**CON-5: The design of the judicial branch protects the Supreme Court’s independence as a branch of government, and the emergence and use of judicial review remains a power judicial practice.**

**CON-5-A.1 The foundation for powers of the judicial branch and how its independence checks the power of other institutions and state governments are set forth in: *Marbury v. Madison*.**

**JUDICIAL REVIEW**

*Marbury v. Madison* (1803)

 *Martin v. Hunter’s Lessee* (1816)

 *Ashwander v. Tennessee Valley Authority* (1936)

 *United States v. Nixon* (1974)

 *Youngstown Sheet & Tube Co. v. Sawyer* (1952)

**CON-2: Federalism reflects the dynamic distribution of power between national and state governments.**

**CON-2.B.2 The balances of power between the national and state governments has changed over time based on the U.S. Supreme Court interpretation.**

**NECESSARY AND PROPER CLAUSE / SUPREMACY CLAUSE**

*McCulloch v. Maryland* (1819)

 *Pennsylvania v. Nelson* (1956) (Supremacy Clause)

 *Printz v. United States* (1997) (Supremacy Clause)

 *United States v. Comstock* (2010) (Necessary and Proper Clause)

 *National Federation of Independent Business v. Sebelius* (2012) (Necessary and Proper Clause)

**COMMERCE CLAUSE**

*United States v. Lopez* (1995)

 *Gibbons v. Ogden* (1824)

 *Schechter Poultry Corp v. United States* (1935)

*Wickard v. Filburn* (1942)

 *Heart of Atlanta Motel v. United States* (1964)

 *United States v. Morrison* (2000)

 *Gonzalez v. Raich* (2005)

**CON-3: The republican ideal in the U.S. is manifested in the structure and operation of the legislative branch.**

**CON-3.C.1 Congressional behavior and governing effectiveness are influenced by Gerrymandering, redistricting, and unequal representation of constituencies have been partially addressed by such Court decisions as *Baker v. Carr* (1961), which opened the door to equal protection challenges to redistricting and stated the “one person, one vote” doctrine, and the no-racial-gerrymandering decision in *Shaw v. Reno* (1993).**

**POLITICAL QUESTIONS AND JUSTICIABLE ISSUES**

*Baker v. Carr* (1963)

 *Luther v. Borden* (1849)

 *INS v. Chadha* (1983)

 *Clinton v. City of New York* (1998)

**REDISTRICTING AND GERRYMANDERING**

*Shaw v. Reno* (1993)

 *Wesberry v. Sanders* (1964)

 *Arizona State Legislature v. Arizona Independent Redistricting Commission* (2015)

 *Gill v. Whitford* (2018)

**PRD-2: The impact of federal policies on campaigning and electoral rules continues to be contested by both sides of the political spectrum.**

**PRD-2.E.1: Federal legislation and case law pertaining to campaign finance demonstrate the ongoing debate over the role of money in political and free speech.**

**CAMPAIGN FINANCE AND ELECTIONEERING**

*Citizens United v. FEC* (2010)

 *Buckley v. Valeo* (1976)

 *McConnell v. FEC* (2003)

 *McCutcheon v. FEC (2014)*

**LOR-2: Provisions of the U.S. Constitution’s Bill of Rights are continually being interpreted to balance the power of government and the civil liberties of individuals.**

**LOR-2.C.1 The interpretation and application of the First Amendment’s establishment and free exercise clauses reflect an ongoing debate over balancing majoritarian religions practice and free exercise.**

**ESTABLISHMENT CLAUSE**

*Engel v. Vitale* (1962)

 *Santa Fe Independent School District v. Doe* (2000)

 *Lemon v. Kurtzman* (1971)

 *Zelman v. Simmons-Harris* (2002)

**FREE EXERCISE CLAUSE**

*Wisconsin v. Yoder* (1972)

 *Oregon v. Smith* (1990)

*Church of the Lukumi Babalu Aye v. Hialeah* (1993)

**LOR-2.C.3: Efforts to balance social order and individual freedoms are reflected in interpretations of the First Amendment that limit speech, including: Time, place, manner regulations; Defamatory, offensive, and obscene statements and gestures; That which creates a “clear and present danger.”**

**FREE SPEECH CLAUSE**

*Schenck v. United States* (1919)

 *Dennis v. United States* (1951)

 *Yates v. United States* (1957)

 *Brandenburg v. Ohio* (1969)

 *Miller v. California* (1973)

**LOR-2.C.2: The Supreme Court has held that symbolic speech is protected by the First Amendment.**

**FREE SPEECH CLAUSE (SYMBOLIC)**

*Tinker v. Des Moines* (1969)

 *West Virginia v. Barnette* (1943)

*Texas v. Johnson* (1989)

 *Morse v. Frederick* (2007)

**LOR-2.C.4: The Supreme Court bolstered the freedom of the press, establishing a “heavy presumption against prior restraint” even in cases involving national security.**

**FREE PRESS CLAUSE**

*New York Times v. United States* (1971)

 *Near v. Minnesota* (1931)

 *Patterson v. Colorado* (1907)

 *New York Times v. Sullivan* (1964)

**LOR-3: Protections of the Bill of Rights have been selectively incorporated by the way of the Fourteenth Amendment’s due process clause to prevent state infringement of basic liberties.**

**LOR-3.B.4: The due process clause had been applied to guarantee the right to an attorney and protection from unreasonable searches and seizures, as represented by: *Gideon v. Wainwright*, which guaranteed the right to an attorney for the poor or indigent; The exclusionary rule, which stipulates that evidence illegally seized by law enforcement officers in violation of the suspect’s Fourth Amendment right to be free from unreasonable searches and seizures cannot be used against that suspect in criminal prosecution.**

**RIGHT TO COUNSEL AND FREEDOM FROM ILLEGAL SEARCHES AND SEIZURES**

*Gideon v. Wainwright* (1963)

 *Powell v. Alabama* (1932)

 *Betts v. Brady* (1942)

 *Wolf v. Colorado* (193

 *Mapp v. Ohio* (196

 *Miranda v. Arizona* (196)

**LOR-3.B.5: While a right to privacy is not explicitly named in the Constitution, the Supreme Court has interpreted the due process clause to protect the right of privacy from state infringement. This interpretation of the due process clause has been the subject of controversy.**

**RIGHT TO PRIVACY**

*Roe v. Wade* (1973)

 *Griswold v. Connecticut* (1965)

 *NAACP v. Alabama* (1958)

 *Bowers v. Hardwick* (1986)

 *Board of Education-Pottawatomie v. Earls* (2002)

**LOR-2.C.5: The Supreme Court’s decision on the Second Amendment rest upon its constitutional interpretation of individual liberty.**

**LOR-2.D.2: The debate about the Second and Fourth Amendments involves concerns about public safety and whether or not the government regulation of firearms or collection of digital metadata promotes or interferes with public safety and individual rights.**

**LOR-3.A.1: The doctrine of selective incorporation has imposed on state regulation of civil rights and liberties.**

**INCORPORATION**

*McDonald v. Chicago* (2010)

 *Barron v. Baltimore* (1833)

 *Slaughter-House Cases* (1873)

 *Gitlow v. New York* (1925)

 *Adamson v. California* (1947)

**PRD-1: The 14th Amendment’s equal protection clause as well as other constitutional provisions have often been used to support the advancement of equality.**

**CON-6.A.1: Decisions demonstrating that minority rights have been restricted at times and protected at other include: State laws and Supreme Court holdings restricting African-American access to the same restaurants, hotels, schools, etc., as the majority white population based on the “separate but equal” doctrine.**

**CON-6.A.2: The debate on affirmative action includes justices who insist that the Constitution is colorblind and those who maintain that it forbids only racial classifications designed to harm minorities, not help them.**

**EQUAL PROTECTION CLAUSE**

*Brown v. Board of Education* (1954)

 *Plessy v. Ferguson* (1896)

 *Regents of the University of California v. Bakke* (1978)

**JUDICIAL REVIEW**

[***Marbury v. Madison* (1803)**](https://www.oyez.org/cases/1789-1850/5us137)

“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 on the operation of each. So, if a law be in opposition to the Constitution, if both the law and the Constitution apply to a particular case, so that the Court must either decide that case conformably to the law, disregarding the Constitution, or conformably to the Constitution, disregarding the law, the Court must determine which of these conflicting rules governs the case. This is of the very essence of judicial duty. If, then, the Courts are to regard the Constitution, and the Constitution is superior to any ordinary act of the Legislature, the Constitution, and not such ordinary act, must govern the case to which they both apply… The judicial power of the United States is extended to all cases arising under the Constitution.”

