



Constitutional Law Center
Joseph F. Rice School of Law
UNIVERSITY OF SOUTH CAROLINA

CONSTITUTIONAL LAW HANDBOOK

FOR STUDENTS AND TEACHERS



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ABOUT THE CONSTITUTIONAL LAW CENTER

Established in 2021 at the University of South Carolina Joseph F. Rice School of Law, the Constitutional Law Center is one of four centers originally funded by Congress to produce research and programming to increase the public's understanding of constitutional law. The Center conducts that mission not only through general constitutional law research and programming but by supporting public school educators who teach subjects related to constitutional law, including social studies, history, and government classes.

The Center provides free professional development on the Constitution, civics, and other government topics to educators at all levels—primary, secondary, and post-secondary. The Center supports educators through one-on-one assistance and district-wide workshops. The Center also provides free, customized instructional aides and classroom exercises focused on using primary sources in the classroom.

Through these and other activities, the Center aims to promote a more accessible and wider understanding of the Constitution and civics among educators, students, scholars, and the general public.

For additional resources or more information about the Center's work, visit our website at https://sc.edu/study/colleges_schools/law/centers/constitutional_law/



INTRODUCTION

The Center strives to encourage active and responsible participation in our country's democracy by providing educators and students with rich opportunities to engage with complex historical concepts. The Center created this particular book to promote a deeper understanding of the Constitution and some of the Supreme Court's most important decisions. The fourteen cases included in this book are also required reading for Advanced Placement courses in U.S. government.

In their full original form, Supreme Court opinions can be daunting for educators and students at all levels. This book aims to make the language of the opinions easier to understand and appreciate. It condenses cases that could otherwise exceed one hundred pages into just two or three pages by focusing on the most significant aspects of the Court's opinions and deleting extraneous issues, citations, and procedural matters. The language following the headings "Opinion of the Court" is the Court's original language

except for an occasional summary of part of the opinion. Those summaries are always surrounded by brackets. For the most part, however, the book deletes material unrelated to the core issues of the case without summarizing it. For ease of reading, those deletions are not noted by ellipses.

This book does not want to leave its desired learning outcomes to chance. Each condensed case features short, one to two sentence, sections that will help orient students before they read the case. These short sections include "The Big Picture," "Ruling," and "Constitutional Text." The Big Picture is a road map to understanding the condensed case both historical and legally, quickly explaining why or how the case matters.

The Ruling section offers a concise explanation of the Court's precise ruling in the case. This section gives students notice of what they should be looking for in the Court's analysis. It also serves as answer

guide of sorts after students read the case. Finally, it offers a clear statement of law with which students can easily agree or disagree. In this respect, it can be a jumping point to class discussions. The Constitutional Text sections accompanying each case identify the constitutional provisions on which the Court relied and reprints them for ease of use and textual analysis.

In some instances, the case reprints include short quotes from particularly poignant dissenting opinions. Dissenting opinions can reveal that the case is not as simple as the majority opinion may suggest. More importantly, dissents present a different perspective that can help spur healthy classroom debate among students.

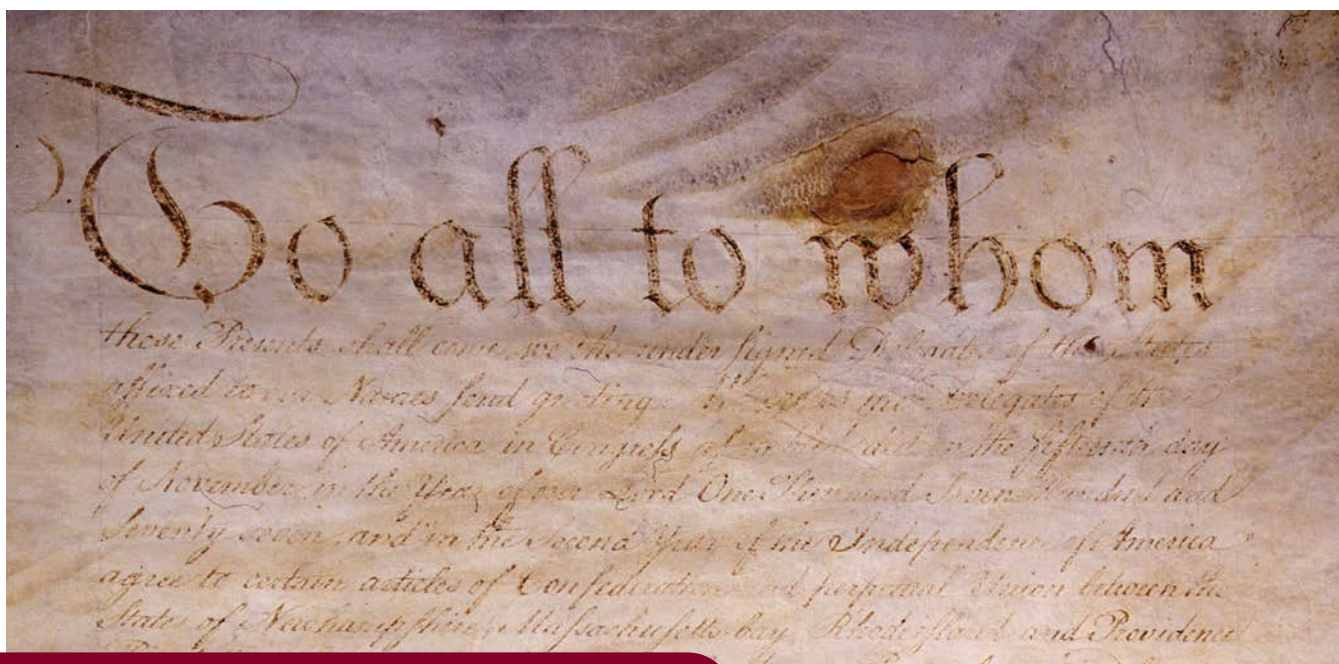
These condensed cases should assist educators in highlighting the key takeaways and explaining the historical significance of each case. The Center encourages teachers and students who want a deeper understanding of the issues and arguments to consult the full opinions and dissents, which should also be easier to understand after reading the condensed versions. The discussion guides, historical background, and hypotheticals following each case will also help students and educators reflect on the Court's holdings and our overall system of constitutional democracy.

The Center hopes it has created a resource that allows teachers and students to dive into complex issues and run with them on their own. It also hopes that this book inspires teachers and students to want to go further into these topics or others. The Center's staff are eager to support you on that journey in whatever way works for your classroom. Please email us at conlawcenter@sc.edu

with any of your needs, whether they be individual support, additional resources, or a department-wide professional development session.



BRIEF HISTORIES



ARTICLES OF CONFEDERATION

The Articles of Confederation were the central governing documents in our country from 1781 until our present-day Constitution went into effect in 1788. The Articles established a “league of friendship” between the original thirteen states. They created a weak central government that consisted primarily of a Congress with one representative from each state.

Under the Articles of Confederation, Congress lacked the power to tax individual states, regulate commerce between states, or force states to send troops to support the creation of a federal military. Without strong federal oversight, states fought amongst themselves over territory and printed and

distributed their own money, causing disruptions to the national economy.

The states sent delegates to Philadelphia in 1787 to revise the Articles of Confederation to address these and other problems. By the Article’s own terms, however, changes required the unanimous decision of all thirteen states, making revisions nearly impossible. After weeks of debate, the delegates decided that it made more sense to create a completely new constitution. The Constitution that the delegates drafted, and states subsequently ratified, remains in effect today.



THE CONSTITUTION

The Constitution is the supreme law of the land, serving as the backbone of rule and governance for the United States of America. The Constitution establishes the three branches of the federal government: the legislative branch in Article I, the executive branch in Article II, and the judicial branch in Article III. The Constitution outlines the powers and responsibilities of each of the three branches and their relationship to the states. It also outlines the rights and freedoms of individuals in the United States and other matters central to our country's democracy.

When the Constitution was drafted, the country was facing uncertainty. The states largely operated independently from each other. Federal procedures such as coining money, collecting taxes, and regulating trade and travel between states, for example, were still in a state of infancy. The idea of concentrating any amount of power in one federal government raised concerns among many political leaders of the time. They feared that a central federal government

might replicate the British monarchy's tyrannical practices. Those practices, of course, led to the American Revolution for independence. The concerns about this potential for abuse of power explain why the Articles of Confederation created such a weak central government. The Articles were only in effect for about six years before the nation's political leaders decided to send delegates from all the original thirteen states to meet in Philadelphia in 1787 and create a more effective national government.

The states did not send delegates to Philadelphia to create an entirely new constitution but simply to amend the Articles of Confederation. Understandably, some delegates resisted the temptation of pursuing a new and more robust constitution, preferring to maintain a weak federal government. Nonetheless, after months of debate, the delegates emerged from the convention with a complete constitution on September 17, 1787. They, however, still needed the states to ratify—or agree to—the constitution they drafted.

Leaders worked to gain support for the Constitution in a variety of ways. To help explain how the Constitution and a stronger federal government would benefit the individual states, James Madison, John Jay, and Alexander Hamilton wrote and distributed the Federalist Papers. Some of the delegates insisted on the idea of amending the Constitution shortly after ratification to protect individual rights. In other words, the Constitution the convention produced was not to be the final word. To go into effect, the Constitution required ratification by nine of the thirteen original states. The country reached that threshold on June 21, 1788, when New Hampshire ratified the Constitution. On May 29, 1790, Rhode Island became the thirteenth state to ratify the Constitution. On December 15, 1791, the Bill of Rights, or the first ten amendments, were added to the Constitution.

Since then, the Constitution has been amended seventeen more times. The first ten amendments to the Constitution establish the basic rights of the American people and direct the government to uphold and protect those rights. Additional amendments represent milestones of change in America. Following the Civil War, the Reconstruction amendments—the Thirteenth, Fourteenth, and Fifteenth amendments—fundamentally changed our constitutional democracy, abolishing slavery, guaranteeing equality for all people, extending the right to vote to Black men, and granting Congress the power to legislate to prevent state governments from engaging in further violations of individual rights. Similarly, the Nineteenth Amendment extended the right to vote to women, forever changing the American electorate. Notwithstanding milestone amendments of this sort, the backbone of the Constitution,

including the powers it grants to each of the three branches of federal government and their relationship to the states, remains almost entirely unchanged.



THE BILL OF RIGHTS

Some states only agreed to ratify the draft of the Constitution proposed at the 1787 convention on the condition that Congress met to amend the document to include a declaration of rights after it was ratified. James Madison, the primary author of the Constitution in Philadelphia, initially proposed twenty amendments. After some debate, Congress agreed to send twelve of Madison's proposed amendments to the states for ratification in 1789. By 1791, three-quarters of the states, the number necessary to amend the constitution, ratified ten of those amendments. These first ten amendments to the Constitution are now commonly known as the Bill of Rights.

The Bill of Rights expanded English common law and tradition and included explicit protections for both individual citizens and the states. Historically, European monarchies suppressed free speech, and at times, forced varying religious beliefs upon their subjects. In response to this history, the First

Amendment guarantees freedom of speech, freedom of the press, and freedom of religion. In the United States' infancy, civilian militias were a key component of the country's fighting forces. The Second Amendment protects the right to bear arms to preserve the ability of individual citizens to form militias. Prior to the passage of the Bill of Rights, the government could force civilians to house and feed soldiers. The Third Amendment indicates the government cannot quarter soldiers in the houses of civilians without consent. In England, the government was able to seize individuals' private property without penalty. The Fourth Amendment prevents the government from searching and seizing private property without reason, and the Fifth Amendment prohibits taking property without just compensation.

The Fifth, Sixth, Seventh, and Eighth Amendments provide protections to individual citizens throughout judicial proceedings. The Fifth Amendment prevents

the government from depriving a person of life, liberty, or property without hearing or trial, and protects individuals from self-incrimination. The Sixth Amendment guarantees, among other things, the right to a speedy trial and provides indigent defendants with the right to legal counsel in criminal trials. The Seventh Amendment guarantees the right to a trial in certain civil matters. The Eighth Amendment prevents excessive bail, excessive fines, and cruel and unusual punishment.

Many feared that the failure to explicitly mention a particular right in the Constitution would later be interpreted to mean the right does not exist. The Ninth and Tenth Amendments were designed to address that possibility. The Ninth Amendment clarifies that the rights included in the Constitution should not be construed to deny or disparage the other rights retained by the people. The Tenth Amendment also provides that any powers not explicitly given to the federal government belong to the states and the American people.

The Bill of Rights, as written, only limits Congress' action. The First Amendment, for instance, indicates, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press." The Fourteenth Amendment later prohibited states from restricting individual liberties, which the Court has reasoned includes almost all the liberties contained in the Bill of Rights. As the cases in this book revealed, the Bill of Rights and the Fourteenth Amendment have produced some of the most monumental decisions in American history.



THE LEGISLATIVE BRANCH

Article I of the Constitution outlines the powers and responsibilities of the Legislative Branch. It vests all legislative powers in the U.S. Congress, comprised of the Senate and the House of Representatives. The Constitution, as excerpted below, identifies several specific congressional powers. It does not, however, define the scope of those powers or what might be implied by those powers. For example, the Necessary and Proper clause grants Congress the ability to pass laws “necessary and proper” for carrying out its enumerated powers, but it does not set a standard for determining what is “necessary or proper” in any given context.

The Commerce Clause provides a great example to use when considering Congress’ implied powers. As written, Article I grants Congress the power to regulate commerce between the states, but it does not define the term commerce. The narrowest definition might mean Congress can only regulate the

buying and selling of goods across state lines, whereas a broader reading might include the regulation of the manufacture of goods that may later be sold across state lines. Additionally, it is unclear whether the Necessary and Proper Clause might grant Congress the power to regulate matters related to interstate commerce that do not fall squarely within the definition of commerce between states. Uncertainties of this sort have long generated legal disputes and required the Supreme Court to interpret the meaning of the Constitution.



