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## Abraham Lincoln and the Writ of Habeas Corpus

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## Abraham Lincoln, the Writ of Habeas Corpus, and Civil Liberties

Within two weeks following the attack on Fort Sumter, South Carolina, Abraham Lincoln had suspended the Writ of Habeas Corpus in Maryland.

On September 24, 1862, Abraham Lincoln issued a general proclamation suspending the Writ of Habeas Corpus throughout the United States.

Habeas Corpus is your constitutional right to a civil proceeding to be notified of the criminal charges against you and the legality of imprisonment.

According to the United States Constitution, Article 1, Section 9, Clause 2, the Privilege of the Writ of

Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or invasion the public safety may require it. Article 2, Section 1,

Clause 8, describes the Presidential Oath. Within the oath, the President swears to preserve, protect, and defend the Constitution of the United States.

In this activity, students will examine primary source documents to make conclusions about the suspension of Habeas Corpus, implications concerning the principle of Checks and Balances, civil rights, and the validity of President Lincoln's decisions.

Objectives: Students will:

- ~ understand the conflict between civil rights and public safety:
- ~ recognize what individuals and groups were denied their constitutional right of the Writ of Habeas Corpus:
- ~ work cooperatively to read and analyze primary source documents regarding the suspension of Habeas Corpus:
- ~ become familiar with on-line collections of primary sources:
- ~ share their knowledge with other groups:
- ~ create a group position statement based on questions provided, based on their knowledge and the sources that were reviewed:
- ~ share and discuss position statements:
- ~ try to reach consensus on position statement findings.

Time Required: Two to three class periods

Recommended Grade Level: Grades 8-12

Curriculum Fit: Civics, American History  
(Civil War and Constitutional Period)

Standards: Illinois Social Science State Standards

Goal 14 Understand political systems, with an emphasis on the United States.

Goal 14A. Understand and explain basic principles of the United States Government.

Goal 14B. Understand the structures and functions of the political systems of Illinois, the United States and other nations.

Goal 14F. Understand the development of United States political ideas and traditions.

Goal 16 Understand events, trends, individuals and movements shaping the history of Illinois, the United States and other nations.

Goal 16A. Apply the skills of historical analysis and interpretation.

Goal 16B. Understand the development of significant political events.

Resources:

~ The Constitution of the United States

Library of Congress, Rare Book and Special Collections Division, Continental Congress & Constitutional Convention Broadsides Collection

American Memory Collection

The following resources are available at Abraham Lincoln Papers at the Library of Congress, Manuscript Division (Washington, D.C.: American Memory Project, [2000-02]), <http://memory.loc.gov/ammem/alhtml/alhome.html>, accessed January 15, 2008

Transcriptions and annotations by the Lincoln Studies Center, Knox College, Galesburg, Illinois. Available at Abraham Lincoln Papers at the Library of Congress, Manuscript Division (Washington, D.C.: American Memory Project, [2000-02]),

<http://memory.loc.gov/ammem/alhtml/alhome.html>, accessed January 15, 2008

~ 2 Edwin M. Stanton, Wednesday, May 13, 1863 (Draft of General Orders suspending writ of habeas corpus regarding Clement Vallandigham)

~ 3 Edwin M. Stanton to Ambrose Burnside, Wednesday, May 13, 1863 (Order concerning habeas corpus in case of Clement L. Vallandigham)

~ 8 Abraham Lincoln to Henry W. Halleck, Monday, December 02, 1861 (Executive Order authorizing suspension of writ of habeas corpus; endorsed by William H. Seward)

~ 9 Nathaniel P. Tallmadge to William H. Seward, Sunday, May 24, 1863 (Arrest of Clement Vallandigham and its consequences)

~ 13 Robert Anderson to Abraham Lincoln, Saturday, September 28, 1861 (Telegram regarding arrests in Kentucky)

~ 16 John W. Forney to Abraham Lincoln, Friday, September 26, 1862 (Support for Emancipation Proclamation)

~ 19 C. E. Moss, Howard T. Combs, et al. to Abraham Lincoln, Wednesday, September 23, 1863 (Petition protesting suspension of habeas corpus in Missouri)

~ 20 W.R. Hallway to John G. Nicolay, Friday, January 02, 1863 (Turmoil in Indiana)