- Majority Opinion, Chief Justice John Marshall

[***Martin v. Hunter’s Lessee* (1816)**](https://www.oyez.org/cases/1789-1850/14us304)

“It must therefore be conceded that the Constitution not only contemplated, but meant to provide for, cases within the scope of the judicial power of the United States which might yet depend before State tribunals. It was foreseen that, in the exercise of their ordinary jurisdiction, State courts would incidentally take cognizance of cases arising under the Constitution, the laws, and treaties of the United States. Yet to all these cases the judicial power, by the very terms of the Constitution, is to extend. It cannot extend by original jurisdiction if that was already rightfully and exclusively attached in the State courts, which (as has been already shown) may occur; it must therefore extend by appellate jurisdiction, or not at all. It would seem to follow that the appellate power of the United States must, in such cases, extend to State tribunals; and if in such cases, there is no reason why it should not equally attach upon all others within the purview of the Constitution.”

- Majority Opinion, Justice Joseph Story

[***Ashwander v. Tennessee Valley Authority* (1936)**](https://www.oyez.org/cases/1900-1940/297us288)

“The Court developed, for its own governance in the cases confessedly within its jurisdiction, a series of rules under which it has avoided passing upon a large part of all the constitutional questions pressed upon it for decision. They are:

1. The Court will not pass upon the constitutionality of legislation in a friendly, nonadversary, proceeding, declining because to decide such questions "is legitimate only in the last resort, and as a necessity in the determination of real, earnest and vital controversy between individuals. It never was the thought that, by means of a friendly suit, a party beaten in the legislature could transfer to the courts an inquiry as to the constitutionality of the legislative act."

2. The Court will not "anticipate a question of constitutional law in advance of the necessity of deciding it."

3. The Court will not "formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied."

4. The Court will not pass upon a constitutional question, although properly presented by the record, if there is also present some other ground upon which the case may be disposed of.

5. The Court will not pass upon the validity of a statute upon complaint of one who fails to show that he is injured by its operation.

6. The Court will not pass upon the constitutionality of a statute at the instance of one who has availed himself of its benefits.

7. "When the validity of an act of the Congress is drawn in question, and even if a serious doubt of constitutionality is raised, it is a cardinal principle that this Court will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided."

- Concurring Opinion, Justice Louis Brandeis

[***Youngstown Sheet & Tube Co. v. Sawyer* (1952)**](https://www.oyez.org/cases/1940-1955/343us579)

“The President's power, if any, to issue the order must stem either from an act of Congress or from the Constitution itself. There is no statute that expressly authorizes the President to take possession of property as he did here. Nor is there any act of Congress to which our attention has been directed from which such a power can fairly be implied… Even though "theater of war" be an expanding concept, we cannot with faithfulness to our constitutional system hold that the Commander in Chief of the Armed Forces has the ultimate power as such to take possession of private property in order to keep labor disputes from stopping production. This is a job for the Nation's lawmakers, not for its military authorities… In the framework of our Constitution, the President's power to see that the laws are faithfully executed refutes the idea that he is to be a lawmaker. The Constitution limits his functions in the lawmaking process to the recommending of laws he thinks wise and the vetoing of laws he thinks bad. And the Constitution is neither silent nor equivocal about who shall make laws which the President is to execute.”

- Majority Opinion, Justice Hugo Black

[***United States v. Nixon* (1974)**](https://www.oyez.org/cases/1973/73-1766)

“We therefore reaffirm that it is the province and duty of this Court "to say what the law is" with respect to the claim of privilege presented in this case… The impediment that an absolute, unqualified privilege would place in the way of the primary constitutional duty of the Judicial Branch to do justice in criminal prosecutions would plainly conflict with the function of the courts under Art. III. In designing the structure of our Government and dividing and allocating the sovereign power among three co-equal branches, the Framers of the Constitution sought to provide a comprehensive system, but the separate powers were not intended to operate with absolute independence.”

- Majority Opinion, Chief Justice Warren Burger

**NECESSARY AND PROPER CLAUSE / SUPREMACY CLAUSE**

[***McCulloch v. Maryland* (1819)**](https://www.oyez.org/cases/1789-1850/17us316)

“If a certain means to carry into effect of any of the powers expressly given by the Constitution to the Government of the Union be an appropriate measure, not prohibited by the Constitution, the degree of its necessity is a question of legislative discretion, not of judicial cognizance. The Bank of the United States has, constitutionally, a right to establish its branches or offices of discount and deposit within any state.

The State within which such branch may be established cannot, without violating the Constitution, tax that branch. The State governments have no right to tax any of the constitutional means employed by the Government of the Union to execute its constitutional powers. The States have no power, by taxation or otherwise, to retard, impede, burthen, or in any manner control the operations of the constitutional laws enacted by Congress to carry into effect the powers vested in the national Government.”

- Majority Opinion, Chief Justice John Marshall

[***Pennsylvania v. Nelson* (1956)**](https://www.oyez.org/cases/1955/10) **(Supremacy Clause)**

“The Smith Act…which prohibits the knowing advocacy of the overthrow of the Government of the United States by force and violence, supersedes the enforceability of the Pennsylvania Sedition Act, which proscribes the same conduct…. In the final analysis, there can be no one crystal clear distinctly marked formula…

1. The scheme of federal regulation is so pervasive as to make reasonable the inference that the Congress left no room for the States to supplement it.

2. The federal statutes touch a field in which the federal interest is so dominant that the federal system must be assumed to preclude enforcement of state laws on the same subject.

3. Enforcement of state sedition acts presents a serious danger of conflict with the administration of the federal program.”

- Majority Opinion, Chief Justice Earl Warren

[***Printz v. United States* (1997)**](https://www.oyez.org/cases/1996/95-1478) **(Supremacy Clause)**

“The Constitution's structure reveals a principle that controls these cases: the system of "dual sovereignty." Although the States surrendered many of their powers to the new Federal Government, they retained a residuary and inviolable sovereignty that is reflected throughout the Constitution's text. The Framers rejected the concept of a central government that would act upon and through the States, and instead designed a system in which the State and Federal Governments would exercise concurrent authority over the people. The Federal Government's power would be augmented immeasurably and impermissibly if it were able to impress into its service-and at no cost to itself-the police officers of the 50 States.”