THE EXECUTIVE BRANCH

Article II of the Constitution creates the Executive Branch. It establishes that the President is the head of the Executive Branch and outlines the responsibilities of the Vice President. It sets qualifications for presidential candidates, including that they must be natural-born U.S. citizens who are at least 35 years old and have lived in the United States for at least fourteen years. It explains that the President and Vice President are elected for four-year terms and chosen through a process called the Electoral College. For the Electoral College, each state is assigned a select number of electors equal to the number of seats the state has in the House of Representatives plus two—one for each senator. The Constitution does not set an explicit limit for the size of the House of Representatives. There are currently 435 seats in the House. This means that there is a total of 538 electoral votes for the Electoral College: 100 votes based on the total number of U.S. senators, plus 435 votes for the number of representatives in the House, and three

votes for Washington, D.C. In most states, the candidate that wins the popular vote in that state receives all the state's electoral votes. A presidential candidate must receive at least 270 out of the 538 total electoral votes to win the election.

Article II tasks the President with ensuring that the laws of the nation are faithfully executed. It names the President as the Commander in Chief of the nation's armed forces and grants the President the power to make treaties with the consent of the Senate. It also gives the President the power to appoint ambassadors, other high federal officials, and federal judges, including the Supreme Court justices.

Some delegates at the Constitutional Convention feared that concentrating too much power in the presidency would allow the president to function as an elected monarch. Conversely, Federalists argued that the federal government needed a strong chief

officer to enforce federal laws and manage foreign policy, which would be incoherent if left to state governors. As a compromise, the Constitution created a strong president but included a system of checks and balances. For example, Congress has the power to impeach the President, the President can veto legislation passed by Congress, and the federal judiciary can review the constitutionality of actions taken by both the President and Congress.

Article II has been amended twice. The Twelfth Amendment changed the electoral process by having electors cast separate votes for the president and the vice president and creating a system for dealing with tied elections. Prior to this amendment, the winner of the presidential election became the president, and the “runner-up” became the Vice President, even if the candidates were from opposing political parties. The Twenty-Fifth Amendment also created a system for succession in situations where the President is removed, dies, or resigns.



THE JUDICIAL BRANCH

Established by Article III of the Constitution, the Judicial Branch is responsible for interpreting the law. The Supreme Court is the only court explicitly established by Article III of the Constitution. Section 1 of Article III provides that “[t]he judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.” The Supreme Court can hear some cases based on what Article III defines as its original jurisdiction, meaning that the litigants can petition for their case to be heard directly in front of the Supreme Court without having to go through the lower federal courts first. For instance, the Court has original jurisdiction over cases between two or more states, between a state and a foreign government, and in lawsuits against ambassadors and other foreign ministers.

Cases that fall outside of the Court’s original jurisdiction are typically heard at both the district court and the court of appeals levels

before reaching the Supreme Court. There is a right of appeal from the district court to the circuit court level, which means that litigants that disagree with a district court’s decision do not have to petition the circuit courts to ask that they hear their appeal. However, there is not a direct right to appeal to the Supreme Court. If litigants disagree with the decisions of the court of appeals, they can file a petition for certiorari to the Supreme Court to request that the Court hear their case. Their petition must explain why the case is sufficiently important for Court to hear.

The Court has discretion in deciding which cases hears and only selects a limited number each year. The Court grants certiorari in cases that involve a variety of disputes, including (1) whether Congress or the President has the authority to pass a law or take a particular action; (2) whether the federal government or a state government has violated the constitutional or statutory rights of an individual; (3) whether federal

officers have properly implemented federal statutes and regulations; and (4) whether private companies and individuals have acted in accordance with federal statutes.

However, the Court does not automatically grant certiorari to cases that fall into one of these listed categories. The Court can refuse certiorari for any reason it wants. It typically only grants certiorari to cases that present important questions about the Constitution or federal laws. Generally, the types of cases that make it before the Supreme Court involve (1) a request that the Court examine a lower federal court or state's supreme court's interpretation of the law and (2) circuit splits, or disagreements between two or more lower federal courts about how a law should be interpreted or applied. If the Court grants certiorari, the hearing process begins, which typically involves the parties submitting written briefs to the Court about factual or legal questions in the case and participating in oral arguments before the Court in support of their written arguments. At the end of the case, the Court issues a final judgment based on the arguments that each side presented.

John Marshall served as Chief Justice of the Supreme Court from 1801 to 1835, making him the longest-serving Chief Justice of the Supreme Court. Under Chief Justice Marshall's leadership, the Supreme Court's decisions solidified the authority of the federal judiciary to hear important disputes and serve as the final word on the meaning of the Constitution. Those decisions also established the Constitution as the supreme law of the land. Three people from the state of South Carolina have served as justices on the Supreme Court: John Rutledge, William Johnson, and James Francis Byrnes.

In the Judiciary Act of 1789, Congress established lower federal courts with specific, limited jurisdiction. The Act created fifteen district courts to hear minor federal cases and three circuit courts to serve as the principal trial courts for federal cases. At that time, Supreme Court justices engaged in "circuit riding" or traveling within their assigned circuit to preside over federal cases. As the country grew, the federal judiciary had to expand to meet new demands. Circuit riding placed significant strain on justices, and the Supreme Court was overburdened with appeals. To ease the strain, Congress established courts of appeal in each judicial circuit in 1891.

Opponents of a federal judiciary at the Constitutional Convention feared that lower federal courts would diminish or supersede the jurisdiction of state courts. However, lower federal courts were intended to handle civil and criminal cases arising under federal law, not state law. Having lower federal courts that focused on federal cases allowed state courts to spend their time focusing on important local cases and provided a buffer for the Supreme Court.

Our present-day federal judicial system is still compromised of the same three levels – (1) district courts, (2) courts of appeal, and (3) the Supreme Court. Today, there are ninety-four district courts, and thirteen courts of appeal. The president appoints the federal judges who serve on these courts, but appointees face another step prior to becoming a judge. They must still be "confirmed" or approved by the Senate. All federal judges have lifetime appointments "with good behavior." Providing federal judges with lifetime appointments was intended to isolate judges from the pressure of partisan

politics and help them focus squarely on the interpretation of law.

State courts also have a tiered judicial system. For example, South Carolina's judicial system has four tiers: (1) Summary Courts; (2) Circuit Courts; (3) Court of Appeal; and (4) the State Supreme Court.



THE U.S. CONSTITUTION (EXCERPTED)

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

ARTICLE I.

Section 1.

All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section 2.

The House of Representatives shall be composed of Members chosen every second Year by the People of the several States.

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according

to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons. The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

Section 3.

The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote.

The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

The Senate shall have the sole Power to try all Impeachments. And no Person shall be convicted without the Concurrence of two thirds of the Members present.

Section 7.

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent to the other House, and if approved by two thirds of that House, it shall become a Law. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

Section 8.

The Congress shall have Power To lay and collect Taxes to pay the Debts and provide for the common Defence and general Welfare of the United States; To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes; To declare War; To raise and support Armies; To provide and maintain a Navy; To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers.

Section 9.

The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight.

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 II.

Section 1.

The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress.

The Electors shall meet in their respective States, and vote by Ballot for two Persons. And they shall transmit [their votes] sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President. The President shall receive for his Services a Compensation, which shall neither be encreased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States.

Section 2.

The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States,

when called into the actual Service of the United States; and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

Section 3.

He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he shall take Care that the Laws be faithfully executed.

Section 4.

The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

ARTICLE III.

Section 1.

The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The

Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour.

Section 2.

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed.

Section 3.

Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

ARTICLE IV.

Section 1.

Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State.

Section 2.

The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.

Section 4.

The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

ARTICLE V.

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which shall be valid as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect [the importation of enslaved persons] .

ARTICLE VI.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

AMENDMENT I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT II

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.

AMENDMENT III

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

AMENDMENT IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private

property be taken for public use, without just compensation.

AMENDMENT VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

AMENDMENT VII

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

AMENDMENT VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

AMENDMENT IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

AMENDMENT X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

AMENDMENT XII

The Electors shall meet in their respective states and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with

themselves. [T]hey shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate; The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then the House of Representatives shall choose immediately, by ballot, the President. The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, the Senate shall choose the Vice-President.

AMENDMENT XIII

Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

AMENDMENT XIV

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

AMENDMENT XV

The right of citizens of the United States to

vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

AMENDMENT XVI

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

AMENDMENT XVII

The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

AMENDMENT XIX

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

AMENDMENT XXII

No person shall be elected to the office of the President more than twice.

AMENDMENT XXIV

The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay poll tax or other tax.

AMENDMENT XXV

Section 1.

In case of the removal of the President from office or of his death or resignation, the Vice President shall become President.

Section 2.

Whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress.

Section 3.

Whenever the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice President as Acting President.

Section 4.

Whenever the Vice President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmit to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as Acting President.

Thereafter, when the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that no inability exists, he shall resume the powers and duties

of his office unless the Vice President and a majority of either the principal officers of the executive department or of such other body as Congress may by law provide, transmit within four days to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office. Thereupon Congress shall decide the issue.

AMENDMENT XXVI

The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.

CONDENSED CASES AND CLASSROOM EXERCISES



GLOSSARY

Each condensed case features the following

THE BIG PICTURE:

This section provides students with a road map for understanding the condensed case. There are many moving parts in court decisions. With the “big picture” descriptor as an introductory guide, students are better equipped to focus on the key issues before the Court.

RULING:

This section provides a concise and simplified explanation of how the Court ruled on the case. Students can read this section after reading the condensed case to confirm that they understood the Court’s ruling, or they can read it before reading the case to have a better understanding of the information they need to pay attention to while reading the Court’s opinion. Either way, the students should consider if they agree or disagree with the Court’s decision.

CONSTITUTIONAL TEXT:

This section provides the students with the language from the Constitution that Court considered while writing its opinion. It also includes a citation to where that language can be found within the Constitution itself.

DISSENTING OPINION:

In some instances, the reprints include a summary of particularly poignant dissenting opinions. These dissents will explain why

the Justice did not agree, in whole or in part, with the majority opinion of the Court. Dissenting opinions offer educators an excellent opportunity to facilitate classroom debate and discussion about the outcome of the case. For select cases, the Center has also included a portion of the original language from the dissenting opinion for students to explore.

OPINION OF THE COURT:

This is the opinion joined by the majority of the justices on the Court. The condensed opinions are about two to three pages long, providing the most relevant information for students based on the South Carolina U.S. History curriculum guidance. Because the original language used by the Court in these decisions can be confusing for readers of all ages—even legal professionals—the Center has included introductory statements that explain the background of the case. The Center removed the internal citations from the original opinions to make the cases easier to digest for students reading case law for the first time. The condensed opinions include some minor revisions to help the students better understand the Court’s intention. Any changes to the Court’s original language are separated by brackets.

MARBURY V. MADISON

CONDENSED CASE



THE BIG PICTURE

The courts have a duty to review the constitutionality of the acts of Congress and the President.

RULING

Although Marbury had a right to his commission as justice of the peace, the statute under which Marbury argued the Court could grant him relief was unconstitutional.

CONSTITUTIONAL TEXT

Article III, Section 1: *The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.* Art. VI, Clause 2 (the Supremacy Clause): *This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall*

OPINION OF THE COURT

[Two days before his term as president ended, John Adams nominated William Marbury to be a justice of the peace for the District of Columbia. The Senate approved the nomination, President Adams then signed the commission (the official paper appointing Marbury to the job), and the Secretary of State affixed the seal of the United States to the document. The Adams Administration, however, was unable to deliver the commission before leaving office. The next Secretary of State, James Madison, refused to deliver the commission.]

Has [Mr. Marbury] a right to the commission he demands?

In order to determine whether he is entitled to this commission, it becomes necessary to enquire whether he has been appointed to the office.

For if he has been appointed, the law [places] him in office for five years, and he is entitled to the possession of those evidences of office, which, being completed, became his property.

[The constitution declares that] “the president shall nominate, and, by and with the advice and consent of the senate, shall appoint ambassadors, other public

be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

DISSENTING OPINION

There was no dissenting opinion filed in this case.

ministers and consuls, and all other officers of the United States, whose appointments are not otherwise provided for.”

[The constitution also declares the President] “shall commission all the officers of the United States.”

The last act to be done by the President is the signature of the commission.

[When a commission] has been signed by the President, the appointment is made; and the commission is complete when the seal of the United States has been affixed to it by the secretary of state.

Mr. Marbury, since his commission was signed by the President, and sealed by the secretary of state, was appointed; and as the law creating the office gave the officer a right to hold for five years, independent of the executive, the appointment was not revocable.

To withhold the commission, therefore, is an act deemed by the court not warranted by law, but violative of a vested legal right.

The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury.

The government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested legal right.

The secretary of state, being a person holding an office under the authority of the United States, is precisely within the letter of the description; and if this court is not authorized to issue a writ of mandamus to such an officer, it must be because the law is unconstitutional, and therefore absolutely incapable of conferring the authority, and assigning the duties which its words purport to confer and assign.

[The Court must decide] whether an act repugnant to

the constitution can become the law of the land.

It is a proposition too plain to be contested, that the constitution controls any legislative act repugnant to it.

The constitution is either a superior, paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and is alterable when the legislature shall please to alter it.

[Those who construct constitutions] contemplate them as forming the fundamental and paramount law of the nation, and consequently the theory of every such government must be, that an act of the legislature, repugnant to the constitution, is void.

It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases, must of necessity expound and interpret that rule. If two laws conflict with each other, the courts must decide the operation of each.

So if a law be in opposition to the constitution[,] the court must determine which of these conflicting rules governs the case. This is of the very essence of judicial duty.

Those who controvert the principle that the constitution is to be considered, in court, as a paramount law, are reduced to the necessity of maintaining that courts must close their eyes on the constitution, and see only the law.

This doctrine would subvert the very foundation of all written constitutions. It would be giving to the legislature a practical and real omnipotence, with the same breath which professes to restrict their powers within narrow limits. It is prescribing limits, and declaring that those limits may be passed as pleasure. [A] law repugnant to the constitution is void, and courts, as well as other departments, are bound by that instrument.

MARBURY V. MADISON

DISCUSSION GUIDE AND QUESTIONS

BACKGROUND

Thomas Jefferson became the nation's third president after winning the 1800 Presidential election. He and his predecessor, John Adams, belonged to rival political parties. The Adams administration rushed to appoint several judges to federal courts before Jefferson took office. William Marbury was one of these judges. Adam's Secretary of State did not manage to deliver Marbury's commission before Adams left office, and Jefferson's administration refused to deliver Marbury's commission. Marbury sued Jefferson's Secretary of State, James Madison, and requested the Court issue a writ of mandamus—an order for a government official to perform a particular act in accordance with the law.

