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The Supreme Court: Allowing and Constraining Constitutional Change

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by Christina Marsett

Introduction

William Penn High School, the school at which I teach, is the largest high school in the state of Delaware and is comprised of a very diverse student population that comes to us from a range of backgrounds. Since ours is the only high school in the Colonial School District, our 2300 students come from a range of areas in the eastern portion of the county; our students that live in the southernmost portion of our district's boundaries live in area that is generally more rural and affluent, while those that live in the northern section of the district mostly come from poorer neighborhoods that are in the city of Wilmington or just along the outskirts, and those in the middle part of the district live in a very working-class suburban area. During the 2017-2018 school year, seventy-five percent of students identified as part of a racial/ethnic minority, with nearly forty percent of our students coming from families that have been identified as earning low incomes. This means that all students in the school receive free breakfast, lunch, and meals if they stay after school for sports or extra-curricular activities. In addition, nearly one-third of our students receive special education services and seven percent are identified as English Language Learners.

Students at William Penn choose a career pathway to explore over the course of their time in high school, which is what brings a considerable amount of recognition to our school and district. However, we have considerable variety in our core academic offerings as well, including Advanced Placement and entirely online Distance Learning courses. Although my teaching experience primarily consists of teaching general and special education social studies courses, I also became the Advanced Placement Human Geography teacher this school year. As this was my first year teaching the course, I have learned a lot about this new content and the academic rigor I should be asking of my ninth grade students that are aiming to earn college credit by taking my course.

Rationale

Since I began teaching at William Penn, one of my teaching assignments has been our ninth grade social studies course, comprised of Civics for one semester and Geography for one semester. This is traditionally the course assigned to the newest teachers in the department, who are then given opportunities to “move up” to a different grade-level as they become effective teachers and get worn down from the demands of teaching freshmen. As a result, when I joined the ninth grade social studies team, I found myself teaching a course that was lacking in cohesion, depth of content knowledge and activities that would engage students in the content.

As I’ve become more familiar with teaching government, I have also spent a considerable amount of time familiarizing myself with Delaware’s Civics standards. A deep dive into the documents that have been created to clarify what is being asked of students in these standards, paired with a close examination of how they are taught at my school, revealed that our Civics course was lacking. Our ninth grade team has been unknowingly reteaching many of the concepts our students are learning in middle school, while running out of time to get the most academically rigorous concept in each standard. This is especially true of our unit that addresses Delaware’s Constitution-centered Civics standard. While teaching this standard, we often spend time on the three branches and checks and balances so that students have foundational knowledge to help them understand the disjointed lessons about executive orders and the elastic clause that are included in the unit. However, at the conclusion, students are rarely able to answer the overall question of “How do the structures and processes of government in the Constitution allow for and limit change?”.

The unit I am going to write as a result of participation in the Politics and Public Policy in the United States seminar with Ian Shapiro will enhance the current unit on the Constitution that is taught in my in my ninth grade Civics course. One of the concepts students should understand as we progress towards the end of this unit, is that features written into the Constitution both allow for and constrain political change, yet I have struggled to teach this in a way that is comprehensible and meaningful for the past five years. In order to accomplish the above curricular goal, this unit will guide students in developing an understanding of how the Judicial branch’s interpretations of the Constitution determine the extent of political change.

Prior to starting this unit, students will need to have developed foundational knowledge of the legislative, executive, and judicial branches, as well as the ways in which these branches work to check one another. As they work through this unit, students will develop an understanding of the fact that the decisions of the Supreme Court are unlikely to be too far out of alignment with to current public sentiment and generally reflect the ideologies of the presidents that appoint them. Therefore, in times that the country tends to behave more Conservatively, the Supreme Court will do the same, and vice versa. This background information will enable students to make comparisons across time. The unit will lead students through an investigation of how the Supreme Court reacted to and enforced the Civil Rights amendments that were passed following the conclusion of the Civil War. From this, they will be able to determine that a more Conservative judicial branch can lead to degressive implementation of progressive legislation. The Conservative leanings of this era were foreshadowed by rulings such as that made in *Scott v. Stanford*, which upheld the practice of slavery and determined that former African Americans would never be able to gain citizenship. Although Congress had the responsibility of developing public policy that was in accordance with the thirteenth, fourteenth and fifteenth Amendments, it was the judicial branch that had the responsibility of interpreting them. Rulings were made by these Conservative-leaning Supreme Court justices on over one hundred and fifty cases relating to the Reconstruction Amendments in the last twenty five years of the

century, which shaped how Americans interpreted the recently-passed Amendments.¹

The rulings of the Supreme Court during the post-Civil War era will be contrasted with those made following Eisenhower's appointment of Justice Warren to the Supreme Court in the 1950's. The Warren Court that followed is markedly different from the first Judicial era students will be studying, due to the liberal leanings of justices at this time. Even though many of the landmark cases from this era related to Civil Rights, as those following the end of the Civil War, a Judicial branch that interpreted the Constitution more liberally allowed for this time period to be remembered for setting progressive precedent. These cases, such as *Brown v. Board of Education* and *Gideon v. Wainwright*, will demonstrate that the Judicial branch used its role to interpret the Constitution in a way that led to the expansion of America's federal government.

The content of this unit and its' the comparisons it makes across time make a discussion of the Supreme Court today a natural fit as the conclusion. The nation has once again reached a time where Civil Rights have come to the forefront and cases related to the topic are making their way to this level of the judiciary. The Judicial branch is currently made up of four justices that were appointed by democratic Presidents and five that were appointed by Republicans, giving it a fairly even split between liberals and conservatives, and the rulings they have delivered in June 2020 alone have had a significant impact on Civil Rights in America. Therefore, it would be beneficial for students to conclude this unit by understanding that the Supreme Court having the ability to allow for and constrain change is not something that was restricted to the Reconstruction era or mid-twentieth century, but evaluating the impact the most recent Supreme Court decisions are having on the government's ability to change.

Learning Objectives

As students work through this unit, they will gain an understanding of the role that the Supreme Court plays in shaping the United States' government. They will develop an understanding of the Constitutional articles that define the Court's role, as well as the implied powers that have developed over time, creating a judicial branch that has the ability to both allow for and limit political change.

In learning about the Supreme Court, students will explore the roles justice ideologies and public opinion play in the cases that the court chooses to take on, as well as the decisions that are handed down. These ideas will be explored by comparing the actions of the court the Chase Court that ruled in the years following the Civil War, to the Warren Court of the mid-twentieth century and actions taken by the Supreme Court today.

Content Objectives

The United States Constitution

"We the people" is a phrase that Americans are inherently familiar with. Hearing it is likely to evoke images of red, white and blue billowing in the breeze and thoughts of freedom from tyranny. However, the words that follow the Constitution's preamble and provide the framework for governance in the United States of America

are likely to be less familiar. In writing the Constitution, its framers wanted to create a government that would balance powers in a way that prevented the dominating strength of central government that they had experienced as a part of England's unitary government structure, while also rectifying the disjointed local governments that were made powerful under the Articles of Confederation. These desires, paired with the need to promote interstate commerce, protect property rights, and persuade citizens to participate, led to the creation of the 4,543 word plan for governing, which was ratified on June 21, 1788.²

One of the most impactful features of the United States Constitution is the separation of powers that are created by the establishment of legislative, executive, and judicial branches, with the document's first three articles define the roles of each. Article I establishes a bicameral Congress that was to be directly responsive to its constituents, with each house having the responsibility for watching over the other. The Constitution defined separate roles for each house, such as approving presidential appointments for the Senate and originating revenue bills for the House of Representatives, while authorizing both houses to play a role in legislating, collecting taxes, and declaring war. The executive branch is defined in the Constitution's second article, with the goal of creating an indirectly elected presidency with the ability to take decisive action of public issues, appoint cabinet officials, and veto Congressional decisions. The framers' concern for governmental power is evident in Article III's establishment of the Supreme Court of the United States. This branch was tasked with determining whether a power is granted to federal or state governments and resolving accompanying conflicts.³ While identifying the powers explicitly granted to each subdivision of the new government, the Constitution also embedded responsibilities for checking the power of the other two, into the roles of each branch.

