

**AMERICAN CONSTITUTION SOCIETY (ACS)  
CONSTITUTION IN THE CLASSROOM  
THE RIGHT TO VOTE**

MIDDLE SCHOOL CURRICULUM — SPRING 2016

Lesson Plan Overview

The purpose of this lesson plan is to provide middle school students with a basic understanding of enfranchisement, or the right to vote, as guaranteed by the Constitution of the United States and their respective state constitution. Topics include what it means to vote, the history of voting rights in the United States, which types of votes are constitutionally protected, and certain efforts to restrict people's right to vote.

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Structure of American Government

**The Three Branches of Government**

In the American system of government, the power is bestowed on three branches of government by the people, and embodied in the Constitution of the United States and the respective states. There are three branches: the Legislative, the Executive, and the Judicial. Each of the three holds certain responsibilities to the public and has certain powers and authority.

We will focus our discussion on the U.S. Constitution for two reasons. The first reason is simply for the sake of keeping things simple. Each of the 50 states has their own constitution, with certain particularities that make them unique. The second reason is: Art. VI, Paragraph 2, which is referred to as “the Supremacy Clause”:

*“This Constitution, and the Laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.”*

The Supremacy Clause is very important in Constitutional and Election Law. This clause establishes that the federal constitution and most federal laws take precedence over conflicting state laws.

The Constitution sets up the government of the United States and guarantees certain freedoms. The first three Articles of the Constitution establish the powers of the three branches of government.

Article I creates the Congress. There are 4 major points to understand about the Congress.

1. The Congress is “vested” with all of the legislative – or law *making* – powers of the federal government. That means that the Congress *writes* or *creates* the laws of the land. Can anyone name a law? Examples include the Voting Rights Act, Civil Rights Act, Immigration and Naturalization Act, PATRIOT Act, Affordable Care Act, etc.
2. There are two houses of Congress – a term called *bicameralism* – the House of Representatives and the Senate.
3. Members of the House are elected from districts drawn within each state, and each district must have roughly the same population. Therefore, states with larger populations have more members, and states with smaller populations have fewer members. For example, California and Texas have large House delegations: 29 and 26 respectively – because California and Texas have large populations compared to other states. Smaller states, like Rhode Island and Wyoming, only have one member of the House. Senators are elected statewide, and each state has two.
4. Every House member has a term of 2 years. That means that every 2 years, all 435 seats in the House are technically up for grabs. Senate terms are 6 years. There are 100 Senators, and only 1/3 of that body is up for reelection every 2 years.

Article II creates the Presidency. The president is the chief executive of the United States government and the Commander-in-Chief of the armed forces. Key points about the Presidency are:

1. The President sees that all laws are “faithfully executed.” This means that it is the President’s job to see that the rules governing the country are followed. If someone breaks a law, then an agency of the Executive branch, not Legislative or Judicial branch, takes *action* to see that the law is followed. For example, if somebody intentionally or negligently pollutes a river, that violates the Environmental Protection Act and the Clean Water Act. The President can see that the Director of the Environmental Protection Agency and the Department of Justice make certain that the law is followed by commencing civil action against the polluter.
2. Presidential elections are held every four years. A President is limited to two 4-year terms.

Article III creates the Judicial branch. Specifically, it “vests” the power of the U.S. in federal courts, and requires there be a Supreme Court. The key points of the Judicial branch:

1. The federal courts can rule on the constitutionality and legality of matters arising only from certain cases and controversies. There must be an injury to a certain party that the courts can redress (fix), and that injury must have been caused by the action of the defending party.

2. The Supreme Court is comprised of 9 judges. None of the 9 justices, or any federal judge, is popularly elected. They are appointed by the President, with the advice and consent of the U.S. Senate.
3. After a case or controversy, the Supreme Court can hear an appeal or, in limited circumstances, an original case, and assess the constitutionality of laws passed by the Congress, decisions made by subordinate courts, and actions taken by the President and the executive branch.

There are also amendments to the Constitution which guarantee the people certain rights and freedoms. Can you name some of those amendments, or any of the rights protected by those amendments?

