

## **Rights Lab– Episode 4: Where Can I Protest?**

### **Overview**

This lesson is the 4th in a series of four that accompany the documentary film series, [Rights Lab](#). They provide a vehicle for discussing how laws, government, and technology intersect around the Constitution. With a mix of compelling documentary video and motion graphic elements, the curriculum uses evidence-based learning by teaching students to analyze texts, graphs, and video content as well as participating in role-playing and other engaging activities designed to foster measurable growth in history and social studies courses.

Along with exploring the moral dilemmas raised within the core media, the curriculum also uses relevant background material to trace the changes within civil liberties over time. Each lesson offers historical context, citing information from scholarly sources, and collaborative activities that include multiple forms of learning in order to engage a diverse class set. Throughout the curriculum, students are provided opportunities to reflect and assess mastery and understanding of current law, how these laws came to be, and how technology and social issues play a factor in moving forward. They are summatively and formatively evaluated and questioned to provide clear benchmarks of achievement and understanding.

### **Lesson Learning Outcomes**

Students will develop a fundamental understanding of the significance and evolution of civil liberties in history and how certain events and advancements led to change. This lesson centers on the knowledge pertaining to our basic right to peacefully assemble under the First Amendment of the Constitution.

### **Suggested Grade Level**

8-12 grades

### **Duration of Activity**

1 class period (90 minutes)

### Common Core Standards

| CCSS Reading  | CCSS writing  | CRS English  |
|---|---|--|
| <p>Reading for Literacy in Social Studies</p> <p><b>CCSS.ELA-LITERACY.RH.11-12.7</b><br/>Integrate and evaluate multiple sources of information presented in diverse formats and media (e.g., visually, quantitatively, as well as in words) in order to address a question or solve a problem.</p> <p><b>CCSS.ELA-LITERACY.RH.11-12.9</b><br/>Integrate information from diverse sources, both primary and secondary, into a coherent understanding of an idea or event, noting discrepancies among sources.</p> <p><b>CCSS.ELA-LITERACY.RH.11-12.2</b><br/>Determine the central ideas or</p> | <p>Writing Standards</p> <p><b>CCSS.ELA-Literacy.WHST.9-10.4</b><br/>Produce clear and coherent writing in which the development, organization, and style are appropriate to task, purpose, and audience.</p> <p><b>CCSS.ELA-Literacy.WHST.9-10.9</b><br/>Draw evidence from informational texts to support analysis, reflection, and research.</p> | <p>Band 13-15</p> <p><b>CLR 201.</b> Locate basic facts (e.g., names, dates, events) clearly stated in a passage</p> <p><b>REL 202.</b> Identify simple cause-effect relationships within a single sentence in a passage</p> <p>Band 16-19</p> <p><b>CLR 301.</b> Locate simple details at the sentence and paragraph level in somewhat challenging passages</p> <p><b>CLR 302.</b> Draw simple logical conclusions in somewhat challenging passages</p> |

information of a primary or secondary source; provide an accurate summary that makes clear the relationships among the key details and ideas.

**CCSS.ELA-LITERACY.RH.11-12.1**

Cite specific textual evidence to support analysis of primary and secondary sources, connecting insights gained from specific details to an understanding of the text as a whole.

**CCSS.ELA-LITERACY.RH.11-12.3**

Evaluate various explanations for actions or events and determine which explanation best accords with textual evidence, acknowledging where the text leaves matters uncertain.

**CCSS.ELA-LITERACY.RH.11-12.8**

Evaluate an author's premises, claims, and evidence by

**REL 302.** Identify simple cause-effect relationships within a single paragraph in somewhat challenging literary narratives  
Band 20-23

**REL 403.** Identify clear cause-effect relationships in somewhat challenging

**EXJ 302.** Generate reasons for a position that are vague or simplistic; show a little recognition of the complexity of the issue in the prompt by

**DEV 301.** Offer limited development in support of ideas; clarify ideas somewhat with vague explanation and the use of general examples

**ORI 301.** Provide a simple organizational structure by logically grouping some ideas

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| corroborating or challenging them with other information. |  |  |
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**Essential Questions**

1. How does the First Amendment define the right to protest and express political opinions? Provide examples of what actions may be protected under the First Amendment.
2. What is meant by “reasonable time, place and manner restrictions” on protests? Students should be able to describe a scenario in which a protest is restricted and why. E.g. a big march in busy downtown only allowed during non-rush hours.
3. How does the Constitution protect people with different and opposing positions?
4. What tactics have been used to make political change over the years? Are these tactics more or less effective than voting to make social change? Give examples of what you think is and isn't effective.

