



OHIO CENTER
FOR LAW-RELATED
EDUCATION

*Partnering with Teachers to
Bring Citizenship to Life*

Civility in Elections

A Three Lesson Plan Series

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This publication was funded by the Ohio Civility Consortium and the Chief Justice Thomas J. Moyer Legacy Committee in preparation for the March 18th “Text, Talk, Civility Matters.”

The views expressed herein do not necessarily reflect those of the Civility Consortium, and no endorsement of these views should be inferred.

The Ohio Center for Law-Related Education is sponsored by the Supreme Court of Ohio, the Office of the Ohio Attorney General, the Ohio State Bar Association, and the ACLU of Ohio Foundation. The views expressed herein do not necessarily reflect those of the sponsors, and no endorsement of these views should be inferred.



Lesson One: Why does voting matter?

Compelling Question:

Should voting in local, state, and national elections be a requirement for all citizens?

Objective(s):

- Students will be able to (SWBAT) identify the origin of the right to vote in the United States Constitution both generally, and specifically for: 1) all races, 2) women, and 3) those over 18.
- SWBAT construct arguments to support their position on whether or not voting should be mandatory for all citizens.

Warm-up / Bell-ringer:

Show students the following statistic from the Bipartisan Policy Center regarding voter turnout. Ask students to respond to the questions that follow:

The table below shows the percentage of eligible citizens who cast ballots in the presidential elections for a given year. Consider these statistics, then answer the questions that follow.

Presidential Election Year	Eligible Citizens Casting Ballots	Eligible Citizens aged 18-29 Casting Ballots
2000	54.2%	40%
2004	60.4%	49%
2008	62.3%	51%
2012	57.5%	45%

Source: Bipartisan Policy Center, *2012 Voter Turnout Full Report*
<http://bipartisanpolicy.org/library/2012-voter-turnout/>
 Youth Vote Source: CIRCLE Youth Vote Fact Sheet
http://civicyouth.org/wp-content/uploads/2013/05/CIRCLE_2013FS_outhVoting2012FINAL.pdf

- 1) Would you consider these numbers to be high or low?
- 2) Are you surprised by these numbers, or are they what one would expect?
- 3) What factors do you think influence voter turnout positively or negatively?

Introduction to new material:

With students, review the following information (available as a student handout on page 5)

Contrary to popular belief, the United States Constitution does not expressly elaborate a right of citizens to vote in elections. Although elections are referenced in Article 1, Section 2, Clause 1, the Constitution as it was originally constructed does not state that voting is a right of citizenship for anyone. For most of the early history of the United States, the individual states were seen to have the power to decide who could and could not vote in Federal elections.

In fact, this absence of an express right to vote would pose a stumbling block to later groups seeking the right to vote. In 1875, in the U.S. Supreme Court case *Minor v. Happersett*, a leader of the Missouri women's suffrage movement named Virginia Minor sued the state registrar who denied her application to register as a voter. In this case, the Court was "unanimously of the opinion that the Constitution of the United States does not confer the right of suffrage upon anyone" (*Minor v. Happersett* 88 U.S. 162, 178). Because the Constitution did not expressly describe voting as a right held by all citizens, the Court used this as a means to deny Minor's claim that preventing women from voting was unconstitutional.

The fight for suffrage (the right to vote) has been a hard fought battle over time for many groups. Previously disenfranchised individuals (those who are denied the vote) include former slaves, African Americans generally, people of Asian descent, Native Americans, women of all races, residents of the District of Columbia, etc. These groups and others fought protracted battles in courts and sometimes literal battles to win a right that they believe was unjustly (or unconstitutionally) denied. In many instances, individuals denied the right to vote faced violent reactions from civilians and government officials alike.

However, over time the view of the right to vote has adapted and expanded to include most classes of citizens (with few exceptions). Since the ratification of the Constitution in 1790, through Constitutional Amendments and U.S. Supreme Court cases, the right to vote has, among other changes, been expanded to:

- 1) Remove requirement of owning property to vote (State based reform, ended in 1856)
- 2) Forbid discrimination based on race (14th and 15th Amendments 1868 and 1870 respectively)
- 3) Include women (19th Amendment passed in 1920)
- 4) Include Native Americans (*Trujillo v. Garley*, New Mexico Statutory Federal Court Opinion)
- 5) Make the minimum voting age 18 years of age (26th Amendment, 1971)

Despite these expansions of the right, there are still individuals who would otherwise qualify as citizens, who are denied the right to vote. One example (in many states) are individuals who have been convicted of serious crimes (felonies). States vary on whether or not individuals regain the right to vote after they serve prison time, or complete probation. The U.S. Supreme Court has upheld the constitutionality of these restrictions (so long as they are applied to all people regardless of race) in the 1974 case *Richardson v. Ramirez*, 418 U.S. 24, and *Hunter v. Underwood*, 471 U.S. 222 (1985). Similarly, U.S. Citizens residing in Puerto Rico are not able to vote, unless they are residing in Puerto Rico on a temporary basis with permanent residency in one of the fifty states or the District of Columbia.