~ 32 Abraham Lincoln to John M. Schofield, Thursday, October 01, 1863 (Affairs in

Missouri)

~ 33 Abraham Lincoln to Winfield Scott, Thursday, April 25, 1861 (Arrest of Maryland Legislature)

~ 34 Ulysses S. Grant to Abraham Lincoln, Monday, January 16, 1865 (Telegram concerning arrest of Henry S. Foote)

~ 42 Oliver P. Morton to Abraham Lincoln, Saturday, May 30, 1863 (Protests General Burnside's Order No. 38)

## Procedure

### Activity 1: Setting the Stage

Students will be introduced to the Constitutional right of the Writ of Habeas Corpus. Ideally, this would occur during study of the Constitutional Period and study of the United States Constitution document.

### Activity 2: Habeas Corpus in the 1860's

(Activity 2 may take place during the Civil War Period or at any time after the Period has been taught.)

Students will review the definition of Habeas Corpus and refer to the United States Constitution to review under what circumstances it can be suspended.

### Activity 3: Student Grouping

1. Assign students to heterogeneous groups of four to six members.
2. Students will meet in assigned groups to select a group leader and deputy group leader.

### Activity 4: Documents as Historical Sources

1. Introduce documents as primary sources.
2. Students read Using Primary Sources on the Learning Page.
3. Introduce students to the Presidents Collections and the Abraham Lincoln Papers. Students will utilize the Hot List, or be provided with hard copies of the assigned primary sources and transcriptions.
4. Distribute and discuss the Written Document Analysis Worksheet.

### Activity 5: Individual and Group Analysis

1. Each group will be assigned to analyze one primary source document and transcription regarding Abraham Lincoln and the suspension of Habeas Corpus.
2. Each group member will examine the assigned documents and complete a Written Document Analysis Worksheet.
3. Group members will then meet as a team to discuss each document and complete a single Analysis worksheet, for each of the assigned documents. This worksheet should reflect the observations of all group members.

#### Note:

Remind students to read the document, additional notes and any other materials included to help them in their analysis.

#### Activity 6: Group Sharing

Class will reassemble and each group will share their analysis of each assigned document. Groups will take turns sharing their analysis.

#### Activity 7: Group Synthesis

Groups will reconvene and complete Position Statement Questions.

Questions one and two are generic. Question three will require groups to refer to their Written Document Analysis Worksheets.

#### Activity 8: Conclusions

1. Reconvene as a class and share findings of Position Statement Questions.

2. Ask the following questions after all groups have made their presentations.

~ “Do you believe that you saw evidence that Abraham Lincoln abused the right to suspend the Writ of Habeas Corpus?”

~ “How important is your right to Habeas Corpus?”

~ “Do you believe that the framers of the Constitution made an error in allowing for the suspension of the Writ of Habeas Corpus?”

~ “Under what circumstances would the President be justified in suspending Habeas Corpus rights?”

~ “How important is it to keep the basic rights that you are guaranteed in the Constitution?”

~ “What rights should we surrender to protect us from danger?”

~ “How can we assure that our rights will not be taken away?”

#### Evaluation and Extension

~ Presentation of information to class

~ Write an opinion paragraph on whether Abraham Lincoln abused his power to suspend Habeas Corpus.

~ Write a paragraph on whether the TSA (Transportation Security Administration) violates your Fourth Amendment Rights.

~ Write a paragraph on what rights American citizens have relinquished since the 9/11 attacks.

## Credits

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## Position Statement Questions

Background on Constitutional Change

## Group Members

### Legislative Branch

In order to propose amendments or changes to the Constitution, the House of Representatives and the Senate must both concur by a two thirds majority.

Amendments are then submitted to the states for ratification. Three fourths of the states must ratify an amendment for it to go into effect. (U.S. Constitution, Article 5)

### Judicial Branch

In order to declare a law unconstitutional, a majority, or at least five, of the Supreme Court Justices must agree.

(Judicial Review, Marbury v. Madison)

### Executive Branch

The President, as Commander in Chief of the military, may suspend the Constitutional right of Habeas Corpus if he feels that in cases of rebellion or invasion, the public safety may require it. Administration of the law is conducted by military authorities, who also can try individuals in military tribunals.

(U.S. Constitution, Article 2, Section 2, Clause 1)

(U.S. Constitution, Article 1, Section 9. Clause 2)

### Question 1

What checks do the Legislative and Judicial branches have on the President's declaration of suspension of Habeas Corpus?