- Majority Opinion, Justice Antonin Scalia

[***United States v. Comstock*  (2010)**](https://www.oyez.org/cases/2009/08-1224) **(Necessary and Proper Clause)**

“The Clause grants Congress broad authority to pass laws in furtherance of its constitutionally enumerated powers. It makes clear that grants of specific federal legislative authority are accompanied by broad power to enact laws that are “convenient, or useful” or “conducive” to the enumerated power’s “beneficial exercise,” and that Congress can “legislate on that vast mass of incidental powers which must be involved in the constitution,” In determining whether the Clause authorizes a particular federal statute, there must be “means-ends rationality” between the enacted statute and the source of federal power. The Constitution “addresse[s]” the “choice of means” “primarily … to the judgment of Congress. If it can be seen that the means adopted are really calculated to attain the end, the degree of their necessity, the extent to which they conduce to the end, the closeness of the relationship between the means adopted and the end to be attained, are matters for congressional determination alone.” Thus, although the Constitution nowhere grants Congress express power to create federal crimes beyond those specifically enumerated, to punish their violation, to imprison violators, to provide appropriately for those imprisoned, or to maintain the security of those who are not imprisoned but who may be affected by the federal imprisonment of others, Congress possesses broad authority to do each of those things under the Clause.”

- Majority Opinion, Justice Stephen Breyer

[***National Federation of Independent Business v. Sebelius* (2012)**](https://www.oyez.org/cases/2011/11-393) **(Necessary and Proper Clause)**

“The Government next contends that Congress has the power…to enact the individual mandate because the mandate is an “integral part of a comprehensive scheme of economic regulation”—the guaranteed-issue and community-rating insurance reforms… No longer would Congress be limited to regulating under the Commerce Clause those who by some preexisting activity bring themselves within the sphere of federal regulation. Instead, Congress could reach beyond the natural limit of its authority and draw within its regulatory scope those who otherwise would be outside of it. Even if the individual mandate is “necessary” to the Act’s insurance reforms, such an expansion of federal power is not a “proper” means for making those reforms effective.”

- Majority Opinion, Chief Justice John Roberts

**COMMERCE CLAUSE**

[***United States v. Lopez* (1995)**](https://www.oyez.org/cases/1994/93-1260)

“To uphold the Government's contentions here, we 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. Admittedly, some of our prior cases have taken long steps down that road, giving great deference to congressional action. The broad language in these opinions has suggested the possibility of additional expansion, but we decline here to proceed any further. To do so would require us to conclude that the Constitution's enumeration of powers does not presuppose something not enumerated, and that there never will be a distinction between what is truly national and what is truly local. This we are unwilling to do.”

- Majority Opinion, Chief Justice William Rehnquist

[***Gibbons v. Ogden* (1824)**](https://www.oyez.org/cases/1789-1850/22us1)

“The laws of New York granting to Robert R. Livingston and Robert Fulton the exclusive right of navigating the waters of that State with steamboats are in collision with the acts of Congress regulating the coasting trade, which, being made in pursuance of the Constitution, are supreme, and the State laws must yield to that supremacy, even though enacted in pursuance of powers acknowledged to remain in the States… The power of regulating commerce extends to the regulation of navigation… The power to regulate commerce extends to every species of commercial intercourse between the United States and foreign nations, and among the several States. It does not stop at the external boundary of a State.

But it does not extend to a commerce which is completely internal… The power to regulate commerce is general, and has no limitations but such as are prescribed in the Constitution itself… The power to regulate commerce, so far as it extends, is exclusively bested in Congress, and no part of it can be exercised by a State.”

- Majority Opinion, Chief Justice John Marshall

[***Schechter Poultry Corp v. United States* (1935)**](https://www.oyez.org/cases/1900-1940/295us495)

“It is not the province of the Court to consider the economic advantages or disadvantage of such a centralized system. It is sufficient to say that the Federal Constitution does not provide for it. Our growth and development have called for wide use of the commerce power of the federal government in its control over the expanded activities of interstate commerce, and in protecting that commerce from burdens, interferences, and conspiracies to restrain and monopolize it. But the authority of the federal government may not be pushed to such an extreme as to destroy the distinction, which the commerce clause itself establishes, between commerce "among the several States" and the internal concerns of a State. The same answer must be made to the contention that is based upon the serious economic situation which led to the passage of the Recovery Act -- the fall in prices, the decline in wages and employment, and the curtailment of the market for commodities. Stress is laid upon the great importance of maintaining wage distributions which would provide the necessary stimulus in starting "the cumulative forces making for expanding commercial activity." Without in any way disparaging this motive, it is enough to say that the recuperative efforts of the federal government must be made in a manner consistent with the authority granted by the Constitution. We are of the opinion that the attempt, through the provisions of the Code, to fix the hours and wages of employees of defendants in their intrastate business was not a valid exercise of federal power.”

- Majority Opinion, Chief Justice Charles Evan Hughes

[***Wickard v. Filburn*  (1942)**](https://www.oyez.org/cases/1940-1955/317us111)

“Whether the subject of the regulation in question was "production", "consumption", or "marketing" is, therefore, not material for purposes of deciding the question of federal power before us. That an activity is of local character may help in a doubtful case to determine whether Congress intended to reach it.... But even if appellee's activity be local and though it may not be regarded as commerce, it may still, whatever its nature, be reached by Congress if it exerts a substantial economic effect on interstate commerce and this irrespective of whether such effect is what might at some earlier time have been defined as "direct" or "indirect"”

- Majority Opinion, Justice Robert Jackson

[***Heart of Atlanta Motel v. United States* (1964)**](https://www.oyez.org/cases/1964/515)

“Thus, the power of Congress to promote interstate commerce also includes the power to regulate the local incidents thereof, including local activities in both the States of origin and destination, which might have a substantial and harmful effect upon that commerce. One need only examine the evidence which we have discussed above to see that Congress may -- as it has -- prohibit racial discrimination by motels serving travelers, however "local" their operations may appear.”

- Majority Opinion, Justice Tom Clark

[***United States v. Morrison* (2000)**](https://www.oyez.org/cases/1999/99-5)

“[T]he Constitution reserves the general police power to the States, noting that the Founders failed to adopt several proposals for additional guarantees against federal encroachment on state authority. This argument is belied by the entire structure of the Constitution. With its careful enumeration of federal powers and explicit statement that all powers not granted to the Federal Government are reserved, the Constitution cannot realistically be interpreted as granting the Federal Government an unlimited license to regulate… Gender-motivated crimes of violence are not, in any sense of the phrase, economic activity. While we need not adopt a categorical rule against aggregating the effects of any noneconomic activity in order to decide these cases, thus far in our Nation's history our cases have upheld…regulation of intrastate activity only where that activity is economic in nature.”

- Majority Opinion, Chief Justice William Rehnquist

[***Gonzalez v. Raich* (2005)**](https://www.oyez.org/cases/2004/03-1454)

“Respondents in this case do not dispute that passage of the CSA, as part of the Comprehensive Drug Abuse Prevention and Control Act, was well within Congress’ commerce power. Nor do they contend that any provision or section of the CSA amounts to an unconstitutional exercise of congressional authority. Rather, respondents’ challenge is actually quite limited; they argue that the CSA’s categorical prohibition of the manufacture and possession of marijuana as applied to the intrastate manufacture and possession of marijuana for medical purposes pursuant to California law exceeds Congress’ authority… the regulation is squarely within Congress'…power because production of the commodity meant for home consumption, be it wheat or marijuana, has a substantial effect on supply and demand in the national market for that commodity.”

**POLITICAL QUESTIONS AND JUSTICIABLE ISSUES**

[***Baker v. Carr* (1963)**](https://www.oyez.org/cases/1960/6)

“It is apparent that several formulations which vary slightly according to the settings in which the questions arise may describe a political question, although each has one or more elements which identify it as essentially a function of the separation of powers. Prominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for non judicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question.”