1. Freedom of Speech, Press, Religion (Establishment and Exercise), Assembly.
2. Right to bear arms.
3. Freedom from quartering soldiers.
4. Right to be free from unreasonable searches and seizures of their person, papers, and homes. The warrant requirement.
5. Right against self-incrimination.
6. Right to a speedy trial by an impartial jury of your peers. Assistance of counsel.
7. Right to a jury trial in certain civil cases.
8. Freedom from cruel and unusual punishment.

Other amendments: XIII (Involuntary Servitude), XIV (Due Process of Law), XV (No discrimination in voting based on race, color and previous servitude), XIX (Woman's Suffrage), XVII (Popular Election of Senators).

### Voting Rights in the Constitution (30 minutes)

Of all the rights we just discussed, the right to vote is perhaps among the most solemn and important. Ironically, the U.S. Constitution does not explicitly guarantee the right to vote. The right to vote stems from the states' determination of the qualifications of voters, and is only limited by amendments to the federal Constitution and the Guarantee Clause (Art. 4, Clause 1, "The United States shall guarantee to every State in this Union a Republican Form of Government, [...]").

The United States is commonly referred to as a democracy, but the appropriate term is a *democratic republic*. In the U.S., the people do not directly vote on laws, court decisions, or how the President faithfully executes laws. The people vote in people to hold office and write laws, execute laws, and appoint judges to render decisions in court cases.

When the Constitution was being written in 1787, there were differing theories on how the government should run, and these theories were drawn from historical precedent. In a monarchy, a king or queen rules absolutely as a lawmaker, executive, and judge. In an aristocracy, elites come together and make rules and law and appoint from within their caucus a person to execute the laws. In a pure democracy, the people would simply decide what to do popularly. The Founders believed that each theory carried inherent risks for tyranny, and so

those theories were encapsulated in the three branches, each with checks on the power of the others.

In the United States, the process of voting is the formal action of a binding contract amongst all Americans to choose amongst us those that will bring our Constitutional experiment to life. It is a serious, essential, and unprecedented governmental design. It started here, and we all have the duty to see that we act on our right to participate in *self-government*.

### Exercise: Voting Rights History

Ask the students to self-segregate into five, evenly numbered groups. Pass out one color card to each student and each self-segregated group should receive the same color. Explain that there are five different color cards: red, white, blue, green, and gold. Red cards stand for white, landowning, men. White cards stand for all men, regardless of race, color, or land holdings. Blue cards stand for women. Green cards stand for people who are 18 years old. We will get to gold cards in a moment.

Explain that, when the Constitution was written, only white landowning men could vote. Go back to the list of games from the introduction and only allow students with red cards to vote (for expediency, you can allow students to raise hands this time).

Explain that in 1870, after the Civil War, the 15th Amendment was passed protecting the right to vote for all men, regardless of race or color. Repeat the voting exercise allowing red and white cardholders to vote.

Explain that in 1920, after a long fight, the 19th Amendment was protecting the right to vote for women. Repeat the voting exercise allowing red, white, and blue cardholders to vote.

Explain that in 1971, the 26th Amendment was passed protecting the right to vote for anyone who was 18 years old or older. Repeat the voting exercise allowing red, white, blue, and green cardholders to vote.

INSERT GOLD CARDS HERE

Did the results change as more people were allowed to vote? Why do you think that is?

### Exercise: Who Can You Vote For

The Constitution only protects the right to vote in certain elections, but not all elections. First, let's explore some examples of things you can vote for that may or may not be protected by the Constitution. [Draw two columns on the board: "Guaranteed/Protected by the Constitution" and "Not Guaranteed/Protected by the Constitution"]. Go around the room and ask students which column the following should be in (encourage them to guess if they don't know):

NOTE: these are provided in appropriate columns, but mix it up for the class! Also, feel free to supplement this list with your own ideas.