During the time that the United States Constitution was being drafted, revolution was the preeminent means of demonstrating dissatisfaction with a political structure. Early American leaders wanted to institute a political structure that would withstand the test of time and therefore understood that a well-developed Constitution would provide instructions for its' own amendment. Although provisions for revising were included eight states' constitutions by 1787, the insertion of this process in the country's constitution made it the first of its' kind.⁴ Instructions for the process were included in Article V of the United States Constitution identifies the possible ways of adding an amendment to the document. In order to make an addition to the Constitution, Congress must propose an amendment and pass it with a two-thirds vote in each house, which will move the proposal to the Office of the Federal Register. It is then presented to the governors of all fifty states, who must submit it to their state legislatures for the action necessary to complete the ratification process. This process means that the length of time required to ratify an amendment can vary significantly, as is evident in the fact that the Eighteenth Amendment outlawing the consumption of alcohol was added to the Constitution little over a year after being proposed, while the Twenty Seventh Amendment, proposed by James Madison in 1789 was not included until being ratified by the thirty eighth state in 1992. While acknowledging that it was necessary to include provisions for changing the government, the Constitutional authors knew that making it difficult to do so would ensure that only the most necessary additions were made to the nation's political blueprint. As a result, of the more than 10,000 amendments that have been proposed since 1789, only seventeen have been ratified.⁵

The Supreme Court

It is widely acknowledged, among both American legal scholars and the views of average citizens, that the Supreme Court has final authority over what the law is in the United States, as it is necessary for each individual and branch of government to adhere to the decisions that are made by the body. This belief has been entrenched in our government for more than two hundred years. In writing Federalist No. 78 on the

power of judicial review, Alexander Hamilton argued that "[t]he interpretation of the laws is the proper and peculiar province of the courts. A constitution is in fact... fundamental law. It therefore belongs to [the courts] to ascertain its meaning, as well as the meaning of any particular act proceeding from the legislative body."⁶ In addition to the information provided above, Article III of the United States Constitution establishes "one supreme Court" which has jurisdiction over "all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made", as well as those involving ambassadors, maritime law, controversies between states or citizens of different states.⁷ The judicial branch does not have the ability to provide unsolicited guidance or initiate a new measure, as their power is only extended to making judgement over existing litigation. Justices also only have no power over state laws or the decisions around them made by lower courts; they are only Constitutionally able to reexamine rulings relating to federal laws, following a very specific and time-sensitive process.⁸ This gives the Supreme Court the responsibility of upholding the public policy enacted by the Legislative and Executive branches, by determining whether or not it lies within the powers granted to the government by the Constitution, while protecting the fundamental rights of citizens of the United States.⁹ The court's inherent power of choosing and applying interpretive methodology in deciding a case can be traced back to English common law¹⁰ and means that justices are often tasked with deciding fundamental social and political measures.¹¹

Constitutional law scholar Alexander Bickel referred to the United States' judicial branch as an "anomalous" political institution, due to the fact that unelected justices have no direct responsibility to a constituency, yet have power to override decisions made by those that are serving in elected positions. Despite lacking an election, the Justice selection process is "political to the core" because presidents choose nominees that promote their interests and satisfy their political needs, and the court's rulings regarding individuals' rights depends on the nation's political climate at the time. This means that as societal views and those of the leaders people choose to represent them shift, it is inevitable to see a shift in the beliefs presented by Supreme Court justices, as well.¹²

The connections between Supreme Court rulings and public opinion goes beyond connections to the ideologies of the Presidents that selected the sitting justices. Tim O'Brien, an attorney and journalist that specializes in the judicial branch, made the observation that "there is no greater barometer of what is on the minds of the US population than the docket of the US Supreme Court", which is supported by over two decades of scholarship that demonstrates a relationship between prevailing public opinion and where the Court's decisions fall along the political spectrum. This concern for public opinion begins at the agenda-setting stage, as justices are likely to vote to grant Writs of Certiorari on cases where their personal preferences are not in opposition to that of the general public, and will result in decisions that maintain trust in the Court. Evidence shows that justices are cognizant of public opinion at multiple stages of the judicial process, especially when deciding cases that are of higher public interest.¹³ Since justices' voting behaviors tend to mirror their own ideologies, it is likely that the same social factors that influence the beliefs of the public impact those of members of the Supreme Court, signaling a widespread attitudinal change. However, a study conducted by Christopher Casillas et al., which provided controls for attitudinal changes, found that current public opinion has significant short- and long-term impacts on the Court's decisions, with a higher number of liberal decisions being handed down in times during which liberal ideology prevailed. If the court were to announce a decision that were out of alignment with that of the majority, media outlets and organized interest groups would be likely to bring attention to it, reducing support for the judicial branch.¹⁴

Reconstruction and The Supreme Court's Interpretation of The Civil Rights Amendments

As the Civil War neared its' end, the United States Congress was well aware of the fact that they would need to take action on the challenges that accompanied reuniting the portion of the country that still favored slavery and emancipation. Additionally, they would need to integrate the four million former slaves into the political life that had previously excluded them.¹⁵ The Thirteenth, Fourteenth, and Fifteenth Amendments to the United States Constitution were passed in the five years following the conclusion of the Civil War, aimed at helping newly-freed African Americans, constituting the country's largest ever expansion of civil rights.¹⁶

The Thirteenth Amendment

The Emancipation Proclamation delivered by President Abraham Lincoln on January 1, 1863 declared that all persons being held as slaves in the states that had joined the Confederacy, were freed. At the elementary level, students are often taught that this Presidential declaration was what ended slavery in the United States. This fallacy overlooks the fact that those in captivity in border and Union states were excluded, and a Union victory would be necessary in order to enforce emancipation.¹⁷ More than 800,000 African Americans were still not freed. The groundwork for emancipation had been previously laid in September of 1862, when Lincoln announced policy that would begin to take Congressional measures towards abolition and the Preliminary Emancipation Proclamation. Three months later, he authorized Congress to appropriate funds for states that legally ended slavery by 1900. His goal was to help emancipated individuals establish their lives and compensate those that were former slave owners for a loss of income. Although it is evident that many factors played a role in bringing about the end of slavery, ratification of the Thirteenth Amendment in December of 1865 was "the final, irrevocable abolition of slavery".¹⁸

By 1865, legislatures in seven formerly Confederate states had passed legislation that formally abolished slavery, setting the stage to ratify a constitutional Amendment. Proposals to amend the Constitution were almost immediate upon the convening of the 38th Congress in December of 1863, authored by men such as James Ashley, Henry Wilson, and Francis Lieber. These proposals were inspired by the work of abolitionists at the time, who were ardently advocating for their cause. As Congress worked towards developing the Amendment that would bring about the final end of slavery, Charles Sumner worried that his colleagues were leaving a loophole that would allow for the reestablishment of slavery under a new name and proposed language based on the French Declaration of the Rights of Man and the Citizen, written in 1791, with wording borrowed from the Northwest Ordinance of 1787 that stated "Neither slavery nor involuntary servitude, except as a punishment of crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction", giving Congress the "power to enforce this article" through legislation. Despite some Republican opposition, on April 8, 1864, Senate approved the Thirteenth Amendment with a vote of 33-6. Although it took two votes to gain the necessary two-thirds majority in the House of Representatives, the Amendment was approved on January 31, 1865,¹⁹ declaring that "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction".²⁰

