



## Lesson Plan: Fayette v. Take Two

### Context of the unit:

This lesson is within an 8<sup>th</sup> grade unit about the Bill of Rights and focuses on how the Supreme Court operates within the context of a simulated First Amendment case.

### Context of the lesson within the unit:

This lesson follows lessons introducing the structure of the federal judicial branch and the rights included within the federal Bill of Rights. Students have already participated in a “Bill of Rights Scramble” activity where they have gained an understanding of the basic rights protected under the aforementioned document as well as lessons outlining the structure and function of the U.S. Supreme Court. They have also read and discussed cases relevant to the simulated case that they will be ruling upon.

### Standards Addressed:

#### **8.2 Students analyze the political principles underlying the U.S. Constitution and compare the enumerated and implied powers of the federal government.**

- #6. Enumerate the powers of government set forth in the Constitution and the fundamental liberties ensured by the Bill of Rights.
- #7. Describe the principles of federalism, dual sovereignty, separation of powers, checks and balances, and the nature and purpose of majority rule, and the ways in which the American idea of constitutionalism preserves individual rights.

#### **8.3 Students understand the foundation of the American political system and the ways in which citizens participate in it.**

- #6. Describe the basic lawmaking process and how the Constitution provides numerous opportunities for citizens to participate in the political process and to monitor and influence government.
- #7. Understand the function and responsibilities of a free press.



## Craft and Structure

### **College and Career Readiness Anchor Standards for Writing Grades 6-12**

#### Text Types and Purposes

1. Write arguments to support claims in an analysis of substantive topics or texts, using valid reasoning and relevant and sufficient evidence.

### **Common Core State Standards for English Language Arts and Literacy in History/Social Studies, Science, and Technical Subjects**

### **College and Career Readiness Anchor Standards for Reading Grades 6-12**

#### Key Ideas and Details

1. Read closely to determine what the text says explicitly and to make logical inferences from it; cite specific textual evidence when writing or speaking to support conclusions drawn from the text.

1. Assess how point of view or purpose shapes the content and style of a text.

9. Draw evidence from literary or informational texts to support analysis, reflection, and research.

#### Research to Build and Present Knowledge

10. Draw evidence from literary or informational texts to support analysis, reflection, and research.

### **Objective(s):**

1. Students will identify societal conflicts inherent within free speech rights.
2. Students will analyze opposing perspectives regarding free speech rights and limitations and draw their own conclusions based on a simulated case.
3. Students will develop a basic understanding of how the Supreme Court decides a case.



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### Big Idea(s):

1. Democracy requires citizen involvement in the lawmaking process. Student engagement increases those chances later in life.
2. Educated citizens, familiar with the big questions as well as the mechanics of our lawmaking process, are the foundation of our system of government.

### Essential Questions/Issues:

1. First Amendment Rights such as free speech are the cornerstone of our democracy.
2. First Amendment Rights are not absolute, generate conflict, and are open to judicial interpretation.

### Higher Order Thinking Questions:

1. Are there limits to freedom of speech? (Evaluation)
2. Should limits be placed on free speech? (Application, Synthesis in a mock case)
3. Do limits on freedom of speech jeopardize democracy? (Evaluation)
4. What rights or securities can be compromised by unabridged free speech? (Analysis)
5. Should the government regulate, or should the citizenry “self-regulate” forms of free speech available in the marketplace? (Evaluation)
6. Is there a point where government is obligated to regulate free speech in the public interest? (Application, Analysis)



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7. Should the majority forgo certain forms of free speech in order to protect the rights of a minority? (Evaluation)
8. Can criminal acts be linked to free speech? (Evaluation)
9. What First Amendment conflicts are posed by social networking? (Synthesis)



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**Assessment:** Students will write a “justice’s opinion” and apply first amendment interpretations to a simulated case. From there they will use their written opinions to discuss and debate the issue to try to arrive at a consensus in small groups. There will be a debrief discussion as well.