- Majority Opinion, Justice William Brennan

[***Luther v. Borden* (1849)**](https://www.oyez.org/cases/1789-1850/48us1)

“The question which of the two opposing governments was the legitimate one, *viz.,* the charter government or the government established by the voluntary convention, has not heretofore been regarded as a judicial one in any of the State courts. The political department has always determined whether a proposed constitution or amendment was ratified or not by the people of the State, and the judicial power has followed its decision… The courts of Rhode Island have decided in favor of the validity of the charter government, and the courts of the United States adopt and follow the decisions of the State courts in questions which concern merely the constitution and laws of the state… The question whether or not a majority of those persons entitled to suffrage voted to adopt a constitution cannot be settled in a judicial proceeding… The Constitution of the United States has treated the subject as political in its nature, and placed the power of recognizing a State government in the hands of Congress. Under the existing legislation of Congress, the exercise of this power by courts would be entirely inconsistent with that legislation… The President of the United States is vested with certain power by an act of Congress, and in this case, he exercised that power by recognizing the charter government.”

- Majority Opinion, Chief Justice Roger Taney

[***INS v. Chadha* (1983)**](https://www.oyez.org/cases/1981/80-1832)

“It is also argued that these cases present a nonjusticiable political question, because Chadha is merely challenging Congress' authority under the Naturalization Clause, and the Necessary and Proper Clause. It is argued that Congress' Art. I power "To establish an uniform Rule of Naturalization," combined with the Necessary and Proper Clause, grants it unreviewable authority over the regulation of aliens. The plenary authority of Congress over aliens…is not open to question, but what is challenged here is whether Congress has chosen a constitutionally permissible means of implementing that power.”

- Majority Opinion, Chief Justice Warren Burger

[***Clinton v. City of New York* (1998)**](https://www.oyez.org/cases/1997/97-1374)

“The appellees have standing to challenge the Act’s constitutionality. They invoked the District Court’s jurisdiction under a section entitled “Expedited Review,” which, among other things, expressly authorizes “any individual adversely affected” to bring a constitutional challenge… The Act empowers the President to cancel an “item of new direct spending…” [T]his decision rests on the narrow ground that the Act’s procedures are not authorized by the Constitution. If this Act were valid, it would authorize the President to create a law whose text was not voted on by either House or presented to the President for signature. That may or may not be desirable, but it is surely not a document that may “become a law” pursuant to Article I, Section 7. If there is to be a new procedure in which the President will play a different role, such change must come through the Article V amendment procedures.”

- Majority Opinion, Justice John Paul Stevens

**REDISTRICTING AND GERRYMANDERING**

[***Shaw v. Reno* (1993)**](https://www.oyez.org/cases/1992/92-357)

“Classifications of citizens based solely on race are by their nature odious to a free people whose institutions are founded upon the doctrine of equality, because they threaten to stigmatize persons by reason of their membership in a racial group and to incite racial hostility. Thus, state legislation that expressly distinguishes among citizens on account of race-whether it contains an explicit distinction or is "unexplainable on grounds other than race,"-must be narrowly tailored to further a compelling governmental interest. Redistricting legislation that is alleged to be so bizarre on its face that it is unexplainable on grounds other than race demands the same close scrutiny, regardless of the motivations underlying its adoption. That it may be difficult to determine from the face of a single-member districting plan that it makes such a distinction does not mean that a racial gerrymander, once established, should receive less scrutiny than other legislation classifying citizens by race. By perpetuating stereotypical notions about members of the same racial group-that they think alike, share the same political interests, and prefer the same candidates-a racial gerrymander may exacerbate the very patterns of racial bloc voting that majority-minority districting is sometimes said to counteract.”

- Majority Opinion, Justice Sandra Day O’Connor

[***Wesberry v. Sanders* (1964)**](https://www.oyez.org/cases/1963/22)

“If the Federal Constitution intends that, when qualified voters elect members of Congress, each vote be given as much weight as any other vote, then this statute cannot stand.We hold that, construed in its historical context, the command of [Article 1, Section 2] that Representatives be chosen "by the People of the several States" means that, as nearly as is practicable, one man's vote in a congressional election is to be worth as much as another's. This rule is followed automatically, of course, when Representatives are chosen as a group on a statewide basis, as was a widespread practice in the first 50 years of our Nation's history. It would be extraordinary to suggest that, in such statewide elections, the votes of inhabitants of some parts of a State, for example, Georgia's thinly populated Ninth District, could be weighted at two or three times the value of the votes of people living in more populous parts of the State, for example, the Fifth District around Atlanta. We do not believe that the Framers of the Constitution intended to permit the same vote-diluting discrimination to be accomplished through the device of districts containing widely varied numbers of inhabitants. To say that a vote is worth more in one district than in another would not only run counter to our fundamental ideas of democratic government, it would cast aside the principle of a House of Representatives elected "by the People," a principle tenaciously fought for and established at the Constitutional Convention.”

- Majority Opinion, Justice Hugo Black

[***Arizona State Legislature v. Arizona Independent Redistricting Commission* (2015)**](https://www.oyez.org/cases/2014/13-1314)

“The Elections Clause permits the people of Arizona to provide for redistricting by independent commission. The history and purpose of the Clause weigh heavily against precluding the people of Arizona from creating a commission operating independently of the state legislature to establish congressional districts. Such preclusion would also run up against the Constitution’s animating principle that the people themselves are the originating source of all the powers of government.”

- Majority Opinion, Justice Ruth Bader Ginsburg

[***Gill v. Whitford* (2018)**](https://www.oyez.org/cases/2017/16-1161)

“Over the past five decades this Court has been repeatedly asked to decide what judicially enforceable limits, if any, the Constitution sets on the gerrymandering of voters along partisan lines. Our previous attempts at an answer have left few clear landmarks for addressing the question. What our precedents have to say on the topic is, however, instructive as to the myriad competing considerations that partisan gerrymandering claims involve. Our efforts to sort through those considerations have generated conflicting views both of how to conceive of the injury arising from partisan gerrymandering and of the appropriate role for the Federal Judiciary in remedying that injury.”

- Majority Opinion, Chief Justice John Roberts

**CAMPAIGN FINANCE AND ELECTIONEERING**

[***Citizens United v. FEC* (2010)**](https://www.oyez.org/cases/2008/08-205)

“Although the First Amendment provides that “Congress shall make no law … abridging the freedom of speech,” [The] prohibition on corporate independent expenditures is an outright ban on speech, backed by criminal sanctions. It is a ban notwithstanding the fact that a PAC created by a corporation can still speak, for a PAC is a separate association from the corporation. Because speech is an essential mechanism of democracy—it is the means to hold officials accountable to the people—political speech must prevail against laws that would suppress it by design or inadvertence. Laws burdening such speech are subject to strict scrutiny, which requires the Government to prove that the restriction “furthers a compelling interest and is narrowly tailored to achieve that interest.” This language provides a sufficient framework for protecting the interests in this case. Premised on mistrust of governmental power, the First Amendment stands against attempts to disfavor certain subjects or viewpoints or to distinguish among different speakers, which may be a means to control content. The Government may also commit a constitutional wrong when by law it identifies certain preferred speakers. There is no basis for the proposition that, in the political speech context, the Government may impose restrictions on certain disfavored speakers. Both history and logic lead to this conclusion.”