QUESTIONS AND COMMENTS FOR DISCUSSION

1. If the Court decided it was unlawful for Jefferson to withhold Marbury's commission, then why did it not require Jefferson's administration to deliver it?
2. Does the Constitution explicitly provide the Judicial Branch with the authority to interpret the meaning of the Constitution? Does it grant it any power to enforce the law?
3. Why is it important that the Supreme Court, a panel of unelected judges, is responsible for interpreting the Constitution and our nation's laws? What would be the dangers of giving elected politicians and their appointees the power to interpret the Constitution for themselves, without any external check?

MCCULLOCH V. MARYLAND

CONDENSED CASE



THE BIG PICTURE

Congress's power includes more than just those powers explicitly mentioned in the Constitution; it also includes the implied power to do things reasonably related to carrying out its explicit powers. States cannot interfere with any of those powers.

RULING

Congress can establish a federal bank pursuant to its power to pass legislation that is "necessary and proper" to the execution of its other explicit powers.

Maryland's attempt to tax the federal bank interfered with this congressional power and, thus, violated the Supremacy Clause.

OPINION OF THE COURT

[Numerous disputes arose in the early 1800s between the federal government and state governments concerning the extent of their powers. When Congress chartered the Second Bank of the United States, Maryland imposed a tax the bank's Maryland branch. A Maryland state court held that the federal government lacked the power to charter a bank.]

[The first question is, does Congress have the power to incorporate a bank?] Among the enumerated powers [of Congress], we do not find that of establishing a bank or creating a corporation. But there is no phrase in the instrument which excludes incidental or implied powers; and which requires that everything granted shall be expressly and minutely described. A constitution, to contain an accurate detail of all the subdivisions of which its great powers will admit, and of all the means by which they may be carried into execution, would [be so long that it would not be understandable]. It would, probably, never be understood by the public. Its nature, therefore, requires that only its great outlines should be marked, its important objects designated, and the minor ingredients which compose those objects be deduced from the nature of the objects themselves.

CONSTITUTIONAL TEXT

The Supremacy Clause, Article VI, Clause 2: *This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.*

The Necessary and Proper Clause, Article I, Section 8: *[Congress shall have Power:] To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.*

DISSENTING OPINION

There was no dissenting opinion filed in this case.

[The Constitution explicitly grants Congress power to] lay and collect taxes; to borrow money; to regulate commerce; to declare and conduct a war; and to raise and support armies and navies. But a government [entrusted] with such ample powers must also be [entrusted] with ample means for their execution. [The Constitution explicitly grants that power by providing that Congress has the power to “make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers.”].

The clause is placed among the powers of congress, not among the limitations on those powers. [The] terms purport to enlarge, not to diminish the powers vested in the government. It purports to be an additional power, not a restriction on those already granted. Had the intention been to make this clause restrictive, it would unquestionably have been so in form as well as in effect.

We admit that the powers of the government are limited. But we think the sound construction of the constitution must allow to the national legislature that discretion with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it, in the manner most beneficial to the people. Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional.

[The Supreme Court reasoned that establishing a bank was an effective means to carry out Congress’s other powers regarding money and commerce, and there is no reason to expect the constitution to have specifically referenced the minor power to create a bank.]

[The second question is:] Whether the state of Maryland may, without violating the constitution, tax that branch?

The sovereignty of a state extends to everything which exists by its own authority, but does it extend to those means which are employed by congress to carry into

execution powers conferred on that body by the people of the United States? We think it demonstrable, that it does not. Those powers are not given by the people of a single state. They are given by the people of the United States, to a government whose laws, made in pursuance of the constitution, are declared to be supreme. Consequently, the people of a single state cannot confer a sovereignty which will extend over them.

Would the people of any one state trust those of another with a power to control the most insignificant operations of their state government? We know they would not. Why, then, should we suppose that the people of any one state should be willing to trust those of another with a power to control the operations of a government to which they have confided their most important and most valuable interests? In the legislature of the Union alone are all represented. The legislature of the Union alone, therefore, can be trusted by the people with the power of controlling measures which concern all, in the confidence that it will not be abused.

If we apply the principle for which the state of Maryland contends, to the constitution generally, we shall find it capable of changing totally the character of that instrument. We shall find it capable of arresting all the measures of the government, and of prostrating it at the foot of the states. The American people have declared their constitution and the laws made in pursuance thereof to be supreme, but this principle would transfer the supremacy, in fact, to the states.

If the states may tax one instrument, employed by the government in the execution of its powers, they may tax any and every other instrument. They may tax the mail; they may tax the mint; they may tax patent rights; they may tax the papers of the custom house; they may tax judicial process; they may tax all the means employed by the government to an excess which would defeat all the ends of government. This was not intended by the American people. They did not design to make their government dependent on the states.

The court has bestowed on this subject its most deliberate consideration. The result is a conviction that the states have no power, by taxation or otherwise, to retard, impede, burden, or in any manner control the operations of the constitutional laws enacted by congress to carry into execution the powers vested in the general government. This is, we think, the unavoidable consequence of that supremacy which the constitution has declared.

MCCULLOCH V. MARYLAND

DISCUSSION GUIDE AND QUESTIONS

BACKGROUND

Congress chartered the Second Bank of the United States in 1816. Many states saw a national bank as a threat to state sovereignty because it took federal funds from state-sponsored banks. Maryland passed a state law that proposed a tax on all banks in the state that were not chartered by the state's legislature shortly after the Bank of the United States opened a branch in Baltimore. The cashier of the Baltimore branch of the Bank refused to pay the state tax. Maryland sued the cashier to enforce the tax. The resulting case, *McCulloch v. Maryland*, discussed two issues: (1) whether the Constitution gave Congress the power to charter the Second National Bank of the United States and (2) whether Maryland had the authority to tax a branch of the Bank that operated within its state borders.

QUESTIONS AND COMMENTS FOR DISCUSSION

1. Would it be practical to define all Congress' powers in the Constitution? What would be some potential downsides to doing so?
2. What relationship does the Constitution establish between the federal government and state governments?
3. What constitutional language did the Court use to justify its decision that Congress had the power to charter a bank?
4. What would be the possible dangers of allowing states to tax federal institutions?

SCHENCK V. UNITED STATES

CONDENSED CASE



THE BIG PICTURE

Speech producing a “clear and present danger” is not protected by the First Amendment.

RULING

The criminalization of speech that threatens violence, insurrection, or marks a threat to national security does not violate the Free Speech Clause of the First Amendment.

CONSTITUTIONAL TEXT

The First Amendment: *Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to*

OPINION OF THE COURT

[During World War I, Mr. Schenck printed and circulated pamphlets that were critical of the military draft. He was indicted on conspiracy to violate the Espionage Act of June 15, 1917 by causing and attempting to cause insubordination in the military and naval forces of the United States, and obstructing United States military recruiting and enlistment when the United States was at war with Germany.]

[The first printed side of the pamphlet contained a portion of the Thirteenth Amendment’s prohibition on involuntary servitude and claimed that the conscription of citizens into the military violated the Thirteenth Amendment.] In impassioned language it intimated that conscription was despotism in its worst form and a monstrous wrong against humanity in the interest of Wall Street’s chosen few. [The second printed side of the pamphlet described arguments] as coming from cunning politicians and a mercenary capitalist press, and even silent consent to the conscription law as helping to support an infamous conspiracy. It denied the power to send our citizens away to foreign shores to shoot up the people of other lands, and added

petition the Government for a redress of grievances.

The Selective Service Act of 1917: No person liable to military service shall hereafter be permitted or allowed to furnish a substitute for such service; nor shall any substitute be received, enlisted, or enrolled in the military service of the United States; and no such person shall be permitted to escape such service or to be discharged therefrom prior to the expiration of his term of service by the payment of money or any other valuable thing whatsoever as consideration his release from military service or liability there to.

DISSENTING OPINION

There was no dissenting opinion filed in this case.

that words could not express the condemnation such cold-blooded ruthlessness deserves, winding up, 'You must do your share to maintain, support and uphold the rights of the people of this country.' Of course the document would not have been sent unless it had been intended to have some effect, and we do not see what effect it could be expected to have upon persons subject to the draft except to influence them to obstruct [military service].

[Schenck argued the First Amendment protects his activities in publishing and carrying the pamphlet]. It well may be that the prohibition of laws abridging the freedom of speech is not confined to previous restraints, although to prevent them may have been the main purpose. We admit that in many places and in ordinary times the circular would have been within their constitutional rights. But the character of every act depends upon the circumstances in which it is done. The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic.

The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree. When a nation is at war many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight and that no Court could regard them as protected by any constitutional right. It seems to be admitted that if an actual obstruction of the recruiting service were proved, liability for words that produced that effect might be enforced. [The Espionage Act] of 1917 punishes conspiracies to obstruct as well as actual obstruction. [If the speech in question] and the intent with which it is done are the same, we perceive no ground for saying that success alone warrants making the act a crime.

Judgments affirmed.

SCHENCK V. UNITED STATES

DISCUSSION GUIDE AND QUESTIONS

QUESTIONS AND COMMENTS FOR DISCUSSION

1. The *Schenck* case occurred during wartime. Do you think the Court would have decided the case differently if Schenck circulated his pamphlets in a time of peace? Is there language in the text of the case decision that supports your answer?
2. About 60 years after *Schenck*, the Court heard another significant First Amendment case, *Brandenburg v. Ohio*. In *Brandenburg*, a local court fined a KKK leader \$1,000 and sentenced him to 10 years in prison for violating the Ohio Criminal Syndicalism statute. This statute outlawed “advocat[ing] . . . the duty, necessity, or propriety of crime, sabotage, violence, or unlawful methods of terrorism as a means of accomplishing industrial or political reform” and “voluntarily assembl[ing] with any society, group or assemblage of persons formed to teach or advocate the doctrines of criminal syndicalism.” The Court in *Brandenburg* offered a two-part test that courts should use to determine when dangerous or threatening speech is unlawful. Under the *Brandenburg* test, speech is unlawful when it is directed at “inciting or producing imminent lawless action” and it “is likely to incite or produce such action.”

Compare the “clear and present danger” test in *Schenck* with *Brandenburg*. Would Schenck’s pamphlet be considered unlawful under the *Brandenburg* test?

HYPOTHETHICAL

The U.S. recently entered military conflict overseas. An anti-war influencer posts videos on TikTok urging people to protest the war by any means possible. The influencer’s posts go viral, reaching hundreds of thousands of people within hours. After watching the videos, one soldier decides to restrict access to the weapons armory on the U.S. Army base Fort Jackson by welding the doors together and handcuffing himself to the outer door handles. He livestreams his protest and says several times that his actions were inspired by the influencer’s initial posts. It takes two hours for army personnel to regain access to the armory. The TikTok influencer is arrested and charged with inciting a rebellion.

Using *Schenck* as a guide, are the influencer’s actions protected by the First Amendment? Does your answer change if you apply the two-part test outlined in *Brandenburg*?

BROWN V. BOARD OF EDUCATION

CONDENSED CASE



THE BIG PICTURE

Racial segregation is unconstitutional in the context of public schools. The holding in *Brown v. Board* quickly became the foundation for overturning segregation in many other aspects of public life.

RULING

Even when the state has equalized all other aspect of the schools, racial segregation in public schools violates the Equal Protection Clause of the Fourteenth Amendment.

CONSTITUTIONAL TEXT

The Equal Protection Clause reads: *No state shall make or enforce any law which shall abridge the privileges or*

OPINION OF THE COURT

[These cases arise from Kansas, South Carolina, Virginia, and Delaware and will be considered together. In each case, Black students wish to attend public schools in their communities] on a nonsegregated basis. [These students] have been denied admission to schools attended by [W]hite children under laws requiring or permitting segregation according to race.

The plaintiffs contend that segregated public schools are not “equal” and cannot be made “equal,” and that hence they are deprived of the equal protection of the laws.

[Arguments in this case were] largely devoted to the circumstances surrounding the adoption of the Fourteenth Amendment in 1868. [That history] is not enough to resolve the problem with which we are faced. At best, [it is] inconclusive. [The Fourteenth Amendment’s] proponents undoubtedly intended to remove all legal distinctions among “all persons born or naturalized in the United States.” Their opponents, just as certainly, were antagonistic to both the letter

immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

DISSENTING OPINION

There was no dissenting opinion filed in this case.

and the spirit of the [post-Civil War] Amendments and wished them to have the most limited effect.

An additional reason for the inconclusive nature of the Amendment's history, with respect to segregated schools, is the status of public education at that time. [At the time of the Fourteenth Amendment, public school education] had advanced further in the North, but the effect of the Amendment on Northern States was generally ignored in the congressional debates. Even in the North, the conditions of public education did not approximate those existing today. The curriculum was usually rudimentary; ungraded schools were common in rural areas; the school term was but three months a year in many states; and compulsory school attendance was virtually unknown. As a consequence, it is not surprising that there should be so little in the history of the Fourteenth Amendment relating to its intended effect on public education.

[U]nlike [prior cases,] there are findings below that the [Black] and [W]hite schools involved have been equalized, or are being equalized, with respect to buildings, curricula, qualifications and salaries of teachers, and other "tangible" factors. Our decision, therefore, cannot turn on merely a comparison of these tangible factors in the [Black] and [W]hite schools involved in each of the cases. We must look instead to the effect of segregation itself on public education.

[W]e cannot turn the clock back to 1868 when the Amendment was adopted. We must consider public education in the light of its full development and its present place in American life throughout the Nation. Only in this way can it be determined if segregation in public schools deprives these plaintiffs of the equal protection of the laws.

Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It

is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

We come then to the question presented: Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other “tangible” factors may be equal, deprive the children of the minority group of equal educational opportunities? We believe that it does.

To separate them from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone.

We conclude that in the field of public education the doctrine of “separate but equal” has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment.

BROWN V. BOARD OF EDUCATION

DISCUSSION GUIDE AND QUESTIONS

BACKGROUND

In *Plessy v. Ferguson*, the Supreme Court held that racially segregated facilities were constitutional as long as they were otherwise equal. Prior to *Brown*, the National Association for the Advancement of Colored People (NAACP), who represented the families in the *Brown* case, fought to ensure that segregated facilities were actually equal. The NAACP won several cases that forced states to provide equal accommodations in segregated facilities, but they quickly recognized that providing equal accommodations did not always ensure that Black people were provided with equal opportunities. This was particularly true in public schools. At the time *Brown* was decided, most White schools received more funding than Black schools. White schools were often in nicer buildings and safer areas. Rather than continuing to enforce the concept of “separate but equal,” the NAACP started a movement to overturn *Plessy* and advocate for racial integration.