**Quality Criteria:**

Level of Understanding Demonstrated	4- Advanced	3- Proficient	2- Approaching Proficiency	1- Basic
Based on their written opinions, students demonstrate understanding of conflicts created by free speech rights and are able to formulate a rational opinion when presented with a realistic First Amendment conflict.	Written opinion strongly demonstrates a thorough understanding of free speech conflicts and proposes a compromise or solution that applies first amendment principles thoughtfully. All requirements are followed. (See student packet).	Written opinion demonstrates a solid understanding of free speech conflicts and proposes a compromise or solution that applies first amendment principles. All requirements are followed. (See student packet).	Written opinion demonstrates some understanding of free speech conflicts and proposes a compromise or solution that applies first amendment principles. Most requirements are followed. (See student packet).	Written opinion demonstrates a limited understanding of free speech conflicts and proposes a vague compromise or solution that applies first amendment principles. A majority of requirements are followed. (See student packet).



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**Activity Steps:**

This lesson usually takes two to three class periods. We begin with a brainstorm/or pair share that addresses the question “Why is free speech important?” or “Why did the Founders list it first?” This is followed by an activity in which we look at the specific language of the First Amendment with a focus on the word “abridge”. We then look at some summaries of previous court cases that are relevant to the case they will be ruling upon. I then introduce the simulated case and lead a class discussion about the case. Students begin taking notes in their packets. Students then view the 60 Minutes video and continue taking notes about evidence on both sides of the case. Students then write their own opinions. Next, they meet in small groups to share, and then vote on a group decision. Since there are nine groups, each symbolizes one Supreme Court justice. We discuss the vote and “next steps” once the “court” has ruled.

Purpose	Teacher	Students
<b>Hook</b> Engage Students 10 -15 minutes	Use the word “abridged” in several sentences, then revisit text of First Amendment with students.  Acknowledge and list any valid interpretations of the word, and substitute some of them within the text of the First Amendment.	Brainstorm/list possible meanings of the word “abridged” and its meaning within the First Amendment.  Students record variations.
<b>Into</b> 20 minutes	Share and discuss briefs/summaries of relevant First Amendment court decisions (See relevant Supreme Court cases).	Read and discuss decisions. Ask clarifying questions and discuss rationale of court decisions.



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<p><b>Through</b></p> <p><b>5-10 Minutes</b></p>	<p>Pass out lesson packet (see attached packet).</p>	<p>At this point students use prior lessons, or a quick web search to fill in the top of their “Decision Writing Template”.</p>
<p><b>10-15 Minutes</b></p>	<p>Discuss the “Mock Case Brief”.</p>	<p>Students read brief quietly and then participate in class discussion about facts of the case, and relevant Constitutional questions.</p>
<p><b>30-40 Minutes</b></p>	<p>Show the 60 Minutes story related to the “Mock Case Brief”. <i>In this instance it is a story about a controversial video game titled “Grand Theft Auto”. Teacher’s can pick and choose other case and media.</i></p>	<p>Students take notes on their “Justice’s Notes Template” as they watch and then debrief the video.</p>
<p><b>20-30 Minutes</b></p>	<p>Discuss Decision Writing Guidelines.</p>	<p>Students write a draft of their decision in class to be used for small group share the next class session. (9 small groups = 9 Justices</p>
<p><b>20 Minutes</b></p>	<p>Facilitate small group (3 to 4 students) sharing and voting. Rules include: 1) The majority in the small group determines the one vote cast by the group. 2) The</p>	<p>Students share their draft opinions, discuss, debate, vote, and then write brief rationales for their votes (based on their written drafts).</p>



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	<p>majority must write a minimum of two rationales for their decision.</p> <p>3) The minority must write at least one rationale for the dissenting vote(s).</p> <p>Record group votes, discuss implications, Supreme Court procedures and possible constitutional responses (new legislation, amendment process).</p>	
<b>Beyond</b>	<p>Expand selection of relevant Bill of Rights cases, adapt activity to other Amendments, find other media sources and current events that can be made into simulated cases.</p>	<p>Students can research and find related cases that have been addressed in the California court system. Students can speculate about future cases involving trends in social networking and texting.</p>

**Special Needs of students are considered in this lesson:**

GATE: This lesson gives plenty of opportunity for critical thinking, and further case study/exploration. Special Ed: Depending on the learning challenge, steps are easy to modify or differentiate. The video game scenario provides strong visuals related to First Amendment issues. Small groups facilitate inclusion of Special Ed. students in discussion and voting process. ELL: Again, steps can be modified and the topic has a significant visual element. Small groups promote inclusion of ELL students in discussion and voting process.

