AP Government & Politics

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Your Name:

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COURSE OVERVIEW

AP U.S. Government and Politics provides a college-level, nonpartisan introduction to key political concepts, ideas, institutions, policies, interactions, roles, and behaviors that characterize the constitutional system and political culture of the United States. Students will study U.S. foundational documents, Supreme Court decisions, and other texts and visuals to gain an understanding of the relationships and interactions among political institutions, processes, and behavior. They will also engage in disciplinary practices that require them to read and interpret data, make comparisons and applications, and develop evidence-based arguments. In addition, they will complete a political science research or applied civics project.

COURSE CONTENT

COURSE UNITS

The AP U.S. Government and Politics course is organized around five units, which focus on major topics in U.S. government and politics.

The units are:
- Foundations of American Democracy
- Interaction Among Branches of Government
- Civil Liberties and Civil Rights
- American Political Ideologies and Beliefs
- Political Participation

Foundational documents and Supreme Court cases are an integral part of the course and necessary for students to understand the philosophical underpinnings, significant legal precedents, and political values of the U.S. political system and may serve as the focus of AP Exam questions. The course requires study of:

9 FOUNDATIONAL DOCUMENTS

The US Constitution
The Declaration of Independence
Letter From a Birmingham Jail (Martin Luther King, Jr.)
Federalist #10
The Articles of Confederation
Federalist #70
Brutus #1
Federalist #51
Federalist #78

15 LANDMARK SUPREME COURT CASES

McCulloch v Maryland (1819)
New York Times Company v United States (1971)
Brown v Board of Education (1954)
U.S. v Lopez (1995)
Schenck v United States (1919)
Citizens United v Federal Election Comm. (2010)
Engel v Vitale (1962)
Gideon v Wainwright (1963)
Baker v Carr (1961)
Wisconsin v Yoder (1972)
Roe v Wade (1973)
Shaw v Reno (1993)
Tinker v Des Moines (1969)
McDonald v Chicago (2010)
Marbury v Madison (1803)

POLITICAL SCIENCE RESEARCH OR APPLIED CIVICS PROJECT

The required project adds a civic component to the course, engaging students in exploring how they can affect, and are affected by, government and politics throughout their lives. The project might have students collect data on a teacher-approved political science topic, participate in a community service activity, or observe and report on the policymaking process of a governing body. Students should plan a presentation that relates their experiences or findings to what they are learning in the course.

AP U.S. GOVERNMENT AND POLITICS DISCIPLINARY PRACTICES

Practice 1: Apply political concepts and processes to scenarios in context
Practice 2: Apply Supreme Court decisions
Practice 3: Analyze and interpret quantitative data represented in tables, charts, graphs, maps, and infographics
Practice 4: Read, analyze, and interpret foundational documents and other text-based and visual sources
Practice 5: Develop an argument in essay format

AP U.S. GOVERNMENT AND POLITICS EXAM: 3 HOURS

Assessment Overview:
The AP U.S. Government and Politics Exam measures students' understanding of required content. Students must be able to define, compare, explain, and interpret political concepts, policies, processes, perspectives, and behaviors that characterize the U.S. political system.

FORMAT OF ASSESMENT:

SECTION I: MULTIPLE CHOICE
55 QUESTIONS
80 MINUTES
50% OF EXAM SCORE

■ Quantitative Analysis: Analysis and application of quantitative based source material
■ Qualitative Analysis: Analysis and application of text-based (primary and secondary) sources
■ Visual Analysis: Analysis and application of qualitative visual information
■ Concept Application: Explanation of the application of political concepts in context
■ Comparison: Explanation of the similarities and differences of political concepts
■ Knowledge: Identification and definition of political principles, institutions, processes, policies, and behaviors

SECTION II: FREE RESPONSE
4 QUESTIONS
100 MINUTES
50% OF EXAM SCORE

■ Concept Application: Respond to a political scenario, explaining how it relates to a political principle, institution, process, policy, or behavior
■ Quantitative Analysis: Analyze quantitative data, identify a trend or pattern, draw a conclusion for the visual representation, and explain how it relates to a political principle, institution, process, policy, or behavior
■ SCOTUS Comparison: Compare a non-required Supreme Court case with a required Supreme Court case, explaining how information from the required case is relevant to that in the non-required one
■ Argument Essay: Develop an argument in the form of an essay, using evidence from one or more required foundational documents

Excerpts from *Second Treatise of Civil Government* (1689)

(not a required document)

John Locke anonymously published the First Treatise as a refutation of the "divine right of kings" as a basis of government. The Second Treatise, on which we will focus here, outlines a theory of civil society, including a description of the state of nature and an argument that all men are created equal by God. He continues to claim that the only legitimate governments are those that have the consent of the people. Illigitimate governments, therefore, may be overthrown by the people. Locke's ideas were influential to the founders of American government.

Of the State of Nature

To understand political power correctly, and derive it from its origins, we must consider what state all men are naturally in: a state of perfect freedom to order their actions and dispose of their possessions and persons as they think fit, within the bounds of the law of nature, without asking permission or depending upon the will of any other man.

A state also of equality, wherein all the power and jurisdiction is mutual, no one having more than another…

But though this be a state of liberty, yet it is not a state of license; though man in that state has an unrestricted liberty to dispose of his person or possessions, yet he has no liberty to destroy himself, or any creature under his control. The state of nature has a law of nature to govern it which obliges every one; and reason, which is that law, teaches all mankind who will but consult it that, being all equal and independent, no one ought to harm another in his life, health, liberty, or possessions.

If man in the state of nature be so free, as has been said, if he be absolute lord of his own person and possessions, equal to the greatest, and subject to nobody, why will he part with his freedom, why will he give up his independence and subject himself to the rule and control of any other power? To which it is obvious to answer that though in the state of nature he has such a right, yet the enjoyment of it is very uncertain and constantly exposed to the attacks of others. This makes him willing to give up a condition which, however free, is full of fears and continual dangers; and it is not without reason that he seeks out and is willing to join in society with others, who are already united, or have a mind to unite, for the mutual preservation of their lives, liberties, and estates which I call by the general name "property."

Of the Beginning of Political Societies

...No one can be put out of this condition and subjected to the political power of another without his own consent. The only way whereby any one divests himself of his natural liberty, and puts on the bonds of civil society, is by agreeing with other men to join and unite into a community for their comfortable, safe, and peaceable living one among another, in a secure enjoyment of their properties and a greater security against any that are not of it.

For when any number of men have, by the consent of every individual, made a community, they have thereby made that community one body, with a power to act as one body, which is only by the will and determination of the majority.

Of the Extent of the Government

The great purposes of men's entering into society being the enjoyment of their properties in peace and safety, and the great instrument and means of that being the laws established in that society, the first and fundamental positive law of all commonwealths is the establishment of the legislative power.

There are the bounds in all forms of government:

First, they are to govern by published established laws, not to be varied in particular cases, but to have one rule for the rich and poor.