In *Brown*, the NAACP strategically chose to concede that the buildings and other “tangible” factors like books and supplies were equal in segregated schools, even though they knew that most Black schools were severely underfunded. This allowed the NAACP to focus on the argument that the segregation in schools was inherently unequal. To support this argument, they presented evidence that racially segregated schools communicated the idea that Black children were inferior to White children and that the stigma of this message undermined Black students’ motivation to learn.

The *Brown* case succeeded in overturning *Plessy* and helped to kickstart the Civil Rights movement in the United States.

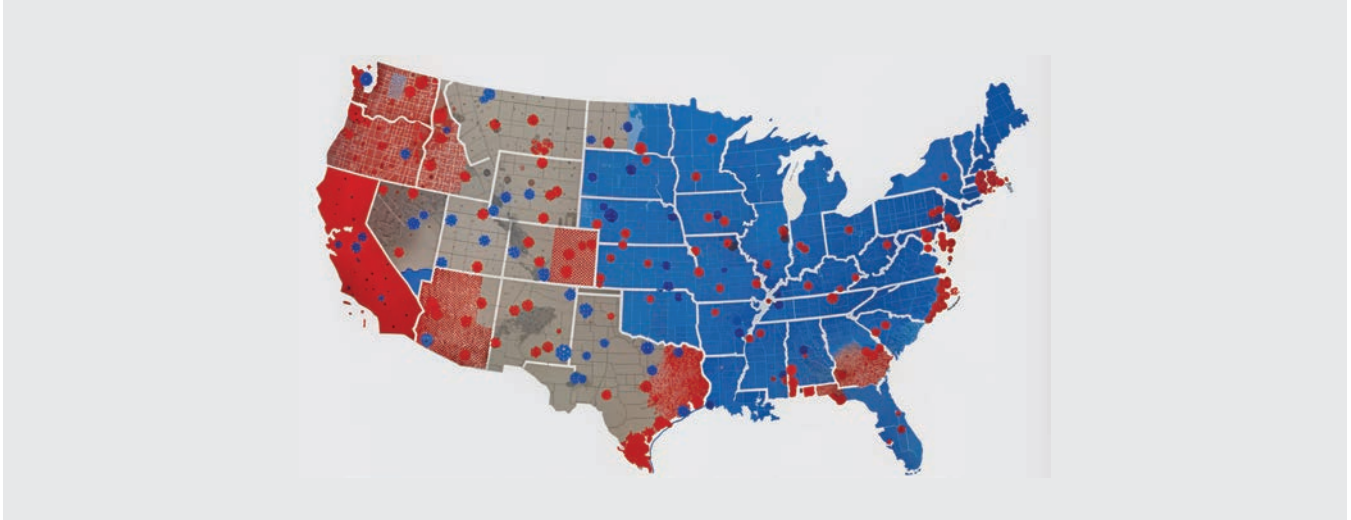
QUESTIONS AND COMMENTS FOR DISCUSSION

1. Why do you think civil rights leaders decided to start their push for desegregation with a case involving public schools? Why might public schools have been easier to integrate than other public institutions?
2. The Court ultimately sided with the NAACP and held that the “separate but equal” doctrine was unconstitutional in public schools. Why did the Court hold that school segregation is unconstitutional? What role should history or the original intent of those who drafted or ratified the Constitution play in interpreting it, if any?
3. The Supreme Court took up *Brown v. Board* a second time in 1955 so that it could provide guidance about how to implement its initial decision from 1954. In *Brown II*, the Court held that states should take actions necessary to desegregate the nation’s public schools “with all deliberate speed.” Even after *Brown II*, state and federal lawmakers across the country continued to oppose integration efforts. In fact, many states only took steps to integrate their public schools after Congress passed the Civil Rights Act of 1964, which tied desegregation to federal funding.

4. Why do you think it took almost a decade after the Supreme Court's holdings in *Brown I & II* for many states to integrate their public schools?
5. Consider this example of one state's opposition to implementing *Brown I* and *Brown II*: Arkansas' governor notoriously made multiple public statements in which he expressed that he did not believe states were required to comply with the Supreme Court's decisions in *Brown I & II*. In *Cooper v. Aaron*, the Supreme Court disagreed with Arkansas' governor, holding that the states were obligated to comply with the *Brown* decisions. The Court reiterated that Constitution is the supreme law of the land, and the federal courts are responsible for interpreting the law and the Constitution. The Court made clear that "[n]o state legislator or executive or judicial officer can war against the Constitution without violating his undertaking to support it."
6. What steps should state and federal lawmakers take when they disagree with a Supreme Court decision?
7. Does the Supreme Court have any power to ensure that state and federal governments comply with its decisions? Does the Court have the power to ensure that individual citizens comply with its decisions?
8. Where does the Supreme Court draw its power from? Why do you think that the public and government actors like the President and Congress generally seem to comply with its opinions even though the Court's power to enforce its decisions is limited?

BAKER V. CARR

CONDENSED CASE



THE BIG PICTURE

The way states divide and sort citizens into voting districts is subject to judicial review.

RULING

Although assigning voters to districts affects political rights, legal challenges to voter redistricting do not necessarily raise a political question. Plaintiffs' allegation that redistricting has denied them equal protection is an issue that falls squarely within the authority of the federal courts to decide.

CONSTITUTIONAL TEXT

The Equal Protection Clause reads: *No state shall . . . deny to any person within its jurisdiction the equal protection of the laws.*

OPINION OF THE COURT

[Note: Merriam-Webster defines "reapportionment" as the process or result of making a new proportionate division or distribution of something; within U.S. Law, the reassignment of representatives proportionally among the states in accordance with changes in population distribution.]

Between 1901 and 1961, Tennessee has experienced substantial growth and redistribution of her population. In 1901 the population was 2,020,616, of whom 487,380 were eligible to vote. [By 1960, the population increased to 3,567,089 and the number of eligible voters to 2,092,891.] The relative standings of the counties in terms of qualified voters have changed significantly. [T]he continued application of the 1901 Apportionment Act to this shifted and enlarged voting population gives rise to the present controversy.

[The complaint] alleges that the 1901 statute 'made no apportionment of Representatives and Senators in accordance with the constitutional formula * * *, but instead arbitrarily and capriciously apportioned representatives in the Senate and House without reference * * * to any logical or reasonable formula

The Guarantee Clause reads: The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic violence.

DISSENTING OPINION

For this Court to direct the District Court to enforce a claim to which the Court has consistently found itself required to deny legal enforcement manifests an odd conception of judicial propriety. To charge courts with the task of accommodating the incommensurable factors of policy that underlie these mathematical puzzles is to attribute omniscience to judges. The Framers of the Constitution persistently rejected a proposal that embodied this assumption.

[T]oday's decision empowers the courts to devise what should constitute the proper composition of the legislatures of the fifty States. The Court's authority ultimately rests on sustained public confidence in its moral sanction. Such feeling must be nourished by the Court's complete detachment,

whatever.' It is further alleged that 'because of the population changes since 1900, and the failure of the Legislature to reapportion itself since 1901,' the 1901 statute became 'unconstitutional and obsolete.' Appellants also argue that, because of the composition of the legislature, redress in the form of a state constitutional amendment to change the entire mechanism for reapportioning, or any other change short of that, is difficult or impossible. The complaint concludes that 'these plaintiffs and others similarly situated, are denied the equal protection of the laws accorded them by the Fourteenth Amendment to the Constitution of the United States by virtue of the debasement of their votes.' They seek a declaration that the 1901 statute is unconstitutional.

Appellants' claim that they are being denied equal protection is justiciable, and if "discrimination is sufficiently shown, the right to relief under the equal protection clause is not diminished by the fact that the discrimination relates to political rights."

The nonjusticiability of a political question is primarily a function of the separation of powers. Deciding whether a matter has in any measure been committed by the Constitution to another branch of government, or whether the action of that branch exceeds whatever authority has been committed, is itself a delicate exercise in constitutional interpretation, and is a responsibility of this Court as ultimate interpreter of the Constitution.

We come, finally, to the ultimate inquiry whether our precedents as to what constitutes a nonjusticiable 'political question' bring the case before us under the umbrella of that doctrine. A natural beginning is to note whether any of the common characteristics which we have been able to identify and label descriptively are present. We find none: The question here is the consistency of state action with the Federal Constitution. We have no question decided, or to be decided, by a political branch of government coequal with this Court.

in fact and in appearance, from political entanglements and by abstention from injecting itself into the clash of political forces in political settlements.

We conclude then that the nonjusticiability of claims resting on the Guaranty Clause which arises from their embodiment of questions that were thought ‘political,’ can have no bearing upon the justiciability of the equal protection claim presented in this case. Finally, we emphasize that it is the involvement in Guaranty Clause claims of the elements thought to define ‘political questions,’ and no other feature, which could render them nonjusticiable. Specifically, we have said that such claims are not held nonjusticiable because they touch matters of state governmental organization.

When a State exercises power wholly within the domain of state interest, it is insulated from federal judicial review. But such insulation is not carried over when state power is used as an instrument for circumventing a federally protected right.

Since, as has been established, the equal protection claim tendered in this case does not require decision of any political question, and since the presence of a matter affecting state government does not render the case nonjusticiable, it seems appropriate to examine again the reasoning by which the District Court reached its conclusion that the case was nonjusticiable.

We conclude that the complaint’s allegations of a denial of equal protection present a justiciable constitutional cause of action upon which appellants are entitled to a trial and a decision. The right asserted is within the reach of judicial protection under the Fourteenth Amendment.

BAKER V. CARR

DISCUSSION GUIDE AND QUESTIONS

BACKGROUND

Every 10 years, the U.S. Census Bureau conducts a census to determine how many people live in each state. The Census Bureau's population data determines how many representatives each state gets in the United States House of Representatives. State legislatures also use census data to divide their states into voting districts for state, local, and federal elections. The process of redrawing voting districts is called apportionment. For the past half century, both the federal and state governments have reapportioned their voting districts at least once every ten years to ensure that U.S. voters have equal representation in their legislative bodies. Prior to *Baker v. Carr*, however, some states almost never reapportioned their districts. As populations shifted, this created enormous imbalances between districts. One district might have ten times as many citizens as another district but still only have one representative in the state legislature.

QUESTIONS AND COMMENTS FOR DISCUSSION

1. Why is redistricting important to ensure equal protection under the Fourteenth Amendment?
2. The political question doctrine explains that federal courts should not rule on certain issues. The name of the doctrine, however, is a little misleading. It does not mean that the case involves a matter touching on politics but instead that the case involves an issue constitutionally designated to the Executive and Legislative branches and their political

judgement. Cases that involve questions beyond the expertise of the Judicial Branch and are more appropriately answered by the Executive or Legislative Branches are also considered political questions.

Article I indicates that apportionment is the responsibility of the legislature. Do you agree with the Court's decision that issues relating to reapportionment based on race are not political questions?

3. What might have been the consequences for voters in the heavily populated urban districts if the Court held that it did not have the authority to decide this case and instead encouraged the state legislature to resolve the apportionment issue raised by the plaintiffs? Would the existing legislature have been likely to voluntarily reapportion in a way that treated voters equally?

ENGEL V. VITALE

CONDENSED CASE



THE BIG PICTURE

Public schools cannot lead or engage in religious activities

RULING

The Establishment Clause of the First Amendment prohibits school officials from composing or leading prayers, even if those prayers are nondenominational and students can opt out.

CONSTITUTIONAL TEXT

First Amendment's Establishment Clause: *Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof.*

DISSENTING OPINION

At the opening of each day's Session of this Court we stand,

OPINION OF THE COURT

[New York state officials composed a prayer which they recommended and published as a part of a "Statement on Moral and Spiritual Training in the Schools."]

We think that by using its public school system to encourage recitation of the Regents' prayer, the State of New York has adopted a practice wholly inconsistent with the Establishment Clause. There can, of course, be no doubt that New York's program of daily classroom invocation of God's blessings as prescribed in the Regents' prayer is a religious activity. [The prayer] is a solemn avowal of divine faith and supplication for the blessings of the Almighty.

[The individuals challenging the daily prayer contend that] state laws requiring or permitting use of the Regents' prayer must be struck down as a violation of the Establishment Clause because that prayer was composed by governmental officials as a part of a governmental program to further religious beliefs. [They argue] the State's use of the Regents' prayer in its public school system breaches the constitutional wall of separation between Church and State. [We agree and]

while one of our officials invokes the protection of God. Since the day of John Marshall our Crier has said, “God save the United States and this Honorable Court.” Both the Senate and the House of Representatives open their daily Sessions with prayer. Each of our Presidents [upon taking office has] asked the protection and help of God.

It was all summed up by this Court just ten years ago in a single sentence: “We are a religious people whose institutions presuppose a Supreme Being.”

I do not believe that this Court, or the Congress, or the President has by the actions and [practices previously mentioned] established an “official religion” in violation of the Constitution.

think that the constitutional prohibition against laws respecting an establishment of religion must at least mean that in this country it is no part of the business of government to compose official prayers for any group of the American people to recite as a part of a religious program carried on by government.

It is a matter of history that this very practice of establishing governmentally composed prayers for religious services was one of the reasons which caused many of our early colonists to leave England and seek religious freedom in America. The Book of Common Prayer, which was created under governmental direction and which was approved by Acts of Parliament in 1548 and 1549, set out in minute detail the accepted form and content of prayer and other religious ceremonies to be used in the established, tax-supported Church of England. The controversies over the Book and what should be its content repeatedly threatened to disrupt the peace of that country as the accepted forms of prayer in the established church changed with the views of the particular ruler that happened to be in control at the time. [Some individuals], lacking the necessary political power to influence the Government on the matter, decided to leave England and its established church and seek freedom in America from England’s governmentally ordained and supported religion.

