* to raise funds to help civil rights leaders, including Martin Luther King, Jr. Sixty well-known Americans signed it. The ad described what it called "an unprecedented wave of terror" of police brutality against peaceful demonstrators in Montgomery, Alabama. What it described was mostly accurate, but some of the charges in the ad were not true. For example, the ad said that police "ringed" a college campus where protestors were, but this charge was exaggerated. The ad also contained the false statement: "When the entire student body protested to state authorities by refusing to re-register, their dining hall was padlocked in an attempt to starve them into submission."

BACKGROUND ESSAY (CONT.)

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L.B. Sullivan was one of three people in charge of police in Montgomery. He sued the *New York Times* for libel. The ad did not mention Sullivan's name, but Sullivan claimed that the ad implied his responsibility for the actions of the police and that the ad damaged his reputation in the community. In the Alabama court, Sullivan won his case and the *New York Times* was ordered to pay \$500,000 in damages.

The Times appealed the decision to the U.S. Supreme Court. The newspaper argued that it had no intention of hurting L.B. Sullivan. The newspaper had no reason to believe that the advertisement included false statements, so it did not check their accuracy. The *Times* argued that if a newspaper had to check the accuracy of every criticism of every public official, a free press would severely be limited.

In a unanimous decision, the Supreme Court ruled in favor of the *New York Times*. In order to prove libel, a "public official" must show that the newspaper acted with "'actual malice'—that is, with knowledge that it was false or with reckless disregard" for the truth. The Court asserted America's "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open." Free and open debate about the conduct of public officials, the Court reasoned, was more important

than occasional, honest factual errors that might hurt or damage officials' reputations.

The result of the *Sullivan* decision is that, generally speaking, it is very difficult for public officials to win in court if they accuse a publisher of libel. The Court ruled in 1987 that public officials cannot sue for emotional distress in libel cases unless the publication contained a false statement made with "actual malice."

PRESS FREEDOM TODAY

The information age and the rise of the security state have ushered in an expansion of press freedom, as well as new threats to it. On the one hand, the Internet has enabled citizens to publish their ideas and share them with a wide audience in ways that were never possible before. Prior restraints are much harder for government to impose when news can be posted online. Video sites like YouTube enable citizens to report on government action instantaneously. On the other hand, there have been numerous incidents where citizens recording police action have had their cameras confiscated and faced prosecution for disturbing the peace or aiding the escape of a prisoner. As Salon.com author Timothy Karr put it, "Freedom of the press is more important, not less, when anyone with a mobile phone and an Internet connection can act as a journalist."

CRITICAL THINKING QUESTIONS

1. Historically, how had press freedom been understood?
2. The Sedition Act of 1798 seems blatantly unconstitutional to modern readers. What arguments might have been made in favor of its constitutionality in 1798?
3. Summarize the Court's ruling in *New York Times v. U.S.* Do you agree with the Court's reasoning?
4. What trade-offs does the Court identify in its ruling in *New York Times v. Sullivan*? Would you have come to the same conclusion if you had been deciding the case?
5. What do you think is the greatest threat to press freedom today? What can citizens do to ensure our free press endures?

B

A FREE PRESS AND THE CANDIDATES

Directions: Find out the answer to each question in the left hand column using the different sources listed. Write what you learn in the appropriate box.

Question about presidential candidate	Information from the candidate's website	Information from mainstream media outlet	Information from blogger	Information from speaking/writing directly to a candidate



LETTER FROM A FRIEND

Directions: *Imagine you've received the following letter from a friend in another country. Your friend has never traveled outside of his country (he is not legally allowed to) but you and some other mutual friends have described to him what life is like in the U.S. around election time. How would you respond to his concern? Write a letter back to him in the space below.*

Letter from your friend:

From what I've been told, elections in the U.S.A. are crazy. I've heard the term "media circus." You have something like 500 channels on television and all those websites— how do you know what you should watch? How do you know who is lying and who's telling the truth? In a way, I'm relieved that we only have our official media. It's much easier. I know what the correct point of view is, and it's not so confusing. Plus we're all more unified – all that arguing among citizens causes division which is bad for society.

Your response to your friend:
