



## Judicial Systems - Judicial Review & Equal Protection

### Middle/ Junior High School US/VA Civics

**Objectives:** Students will be able to:

- analyze primary and secondary sources;
- synthesize evidence from primary and secondary sources;
- use and create charts, diagrams, and pictures to determine characteristics of people, places, and events;
- summarize points and evidence to answer a question;
- use evidence to draw conclusions and make generalizations;
- construct arguments using evidence from multiple sources;
- compare and contrast people, places, and events;
- compare and contrast historical, cultural, and political perspective;
- make connections between past and present;
- access a variety of media, including online resources.

### Standards

- Virginia: CE.9b** The student will apply social science skills to understand the judicial systems established by the Constitution of Virginia and the Constitution of the United States by describing the exercises of judicial review
- The supreme courts of the United States and Virginia determine the constitutionality of laws and acts of the legislative and executive branches of government. This power is called “judicial review.”
  - *Marbury v. Madison* established the principle of judicial review at the national level.
  - The Constitution of the United States is the supreme law of the land.
  - State laws must conform to the Virginia and United States constitutions.

- CE.3b** The student will apply social science skills to understand citizenship and the rights, duties, and responsibilities of citizens by describing the First Amendment freedoms of religion, speech, press, assembly, and petition, and the rights guaranteed by due process and equal protection of the laws

- National: NSS-USH.5-12.4 Era 4** Expansion & Reform (1801-1861)  
**NSS-C.5-8.3** Principles of Democracy

**Approx. Time:** One and a half 90 minute blocks or three 45 minute blocks

**Hook:** There are two different versions depending on your particular classroom and comfort level. Both involve the same scenario based on the Masterpiece Cakeshop case where the owner of a bakery refused to make a cake for a same-sex wedding.

In Version 1, students are divided into groups based on whom they think is right in the scenario, and then they must defend their position using the Constitution. This version saves time, but may be less comfortable for students, perhaps, in having them choose for themselves where to stand on a controversial subject.



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In Version 2, students are divided randomly into three groups of lawyers defending the cake shop owner, lawyers defending the same-sex couple, and judges who must decide the case. They must also use the Constitution to argue and decide the case. This version takes much longer, but it takes the pressure off of students to choose where to stand on a controversial subject. It does, however, force them to possibly defend something they do not agree with, but it will give them a deeper experience into the judicial process.

### Give the students the following scenario:

A same-sex couple is planning their wedding and go to a bakery known for making amazing wedding cakes. When they ask the owner to create a wedding cake, the owner politely declines, explaining that because of his religious beliefs, he cannot make them a wedding cake. He will, however, make them any other type of cake, like a birthday cake, but he cannot make a wedding cake. He explains that decorating cakes is a form of art and that is how he honors God, so creating a wedding cake for the marriage of a same-sex couple would go against his religious beliefs.

The same-sex couple leave and decide to file charges against the cake shop in a state court, relying on a state law that bans discrimination based on sexual orientation.

### VERSION 1

Once they have read and discussed the situation, divide them into three groups: 1) those that support the owner of the cake shop, 2) those that support the same-sex couple, and 3) those that are not sure. Explain to them that they will work together to come up with an educated argument for their group and then share that argument with the class. First, however, they will need some help from the U.S. Constitution!

Give each group several copies of the "U.S. Constitution Helper Document" below which has excerpts from the First Amendment and Section 1 of the Fourteenth Amendment and discuss briefly the meanings of each amendment, specifically emphasizing the Free Exercise and Equal Protection clauses.

Once students have a better understanding of these clauses, have the students apply the clauses to their arguments. Allow them to brainstorm and record their information on large paper to display to the class, but remind them to focus on using the Constitution to support their argument. The group that is not sure should weigh both sides as much as possible and argue for both.

Students will then present their arguments to the class, allowing for as much discussion as possible. Once all groups have presented, have them vote on who had the best argument and record the votes on the board. Award the group with the best arguments with a prize (candy, extra credit, an autographed picture of the U.S. Supreme Court, etc.).

### VERSION 2

Once they have read and discussed the situation, tell them that they will be the lawyers and judges for this particular case. Divide them randomly into three groups: 1) lawyers arguing in support of the owner of the cake shop, 2) lawyers arguing in support of the same-sex couple, and 3) judges who will determine which side has the best constitutional argument.

Give each group several copies of the "U.S. Constitution Helper Document" below that has excerpts from the First Amendment and Section 1 of the Fourteenth Amendment. Briefly discuss the meanings of each amendment, emphasizing the Free Exercise and Equal Protection Clauses.



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-Once students have a better understanding of these clauses, explain to the groups of lawyers that they must use the information in the Helper Document to make their argument to the judges. They may also use other sources or information, but the basis for their argument must be grounded in the Constitution. **MAKE SURE THEY DO NOT USE THE Masterpiece Cakeshop CASE.**

Each group of lawyers should brainstorm and work together to come up with the best argument. Have them record all information on a large sheet of paper or digital presentation to share with the class and to support their argument to the judges. Have each group pick two students to be the lead lawyers who will present the argument to the judges.

The group of judges may think they have it easy because they can just sit back and listen to the arguments of the other two groups and make a decision, but that is not the case. The judges must be experts on the 1<sup>st</sup> and 14<sup>th</sup> Amendments to make the best decision. They must also ask tough questions of the lawyers as the lawyers plead their cases.

The group of judges must discuss the meanings of the 1<sup>st</sup> and 14<sup>th</sup> Amendments from the Helper Document and then develop a list of ten questions to ask the lawyers- five for the lawyers arguing in favor of the owner of the cake shop and five for the lawyers arguing in favor of the same-sex couple. They will have to anticipate how each side will argue and listen carefully to ask the best questions.

Once lawyers from both sides have argued in front of the judges, allow the judges time to deliberate and take a vote. You may even allow them to deliberate in private if they wish. Explain to the judges that whatever the majority of the group decides, that is the final decision. They must, however, be able to explain WHY they arrived at that particular decision and must be able to explain to the class their reasoning. Once they have reached a decision, have one of the judges announce the decision and explain why they reached that particular decision.

Allow as much time as you believe is necessary for them to wrap up the discussion.

Once they are done, tell them that this was a real case argued in front of the U.S. Supreme Court and they will learn later just how the Court decided.

Now that the students are engaged, ask if they know where the Supreme Court's power to declare laws or actions of the government unconstitutional originated. Some may be familiar with judicial review or *Marbury v Madison*, but many may not. Explain that today they will be learning about the idea of judicial review as well as the idea of the equal protection clause in the U.S. Constitution.

To provide background knowledge on the origins of the principle of judicial review, have students complete the "Judicial Power: Clear as Mud!" handout. Students will watch a video from Chapter 4 MS Chief Justice Marshall's Court and cases on the *Justice in the Classroom* website to answer questions.

<https://justiceintheclassroom.net/middle-school-programs/chapter-4-chief-justice-marshall-court-and-cases/> If students have access to the internet at home, you can assign the video and handout as homework to "flip" the class, having students take notes at home. If most students do not have access to the internet at home, show the video in class, stopping to allow students to take notes.

Once students have completed the notes on judicial review and it has been discussed in class, they will apply their knowledge of judicial review and the equal protection clause by researching some historic and current Supreme Court decisions and explain how they reflect the idea of judicial review and equal protection, including the *Masterpiece Cakeshop, Ltd. v Colorado Civil Rights Commission* case which they learned about during the hook.



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Using the Supreme Court cases below, divide the students into 7 groups and assign each group a case involving the 14<sup>th</sup> Amendment's equal protection clause. Provide students with the hyperlink to the case as well so they will be consistent in collecting information about their case (from the Oyez website). Provide each group with the **Supreme Court Case Information Sheet** below to help collect their information.

Once students have collected the appropriate information for their case, they will create a presentation to teach the class about their particular case. Allow each group to decide how they would like to present, including posters or digital presentation (Google Slides, Prezi, infographic, etc.).

Presentations should include ALL information from the Supreme Court Information Sheet as well as a picture or symbol that best represents their case.

Once students have heard about each case, have them reflect on what they have learned by answering the following question:

**Which case do you believe *best* reflects the idea of judicial review and equal protection? Explain WHY in several sentences.**

**Suggested sites for creating an infographic:**

<https://www.creativebloq.com/infographic/tools-2131971>

- 1) ***Plessy v Ferguson* (1896):** <https://www.oyez.org/cases/1850-1900/163us537>
- 2) ***Smith v Allwright* (1944):** <https://www.oyez.org/cases/1940-1955/321us649>
- 3) ***Brown v Board of Education of Topeka* (1954):**  
<https://www.oyez.org/cases/1940-1955/347us483>
- 4) ***Loving v Virginia* (1967):** <https://www.oyez.org/cases/1966/395>
- 5) ***Plyler v Doe* (1982):** <https://www.oyez.org/cases/1981/80-1538>
- 6) ***Obergefell v Hodges* (2015):** <https://www.oyez.org/cases/2014/14-556>
- 7) ***Masterpiece Cakeshop, Ltd. v Colorado Civil Rights Commission* (2018):**  
<https://www.oyez.org/cases/2017/16-111>



## U.S. Constitution Helper Document

***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.***

### Amendment I

***All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.***

### Amendment XIV, Section 1



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

### Judicial Power: Clear As Mud!

Read the following passage from the Constitution:

"The judicial power of the United States, shall be vested in one Supreme Court..."

#### Article III, Section 1

1. Does the Constitution give a detailed description of what power the Supreme Court has?

2. What do you think is meant by "judicial power?"

As you can see, the Supreme Court's power was not really clear in the Constitution. For the most part, the Court had very little expressed power. Chief Justice John Marshall will change that forever.

JIC Ch. 4 Video Link: <https://justiceintheclassroom.net/middle-school-programs/chapter-4-chief-justice-marshall-court-and-cases/>

Using the *Justice in the Classroom* Chapter 4 video clip above, answer the following questions:

1. Who did President John Adams appoint as Chief Justice of the Supreme Court?

2. Why was the Supreme Court so weak early on?

3. Give one example of how John Marshall changed the way the court did business.

4. With how many presidents does John Marshall's term overlap?

5. What is a "landmark" case?



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

6. What year was the *Marbury v. Madison* case decided?

7. Who did President Adams appoint as Justice of the Peace?

8. What did President Thomas Jefferson tell Secretary of State James Madison to do about Marbury's commission? WHY did he tell Madison this?

9. What did Marbury do about Madison's actions?

10. The Supreme Court ruled that the Judiciary Act of 1789, was unconstitutional when Marbury petitioned the Supreme Court to force Madison to give him his commission as a justice of the peace. This creates the idea of **judicial review**. What IS judicial review?

11. The Supreme Court declared that the Constitution is to be considered \_\_\_\_\_ (a) \_\_\_\_\_ law that is superior to the "ordinary" \_\_\_\_\_ (b) \_\_\_\_\_ of \_\_\_\_\_ (c) \_\_\_\_\_ or \_\_\_\_\_ (d) \_\_\_\_\_ of the (e) \_\_\_\_\_.

a.

b.

c.

d.

e.



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

### Supreme Court Case Information Sheet

Use this sheet to record information about the U.S. Supreme Court case your group has been assigned.

- Name of Court Case:

- Year the Case was Decided:

- Facts of the Case:

- Decision: Include the Number of Judges For/Against/Concurring—EX. 5-4 means there are 5 judges “for” (meaning the author of the decision and the judges who “join” or “concur” in the opinion) to 4 judges “against” (“Dissenting” opinions and judges who join dissents):

- Conclusion:

- How does this decision reflect the idea of judicial review?

- How does this decision reflect the idea of equal protection under the law?

STUDENT HANDOUT