**Essential Knowledge**

1. The First Amendment guarantees that the government ensures freedom of religion, freedom of speech and freedom of the press
2. Reasonable time, place and manner restrictions are rules by which the government can restrict protest. They govern:
  - A. Whether the protest is taking place at a decent time - ie a protest at 2 a.m. in a residential neighborhood might be discouraged

B. Would the place the protest is taking place put other people in danger ie in front of a hospital, or is it not on public land?

C. Manner restrictions govern whether, for example, the protest will stop individuals from getting to a place where they'll have a medical procedure

3. Equal protection is your right as a citizen. The reason for the importance of people with differing opinions receiving the same rights and protections under federal law lies within the First Amendment and the way it protects freedom of speech. This provides an outlet for free expression, and the ability for people to voice their opinions openly to create awareness and lead to change, such as with the Civil Rights movement. The Supreme Court is serious about any restrictions on protest being content-neutral, to keep judges or lawmakers opinions from curtailing the right to protest.
4. Students should be aware of the tactics used for protesting on the topic of abortions by means of the Rights Lab episode. They should also know that it is illegal to prevent/block people from entering places where they are taking part in a constitutionally-protected medical procedure. They should see how both the Pro Life and Pro Choice activists strategically protest—through an understanding of the law by means of protesting as close as possible to Planned Parenthood and other abortion centers. Most states have distance limitations. Students don't need to know the exact numbers per se, just that distance itself varies from government body to government body (State, Local. Federal).

## **Historical Context**

The First Amendment, ratified on December 15th, 1791, reads: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." A key part of this amendment is the protection of freedom of assembly, which allows people to congregate to express their freedom of speech. The decades leading up to the creation of the First Amendment saw several events that helped shape the amendment. Groups of people were arrested for preaching a gospel contrary to that considered mainstream - Baptists who didn't preach to the Anglican book of prayer - and in 1735 a famous libel trial shook New York when a local publisher was tried for libel after publishing criticism of the governor of New York.

The bill got off to a rocky start. Only seven years after the First Amendment was ratified, Congress passed the Alien and Seditions Act of 1798, making it illegal to criticize government, in response to concerns about a war breaking out that would undermine the newly created country of the United States. They were repealed when Thomas Jefferson became president, in 1801. The First Amendment wouldn't become singularly important until the 20th century came around.

Based on a precedent created in several cases - particularly *Rosenberg v. Rector and Visitors of the University of Virginia* which clarified the difference between barring speech on a topic or on a particular view of a topic - protest law has evolved to now allow discrimination based on viewpoint, meaning that protests can't be banned because of their subject matter. The government can, however, create reasonable time, place and manner of speech restrictions if they can prove the restrictions are within reason. The government can also limit protests on government property if they're violent, in an area such as a school, or outside government buildings charged with being neutral law-makers, such as the Supreme Court. Some localities also have permit ordinances, meaning a planned march or protest has to get permission before taking place.

Before states had to protect all the legal rights of individuals, state governments could regulate speech without regard to the First Amendment. This changed in 1939 when Justice Owens Josephus Roberts said that the use of the streets and public spaces is a right of citizens. From there, the court developed a Federal Forum Analysis to decide what kinds of speech are appropriate in which publically owned locations. Traditional Public Forums include a sidewalk, street or public park; Designated Public Forums that the government has opened up specifically for First Amendment activity; and Non-Public Forums in which First Amendment rights are unclear, such as military bases, airport terminals or post offices.