The Fourteenth Amendment

The Fourteenth Amendment to the United States Constitution was the next addition made as politicians devised a plan for integrating Southern states and emancipated African Americans into nineteenth century daily and political life. The Amendment was passed in Congress on June 13, 1866 but not ratified until July 9, 1868. This multifaceted legislation was developed in response to the new laws being passed by southern

legislatures that placed restrictions on the rights of former slaves, and was required to be ratified by a state before it would be readmitted to the Union.²¹ The Amendment's first section is most notable for its expansion of civil liberties, as it granted citizenship to all those who were born or naturalized on American soil, which included former slaves and directly contradicted the Supreme Court's ruling in its 1857 case concerning Dred Scott.²² This section also outlawed individual states' ability to pass laws "which shall abridge the privileges or immunities of the citizens of the United States... [or] deprive any person of life, liberty, or property without due process of law, [or] deny to any person within its jurisdiction the equal protection of the laws",²³ which would allow Americans the ability to travel between states without the possibility of being denied rights. The Due Process clause of Section One expanded upon the protections provided by the Bill of Rights, requiring these rights to be withheld by state governments, whereas before this was only required at the federal level. Following sections of the Fourteenth Amendment provided the federal government with a means of enforcing the rights contained within the legislation, including the ability to reduce the Congressional representation of states that violated their citizens' rights.²⁴

This addition to the United States Constitution brought about profound changes at all levels of government and has had implications for the substance of laws and procedures of state government, as well as the branches of the federal government. It is unique in the fact that it is the longest of the United States' twenty seven Amendments, but also in the fact that it provided the single largest expansion in Civil Rights; much of the Constitutional law scholarship that has emerged regarding civil rights can be traced back to the contents of the Fourteenth Amendment. Judicial decisions regarding the contents of the Amendment have been said to have altered the structure of the Constitution and our legal system, while making America into the democracy it is known as today.²⁵

The Fifteenth Amendment

The last of the trio of Reconstruction Amendments, the Fifteenth Amendment, which states that "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude"²⁶ was passed by Congress on February 26, 1869 and ratified less than a year later on February 3, 1870. Framers created the amendment with the intention that it would apply to disenfranchisement based on race, color, or previous condition of servitude, but knew that dissenting states would find loopholes that could continually disenfranchise African Americans. Therefore, they paid close attention to the wording that was chosen. The Amendment was largely based on language that was proposed for the Fourteenth Amendment, leading the two to be seen as "two halves of a whole". However, in crafting the Fifteenth Amendment, Congress knew that they no longer had the power to unilaterally ensure Reconstruction legislation was enforced, as written in the prior Amendment, so they chose words that expanded their own power and provided a way to enforce these Civil Rights Amendments via the judicial branch as well.²⁷

Political leaders believed that this addition to the Constitution was necessary in order to provide additional authority for the federal government to directly intervene in state electoral processes. Intervention was likely to be necessary, as former Confederate states were uninterested in extending basic rights to African American citizens. The legislation shows an expansion of federal power by intruding on state' abilities to choose the qualifications of their electors and provided broad enforcement authority that would prevent ex-Confederate governments from altering state constitutions in order to limit voting rights.²⁸ This was the first of many legislative actions that expanded voting rights in the United States.

Reconstruction's Supreme Court

During the period of “Radical Reconstruction” that immediately followed the ratification of the Civil Rights Amendments, African American men fully enjoyed the rights that were newly granted to them. Over 1,5000 African Americans were elected to office, while others voted, served as judges, and played important roles in integrating local schools and police forces. Although this was the society envisioned with the ratification of the Thirteenth, Fourteenth, and Fifteenth Amendments, it was a fragile time period, with military control of the South nearing its end and violent reactionary groups seizing the opportunity to rise to power. Congress’s placing the success of the Reconstruction Era on their three new Amendments, meant that the Supreme Court would play an increasingly important role in dictating the extent to which they would be upheld. Nevertheless, Congressional Republicans believed that having the right to vote meant that African Americans would soon develop the ability to protect themselves and defend their own rights.²⁹

At the conclusion of the Civil War, the Supreme Court was under the leadership of Chief Justice Salmon P. Chase, who was appointed by Lincoln and had become known for his defense of runaway slaves and former roles as Senator, Governor, and Secretary of the Treasury.³⁰ Chase was accompanied on the Court by four other justices that were appointed by Lincoln, meaning that for the majority of the Reconstruction Era, there were seven Supreme Court justices that had been appointed by Republican presidents.³¹ This left Congress with little doubt that the Civil Rights Amendments would be supported.

Coincidentally public sentiment was shifting out of alignment with that of Congress. As the Civil War progressed and drew to a close, the intensity of Southern White resistance had grown to be significantly greater than the Northern desire for desegregation. Prior to the war’s end, support had decreased in popularity in northern states, due to the expenses it was incurring, leading Southerners to believe that they would win the war due to the attrition of northern interest. Those that expected the war to end in favor of slavery were deeply upset by the loss and vowed to fight adamantly against Reconstruction efforts.³²

Additionally, the federal government’s actions aimed at protecting the rights of emancipated African Americans in the 1860s were seen as acts of favoritism and discrimination against white Americans. This belief was perpetuated in the messages delivered by President Andrew Johnson, as was evident in his message vetoing the 1866 Civil Rights Bill, in which he wrote “[T]he distinction of race and color, is...made to operate in favor of the colored and against the white race.” The White South believed that power needed to be decentralized and that they were justified in taking measures that would reinstate Black disenfranchisement since in their eyes, it had been a “horror” to give emancipated slaves the right to vote because African American participation in governments prevented the “best men” from dominating public life. This led towards a national retreat from the beliefs that guided political decision-making during Reconstruction.³³

This regard for public opinion was evident, as Republican-appointed Supreme Court justices began to issue rulings on cases related to the Thirteenth, Fourteenth, and Fifteenth Amendments. They : “systemically undermined Congress’s powers to enforce the Reconstruction Amendments”, with decisions reflecting a resurgence in racism in both the Northern and Southern states. It can be argued that ruling in alignment with the beliefs of the nation helped improve the public’s trust in the Court, which had been suffering since the Dred Scott decision was handed down.³⁴

Supreme Court Rulings

The first example of the Supreme Court’s shifting ideology was evident in the 1866 *Ex Parte Milligan* case,

during which they overturned the conviction of Lambdin P. Milligan, a member of an Indiana-based pro-Confederate organization. Milligan was convicted of plotting to free Confederate prisoners of war in multiple states and arm them with weapons that had been looted from federal arsenals. The defendant's lawyers elevated the case to the Supreme Court on the grounds that as a civilian, Milligan never should have been tried in a military court, despite the fact that he was receiving funding from the Confederate government to carry out his plan. Supreme Court justices unanimously agreed to free this aide to the Confederacy, with six believing it was warranted due to his trial by military tribunal, while the other four justices (Abraham Lincoln had added a tenth justice to the Court prior to this case) shared the opinion that if he were not freed, Southerners would likely use the Court's argument to challenge the legitimacy of recently-established Freedmen's Bureau courts. These alternative courts had been established as a way for African Americans to seek justice free from the Southern courts established by Andrew Johnson, which were well-known to be biased against them. This case was notable in the fact that justices unanimously sided with someone that was plotting against the United States Government in support of the Confederacy, as well as for Chief Justice Chase's minority opinion, which stated that courts were the "most efficient allies" for civilian officials that sympathized with Confederate supporters.³⁵