Secondly, these laws also ought to be designed for no other purpose than the good of the people.

Thirdly, they must not raise taxes on the property of the people without the consent of the people, given by themselves or their representatives....

Fourthly, the legislative cannot transfer the power of making laws to anybody else, or place it anywhere but where the people have placed it.

Of Tyranny

As usurpation is the exercise of power which another has a right to, so tyranny is the exercise of power beyond right, which nobody can have a right to. And this is making use of the power any one has in his hands, not for the good of those who are under it, but for his own private advantage – when the executive officer makes not the law, but his will, the rule, and his commands and actions are not directed to the preservation of the properties of his people, but the satisfaction of his own ambition, revenge, greed, or any other unlawful passion....

Of the Dissolution of Government

Whenever the legislators endeavor to take away and destroy the property of the people, or to reduce them to slavery under arbitrary power, they put themselves into a state of war with the people who are thereupon freed from any further obedience. It reverts then to the people, who have a right to resume their original liberty, and, by the establishment of a new legislative, such as they shall think fit, provide for their own safety and security, which is the purpose for which they are in society.

To conclude, the power that every individual gave the society when he entered into it can never revert to the individuals again as long as the society lasts, but will always remain in the community, because without this there can be no community, no commonwealth, which is contrary to the original agreement. The people then have a right to act as supreme and continue the legislative in themselves, or erect a new form, or under the old form place it in new hands, as they think good.

The Declaration of Independence (1776)

The American Declaration of Independence, written by Thomas Jefferson in 1776, is one of the most quoted documents in world history. Rightfully so, it contains the values and ideals that spurred not only our own quest for independence but many others as well. The Declaration of Independence is our creed. It is the foundation of our social contract. The claims of our Declaration of Independence are normative statements that serve as the guiding force behind American political culture. More than complaints against King George in 1776, the Declaration of Independence contains a "set of core ideals – liberty, equality, and self government – that serve as the people's common bond." These values have become universals that time and history across the globe have pursued. The values and ideals found in the Declaration of Independence continue to be our standard. As it was in 1776 so it is today. Though we may often fall short of our standard we nevertheless know the principles by which every political debate must be judged. In American politics we disagree on a lot of things. But there is no disagreement on this – "we hold these truths to be self evident, that all men are created equal…" On July Fourth we can all come together to celebrate the Declaration of Independence.

The Declaration of Independence

July 4, 1776

The unanimous Declaration of the thirteen united States of America.

When in the Course of human events it becomes necessary for one people to dissolve the political bands which have connected them with another and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. — That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, — That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shewn that mankind are more disposed to suffer, while evils are sufferable than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security. — Such has been the patient sufferance of these Colonies; and such is now the necessity which constrains them to alter their former Systems of Government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States. To prove this, let Facts be submitted to a candid world.

He has refused his Assent to Laws, the most wholesome and necessary for the public good.

He has forbidden his Governors to pass Laws of immediate and pressing importance, unless suspended in their operation till his Assent should be obtained; and when so suspended, he has utterly neglected to attend to them.

He has refused to pass other Laws for the accommodation of large districts of people, unless those people would relinquish the right of Representation in the Legislature, a right inestimable to them and

formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their Public Records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved Representative Houses repeatedly, for opposing with manly firmness his invasions on the rights of the people.

He has refused for a long time, after such dissolutions, to cause others to be elected, whereby the Legislative Powers, incapable of Annihilation, have returned to the People at large for their exercise; the State remaining in the mean time exposed to all the dangers of invasion from without, and convulsions within.

He has endeavoured to prevent the population of these States; for that purpose obstructing the Laws for Naturalization of Foreigners; refusing to pass others to encourage their migrations hither, and raising the conditions of new Appropriations of Lands.

He has obstructed the Administration of Justice by refusing his Assent to Laws for establishing Judiciary Powers.

He has made Judges dependent on his Will alone for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of New Offices, and sent hither swarms of Officers to harass our people and eat out their substance.

He has kept among us, in times of peace, Standing Armies without the Consent of our legislatures.

He has affected to render the Military independent of and superior to the Civil Power.

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his Assent to their Acts of pretended Legislation:

For quartering large bodies of armed troops among us:

For protecting them, by a mock Trial from punishment for any Murders which they should commit on the Inhabitants of these States:

For cutting off our Trade with all parts of the world:

For imposing Taxes on us without our Consent:

For depriving us in many cases, of the benefit of Trial by Jury:

For transporting us beyond Seas to be tried for pretended offences:

For abolishing the free System of English Laws in a neighbouring Province, establishing therein an Arbitrary government, and enlarging its Boundaries so as to render it at once an example and fit instrument for introducing the same absolute rule into these Colonies

For taking away our Charters, abolishing our most valuable Laws and altering fundamentally the Forms of our Governments:

For suspending our own Legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated Government here, by declaring us out of his Protection and waging War against us.

He has plundered our seas, ravaged our coasts, burnt our towns, and destroyed the lives of our people.

He is at this time transporting large Armies of foreign Mercenaries to compleat the works of death, desolation, and tyranny, already begun with circumstances of Cruelty & Perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the Head of a civilized nation.

He has constrained our fellow Citizens taken Captive on the high Seas to bear Arms against their Country, to become the executioners of their friends and Brethren, or to fall themselves by their Hands.

He has excited domestic insurrections amongst us, and has endeavoured to bring on the inhabitants of our frontiers, the merciless Indian Savages whose known rule of warfare, is an undistinguished destruction of all ages, sexes and conditions.

In every stage of these Oppressions We have Petitioned for Redress in the most humble terms: Our repeated Petitions have been answered only by repeated injury. A Prince, whose character is thus marked by every act which may define a Tyrant, is unfit to be the ruler of a free people.

Nor have We been wanting in attentions to our British brethren. We have warned them from time to time of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred to disavow these usurpations, which would inevitably interrupt our connections and correspondence. They too have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity, which denounces our Separation, and hold them, as we hold the rest of mankind, Enemies in War, in Peace Friends.

We, therefore, the Representatives of the united States of America, in General Congress, Assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the Name, and by Authority of the good People of these Colonies, solemnly publish and declare, That these united Colonies are, and of Right ought to be Free and Independent States, that they are Absolved from all Allegiance to the British Crown, and that all political connection between them and the State of Great Britain, is and ought to be totally dissolved; and that as Free and Independent States, they have full Power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which Independent States may of right do. — And for the support of this Declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our Lives, our Fortunes, and our sacred Honor.