Majority Opinion, Justice Anthony Kennedy

[***Buckley v. Valeo* (1976)**](https://www.oyez.org/cases/1975/75-436)

“The First Amendment requires the invalidation of the Act's independent expenditure ceiling, its limitation on a candidate's expenditures from his own personal funds, and its ceilings on over-all campaign expenditures, since those provisions place substantial and direct restrictions on the ability of candidates, citizens, and associations to engage in protected political expression, restrictions that the First Amendment cannot tolerate… The contribution provisions, along with those covering disclosure, are appropriate legislative weapons against the reality or appearance of improper influence stemming from the dependence of candidates on large campaign contributions, and the ceilings imposed accordingly serve the basic governmental interest in safeguarding the integrity of the electoral process without directly impinging upon the rights of individual citizens and candidates to engage in political debate and discussion.”

- Majority Opinion, Per Curiam

[***McConnell v. FEC* (2003)**](https://www.oyez.org/cases/2003/02-1674)

“New FECA–which forbids national party committees and their agents to “solicit, receive, … direct … , or spend any funds … that are not subject to [FECA’s] limitations, prohibitions, and reporting requirements,”–does not violate the First Amendment. The governmental interest underlying–preventing the actual or apparent corruption of federal candidates and officeholders–constitutes a sufficiently important interest to justify contribution limits. That interest is not limited to the elimination of *quid pro quo,* cash-for-votes exchanges, but extends also to “undue influence on an officeholder’s judgment, and the appearance of such influence,” These interests are sufficient to justify not only contribution limits themselves, but also laws preventing the circumvention of such limits.  While the quantum of empirical evidence needed to satisfy heightened judicial scrutiny of legislative judgments varies with the novelty or plausibility of the justification raised the idea that large contributions to a national party can corrupt or create the appearance of corruption of federal candidates and officeholders is neither novel nor implausible. There is substantial evidence in these cases to support Congress’ determination that such contributions of soft money give rise to corruption and the appearance of corruption. For instance, the record is replete with examples of national party committees’ peddling access to federal candidates and officeholders in exchange for large soft-money donations.”

- Majority Opinion, Justice Sandra Day O’Connor and Justice John Paul Stevens

[***McCutcheon v. FEC* (2014)**](https://www.oyez.org/cases/2013/12-536)

“The right to participate in democracy through political contributions is protected by the First Amendment, but that right is not absolute. Our cases have held that Congress may regulate campaign contributions to protect against corruption or the appearance of corruption. At the same time, we have made clear that Congress may not regulate contributions simply to reduce the amount of money in politics, or to restrict the political participation of some in order to enhance the relative influence of others… This case does not involve any challenge to the base limits, which we have previously upheld as serving the permissible objective of combatting corruption. The Government contends that the aggregate limits also serve that objective, by preventing circumvention of the base limits. We conclude, however, that the aggregate limits do little, if anything, to address that concern, while seriously restricting participation in the democratic process. The aggregate limits are therefore invalid under the First Amendment.”

- Majority Opinion, Chief Justice John Roberts

**ESTABLISHMENT CLAUSE**

[***Engel v. Vitale* (1962)**](https://www.oyez.org/cases/1961/468)

“The petitioners contend, among other things, that the 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. For this reason, petitioners 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 with that contention, since we 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.”

Majority Opinion, Justice Hugo Black

[***Santa Fe Independent School District v. Doe* (2000)**](https://www.oyez.org/cases/1999/99-62)

“[T]he District has failed to divorce itself from the invocations' religious content. The policy involves both perceived and actual endorsement of religion declaring that the student elections take place because the District "has chosen to permit" student-delivered invocations, that the invocation "shall" be conducted "by the high school student council" "[u]pon advice and direction of the high school principal," and that it must be consistent with the policy's goals, which include "solemniz[ing] the event." A religious message is the most obvious method of solemnizing an event. Indeed, the only type of message expressly endorsed in the policy is an "invocation," a term which primarily describes an appeal for divine assistance and, as used in the past at Santa Fe High School, has always entailed a focused religious message. A conclusion that the message is not "private speech" is also established by factors beyond the policy's text, including the official setting in which the invocation is delivered by the policy's sham secular purposes, see *id.,*at 75, and by its history, which indicates that the District intended to preserve its long-sanctioned practice of prayer before football games.”

- Majority Opinion, Justice John Paul Stevens

[***Lemon v. Kurtzman* (1971)**](https://www.oyez.org/cases/1970/89)

“In the absence of precisely stated constitutional prohibitions, we must draw lines with reference to the three main evils against which the Establishment Clause was intended to afford protection: "sponsorship, financial support, and active involvement of the sovereign in religious activity." Every analysis in this area must begin with consideration of the cumulative criteria developed by the Court over many years. Three such tests may be gleaned from our cases. First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion, finally, the statute must not foster "an excessive government entanglement with religion." Inquiry into the legislative purposes of the Pennsylvania and Rhode Island statutes affords no basis for a conclusion that the legislative intent was to advance religion. On the contrary, the statutes themselves clearly state that they are intended to enhance the quality of the secular education in all schools covered by the compulsory attendance laws.”

- Majority Opinion, Chief Justice Warren Burger

[***Zelman v. Simmons-Harris* (2002)**](https://www.oyez.org/cases/2001/00-1751)

“Because the [school voucher] program was enacted for the valid secular purpose of providing educational assistance to poor children in a demonstrably failing public school system, the question is whether the program nonetheless has the forbidden effect of advancing or inhibiting religion. This Court's jurisprudence makes clear that a government aid program is not readily subject to challenge under the Establishment Clause if it is neutral with respect to religion and provides assistance directly to a broad class of citizens who, in turn, direct government aid to religious schools wholly as a result of their own genuine and independent private choice. Under such a program, government aid reaches religious institutions only by way of the deliberate choices of numerous individual recipients. The incidental advancement of a religious mission, or the perceived endorsement of a religious message, is reasonably attributable to the individual aid recipients, not the government, whose role ends with the disbursement of benefits.”

- Majority Opinion, Chief Justice William Rehnquist

**FREE EXERCISE CLAUSE**

[***Wisconsin v. Yoder* (1972)**](https://www.oyez.org/cases/1971/70-110)

“Neither the findings of the trial court nor the Amish claims as to the nature of their faith are challenged in this Court by the State of Wisconsin. Its position is that the State's interest in universal compulsory formal secondary education to age 16 is so great that it is paramount to the undisputed claims of respondents that their mode of preparing their youth for Amish life, after the traditional elementary education, is an essential part of their religious belief and practice. Nor does the State undertake to meet the claim that the Amish mode of life and education is inseparable from and a part of the basic tenets of their religion -- indeed, as much a part of their religious belief and practices as baptism, the confessional, or a sabbath may be for others. Wisconsin concedes that, under the Religion Clauses, religious beliefs are absolutely free from the State's control, but it argues that "actions," even though religiously grounded, are outside the protection of the First Amendment. But our decisions have rejected the idea that religiously grounded conduct is always outside the protection of the [First Amendment].”

- Majority Opinion, Chief Justice Warren Burger

[***Oregon v. Smith* (1990)**](https://www.oyez.org/cases/1989/88-1213)

“Although a State would be "prohibiting the free exercise [of religion]" in violation of the Clause if it sought to ban the performance of (or abstention from) physical acts solely because of their religious motivation, the Clause does not relieve an individual of the obligation to comply with a law that incidentally forbids (or requires) the performance of an act that his religious belief requires (or forbids) if the law is not specifically directed to religious practice and is otherwise constitutional as applied to those who engage in the specified act for nonreligious reasons… Respondents' claim for a religious exemption from the Oregon law cannot be evaluated under the balancing test…whereby governmental actions that substantially burden a religious practice must be justified by a "compelling governmental interest." That test was developed in a context -- unemployment compensation eligibility rules -- that lent itself to individualized governmental assessment of the reasons for the relevant conduct. The test is inapplicable to an across-the-board criminal prohibition on a particular form of conduct.”