**Extension Ideas:**

Other cases can be analyzed in a similar fashion. Students can find cases or controversies in the news that share common threads. A mock Supreme Court can be adapted to this activity.



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### Materials and Resources Needed:

- Student packet (attached)
- computers with internet access (to find basic information on Supreme Court)
- relevant case citations and summaries
- 60 Minutes Video on “Grand Theft Auto”.

### References:

The Bill of Rights

CBS News Website

Hall, Kermit (1996). America Legal History: Cases and Materials. New York: Oxford University Press.

Hall, Kermit (1999). The Oxford Guide to United States Supreme Court Decisions. New York: Oxford University Press.

Patrick, John (2001). The Supreme Court of the United States: A Student Companion. New York: Oxford University Press.

### Relevant Supreme Court Cases

Wisconsin v. Mitchell (1993)

Brandenburg v. Ohio (1969)

Schenck v. United States (1919)



**Lesson Plan: Fayette v. Take Two**

**Student Handouts:**

**How Far does Free Speech Go?**





## Analyzing the First Amendment Via Current Events

### Contents

1. Decision Writing Template
2. Mock Case “Brief”
3. Justice’s Notes Template
4. Ruling Guidelines
5. Some Sources and Cases



## 9 Wise Men and Women

Name \_\_\_\_\_ Per \_\_\_\_\_

Justice Antonin Scalia has decided to spend more time with his family in the remaining years of his life. He also doesn't mind getting three times his pay as a part time legal consultant for a major TV network. President Obama has appointed you to fill his seat on the United States Supreme Court!!!! After some rocky confirmation hearings in the Senate, you were confirmed and are now ready to hear your first Constitutional case.

Your term in office: \_\_\_\_\_

Your pay: \_\_\_\_\_

Constitutional Requirements needed to fill this position: \_\_\_\_\_

Constitutional Issue or Amendment in question: \_\_\_\_\_

Your ruling: (In favor of plaintiff or defendant) \_\_\_\_\_

Reasoning:



## Fayette Alabama v. Take Two Interactive

The City of Fayette Alabama has passed an ordinance banning the sale or possession of the video game “Grand Theft Auto” within its city limits. Take Two Interactive produces “Grand Theft Auto” which is graphic, violent, and extremely popular amongst gamers.

It is the Fayette City Council’s contention that playing “Grand Theft Auto” has encouraged some young people to commit deadly crimes, and in at least one case to specifically target police officers. They point to a recent shooting that claimed the lives of three Fayette officers. It is the Council’s position that the game is not a form of expression protected by the First Amendment because it promotes violence against a specific group: police officers. In past decisions the Supreme Court has ruled that the First Amendment does not protect “fighting words” that target a specific group and that restrictions can be placed on speech that appears to encourage or cause illegal actions.

The makers of the game, Take Two, state that the game is simply that, a game. Millions of people play the game daily and lead normal, law-abiding lives. Thus Take Two contends that the game alone does not contribute to acts of violence against police officers or encourage other illegal actions. Furthermore, they believe the game may be a way for players to let out aggression, thus discouraging violence. Most importantly, Take Two argues that the game is a form of free expression protected by the First Amendment to the Constitution. Banning “Grand Theft Auto” would open the door to the censorship of any form of expression a community deems threatening, including music, books, and videos. Take Two regards any limitations placed on the game as unconstitutional.

The case worked its way through the lower courts in Alabama and eventually to the Alabama supreme court, where the court sided with Take Two. As a result, the city of Fayette appealed to the U.S. Supreme Court and you and your fellow justices have agreed to hear the case.





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**Evidence for City Council**

**Evidence for T2**



## Ruling Guidelines:

1. Clearly State Your Opinion – Do you rule in favor of the Fayette City Council or in favor of T2?
2. Site at least two specific reasons in favor of your ruling from your notes and explain why they support your opinion.
3. Explain how you interpret the First Amendment and how your interpretation supports your ruling