New Hampshire:
Josiah Bartlett, William Whipple, Matthew Thornton

Massachusetts:
John Hancock, Samuel Adams, John Adams, Robert Treat Paine, Elbridge Gerry

Rhode Island:
Stephen Hopkins, William Ellery

Connecticut:
Roger Sherman, Samuel Huntington, William Williams, Oliver Wolcott

New York:
William Floyd, Philip Livingston, Francis Lewis, Lewis Morris

New Jersey:
Richard Stockton, John Witherspoon, Francis Hopkinson, John Hart, Abraham Clark

Pennsylvania:
Robert Morris, Benjamin Rush, Benjamin Franklin, John Morton, George Clymer, James Smith, George Taylor, James Wilson, George Ross

Delaware:
Caesar Rodney, George Read, Thomas McKean

Maryland:
Samuel Chase, William Paca, Thomas Stone, Charles Carroll of Carrollton

Virginia:
George Wythe, Richard Henry Lee, Thomas Jefferson, Benjamin Harrison, Thomas Nelson, Jr., Francis Lightfoot Lee, Carter Braxton

North Carolina:
William Hooper, Joseph Hewes, John Penn

South Carolina:
Edward Rutledge, Thomas Heyward, Jr., Thomas Lynch, Jr., Arthur Middleton

Georgia:
Button Gwinnett, Lyman Hall, George Walton

The Articles of Confederation (1781-1789)

The Articles of Confederation was the first governing charter of the United States. Ratified in 1781, the Articles successfully empowered the young nation to fight a war for independence against England, organize the means of expansion west and most importantly hold our union together. At its core, the Articles of Confederation created a league or alliance of thirteen independent states. Each state would hold onto their "sovereignty, freedom and independence." Herein was its terminal weakness. Illustrated best by its inability to govern sufficiently against the Shay's Rebellion in Massachusetts the Articles would be replaced due to a number of inherent weaknesses. Absent in the Articles was a separate executive branch. There was no national court system. The Articles gave little legislative authority and virtually no authority to enforce. There were no provisions to regulate commerce. It contained no Bill of Rights. Under the Articles of Confederation the United States fought for independence from England. Yet sustaining that independence would have been difficult, if not impossible, had a new constitutional convention not been called. The Articles failures can never quite replace its important role in the early development of the United States. Constitutional interpretation even today is aided by our understanding of the successes and failures of the Articles of Confederation.

The Articles of Confederation

1781-1789

To all to whom these Presents shall come, we the undersigned Delegates of the States affixed to our Names send greeting.

Articles of Confederation and perpetual Union between the states of New Hampshire, Massachusetts-bay Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina and Georgia.

I. The Stile of this Confederacy shall be "The United States of America".

II. Each state retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this Confederation expressly delegated to the United States, in Congress assembled.

III. The said States hereby severally enter into a firm league of friendship with each other, for their common defense, the security of their liberties, and their mutual and general welfare, binding themselves to assist each other, against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretense whatever.

IV. The better to secure and perpetuate mutual friendship and intercourse among the people of the different States in this Union, the free inhabitants of each of these States, paupers, vagabonds, and fugitives from justice excepted, shall be entitled to all privileges and immunities of free citizens in the several States; and the people of each State shall free ingress and regress to and from any other State, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions, and restrictions as the inhabitants thereof respectively, provided that such restrictions shall not extend so far as to prevent the removal of property imported into any State, to any other State, of which the owner is an inhabitant; provided also that no imposition, duties or restriction shall be laid by any State, on the property of the United States, or either of them.

If any person guilty of, or charged with, treason, felony, or other high misdemeanor in any State, shall flee from justice, and be found in any of the United States, he shall, upon demand of the Governor or executive power of the State from which he fled, be delivered up and removed to the State having jurisdiction of his offense.

Full faith and credit shall be given in each of these States to the records, acts, and judicial proceedings of the courts and magistrates of every other State.

V. For the most convenient management of the general interests of the United States, delegates shall be annually appointed in such manner as the legislatures of each State shall direct, to meet in Congress on the first Monday in November, in every year, with a power reserved to each State to recall its delegates, or any of them, at any time within the year, and to send others in their stead for the remainder of the year.

No State shall be represented in Congress by less than two, nor more than seven members; and no person shall be capable of being a delegate for more than three years in any term of six years; nor shall any person, being a delegate, be capable of holding any office under the United States, for which he, or another for his benefit, receives any salary, fees or emolument of any kind.

Each State shall maintain its own delegates in a meeting of the States, and while they act as members of the committee of the States.

In determining questions in the United States in Congress assembled, each State shall have one vote.

Freedom of speech and debate in Congress shall not be impeached or questioned in any court or place out of Congress, and the members of Congress shall be protected in their persons from arrests or imprisonments, during the time of their going to and from, and attendance on Congress, except for treason, felony, or breach of the peace.

VI. No State, without the consent of the United States in Congress assembled, shall send any embassy to, or receive any embassy from, or enter into any conference, agreement, alliance or treaty with any King, Prince or State; nor shall any person holding any office of profit or trust under the United States, or any of them, accept any present, emolument, office or title of any kind whatever from any King, Prince or foreign State; nor shall the United States in Congress assembled, or any of them, grant any title of nobility.

No two or more States shall enter into any treaty, confederation or alliance whatever between them, without the consent of the United States in Congress assembled, specifying accurately the purposes for which the same is to be entered into, and how long it shall continue.

No State shall lay any imposts or duties, which may interfere with any stipulations in treaties, entered into by the United States in Congress assembled, with any King, Prince or State, in pursuance of any treaties already proposed by Congress, to the courts of France and Spain.

No vessel of war shall be kept up in time of peace by any State, except such number only, as shall be deemed necessary by the United States in Congress assembled, for the defense of such State, or its trade; nor shall any body of forces be kept up by any State in time of peace, except such number only, as in the judgement of the United States in Congress assembled, shall be deemed requisite to garrison the forts necessary for the defense of such State; but every State shall always keep up a well-regulated and disciplined militia, sufficiently armed and accoutered, and shall provide and constantly have ready for use, in public stores, a due number of filed pieces and tents, and a proper quantity of arms, ammunition and camp equipage.

No State shall engage in any war without the consent of the United States in Congress assembled, unless such State be actually invaded by enemies, or shall have received certain advice of a resolution being formed by some nation of Indians to invade such State, and the danger is so imminent as not to admit of a delay till the United States in Congress assembled can be consulted; nor shall any State grant commissions to any ships or vessels of war, nor letters of marque or reprisal, except it be after a declaration of war by the United States in Congress assembled, and then only against the Kingdom or State and the subjects thereof, against which war has been so declared, and under such regulations as shall be established by the United States in Congress assembled, unless such State be infested by pirates, in which case vessels of war may be fitted out for that occasion, and kept so long as the danger shall continue, or until the United States in Congress assembled shall determine otherwise.

VII. When land forces are raised by any State for the common defense, all officers of or under the rank of colonel, shall be appointed by the legislature of each State respectively, by whom such forces shall be raised, or in such manner as such State shall direct, and all vacancies shall be filled up by the State which first made the appointment.