The *Slaughterhouse Cases* were among the most consequential rulings of the Reconstruction Era, during which many suits were brought together against a law passed that created a single slaughterhouse in Louisiana. This law was aimed at moving the existing slaughterhouses outside the city limits of New Orleans to prevent the spread of disease and required the existing butchers, all of whom were white, to utilize a new facility that was also open to the African Americans that were recently able to become butchers. Many butchers formed a coalition to bring about suits against this law, arguing that the state had created a Monopoly that "violated their right to pursue a lawful occupation", which they argued was protected by the Fourteenth Amendment. In the court's decision to uphold the state law in question, Justice Miller wrote a precedent that amended the Privileges or Immunities Clause of the Fourteenth Amendment, by stating that the Amendment only protected the rights that accompanied national citizenship, not those relating to state citizenship. This interpretation gave African Americans the rights only to use the nation's waterways, have protection at sea and abroad, and peacefully air their grievances with the government; all other rights were left to the states and no longer protected. This ruling essentially stripped away the meaning of the Fourteenth Amendment.³⁶

Between the end of the Civil War and the turn of the century, the Supreme Court engaged in "a long process of definition" of the Thirteenth, Fourteenth, and Fifteenth Amendments, in which they continued to set precedents that would dictate how they would be interpreted for years to come. In 1868, they head the case of *Bradwell v. Illinois*, in which Myra Bradwell, who was a widely-respected law journalist and women's rights activist in Chicago was barred from becoming an attorney in the Illinois Supreme Court's limiting the career to only men. When she appealed her case with the United States Supreme Court, the prior decision was upheld with an eight to one vote. Justice Bradley wrote an opinion stating that despite the Fourteenth Amendment and related rulings in the *Slaughterhouse Cases*, Bradwell did not have the right to free labor claim due to the fact that women belonged in the domestic sphere. The 1872 case of *Blyew v. United States* related to the murder of four members of a Black family by two white men in Kentucky. The case was elevated to the Supreme Court, due to the fact that the state prohibited African Americans from testifying in cases involving Whites. The Supreme Court ruled to overturn the murders' sentence of execution, while acknowledging that the murdered that had been committed was racially-motivated, due to the "dangerous" expansion of federal government brought about by the Thirteenth Amendment and the Civil Rights Act of 1866. The majority opinion argued that only the defendants and the government were affected by the case, not the black

witnesses or family members of the deceased, reflecting the anti-Reconstruction sentiment of the general public at the time.³⁷

The Fourteenth Amendment was also put to the test in the 1896 case of *Plessy v. Ferguson*, arrived at the Supreme Court of the United States questioning an 1890 Louisiana law dictating that railroad companies had the responsibility of providing “equal but separate accommodations” for passengers of different races. The constitutionality of this law was challenged by a group of citizens, who instructed Homer Plessy find a seat in a whites only railroad car and refuse to leave when directed to do so. Albion Tourgée, the lawyer that elected to take on the case, argued that the Fourteenth Amendment created protections against racial discrimination, hoping to reverse the precedent set by the *Slaughterhouse Cases*. He also presented the belief that this law was established in order to humiliate African Americans, contradicting protections provided under the Thirteenth Amendment. The Supreme Court upheld the Constitutionality of the law, as it had previously done with a similar Mississippi law, in a seven to one ruling. Justice Brown’s decision that as long as the provided facilities were equal, separation was not done as a means of degradation, voiding the protections of both the Thirteenth Amendment and the Fourteenth Amendment’s Equal Protection Clause,³⁸ and creating a lasting precedent of racial inferiority and segregation.

Supreme Court Precedents Under the Warren Court

Justice Chase presided over the Supreme Court of the United States until his death in 1873. Over the next several decades the makeup of the Court changed considerably, as justices came and went. At the start of Dwight D. Eisenhower’s presidency, he inherited a court that had become involved in cases related to Civil Rights, with Thurgood Marshall represented the NAACP in arguing *Brown v. Board of Education of Topeka* before them, proclaimed as the most momentous discrimination case since *Dred Scott*. Justices were so divided on what the ruling ought to be that they purposely delayed voting on a decision, in an attempt to avoid creating further polarization when public opinion was already so divided. Following the unexpected death of Chief Justice Vinson, Eisenhower shared that in his search for a new justice, he was looking for someone with integrity, political experience, knowledge of law, and a reputation that would restore the court’s prior prestige. Despite his lack of judicial experience, Earl Warren fit the bill and was sworn in as Chief Justice in October 5, 1953.³⁹

Warren was Berkeley educated and labeled the “man of the west” when he appeared on the cover of *Time* magazine’s January 31, 1944 issue. He had previously held multiple offices in California, but was most known for his time as governor, during which he was so popular with voters that he won the nomination of both the Republican and Democratic parties as he ran for reelection in 1946. Warren had a record of nonpartisanship, drawing on membership of both political parties as he made cabinet selections. This led to him being labeled as a middle-of-the-road politician, that would make “a picture book candidate” according to an article published in the *New York Herald Tribune*, as rumors that he would run for president circulated. His image was marked by fiscal responsibility that led to a booming post-war economy in California, as well as introducing new social services that increased public health spending, improved conditions in both hospitals and prisons, all while avoiding increasing taxes and creating a surplus in the state’s budget. Although not an overly progressive politician, the April 18, 1948 issue of *New York Times Magazine* quoted Warren’s proclamation that liberalism is the belief that “the individual should be the all-important, precious object of consideration in every phase of the social relationship” and that “civil rights, representative government, and equality of opportunity are all part and parcel of the liberal tradition”. Earl Warren had been President Dwight D. Eisenhower’s first choice for appointment to the United States Supreme Court, with a verbal commitment, prior to any vacancies on the bench.⁴⁰

Warren was appointed Chief Justice of the Supreme Court just in time to push his colleagues to make a decision on the previously-delayed *Brown v. Board of Education* case, leading to a unanimous decision to gradually desegregate. This decision established Justice Warren's court as a symbol of modern liberalism and defender of equality. This trend of liberal rulings was evident in its decisions on issues of McCarthyism and national security during the Cold War, despite the court's hiatus from race-related cases in the years after *Brown V. Board of Education*. As Warren's tenure progressed, the rhythms of change in the Supreme Court were in alignment with the social and cultural changes that characterized America at the time, as is customary of the institution. The Supreme Court ideologically participated in the trend towards liberalism that permeated the American political system between the New Deal and the Reagan administration.⁴¹

The United States Supreme Court, under the leadership of Chief Justice Warren, has come to be known as an anomaly in the history of the judicial branch. The court was unusual because this was the first time that political liberalism had played a key role in politics at the national level, therefore also the first time that the Supreme Court had trended towards liberal behavior. This puts it in stark contrast to the conservative court that legislation around Reconstruction, under Chief Justice Chase. However, it is also seen as unusual due to its pivot in ideology over the course of Chief Justice Warren's tenure. In aligning itself with the dominant national political trends, the court's actions were fairly conservative from Warren's 1953 appointment until 1962, when the cultural phenomenon that has become known as the Warren Court came into existence. At this time, the judicial branch "implemented the modern liberal agenda" that characterizes the 1960s, by enforcing norms of fair treatment and racial equality. The Warren Court also played an important role in defining the Supreme Court's role in government and was an important factor in the political climate of the 1960s. The influence of Warren shaped the behavior of the court in years after his retirement, despite Nixon's appointees vowed to swing the judicial branch back towards conservatism. How the court from this era is viewed today highlights the polarization of our current political climate, as liberals long for a Supreme Court the replicates that under Warren, while conservatives view it as an reminder of what the court should avoid becoming. In alignment with traditional liberal views, the court believed large government was necessary and played an important role in ensuring equality for all Americans.⁴²

