

**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 2: Written Conversations & Dialectical Notebooks—Collaborative Close Reading

Document B: The First and Fourth Amendments to the *US Constitution*, 1791 (and Document A)

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

#### *Grades 6-8:*

- **RH1:** Cite specific textual evidence to support analysis of primary and secondary sources.
- **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.
- **RH4:** Interpret words and phrases, including disciplinary language, as they are developed in a text, including determining technical, connotative, and figurative meanings, and analyze how specific word choices shape meaning or tone.
- **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.
- **CCSS.ELA-Literacy.SL.11-12.1.B:** Work with peers to promote civil, democratic discussions and decision-making, set clear goals and deadlines, and establish individual roles as needed.

### **Reading and Annotating Document B [20-25 Minutes]**

*\*\*This step can be done for homework or as individual practice in class. The reading and annotating process from Activity 1 can also be repeated as a way to reinforce slow, attentive reading or primary documents.*

1. **Handout Document B** and invite students to read the document on their own, paying close attention to the annotation practices we used with the previous document (underlining, circling, taking notes, etc.).
  - If students read Document B for homework, allow for a few minutes of class time for them to look over the text and re-familiarize themselves with it.
2. **FFW 1:** In your own words, and in no more than a single sentence, what is Amendment I saying? What does Amendment IV say? Again, ask students to summarize each amendment in a single sentence so that they synthesize what the text is saying into their own language. [5 Minutes]
3. **Quick share.** Hear a few responses for each amendment.
4. **Word Choice:** We're now going to look even more closely at these amendments and the specific language used to convey meaning.
  - **For example:** Amendment IV talks about being “secure” in your home. What might the question of freedom from “search and seizure” have to do with feeling “secure”? (*Discuss briefly*)
  - **Guided Individual Practice:** Return to Amendment IV. Reread the amendment and **underline any word or phrase that sticks out to you** (for any reason). The goal is to focus your

attention on word choice, so try to pick a moment where the language either jumps out at you or puzzles you.

- **FFW 2:** Copy the word or phrase you chose into your notebook and keep writing. Why did you choose this word or phrase? What does the language mean to you? What associations do you make when thinking about this word or phrase? [3 Minutes]
- **FFW 3:** Look over what you just wrote. How does your own writing help you to understand the importance of this particular amendment? [3 Minutes]
- **Share FFW 2.** As you listen to your peers, make sure to take note of any new ideas or clarifications you hear.

**Written Conversation/Dialectical Notebook Across Documents [30-35 Minutes]**

5. Ask students to turn to a fresh page in their notebooks and set up the page as follows below (this can also be done by creating a pre-made worksheet).
6. Guide students through the written conversation/dialectical notebook as below.
  - Begin with the 2 FFWs in Column 1, allowing for 10 minutes for students to complete both pieces of writing
  - Ask students to exchange with a partner (Critical Friend) for Column 2. Allow for 15 minutes for students to read Column 1 and respond to the prompts in Column 2.
  - Return paper/notebook to its owner. Allow time for students to read the new writing in Column 2 and respond reflectively in Column 3, with an eye towards putting the two documents in conversation through process writing.
  - Invite students to share any portion of any of the columns. Encourage students that this is a moment where they can invite the larger community of the class into the conversation that began in their notebooks.

[Column 1] <b>Writer</b> (Focus on <i>US Constitution</i> )	[Column 2] <b>Critical Friend</b> (Focus on <i>NY Constitution</i> )	[Column 3] <b>Writer</b> (Focus on both Documents)
<p><b>FFW:</b> What rights do Amendments I and IV outline? Describe why and how these rights are important to democracy. (Make sure to cite specific language from the text in your response.) [5 Minutes]</p>	<p><b>FFW:</b> Write to explore the difference between Amendments I and IV of the <i>US Constitution</i> and Article 1 Sections 3 and 8 of the <i>NY Constitution</i>. What rights are outlined in the <i>NY Constitution</i> that differ from those in the <i>US Constitution</i> (focusing on the excerpts provided and the writing in Column 1)? [7 Minutes]</p>	<p><b>Process Write:</b> Based on the writing in Columns 1 and 2, how do the goals of the <i>NY Constitution</i> and <i>US Constitution</i> differ? What do they teach us about how democracy is defined on state and federal levels? [5 Minutes]</p>

<p><b>FFW:</b> What freedoms for the individual are provided in these Amendments. List them (using textual evidence) and write to explore the connection between freedom and democracy. [5 Minutes]</p>	<p><b>FFW:</b> Write to compare Amendment I of the <i>US Constitution</i> with Article I Sections 3 and 8 of the <i>New York Constitution</i>. Which gives the individual more freedom? Why? How do you know? [5 Minutes]</p>	<p><b>Process Write:</b> Based on the writing in Columns 1 and 2, write to explore the role of the individual in a democracy. How does this differ between state and federal levels? [5 Minutes]</p>
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*\*\*For younger students, this activity can be adapted as a “double-entry notebook” where the student does not exchange with a peer. Once students have completed the writing in both columns, you might invite them to share something from each prompt, or you might ask the students to count off by 4 and then each student shares the piece of writing that corresponds to the number they received.*

<p>[Column 1] They Say... (Paraphrase, Summarize)</p>	<p>[Column 2] I Say...</p>
<p><b>FFW 1:</b> Paraphrase Amendments I and IV of the <i>US Constitution</i>. The goal here is to summarize what these amendments are saying in your own words. [5 Minutes]</p>	<p><b>FFW 3:</b> Look over what you wrote in Column 1. What rights do these Amendments outline? Pick 1-2 of these “rights” and write to explore what you imagine happened that led to the passing of this Amendment. How would our lives be different if these Amendments had never been passed? [5 Minutes]</p>
<p><b>FFW 2:</b> Paraphrase Article 1 Sections 3 and 8 of the <i>NY Constitution</i>. Again, the goal of this writing is to translate the primary document into your own words. [5 Minutes]</p>	<p><b>FFW 4:</b> How do the rights included in the <i>NY Constitution</i> (Article 1 Sections 3 and 8) differ from those included in the <i>US Constitution</i> (Amendments I and IV)? What do you imagine inspired a state (i.e. New York) to write and adopt its own constitution? [5 Minutes]</p>

7. Regardless of which version of the dialectical notebook students complete, the end goal of this activity is to engage in **reflective “process talk”** focused on the two documents placed in conversation. Some possible guiding questions to use:
- Based on the writing you just did, where is your thinking about these primary documents? How would our lives differ today without them?
  - What questions about freedom and individuality do these documents make you think about?
  - What questions are still lingering for you—what more do you want to know or learn about either the *US Constitution* or the *New York Constitution*? Why?
  - How are these “rights” still relevant today?