There can be no doubt that New York’s state prayer program officially establishes the religious beliefs embodied in the Regents’ prayer. [New York’s] argument to the contrary, which is largely based upon the contention that the Regents’ prayer is “nondenominational” and does not require all pupils to recite the prayer but permits those who wish to do so to remain silent or be excused from the room, ignores the essential nature of the program’s constitutional defects. Neither the fact that the prayer may be denominationally neutral nor the fact that its observance on the part of the students is voluntary can serve to free it from the limitations of the Establishment Clause, as it might from the Free Exercise Clause, of the First Amendment.

It has been argued that to apply the Constitution in such a way as to prohibit state laws respecting an establishment of religious services in public schools is to indicate a hostility toward religion or toward prayer. Nothing, of course, could be more wrong. It is neither sacrilegious nor antireligious to say that each separate government in this country should stay out of the business of writing or sanctioning official prayers and leave that purely religious function to the people themselves and to those the people choose to look to for religious guidance.

To those who may subscribe to the view that because the Regents' official prayer is so brief and general there can be no danger to religious freedom in its governmental establishment, however, it may be appropriate to say in the words of James Madison, the author of the First Amendment: "[I]t is proper to take alarm at the first experiment on our liberties. * * * Who does not see that the same authority which can establish Christianity, in exclusion of all other Religions, may establish with the same ease any particular sect of Christians, in exclusion of all other Sects? That the same authority which can force a citizen to contribute three pence only of his property for the support of any one establishment, may force him to conform to any other establishment in all cases whatsoever?"

ENGEL V. VITALE

DISCUSSION GUIDE AND QUESTIONS

QUESTIONS AND COMMENTS FOR DISCUSSION

1. Is the separation of church and state necessary to protect the right to free exercise of religion?
2. Why did the Court decide that allowing students to opt out of the morning prayer was not enough to protect the First Amendment rights of students who did not want to participate in the prayer?
3. Religious freedom continues to be a hot topic in the courts to this today. In *Kennedy v. Bremerton School District*, a public-school football coach was fired for disregarding instructions from the superintendent to stop going to midfield after football games and offering a prayer in plain view of others. The case highlighted the connection between the Free Exercise, Free Speech, and Establishment clauses. Although the coach was a public-school employee,

the Court held that he did not violate the Establishment clause by praying privately after football games and that the school violated his free exercise rights by stopping him. This case rested on two key facts. First, the prayer occurred after the game when other coaches were free to attend to personal matters. Second, although players joined him on the field to pray, he did not force or encourage any of the players to pray with him.

4. Why was the prayer in the *Engel* case unconstitutional but the coach's prayer in *Bremerton* was not?
5. If your coach prayed on a field or court after a sporting event, what would your reaction be? Do you think it would affect other players and students? Should the coach have a right to pray regardless of any potential effect on others?

GIDEON V. WAINWRIGHT

CONDENSED CASE



THE BIG PICTURE

States must provide counsel to indigent defendants in criminal cases.

RULING

The failure to appoint counsel to an indigent defendant in a criminal case denies the defendant a fair trial and the fundamental right to counsel.

CONSTITUTIONAL TEXT

The Sixth Amendment reads: *In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to*

OPINION OF THE COURT

[Gideon was charged with breaking and entering, a felony under Florida law]. Appearing in court without funds and without a lawyer, [Gideon] asked the court to appoint counsel for him, whereupon the following [exchange] took place:

“The COURT: Mr. Gideon, I am sorry, but I cannot appoint Counsel to represent you in this case. Under the laws of the State of Florida, the only time the Court can appoint Counsel to represent a Defendant is when that person is charged with a capital offense. I am sorry, but I will have to deny your request to appoint Counsel to defend you in this case.

“The DEFENDANT: The United States Supreme Court says I am entitled to be represented by Counsel.”

[In front of a jury], Gideon conducted his [own] defense. He made an opening statement to the jury, cross-examined the State’s witnesses, presented witnesses in his own defense, declined to testify himself, and made a short argument “emphasizing his innocence to the charge contained in the Information filed in this

be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

DISSENTING OPINION

There was no dissenting opinion filed in this case.

case.” [He was found guilty and sentenced to five years in prison].

[Gideon appealed] his conviction and sentence on the ground that the trial court’s refusal to appoint counsel for him denied him rights “guaranteed by the Constitution and the Bill of Rights by the United States Government.” Since Gideon was proceeding in *forma pauperis*, we appointed counsel to represent him [in front of the United States Supreme Court].

The Sixth Amendment provides, “In all criminal prosecutions, the accused shall enjoy the right * * * to have the Assistance of Counsel for his defence.” We have construed this to mean that in federal courts counsel must be provided for defendants unable to employ counsel unless the right is competently and intelligently waived. [The question now is] “whether the constraint laid by the amendment upon the [federal] courts expresses a rule so fundamental and essential to a fair trial, and so, to due process of law, that it is made obligatory upon the states by the Fourteenth Amendment.”

[Prior caselaw and] reflection require us to recognize that in our adversary system of criminal justice, any person hauled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him.

Governments, both state and federal, spend vast sums of money to establish machinery to try defendants accused of crime. [Prosecutors everywhere are] deemed essential to protect the public’s interest in an orderly society. Similarly, there are few defendants charged with crime who fail to hire the best lawyers they can get to prepare and present their defenses. That government hires lawyers to prosecute and defendants who have the money hire lawyers to defend are the strongest indications of the widespread belief that lawyers in criminal courts are necessities, not luxuries. From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and

substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him. A defendant's need for a lawyer is nowhere better stated than in the moving words of Mr. Justice Sutherland in *Powell v. Alabama*:

“[Even] the intelligent and educated layman has small and sometimes no skill in the science of law . . . Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence.”

[Our prior decision in *Betts v. Brady* denying a defendant the right to counsel in state court] was “an anachronism when handed down” and [is] now overruled.

GIDEON V. WAINWRIGHT

DISCUSSION GUIDE AND QUESTIONS

BACKGROUND

Prior to the Court's decision in *Gideon*, criminal defendants were routinely charged with crimes carrying lengthy jail sentences and forced to defend themselves at trial without assistance from an attorney. Now, states provide attorneys to indigent criminal defendants through different methods, including public defender offices, appointed counsel programs, and contracts with private firms.

QUESTIONS AND COMMENTS FOR DISCUSSION

1. Why did the Court find that it is the state's responsibility to pay a lawyer for criminal defendants?
2. How does representation by an attorney help guarantee that criminal defendants receive a fair trial? What abuses of power might occur in criminal trials if defendants did not have access to an attorney?
3. The Court's decision in *Gideon* only addresses the right to assistance of counsel, but the Sixth Amendment provides several other protections to criminal defendants as well. In your opinion, which Sixth Amendment protection is the most important?
4. The Sixth Amendment only applies to criminal proceedings. Some states have passed laws that allow for defendants in all civil cases to have access to an attorney. But those laws do not actually require the attorney to be provided at the state's expense. In fact, it is rare for states to provide individuals attorneys in civil cases. Why do you think states typically are not required to pay for attorneys for defendants in civil proceedings?
5. The Court has grappled with the real-world application of the right to counsel in criminal prosecutions since its issuing its decision in *Gideon*. It has clarified that the potential "loss of liberty" that comes with being incarcerated is what prompts the right to a court-appointed attorney. Based on that reasoning, the Court limited the right to a court-appointed attorney to cases where the defendant is sentenced to a term of imprisonment. In other words, a court-appointed attorney is not required in cases where the defendant must only pay a fine or no jail sentence is imposed. Thus, as a practical matter, defendants charged with misdemeanors or minor offenses do not necessarily receive court-appointed attorneys. What consequences, if any, do states face when they fail to protect fundamental rights?
6. Do you think it is reasonable that the Court has limited the right to an attorney to cases in where the defendant is actually sentenced to a term of imprisonment? Should people who face serious fines or other punishments be entitled to representation as well?

TINKER V. DES MOINES INDEPENDENT COMMUNITY SCHOOL DISTRICT

CONDENSED CASE



THE BIG PICTURE

The First Amendment protects students' right to free speech and expression in public schools.

RULING

Suspending students for wearing black armbands to protest the Vietnam War violated students' free speech rights because their behavior was nondisruptive.

CONSTITUTIONAL TEXT

The First Amendment reads: *Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.*

OPINION OF THE COURT

[A group of students decided to express their objections to the Vietnam War by wearing black armbands to school. The principals] adopted a policy that any student wearing an armband to school would be asked to remove it, and if he refused he would be suspended. [Students] were aware of the regulation [and wore the armbands anyway]. They were suspended.

First Amendment rights are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate. This has been the unmistakable holding of this Court for almost 50 years.

On the other hand, the Court has repeatedly emphasized the need for affirming the comprehensive authority of the States and of school officials, consistent with fundamental constitutional safeguards, to prescribe and control conduct in the schools.

The problem posed by the present case does not relate to regulation of the length of skirts or the type of clothing, to hair style, or deportment. It does not

DISSENTING OPINION

While the record does not show that any of these armband students shouted, used profane language, or were violent, detailed testimony shows their armbands caused comments, warnings by other students, the poking of fun at them, and a warning by an older football player that other students had better let them alone.

Even a casual reading of the record shows that this armband did divert students' minds from their regular lessons. While the absence of obscene remarks or boisterous and loud disorder perhaps justifies the Court's statement that the few armband students did not actually "disrupt" the classwork, the record overwhelmingly shows that the armbands did exactly what the elected school officials and principals foresaw they would, that is, took the students' minds off their classwork and diverted them to thoughts about the Vietnam war. [I]f the time has come when pupils can defy and flout orders of school officials, it is the beginning of a new revolutionary era of permissiveness in this country. The original idea of schools was that children had not yet reached the point of experience and wisdom

concern aggressive, disruptive action or even group demonstrations. Our problem involves direct, primary First Amendment rights akin to "pure speech."

The school officials banned and sought to punish petitioners for a silent, passive expression of opinion, unaccompanied by any disorder or disturbance on the part of [the students].

Only a few of the 18,000 students in the school system wore the black armbands. There is no indication that the work of the schools or any class was disrupted. Outside the classrooms, a few students made hostile remarks to the children wearing armbands, but there were no threats or acts of violence on school premises.

[I]n our system, undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression. Any departure from absolute regimentation may cause trouble. Any variation from the majority's opinion may inspire fear. Any word spoken, in class, in the lunchroom, or on the campus, that deviates from the views of another person may start an argument or cause a disturbance. But our Constitution says we must take this risk; and our history says that it is this sort of hazardous freedom—this kind of openness—that is the basis of our national strength.

[To restrict] expression of opinion, [a school] must be able to show that its action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint. Certainly where there is no finding and no showing that engaging in the forbidden conduct would "materially and substantially interfere with the requirements of appropriate discipline in the operation of the school," the prohibition cannot be sustained.

It is also relevant that the school authorities did not purport to prohibit the wearing of all symbols of political or controversial significance. [S]tudents in some of the schools wore buttons relating to national political campaigns, and some even wore the Iron

which enabled them to teach all of their elders.

This case subjects all the public schools in the country to the whims and caprices of their loudest-mouthed, but maybe not their brightest, students.

Cross, traditionally a symbol of Nazism. The order prohibiting the wearing of armbands did not extend to these [symbols]. Instead, a particular symbol—black armbands worn to exhibit opposition to this Nation’s involvement in Vietnam—was singled out. Clearly, the prohibition of one particular opinion, at least without evidence that it is necessary to avoid material and substantial interference with schoolwork or discipline, is not constitutionally permissible.

In our system, state-operated schools may not be enclaves of totalitarianism. School officials do not possess absolute authority over their students. Students in school as well as out of school are “persons” under our Constitution. They [possess] fundamental rights which the State must respect, just as they themselves must respect their obligations to the State. In our system, students may not be regarded as closed-circuit recipients of only that which the State chooses to communicate. They may not be confined to the expression of those sentiments that are officially approved. In the absence of a specific showing of constitutionally valid reasons to regulate their speech, students are entitled to freedom of expression of their views.

TINKER V. DES MOINES INDEPENDENT COMMUNITY SCHOOL DISTRICT

DISCUSSION GUIDE AND QUESTIONS

QUESTIONS AND COMMENTS FOR DISCUSSION

1. Why was the students' decision to wear armbands protected by the First Amendment?
2. Is the "speech" protected by the First Amendment limited to just spoken words? If not, what other expressive activities might the First Amendment protect under the umbrella of "free speech"?
3. Does the First Amendment protect speech on social media platforms like TikTok or Instagram?

HYPOTHETICALS

1. The Court reasoned in *Tinker* that students' decision to wear black armbands to protest U.S. involvement in the Vietnam War did not materially and substantially interfere with the work of the school or impinge on the rights of other students. Consider how *Tinker* applies to the following situation. Since 2019, Deacon Hill Middle School has had 'Pizza Friday' once a month, where the school orders pizza from a local restaurant to feed all the students for lunch. This year, the School Board decides to cut 'Pizza Friday' due to lack of funding. In protest, the students sit silently on the floor at the entrance of the school cafeteria during their lunch hour. Are the students practicing a form

of speech? Is this speech protected under the First Amendment? What facts or scenarios might justify the school in punishing the students or requiring that they disperse?

2. Bernadette only speaks Spanish at home. She has been learning English in school with the help of her English as a Second Language teacher, who offers very little if any instruction in Spanish. Bernadette comes to school one day with a shirt on that has the following message printed on it: Bilingual Education Now! Is wearing that shirt a form of "speech" protected by the First Amendment?
3. Pantherville High School plans to cancel its senior prom this year because the venue is no longer available. A group of students plan to protest this decision by marching around the school for the duration of their End of Year Exams, playing music and shouting protest chants. Would this protest be protected under *Tinker*?

NEW YORK TIMES V. UNITED STATES

CONDENSED CASE



THE BIG PICTURE

The First Amendment protects the press from censorship, even when its reporting touches on matters of national security.

RULING

The Government did not meet the high burden of demonstrating that the publication of classified materials on the Viet Nam War would endanger national security.

CONSTITUTIONAL TEXT

The First Amendment reads: *Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people*

To signal its position that censoring the New York Times was clearly unconstitutional, the Court's main opinion was only three paragraphs long. One of the concurring opinions – the opinion of Justice Black – is included below to provide further context.

OPINION OF THE COURT

[T]he United States seeks to [prevent] the New York Times and the Washington Post from publishing the contents of a classified study entitled “History of U.S. Decision-Making Process on Viet Nam Policy.”