- Majority Opinion, Justice Antonin Scalia

[***Church of the Lukumi Babalu Aye v. Hialeah* (1993)**](https://www.oyez.org/cases/1992/91-948)

“Under the Free Exercise Clause, a law that burdens religious practice need not be justified by a compelling governmental interest if it is neutral and of general applicability. However, where such a law is not neutral or not of general application, it must undergo the most rigorous of scrutiny: It must be justified by a compelling governmental interest and must be narrowly tailored to advance that interest. Neutrality and general applicability are interrelated, and failure to satisfy one requirement is a likely indication that the other has not been satisfied… Each of the ordinances pursues the city's governmental interests only against conduct motivated by religious belief and thereby violates the requirement that laws burdening religious practice must be of general applicability.”

- Majority Opinion, Justice Anthony Kennedy

**FREE SPEECH CLAUSE**

[***Schenck v. United States* (1919)**](https://www.oyez.org/cases/1900-1940/249us47)

“The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic… Words which, ordinarily and in many places, would be within the freedom of speech protected by the First Amendment may become subject to prohibition when of such a nature and used in such circumstances a to create a clear and present danger that they will bring about the substantive evils which Congress has a right to prevent. The character of every act depends upon the circumstances in which it is done.”

- Majority Opinion, Justice Oliver Wendell Holmes

[***Dennis v. United States* (1951)**](https://www.oyez.org/cases/1940-1955/341us494)

“We hold that…the Smith Act do not inherently, or as construed or applied in the instant case, violate the First Amendment and other provisions of the Bill of Rights, or the First and Fifth Amendments because of indefiniteness. Petitioners intended to overthrow the Government of the United States as speedily as the circumstances would permit. Their conspiracy to organize the Communist Party and to teach and advocate the overthrow of the Government of the United States by force and violence created a "clear and present danger" of an attempt to overthrow the Government by force and violence. They were properly and constitutionally convicted for violation of the Smith Act.”

- Majority Opinion, Chief Justice Fred Vinson

[***Yates v. United States* (1957)**](https://www.oyez.org/cases/1956/6)

“We are thus faced with the question whether the Smith Act prohibits advocacy and teaching of forcible overthrow as an abstract principle, divorced from any effort to instigate action to that end, so long as such advocacy or teaching is engaged in with evil intent. We hold that it does not.... In failing to distinguish between advocacy of forcible overthrow as an abstract doctrine and advocacy of action to that end, the District Court appears to have been led astray by the holding in *Dennis* that advocacy of violent action to be taken at some future time was enough.”

- Majority Opinion, Justice John Marshall Harlan II

[***Brandenburg v. Ohio* (1969)**](https://www.oyez.org/cases/1968/492)

“Ohio's Criminal Syndicalism Act cannot be sustained. The Act punishes persons who "advocate or teach the duty, necessity, or propriety" of violence "as a means of accomplishing industrial or political reform"; or who publish or circulate or display any book or paper containing such advocacy; or who "justify" the commission of violent acts "with intent to exemplify, spread or advocate the propriety of the doctrines of criminal syndicalism"; or who "voluntarily assemble" with a group formed "to teach or advocate the doctrines of criminal syndicalism." Neither the indictment nor the trial judge's instructions to the jury in any way refined the statute's bald definition of the crimein terms of mere advocacy not distinguished from incitement to imminent lawless action.”

- Majority Opinion, Per curiam

[***Miller v. California* (1973)**](https://www.oyez.org/cases/1971/70-73)

“This Court has recognized that the States have a legitimate interest in prohibiting dissemination or exhibition of obscene material when the mode of dissemination carries with it a significant danger of offending the sensibilities of unwilling recipients or of exposure to juveniles… We hold that obscenity is not within the area of constitutionally protected speech or press… We acknowledge, however, the inherent dangers of undertaking to regulate any form of expression. State statutes designed to regulate obscene materials must becarefully limited. As a result, we now confine the permissible scope of such regulation to works which depict or describe sexual conduct. That conduct must be specifically defined by the applicable state law, as written or authoritatively construed.A state offense must also be limited to works which, taken as a whole, appeal to the prurient interest in sex, which portray sexual conduct in a patently offensive way, and which, taken as a whole, do not have serious literary, artistic, political, or scientific value.”

- Majority Opinion, Chief Justice Warren Burger

**FREE SPEECH CLAUSE (SYMBOLIC)**

[***Tinker v. Des Moines* (1969)**](https://www.oyez.org/cases/1968/21)

“First Amendment rights, applied in light of the special characteristics of the school environment, 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… First Amendment rights, applied in light of the special characteristics of the school environment, 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.”

- Majority Opinion, Justice Abe Fortas

[***West Virginia v. Barnette* (1943)**](https://www.oyez.org/cases/1940-1955/319us624)

“There is no doubt that, in connection with the pledges, the flag salute is a form of utterance. Symbolism is a primitive but effective way of communicating ideas. The use of an emblem or flag to symbolize some system, idea, institution, or personality is a short-cut from mind to mind… We think the action of the local authorities in compelling the flag salute and pledge transcends constitutional limitations on their power, and invades the sphere of intellect and spirit which it is the purpose of the First Amendment to our Constitution to reserve from all official control.”

- Majority Opinion, Justice Robert Jackson

[***Texas v. Johnson* (1989)**](https://www.oyez.org/cases/1988/88-155)

“Johnson burned an American flag as part -- indeed, as the culmination -- of a political demonstration that coincided with the convening of the Republican Party and its renomination of Ronald Reagan for President. The expressive, overtly political nature of this conduct was both intentional and overwhelmingly apparent… The government generally has a freer hand in restricting expressive conduct than it has in restricting the written or spoken word. It may not, however, proscribe particular conduct because it has expressive elements… Nor does Johnson's expressive conduct fall within that small class of "fighting words" that are "likely to provoke the average person to retaliation, and thereby cause a breach of the peace”… If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.”

- Majority Opinion, Justice William Brennan

[***Morse v. Frederick* (2007)**](https://www.oyez.org/cases/2006/06-278)

“The question thus becomes whether a principal may, consistent with the First Amendment, restrict student speech at a school event, when that speech is reasonably viewed as promoting illegal drug use. We hold that she may… School principals have a difficult job, and a vitally important one. When Frederick suddenly and unexpectedly unfurled his banner, Morse had to decide to act—or not act—on the spot. It was reasonable for her to conclude that the banner promoted illegal drug use—in violation of established school policy—and that failing to act would send a powerful message to the students in her charge, including Frederick, about how serious the school was about the dangers of illegal drug use. The First Amendment does not require schools to tolerate at school events student expression that contributes to those dangers.”

- Majority Opinion, Chief Justice John Roberts

**FREE PRESS CLAUSE**

[***New York Times v. United States* (1971)**](https://www.oyez.org/cases/1970/1873)

“In the governmental structure created by our Constitution, the Executive is endowed with enormous power in the two related areas of national defense and international relations… In the absence of the governmental checks and balances present in other areas of our national life, the only effective restraint upon executive policy and power in the areas of national defense and international affairs may lie in an enlightened citizenry -- in an informed and critical public opinion which alone can here protect the values of democratic government. For this reason, it is perhaps here that a press that is alert, aware, and free most vitally serves the basic purpose of the First Amendment. For, without an informed and free press, there cannot be an enlightened people… But in the cases before us, we are asked neither to construe specific regulations nor to apply specific laws. We are asked, instead, to perform a function that the Constitution gave to the Executive, not the Judiciary. We are asked, quite simply, to prevent the publication by two newspapers of material that the Executive Branch insists should not, in the national interest, be published. I am convinced that the Executive is correct with respect to some of the documents involved. But I cannot say that disclosure of any of them will surely result in direct, immediate, and irreparable damage to our Nation or its people.”