Introduce Compelling Question

Less than 2/3 of eligible citizens vote in any given year. Although these statistics are specific to the presidential elections, the turnout for local elections is similarly low. According to the Ohio Secretary of State, since 2013 elections on 70 local elections in Ohio have been decided by a single vote (*Source: <http://www.sos.state.oh.us/mediaCenter/2015/2015-01-26.aspx>*).

Considering the importance of voting, and given the current voter turnout rate, **should voting be mandatory for all eligible citizens?**

Questions for Discussion:

- 1) What importance does voting have in our government?
- 2) What reasons exist (legitimate or otherwise) from limiting every person (e.g. teenagers, non-citizens, convicted felons, etc.) from voting?
- 3) Given the struggle that many groups fought to gain the right to vote (e.g. women) would we expect that group to have higher than average voter turnout today?
- 4) What potential harm is created when we require all eligible citizens to vote?
- 5) What benefits exist to requiring all citizens to vote?

Brief History of Voting Rights in America

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Lesson Two: What issues should candidates cover?

Compelling Question:

When a voter is considering which presidential candidate to support, what issues or characteristics should be most important?

Objective(s):

- Students will be able to (SWBAT) support their selection of the criteria or issues that are most important in choosing a candidate for an elected office.

Warm-up / Bell-ringer:

Ask students to answer the following questions to activate their prior knowledge of the role of a president in our system of government:

- 4) Of which branch of government is the President a part?
- 5) In our “representative democracy” how does the President represent the people?
- 6) What influence does the President have over other elected and unelected officials in our system of government?

Introduction to new material:

With students, review the following information (available as a student handout on pages 10-11)

When a company is looking to hire someone to fill a vacancy, they often begin by creating a job description. Only by knowing all of the duties a person will be asked to perform can the search committee screen applicants and ultimately choose a candidate. Applicants for the position will read the job description and send in their cover letters and resumes that show why they are the most qualified candidate. In an interview, the candidates will answer questions that provide support to their claim of being the most qualified, and will hope that the company chooses to hire them for the role.

In presidential elections, the voters are the search committee, and must screen the “applicants” (i.e. candidates) to ultimately offer only one of them the “job” (i.e. the presidency). The campaign ads and website that candidates create are their resumes, and the debates are like the job interviews.

However, it is not a guarantee that all voters will consider the roles and duties of the president before picking their candidate. Likewise, there is no guarantee that the

candidates will use their campaigns to advertise how they best fit the job description. If campaign managers and voters are not matching their considerations to fitting the job description, how do we ensure the integrity of the process?

The actual "Job Description" for the President is contained in Article Two of the United States Constitution. Although this Article has been interpreted over time by the U.S. Supreme Court, the duties of the President and their powers remain the same. The Sections of Article Two directly describing the President's job are as follows:

SECTION 1: CLAUSE 1

The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows

SECTION 1: CLAUSE 5

No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

SECTION 1: CLAUSE 8

Before he enters the Execution of his Office, he shall take the following Oath or Affirmation:—"I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

SECTION 2: CLAUSE 1

The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment.

SECTION 2: CLAUSE 2

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

SECTION 3: CLAUSE 1

He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

How fully do you think this “job description” matches the role? Does this adequately describe the qualities a president must possess? Although many of the duties are described, this does not completely assist a person trying to choose between a variety of candidates. Some questions that arise come directly from the job duties described above. For example, if a president is appointing ambassadors, should we ask presidents about their prior experience in foreign politics? Others might be more general questions about what kind of a leader the candidate will be, or the beliefs and opinions they may hold. For example, should a person vote for a president who shares their same beliefs about religion? Should a person care whether or not a candidate has a college degree, or what employment history a candidate has?

Because the characteristics that make a good president are not spelled out (and perhaps cannot be) much is left to the opinion of the voters. Likewise, campaign managers do not have perfect guidance on the kinds of advertising they should create. In order to cater to as many opinions as possible, campaign strategists tend to create many different kinds of ads, highlighting the positive aspects of their candidate, and attacking the negative aspects of opponents. A “good” campaign strategist will employ both strategies, trying to appeal to a wide audience to either convince them that their candidate is best suited for the job, or adequately shock them into not voting for the other options.

