

## **Updates to the Fourth Edition of *We the People: The Citizen & the Constitution*, Level 3 (high school)**

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*This document lists the major changes made to the We the People third edition (2009) that are found in the fourth edition (2015). The full text of the added or updated sections is included as a service to our teachers. Only major updates are included in this list. Teachers using the third edition can use this document to supplement their teaching of We the People. All page numbers refer to the third edition (2009).*

### **Lesson Objectives**

- A new Lesson Objectives section was added to the first page of every lesson. In most cases, this was adapted from the third edition's Lesson Purpose section but delineates in a clear fashion what students are expected to know when they have completed the lesson.

### **Lesson 11**

- Page 83: What Do You Think? exercise, question 3: "Why or why not?" has been added after the question.
- Page 83: "How Should Presidents Be Selected" section: The Critical Thinking Exercise has been deleted.
- Page 83: A new section and Critical Thinking Exercise has been added after the "How Should Presidents Be Selected" section. The new section is titled "Should the Electoral College Be Changed?" and includes a new Critical Thinking Exercise titled "Analyzing the Advantages and Disadvantages of the Electoral College." Although the title of the new Critical Thinking Exercise is the same as the exercise on page 83 of the third edition, the exercise has been revised for the fourth edition and now contains three questions. Here is the complete text of the new section and Critical Thinking Exercise:

#### **Should the Electoral College Be Changed?**

At the Philadelphia Convention the Framers rejected proposals to have the president elected by Congress or state legislatures. Some delegates worried that direct election by the people would be unwise. The people might not be able to make informed judgments because it was unlikely they would know candidates from other states or regions, or they might simply splinter and support favorite candidates from their states or regions. They devised a plan called the Electoral College, although that name is not used in the Constitution. The plan is set forth in Article II, Section I. It provides that each state gets the number of votes equal to the number of its representatives and senators. Because all but two states and the District of Columbia distribute all their votes to the statewide winner, the popular-vote victor can lose the Electoral College.

Since the nation's first presidential election in 1792 there have only been a few times when the winner of the popular vote has not won the election. The most recent example was the 2000 election. George W. Bush won the key state of Florida but received less of the popular vote, 48.4 percent, than his opponent, Al Gore, who received 48.6 percent. To win the electoral vote a candidate must win 270 of the 538 electoral votes. Bush won 271 to Gore's 267.

In 1969 an attempt was made in Congress to amend the Constitution and replace the Electoral College with a system based on the national popular vote. Although the amendment was supported by a large majority in the House of Representatives, it failed to pass in the Senate due to a filibuster by senators

from several small states who argued that to eliminate the Electoral College would reduce the influence of small states. However, since the election of 2000 there have been a number of calls for change.

Critics of the Electoral College make the following claims, for example:

- It is undemocratic and should be abolished in favor of direct popular vote for president and vice president.
- It unfairly gives disproportionate power to small states.
- The electoral votes of each state should be allotted to candidates in proportion to the popular votes they receive.

Defenders of the Electoral College make the following claims, for example:

- Since presidential candidates cannot gain enough electoral votes in any one region of the United States to win, they must appeal to voters in most, if not all, of the regions of the country and represent their interests as well. The result is that winning candidates must be supported by voters from throughout the country, which contributes to the unity of the nation.
- The outcomes of elections are more clear and less disputable because the winner typically gets a larger proportion of the electoral votes than popular votes. This reduces the chances of a call for a recount of votes to decide an election when compared with popular-vote systems.
- The disproportionate power given to small states helps to protect their interests from possible abuses by larger, more populous states.

### **CRITICAL THINKING EXERCISE**

#### *Analyzing the Advantages and Disadvantages of the Electoral College*

Work with two or more other students to answer the following questions. Be prepared to discuss your answers with your class.

- What democratic principles, if any, are furthered or
- violated by the Electoral College?
- What arguments can you give for and against the use of the Electoral College to select the president?
- If you think the Electoral College should be reformed or replaced, what kind of changes for electing the president would you support? Why?

### **Lesson 20**

- Reviewing and Using the Lesson: New questions 4 and 5

### **Lesson 21**

- There is a new What Do You Think? exercise on gerrymandering that appears after the Why Is Districting Controversial? section.