The civil rights movement of the 1960s drew upon several First Amendment freedoms, primarily speech, free assembly and the right to petition, to fight for racial equality and eventually end segregation in the South. They used sit-ins, bus rides called "Freedom Rides" and marches across the country - sit-ins took place in more than 100 cities by 1960. The NAACP filed lawsuits throughout the turbulent period to protect protesters First Amendment rights - including *Gibson v. Florida* (1963) in which the NAACP sued to overturn the Florida legislature's

investigation of them for Community activity and NAACP v. Claiborne Hardware Co, in which a hardware company sued the NAACP over a boycott and picket of businesses that didn't serve black people, with the court eventually siding with the NAACP's non-violent tactics. NAACP attorney Thurgood Marshall would later go on to be the first African-American Supreme Court justice. great

In 1976, the U.S. Supreme Court ruled in *Hudgens v. National Labor Relations Board* that the First Amendment didn't prevent a property owner from restricting the exercise of free speech on their property. The case in question was a protest by union members picketing inside a mall - when they were told to either leave or face criminal trespass charges, they argued to the court that this abridged their First Amendment rights. The court, however, decided in favor of restricting protest on private property. A case in 1988 - *Frisby v. Schultz* - further codified in law that picketing was banned not just on but also in front of private residences.

Some states have local constitutions that expand protest rights. In New Jersey and California, for example, free speech rights can prevail over that of property owners. The New Jersey law is specific to free speech rights in shopping malls. In California, it was high school students that helped push free speech in shopping malls with the 1980 case *Pruneyard Shopping Center v. Robins*. Several local high school students wanted to solicit signatures against a United Nations resolution. When the mall tried to restrict them, the case was taken to court and found in favor of the high schoolers right to exercise their free speech in private shopping centers and for individual states to offer freedoms beyond that of the constitution.

Buffer zones around abortion clinics have been contentious because anti-abortion protesters have said they were exercising their free speech rights, while proponents of reproductive choice have argued that protesters were obstructing a legally recognized right to health care. The solution to this has been to create a buffer zone which delineates how far away anti-abortion protesters can be from a clinic. The first such buffer zone law was in Colorado, which mandated an 8-foot buffer zone, and was upheld by the Supreme Court in *Hill v. Colorado* in 2001. Illinois does not have a bubble zone law, but Chicago does. In August 2016, anti-abortion protesters filed a law to take down Chicago's bubble zone law.

The Westboro Baptist Church was in the middle of a Supreme Court case that further challenged the question of what areas are allowed for free speech - *Snyder v. Phelps* in 2010 found that the church caused emotional distress to a soldier's family by protesting outside his funeral. The concern here was that the restriction could have discriminated on viewpoint - but by banning all emotionally distressing protests outside of funerals the court made sure to be mostly content neutral.

In 2011, the Occupy movement raised the question of how localities dealt with protests - and what was considered protest and whether the time it took place mattered - when members tried to sleep in public and private parks and plazas across the country. Some were welcomed, while the majority were forcibly evicted. In Chicago, people arrested while trying to set up an encampment in Grant Park were charged with violating a curfew, though most charges were eventually dropped.

## **Vocabulary**

### ***The Freedom to Assemble:***

The right for people to congregate in order to express their freedom of speech

### ***The Federal Forum Analysis:***

Used to decide what kinds of speech are appropriate in which publically owned locations

## **Materials**

1. Episode 4 Powerpoint Slides
2. Lesson 4 Student Notes Packet
3. Independent Activity (assessment at the end of class)

## **Opening Activity:**

**10 min–Opening Question:** What does the First Amendment mean to you?

Teacher decides whether or not to have students write their responses silently, work in groups or as partners, or engage in an open whole-class discussion.

### Further thinking:

1. How does this amendment effect law?
2. What freedoms are important to you?
3. What does it mean to have a right to peacefully assemble?
4. When should people assembling not be allowed?
5. How does the term peacefully play a factor?

Give students 5 minutes to write, and five minutes to share with a partner before opening a full discussion.