VIII. All charges of war, and all other expenses that shall be incurred for the common defense or general welfare, and allowed by the United States in Congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several States in proportion to the value of all land within each State, granted or surveyed for any person, as such land and the buildings and improvements thereon shall be estimated according to such mode as the United States in Congress assembled, shall from time to time direct and appoint.

The taxes for paying that proportion shall be laid and levied by the authority and direction of the legislatures of the several States within the time agreed upon by the United States in Congress assembled.

IX. The United States in Congress assembled, shall have the sole and exclusive right and power of determining on peace and war, except in the cases mentioned in the sixth article -- of sending and receiving ambassadors -- entering into treaties and alliances, provided that no treaty of commerce shall be made whereby the legislative power of the respective States shall be restrained from imposing such imposts and duties on foreigners, as their own people are subjected to, or from prohibiting the exportation or importation of any species of goods or commodities whatsoever -- of establishing rules for deciding in all cases, what captures on land or water shall be legal, and in what manner prizes taken by land or naval forces in the service of the United States shall be divided or appropriated -- of granting letters of marque and reprisal in times of peace -- appointing courts for the trial of piracies and felonies committed on the high seas and establishing courts for receiving and determining finally appeals in all cases of captures, provided that no member of Congress shall be appointed a judge of any of the said courts.

The United States in Congress assembled shall also be the last resort on appeal in all disputes and differences now subsisting or that hereafter may arise between two or more States concerning boundary, jurisdiction or any other causes whatever; which authority shall always be exercised in the manner following. Whenever the legislative or executive authority or lawful agent of any State in controversy with another shall present a petition to Congress stating the matter in question and praying for a hearing, notice thereof shall be given by order of Congress to the legislative or executive authority of the other State in controversy, and a day assigned for the appearance of the parties by their lawful agents, who shall then be directed to appoint by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question: but if they cannot agree, Congress shall name three persons out of each of the United States, and from the list of such persons each party shall alternately strike out one, the petitioners beginning, until the number shall be reduced to thirteen; and from that number not less than seven, nor more than nine names as Congress shall direct, shall in the presence of Congress be drawn out by lot, and the persons whose names shall be so drawn or any five of them, shall be commissioners or judges, to hear and finally determine the controversy, so always as a major part of the judges who shall hear the cause shall agree in the determination: and if either party shall neglect to attend at the day appointed, without showing reasons, which Congress shall judge sufficient, or being present shall refuse to strike, the Congress shall proceed to nominate three persons out of each State, and the secretary of Congress shall strike in behalf of such party absent or refusing; and the judgment and sentence of the court to be appointed, in the manner before prescribed, shall be final and conclusive; and if any of the parties shall refuse to submit to the authority of such court, or to appear or defend their claim or cause, the court shall nevertheless proceed to pronounce sentence, or judgment, which shall in like manner be final and decisive, the judgment or sentence and other proceedings being in either case

transmitted to Congress, and lodged among the acts of Congress for the security of the parties concerned: provided that every commissioner, before he sits in judgment, shall take an oath to be administered by one of the judges of the supreme or superior court of the State, where the cause shall be tried, 'well and truly to hear and determine the matter in question, according to the best of his judgment, without favor, affection or hope of reward': provided also, that no State shall be deprived of territory for the benefit of the United States.

All controversies concerning the private right of soil claimed under different grants of two or more States, whose jurisdictions as they may respect such lands, and the States which passed such grants are adjusted, the said grants or either of them being at the same time claimed to have originated antecedent to such settlement of jurisdiction, shall on the petition of either party to the Congress of the United States, be finally determined as near as may be in the same manner as is before prescribed for deciding disputes respecting territorial jurisdiction between different States.

The United States in Congress assembled shall also have the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that of the respective States -- fixing the standards of weights and measures throughout the United States -- regulating the trade and managing all affairs with the Indians, not members of any of the States, provided that the legislative right of any State within its own limits be not infringed or violated -- establishing or regulating post offices from one State to another, throughout all the United States, and exacting such postage on the papers passing through the same as may be requisite to defray the expenses of the said office -- appointing all officers of the land forces, in the service of the United States, excepting regimental officers -- appointing all the officers of the naval forces, and commissioning all officers whatever in the service of the United States -- making rules for the government and regulation of the said land and naval forces, and directing their operations.

The United States in Congress assembled shall have authority to appoint a committee, to sit in the recess of Congress, to be denominated 'A Committee of the States', and to consist of one delegate from each State; and to appoint such other committees and civil officers as may be necessary for managing the general affairs of the United States under their direction -- to appoint one of their members to preside, provided that no person be allowed to serve in the office of president more than one year in any term of three years; to ascertain the necessary sums of money to be raised for the service of the United States, and to appropriate and apply the same for defraying the public expenses -- to borrow money, or emit bills on the credit of the United States, transmitting every half-year to the respective States an account of the sums of money so borrowed or emitted -- to build and equip a navy -- to agree upon the number of land forces, and to make requisitions from each State for its quota, in proportion to the number of white inhabitants in such State; which requisition shall be binding, and thereupon the legislature of each State shall appoint the regimental officers, raise the men and clothe, arm and equip them in a solid-like manner, at the expense of the United States; and the officers and men so clothed, armed and equipped shall march to the place appointed, and within the time agreed on by the United States in Congress assembled. But if the United States in Congress assembled shall, on consideration of circumstances judge proper that any State should not raise men, or should raise a smaller number of men than the quota thereof, such extra number shall be raised, officered, clothes, armed and equipped in the same manner as the quota of each State, unless the legislature of such State shall judge that such extra number cannot be safely spread out in the same, in which case they shall raise, officer, clothe, arm and equip as many of such extra number as they judge can be safely spared. And the officers and men so clothed, armed, and equipped, shall march to the place appointed, and within the time agreed on by the United States in Congress assembled.

The United States in Congress assembled shall never engage in a war, nor grant letters of marque or reprisal in time of peace, nor enter into any treaties or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expenses necessary for the defense and welfare of the United States, or any of them, nor emit bills, nor borrow money on the credit of the United States, nor appropriate money, nor agree upon the number of vessels of war, to be built or purchased, or the number of land or sea forces to be raised, nor appoint a commander in chief of the army or navy, unless nine States assent to the same: nor shall a question on any other point, except for adjourning from day to day be determined, unless by the votes of the majority of the United States in Congress assembled.

The Congress of the United States shall have power to adjourn to any time within the year, and to any place within the United States, so that no period of adjournment be for a longer duration than the space of six months, and shall publish the journal of their proceedings monthly, except such parts thereof relating to treaties, alliances or military operations, as in their judgment require secrecy; and the yeas and nays of the delegates of each State on any question shall be entered on the journal, when it is desired by any delegates of a State, or any of them, at his or their request shall be furnished with a transcript of the said journal, except such parts as are above excepted, to lay before the legislatures of the several States.