### **Lesson 22**

- Page 153: The second paragraph (starting “The Senate also operates...”) has been refined and updated to include the 2013 modifications to Senate rules for invoking cloture. This is the revised paragraph:

The Senate also operates according to rules, but the rules are treated more informally in the Senate

than in the House. Traditionally, members of the Senate have been more independent than members of the House, perhaps because senators originally were regarded as “ambassadors” from their states. A single senator can use the filibuster, a practice of refusing to surrender the floor during a debate, to prevent a vote. In 1917 the Senate adopted a rule to limit debate with the approval of two-thirds of its members, later changed to three-fifths, known as a cloture vote, and thus bring a proposal to a vote by the full Senate. Senators also have the opportunity to amend bills on the floor. In 2013 the Senate modified its procedures to allow for cloture for judicial nominees, other than Supreme Court nominees, by a simple majority vote.

- Pages 156-7: The Critical Thinking Exercise has been divided into two sections: (1) a new section titled "What Role Has Congress Played in Promoting the Protection of Individual Rights?" and (2) a Critical Thinking Exercise. The new section and the Critical Thinking Exercise are exactly the same text as in the third edition: the Critical Thinking Exercise has simply been split into a new section and a Critical Thinking Exercise .

### Lesson 23

- Page 168-9: The Critical Thinking Exercise has been divided into two sections: (1) a new section titled "What Role Has the Executive Branch Played in Promoting the Protection of Individual Rights?" and (2) a Critical Thinking Exercise.

### Lesson 26

- Page 184, second paragraph: This new sentence was added between the first and second sentences (the Term to Understand is in bold): “The powers referred to in the Ninth and Tenth Amendments that are reserved to the states or to the people are called **reserved powers**.”
- Page 187: Third paragraph: the sentence that begins “State constitutional amendments...” was replaced with the following:

State constitutional amendments often reflect state responses to policy debates occurring throughout the United States. For example, beginning in the late twentieth century Americans have debated whether same-sex couples should be allowed to marry. Several states adopted constitutional amendments banning marriage between same-sex couples, whereas others adopted provisions or statutes granting same-sex couples a wide range of rights short of marriage. In 2015 this matter was taken out of the hands of the states in a ruling by the U.S. Supreme Court in the case of *Obergefell v. Hodges*. In a 5–4 decision the Court ruled that same-sex marriage is a fundamental right guaranteed by the equal protection clause of the Fourteenth Amendment. Other policy debates continue at the state level today. Recently proposed state constitutional amendments include the use of public money for private education, authorization of casino gaming, and the use of marijuana for medical conditions.

- Page 188: This paragraph replaces the first paragraph on the page, which reads “The case was *Gonzalez v. Raich...*”:

U.S. drug policy is currently at a crossroads. Since Colorado became the first state to legalize marijuana for recreational use in 2014, an increasing number of states and some localities have followed suit. A number of states also have passed legislation to decrease the amount of time drug

offenders are incarcerated and to increase substance-abuse treatment for offenders. Federal law, however, still prohibits marijuana for any use in all states and territories of the United States.

- Pages 189-190: The “Environmental protection” bullet has been updated. The first two paragraphs in that section have been replaced with the following:

**Environmental protection.** In response to congressional inaction on various environmental policy issues, a number of state legislatures have taken the initiative. One example is climate change. California took the lead in 2006 with the Global Warming Solutions Act. Since then other states have enacted similar measures, passing legislation to reduce greenhouse gas emissions, develop clean energy resources, and promote more energy- efficient vehicles, buildings, and appliances. Some states have joined together in regional compacts, such as the mid-Atlantic and northeastern states and the western and midwestern states. However, it seems that climate change is an issue that is prompting action at the national and international levels. Despite this fact, state governments and regional associations will continue to play an important role by testing new solutions and making successful programs available for widespread use.

- Page 190: Health care section has been updated to include the Affordable Care Act. This is the new section:

**Health care.** By the mid-1990s soaring health-care costs and increasingly large numbers of people without health insurance had become a major issue of public concern. By the mid-2000s, nearly 50 million Americans did not have health insurance. Moreover, it was generally agreed that the United States had the highest health-care costs relative to the size of its economy of any country in the world. Proposed solutions to the problem, however, created significant political disagreement; Democrats generally sought to increase the federal government’s and state governments’ roles in providing affordable health care to Americans, whereas Republicans argued that the best solution was to keep America’s health care system under the control of private enterprise. In 2009– 2010, at President Obama’s urging, Congress passed the Patient Protection and Affordable Care Act. This law mandates that people buy health insurance or face a tax penalty, subsidizes the cost of insurance for low-income citizens, provides financial incentives for certain small businesses to offer health insurance to their workers, prohibits insurance companies from denying coverage based on preexisting conditions or from capping annual benefits, expands Medicaid coverage, and creates health insurance exchanges to try to lower the costs of health insurance. In 2010, the Congressional Budget Office predicted that the law, which began to take effect in 2014, would reduce the federal deficit by \$143 billion over ten years.