## **25 min–Powerpoint Instruction:**

Teacher guides students through the powerpoint slides. Prompting students to take notes accordingly. Additional instructions, further thinking, and discussion questions are associated with each slide in the comments.

## **10 min - 20 min–Rights Lab Episode:**

After instruction, students watch the relevant episode of Rights Lab and engage in a teacher led discussion centering on the content of the episode.

## **25 min–Independent/Collaborative Assignment:**

### Option 1: Writing Prompt

Post the following question to the class, “Are the laws regarding protesting fair to you? Why or Why not?” Give the students roughly 15 minutes to write a response to the question. Make sure they utilize what they learned from the episode and what they have in their notes as well.

Option 2: Collaborative Assignment: - Where can I Protest Game

Divide the class into groups. Assign each group a different protest scenario to analyze. Have students use their notes to determine the following:

- Who is protesting, what are they protesting, and who is affected by it?
- Was the protest legal? Why?
- How can they use the First Amendment in court?
- What effect to police officers have on this event. What is within their power?

After the groups have a chance to discuss the scenario, have one member from each group read their scenario and present their findings. If time allots, have the groups switch scenarios to analyze.

***10 min–Assessment:***

See attached worksheet for end-of-class assessment

***Extended Assignment/Homework***

Watch the panel discussion following the Rights Lab Episode & write a response.

# Rights Lab Episode 4



Where can I protest?

# Opening Activity

The First Amendment, ratified on December 15th, 1791, states that there is a “right of people peaceably to assemble, and to petition the Government for a redress of grievances.”

Describe what this means to you? How does this relate to today? Can you protest anywhere? Does it apply to you and your daily life? If so, then how?

# Questions for the Day

1. How does the First Amendment define the right to protest and express political opinions?
2. What is meant by “reasonable time, place & manner restrictions” on protests?
3. How does the Constitution protect people with different and opposing positions?
4. What tactics have been used to make political change over the years? Are these tactics more or less effective than voting to make social change?

# Agenda

1. Discovering the First Amendment
2. The Evolution of Assembly
3. Where can I protest
4. The Limits of Assembly
5. Rights Lab Episode 4

# The First Amendment

Ratified on December 15th, 1791, reads: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

# Constitutional Vocabulary

## **The Freedom to Assemble:**

The right for people to congregate in order to express their freedom of speech

## **Federal Forum Analysis**

Used to decide what kinds of speech are appropriate in which publically owned locations.

# The Evolution of Assembly in America

# Alien and Seditions Act (1798)

- Made it illegal to criticize the government
- The reason behind the Act was a response to the fear of war breaking out that would undermine the newly created United States
- The Seditions Act resulted in the prosecution and conviction of many people that disagreed with the government
- Thomas Jefferson, who was against the Alien and Seditions Act, used this attitude to help win the election against President Adams

# The Civil Rights Movement (1960s)

- The movement to end segregation and fight for racial equality in the US
- Brought into question freedoms provided under the First Amendment, primarily the freedom of speech, free assembly, and the right to petition
- Protest tactics included sit-ins, boycotts, “Freedom Rides”, and marches across the country
- Many major court cases sided with civil rights non-violent protesting tactics

# Hudgens v. National Relations Board (1976)

**Facts:** Union members on strike decided to picket in front their stores. The general manager of the mall in which one store operated in threatened to arrest the strikers for trespassing.

**Issue:** Can a private shopping mall prohibit members of the public protesting a store in it?

**Holding:** Because a shopping mall is private, unlike a town or city, it may restrict First Amendment rights

**Reasoning:** A shopping mall does not have the same functionality of a town. So it is not restricted by the confines of public space and the freedoms under the First Amendment.

# Frisby v. Schultz (1988)

**Facts:** Anti-abortion protesters picketed outside of the home of a doctor that performs abortions. The protesting was generally peaceful, but violated a town ordinance banning picketing “before or about” any residence. The anti-abortionists claimed that the ordinance unconstitutionally restricted their right of free speech.

**Issue:** Is the town ordinance that restricts picketing in residential areas narrowly tailored to serve the government’s self interest?