Supreme Court Rulings and the Civil Rights Amendments

Of the precedents set by the Supreme Court of the United States under Chief Justice Warren, those relating to the amendments passed at the conclusion of the Civil War are some of the most notable for using the markedly liberal institution to change and expand the federal government's power. One area in which this court made a change was how the Thirteenth Amendment ought to be interpreted. Although the Amendment prohibited slavery, and the Civil Rights Act of 1866 that followed expanded citizenship to all born in the United States (with the exception of American Indians), these protections were limited in practice due to precedents set by the Chase Court.⁴³ However, the precedents that perpetuated this interpretation were overturned in the court's 1968 ruling on *Jones v. Alfred H. Mayer Co.* This case focused on a planned community built by Alfred H. Mayer in the suburbs of St. Louis, and the mixed-race Jones family that made an offer on one of the community's houses. The Jones' offer was refused as they were told by Mayer that his policy was not to sell homes to Blacks in this particular community, so they filed a lawsuit against the developer for violating both the Thirteenth Amendment and Civil Rights Act of 1866, stating that "all citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property." It is said that Mayer's policy was to prevent him from the loss of business that accompanied selling homes to Black families in white neighborhoods, but that he hoped he would lose the case so that his large real estate development firm could lead the way in desegregation. After losing their cause at multiple lower levels, the Jones' appealed to the Supreme Court. In a

7-2 ruling, the court held that the Thirteenth Amendment allowed Congress to remove barriers to peoples' fundamental rights, including that of owning property. This decision expanded upon an 1883 decision that prohibited "badges and incidents of slavery" without defining what those consisted of, by defining the social conditions that created them.⁴⁴ This decision prohibited private acts of discrimination, including those in housing.

The Fourteenth Amendment was the topic of many influential cases that were argued by the Warren Court, one of the most popular of which was *Gideon V. Wainwright*. Clarence Earl Gideon of Florida was arrested and put on trial for felony theft at a local bar that had been broken in to. During the trial, he asked to be provided with legal counsel, as he could not afford to hire an attorney himself. He was denied representation due to the perceived lack of extenuating circumstances that the state of Florida believed were necessary to prohibit someone from successfully representing themselves. From jail, Gideon wrote letters of appeal to the Supreme Court, who decided the time was right to hear his case. In a unanimous decision, the court reasoned that the Sixth Amendment's right to counsel is extended to all Americans by the Fourteenth Amendment,⁴⁵ setting a precedent that is well-known today.

The court also used their power to set precedents prohibiting discrimination against minority groups in the cases of *Hernandez v. Texas* and *Loving v. Virginia*. The first of these cases centered around Pete Hernandez, a Mexican-American who was indicted for murder by an all-white grand jury because those of Mexican descent were unable to serve as jurors in Texas in 1954. After a lower court denied the prohibition of Mexican-Americans from participating in juries was discrimination forbidden by the Fourteenth Amendment, the case was elevated to the Supreme Court. The court decided unanimously that the Equal Protection clause of the Fourteenth Amendment applies to other racial groups beyond just Blacks and Whites.⁴⁶ *Loving v. Virginia* used the Fourteenth Amendment to strike down state laws that banned interracial marriage, after Richard and Mildred Loving's marriage was deemed illegal according by the state of Virginia. The couple appealed the decisions of lower courts to uphold that they were illegally married to the Supreme Court. In a unanimous decision written by Chief Justice Warren, the court proclaimed that anti-miscegenation laws dating back to colonial times were violations of the United States Constitution, which eliminated laws against interracial marriage in fifteen other states.⁴⁷ Both of these cases allowed the federal government to change by removing barriers that existed for minority groups.

Since the end of World War II, the Supreme Court had been handing down decisions that slowly removed southern states' control of African American voting rights by broadening the scope of the Fifteenth Amendment,⁴⁸ and the Warren Court was no different. During this era, the Supreme Court was a strong advocate for protecting Southern Blacks' voting rights and known for finding many ways to show that the Voting Rights Act of 1965 was grounded in Constitutional principles.⁴⁹ This advocacy for the voting rights protected by the Fifteenth Amendment began as early as 1960, with the case of *Gomillion v. Lightfoot*, in which Alabama's state and local laws that had enabled city officials to redraw voting districts were ruled unconstitutional. The court unanimously held that this practice was a violation of the Fifteenth Amendment, since it drew nearly all of Tuskegee's black residents out of the city and prevented them from voting in municipal elections.⁵⁰ Also related to voting districts, the Supreme Court heard the case of *Baker v. Carr* in 1962, in which a group of Tennessee residents presented concerns about the fact that the state had not redrawn voting districts since 1901, ignoring shifts in population centers and the contents of the state's Constitution. The overrepresentation of rural voters denied those living in more populated areas equal protection under the law, but the main question was whether or not the case was a political question. The justices finally concluded that the case was justiciable and established the principle of "one man, one vote",

which required districts drawn for state legislatures and congressional districts to have roughly equal populations. This eventually resulted in nationwide redistricting and ensured fair representation.⁵¹

Following the passage of the Civil Rights Act of 1965, the court began to hear cases that questioned the constitutionality of the new legislation. One such case was *South Carolina v. Katzenbach*, in which the state South Carolina argued against the statute's prohibiting states from using a test (such as a literacy test) that would deny citizens the right to vote. It was argued that in singling out one specific region, Congress had exceeded its constitutional authority as defined by the Fifteenth Amendment. Warren and his court upheld the legislation on the grounds that it was aimed at the South because this was the region in which voter discrimination was most predominant.⁵² In the decision handed down by the Chief Justice, it was proclaimed that Congress had full authority to prevent racial discrimination in voting, and provided a preclearance provision, which required certain states and localities to get approval from the Justice Department of a federal court before they would be able to change their voting laws. This provision was especially aimed at those that had a record of attempting to make it harder for minorities to vote.⁵³ In another instance of support for provisions of the Civil Rights Act of 1965, the judicial branch handed down a ruling in *Harper v. Virginia Board of Elections*. This case was brought to the Supreme Court by Annie Harper, who could not afford to pay the poll tax Virginia required for voting, despite the fact that the Twenty Fourth Amendment had outlawed such barriers to voting. In this instance, the court overruled the precedent that had previously been set in the 1937 case of *Breedlove v. Suttles*, in striking down poll taxes due to their violation of the Equal Protection clause.⁵⁴ These cases were instrumental in changing the federal government by constitutionally-backing new legislation and ensuring that the protections that were guaranteed in the Civil Rights Amendments, and not previously upheld by the Supreme Court, were extended to all citizens.

Teaching Strategies

Many of the students at my school are significantly below grade-level when it comes to reading and writing, so the social studies department has been focusing on weaving literacy skills into our own curriculum. This is especially true for underclassmen, who we are trying to arm with skills that will be enduring and increase their success as they progress to higher-level courses. In ninth grade social studies courses, we aim to expose students to disciplinary texts with challenging language and practice using context clues to interpret them, increase the reading endurance of our students that are used to reading short passages, select the most important details of a reading in order to write summaries, and make claims that are supported by specific evidence.

