Teaching American History Primary Sources Lesson Plan

**Lesson Title:** Majority Rule vs. Minority rights

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**Contact Information:**

**Appropriate for Grade Level(s):** High School, esp. 12th Grade Civics Class

**Social Studies Standard(s):** C13.[9-12].5 & C13.[9-12].6

**Objective(s): At the end of this lesson, students will be able to…**

Assess enhance their understanding of the limits of majority rule and the necessity of minority rights

**Primary Sources (at least 3 used in lesson):** Majority (doc 1) and dissenting (doc 2) opinions from the West Virginia State Board of Education v. Barnette (1943) and a quote from William Renquist (doc 3); see attached below.

**Total Time Needed:** One 60 min. class period

**Historical Background & Context (+/- 250 words):** The Supreme Court case of the West Virginia State Board of Education v. Barnette (1943) is perfect for examining the delicate balance government has for respecting the open and fair democratic process (will of the majority) and also doing the same for the rights of the minority (civil rights). This a fundamental issue that our democracy has struggled with from the very beginning up to the present. The facts of the case are as follows: The West Virginia Board of Education required that the flag salute be part of the program of activities in all public schools. All teachers and pupils were required to honor the Flag; refusal to salute was treated as "insubordination" and was punishable by expulsion and charges of delinquency. Walter Barnette and other Jehovah’s Witnesses sued the school board challenging the compulsory nature of the flag salute and pledge, saying it was against their religious principles to participate in such an activity.

**Detailed Steps of Lesson :**

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| **Time Frame****(e.g. 15 minutes)** | **What is the teacher doing?**  | **What are students doing?** |
| 5 | Show Renquist quote, ask students to interpret. | Students will put Renquist quote in their own words. |
| 5-10 | Leading the class in saying the pledge, asking the question if anyone felt it was a violation of their religious rights and facilitating brief discussion. | Standing and saying the pledge and participating in the following discussion. |
| 10-15 | As a class, go over the background and facts of the case, have students read for themselves the excerpts from the majority and dissenting opinions. | Reading the opinions and deciding which they feel was the majority and which was the dissenting opinion and also which they most agreed with. |
| 5-10 | Leading the students in voting for either opinion A or opinion B. Call on or ask students to volunteer what specific sentence or phrase most made them agree with that opinion. Have students highlight or underline these parts of the text on their handouts. Inform students of the actual results of the case. | Voting on the opinions and substantiating their vote by highlighting specific parts of the decisions on their handouts. |
| 25-30 | Students will be broken up into groups of 5-7 and given current issues that deal with majority rule vs. minority rights. Monitor groups and facilitate progress | Students will come up with arguments for each side of the issue and then vote on which side they most believe in. They will have a spokesperson who briefly presents their issue, arguments and results to the class. |
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**Description of Lesson Assessment Tied to Objective/Standards:** Group participation & issue form filled out, discussion participation.

**Attached to the following pages are all readings, primary sources, guided questions, worksheets, assignment guidelines, rubrics, etc.**

**Renquist Quote:** To the argument made by Thurgood Marshall [in Brown v. Board of Education] that a majority may not deprive a minority of its constitutional rights, the answer must made that while this is sound in theory, in the long run it is the majority who will determine what the constitutional rights of the minority are.” –William Rehnquist in a memo as a young law clerk in 1952.

**Student Handout:**

WEST VIRGINIA STATE BOARD OF EDUCATION V. BARNETTE (1943)

Directions:

1. Read along as I your teacher goes over the background and facts of the case.

2. Read the opinions of the Supreme Court on this case.

3. Decide which opinion you most agree with and predict which opinion you think spoke for the majority. Underline or highlight the specific parts of the text that most led you to your decision. The case was decided on a vote of 6-3.

Background of the case:

In the two years after the Supreme Court's decision in Gobitis, Jehovah's Witnesses became regular targets of harassment and brutal treatment. Even as the United States entered World War II and the country entered a particularly patriotic era (after Gobitis), public sentiment began to turn about the compulsory pledge.