Introduce Compelling Question

In the 2016 Iowa Caucus, the first major electoral event of the 2016 Presidential Election, the margins between “winners” and “losers” was very narrow. Of the twelve republican candidates, the top three candidates earned 27.6%, 24.3%, and 23.1% (Ted Cruz, Donald Trump, and Marco Rubio respectively). On the Democratic side, the results were even closer, with Hilary Clinton and Bernie Sanders dividing the vote at 49.9% and 49.6% respectively. With margins this close, it is difficult to say that any one group voting for a candidate is “wrong,” and a clear “best candidate” cannot truly be identified.

Source: <http://www.nytimes.com/elections/2016/primaries/iowa>

Knowing that ultimately only one person can be elected to the presidency, what criteria should voters use to cast their votes? **What issues or characteristics should be most important in choosing who to vote for in a presidential election?**

Questions for Discussion:

- 6) Should all voters be required to prove that they have read the “job description” for president that is written in Article Two of the Constitution?
- 7) Should candidates be limited to creating advertising that directly addresses the responsibilities and powers described in Article Two of the Constitution?
- 8) Are there other considerations that are not specifically mentioned in Article Two that might make someone a good or bad president?
- 9) The only “requirement” for a president (other than being duly elected) is that they be a natural born citizen over the age of 35 who has resided in the United States for at least fourteen years. Should there be other requirements (e.g. college degree, background in politics, prior experience, etc.)?
- 10) What are the three criteria that you would say are *most* important in selecting a president?

A Job Description Fit for a President

When a company is looking to hire someone to fill a vacancy, they often begin by creating a job description. Only by knowing all of the duties a person will be asked to perform can the search committee screen applicants and ultimately choose a candidate. Applicants for the position will read the job description and send in their cover letters and resumes that show why they are the most qualified candidate. In an interview, the candidates will answer questions that provide support to their claim of being the most qualified, and will hope that the company chooses to hire them for the role.

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A Job Description Fit for a President

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SECTION 2: CLAUSE 2

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Lesson Three: What is Political Civility?

Compelling Question(s):

Should there be behavior standards that regulate the speech/advertising of officials running for political office? If so, what should these standards be? How should they be enforced?

Objective(s):

- Students will be able to (SWBAT) define the term “political incivility.”
- SWBAT present and defend their response to the compelling question.

Warm-up / Bell-ringer:

Ask students to answer the following questions to activate their prior knowledge of the role of the government in regulating behavior:

- 7) If the government (state or federal) wants to stop a certain behavior, how do they do so?
- 8) If the government (state or federal) wants to promote/encourage a certain behavior, how do they do so?
- 9) How successful is the government at regulating people’s behavior?

Introduction to new material:

With students, review the following information (available as a student handout on pages 16-17)

Although most individuals (even the most conservative among us) would accept that the government has a right to regulate individual behaviors like murder, theft, destruction of property, etc. (i.e. criminal behavior), most people would disagree with a proposal that governments be given the power to regulate moral behavior (e.g. treating each other with kindness, accepting responsibility proactively, keeping our promises, etc.).

This is not to say that morality is *never* regulated by the government, but it is done in more limited circumstances. In certain professions, for example, maintaining a high level of ethical behavior is seen to be such a priority that governments have created rules for how they behave. For example, attorneys must comply with a “rules of professional conduct” that govern the ways that they should prepare and interact with clients, other attorneys, and the court system.

Because a person's life, liberty, and property are at stake, we hold attorneys to a higher standard of expected behavior. If attorneys violate these rules they could lose their license to practice law.

Similar "codes of professional conduct" apply to professionals like doctors, real estate agents, accountants, currently serving elected officials, and others. The professions that are regulated by a code of conduct are typically also professionals who require a license from the state to operate (e.g. attorneys must pass the bar exam and be licensed by the state, doctors must pass medical board exams and have an active state license, etc.) What do these professions have in common? Why might it be important to ensure they are being held to a high standard of behavior?

The rules of conduct for professionals are designed to address many of the problems that could arise when professionals act unethically. Because great harm could result (e.g. a patient could die if a doctor comes to work intoxicated) we enforce behavior standards against these licensed professionals. However, codes of conduct rarely address what we might call "civility." That is to say, the rules prevent a doctor from operating while intoxicated, but do not govern the tone of voice that she uses when interacting with nursing staff.