Guaranteed/Protected by the Constitution	NOT Guaranteed/Protected by the Constitution
<ul style="list-style-type: none"> <li>• President of the United States</li> <li>• US Senators from your state</li> <li>• Congressional representatives from your state</li> <li>• Candidates for President</li> <li>•</li> </ul>	<ul style="list-style-type: none"> <li>• President of Mexico</li> <li>• US Senators from another state</li> <li>• Congressional representatives from another state</li> <li>• Contestants on American Idol</li> <li>• Class president</li> <li>• Major League Baseball All-Stars</li> <li>• Supreme Court Justices</li> <li>• Laws</li> </ul>

Exercise: Casting your vote

Choose two volunteers. One will be the entrance warden and one will be the exit warden. Have a list of all of the students' names and have the students line up. Prepare a sample ballot, perhaps printing an old ballot or a sample from the Secretary of State's website. Simulate what it is like to enter a voting precinct, state your name and address, and retire to the voting booth to cast the ballot. Have the ballot collected by the exit warden.

Quick Lesson on Political Parties

The American System has typically featured two major political parties. The two major parties in the U.S. are the Democratic Party and the Republican Party.

The Democratic Party emerged in the late 1820s and 1830s with President Andrew Jackson as its original standard bearer. Throughout the last 200 years, the coalition supporting the Democratic Party has changed dramatically. Currently, the Democratic Party has control of the Presidency, with Barack Obama as the current office holder. Some significant Democratic Presidents have been Franklin D. Roosevelt, John F. Kennedy, and Lyndon B. Johnson. Some significant Democratic members of the Congress were Senators Edward M. Kennedy, Hubert H. Humphrey, and for less glamorous and heroic reasons, Richard Russell, Jr, and Speakers Sam Rayburn and Tip O'Neill. The Democratic Party today typically supports progressive civil rights issues, social liberalism, moderate to liberal economic policy, and the modern welfare state.

The Republican Party emerged in the late 1850s with its first President being Abraham Lincoln. Like the Democratic Party, the "GOP" or "Grand Old Party" has seen significant changes in its governing philosophy and coalition. The GOP began as an anti-slavery party, supporting strong national policies. One might assume that today's Democratic Party is more in line with the original Republican Party's principles. Some significant successors to Abe Lincoln have been Theodore Roosevelt, Dwight Eisenhower, and Ronald Reagan. Some significant Republican members of the Congress were Senators Robert Dole, Robert Taft, Henry Cabot Lodge, Edward Brooke and Speakers Thomas B. Reed. The Republican Party today typically supports conservative governing principles: social conservatism, free trade, fiscal restraint, and a hawkish foreign policy.

## Restrictions on Voting (15-20 minutes)

Remember earlier that the Constitution leaves the power to determine qualifications for voting to the states? States have the power to determine who, when, and how people can vote for their government officials. Also remember, that these restrictions *must* always comply with the U.S. Constitutional amendments prohibit discrimination in voting laws. In some states throughout this country's history, some people have tried to control the outcome of elections by stopping certain people from voting, or by making their vote count less than other people.

### **Literacy Tests**

After the Civil War, African Americans and newly freed slaves were granted the right to vote by operation of the 15<sup>th</sup> Amendment. Soon after though, states began passing laws which restricted those newly franchised Americans.

One way to limit the participation of voters in elections was through a literacy test. When a person would arrive to register to vote, or to cast their ballot in an election, an election warden would require that person to pass a literacy test. These were not always just a test of whether or not a person was literate, but also whether they could memorize long, complicated, and esoteric Constitutional or historical texts. Do you think reciting the Declaration of Independence, the Preamble to the Constitution, or knowing all of the Vice Presidents of the United States should determine whether or not a person should be able to vote?

How many of you know who the President of the United States is? How many of you read in a newspaper or in a book or online who he was? How many of you saw President Obama on T.V. before you read about him in a book or newspaper or online? Do you think reading a newspaper should be a prerequisite to vote? Should being able to get news online determine whether you can vote?

### **Poll Tax**

Question, how many people here think that you should only be able to vote if you have \$100 in your wallet right now? What if you had \$100 in the bank? What if you were extraordinarily wealthy or poor, would that make you more or less qualified to decide on who should be making decisions regarding laws, policy, and perhaps even war?