Facts of the case:

In 1941 (after the Gobitis decision), West Virginia passed a law that required all public and private school teachers and students to participate in activities for the purposes of "teaching, fostering, and perpetuating the ideals, principles and spirit of Americanism ... [and] the government of the United States and of the state of West Virginia." Part of that requirement was "honoring the Nation represented by the Flag."

Those who refused were considered "insubordinate" and could be punished by expulsion. Students who were expelled could not be readmitted to school until they agreed to pledge. Parents of students who were absent for five days of school or more could be charged with delinquency, and if convicted, subject to fines of $50 and up to 30 days in jail.

Originally, the board of education required the "stiff-arm" salute to the flag. However, after several civic groups objected because the salute was too much like Hitler's Nazi salute, the board of education allowed students and teachers to simply cover their hearts with one hand throughout the pledge.

Walter Barnette and other Jehovah's Witnesses sued the school board challenging the compulsory nature of the flag salute and pledge. The lower court sided with Barnette and the other families. In the process, the lower court rejected Supreme Court's decision in Gobitis.

Opinions in the case:

Opinion A

This case is about the First Amendment, but we should not decide the outcome based on the idea of freedom of religion. This case is about when someone can be compelled to speak words or to use symbolic speech in the form of a salute to the flag. It is about free speech. By forcing children to speak the pledge and salute the flag, the state is compelling speech in a manner that is not constitutional.

In the past, when deciding to "muffle" free speech and expression, the Court has used the test of whether there is a "clear and present danger" of action as a result of that speech. In this case, there is no clear and present danger posed by students who do not pledge or salute the flag.

It is ironic that in requiring the pledge and flag salute, we are expecting children to honor a patriotic creed, their country, and their Constitution, which in fact, includes the Bill of Rights that guards the individual's right to speak his own mind.

The Gobitis decision was wrong in many ways and should be overturned. First, it said the courts have no controlling interest in laws that are passed democratically by democratically elected officials. However, "One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections."

In the heart of the Gobitis decision was the argument that "national unity is the basis of national security" and that government authorities have the right to try to compel national unity. History tells us that "As governmental pressure toward unity becomes greater, so strife becomes more bitter as to whose unity it should be. ... Those who begin coercive elimination of dissent soon find themselves exterminating dissenters. Compulsory unification of opinion achieves only the unanimity of the graveyard."

"If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein."

Opinion B

If the main purpose of the West Virginia law in question is either to promote or to discourage some religious community or creed, it would clearly violate the Constitution. However, at its core, "this law is about promoting good citizenship and national allegiance" and unity. Elected officials do have the right and authority to pass such laws.

It is not the job of a judge to decide issues that have been settled in a democratic fashion by elected officials. "It can never be emphasized too much that one's own opinion about the wisdom or evil of a law should be excluded altogether when one is doing one's duty on the bench." The only opinion that matters is whether reasonable legislators could have passed the law before us. We are not "free to act as though we were a superlegislature."

"When Mr. Justice Holmes, speaking for the Court, wrote that 'it must be remembered that legislatures are ultimate guardians of the liberties and welfare of the people in quite as great a degree as the courts,' ... he went to the very essence of our constitutional system and the democratic conception of our society." ... The "framers of the Constitution denied such legislative power to the federal judiciary. ... They did not grant to this Court supervision over legislation."

"We are not reviewing merely the action of a local school board. The flag salute requirement in this case comes before us with the full authority of the State of West Virginia. We are in fact passing judgment on 'the power of the State as a whole.' ... Practically we are passing [judgment] on the power of each of the forty-eight states" to pass laws their citizens favor.

*Teacher info: Opinion A was the majority opinion, written by Justice Jackson and B was the dissenting opinion written by Justice Frankfurter*

**Issues for Groups:**

* Smoking in public places
* Mandating purchase of health insurance
* Eminent Domain
* Same sex marriage
* Affirmative action
* American Disabilities Act

Just to name a few; you may come up with better and more relevant ones yourself.

**Group Handout to be completed:**

Group Names: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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Arguments for (min. 3):

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Arguments against (min. 3):

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Group vote: Name How voted Leading Argument (list no.)

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