**Holding:** The ordinance is valid. Picketing is banned on or in front of private residences.

# Frisby v. Schultz (1988)

**Reasoning:** Though the town ordinance is narrowly tailored to protect government interests and is therefore a constitutional restriction of First Amendment rights, it is content neutral and only prohibits certain conduct regardless of content (in this case, protesting in front of a private residence). Residential streets are as much public space as any other street and the protesting was peaceful, but the picketing was intrusive because the doctor couldn't avoid it given its proximity to his home. The doctor was literally trapped at home by the picketers. The doctor had no means of avoiding this unwanted speech. It is not the content of the protest that is the issue, it is the conduct of the protest that limited the doctors civil freedoms.

**Currently,** protest law has evolved to not allow discrimination based on viewpoint, meaning that protests can't be banned because of their subject matter.

# Where can I protest?

Where can I legally protest?

- Schools
- Outside of courtrooms
- In the street
- At a public park
- On government property
- At a local business

# Where can I protest?

Where can I legally protest?

- × Schools
- × Outside of courtrooms
- ✓ In the street
- ✓ At a public park
- × On government property
- ☒ At a local business-If permission is granted by the owner of the property

# The Limits of Protesting

The government can limit the time, place, and manner of freedom speech and assembly. They must, however, prove that the restrictions are within reason.

## **The government can also limit protests...**

- On government property if they're violent,
- In an area such as a school, or
- outside government buildings, such as the Supreme Court
- At local venues where permission is needed first

**Where can I protest?**

I'm in a group against abortion. Can I protest outside of a Planned Parenthood?

I do not agree with the new selection for the President of the United States. My friends and I decide to protest in front of the President's home.

Chicago decided to add two additional hours to the school day. Both teachers and students are upset, for various reasons. The two parties decide to organize a protest at a park.

There is a major crisis in North Dakota over pipelines that are a direct violation of the treaty rights that promised the land to the indigenous people. You form a protest directly over the pipeline in question.

Where can I protest?

Rights Lab: Episode 4

# Assignment

Write a synopsis on what you learned today. What do you now know about protesting that you didn't before? What do you now know about law in the United States?

Name \_\_\_\_\_ Date \_\_\_\_\_ Class \_\_\_\_\_

**Directions:** Decide whether or not the protesters in each scenario are protected by the First Amendment. Provide reasoning with your decisions. Answer in complete sentences and to the best of your knowledge.

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| <b>I'm in a group against abortion. Can I protest outside of a Planned Parenthood?</b> | <b>I do not agree with the new selection for the President of the United States. My friends and I decide to protest in front of the President's home.</b> |
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| <b>Chicago decided to add two additional hours to the school day. Both teachers and students are upset, for various reasons. The two parties decide to organize a protest at a park.</b> | <b>There is a major crisis in North Dakota over pipelines that are a direct violation of the treaty rights that promised the land to the Indigenous People. You form a protest directly over the pipeline in question.</b> |
|  |  |

Name \_\_\_\_\_ Date \_\_\_\_\_ Class \_\_\_\_\_

**Questions for the Day:**

- 1. How does the First Amendment define the right to protest and express political opinions?**
- 2. What is meant by “reasonable time, place and manner restrictions” on protests?**
- 3. How does the Constitution protect people with different and opposing positions?**
- 4. What tactics have been used to make political change over the years? Are these tactics more or less effective than voting to make social change?**

| <b>The First Amendment</b> |
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| <b>The Freedom to Assemble</b> | <b>Federal Forum Analysis</b> |
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| <b>Civil Rights Movement (1960s)</b> | <b>Alien and Sedition Act (1978)</b> |
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|                                      |                                      |

Name \_\_\_\_\_ Date \_\_\_\_\_ Class \_\_\_\_\_

| <b>Hudgens v National Labor Relations Board</b> |
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| <b>Frisby v Schultz (1988)</b> |
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| <b>Current Law</b> | <b>Where can I protest?</b> |
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| <b>The Limits of Protesting</b> |
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