“Any system of prior restraints of expression comes to this Court bearing a heavy presumption against its constitutional validity.” The Government “thus carries a heavy burden of showing justification for the imposition of such a restraint.” [Lower courts in this matter] held that the Government had not met that burden. We agree.

JUSTICE BLACK, WITH WHOM JUSTICE DOUGLAS JOINS, CONCURRING.

peaceably to assemble, and to petition the government for a redress of grievances.

DISSENTING OPINION

[T]he imperative of a free and unfettered press comes into collision with another imperative, the effective functioning of a complex modern government. Only those who view the First Amendment as an absolute in all circumstances can find such cases as these to be simple or easy.

[T]he First Amendment right itself is not an absolute. [For instance, no one has the right] to shout “fire” in a crowded theater if there was no fire.

Would it have been unreasonable, since the newspaper could anticipate the Government’s objections, to give the Government an opportunity to review the entire collection and determine whether agreement could be reached on publication? [T]he newspapers and Government might well have narrowed the area of disagreement as to what was and was not publishable, leaving the remainder to be resolved in orderly litigation, if necessary. To me it is hardly believable that a newspaper long regarded as a great institution

When the Constitution was adopted, many people strongly opposed it because the document contained no Bill of Rights to safeguard certain basic freedoms.

In response to an overwhelming public clamor, James Madison offered a series of amendments to satisfy citizens that these great liberties would remain safe and beyond the power of government to abridge. Madison proposed what later became the First Amendment in three parts, two of which are set out below, and one of which proclaimed: “The people shall not be deprived or abridged of their right to speak, to write, or to publish their sentiments; *and the freedom of the press, as one of the great bulwarks of liberty, shall be inviolable.*” The Bill of Rights changed the original Constitution into a new charter under which no branch of government could abridge the people’s freedoms of press, speech, religion, and assembly. Yet the Solicitor General argues and some members of the Court appear to agree that the general powers of the Government adopted in the original Constitution should be interpreted to limit and restrict the specific and emphatic guarantees of the Bill of Rights adopted later. I can imagine no greater perversion of history. Madison and the other Framers of the First Amendment wrote in language they earnestly believed could never be misunderstood: “Congress shall make no law * * * abridging the freedom * * * of the press * * *.”

The press was protected so that it could bare the secrets of government and inform the people. Only a free and unrestrained press can effectively expose deception in government. And paramount among the responsibilities of a free press is the duty to prevent any part of the government from deceiving the people and sending them off to distant lands to die of foreign fevers and foreign shot and shell.

[T]he Government argues in its brief that in spite of the First Amendment, “[t]he authority of the Executive Department to protect the nation against publication of information whose disclosure would endanger the national security stems from two interrelated sources: the constitutional power of the President

in American life would fail to perform one of the basic and simple duties of every citizen with respect to the discovery or possession of stolen property or secret government documents.

over the conduct of foreign affairs and his authority as Commander-in-Chief.”

In other words, we are asked to hold that despite the First Amendment’s emphatic command, the Executive Branch, the Congress, and the Judiciary can make laws enjoining publication of current news and abridging freedom of the press in the name of “national security.” The Government does not even attempt to rely on any act of Congress.

To find that the President has “inherent power” to halt the publication of news by resort to the courts would wipe out the First Amendment and destroy the fundamental liberty and security of the very people the Government hopes to make “secure.”

The word “security” is a broad, vague generality whose contours should not be invoked to abrogate the fundamental law embodied in the First Amendment. The guarding of military and diplomatic secrets at the expense of informed representative government provides no real security for our [nation].

NEW YORK TIMES V. UNITED STATES

DISCUSSION GUIDE AND QUESTIONS

BACKGROUND

The Pentagon Papers were a comprehensive report that outlined U.S. policy related to Vietnam from 1945 to 1967. This report revealed that the U.S. government willfully deceived the American public about the nation's involvement in Vietnam. In *New York Times v. United States*, the government tried to prevent the New York Times from publishing excerpts from the Pentagon Papers, citing a concern that the distribution of this information would endanger national security. The Court disagreed and allowed for the publication of the excerpts. In his concurring opinion, Justice Black wrote that “[t]he guarding of military and diplomatic secrets at the expense of informed representative government provides no real security for our [nation].”

QUESTIONS AND COMMENTS FOR DISCUSSION

1. Do you agree with the quote from Justice Black's concurrence? Do you think that the Supreme Court should have prevented the New York Times from publishing this story in the interest of national security?
2. This case was decided at the tail end of the Vietnam War. Do you think that the Court would have decided the case differently if it was argued in the middle of the war?
3. Why is freedom of the press important in a democracy?

4. How is the freedom of the press to distribute information different from the freedom of speech for individual citizens? Do you think that “speech” by the press or by individuals is subject to more restrictions from the government?

HYPOTHETICAL

Nancy is a sports journalism student at South Carolina State University. Last semester, just for fun, Nancy began printing one-page flyers called *The Bulldog Fan News* covering South Carolina State University sports. She shares her flyers with family and friends for free. Yesterday, while waiting at the bus stop, Nancy saw someone drop a piece of paper. The paper contained results from a medical test that indicated that the patient, Mr. Smith, a professor at the university, was diagnosed with dementia. Nancy's friend, who is enrolled in the professor's class, told her that every student failed the midterm exam, and when the students tried to talk to him about their grades during the next class, he could not remember grading their tests. Nancy runs home to print this information in *The Bulldog Fan News*.

If the university learns of her plans, could it stop her from printing information about the professor's medical condition?

WISCONSIN V. YODER

CONDENSED CASE



THE BIG PICTURE

While state laws requiring students to attend high school are generally valid, parental religious rights can justify an exception under special circumstances.

RULING

A Wisconsin law requiring students to attend school beyond the eighth grade violated Amish families' First Amendment right of free exercise of religion due to the unique and substantial burden that further schooling placed on their faith.

CONSTITUTIONAL TEXT

Free Exercise Clause of the First Amendment: *Congress shall make no law respecting*

OPINION OF THE COURT

[Wisconsin's compulsory school-attendance law requires children under the age of sixteen to attend public or private school. Three Amish families refused to send their children, aged fourteen to fifteen, to public school or private school after completion of the eighth grade.]

A feature of Old Order Amish communities is their devotion to a life in harmony with nature. Broadly speaking, the Old Order Amish religion pervades and determines the entire mode of life of its [followers]. Their conduct is regulated in great detail by the *Ordnung*, or rules, of the church community. Adult baptism, which occurs in late adolescence, is the time at which Amish young people voluntarily undertake heavy obligations [to follow] the rules of the church community.

Amish objection to formal education beyond the eighth grade is firmly grounded in these central religious concepts. [The Amish] object to high school [because] the values [taught] are in marked variance with Amish values and the Amish way of life; they view secondary school education as an impermissible

*an establishment of religion,
or prohibiting the free
exercise thereof.*

DISSENTING OPINION

It is the future of the student, not the future of the parents, that is imperiled by today's decision. If a parent keeps his child out of school beyond the grade school, then the child will be forever barred from entry into the new and amazing world of diversity that we have today. The child may decide that that is the preferred course, or he may rebel. It is the student's judgment, not his parents', that is essential if we are to give full meaning to what we have said about the Bill of Rights and of the right of students to be masters of their own destiny. If he is harnessed to the Amish way of life by those in authority over him and if his education is truncated, his entire life may be stunted and deformed. The child, therefore, should be given an opportunity to be heard before the State gives the exemption which we honor today.

exposure of their children to a "worldly" influence in conflict with their beliefs. [H]igh school tends to emphasize intellectual and scientific accomplishments, self-distinction, competitiveness, worldly success, and social life with other students. Amish society emphasizes informal learning-through-doing; a life of "goodness," rather than a life of intellect; wisdom, rather than technical knowledge, community welfare, rather than competition; and separation from, rather than integration with, contemporary worldly society.

Formal high school education beyond the eighth grade [removes Amish students] from their community, physically and emotionally, during the crucial and formative adolescent period of life.

The Amish do not object to elementary education through the first eight grades as a general proposition because they agree that their children must have basic skills in the "three R's" in order to read the Bible, to be good farmers and citizens, and to be able to deal with non-Amish people when necessary in the course of daily affairs. They view such a basic education as acceptable because it does not significantly expose their children to worldly values or interfere with their development in the Amish community during the crucial adolescent period.

[In order for Wisconsin to compel school attendance] beyond the eighth grade against a claim that such attendance interferes with the practice of a legitimate religious belief, it must appear either that the State does not deny the free exercise of religious belief by its requirement, or that there is a state interest of sufficient magnitude to override the interest claiming protection under the Free Exercise Clause. Long before there was general acknowledgment of the need for universal formal education, the Religion Clauses had specifically and firmly fixed the right to free exercise of religious beliefs, and buttressing this fundamental right was an equally firm, even if less explicit, prohibition against the establishment of any religion by government.

[H]owever strong the State's interest in universal compulsory education, it is by no means absolute to the exclusion or subordination of all other interests. [T]o have the protection of the Religion Clauses, the claims must be rooted in religious belief.

[The evidence in this case] abundantly supports the claim that the traditional way of life of the Amish is not merely a matter of personal preference, but one of deep religious conviction, shared by an organized group, and intimately related to daily living.

The State attacks [the parent's] position as one fostering "ignorance" from which the child must be protected by the State. No one can question the State's duty to protect children from ignorance, but this argument does not square with the facts. [The evidence] strongly shows that the Amish community has been a highly successful social unit within our society, even if apart from the conventional "mainstream." Its members are productive and very law-abiding members of society; they reject public welfare in any of its usual modern forms.

The record strongly indicates that accommodating the religious objections of the Amish by forgoing one [to two] additional years of compulsory education will not impair the physical or mental health of the child, or result in an inability to be self-supporting or to discharge the duties and responsibilities of citizenship, or in any other way materially detract from the welfare of society.

[Relying on] our consistent emphasis on the values underlying the Religion Clauses in our [constitution], we cannot accept a *parens patriae* claim of such all-encompassing scope and with such sweeping potential for broad and unforeseeable application as that urged by the State.

WISCONSIN V. YODER

DISCUSSION GUIDE AND QUESTIONS

QUESTIONS AND COMMENTS FOR DISCUSSION

1. Why did Wisconsin's compulsory education law requiring students to attend school until the age of sixteen violate the Free Exercise Clause of the First Amendment? Did the law violate the First Amendment rights of all students and families?
2. Do you think the Court would have decided the case differently if Wisconsin's compulsory education law required students to only attend school until the age of twelve instead of sixteen?
3. The Court recently decided another case about free exercise of religion and public education curriculum, *Mahmoud v. Taylor*. In *Mahmoud*, a group of public-school parents from different religious backgrounds filed a lawsuit against their public-school board in Maryland. The parents argued that the Board violated their First Amendment right to free exercise of religion by denying them the ability to opt their children out of instruction related to LGBTQ+ inclusive books. Like in *Yoder*, the Court held that the Board's policies substantially interfered with the religious development of the parents' children and posed a "very real threat of undermining" the religious beliefs that the parents wish to instill in their children. The Court indicated the district's policies created pressure for students to adopt the school's normative values regarding LGBTQ+ issues, including correcting students who

express views that are not accepting of LGBTQ+ couples.

HYPOTHETICAL

Using *Yoder* and *Mahmoud* as a guide, consider the following hypo.

Tigertown School District is introducing a new policy this year that all elementary school teachers must lead their students in a 15-minute yoga stretching and breathwork activity after recess. This policy is meant to help students reset and reengage in learning after a period of unstructured play. Louise's mother is a devout Christian. She does not want Louise to participate in the yoga sessions because she believes that yoga too closely aligns with the principles of Hinduism. She believes that exposing Louise to yoga conflicts with her Christian faith, which prioritizes prayer and reflection rather than the mindfulness techniques taught by yoga. Louise's principal responds that the yoga sessions are required district-wide and that Louise's mother cannot opt her daughter out of them. Does the new district-wide policy requiring yoga sessions violate the First Amendment? If so, why?

SHAW V. RENO

CONDENSED CASE



THE BIG PICTURE

Courts will closely scrutinize states that redraw voting district lines to create unusually shaped majority-Black or majority minority districts.

RULING

Voting districts so irregular in shape that they can only be explained based on racial considerations violate the Fourteenth Amendment's Equal Protection Clause, even if the purpose was to increase minority voters' ability to elect a candidate of their choice.

CONSTITUTIONAL TEXT

The Fourteenth Amendment Equal Protection Clause reads: *No state shall make or enforce any law which shall abridge*

OPINION OF THE COURT

This case involves two of the most complex and sensitive issues this Court has faced in recent years: the meaning of the constitutional "right" to vote, and the propriety of race-based state legislation designed to benefit members of historically disadvantaged racial minority groups. As a result of the 1990 census, North Carolina became entitled to a 12th seat in the United States House of Representatives. [As a result, the North Carolina legislature redrew the congressional voting district lines in the state, which included creating a majority-black congressional district.] The Voting Rights Act of 1965 requires jurisdictions with a history of discrimination to submit changes in a "standard, practice, or procedure with respect to voting" to the U.S. Attorney General for approval. The Attorney General objected to North Carolina's new districting plan. In response, the state redrew its district lines and created a second majority-black district. [Plaintiffs in this case] allege that the revised plan, which contains district boundary lines of dramatically irregular shape, constitutes an unconstitutional racial gerrymander.

the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws

DISSENTING OPINION

“[L]ike bloc-voting by race, [the racial composition of geographic area] is a fact of life, well known to those responsible for drawing electoral district lines. These lawmakers are quite aware that the districts they create will have a white or a black majority; and with each new district comes the unavoidable choice as to the racial composition of the district.”

Redistricting plans also reflect group interests and inevitably are conceived with partisan aims in mind. To allow judicial interference whenever this occurs would be to invite constant and unmanageable intrusion.

[W]e must ask whether otherwise permissible redistricting to benefit an underrepresented minority group becomes impermissible when the minority group is defined by its race. The Court today answers this question in the affirmative, and its answer

The voting age population of North Carolina is approximately 78% white, 20% black, and 1% Native American; the remaining 1% is predominantly Asian. The black population is relatively dispersed; blacks constitute a majority of the general population in only 5 of the State’s 100 counties. The largest concentrations of black citizens live in the Coastal Plain, primarily in the northern part. The General Assembly’s first redistricting plan contained one majority-black district centered in that area of the State.