## Lesson 27

- Page 197: “What Kinds of Rights Does the Bill of Rights Protect?” section, second paragraph: This paragraph was updated to include two recent Supreme Court cases that incorporated the Second Amendment: *District of Columbia v. Heller* (2008) and *McDonald v. Chicago* (2010). Here is the revised paragraph:

For example, the Second Amendment provides that “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” The amendment requires the government to refrain from infringing upon the “right of the people to keep and bear Arms” and, as such, is a negative right. Some people argue that this amendment refers to the

institutional rights of states to maintain militia units. Others contend that it refers to the individual right to keep and bear arms that is permitted by law in most states. The Supreme Court seemed to side with the institutional view in 1939 in *United States v. Miller*. In 2008, however, in the case of *District of Columbia v. Heller*, the Court made clear that the Second Amendment protected the individual's right in federal territories to bear arms. In *McDonald v. Chicago* in 2010 the Court incorporated the Second Amendment and ruled that citizens have the right to bear arms.

## Lesson 29

- Page 210: The Critical Thinking Exercise has been rearranged so that the questions that pertain to each position appear at the end of each position's paragraph rather than at the end of the exercise.
- Page 210: The "What Are Commonly Accepted Limitations on Freedom of Expression?" section has been greatly elaborated and expanded with a more in-depth explanation of situations in which government can limit freedom of expression. Here is the new section:

Despite the statement in the First Amendment that "Congress shall make no law...abridging the freedom of speech," most people argue in favor of limiting freedom of expression in certain situations. Suppose the First Amendment were interpreted to mean that there could be no laws at all limiting speech. People would be able to say anything they wanted at any time they wanted. People could lie in court and deprive others of their right to a fair trial. People could scream in libraries, give political speeches in the middle of church sermons, or speak through loudspeakers in neighborhoods in the middle of the night.

Most judges and legal scholars believe that the First Amendment should not be interpreted to protect freedom of expression in situations such as these examples where other people might be harmed or their rights infringed upon. Freedom is not license to do anything one pleases. In some situations limiting freedom to speak may actually increase a person's opportunity to be heard. For example, there are rules governing when someone may talk at a meeting or a debate.

Governments do make laws that limit freedom of expression to protect other important values and interests. Such laws usually do not violate the First Amendment. Laws that limit freedom of speech that are commonly accepted include, among others, those prohibiting the following:

- **Defamation.** Laws that prohibit people from defamation of others. These are laws that prohibit slander which is to make false and malicious statements about another person that injures his or her reputation. Laws also prohibit libel, which is to print false and malicious statements about another person that injures her reputation.
- **Incitement to crime.** Laws that prohibit people from urging others to take immediate action which is against the law.
- **Revealing of government or trade secrets.** Laws that prohibit people from giving military secrets to an enemy or secrets of a company one works for to another company.
- **False advertising.** Laws that prohibit companies from making false statements about the products they sell.
- **Obscenity.** Laws that prohibit speech that is deeply offensive in light of contemporary community standards.
- **Time, place, and manner.** Laws that prohibit speech at certain times, in certain places, and in the ways speech is expressed. For example, one cannot give a political speech through a loudspeaker in a residential area in the middle of the night (time), one cannot give a speech

about the death penalty in a kindergarten classroom (place), and one cannot shout one's responses to questioning in a courtroom (manner).

- Page 211-12: The “What Limits Are There on Government’s Power to Limit Expression?” section has been edited to make the concepts more easily understood by students. Here is the section:

The Supreme Court always has permitted some regulation of speech and press. The Court’s approach to analyzing restrictions on speech and press has been described as both “dynamic” and “unpredictable.” That is because the Court’s rulings change with changes in the Court’s membership. Generally the following rules limit the government’s power to make laws and rules restricting free speech and press:

- **Laws may not discriminate unfairly on the basis of the content of the expression or the speaker.** For example, a city council could not permit some religious organizations to pass out literature on public streets but forbid other religious organizations from doing so.
- **Laws and regulations also cannot single out people who hold unpopular views and prevent only them from speaking.** However, no one has the right to publish secret military information or the names of U.S. intelligence agents working overseas.
- **Laws restricting the time, place, and manner of expression must be content-neutral and applied fairly.** Speech can be limited by time, place, and manner restrictions on when, where, and how it can occur. For example, a city council can restrict public speeches to certain parts of the day or require organizations to obtain permits for large public gatherings. Such regulations may not affect the content of expression or favor some individuals, groups, or opinions over others.
- **Laws restricting expression cannot be vague.** Restrictions on expression must be clear so that people know what is permitted and what is forbidden. For example, an administrative rule prohibiting “disrespectful speech that interferes with the public good” would be too vague. Neither a person wanting to speak in a lawful manner nor a police official charged with enforcement would know what the rule permits or prohibits.

