LESSON 1: WHAT IS INCORPORATION?

Handout A: Background Essay - What Is Incorporation?
1. Any three of these: the definition of citizenship; the privileges or immunities clause; the due process clause; and the equal protection clause.
2. Accept all reasoned responses.
3. Accept all reasoned responses.
4. Some people call the Fourteenth Amendment the “second Bill of Rights” because it ensures that everyone’s basic liberties are protected against action by the state.
5. Incorporation means that the protections of the Bill of Rights against the federal government are also protections against state or local governments.
6. Accept all reasoned responses.

Handout B: The Nation, the States, and Liberty
1. A veto on state laws is necessary to protect liberties. States shall not interfere with freedom of religion.
2. Madison’s drafts refer to protections against state limitations on liberties; the first amendment refers to protections against congressional limitations on liberties.
3. Anyone born in the United States is a citizen both of the country as well as of the state where they were born. All people are entitled to protections of life, liberty, and property. Each state must ensure that anybody living within the state is equally protected by the state’s laws.
4. Accept all reasoned responses. Some students may say that state governments, since they are closer to the people, are better protectors of rights. They may argue that the federal government cannot protect people against the federal government. Others may argue that the federal government, which takes a national view of rights and liberties, is best positioned to ensure that anyone, no matter which state they live in, is guaranteed the same basic rights.

LESSON 2: WHO SHOULD PROTECT OUR FUNDAMENTAL FREEDOMS?

Handout A: Background Essay - Who Should Define Our Fundamental Freedoms?
1. A “landmark case” is one which offers directions for future decisions.
2. Total incorporation suggests that every single part of the Bill of Rights be applied against the states. Selective incorporation suggests that only those rights guaranteed in the first eight amendments which are “fundamental and essential in the concept of ordered liberty” be incorporated.
3. Accept all reasoned responses while encouraging students to focus on whether or not these actions violate our fundamental freedoms.
4. Because of incorporation, individuals’ identification with their nation has increased while their identification with their state has decreased. People expect that the federal government—not the state governments—will be the main protector of individual rights. The federal
government now enforces protections instead of being the institution that people needed protection from.

5. Problems could arise since the institution which is protecting individuals (e.g., the federal government) is also the institution that individuals are being protected against. This can create a conflict of interest. This situation also makes the federal government the final determiner of which rights will/will not be protected.

6. Accept all reasoned responses while reminding students both of the Founders’ vision of the purpose of the Bill of Rights as well as the potential problems in giving one branch of government the ability to define our rights.

7. Accept all reasoned responses. Most students will likely reference life, liberty, pursuit of happiness, due process (both procedural and substantive), property, conscience, etc.

Handout B: Attitude Inventory
Answers will vary. Accepted reasoned responses.

Handout C: Fundamental Freedoms?

Fundamental Freedoms

First Amendment
Freedom from establishment of religion
Freedom to practice religion (free exercise)
Freedom of speech
Freedom of the press
Freedom to peaceably assemble
Freedom to petition

Second Amendment
Right to keep and bear arms

Third Amendment
Freedom from quartering of soldiers

Fourth Amendment
Freedom from unreasonable search and seizure
Right to valid search warrants

Fifth Amendment
Right to indictment by a grand jury
Freedom from double jeopardy
Freedom from forced self-incrimination
Right to just compensation when property is taken

Sixth Amendment
Right to a speedy trial
Right to a public trial
Right to an impartial jury
Right to a jury trial selected from residents where the crime was committed
Right to notice of accusations
Right to confront adverse witnesses
Right to process for obtaining witnesses (subpoena)
Right to counsel

Seventh Amendment
Right to jury trial in civil cases
Freedom from re-examination of facts in trials

Eighth Amendment
Freedom from excessive bail
Freedom from excessive fines
Freedom from cruel and unusual punishment

Incorporation
As of 2013, all rights have been incorporated except the Third Amendment; the Fifth Amendment’s guarantee to the right of indictment by a grand jury; the Sixth Amendment’s guarantee to a jury trial selected from residents where the crime was committed; and the Eighth Amendment’s protections against excessive bail and excessive fines.