X. The Committee of the States, or any nine of them, shall be authorized to execute, in the recess of Congress, such of the powers of Congress as the United States in Congress assembled, by the consent of the nine States, shall from time to time think expedient to vest them with; provided that no power be delegated to the said Committee, for the exercise of which, by the Articles of Confederation, the voice of nine States in the Congress of the United States assembled be requisite.

XI. Canada acceding to this confederation, and adjoining in the measures of the United States, shall be admitted into, and entitled to all the advantages of this Union; but no other colony shall be admitted into the same, unless such admission be agreed to by nine States.

XII. All bills of credit emitted, monies borrowed, and debts contracted by, or under the authority of Congress, before the assembling of the United States, in pursuance of the present confederation, shall be deemed and considered as a charge against the United States, for payment and satisfaction whereof the said United States, and the public faith are hereby solemnly pledged.

XIII. Every State shall abide by the determination of the United States in Congress assembled, on all questions which by this confederation are submitted to them. And the Articles of this Confederation shall be inviolably observed by every State, and the Union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them; unless such alteration be agreed to in a Congress of the United States, and be afterwards confirmed by the legislatures of every State.

And whereas it hath pleased the Great Governor of the World to incline the hearts of the legislatures we respectively represent in Congress, to approve of, and to authorize us to ratify the said

Articles of Confederation and perpetual Union. Know Ye that we the undersigned delegates, by virtue of the power and authority to us given for that purpose, do by these presents, in the name and in behalf of our respective constituents, fully and entirely ratify and confirm each and every of the said Articles of Confederation and perpetual Union, and all and singular the matters and things therein contained: And we do further solemnly plight and engage the faith of our respective constituents, that they shall abide by the determinations of the United States in Congress assembled, on all questions, which by the said Confederation are submitted to them. And that the Articles thereof shall be inviolably observed by the States we respectively represent, and that the Union shall be perpetual.

In witness whereof we have hereunto set our hands in Congress. Done at Philadelphia in the State of Pennsylvania the ninth day of July in the Year of our Lord One Thousand Seven Hundred and Seventy-Eight, and in the Third Year of the independence of America.

Agreed to by Congress 15 November 1777
In force after ratification by Maryland, 1 March 1781

The U.S. Constitution (1788)

Constitutions are governmental road maps. The U.S. Constitution, written in the summer of 1787, is no exception. Our original thirteen colonies had united in 1776 to fight for their independence against a common foe – King George of England. The colonists feared, rightfully so, that gaining independence from England might result in a Pyrrhic victory. Their ability to self govern was no foregone conclusion. As the weaknesses of the newfound government manifested themselves in the Articles of Confederation our United States was imperiled. As colonial delegates assembled in Philadelphia in the summer of 1787, the fragile survival of the United States was at stake. What they created was nothing short of "the greatest experiment" in political history. Overlapping federal and state powers; the separation of three branches of government; a president rather than a prime minister; a dual court system; and the supremacy of the Constitution were just a few of the innovations agreed to that hot summer. After much debate the U.S. Constitution was ratified. That same document continues to guide our government today. As noted political scientist William Galston has argued, constitutions like ours continue to serve a number of critical purposes. Constitutions are principled documents that authorize legitimacy. They "establish governing institutions and set forth their respective responsibilities and powers." Constitutions orient a polity toward "public purposes." And finally, constitutions are "higher than ordinary law." Remarkably, the political experiment first started back in Philadelphia in 1787 continues to serve us as it did then.

The U.S. Constitution

June 21, 1788

Preamble: We the people of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, 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 One – Legislative Branch
Article Two – Executive Branch
Article Three – Judicial Branch
Article Four – States' Relations
Article Five – Mode of Amendment
Article Six – Prior Debts, National Supremacy, Oaths of Office
Article Seven – Ratification

The Constitution of the United States of America

Important Clauses in the Constitution

	Where is it in the Constitution?	Describe its significance in your own words
Necessary & Proper (Elastic) Clause		
Commerce Clause		
Full Faith and Credit Clause		
Due Process Clause #1		
Due Process Clause #2		
Equal Protection Clause		
Establishment Clause		
Free Exercise Clause		

Brutus #1

Read and annotate the document. Then choose 5 of the most significant and impactful quotations from the text. List them below along with an explanation of what they mean in regular language.

Quote	Explanation / analysis

What are the main, central arguments of this document? What point is the author trying to make? What evidence does the author use to back up those arguments?	

How does this document relate to anything from our AP Government and Politics course?	

Brutus I (1787)

Partisan bickering is not new. At our founding the Federalists and the Anti-Federalists had two very different visions for the new American government. Federalists, scarred by the weaknesses under the Articles of Confederation, realized a stronger central government was necessary. The Anti-Federalists preferred smaller more localized governmental units. Debates took on many different forms. Both sides submitted a series of essays that were printed in newspapers across the country. One of the earliest essays, written by an Anti-Federalist, was signed Brutus. In ancient history Brutus was a Roman citizen who fought bravely against tyranny and despotism. This essay, Brutus I, was an Anti-Federalist essay written to alert citizens to the dangers manifest in the new proposed U.S. Constitution. The seemingly "uncontrollable power" of the new federal government was feared most. The new constitution was flawed. This essay in particular warned of the "subversion of liberty" that was to be expected if the new constitution was ratified. The debate over the new constitution was on.

Brutus I

October 18, 1787

To the citizens of the State of New York

When the public is called to investigate and decide upon a question in which not only the present members of the community are deeply interested, but upon which the happiness and misery of generations yet unborn is in great measure suspended, the benevolent mind cannot help feeling itself peculiarly interested in the result.

In this situation, I trust the feeble efforts of an individual, to lead the minds of the people to a wise and prudent determination, cannot fail of being acceptable to the candid and dispassionate part of the community. Encouraged by this consideration, I have been induced to offer my thoughts upon the present important crisis of our public affairs.

Perhaps this country never saw so critical a period in their political concerns. We have felt the feebleness of the ties by which these United-States are held together, and the want of sufficient energy in our present confederation, to manage, in some instances, our general concerns. Various expedients have been proposed to remedy these evils, but none have succeeded. At length a Convention of the states has been assembled, they have formed a constitution which will now, probably, be submitted to the people to ratify or reject, who are the fountain of all power, to whom alone it of right belongs to make or unmake constitutions, or forms of government, at their pleasure. The most important question that was ever proposed to your decision, or to the decision of any people under heaven, is before you, and you are to decide upon it by men of your own election, chosen specially for this purpose. If the constitution, offered to your acceptance, be a wise one, calculated to preserve the invaluable blessings of liberty, to secure the inestimable rights of mankind, and promote human happiness, then, if you accept it, you will lay a lasting foundation of happiness for millions yet unborn; generations to come will rise up and call you blessed. You may rejoice in the prospects of this vast extended continent becoming filled with freemen, who will assert the dignity of human nature. You may solace yourselves with the idea, that society, in this favoured land, will fast advance to the highest point of perfection; the human mind will expand in knowledge and virtue, and the golden age be, in some measure, realised. But if, on the other hand, this form of government contains principles that will lead to the subversion of liberty — if it tends to establish a despotism, or, what is worse, a tyrannic aristocracy; then, if you adopt it, this only remaining assylum for liberty will be shut up, and posterity will execrate your memory.