Laws restricting expression may not be overly broad and must be implemented by the “least restrictive means.” Regulations must be written narrowly so that they solve a specific problem without limiting more expression than is necessary. Regulations also must employ the “least restrictive means” of achieving their goals. For example, violence sometimes erupts during political protests. Banning all political protests would be broader than necessary to solve the problem of occasional violence, therefore such a ban would not be the least restrictive means for reducing the risk of violence. See *Ashcroft v. American Civil Liberties Union* (2002) for a case involving the least restrictive means requirement.

- Page 213: The Critical Thinking Exercise has been converted into a new section entitled “Should There Be Speech Codes on College and University Campuses?” The What Do You Think? exercise afterward remains the same.

## Lesson 31

- Page 226: A new What Do You Think? exercise has been added after the section “When Is a Warrant Required? What Is Probable Cause?” Here is the exercise:

### WHAT DO YOU THINK?

1. Should law enforcement officers who have legally arrested a person be allowed to search the entire contents of the person's cell phone without a warrant?
2. Should law enforcement officers be allowed to secretly place a tracking device on a suspect's vehicle without a warrant to track his or her movements on public streets?

- Page 232: An additional Reviewing and Using the Lesson question was added, as follows: “3. What rights does the Fifth Amendment protect?”

## Lesson 32

- Page 236: The Critical Thinking Exercise was converted into a new section, “How Might a Free Press Endanger a Fair Trial?,” and a What Do You Think? exercise.
- Page 238: The What Do You Think? exercise was converted into a Critical Thinking Exercise.
- Page 239: A new paragraph titled “Right to appeal convictions” has been added.
- Page 239, Critical Thinking Exercise: The title of the exercise has been changed to “What Were Some Historical Positions on Punishment?”
- Page 240: The questions in the Critical Thinking Exercise have been updated. Here are the new questions:
  1. Explain your personal position on the death penalty.
  2. What evidence or argument might convince you to change your position on the death penalty? Why?

## Lesson 33

- Page 247: A new question was added to the What Do You Think? exercise, as follows: “6. Should the First Amendment right to freedom of speech be interpreted to give corporations the right to spend unlimited funds to pay for political broadcasts in elections that support or oppose candidates for political office or take positions on political issues so long as their funding is made public? Why or why not?”
  - Page 252: Critical Thinking Exercise: The final question (“3. Be prepared to explain and defend your responses.”) was moved to the first paragraph of the exercise.
- Page 252: A new section was added at the end of the lesson:

### **What Responsibilities Do Americans Have toward Undocumented Immigrants?**

Few issues are as controversial and complex as that of transnational migrants who lack legal status to live or work in the United States. Undocumented immigrants currently number about 11.5 million people. That represents an increase of more than 35 percent since 2000. Most undocumented immigrants come from Mexico or Central America. A surge of illegal border crossings by unaccompanied minor children in 2014 led President Obama to take executive action. He approved a plan to allow Central American children to apply for refugee status while in their home countries and indicated that undocumented minors must receive a court hearing before being deported.

Because Congress failed to enact broad reforms of immigration, some states took action on their own. Several states, including Arizona, Texas, and California, complained that the undocumented immigrants strained their resources to feed and house them. Some states took legal action, arguing that the federal government has failed in its duty to secure national borders.

## Lesson 34

- Page 258, Critical Thinking Exercise: The voter participation statistics have been updated.
- Page 260: The first paragraph of the Critical Thinking Exercise became a new section titled “Does the Natural Rights Philosophy or Classical Republicanism Dominate American Behavior?”

## Lesson 35

- Page 264: The title of the section, “What Is the Civil Rights Act?” has been changed to “What Is the Civil Rights Act of 1964?”
- Page 265: The last bullet in the first column was deleted
- Page 265: The first and second paragraphs in the second column were deleted and replaced by the following paragraph:

Although the Voting Rights Act of 1965 has been called “the most successful civil rights law in history,” one of its key provisions, Section 5, was challenged in the Supreme Court in 2013. That provision required states and counties with a history of discrimination in voting to obtain federal permission before changing voting procedures. In a five-to-four decision in *Shelby County v. Holder*, the Court declared Section 4 to be unconstitutional because it relied on outdated information. Section 4 established a formula that determined which state and local governments had to obtain federal permission to change their election laws under Section 5.