During elections for federal officials, there are also rules that govern conduct. Similar to the rules for professionals, these rules govern specific ethical behaviors (e.g. requiring a candidate to disclose the source of campaign donations) but do not regulate the tone of advertisements used in their campaign. Thus we can prevent a politician from taking large sums of money from a corporation, but we cannot stop them from creating campaign materials that negatively attack their opponents.

Negative or attack advertising is merely one example of a kind of behavior that can be characterized as "political incivility." Other examples include name calling, disparaging language, speech that distracts from real issues, or speech that shuts down open dialogue. In all of these instances, candidates are exhibiting behaviors that obscure a voter's ability to make an informed opinion about who to support.

There is very little regulation, state or federal, that prevents candidates from engaging in this kind of behavior. Courts have routinely ruled that First Amendment rights to free speech limit government oversight, even in instances where candidates openly lie. Some states, like Ohio, have laws that criminalize knowingly making false statements in campaign advertising; however, this law is currently being challenged in the federal courts as unconstitutional.¹

¹ See *Susan B. Anthony List et al. v. Stephen Driehaus*, No. 14-4008, slip op. (6th Cir. Feb. 26, 2016); holding that Ohio's law criminalizing false statements in campaign advertising unconstitutionally limits speech under the First Amendment. The case is currently pending appeal, and could be appealed to the Sixth Circuit for *en banc* review (review by all 16 of the judges appointed to the Sixth Circuit), or can be appealed to the United States Supreme Court.

Although the government may be limited in its ability to legislate for civility in elections, this does not mean that all hope is lost. Private individuals can take actions to encourage candidates to operate with integrity. Candidates can pledge to run campaigns that maintain civility. Private citizens can also make contributions to non-partisan organizations that fact check political advertising, or that provide training for campaign managers and candidates on civil discourse. Ultimately, citizens can also use their vote to support candidates who run civil campaigns. While these actions may not carry the legal significance of a federal regulation, they can be equally powerful in holding political candidates accountable.

Introduce Compelling Question

“Americans generally dislike mean-spirited political campaigns and they presume the absence of civil discourse in American politics is a major problem. Results from a representative survey published in 2011 show that 82% of Americans agreed strongly or somewhat agreed that “[s]ome negative advertisements are so nasty I stop paying attention to what the candidates are saying” (Fridkin & Kenney, 2011, p. 314). The same survey showed that 72% of Americans found that “mean-spirited commercials attacking the opponent [were] inappropriate,” and 82% percent said the same about ads featuring personal attacks (p. 314). A 2010 poll found that “[e]ight-in-ten Americans [said] the lack of civil discourse in our political system [was] a serious problem” (Public Religion Research Institute, 2010).”

Source: Robin Stryker, Bethany Anne Conway, and J. Taylor Danielson: “What is political incivility?” (2014)

Citing:

Fridkin, K. L., & Kenney, P. J. (2011). Variability in citizens’ reactions to different types of negative campaigns. *American Political Science Review*, 55, 307-332. doi: 10.1111/j.1540-5907.2010.00494.x

Public Religion Research Institute. (2010, November 10). *Americans Say Elections More Negative than Past, Lack of Civility As Major Problem*. Available at <http://publicreligion.org/research/2010/11/americans-say-elections-more-negative-than-past-lack-of-civility-as-major-problem>.

If Americans are this dissatisfied with the tone of political discourse, **should there be behavior standards that regulate the speech/advertising of officials running for political office? If so, what should these standards be? How should they be enforced?**

Questions for Discussion:

- 11) We said that governments regulate behavior of some professionals due to the high danger that exists when they act unethically. Is the risk of harm that comes from political candidates sufficiently dangerous to encourage the government to intervene?
- 12) Should the Constitution protect a political candidate's ability to lie in their advertising?
- 13) What other behaviors should be prohibited for candidates campaigning for office?

There should be a law... maybe.

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In the box below, define the term “political incivility.” Provide at least two examples of political incivility, and at least one example of *civil* behavior.

Define the term “political incivility”	
Examples of political incivility	Examples of political civility

² See *Susan B. Anthony List et al. v. Stephen Driehaus*, No. 14-4008, slip op. (6th Cir. Feb. 26, 2016); holding that Ohio’s law criminalizing false statements in campaign advertising unconstitutionally limits speech under the First Amendment. The case is currently pending appeal, and could be appealed to the Sixth Circuit for *en banc* review (review by all 16 of the judges appointed to the Sixth Circuit), or can be appealed to the United States Supreme Court.