Modeling

When students are unfamiliar with something they will be doing, it is highly beneficial for the teacher to model the way students should be doing the activity. In many instances, high school teachers seem to assume that their students are familiar with what is being asked of them and simply explain the instructions and send students on their way. This can set students up for failure, putting them in a situation where they do not know what is expected of them or are overwhelmed by a vague understanding of the assignment. Modeling is especially useful when introducing students to disciplinary-specific texts, which varies greatly from the types of reading they are familiar with. Many social studies teachers have become so familiar with the type of

thinking we need to engage in order to interpret social studies sources, to the point that it becomes second nature. When modeling these sources, it is necessary for teachers to prepare the source by reading through it for specific contextual clues about the information, the author's main idea and supporting details, words or phrasing that may be unfamiliar to students, and questions that could be asked of the document. This approach prepares them to model their thinking for students and allows our students to see examples of what they should be looking for in the primary sources that they will be interacting throughout this unit.

Reading Images

Our students spend all day, every day looking at pictures and taking in the images that are surrounding them. However, they are likely to process, interpret, and make meaning of the things they see in ways that vary greatly from the ways social scientists "read" images. Our students will be able to identify the main idea of an image easily and will likely be able to pick out all of the components of the picture. However, they are generally less skilled when it comes to contextualizing what they see and drawing conclusions from the image. This means that it is necessary to guide them through the process of how to read images and make meaning out of that they see. Students need to be led through gathering information about sourcing the image to draw conclusions about when and why it was created, what is in the picture including subjects and positioning, and draw conclusions about what things are not included in the image and why. Once they have done this, students need to understand how this information can be used to determine what message the artist or photographer is trying to present. In this case, images will photographs and political cartoons that provide students with information about the nature of daily life during the time periods we are examining. Reading images will require students to gather evidence about places and groups that are unfamiliar to them, and look for patterns in information. This pushes students to go beyond just what they see in front of them and draw conclusions about the information.

Collaborative Pairs

Using collaborative pairs is a great way to ensure that all students remain engaged in the activity and learn the desired information from the lesson, while identifying any misconceptions. In a classroom where students seem to prefer to live 'in their own worlds' and would much rather communicate with others through digital formats, getting them to engage in actual conversation with someone else seems to push some students outside of their comfort zones. Making deliberate choices in student pairings can serve to provide support for students that perform at a lower level and encourage students to acknowledge the ideas of others, instead of simply taking their own ideas as fact. Working in pairs eliminates the intimidation that can accompany speaking in front of larger groups or the possibility of one student being overruled by a majority group that shares the same ideas or opinions. Collaborative pairs are often used during Think-Pair-Share activities, where students are asked to start by coming up with their own ideas about a particular topic before exchanging ideas and discussing with their partner, and ultimately having a class discussion on the topic. In this unit, it would be useful to use this teaching strategy as students gather information about our current Supreme Court and evaluate decisions that are being handed down.

Writing Summaries

One of the most surprising struggles my ninth graders face in their writing is the ability to write summaries after interacting with some sort of text, whether in print or digitally. They have an idea of what it means to summarize something and if I ask them to summarize the class period or something else that they have experienced first-hand, they are easily able to pick out the main ideas and provide a short overview of a large amount of information. However, when asked to summarize in an academic situation, whether verbally or in

writing, students often have difficulty and will pick out secondary details but overlook the main idea. Accordingly, it is important for students to continually practice writing summaries and refining their skills. When we work with summarization at William Penn, students are reminded of the acronym TWINE, which tells them that summaries should tell the reader the topic of what they are summarizing, explain what they learned, be in their own words, not be too long, and include essential vocabulary. In this unit, it will be essential for students to be able to summarize the details of a Supreme Court case.

Evidence-Based Writing

Another area of writing that my students display weaknesses in is making claims that are backed by evidence, as well as explaining how the evidence they have chosen is helpful in supporting the argument they are trying to make. Being pushed to write in this fashion can be unfamiliar and uncomfortable for students that have grown used to hunting for answers within a text and copying it down on their worksheet word-for-word. My school uses the acronym CSET (claim, support, evidence and tie-up) to provide our students with a framework for what evidence-based claims ought to look like. Students are taught that their writing should generally follow the format of making a claim, supporting the claim with their own words, providing evidence from the source and then explaining the evidence as they tie it up. It is generally most difficult for students to choose textual evidence that best supports their claim and then go beyond a simple conclusion to tie-up their writing piece. In this unit, students will need to incorporate evidence their written conclusions about whether recent Supreme Court decisions are allowing for or preventing political change.

Classroom Activities

Title: Attitudes About Reconstruction

Essential Question: What were the attitudes of the general public and political leaders about the passage of the Civil Rights Amendments?

This lesson is intended to help students develop an understanding of the correlation between public opinion and political decisions that are made. They will gather information about the perspectives of the general public, the Supreme Court, and elected officials.

Anticipatory Set: What emotions do you think Americans in the North were feeling when the Thirteenth, Fourteenth, and Fifteenth Amendments were passed? What about the South?

Lesson Details: Many students arrive in high school with a general understanding of the role Abraham Lincoln played in ending slavery but are unlikely to have deeper knowledge of the multi-faceted process that was required for legally abolishing slavery. This lesson is intended to capture their intention through the use of film, while challenging them to examine the abolition of slavery from multiple perspectives. In completing this lesson, students will view clips of Steven Spielberg's 2012 *Lincoln* film. As they view the selected clips, students will add information a graphic organizer, which asks them for evidence that the general public, Supreme Court, and elected officials were in support of or against the Amendments that were passed at the conclusion of the Civil War. Once students have gathered the necessary information, they will demonstrate their understanding via writing. To conclude this lesson, students' written responses will choose one of the perspectives they gathered information about and make an evidence-based claim that conveys their chosen

group's attitude towards the Civil Rights Amendments.

Title: Voting Rights Over Time

Essential Question: How has the Supreme Court changed the federal government over time, in regards to voting rights?

This lesson is intended to demonstrate that the idea that the actions of the Supreme Court since the end of the Civil War had played a significant role in ensuring voting rights for all Americans.

Anticipatory Set: In what year would you have gotten the right to vote?

Lesson Details: This lesson will focus on precedents set by the Supreme Court, related to voting rights. During this lesson, students will collaborate to create a chronological representation that allows them to visualize the change in decisions made by the judicial branch over time. Each group will be assigned an assortment of Supreme Court cases to research. Students will summarize the basic facts of each case, while determining whether it allowed for or prevented political change. They will then work together to develop a visually appealing way to present the information they have gathered and a thirty-second speech that will share the most important information they've learned with their classmates. The product that will be created lends itself to adaption for remote learning, as students can easily create Google Slides presentations of infographics with the required information. Students should investigate the following Supreme Court cases: *United States v. Cruikshank*, *United States v. Reese*, *Guinn v. United States*, *Smith v. Allwright*, *Gray v. Sanders*, *Baker v. Carr*, *Gomillion v. Lightfoot*.

Title: Today's Supreme Court

Essential Question: Are the actions of today's Supreme Court allowing for or constraining political change?

This lesson is intended to help students think critically about the ideologies of the current sitting Supreme Court justices and the decisions they are making, in order to determine if the court's decisions are allowing for or constraining political change.

Anticipatory Set: What is the last Supreme Court decision you saw in the news?