- Page 267: The second paragraph and the bullet points that follow have been changed to the following:

After the passage of laws in the 1960s organizations such as the NAACP turned their attention to other, broader societal concerns, such as

- equal educational opportunities for all students,
  - equal employment opportunities,
  - health care reform,
  - protection of voting rights,
  - campaign finance reform, and
  - environmental protection.
- Page 268, after the final paragraph on the Equal Rights Amendment, a new bullet was added:

**Lesbians and gays.** The term *lesbian, gay, bisexual, and transgendered* (LGBT) *people’s rights* is used to cover a range of issues from the right to serve openly in the armed forces to the decriminalization of homosexuality to prohibiting discrimination in employment and housing.

The LGBT rights movement is noteworthy for how rapidly it has brought about changes, particularly in traditional notions of marriage and the family. In 2003 Massachusetts became the first state to legalize same-sex marriage. Several other states soon followed suit. In 2011 President Obama announced that his administration would no longer defend the 1996 Defense of Marriage Act. When the Supreme Court heard *United States v. Windsor* in 2013 it struck down the provisions of that act that prohibited the

federal government from legally recognizing same-sex marriages. The Court's ruling also made same-sex married couples eligible for a number of federal benefits and tax advantages. The movement to recognize the right to same-sex marriage culminated in 2015 when, in the case of *Obergefell v. Hodges*, the Supreme Court decided that it is a fundamental right guaranteed by the equal protection clause of the Fourteenth Amendment. Today the LGBT movement continues its advocacy for equal rights and legal protections in various aspects of public and private life.

- Page 268, Critical Thinking Exercise: The first sentence now says "Work in one of four groups" because there are now four civil rights movements mentioned in the preceding section.

### Lesson 37

- Page 280, second column: The sentences from "Writing on diary-like blogs..." to "...political discourse" were replaced by the following:

More than half of the voting-age population now uses the Internet to post their thoughts, watch campaign videos, or forward political content. Facebook is now a top destination, with some 1.4 billion users. Mobile messaging apps are mounting a challenge to Facebook. Younger people are increasingly using a wide variety of mobile messaging apps to communicate while spending less time broadcasting their activities and their views on Facebook's more expansive social network.

Users give three reasons for following political affairs and figures on social media. First, they place a greater importance on finding out about news quickly. Second, they feel more personally connected to political figures when they follow them on social media. Third, they perceive social media to be more reliable than information from traditional news media.

- Page 280, Critical Thinking Exercise: The first question was changed to the following:

In what ways, if at all, might the unrestricted use of the Internet, social media, electronic databases, smartphones, and other technologies, such as surveillance cameras and police body cameras, threaten or enhance the following fundamental principles of American constitutional democracy?

- Individual rights (especially privacy)
  - Limited government
  - Rule of law
  - Equality of opportunity
- Page 283-4: Campaign finance bullet was updated to include *Citizens United v. Federal Election Commission* (2010)

### Lesson 39

- Page 301, Critical Thinking Exercise 4: The first paragraph in the Critical Thinking Exercise was replaced by the following:

The health care system of the United States remained unique among the health care systems of developed countries until 2010. The passage that year of the Affordable Care Act (ACA) changed the landscape from reliance on job-based health insurance to require all individuals who could afford it to obtain basic health coverage or pay a fine. President Barack Obama considered the ACA to be the signature success of his domestic agenda. It was to extend medical insurance to more than 30 million previously excluded people.

As soon as the law was signed lawsuits were filed to challenge its constitutionality. Special-interest groups claimed that the ACA's requirement that people had to buy health insurance or pay a penalty violated the Constitution. The Court ruled in a 5-to-4 decision in *National Federation of Independent Business v. Sebelius* (2012) that the ACA's requirement was not unconstitutional.

A second challenge to the ACA came in June 2014 in two cases where companies said the law's requirement that they had to provide health care that covered all forms of contraception was a violation of their First Amendment right to religious freedom. Both were family-run companies that said they operated according to "Christian principles." The ruling came in the cases of *Burwell v. Hobby Lobby Stores* and *Conestoga Wood Specialties Corp. v. Burwell*. The Court ruled in another five-to-four decision that some closely held corporations could claim exemption from the law based on their owners' religious beliefs.

- Page 301, Critical Thinking Exercise 4:
  - A new Question 1 was added: "What arguments can you give for and against the Supreme Court's ruling in each of the above cases?"
  - Question 5, which used to be Question 4, was changed to the following: "What is your position on this issue in terms of the current situation and the principles involved?"