When a state charges people money as a pre-condition for the right to vote, that is a poll tax. The federal government attacked the poll tax in three different ways. First, 24<sup>th</sup> Amendment was ratified in 1964 which prohibited the Congress and the states from passing poll tax laws. Then, in 1965 the President proposed and the Congress passed the Voting Rights Act of 1965, which – among many other things – directed the Department of Justice to see that the 24<sup>th</sup> Amendment was followed. Finally, the Supreme Court in 1966 declared that Virginia's poll tax law was unconstitutional in a case called Harper v. Virginia Board of Elections. In the words of Justice William O. Douglas, "voter qualifications have no relation to wealth."

Do you agree with Justice Douglas? Is there any conceivable reason why people should have to pay for the right to vote? Do people have to pay for the right to have a jury trial? Do people have to pay for the right to choose their own religion? Does the fact that the right to vote is not technically written into the Constitution matter here?

### **Voter ID**

Recently, some states have started to require that a person has a valid identification card (like a driver's license) in order to vote. What group of people do you think this would keep from

voting? Can you think of a good reason why this group shouldn't be allowed to vote? Think back to the voting exercise with the colored cards. Would it be fair if we asked you to provide identification before you could vote? Could a valid identification requirement help prevent voter fraud?

What happens if you do not have one of these licenses or forms of identification? How many of you have a library card? Did you pay for that? Well, getting certain forms of identification requires a fee. Some states require \$25 or \$50 to get a driver's license, or some other form of picture identification. Does someone paying \$25 for a requirement to vote strike you as fair? Does it sound familiar?

**Gerrymandering** (for students in the 4th grade or above)

A third way that people tried to limit people's right to vote is by controlling the size and shape of the areas, or "districts," from which members of the House of Representatives are elected. This is a pretty complicated idea, but we have an exercise that will make it easy to understand.

In the beginning of class, we talked about how the Constitution sets up what the government looks like, including the House of Representatives, which is part of Congress. Does anyone remember what Congress does? That's right, Congress *creates* the laws. Each member of the House of Representatives "represents" the people from his/her district in Congress. Remember earlier, in the "who can you vote for" exercise when we said that you can't vote on laws? That's because the people we elect to Congress get to vote on the laws. That's what we mean when we say Congress makes the laws. So it is very important that every person's vote counts the same as everyone else's.

Article 1, Section 2, Clause 2 requires that representatives "shall be apportioned among the several States which may be included within his Union, according to their respective Numbers." The districts are reapportioned after the completion of the U.S. Census, or every ten years. Moreover, Section 2 of the 14<sup>th</sup> Amendment extended the counting of all people in every State. This means that the population of the United States is divided by 435 (the total number of seats in the House of Representatives), and that figure will give us the population size of each House district. Today that number is approximately 700,000 people per House seat. There must be proportional representation amongst the states, and there must be equal representation for all people before the House of Representatives.

For that reason, when states draw districts there are six things they have to look at:

1. Whether the district is *compact* (districts should be small in size)
2. Whether the district is *contiguous* (a district should be connected - no islands)
3. Whether the district has an *equal population* (each district should have as close to the same number of people as possible)
4. Whether the district *preserves existing political communities* (when changing district lines, try not to change too much)
5. Whether the district has *partisan fairness* (don't draw district lines to favor one political party)
6. Whether the district has *racial fairness* (don't draw district lines to group together people of a certain race)

Gerrymandering Exercise (can be done individually or in groups):

Hand out three Gerrymandering Worksheets to each student or group. Explain that each red and blue rectangle represents an equal population. Ask the students to draw five

districts according to the above principles (so that the number of representatives is proportional to the total population).

*Bonus 1:* ask the students to draw five districts so that the blue team is a majority in all five districts.

*Bonus 2:* ask the students to draw five districts so that the red team is a majority in three districts.