In the Attorney General’s view, the General Assembly could have created a second majority-minority district “to give effect to black and Native American voting strength” by using boundary lines “no more irregular than [those] found elsewhere in the proposed plan,” but failed to do so for “pretextual reasons.”

The first of the two majority-black districts contained in the revised plan is somewhat hook shaped. Centered in the northeast portion of the State, it moves southward until it tapers to a narrow band; then, with finger-like extensions, it reaches far into the southern-most part of the State near the South Carolina border.

The second majority-black district is even more unusually shaped. It is approximately 160 miles long and, for much of its length, no wider than the [Interstate 85 corridor]. Of the 10 counties through which District 12 passes, 5 are cut into 3 different districts; even towns are divided.

[Plaintiffs] contended that the General Assembly’s revised reapportionment plan violated several provisions of the United States Constitution, including the [Equal Protection Clause of the] Fourteenth Amendment. They alleged that the General Assembly deliberately “create[d] two Congressional Districts in which a majority of black voters was concentrated arbitrarily—without regard to any other considerations, such as compactness, contiguousness, geographical boundaries, or political subdivisions” with the purpose “to create Congressional Districts along racial lines” and

is wrong. If it is permissible to draw boundaries to provide adequate representation for rural voters, for union members, for Hasidic Jews, for Polish Americans, or for Republicans, it necessarily follows that it is permissible to do the same thing for members of the very minority group whose history in the United States gave birth to the Equal Protection Clause. The Court offers no adequate justification for treating the narrow category of bizarrely shaped district claims differently from other districting claims.

to assure the election of two black representatives to Congress.

What [plaintiffs] object to is redistricting legislation that is so extremely irregular on its face that it rationally can be viewed only as an effort to segregate the races for purposes of voting, without regard for traditional districting principles and without sufficiently compelling justification.

The Equal Protection Clause provides that “[n]o State shall ... deny to any person within its jurisdiction the equal protection of the laws.” Laws that explicitly distinguish between individuals on racial grounds fall within the core of that prohibition.

These principles apply not only to legislation that contains explicit racial distinctions, but also to those “rare” statutes that, although race neutral, are, on their face, “unexplainable on grounds other than race.”

[Plaintiffs] contend that redistricting legislation that is so bizarre on its face that it is “unexplainable on grounds other than race” demands the same close scrutiny that we give other state laws that classify citizens by race. Our voting rights precedents support that conclusion.

A reapportionment statute typically does not classify persons at all; it classifies tracts of land, or addresses. Moreover, redistricting differs from other kinds of state decisionmaking in that the legislature always is aware of race when it draws district lines, just as it is aware of age, economic status, religious and political persuasion, and a variety of other demographic factors. That sort of race consciousness does not lead inevitably to impermissible race [discrimination].

[But i]n some exceptional cases, a reapportionment plan may be so highly irregular that, on its face, it rationally cannot be understood as anything other than an effort to “segregat[e] ... voters” on the basis of race.

A reapportionment plan that includes in one district individuals who belong to the same race, but who are otherwise widely separated by geographical and political boundaries, and who may have little in common with one another but the color of their skin, bears an uncomfortable resemblance to political apartheid. It reinforces the perception that members of the same racial group—regardless of their age, education, economic status, or the community in which they live—think alike, share the same political interests, and will prefer the same candidates at the polls. We have rejected such perceptions elsewhere as impermissible racial [stereotypes].

The States certainly have a very strong interest in complying with federal antidiscrimination laws that are constitutionally valid as interpreted and as applied. But in the context of a Fourteenth Amendment challenge, courts must bear in mind the difference between what the law permits and what it requires.

Today we hold only that appellants have stated a claim under the Equal Protection Clause by alleging that the North Carolina General Assembly adopted a reapportionment scheme so irrational on its face that it can be understood only as an effort to segregate voters into separate voting districts because of their race, and that the separation lacks sufficient justification.

SHAW V. RENO

DISCUSSION GUIDE AND QUESTIONS

BACKGROUND

Despite the Fifteenth Amendment's ban on race-based voting restrictions, during the Jim Crow era, many southern states adopted laws that appeared race-neutral on their face but disproportionately disenfranchised people of color. In other words, these laws had the effect of denying many African Americans the right to vote. Common restrictions included literacy tests and poll taxes. The Voting Rights Act of 1965 was enacted to ensure minority communities had equal access to the ballot and an equal opportunity to elect representatives of their choice. Following its passage, many states reapportioned their voting districts to improve representation for minority voters. In some cases, this resulted in the creation of majority-minority districts (districts where most residents are racial minorities). In *Reno*, the Court addressed the question of whether drawing a majority-minority district, even with good intentions, might violate the Constitution.

QUESTIONS AND COMMENTS FOR DISCUSSION

1. Was North Carolina's reapportionment of its voting districts unconstitutional? Why or why not?
2. Merriam Webster defines gerrymandering as the practice of dividing or arranging a territorial unit into election districts in a way that gives one political party an unfair advantage in elections. Gerrymandering is often used to diminish or strengthen the voting power of certain communities. What ways, if any, can gerrymandering be beneficial to the voting process? What problems, if any, can arise from intentionally drawing districts to benefit one party or candidate over their opponent?
3. The Court has not outlawed all forms of gerrymandering. In *Rucho v. Common Cause*, the Court held that it did not have the authority to decide cases about partisan gerrymandering (drawing district lines with the intent of increasing one party's chances of winning elections) because the practice raises a political question that courts are ill-equipped to answer: How much gerrymandering is too much? The process of creating voting districts has always involved legislatures separating district boundaries based on how those boundaries will affect election results. If partisan considerations are an inherent aspect of districting, how can a court determine the point when partisanship is so egregious that it is unconstitutional? Reasoning that there was no judicially manageable standard by which to draw that constitutional line, the Court ordered the lower court to dismiss the case. The Court did, however, explain that the Constitution grants Congress the authority to address partisan gerrymandering by state legislatures.

HYPOTHETICAL

Using what you learned about *Baker and Rucho*, analyze the state's action in the following scenario:

Most voters in South Carolina cast ballots for Republican candidates. Imagine that the Republican party is the majority in South Carolina's state legislature, and its leaders decide to redraw the state's voting districts to further increase the number of districts that Republicans are likely to win in the state. Under the new map, although roughly 40% of voters cast ballots for Democratic candidates, Democratic candidates will likely only win 20% of the seats in the state legislature. Because Black voters tend to vote for Democratic candidates, the new map also results in the vast majority Black voters in the state being gerrymandered into those Democratic leaning districts. A coalition of Black voters files a complaint against the legislature, alleging that the new voting map diminishes the voting power of the Black residents of South Carolina. The state legislature justifies this new voting map by claiming that it redrew the lines with the purpose of increasing the voting strength of Republican voters, not packing Black voters into particular districts. Is this redistricting plan constitutional?

UNITED STATES V. LOPEZ

CONDENSED CASE



THE BIG PICTURE

The Constitution does not grant Congress any general power to regulate students or schools.

RULING

Congress lacks the power under the Commerce Clause to criminalize all gun possession at schools because gun possession does not involve the regulation of an item of interstate commerce, a channel of commerce, or economic activity that substantially affects interstate commerce

CONSTITUTIONAL TEXT

The Commerce Clause, in part, reads: *The Congress shall have power to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes*

OPINION OF THE COURT

[In the Gun-Free School Zones Act of 1990, Congress made it a federal offense] “for any individual knowingly to possess a firearm at a place that the individual knows, or has reasonable cause to believe, is a school zone.” The Act neither regulates a commercial activity nor contains a requirement that the possession be connected in any way to interstate commerce.

[A high school student] arrived at Edison High School in San Antonio, Texas, carrying a concealed handgun and five bullets. Acting upon an anonymous tip, school authorities confronted respondent. He was arrested and charged under Texas law. The next day, the state charges were dismissed after federal agents charged [the student] with violating the Gun-Free School Zones Act. [He was found guilty and sentenced to six months' in prison. He appealed] his conviction based on his claim that [the Act] exceeded Congress' power to legislate under the Commerce Clause.

The Constitution creates a Federal Government of enumerated powers [that] “are few and defined. Those which are to remain in the State governments are numerous and indefinite.” This constitutionally mandated division of authority “was adopted by the

DISSENTING OPINION

The welfare of our future “Commerce with foreign Nations, and among the several States” is vitally dependent on the character of the education of our children. Congress has ample power to prohibit the possession of firearms in or near schools—just as it may protect the school environment from harms posed by controlled substances such as asbestos or alcohol.

Guns are both articles of commerce and articles that can be used to restrain commerce. Their possession is the consequence, either directly or indirectly, of commercial activity. In my judgment, Congress’ power to regulate commerce in firearms includes the power to prohibit possession of guns at any location because of their potentially harmful use; it necessarily follows that Congress may also prohibit their possession in particular markets. The market for the possession of handguns by school-age children is substantial. Whether or not the national interest in eliminating that market would have justified federal legislation in 1789, it surely does today.

Framers to ensure protection of our fundamental liberties.” “Just as the separation and independence of the coordinate branches of the Federal Government serve to prevent the accumulation of excessive power in any one branch, a healthy balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front.”

The Constitution delegates to Congress the power “[t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.”

[The Court has] identified three broad categories of activity that Congress may regulate under its commerce power. First, Congress may regulate the use of the channels of interstate commerce. Second, Congress is empowered to regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities. Finally, Congress’ commerce authority includes the power to regulate those activities having a substantial relation to interstate commerce, [and] those activities that substantially affect interstate commerce.

We now turn to consider the power of Congress, in the light of this framework, to enact [the Gun-Free Schools Zone Act]. The first two categories of authority may be quickly disposed of: [the Act] is not a regulation of the use of the channels of interstate commerce, nor is it an attempt to prohibit the interstate transportation of a commodity through the channels of commerce; nor can [the Act] be justified as a regulation by which Congress has sought to protect an instrumentality of interstate commerce or a thing in interstate commerce. Thus, if [the Act] is to be sustained, it must be under the third category as a regulation of an activity that substantially affects interstate commerce.

The [federal] Government argues that possession of a firearm in a school zone may result in violent crime and that violent crime can be expected to affect the functioning of the national economy in two ways. First, the costs of violent crime are substantial, and,

through the mechanism of insurance, those costs are spread throughout the population. Second, violent crime reduces the willingness of individuals to travel to areas within the country that are perceived to be unsafe. The Government also argues that the presence of guns in schools poses a substantial threat to the educational process by threatening the learning environment. A handicapped educational process, in turn, will result in a less productive citizenry. That, in turn, would have an adverse effect on the Nation's economic well-being. As a result, the Government argues that Congress could rationally have concluded that [the Act] substantially affects interstate commerce.

Under the theories that the Government presents, it is difficult to perceive any limitation on federal power, even in areas such as criminal law enforcement or education where States historically have been sovereign. Thus, if we were to accept the Government's arguments, we are hard pressed to posit any activity by an individual that Congress is without power to regulate.

The possession of a gun in a local school zone is in no sense an economic activity that might, through repetition elsewhere, substantially affect any sort of interstate commerce. [The student] was a local student at a local school; there is no indication that he had recently moved in interstate commerce, and there is no requirement that his possession of the firearm have any concrete tie to interstate commerce.

To uphold the Government's contentions here, we would have to pile inference upon inference in a manner that would bid fair to convert congressional authority under the Commerce Clause to a general police power of the sort retained by the States.

This we are unwilling to do.

UNITED STATES V. LOPEZ

DISCUSSION GUIDE AND QUESTIONS

BACKGROUND

The Commerce Clause does not give Congress the general ability to regulate all commerce within the United States. It only gives Congress the power to regulate commerce between states, what the Court calls interstate commerce. The Commerce Clause does not provide an explicit definition of “commerce.” In the late 1800s and early 1900s, the Court limited “commerce” to the actual selling of goods and services across state lines and held that manufacturing and labor standards do not fall under Congress’ ability to regulate commerce.

In the late 1930s, the Court began to expand its interpretation of what Congress could regulate under the Commerce Clause. The Court eliminated prior distinctions between manufacture, labor, and the buying and selling of goods when defining “commerce.” The Court also expanded Congress’ commerce power to allow for the regulation of activities that impacted interstate commerce in the aggregate, even if those activities never cross state lines. In one case, the Court even decided that Congress could regulate crops grown for personal consumption. The Court reasoned that if large numbers of people grew crops for personal consumption, it would have a substantial impact on the price of corn in interstate markets.

Building on that logic in the following decades, the Court’s precedent created the impression that Congress could regulate almost anything using its commerce powers. *U.S. v. Lopez* offered the first major limitation

on Congress’ commerce powers since the 1930s. The Court in *Lopez* reasoned that, regardless of the impact gun violence might have on schools or the economy, Congress could not regulate the possession of firearms in school zones because carrying a gun to school is not an “economic activity.”

QUESTIONS AND COMMENTS FOR DISCUSSION

1. Should Congress be able to use its Commerce Clause power to enact legislation like the Gun-Free Schools Zone Act? What problems might arise in allowing Congress broad power under the Commerce Clause?
2. What powers does the *Lopez* decision reserve to state governments? How does it make Congress’ ability to enact laws more difficult?

HYPOTHETICALS

1. Imagine that this case involved a student selling drugs at school instead of a student bringing a weapon to school. Could Congress use the Commerce Clause to regulate the sale of illegal drugs in public school buildings?
2. Imagine that Congress was proposing a “Gun-Free Malls Act” that prevented the possession of firearms in public malls. Using *Lopez* as a guide, determine if this statute would fall within Congress’ commerce power.

MCDONALD V. CITY OF CHICAGO

CONDENSED CASE



THE BIG PICTURE

In a previous case, the Court declared a federal restriction on handguns unconstitutional. It applied the same rationale to strike down state and local gun regulations in this case.

RULING

The Fourteenth Amendment's protection of liberty, which applies to states, includes the right to keep and bear arms for self-defense.

CONSTITUTIONAL TEXT

The Second Amendment reads: *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.*

OPINION OF THE COURT

[In deciding whether the Second Amendment right to keep and bear arms applies not just to the Federal Government but also to States, the Court] must decide whether the right to keep and bear arms is fundamental to our scheme of ordered liberty, or as we have said in a related context, whether this right is “deeply rooted in this Nation’s history and tradition.”