Lesson Details: In order to get students to extend their thinking and make connections between the content they learned in this unit and current events, we will conclude the unit by examining the present-day Supreme Court. Students may have heard mention of the Supreme Court in current events recently, but are unlikely to know much about the individual justices and how their ideologies are impacting the rulings being handed down. This activity will be completed in expert groups, where they are collaborating with peers, with each student having a role that contributes to the final product. At the start of the activity, each student will complete a Supreme Court Justice profile, where they gather information about the ideology of the president that they were appointed by, as well as that of the justice, and their past decisions. Each group will then come together to discuss their individual justices and make a prediction about the overall ideological leanings of the present-day court. They will then be assigned a recent Supreme Court ruling to gain information about. The group will read the decision handed down by the Court, as well as any dissenting opinions. This information will be used to summarize the case, as well as determine whether the decision was in alignment with the ideologies of the justices, as well as the general public. They will then create a poster that will be used to present their findings during a class-wide gallery walk.

Resources

Aul, Francis J. "Statutory Rules of Constitutional Interpretation and the Original Understanding of Judicial Power and Independence." *Georgetown Journal of Law and Public Policy* 17, no. 1 (2019). In this article, Aul elaborates on the role of the Supreme Court in the American political system.

Bryan, Amanda C. "Public Opinion and Setting the Agenda on the U.S. Supreme Court." *American Politics Research* 48, no. 3 (2020): 377-90. <https://doi.org/10.1177/1532673X18822312>. In this article, there was a discussion of how the Supreme Court cases that will be heard are chosen, and the fact that those in which justices' opinions do not align with the majority of Americans are avoided.

Casillas, Christopher J., Peter K. Enns, and Patrick C. Wohlfarth. "How Public Opinion Constrains the U.S. Supreme Court." *American Journal of Political Science* 55, no. 1 (2011): 74-88. <https://doi.org/10.1111/j.1540-5907.2010.00485.x>. This article provided information about how the actions of the Supreme Court tend to fall in alignment with the beliefs of the general public.

Chism, Kahlil. "The Constitutional Amendment Process." *Social Education* 69, no. 7 (2005): 373. This article provided the necessary information for explaining how an Amendment is added to the United States Constitution.

Cornell Law School Legal Information Institute. "Civil Rights." Accessed November 7, 2020. https://www.law.cornell.edu/wex/civil_rights. This webpage from Cornell's Legal Information Institute gave an overview of significant Civil Rights legislation.

Cohen, Adam. *Supreme Inequality: The Supreme Court's Fifty-Year Battle for a More Just America*. New York: Penguin Press, 2020. This book's chapter on Democracy discussed the work done by the Warren Court to protect voting rights.

Editors, History.com. "14th Amendment." History.com, 2020. This History.com webpage gave an overview of the Fourteenth Amendment, including a discussion of its lasting impact.

———. "Loving v. Virginia." History.com, 2019. This webpage provided the background information on the case of *Loving v. Virginia* that was used to discuss how the Warren Court expanded protections provided by the federal government.

Epps, Garrett. "The Antebellum Political Background of the Fourteenth Amendment." *Law and Contemporary Problems* 67, no. 3 (2004): 175+. <https://link.gale.com/apps/doc/A125875239/AONE?u=29002&sid=AONE&xid=080de1ae>. In this article, there was an in-depth discussion of the Fourteenth Amendment.

Foner, Eric. "Abraham Lincoln, the Thirteenth Amendment, and the Problem of Freedom." *Georgetown Journal of Law & Public Policy* 15, no. 1 (2017): 59+. This article discusses Abraham Lincoln's role in the abolition of slavery, as well as the process that was necessary for ratification of the Thirteenth Amendment.

———. *The Second Founding: How the Civil War and Reconstruction Remade the Constitution*. 1st ed. New York, NY: W. W. Norton & Company, Inc., 2019. This book provided a significant amount of information about how the Supreme Court ruled in regards to the Civil Rights Amendments during the Reconstruction era.

———. “The Supreme Court and the History of Reconstruction — and Vice-Versa.” *Columbia Law Review* 112, no. 7 (2018): 1585–1606. This article discussed the actions taken by the United States Supreme Court in the years following Reconstruction.

Ginsberg, Benjamin, Theodore J. Lowi, Margaret Weir, and Caroline J. Tolbert. “The Founding and the Constitution.” In *We The People*, 11th ed., 39–68. New York, NY: W. W. Norton & Company, Inc., 2017. This textbook was useful in providing background information about the United States Constitution, including the explicit powers granted to the judicial branch.

Goldfield, David. *America Aflame: How the Civil War Created A Nation*. 1st ed. New York, NY: Bloomsbury Press, 2011. This book provided context for the state of America following the Civil War and information about attitudes towards the Civil Rights Amendments. This book provided context for the state of America following the Civil War and information about attitudes towards the Civil Rights Amendments.

Oyez. “Harper v. Virginia Board of Elections,” n.d. This entry provided the background information on the case of *Harper v. Virginia Board of Elections* that was used to discuss how the Warren Court ruled in favor of protecting voting rights.

Tulane University Law School Webpage. “History of Law: The Fourteenth Amendment.” Accessed December 7, 2020. <https://www.history.com/topics/black-history/fourteenth-amendment>. This website contained an in-depth look at the Fourteenth Amendment and its implications.

United States Senate Webpage. “Landmark Legislation: Thirteenth, Fourteenth, & Fifteenth Amendments,” n.d. This section of the United States Senate's webpage provided an overview of each of the Amendments passed at the conclusion of the Civil War.

Lewis, Anthony. *Gideon's Trumpet*. 1st ed. New York: Random House, Inc., 1964. This book told the story of *Gideon v. Wainwright* in a way that highlighted the judicial processes that brought the case to the Supreme Court.

Supreme Court of the United States Webpage. “Members of the Supreme Court of the United States.” Accessed December 7, 2020. <https://www.supremecourt.gov/about/members.aspx>. This website was used to gather information about the years that justices of the Supreme Court served.

Rodriguez, Marc S. “Hernandez v. Texas.” Oyez, n.d. This entry provided the background information on the case of *Hernandez v. Texas* that was used to discuss how the Warren Court expanded protections provided by the federal government.

Ross, Michael A. “The Supreme Court, Reconstruction, and the Meaning of the Civil War.” *Journal of Supreme Court History* 41, no. 3 (2016): 275–94. <https://doi.org/10.1111/jsch.12119>. This article discussed the actions taken by the Supreme Court during Reconstruction and their lasting impact.

Scheips, Paul J. “Significance and Adoption of Article V of the Constitution.” *Notre Dame Law Review* 26, no. 1 (1950): 46–67. This article detailed the information about the Supreme Court that is contained in Article V of the United States Constitution.

Simon, James F. *Eisenhower vs. Warren: The Battle for Civil Rights and Liberties*. 1st ed. New York, NY: W. W. Norton & Company, Inc., 2018. This book was useful for providing background information about Warren and why Eisenhower selected him as Chief Justice of the Supreme Court.

The Supreme Court Historical Society Webpage. "The Chase Court, 1864-1873," n.d. This website from the Supreme Court Historical Society gave detailed information about the membership of the Chase Court and its rulings.

The National Archives' Online Exhibits. "The Emancipation Proclamation," 2019. This webpage contained information that was used in my discussion of the Emancipation Proclamation and its limits.

Tolson, Franita. "The Constitutional Structure of Voting Rights Enforcement." *Washington Law Review* 89, no. 2 (2014): 413+. <https://link.gale.com/apps/doc/A376071102/AONE?u=29002&sid=AONE&xid=98d276f7>. This article was used to gain information about the Supreme Court's handling of the Fifteenth Amendment over time, especially during the Reconstruction era.