### Conclusion

“Nobody will ever deprive the American people of the right to vote except the American people themselves and the only way they could do this is by not voting.” Franklin D. Roosevelt.

Voting remains the most basic, and most important, method by which citizens can participate in democracy. It allows citizens to pick their representatives in government, who then decide, pass, and enforce laws which influence every aspect of life. The Constitution, the blueprint for America’s government, protects many rights, including the right to vote. In the beginning, only a small privileged section of the population was able to vote. Over the years, the right to vote has expanded from white, land-owning men to all adult citizens, regardless of race, gender, wealth or education. This was the result of various Constitutional amendments and federal legislation passed by Congress. Furthermore, voting rights have also expanded the voting population, by allowing the voting public to vote directly for President and U.S. Senator. Despite the progress that has been made in protecting voting rights, there are still barriers placed to restrict voting, including voter ID laws and tough-to-reach polling locations. For many, the right to vote was given to them within the lifetime of themselves or their parents. The fact that so many have had their right to vote denied or restricted only reinforces the importance of voting. It is the most fundamental right in a democracy.

All students who are not currently eligible to vote should encourage their parents to vote in the 2016 elections and should accompany their parents to the voting booths!

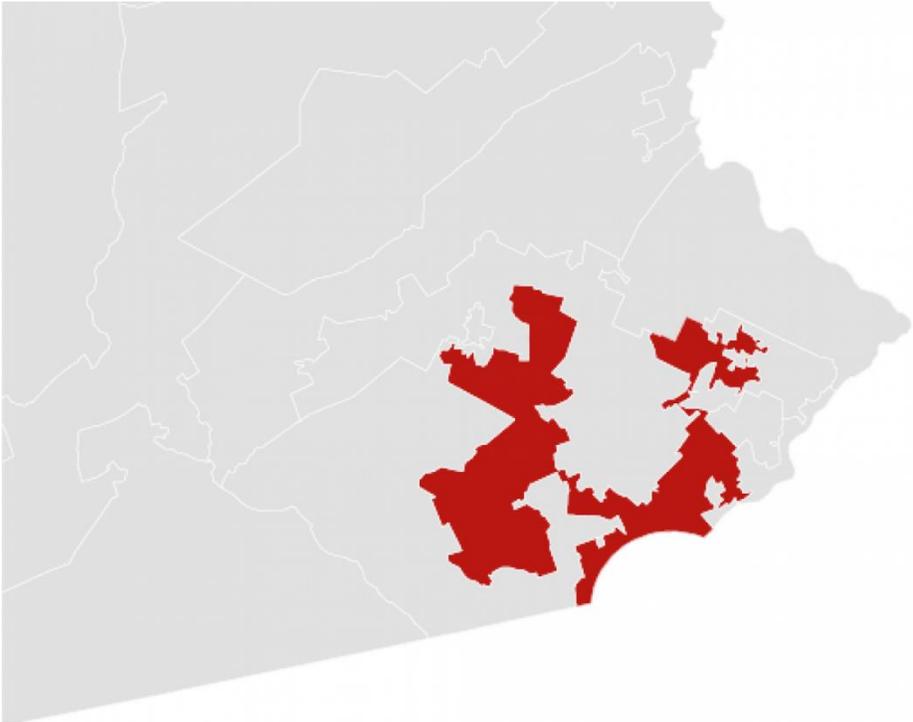
## Appendix

Please use the following three actual Congressional districts and corresponding pictures to supplement your discussion in a manner of your choosing. These materials serve as a stark visual of Congressional gerrymandering in the extreme. As the United States Supreme Court has repeatedly held, these maps are terrific examples of “bizarre” or “Rorschach test” shaped districts. You may lead or conclude the redistricting section of your presentation with the appendix materials. You may choose to provide the appendix materials as a handout for students to take home to serve as a reminder of the complexities of election law.

Maryland 3<sup>rd</sup> Congressional map: Praying Mantis



Pennsylvania 7<sup>th</sup> Congressional map: Goofy Kicking Donald Duck



Texas 35<sup>th</sup> Congressional map: The upside-down elephant

