

**Document-Based Analysis:  
Writing to Read Democracy in New York State & These United States  
Activity Sequence Instructor Guide**

**NYS Next Generation Learning Standards**

\*\*Relevant standards noted for each activity.

*Reading Standards for Literacy in History/Social Studies 6-12*

*Writing Standards for Literacy in History/Social Studies, Science and Technical Subjects 6-12*

*Speaking and Listening Standards 11-12*

**NYS Social Studies Framework**

*Grades 7-8: History of the United States and New York State*

*Grade 11: United States History and Government*

*Grade 12: Participation in Government and Civics*

**Overview of Documents:**

Document A: *Freedom of Expression in the NYS Constitution* (Article 1, Sections 3 and 8, NYS Constitution)

Document B: The First and Fourth Amendments to the US Constitution, 1791

***Case 1: Shield Law***

Document C: New York Civil Rights Law § 79-h (Shield Law), Amended 2019

Document D: Memorandum of Governor Nelson A. Rockefeller, “To Amend the Civil Rights Law in Relation to Contempt,” May 12, 1970

Document E: *Holmes v. Winter*, Court of Appeals, NY, 2013

Document F: Dissenting Opinion, Smith, J. (*Holmes v. Winter*, Court of Appeals, NY, 2013)

***Case 2: “Stop and Frisk”***

Document G: Security against unreasonable searches, seizures and interceptions in the *New York State Constitution*, Section 12

Document H: Stops and Searches of Citizens by the NYPD 2012-2015

Document I: Racial Distribution of Citizens Stopped by “Stop and Frisk” Policies in New York City, 2013-15

***Case 3: Prison and the Frisk***

Document J: *Rivera v. Smith* (Court of Appeals, NY, 1984)

Document K: Concurring Opinion, Kaye, J. (*Rivera v. Smith*, Court of Appeals, NY 1984)

### Overview:

This document-based sequence of activities invites students to chart the dialog between the New York State Courts, the Federal Courts, and other State Courts (Colorado, for instance) regarding the scope of individual rights. Generally speaking, New York State courts are more protective of individual rights than federal courts and more so than other State courts as well. Thus, our central question: *How have the New York State Courts understood the scope of individual rights?*

### Background Information:

Federal Courts interpret the law and rule on cases involving the Federal Government, or in cases where two States' laws may be in dispute. State Courts decide cases on State Constitutions and on local, state and federal questions.

Some states, like New York have been more or less progressive when it comes to the scope and the nature of individual rights. Other states, nowadays Southern States, tend to be more restrictive of individual rights. But this, too, is subject to interpretation (New York, however, while protective of the rights of criminal defendants for instance, are more restrictive when it comes to gun ownership.)

When New York State Courts rule on competing claims, they look both to the common law (i.e. prior judicial decisions); to New York State legislative law (our statutes); and to the New York State Constitution. In all of this, New York is guided by the overarching United States Federal Constitution, which is the great-granddaddy of all laws. While we think of the United States Constitution and particularly its first Ten Amendments (the Bill of Rights) as the final authority on our individual rights, New York State has a progressive tradition in this regard; Interestingly, our very own State Constitution is often more expansive when it comes to individual rights than its Federal counterpart.

At the center of this back and forth, ebb and flow, of the scope of individual rights, is the idea of Federalism. "Federalism" is the concept that the laws of this Country are based upon a balancing act between what the Federal Government thinks and what the individual States may think. "Federalism" is also the concept that we use to understand how and why States often compete with each other about which law will apply in a certain case. Under a Federalist society, such as ours, the States, (New York or Minnesota for instance) have and compete for jurisdiction over some issues, and the Federal government has jurisdiction over other issues. This balancing act between State and Federal government, and between State and State, has been the cause of major political disputes in our history and to this day.