Tushnet, Mark, ed. *The Warren Court in Historical and Political Perspective*. 1st ed. Charlottesville: University Press of Virginia, 1993. This work is a collection of essays written on the Warren Court, which was useful in understanding why this era of the Supreme Court was an anomaly, as well as providing information about some of the cases that were cited in this unit.

———. *Why the Constitution Matters*. 1st ed. Orwigsburg, PA: Keystone Typesetting, Inc., 2010. This book provided information about the contents of the Constitution, including what it dictates about the judicial branch.

Westbrook, Gennie. "Jones v. Alfred H. Mayer Co." *Constituting America*, 2017. <https://constitutingamerica.org/jones-v-alfred-h-mayer-co-1968-guest-essayist-gennie-westbrook/>. This article was where I obtained additional information for my discussion of the Supreme Court case *Jones v. Alfred H. Mayer Co.*

Reading List for Students

Lewis, Anthony. *Gideon's Trumpet*. 1st ed. New York: Random House, Inc., 1964. This novel is helpful in providing students with an overview of the dynamic process of decision-making within the Supreme Court, as well as explaining the case of *Gideon v. Wainwright* in a way that is interesting.

Spielberg, Steven, John Williams, and Alejandro De La Llosa, *LINCOLN*. USA/India, 2012. This film is useful in demonstrating the role of the Civil Rights Amendments in the abolition of slavery, as well as the attitudes of the general public towards this action, in a way that will interest students.

Appendix on Implementing district Standards

Delaware Civics Standard Two, 9-12 Benchmark B: Students will understand that the functioning of the American government is a dynamic process which combines the formal balances of power incorporated in the Constitution with traditions, precedents, and interpretations which have evolved over time.

Students will work towards meeting this standard throughout the course of this unit, as they develop an understanding of the Supreme Court. They will understand that the judicial branch is one of three branches of government established in the United States Constitution, whose power is balanced by actions of the other two. They will be able to demonstrate that they understand the highest level of this standard, asks them to identify ways that the Constitution both allows for and limits change.

CCSS.ELA-LITERACY.RH.9-10.1

Cite specific textual evidence to support analysis of primary and secondary sources, attending to such features as the date and origin of the information.

Students will meet this standard as they create written pieces that explain decisions made by the Supreme Court, incorporating information from various activities throughout the unit. They will have the opportunity to interact with primary sources as they read Supreme Court rulings and dissenting opinions, and secondary sources that they will likely come across as they complete their own research on the judicial branch.

Notes

¹ Eric Foner, *The Second Founding: How the Civil War and Reconstruction Remade the Constitution*, 1st ed. (New York, NY: W. W. Norton & Company, Inc., 2019).

² Benjamin Ginsberg et al., "The Founding and the Constitution," in *We The People*, 11th ed. (New York, NY: W. W. Norton & Company, Inc., 2017), 39–68.

³ rton & Company, Inc., 2017), 39–68.

⁴ Paul J Scheips, "Significance and Adoption of Article V of the Constitution," *Notre Dame Law Review* 26, no. 1 (1950): 46–67.

⁵ Kahlil Chism, "The Constitutional Amendment Process.," *Social Education* 69, no. 7 (2005): 373.

⁶ Francis J. Aul, "Statutory Rules of Constitutional Interpretation and the Original Understanding of Judicial Power and Independence," *Georgetown Journal of Law and Public Policy* 17, no. 1 (2019).

⁷ U.S. Const. art. III.

⁸ Anthony Lewis, *Gideon's Trumpet*, 1st ed. (New York: Random House, Inc., 1964).

⁹ Mark Tushnet, *Why the Constitution Matters*, 1st ed. (Orwigsburg, PA: Keystone Typesetting, Inc., 2010).

¹⁰ Aul, "Statutory Rules of Constitutional Interpretation and the Original Understanding of Judicial Power and Independence."

¹¹ Lewis, *Gideon's Trumpet*.

¹² Tushnet, *Why the Constitution Matters*.

¹³ Amanda C. Bryan, "Public Opinion and Setting the Agenda on the U.S. Supreme Court," *American Politics Research* 48, no. 3 (2020): 377–90, <https://doi.org/10.1177/1532673X18822312>.

¹⁴ Christopher J. Casillas, Peter K. Enns, and Patrick C. Wohlfarth, "How Public Opinion Constrains the U.S. Supreme Court," *American Journal of Political Science* 55, no. 1 (2011): 74–88, <https://doi.org/10.1111/j.1540-5907.2010.00485.x>.

¹⁵ "Landmark Legislation: Thirteenth, Fourteenth, & Fifteenth Amendments," United States Senate Webpage, n.d.

¹⁶ "Civil Rights," Cornell Law School Legal Information Institute, accessed November 7, 2020, https://www.law.cornell.edu/wex/civil_rights.

¹⁷ "The Emancipation Proclamation," The National Archives' Online Exhibits, 2019.

¹⁸ Eric Foner, "Abraham Lincoln, the Thirteenth Amendment, and the Problem of Freedom," *Georgetown Journal of Law & Public Policy* 15, no. 1 (2017): 59+.

¹⁹ Foner.

²⁰ U.S. Const. amend. XIII.

²¹ "History of Law: The Fourteenth Amendment," Tulane University Law School Webpage, accessed December 7, 2020, <https://www.history.com/topics/black-history/fourteenth-amendment>.

²² History.com Editors, "14th Amendment," History.com, 2020.

²³ "Civil Rights."

²⁴ Garrett Epps, "The Antebellum Political Background of the Fourteenth Amendment," *Law and Contemporary Problems* 67, no. 3 (2004): 175+, <https://link.gale.com/apps/doc/A125875239/AONE?u=29002&sid=AONE&xid=080de1ae>.

²⁵ Epps.

²⁶ U.S. Const. amend. XIV.

²⁷ Franita Tolson, "The Constitutional Structure of Voting Rights Enforcement," *Washington Law Review* 89, no. 2 (2014): 413+, <https://link.gale.com/apps/doc/A376071102/AONE?u=29002&sid=AONE&xid=98d276f7>.

²⁸ Tolson.

²⁹ Michael A. Ross, "The Supreme Court, Reconstruction, and the Meaning of the Civil War," *Journal of Supreme Court History* 41, no. 3 (2016): 275–94, <https://doi.org/10.1111/jsch.12119>.

³⁰ "The Chase Court, 1864-1873," The Supreme Court Historical Society Webpage, n.d.

³¹ “Members of the Supreme Court of the United States,” Supreme Court of the United States Webpage, accessed December 7, 2020, <https://www.supremecourt.gov/about/members.aspx>.

³² David Goldfield, *America Aflame: How the Civil War Created a Nation*, 1st ed. (New York, NY: Bloomsbury Press, 2011).

³³ Eric Foner, “The Supreme Court and the History of Reconstruction — and Vice-Versa,” *Columbia Law Review* 112, no. 7 (2018): 1585–1606.

³⁴ Foner.

³⁵ Ross, “The Supreme Court, Reconstruction, and the Meaning of the Civil War.”

³⁶ Foner, *The Second Founding: How the Civil War and Reconstruction Remade the Constitution*.

³⁷ Foner.

³⁸ Foner.

³⁹ James F. Simon, *Eisenhower vs. Warren: The Battle for Civil Rights and Liberties*, 1st ed. (New York, NY: W. W. Norton & Company, Inc., 2018).

⁴⁰ Simon.

⁴¹ Mark Tushnet, ed., *The Warren Court in Historical and Political Perspective*, 1st ed. (Charlottesville: University Press of Virginia, 1993).

⁴² Tushnet.

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