



These materials have been adapted, with permission from The Florida Bar Benchmarks Adult Civic Education Program, for use in Louisiana. Principal authors of the Florida Benchmarks Program are Annette Boyd Pitts and Richard Levenstein. For assistance with adaptation in other states, contact staff@flrea.org

IS IT UNCONSTITUTIONAL? THE CASE OF THE SCARLET TAG

Topics addressed

- The Bill of Rights
- Constitutionality and judicial review

Time needed: 30 minutes

Overview: Participants will review the rights guaranteed in the Bill of Rights and examine some factors to determine if a hypothetical law violates the U.S. Constitution.

Format: This is a fast-paced, multi-dimensional activity that relies on audience participation and small group work.

Preparation: Ask the event coordinator to make sure participants have paper and pens for writing. Ideally, each table will have an odd number of persons seated to avoid a tie vote; however, this is not essential. Before presentation, review **Scarlet Tag Background Paper** to be able to respond to questions. Review Scarlet Tag PowerPoint.

Group size: Ideal for groups of 50 or fewer.

Handouts:

- LA 538 (fictitious law)
- Hypothetical scenario
- Evaluating the law handout

Presentation materials: Scarlet Tag PowerPoint. Print out a copy of the PowerPoint (six slides per page) to reference during presentation.

Optional Handouts:

Constitution pamphlets. Contact the LCLCE at (504) 619-0134.

Equipment: Arrange with event coordinator at program site to make sure you have all the equipment you need, such as a computer for PowerPoint, projector, screen and power cords.

30 minutes



This activity works best for groups of 50 or fewer

Handouts:

Scarlet Tag Scenario;
LA 538 (fictitious Law);
Evaluating the law handout

Ask if you need to bring your **laptop and projector**



Pace yourself!



Opening

Write down the rights: Ask participants to work either in small groups or individually and write down as many rights as they can remember from the Bill of Rights.

Remind the audience that the Bill of Rights includes the first 10 amendments to the U.S. Constitution.

Show Scarlet Tag PowerPoint: Using the PowerPoint, engage in a discussion with the audience. Distribute Constitution pamphlets, if available, after the Power-Point.

Judicial review: Let participants know that the U.S. Constitution is the supreme law of the land. Ask participants who the Constitution protects them from. (Answer: the government.) It is the responsibility of the judicial branch to determine if a government action (law, policy or ordinance, etc.) violates the Constitution. This is known as judicial review. For judicial review to take place, a person or entity brings a problem/case to the courts. How are judges different from other elected officials, such as lawmakers? (Note to presenter: Judges make decisions based on the law and should not make decisions based on public opinion or political motivations.) Next, using a hypothetical situation, participants will review a state law to determine if they think the law involved violates the Constitution.

The Scarlet Tag

Hand out Scarlet Tag scenario: Have audience read the scenario then ask what happened. Have people call out the facts. Did the driver do something wrong? Mold and shape the discussion. Make sure all facts are discussed: What time of night did this happen? Why was the driver stopped? Why did he have this tag? What happened to the driver? Review the hypothetical state law that led to the driver's stop.

Hand out copies of Scarlet Tag hypothetical state law (LA 538): The hypothetical law would require drivers convicted of a DUI offense to have a scarlet license plate. Also distribute the handout on evaluating the law. Allow time for participants to read and highlight important elements of the hypothetical state law. Ask the following questions while walking around the room. Have participants share their thoughts with the full group.

1. What is the problem this piece of legislation is trying to solve? Can you think of a scenario in which a citizen would approach a lawmaker?
2. Summarize the fictitious law (LA 538).
3. What is the purpose of the law?
4. Is the law fair? Why or why not?
5. Is the law practical and reasonable?
6. Is the law necessary or are there better ways to accomplish the same purpose?
7. What are the strengths and weaknesses of the law?

Allow 5 minutes to open



Ask audience to list rights from Bill of Rights

Allow 5 minutes to review Scarlet Tag Power-Point

Explain what judicial review is

Hand out Scarlet Tag Scenario

Allow 5 minutes for Q&A

Allow 5 to 10 minutes to review Scarlet Tag law using handout for evaluating the law

Ask each person individually to think about the following question. After deciding individually, put individuals into small groups and ask each small group to come to a consensus on the decision using the following question.

- 8. Do you think the hypothetical law is unconstitutional?** Why or why not? Cite specific provisions within the law that you think are unconstitutional. What specific sections of the Constitution or Bill of Rights does it violate?
Seek decisions from the groups.

Debriefing

Let the audience know that similar legislation has passed in Ohio. But Ohio did not include the probable cause section in their legislation. (Note: Please see “Drivers Seeing Red” in background paper.) In 1986, the 2nd District Court of Appeal ruled it was not cruel or unusual and did not infringe on the First Amendment to require a DUI offender to place a bumper sticker on his vehicle that read: “CONVICTED DUI – RESTRICTED LICENSE.”



Debrief.
Tell audience other states have similar laws

Allow 5 minutes for debriefing and closing