- Concurring Opinion, Justice Potter Stewart

[***Near v. Minnesota* (1931)**](https://www.oyez.org/cases/1900-1940/283us697)

“For these reasons we hold the statute, so far as it authorized the proceedings in this action under clause (b) [723] of section one, to be an infringement of the liberty of the press guaranteed by the Fourteenth Amendment. We should add that this decision rests upon the operation and effect of the statute, without regard to the question of the truth of the charges contained in the particular periodical. The fact that the public officers named in this case, and those associated with the charges of official dereliction, may be deemed to be impeccable cannot affect the conclusion that the statute imposes an unconstitutional restraint upon publication… The objection has also been made that the principle as to immunity from previous restraint is stated too broadly, if every such restraint is deemed to be prohibited. That is undoubtedly true; the protection even as to previous restraint is not absolutely unlimited. But the limitation has been recognized only in exceptional cases.”

- Majority Opinion, Chief Justice Charles Evan Hughes

[***New York Times v. Sullivan* (1964)**](https://www.oyez.org/cases/1963/39)

“The constitutional guarantees require, we think, a Federal rule that prohibits a public official from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with 'actual malice'—that is, with knowledge that it was false or with reckless disregard of whether it was false or not.”

- Majority Opinion, Justice William Brennan

**RIGHT TO COUNSEL RIGHT TO COUNSEL AND FREEDOM FROM ILLEGAL SEARCHES AND SEIZURES**

[***Gideon v. Wainwright* (1963)**](https://www.oyez.org/cases/1962/155)

“Governments, both state and federal, quite properly spend vast sums of money to establish machinery to try defendants accused of crime. Lawyers to prosecute are everywhere deemed essential to protect the public's interest in an orderly society. Similarly, there are few defendants charged with crime, few indeed, 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. The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours. 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.”

- Majority Opinion, Justice Hugo Black

[***Powell v. Alabama* (1932)**](https://www.oyez.org/cases/1900-1940/287us45)

“The right to be heard would be, in many cases, of little avail if it did not comprehend the right to beheard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. 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.”

- Majority Opinion, Justice George Sutherland

[***Betts v. Brady* (1942)**](https://www.oyez.org/cases/1940-1955/316us455)

“The Fourteenth Amendment prohibits the conviction and incarceration of one whose trial is offensive to the common and fundamental ideas of fairness and right, and while want of counsel in a particular case may result in a conviction lacking in such fundamental fairness, we cannot say that the amendment embodies an inexorable command that no trial for any offense, or in any court, can be fairly conducted and justice accorded a defendant who is not represented by counsel.”

- Majority Opinion, Justice Owen Roberts

[***Miranda v. Arizona* (1966)**](https://www.oyez.org/cases/1965/759)

“The person in custody must, prior to interrogation, be clearly informed that he has the right to remain silent, and that anything he says will be used against him in court; he must be clearly informed that he has the right to consult with a lawyer and to have the lawyer with him during interrogation, and that, if he is indigent, a lawyer will be appointed to represent him… If the individual indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease... If the individual states that he wants an attorney, the interrogation must cease until an attorney is present. At that time, the individual must have an opportunity to confer with the attorney and to have him present during any subsequent questioning.”

- Majority Opinion, Chief Justice Earl Warren

[***Mapp v. Ohio* (1961)**](https://www.oyez.org/cases/1960/236)

“We hold that all evidence obtained by searches and seizures in violation of the Constitution is, by that same authority, inadmissible in a state court… Since the Fourth Amendment's right of privacy has been declared enforceable against the States through the Due Process Clause of the Fourteenth, it is enforceable against them by the same sanction of exclusion as is used against the Federal Government.”

- Majority Opinion, Justice Tom Clark

**RIGHT TO PRIVACY**

[***Roe v. Wade* (1973)**](https://www.oyez.org/cases/1971/70-18)

“TheCourt's decisions recognizing a right of privacy also acknowledge that some state regulation in areas protected by that right is appropriate. As noted above, a State may properly assert important interests in safeguarding health, in maintaining medical standards, and in protecting potential life. At some point in pregnancy, these respective interests become sufficiently compelling to sustain regulation of the factors that govern the abortion decision. The privacy right involved, therefore, cannot be said to be absolute… We, therefore, conclude that the right of personal privacy includes the abortion decision, but that this right is not unqualified, and must be considered against important state interests in regulation.”

- Majority Opinion, Justice Harry Blackmun

[***Griswold v. Connecticut* (1965)**](https://www.oyez.org/cases/1964/496)

“The foregoing cases suggest that specific guarantees in the Bill of Rights have penumbras, formed by emanations from those guarantees that help give them life and substance. Various guarantees create zones of privacy. The right of association contained in the penumbra of the First Amendment is one, as we have seen. The Third Amendment, in its prohibition against the quartering of soldiers "in any house" in time of peace without the consent of the owner, is another facet of that privacy. The Fourth Amendment explicitly affirms the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." The Fifth Amendment, in its Self-Incrimination Clause, enables the citizen to create a zone of privacy which government may not force him to surrender to his detriment. The Ninth Amendment provides: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

- Majority Opinion, Justice William O. Douglas

[***NAACP v. Alabama* (1958)**](https://www.oyez.org/cases/1957/91)

“It is hardly a novel perception that compelled disclosure of affiliation with groups engaged in advocacy may constitute as effective a restraint on freedom of association as the forms of governmental action in the cases above were thought likely to produce upon the particular constitutional rights there involved… Inviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs… We hold that the immunity from state scrutiny of membership lists which the Association claims on behalf of its members is here so related to the right of the members to pursue their lawful private interests privately and to associate freely with others in so doing as to come within the protection of the Fourteenth Amendment. And we conclude that Alabama has fallen short of showing a controlling justification for the deterrent effect on the free enjoyment of the right to associate which disclosure of membership lists is likely to have.”

- Majority Opinion, Justice John Marshall Harlan II

***[Bowers v. Hardwick](https://www.oyez.org/cases/1985/85-140)* [(1986)](https://www.oyez.org/cases/1985/85-140)**

“The issue presented is whether the Federal Constitution confers a fundamental right upon homosexuals to engage in sodomy, and hence invalidates the laws of the many States that still make such conduct illegal, and have done so for a very long time. The case also calls for some judgment about the limits of the Court's role in carrying out its constitutional mandate… We first register our disagreement with the Court of Appeals and with respondent that the Court's prior cases have construed the Constitution to confer a right of privacy that extends to homosexual sodomy… Precedent aside, however, respondent would have us announce, as the Court of Appeals did, a fundamental right to engage in homosexual sodomy. This we are quite unwilling to do. It is true that, despite the language of the Due Process Clauses of the Fifth and Fourteenth Amendments, which appears to focus only on the processes by which life, liberty, or property is taken, the cases are legion in which those Clauses have been interpreted to have substantive content, subsuming rights that to a great extent are immune from federal or state regulation or proscription. Among such cases are those recognizing rights that have little or no textual support in the constitutional language.”