### Question 2

Do you think that the Framers of the Constitution made an error in giving one person (the President) the power to suspend Habeas Corpus?

Why?

### Question 3

Use your Analysis Worksheets to complete the following questions.

### Document Title

In our opinion:

\_\_\_\_\_~ this document indicates a proper use of suspension of Habeas Corpus by President Lincoln.

\_\_\_\_\_ ~ this document indicates an abuse of power in the use of suspension of Habeas Corpus by President Lincoln.

\_\_\_\_\_ ~ this document does not contain the necessary information to make an informed decision on the use of suspension of Habeas Corpus by President Lincoln.

Why did you make this decision? Be specific.

Abraham Lincoln, the Writ of Habeas Corpus, and Civil Liberties - Documents

#### Document #2

The Abraham Lincoln Papers at the Library of Congress?Series 1. General Correspondence. 1833-1916.?Edwin M. Stanton, Wednesday, May 13, 1863 (Draft of General Orders suspending writ of habeas corpus regarding Clement Vallandigham)

<http://memory.loc.gov/cgi-bin/ampage?collId=mal&fileName=mal1/234/2345400/malpage.db&recNum=0>

Collection of U.S. House of Representatives

<http://bioguide.congress.gov/scripts/biodisplay.pl?index=V000008>

"General Order No. 38." Encyclopedia of American History. Answers Corporation, 2006. Answers.com 05 Feb. 2009. <http://www.answers.com/topic/general-order-no-38>

#### Document #3

The Abraham Lincoln Papers at the Library of Congress?Series 1. General Correspondence. 1833-1916.?Edwin M. Stanton to Ambrose Burnside, Wednesday, May 13, 1863

(Order concerning habeas corpus in case of Clement L. Vallandigham)

<http://memory.loc.gov/cgi-bin/ampage?collId=mal&fileName=mal1/234/2345200/malpage.db&recNum=0>

Collection of U.S. House of Representatives

<http://bioguide.congress.gov/scripts/biodisplay.pl?index=V000008>

"General Order No. 38." Encyclopedia of American History. Answers Corporation, 2006. Answers.com 05 Feb. 2009. <http://www.answers.com/topic/general-order-no-38>

#### Document #8

The Abraham Lincoln Papers at the Library of Congress?Series 3. General Correspondence. 1837-1897.?Abraham Lincoln to Henry W. Halleck, Monday, December 02, 1861

(Executive Order authorizing suspension of writ of habeas corpus; endorsed by William H. Seward)

<http://memory.loc.gov/cgi-bin/ampage?collId=mal&fileName=mal3/434/4344800/malpage.db&recNum=0>

"Suspension of the Writ of Habeas Corpus in Missouri." Civil War Homepage <http://www.civilwarhome.com/Writ.htm>

Document #9

The Abraham Lincoln Papers at the Library of Congress?Series 1. General Correspondence. 1833-1916.?Nathaniel P. Tallmadge to William H. Seward, Sunday, May 24, 1863 (Arrest of Clement Vallandigham and its consequences)

<http://memory.loc.gov/cgi-bin/ampage?collId=mal&fileName=mal1/236/2366100/malpage.db&recNum=0>

Collection of U.S. House of Representatives

<http://bioguide.congress.gov/scripts/biodisplay.pl?index=V000008>

"General Order No. 38." Encyclopedia of American History. Answers Corporation, 2006. Answers.com 05 Feb. 2009. <http://www.answers.com/topic/general-order-no-38>

Document #13

The Abraham Lincoln Papers at the Library of Congress?Series 1. General Correspondence. 1833-1916.?

Robert Anderson to Abraham Lincoln, Saturday, September 28, 1861 (Telegram regarding arrests in Kentucky)

<http://memory.loc.gov/cgi-bin/ampage?collId=mal&fileName=mal1/120/1209500/malpage.db&recNum=0>

John T. Woolley and Gerhard Peters, The American Presidency Project [online]. Santa Barbara, CA: University of California (hosted), Gerhard Peters (database).

<http://www.presidency.ucsb.edu/ws/index.php?pid=69993>

Document #16

The Abraham Lincoln Papers at the Library of Congress Series 1. General Correspondence. 1833-1916.

