

**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.

Activity 1: Guided Document Analysis

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

NYS Next Generation Learning Standards for Literacy in History/Social Studies:

Grades 6-8:

- **RH2:** Determine the central ideas or information of a primary or secondary source; provide an accurate, objective summary of the source distinct from prior knowledge or opinions.
- **RH4:** Determine the meaning of words and phrases as they are used in a text, including content-specific vocabulary related to history/social studies.
- **WHST4:** Write responses to texts and to events (past and present), ideas, and theories that include personal, cultural, and thematic connections.

Grades 11-12:

- **RH1:** Cite specific textual evidence to support analysis of primary and secondary sources, connecting insights gained from specific details to an understanding of the source as a whole.
- **RH2:** Determine the central ideas or information of a primary or secondary source; provide an accurate summary that makes clear the relationships among the key details and ideas.
- **WHST4:** Write responses to texts and to events (past and present), ideas, and theories that include personal, cultural, and thematic connections.

Common Core State Standards ELA Speaking & Listening, Grades 11-12:

- **CCSS.ELA-Literacy.SL.11-12.1:** Initiate and participate effectively in a range of collaborative discussions (one-on-one, in groups, and teacher-led) with diverse partners on grades 11-12 topics, texts, and issues, building on others' ideas and expressing their own clearly and persuasively.

Reading and Annotating Document A [10-15 Minutes]

1. Handout copies of Document A.
2. Ask for a volunteer to read Article 1, Section 8 out loud.
 - Remind students to follow along, pen in hand, annotating (underline language that strikes you, that you like; circle language you find puzzling).
3. Read Article 1, Section 8 a second time, one student reader per sentence.
4. Pause for students to look over the text themselves and take note of any first thoughts or initial impressions.
5. Ask for a volunteer to read Article 1, Section 3 out loud.
 - Remind students to follow along, pen in hand, annotating (underline language that strikes you, that you like; circle language you find puzzling).
6. Read Article 1, Section 3 a second time, each student reads to a punctuation mark (period, comma, semicolon, etc.) going around the room.
7. Pause again for students to look over the text themselves and take note of any first thoughts or initial impressions.

Focused Free Writing (FFW) to Unpack the Document [25-30 Minutes]

On Focused Free Writing (FFW): Focused free writing always begins with some kind of directive (or focus) in the form of a text or question. For example, you might invite students to write their first reactions to a text (or a moment, a piece of language, or an image within it), or you might offer several interconnected prompts or questions intended to help to open up a topic or text to a wider range of interpretation. *It is important to remember that focused free writing is intended to be generative and exploratory, not a carefully plotted out paragraph. This kind of writing is also often public (shared) and can be used to help students*

articulate and discover their ideas about a text or topic, stimulate or jumpstart discussion, or to delve deeper into specific content.

8. **FFW 1:** What are the rights of a citizen of New York State when it comes to freedom of expression. Make a list based on the information in the document we just read. [3 Minutes]
 - a. **FFW 1a: (for grades 11-12 only):** How can we interpret the statement “being responsible for the abuse of that right”? How does this complicate or change your list of the rights of a citizen of New York State when it comes to freedom of expression? [5 Minutes]
(This prompt can be shared following FFW 1 or it can be set aside for later.)
9. **Share.** Invite students to **read exactly what they wrote in response to FFW 1.** Instructor creates a list of rights on the board, making individual student thinking visible to the larger learning community. [10-15 Minutes depending on class size]
10. **Divide the class into two groups.** Group 1 will work with Article 1, Section 8 and Group 2 will work with Article 1, Section 3.
11. **FFW 2:** Focusing on the document you’ve been assigned, write a summary or a re-statement in your own words of **one sentence** from the document that you feel you understand well. Make sure to do this in your own language, in words that make sense to you. [5 Minutes]
12. **FFW 3:** Now, focus your attention on a sentence that you find to be puzzling or confusing—something you feel like you just don’t understand entirely. Write a question that (if answered) you think would help you to better understand the sentence. [3 Minutes]

***FFW 2 and FFW 3 can also be assigned for homework to maximize class time.*

Both can also be collected as homework or an exit ticket and used to gauge student understanding.

Group Work / Collaborative Writing [30 Minutes]

13. **Group work with FFW 2 and FFW 3 [10-15 Minutes]:**
 - Divide students into groups of 3-4 (based on article section).
 - Each group should appoint a time keeper and note-taker
 - Read/share FFW 2 then FFW 3.
 - Based on what you heard, are you able to answer your FFW 3 question?
 - Revise your section as a group—this should be a synthesis of the work each student did individually as well as a translation of the section into contemporary speech.
14. Return together as a class. **Each group reads their newly revised section slowly and clearly.**
 - Remind students to listen with a pen in hand, taking notes when they hear something that helps add to their understanding of the text.
15. **Process Write:** Return to the list of rights on the board. Based on where your thinking is regarding Article I, Sections 3 and 8 of the NYS Constitution, what’s missing from our list? Should anything be erased? [3-5 Minutes]
16. **Process Talk/Guided Discussion:** What questions do you still need answered in order to feel as though you fully understand Document A?