Momentous then is the question you have to determine, and you are called upon by every motive which should influence a noble and virtuous mind, to examine it well, and to make up a wise judgment. It is insisted, indeed, that this constitution must be received, be it ever so imperfect. If it has its defects, it is said, they can be best amended when they are experienced. But remember, when the people once part with power, they can seldom or never resume it again but by force. Many instances can be produced in which the people have voluntarily increased the powers of their rulers; but few, if any, in which rulers have willingly abridged their authority. This is a sufficient reason to induce you to be careful, in the first instance, how you deposit the powers of government.

With these few introductory remarks, I shall proceed to a consideration of this constitution:

The first question that presents itself on the subject is, whether a confederated government be the best for the

United States or not? Or in other words, whether the thirteen United States should be reduced to one great republic, governed by one legislature, and under the direction of one executive and judicial; or whether they should continue thirteen confederated republics, under the direction and controul of a supreme federal head for certain defined national purposes only?

This enquiry is important, because, although the government reported by the convention does not go to a perfect and entire consolidation, yet it approaches so near to it, that it must, if executed, certainly and infallibly terminate in it.

This government is to possess absolute and uncontroulable power, legislative, executive and judicial, with respect to every object to which it extends, for by the last clause of section 8th, article 1st, it is declared "that the 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 office thereof." And by the 6th article, it is declared "that this constitution, and the laws of the United States, which shall be made in pursuance thereof, and the 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 law of any state to the contrary notwithstanding." It appears from these articles that there is no need of any intervention of the state governments, between the Congress and the people, to execute any one power vested in the general government, and that the constitution and laws of every state are nullified and declared void, so far as they are or shall be inconsistent with this constitution, or the laws made in pursuance of it, or with treaties made under the authority of the United States. — The government then, so far as it extends, is a complete one, and not a confederation. It is as much one complete government as that of New-York or Massachusetts, has as absolute and perfect powers to make and execute all laws, to appoint officers, institute courts, declare offences, and annex penalties, with respect to every object to which it extends, as any other in the world. So far therefore as its powers reach, all ideas of confederation are given up and lost. It is true this government is limited to certain objects, or to speak more properly, some small degree of power is still left to the states, but a little attention to the powers vested in the general government, will convince every candid man, that if it is capable of being executed, all that is reserved for the individual states must very soon be annihilated, except so far as they are barely necessary to the organization of the general government. The powers of the general legislature extend to every case that is of the least importance — there is nothing valuable to human nature, nothing dear to freemen, but what is within its power. It has authority to make laws which will affect the lives, the liberty, and property of every man in the United States; nor can the constitution or laws of any state, in any way prevent or impede the full and complete execution of every power given. The legislative power is competent to lay taxes, duties, imposts, and excises; — there is no limitation to this power, unless it be said that the clause which directs the use to which those taxes, and duties shall be applied, may be said to be a limitation: but this is no restriction of the power at all, for by this clause they are to be applied to pay the debts and provide for the common defence and general welfare of the United States; but the legislature have authority to contract debts at their discretion; they are the sole judges of what is necessary to provide for the common defence, and they only are to determine what is for the general welfare; this power therefore is neither more nor less, than a power to lay and collect taxes, imposts, and excises, at their pleasure; not only [is] the power to lay taxes unlimited, as to the amount they may require, but it is perfect and absolute to raise them in any mode they please. No state legislature, or any power in the state governments, have any more to do in carrying this into effect, than the authority of one state has to do with that of another. In the business therefore of laying and collecting taxes, the idea of confederation is totally lost, and that of one entire republic is embraced. It is proper here to remark, that the authority to lay and collect taxes is the most important of any power that can be granted; it connects with it almost all other powers, or at least will in process of time draw all other after it; it is the great mean of protection, security, and defence, in a good government, and the great engine of oppression and tyranny in a bad one. This cannot fail of being the case, if we consider the contracted limits which are set by this constitution, to the late [state?] governments, on this article of raising money. No state can emit paper money — lay any duties, or imposts, on imports, or exports, but by consent of the Congress; and then the net produce shall be for the benefit of the United States: the only mean therefore left, for any state to support its government and discharge its debts, is by direct taxation; and the United States have also power to lay and collect taxes, in any way they please. Every one who has thought on the subject, must be convinced that but small sums of money can be collected in any country, by direct taxe[s], when the foederal government begins to exercise the right of taxation in all its parts, the legislatures of the several states will find it impossible to raise monies to support their governments. Without money they cannot be supported, and they must dwindle away, and, as before observed, their powers absorbed in that of the general government.

It might be here shewn, that the power in the federal legislative, to raise and support armies at pleasure, as well in peace as in war, and their controul over the militia, tend, not only to a consolidation of the government, but the destruction of liberty. — I shall not, however, dwell upon these, as a few observations upon the judicial power of this government, in addition to the preceding, will fully evince the truth of the position.

The judicial power of the United States is to be vested in a supreme court, and in such inferior courts as Congress may from time to time ordain and establish. The powers of these courts are very extensive; their jurisdiction comprehends all civil causes, except such as arise between citizens of the same state; and it extends to all cases in law and equity

arising under the constitution. One inferior court must be established, I presume, in each state, at least, with the necessary executive officers appendant thereto. It is easy to see, that in the common course of things, these courts will eclipse the dignity, and take away from the respectability, of the state courts. These courts will be, in themselves, totally independent of the states, deriving their authority from the United States, and receiving from them fixed salaries; and in the course of human events it is to be expected, that they will swallow up all the powers of the courts in the respective states.

How far the clause in the 8th section of the 1st article may operate to do away all idea of confederated states, and to effect an entire consolidation of the whole into one general government, it is impossible to say. The powers given by this article are very general and comprehensive, and it may receive a construction to justify the passing almost any law. A power to make all laws, which shall be necessary and proper, for carrying into execution, all powers vested by the constitution in the government of the United States, or any department or officer thereof, is a power very comprehensive and definite [indefinite?], and may, for ought I know, be exercised in a such manner as entirely to abolish the state legislatures. Suppose the legislature of a state should pass a law to raise money to support their government and pay the state debt, may the Congress repeal this law, because it may prevent the collection of a tax which they may think proper and necessary to lay, to provide for the general welfare of the United States? For all laws made, in pursuance of this constitution, are the supreme lay of the land, and the judges in every state shall be bound thereby, any thing in the constitution or laws of the different states to the contrary notwithstanding. — By such a law, the government of a particular state might be overturned at one stroke, and thereby be deprived of every means of its support.