John W. Forney to Abraham Lincoln, Friday, September 26, 1862 (Support for Emancipation Proclamation)

<http://memory.loc.gov/cgi-bin/ampage?collId=mal&fileName=mal1/186/1866600/malpage.db&recNum=0>

Document #19

The Abraham Lincoln Papers at the Library of Congress ?Series 1. General Correspondence. 1833-1916.?C. E. Moss, Howard T. Combs, et al. to Abraham Lincoln, Wednesday, September 23, 1863

(Petition protesting suspension of habeas corpus in Missouri)

<http://memory.loc.gov/cgi-bin/ampage?collId=mal&fileName=mal1/265/2653400/malpage.db&recNum=0>

"Suspension of the Writ of Habeas Corpus in Missouri." Civil War Homepage

<http://www.civilwarhome.com/Writ.htm>

Document #20

The Abraham Lincoln Papers at the Library of Congress?

Series 1. General Correspondence. 1833-1916.?W.R. Hallway to John G. Nicolay, Friday, January 02, 1863 (Turmoil in Indiana)

<http://memory.loc.gov/cgi-bin/ampage?collId=mal&fileName=mal1/209/2091600/malpage.db&recNum=0>



Document #32

The Abraham Lincoln Papers at the Library of Congress?

Series 1. General Correspondence. 1833-1916.?Abraham Lincoln to John M. Schofield, Thursday, October 01, 1863 (Affairs in Missouri)

[http://memory.loc.gov/cgi-](http://memory.loc.gov/cgi-bin/ampage?collId=mal&fileName=mal1/268/2683300/malpage.db&recNum=0)

[bin/ampage?collId=mal&fileName=mal1/268/2683300/malpage.db&recNum=0](http://memory.loc.gov/cgi-bin/ampage?collId=mal&fileName=mal1/268/2683300/malpage.db&recNum=0)

"Suspension of the Writ of Habeas Corpus in Missouri." Civil War Homepage

<http://www.civilwarhome.com/Writ.htm>

Document #33

The Abraham Lincoln Papers at the Library of Congress?Series 1. General

Correspondence. 1833-1916.?Abraham Lincoln to Winfield Scott,

Thursday, April 25, 1861 (Arrest of Maryland Legislature)

[http://memory.loc.gov/cgi-](http://memory.loc.gov/cgi-bin/ampage?collId=mal&fileName=mal1/094/0940400/malpage.db&recNum=0)

[bin/ampage?collId=mal&fileName=mal1/094/0940400/malpage.db&recNum=0](http://memory.loc.gov/cgi-bin/ampage?collId=mal&fileName=mal1/094/0940400/malpage.db&recNum=0)

"Suspension of the Writ of Habeas Corpus in Baltimore." Civil War Homepage

<http://www.civilwarhome.com/Writ.htm>

Document#34

The Abraham Lincoln Papers at the Library of Congress?Series 1. General

Correspondence. 1833-1916.?Ulysses S. Grant to Abraham Lincoln,

Monday, January 16, 1865 (Telegram concerning arrest of Henry S. Foote)

[http://memory.loc.gov/cgi-](http://memory.loc.gov/cgi-bin/ampage?collId=mal&fileName=mal1/400/4005400/malpage.db&recNum=0)

[bin/ampage?collId=mal&fileName=mal1/400/4005400/malpage.db&recNum=0](http://memory.loc.gov/cgi-bin/ampage?collId=mal&fileName=mal1/400/4005400/malpage.db&recNum=0)

Document#42

The Abraham Lincoln Papers at the Library of Congress?Series 1. General

Correspondence. 1833-1916.?Oliver P. Morton to Abraham Lincoln,

Saturday, May 30, 1863 (Protests General Burnside's Order No. 38)

[http://memory.loc.gov/cgi-](http://memory.loc.gov/cgi-bin/ampage?collId=mal&fileName=mal1/237/2378000/malpage.db&recNum=0)

[bin/ampage?collId=mal&fileName=mal1/237/2378000/malpage.db&recNum=0](http://memory.loc.gov/cgi-bin/ampage?collId=mal&fileName=mal1/237/2378000/malpage.db&recNum=0)

"General Order No. 38." Encyclopedia of American History. Answers Corporation, 2006.

Answers.com 05 Feb.

2009. <http://www.answers.com/topic/general-order-no-38>