- Majority Opinion, Justice Byron White

[***Board of Education-Pottawatomie v. Earls* (2002)**](https://www.oyez.org/cases/2001/01-332)

“Because searches by public school officials implicate Fourth Amendment interests, the Court must review the Policy for "reasonableness," the touchstone of constitutionality. In contrast to the criminal context, a probable-cause finding is unnecessary in the public school context because it would unduly interfere with maintenance of the swift and informal disciplinary procedures that are needed. In the public school context, a search may be reasonable when supported by "special needs" beyond the normal need for law enforcement. Because the "reasonableness" inquiry cannot disregard the schools' custodial and tutelary responsibility for children, a finding of individualized suspicion may not be necessary… the Court concludes that the students affected by this Policy have a limited expectation of privacy… the Court concludes that the invasion of students' privacy is not significant, given the minimally intrusive nature of the sample collection and the limited uses to which the test results are put… The need to prevent and deter the substantial harm of childhood drug use provides the necessary immediacy for a school testing policy. Given the nationwide epidemic of drug use, and the evidence of increased drug use in Tecumseh schools, it was entirely reasonable for the School District to enact this particular drug testing policy.”

- Majority Opinion, Justice Clarence Thomas

**INCORPORATION**

[***McDonald v. Chicago* (2010)**](https://www.oyez.org/cases/2009/08-1521)

“The right to keep and bear arms was also widely protected by state constitutions at the time when the Fourteenth Amendment was ratified… 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 cite 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… In [*District of Columbia v.* *Heller* (2008)], we held that the Second Amendment protects the right to possess a handgun in the home for the purpose of self-defense. Unless considerations of *stare decisis* counsel otherwise, a provision of the Bill of Rights that protects a right that is fundamental from an American perspective applies equally to the Federal Government and the States. We therefore hold that the Due Process Clause of the Fourteenth Amendment incorporates the Second Amendment right recognized in *Heller*.”

- Majority Opinion, Justice Samuel Alito

[***Barron v. Baltimore* (1833)**](https://www.oyez.org/cases/1789-1850/32us243)

“The Constitution was ordained and established by the people of the United States for themselves, for their own government, and not for the government of individual States. Each State established a constitution for itself, and in that constitution provided such limitations and restrictions on the powers of its particular government as its judgment dictated. The people of the United States framed such a government for the United States as they supposed best adapted to their situation, and best calculated to promote their interests. The powers they conferred on this government were to be exercised by itself, and the limitations on power, if expressed in general terms, are naturally and necessarily applicable to the government created by the instrument. They are limitations of power granted in the instrument itself, not of distinct governments framed by different persons and for different purposes… In almost every convention by which the Constitution was adopted, amendments to guard against the abuse of power were recommended. These amendments demanded security against the apprehended encroachments of the General Government -- not against those of the local governments. In compliance with a sentiment thus generally expressed, to quiet fears thus extensively entertained, amendments were proposed by the required majority in Congress and adopted by the States. These amendments contain no expression indicating an intention to apply them to the State governments. This court cannot so apply them.”

- Majority Opinion, Chief Justice John Marshall

[***Slaughter-House Cases* (1873)**](https://www.oyez.org/cases/1850-1900/83us36)

“The next observation is more important in view of the arguments of counsel in the present case. It is, that the distinction between citizenship of the United States and citizenship of a state is clearly recognized and established....It is quite clear, then, that there is a citizenship of the United States, and a citizenship of a state, which are distinct from each other, and which depend upon different characteristics or circumstances in the individual… We think this distinction and its explicit recognition in this Amendment of great weight in this argument, because the next paragraph of this same section, which is the one mainly relied on by the plaintiffs in error, speaks only of privileges and immunities of citizens of the United States, and does not speak of those of citizens of the several states. The argument, however, in favor of the plaintiffs, rests wholly on the assumption that the citizenship is the same and the privileges and immunities guaranteed by the clause are the same… Was it the purpose of the fourteenth amendment, by the simple declaration that no State should make or enforce any law which shall abridge the privileges and immunities of citizens of the United States, to transfer the security and protection of all the civil rights which we have mentioned, from the States to the Federal government? And where it is declared that Congress Shall have the power to enforce that article, was it intended to bring within the power of Congress the entire domain of civil rights heretofore belonging exclusively to the States? We are convinced that no such results were intended by the Congress which proposed these amendments, nor by the legislatures of the States which ratified them.”

- Majority Opinion, Justice Samuel Miller

[***Gitlow v. New York* (1925)**](https://www.oyez.org/cases/1900-1940/268us652)

“For present purposes, we may and do assume that freedom of speech and of the press which are protected by the First Amendment from abridgment by Congress are among the fundamental personal rights and "liberties" protected by the due process clause of the Fourteenth Amendment from impairment by the States.”

- Majority Opinion, Justice Edward Sanford

[***Adamson v. California* (1947)**](https://www.oyez.org/cases/1940-1955/332us46)

“It is settled law that the clause of the Fifth Amendment, protecting a person against being compelled to be a witness against himself, is not made effective by the Fourteenth Amendment as a protection against state action on the ground that freedom from testimonial compulsion is a right of national citizenship, or because it is a personal privilege or immunity secured by the Federal Constitution as one of the rights of man that are listed in the Bill of Rights… The due process clause of the Fourteenth Amendment, however, does not draw all the rights of the federal Bill of Rights under its protection. It was rejected with citation of the cases excluding several of the rights, protected by the Bill of Rights, against infringement by the National Government.”

- Majority Opinion, Justice Stanley Reed

**EQUAL PROTECTION CLAUSE**

[***Brown v. Board of Education* (1954)**](https://www.oyez.org/cases/1940-1955/347us483)

“[D]oes 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. ..."Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The effect is greater when it has the sanction of the law, for the policy of separating the races is usually interpreted as denoting the inferiority of the negro group. A sense of inferiority affects the motivation of a child to learn. Segregation with the sanction of law, therefore, has a tendency to [retard] the educational and mental development of negro children and to deprive them of some of the benefits they would receive in a racial[ly] integrated school system."

- Majority Opinion, Chief Justice Earl Warren

[***Plessy v. Ferguson* (1896)**](https://www.oyez.org/cases/1850-1900/163us537)

“The white race deems itself to be the dominant race in this country. And so it is in prestige, in achievements, in education, in wealth and in power. So, I doubt not, it will continue to be for all time if it remains true to its great heritage and holds fast to the principles of constitutional liberty. But in view of the constitution, in the eye of the law, there is in this country no superior, dominant, ruling class of citizens. There is no caste here. Our constitution is color-blind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law. The humblest is the peer of the most powerful. The law regards man as man, and takes no account of his surroundings or of his color when his civil rights as guaranteed by the supreme law of the land are involved. It is therefore to be regretted that this high tribunal, the final expositor of the fundamental law of the land, has reached the conclusion that it is competent for a state to regulate the enjoyment by citizens of their civil rights solely upon the basis of race.”

- Dissenting Opinion, Justice John Marshall Harlan

[***Regents of the University of California v. Bakke* (1978)**](https://www.oyez.org/cases/1979/76-811)

“En route to this crucial battle over the scope of judicial review, the parties fight a sharp preliminary action over the proper characterization of the special admissions program. Petitioner prefers to view it as establishing a "goal" of minority representation in the Medical School. Respondent, echoing the courts below, labels it a racial quota. This semantic distinction is beside the point: the special admissions program is undeniably a classification based on race and ethnic background. To the extent that there existed a pool of at least minimally qualified minority applicants to fill the 16 special admissions seats, white applicants could compete only for 84 seats in the entering class, rather than the 100 open to minority applicants. Whether this limitation is described as a quota or a goal, it is a line drawn on the basis of race and ethnic status… The guarantee of equal protection cannot mean one thing when applied to one individual and something else when applied to a person of another color. If both are not accorded the same protection, then it is not equal.

- Majority Opinion, Justice Lewis Powell