It is not meant, by stating this case, to insinuate that the constitution would warrant a law of this kind; or unnecessarily to alarm the fears of the people, by suggesting, that the federal legislature would be more likely to pass the limits assigned them by the constitution, than that of an individual state, further than they are less responsible to the people. But what is meant is, that the legislature of the United States are vested with the great and uncontroulable powers, of laying and collecting taxes, duties, imposts, and excises; of regulating trade, raising and supporting armies, organizing, arming, and disciplining the militia, instituting courts, and other general powers. And are by this clause invested with the power of making all laws, proper and necessary, for carrying all these into execution; and they may so exercise this power as entirely to annihilate all the state governments, and reduce this country to one single government. And if they may do it, it is pretty certain they will; for it will be found that the power retained by individual states, small as it is, will be a clog upon the wheels of the government of the United States; the latter therefore will be naturally inclined to remove it out of the way. Besides, it is a truth confirmed by the unerring experience of ages, that every man, and every body of men, invested with power, are ever disposed to increase it, and to acquire a superiority over every thing that stands in their way. This disposition, which is implanted in human nature, will operate in the federal legislature to lessen and ultimately to subvert the state authority, and having such advantages, will most certainly succeed, if the federal government succeeds at all. It must be very evident then, that what this constitution wants of being a complete consolidation of the several parts of the union into one complete government, possessed of perfect legislative, judicial, and executive powers, to all intents and purposes, it will necessarily acquire in its exercise and operation.

Let us now proceed to enquire, as I at first proposed, whether it be best the thirteen United States should be reduced to one great republic, or not? It is here taken for granted, that all agree in this, that whatever government we adopt, it ought to be a free one; that it should be so framed as to secure the liberty of the citizens of America, and such an one as to admit of a full, fair, and equal representation of the people. The question then will be, whether a government thus constituted, and founded on such principles, is practicable, and can be exercised over the whole United States, reduced into one state?

If respect is to be paid to the opinion of the greatest and wisest men who have ever thought or wrote on the science of government, we shall be constrained to conclude, that a free republic cannot succeed over a country of such immense extent, containing such a number of inhabitants, and these encreasing in such rapid progression as that of the whole United States. Among the many illustrious authorities which might be produced to this point, I shall content myself with quoting only two. The one is the baron de Montesquieu, spirit of laws, chap. xvi. vol. I [book VIII]. "It is natural to a republic to have only a small territory, otherwise it cannot long subsist. In a large republic there are men of large fortunes, and consequently of less moderation; there are trusts too great to be placed in any single subject; he has interest of his own; he soon begins to think that he may be happy, great and glorious, by oppressing his fellow citizens; and that he may raise himself to grandeur on the ruins of his country. In a large republic, the public good is sacrificed to a thousand views; it is subordinate to exceptions, and depends on accidents. In a small one, the interest of the public is easier perceived, better understood, and more within the reach of every citizen; abuses are of less extent, and of course are less protected." Of the same opinion is the marquis Beccarari.

History furnishes no example of a free republic, any thing like the extent of the United States. The Grecian republics were of small extent; so also was that of the Romans. Both of these, it is true, in process of time, extended their conquests over large territories of country; and the consequence was, that their governments were changed from that of free governments to those of the most tyrannical that ever existed in the world.

Not only the opinion of the greatest men, and the experience of mankind, are against the idea of an extensive republic, but a variety of reasons may be drawn from the reason and nature of things, against it. In every government, the will of the sovereign is the law. In despotic governments, the supreme authority being lodged in one, his will is law, and can be as easily expressed to a large extensive territory as to a small one. In a pure democracy the people are the sovereign, and their will is declared by themselves; for this purpose they must all come together to deliberate, and decide. This kind of government cannot be exercised, therefore, over a country of any considerable extent; it must be confined to a single city, or at least limited to such bounds as that the people can conveniently assemble, be able to debate, understand the subject submitted to them, and declare their opinion concerning it.

In a free republic, although all laws are derived from the consent of the people, yet the people do not declare their consent by themselves in person, but by representatives, chosen by them, who are supposed to know the minds of their constituents, and to be possessed of integrity to declare this mind.

In every free government, the people must give their assent to the laws by which they are governed. This is the true criterion between a free government and an arbitrary one. The former are ruled by the will of the whole, expressed in any manner they may agree upon; the latter by the will of one, or a few. If the people are to give their assent to the laws, by persons chosen and appointed by them, the manner of the choice and the number chosen, must be such, as to possess, be disposed, and consequently qualified to declare the sentiments of the people; for if they do not know, or are not disposed to speak the sentiments of the people, the people do not govern, but the sovereignty is in a few. Now, in a large extended country, it is impossible to have a representation, possessing the sentiments, and of integrity, to declare the minds of the people, without having it so numerous and unwieldly, as to be subject in great measure to the inconveniency of a democratic government.

The territory of the United States is of vast extent; it now contains near three millions of souls, and is capable of containing much more than ten times that number. Is it practicable for a country, so large and so numerous as they will soon become, to elect a representation, that will speak their sentiments, without their becoming so numerous as to be incapable of transacting public business? It certainly is not.

In a republic, the manners, sentiments, and interests of the people should be similar. If this be not the case, there will be a constant clashing of opinions; and the representatives of one part will be continually striving against those of the other. This will retard the operations of government, and prevent such conclusions as will promote the public good. If we apply this remark to the condition of the United States, we shall be convinced that it forbids that we should be one government. The United States includes a variety of climates. The productions of the different parts of the union are very variant, and their interests, of consequence, diverse. Their manners and habits differ as much as their climates and productions; and their sentiments are by no means coincident. The laws and customs of the several states are, in many respects, very diverse, and in some opposite; each would be in favor of its own interests and customs, and, of consequence, a legislature, formed of representatives from the respective parts, would not only be too numerous to act with any care or decision, but would be composed of such heterogenous and discordant principles, as would constantly be contending with each other.

The laws cannot be executed in a republic, of an extent equal to that of the United States, with promptitude.

The magistrates in every government must be supported in the execution of the laws, either by an armed force, maintained at the public expence for that purpose; or by the people turning out to aid the magistrate upon his command, in case of resistance.

In despotic governments, as well as in all the monarchies of Europe, standing armies are kept up to execute the commands of the prince or the magistrate, and are employed for this purpose when occasion requires: But they have always proved the destruction of liberty, and [are] abhorrent to the spirit of a free republic. In England, where they depend upon the parliament for their annual support, they have always been complained of as oppressive and unconstitutional, and are seldom employed in executing of the laws; never except on extraordinary occasions, and then under the direction of a civil magistrate.