Self-defense is a basic right, recognized by many legal systems from ancient times to the present, [and the Court previously held] that individual self-defense is “the central component” of the Second Amendment right. Explaining that “the need for defense of self, family, and property is most acute” in the home, the Court found that this right applies to handguns because they are “the most preferred firearm in the nation to ‘keep’ and use for protection of one’s home and family.”

The right to keep and bear arms was considered no less fundamental by those who drafted and ratified the Bill of Rights. “During the 1788 ratification debates, the fear that the federal government would disarm the people in order to impose rule through a standing

The Fourteenth Amendment Due Process Clause reads: *No state shall . . . deprive any person of life, liberty, or property, without due process of law.*

DISSENTING OPINION

[F]irearms have a fundamentally ambivalent relationship to liberty. Just as they can help homeowners defend their families and property from intruders, they can help thugs and insurrectionists murder innocent victims. The threat that firearms will be misused is far from hypothetical, for gun crime has devastated many of our communities. In recent years, handguns were reportedly used in more than four-fifths of firearm murders and more than half of all murders nationwide.

It is at least reasonable for a legislature to take such concerns into account in considering what sorts of regulations would best serve the public welfare.

[The] right to possess a firearm of one's choosing is different in kind from the liberty interests we have recognized under the Due Process Clause. [There are] many tools for self-defense, even if they are imperfect substitutes. The strength of a liberty claim must be assessed in

army or select militia was pervasive in Antifederalist rhetoric." [T]hose who were fearful that the new Federal Government would infringe traditional rights such as the right to keep and bear arms insisted on the adoption of the Bill of Rights as a condition for ratification of the Constitution.

This understanding persisted in the years immediately following the ratification of the Bill of Rights. In addition to the four States that had adopted Second Amendment analogues before ratification, nine more States adopted state constitutional provisions protecting an individual right to keep and bear arms between 1789 and 1820.

By the 1850's, the perceived threat that had prompted the inclusion of the Second Amendment in the Bill of Rights had largely faded as a popular concern, but the right to keep and bear arms was highly valued for purposes of self-defense.

After the Civil War, many of the over 180,000 African-Americans who served in the Union Army returned to the States of the old Confederacy, where systematic efforts were made to disarm them and other blacks. The laws of some States formally prohibited African-Americans from possessing firearms.

In debating the Fourteenth Amendment, the 39th Congress referred to the right to keep and bear arms as a fundamental right deserving of protection. Senator Samuel Pomeroy described three "indispensable" "safeguards of liberty under our form of Government." One of these, he said, was the right to keep and bear arms: "Every man . . . should have the right to bear arms for the defense of himself and family and his homestead. And if the cabin door of the freedman is broken open and the intruder enters for purposes as vile as were known to slavery, then should a well-loaded musket be in the hand of the occupant to send the polluted wretch to another world, where his wretchedness will forever remain complete."

connection with its status in the democratic process. If a particular State or locality has enacted some “improvident” gun-control measures, as petitioners believe Chicago has done, there is no apparent reason to infer that the mistake will not “eventually be rectified by the democratic process.”

Evidence from the period immediately following the ratification of the Fourteenth Amendment only confirms that the right to keep and bear arms was considered fundamental.

In sum, it is clear that the Framers and ratifiers of the Fourteenth Amendment counted the right to keep and bear arms among those fundamental rights necessary to our system of ordered liberty.

Municipal respondents maintain that the Second Amendment differs from all of the other provisions of the Bill of Rights because it concerns the right to possess a deadly implement and thus has implications for public safety. The right to keep and bear arms, however, is not the only constitutional right that has controversial public safety implications. All of the constitutional provisions that impose restrictions on law enforcement and on the prosecution of crimes fall into the same category. [The City of Chicago cites] no case in which we have refrained from holding that a provision of the Bill of Rights is binding on the States on the ground that the right at issue has disputed public safety implications.

MCDONALD V. CITY OF CHICAGO

DISCUSSION GUIDE AND QUESTIONS

BACKGROUND

Two years before *McDonald*, the Court decided a case about the constitutionality of a federal gun-control law, *District of Columbia v. Heller*. The law in *Heller* prohibited the possession of handguns in the home without a license in Washington, D.C. In *Heller*, the Court held that this law violated the plaintiff's Second Amendment right to possess a firearm. *McDonald* involved a similar gun regulation, but the legal question was different because the challenge was to state and local law rather than federal law.

The first ten amendments to the Constitution, by explicit terms and intent, originally only applied as prohibitions against Congress. Thus, the Second Amendment, for instance, did not apply against states. Not until the Fourteenth Amendment did the Constitution provide any major protection against states violating individual rights. Among other things, the Fourteenth Amendment prohibited states from restricting individuals' liberty without due process of law. Then, in a process called "incorporation," the Supreme Court determined on a case-by-case basis whether individual rights found in the first ten amendments—like freedom of speech or freedom from unreasonable searches—were so fundamental that they fell within the concept of "ordered liberty." If so, the Court reasoned that, given the Fourteenth Amendment's protection of liberty, the Fourteenth Amendment had "incorporated" those rights against the states. The question in *McDonald* was whether the Second Amendment right to possess firearms was a

fundamental right and, thus, applied against state and local government through the Fourteenth Amendment.

Fundamental rights, however, are not absolute. The right of free speech, for instance, does not grant one the right to scream fire in a crowded theater or to disrupt class. More recent Second Amendment cases involve the scope of the right to possess and bear arms and the extent to which government can regulate that right. In *New York Rifle & Pistol Assoc. Inc. v. Bruen*, the Court held that the Second and Fourteenth Amendments protect an "ordinary, law abiding citizen's" right to carry a handgun for self-defense outside the home, striking down a New York statute that prohibited possession of concealed weapons outside of the home unless a person could prove that he has a special need for self-protection. But in *U.S. v. Rahimi*, the Court upheld a federal law that prohibits persons subject to domestic violence restraining orders from possessing firearms. The Court explained that the Second Amendment does not provide unlimited access to gun ownership and held that an individual who poses a credible threat to the physical safety of an intimate partner may be barred from possessing firearms.

QUESTIONS AND COMMENTS FOR DISCUSSION

1. The Court in *McDonald* held that the Second Amendment applies to the states under the Fourteenth Amendment's

Equal Protection clause. What historical context did the Court use to support its decision?

2. The Fourteenth Amendment also contains a clause that protects individuals' "privileges and immunities." Read this clause in the excerpted Constitution in this booklet. What rights might the privileges and immunities clause have been meant to protect? Might it have been a more natural clause for incorporating fundamental rights against the states?
3. In *San Antonio v. Rodriguez*, the Supreme Court held that the Constitution does not include a fundamental right to education. Does it make sense that the right to bear arms is fundamental but not the right to education? Why or why not? Regardless, it is important to note that the constitutions in all fifty states guarantee access to education.
4. The Ninth Amendment indicates that are rights that are retained "by the people" that are not explicitly included in the Constitution. Are there any context clues within the Constitution or the amendments that we can use to determine what rights the Ninth Amendment is referencing?

HYPOTHETICAL

As the cases discussed above reveal, there are limited circumstances under which the government can restrict the right to bear arms. For example, federal law prohibits a person convicted of a felony from legally possessing firearms. However, the Gun Control Act includes a mechanism that allows for convicted felons to petition the federal government to reinstate their Second Amendment rights if they can

prove that they "will not be likely to act in a manner dangerous to public safety" and that reinstating these rights "would not be contrary to the public interest." The gun ownership ban in *Rahimi* was time-restricted and only applies while a person subject to a domestic-violence restraining order. Should the ban on convicted felons owning guns be time limited? Why or why not?

CITIZENS UNITED V. FEDERAL ELECTION COMMISSION

CONDENSED CASE



THE BIG PICTURE

Corporate spending to advance a political position or candidate is protected speech.

RULING

Independent political expenditures by corporations, business associations, nonprofit organizations, and labor unions are distinct from direct contributions to candidates. These independent expenditures are protected speech under the First Amendment. The government lacked a basis for restricting them.

CONSTITUTIONAL TEXT

The First Amendment:
Congress shall make no law . . . abridging the freedom of speech.

OPINION OF THE COURT

[Citizens United, a nonprofit organization, released a film entitled *Hillary: The Movie*. The movie was critical of Senator Clinton, who was running for president. In December 2007, a cable company offered, for a payment of \$1.2 million, to make *Hillary* available free of charge to viewers on a channel entitled “Election ‘08.”]

Before the Bipartisan Campaign Reform Act of 2002 (BCRA), federal law prohibited [businesses] from using general treasury funds to make direct contributions to candidates or independent expenditures that expressly advocate the election or defeat of a candidate, through any form of media, in connection with certain qualified federal elections. An electioneering communication is defined as “any broadcast, cable, or satellite communication” that “refers to a clearly identified candidate for Federal office” and is made within 30 days of a primary or 60 days of a general election. The Federal Election Commission’s (FEC) regulations define an electioneering communication as a communication that is “publicly distributed.” [Publicly distributed means the communication can] “be received by 50,000 or more persons in a State where a primary election...is

DISSENTING OPINION

Citizens United is a wealthy corporation with millions of dollars. Under the BCRA, it could have used those assets to televise and promote *Hillary: The Movie* wherever and whenever it wanted to. It also could have spent unrestricted sums to broadcast *Hillary* at any time other than the 30 days before the last primary election. Neither Citizens United's nor any other corporation's speech has been "banned." All that the parties dispute is whether Citizens United had a right to pay for broadcasts during the 30-day period.

The conceit that corporations must be treated identically to natural persons in the political sphere is not only inaccurate but also inadequate to justify the Court's disposition of this case.

In the context of election to public office, the distinction between corporate and human speakers is significant. Although they make enormous contributions to our society, corporations are not actually members of it. They cannot vote or run for office. Because they may be managed and controlled by nonresidents, their interests may conflict in fundamental respects with the interests

being held within 30 days." Corporations and unions are barred from using their general treasury funds for express advocacy or electioneering communications. They may establish, however, a "separate segregated fund" (known as a political action committee, or PAC) for these purposes.

The moneys received by the segregated fund are limited to donations from stockholders and employees of the corporation or, in the case of unions, members of the union.

[The BCRA] makes it a felony for all corporations—including nonprofit advocacy corporations—either to expressly advocate the election or defeat of candidates or to broadcast electioneering communications within 30 days of a primary election and 60 days of a general election.

A PAC is a separate association from the corporation. PACs are burdensome alternatives; they are expensive to administer and subject to extensive regulations.

Speech is an essential mechanism of democracy, for it is the means to hold officials accountable to the people. The right of citizens to inquire, to hear, to speak, and to use information to reach consensus is a precondition to enlightened self-government and a necessary means to protect it.

For these reasons, political speech must prevail against laws that would suppress it, whether by design or inadvertence.

Political speech is "indispensable to decision making in a democracy, and this is no less true because the speech comes from a corporation rather than an individual."

All speakers, including individuals and the media, use money amassed from the economic marketplace to fund their speech.

There is simply no support for the view that the First Amendment, as originally understood, would permit the suppression of political speech by media corporations.

of eligible voters. Our lawmakers have a compelling constitutional basis, if not also a democratic duty, to take measures designed to guard against the potentially deleterious effects of corporate spending in local and national races.

When government seeks to use its full power, including the criminal law, to command where a person may get his or her information or what distrusted source he or she may not hear, it uses censorship to control thought. This is unlawful. The First Amendment confirms the freedom to think for ourselves.

The appearance of influence or access, furthermore, will not cause the electorate to lose faith in our democracy. By definition, an independent expenditure is political speech presented to the electorate that is not coordinated with a candidate. The fact that a corporation, or any other speaker, is willing to spend money to try to persuade voters presupposes that the people have the ultimate influence over elected officials.

When word concerning the plot of the movie *Mr. Smith Goes to Washington* reached the circles of Government, some officials sought, by persuasion, to discourage its distribution. [Under the reasoning advanced by the FEC, the agency] could have banned the film. After all, it, like *Hillary*, was speech funded by a corporation that was critical of Members of Congress. *Mr. Smith Goes to Washington* may be fiction and caricature; but fiction and caricature can be a powerful force.

Some members of the public might consider *Hillary* to be insightful and instructive; some might find it to be neither high art nor a fair discussion on how to set the Nation's course; still others simply might suspend judgment on these points but decide to think more about issues and candidates. Those choices and assessments, however, are not for the Government to make. "The First Amendment underwrites the freedom to experiment and to create in the realm of thought and speech. Citizens must be free to use new forms, and new forums, for the expression of ideas. The civic discourse belongs to the people, and the Government may not prescribe the means used to conduct it."

CITIZENS UNITED V. FEDERAL ELECTION COMMISSION

DISCUSSION GUIDE AND QUESTIONS

BACKGROUND

In this case, the Court considered whether the Bipartisan Campaign Reform Act of 2002's (BCRA) prohibition of corporations and unions from using their money to make independent expenditures on "electioneering communication" was constitutional. Electioneering communication is speech that expressly advocates for the election or defeat of a candidate.

The Court struck down the BCRA's prohibition on independent spending for election ads, but it kept the part of the BCRA that required TV ads funded by anyone other than a candidate to clearly say who paid for the ad and explain that the ad was not approved by any candidate or their campaign. The Court also kept the requirement that any person who spends more than \$10,000 on electioneering communications within a year must submit a report on their spending to the FEC that includes their name, how much they spent, the election they contributed to, and the names of certain contributors.

QUESTIONS AND COMMENTS FOR DISCUSSION

1. Why did the Court decide that limits on independent corporate spending on political speech violate the freedom of speech provided by the First Amendment?

2. What role do political ads created by businesses or nonprofits have in modern-day elections?

HYPOTHETICAL

Mineral Mining, a mining company, began operating in the state five years ago. The company has polluted local waterways in the past and has a poor safety record for workers. Sam Riley is running against Alex Smith for a state congressional seat that encompasses land owned by Mineral Mining. Riley promises to clean up the pollution caused by Mineral Mining and to improve safety conditions for mine workers.

One year before the election, Mine Workers Local 456, a mining union, spends \$100,000 to create commercials that highlight Riley's history of promoting workers' rights. Is this type of spending constitutional?



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