A free republic will never keep a standing army to execute its laws. It must depend upon the support of its citizens. But when a government is to receive its support from the aid of the citizens, it must be so constructed as to have the confidence, respect, and affection of the people." Men who, upon the call of the magistrate, offer themselves to execute the laws, are influenced to do it either by affection to the government, or from fear; where a standing army is at hand to punish offenders, every man is actuated by the latter principle, and therefore, when the magistrate calls, will obey: but, where this is not the case, the government must rest for its support upon the confidence and respect which the people have for their government and laws. The body of the people being attached, the government will always be sufficient to support and execute its laws, and to operate upon the fears of any faction which may be opposed to it, not only to prevent an opposition to the execution of the laws themselves, but also to compel the most of them to aid the magistrate; but the people will not be likely to have such confidence in their rulers, in a republic so extensive as the United States, as necessary for these purposes. The confidence which the people have in their rulers, in a free republic, arises from their knowing them, from their being responsible to them for their conduct, and from the power they have of displacing them when they misbehave: but in a republic of the extent of this continent, the people in general

would be acquainted with very few of their rulers: the people at large would know little of their proceedings, and it would be extremely difficult to change them. The people in Georgia and New-Hampshire would not know one another's mind, and therefore could not act in concert to enable them to effect a general change of representatives. The different parts of so extensive a country could not possibly be made acquainted with the conduct of their representatives, nor be informed of the reasons upon which measures were founded. The consequence will be, they will have no confidence in their legislature, suspect them of ambitious views, be jealous of every measure they adopt, and will not support the laws they pass. Hence the government will be nerveless and inefficient, and no way will be left to render it otherwise, but by establishing an armed force to execute the laws at the point of the bayonet — a government of all others the most to be dreaded.

In a republic of such vast extent as the United-States, the legislature cannot attend to the various concerns and wants of its different parts. It cannot be sufficiently numerous to be acquainted with the local condition and wants of the different districts, and if it could, it is impossible it should have sufficient time to attend to and provide for all the variety of cases of this nature, that would be continually arising.

In so extensive a republic, the great officers of government would soon become above the controul of the people, and abuse their power to the purpose of aggrandizing themselves, and oppressing them. The trust committed to the executive offices, in a country of the extent of the United-States, must be various and of magnitude. The command of all the troops and navy of the republic, the appointment of officers, the power of pardoning offences, the collecting of all the public revenues, and the power of expending them, with a number of other powers, must be lodged and exercised in every state, in the hands of a few. When these are attended with great honor and emolument, as they always will be in large states, so as greatly to interest men to pursue them, and to be proper objects for ambitious and designing men, such men will be ever restless in their pursuit after them. They will use the power, when they have acquired it, to the purposes of gratifying their own interest and ambition, and it is scarcely possible, in a very large republic, to call them to account for their misconduct, or to prevent their abuse of power.

These are some of the reasons by which it appears, that a free republic cannot long subsist over a country of the great extent of these states. If then this new constitution is calculated to consolidate the thirteen states into one, as it evidently is, it ought not to be adopted.

Though I am of opinion, that it is a sufficient objection to this government, to reject it, that it creates the whole union into one government, under the form of a republic, yet if this objection was obviated, there are exceptions to it, which are so material and fundamental, that they ought to determine every man, who is a friend to the liberty and happiness of mankind, not to adopt it. I beg the candid and dispassionate attention of my countrymen while I state these objections — they are such as have obtruded themselves upon my mind upon a careful attention to the matter, and such as I sincerely believe are well founded. There are many objections, of small moment, of which I shall take no notice — perfection is not to be expected in any thing that is the production of man — and if I did not in my conscience believe that this scheme was defective in the fundamental principles — in the foundation upon which a free and equal government must rest — I would hold my peace.

Brutus.

Federalist 1 (1787)

(not a required document)

The Federalist Papers were originally newspaper essays written by Alexander Hamilton, James Madison, and John Jay under the pseudonym Publius, whose immediate goal was to persuade the people of New York to ratify the Constitution. Hamilton opened Federalist 1 by raising the momentousness of the choice that lay before New Yorkers and the American people as a whole. If Americans failed to deliberate and choose well, they would prove forever that humans are incapable of founding just and successful governments based on "reflection and choice" — that in fact, governments necessarily come into existence by "accident and force". Publius also provides an outline of the topics to be covered in this series of newspaper articles as well as a not too subtle warning to be aware that the Antifederalists are really in favor of disunion.

Federalist 1

October 27, 1787

After full experience of the insufficiency of the subsisting federal government, you are invited to deliberate on a New Constitution for the United States of America. The subject speaks its own importance; comprehending in its consequences, nothing less than the existence of the UNION, the safety and welfare of the parts of which it is composed, the fate of an empire, in many respects, the most interesting in the world. It has been frequently remarked, that it seems to have been reserved to the people of this country to decide, by their conduct and example, the important question, whether societies of men are really capable or not, of establishing good government from reflection and choice, or whether they are forever destined to depend, for their political constitutions, on accident and force. If there be any truth in the remark, the crisis at which we are arrived may, with propriety, be regarded as the period when that decision is to be made; and a wrong election of the part we shall act may, in this view, deserve to be considered as the general misfortune of mankind.

This idea, by adding the inducements of philanthropy to those of patriotism, will heighten the solicitude which all considerate and good men must feel for the event. Happy will it be if our choice should be directed by a judicious estimate of our true interests, uninfluenced by considerations foreign to the public good. But this is more ardently to be wished for, than seriously to be expected. The plan offered to our deliberations, affects too many particular interests, innovates upon too many local institutions, not to involve in its discussion a variety of objects extraneous to its merits, and of views, passions and prejudices little favorable to the discovery of truth.

Among the most formidable of the obstacles which the new constitution will have to encounter may readily be distinguished the obvious interest of a certain class of men in every state to resist all changes which may hazard a diminution of the power, emolument and consequence of the offices they hold under the state establishments . . . and the perverted ambition of another class of men, who will either hope to aggrandize themselves by the confusions of their country, or will flatter themselves with fairer prospects of elevation from the subdivision of the empire into several partial confederacies, than from its union under one government.

It is not, however, my design to dwell upon observations of this nature. I am aware that it would be disingenuous to resolve indiscriminately the opposition of any set of men into interested or ambitious views, merely because their situations might subject them to suspicion. Candor will oblige us to admit, that even such men may be actuated by upright intentions; and it cannot be doubted, that much of the opposition, which has already shown itself, or that may hereafter make its appearance, will spring from sources blameless at least, if not respectable — the honest errors of minds led astray by preconceived jealousies and fears. So numerous indeed and so powerful are the causes which serve to give a false bias to the judgment, that we, upon many occasions, see wise and good men on the wrong as well as on the right side of questions, of the first magnitude to society. This circumstance, if duly attended to, would always furnish a lesson of moderation to those, who are engaged in any controversy, however well persuaded of being in the right. And a further reason for caution, in this respect, might be drawn from the reflection, that we are not always sure, that those who advocate the truth are activated by purer principles than their antagonists. Ambition, avarice, personal animosity, party opposition, and many other motives, not more laudable than these, are apt to operate as well upon those who support, as those who oppose, the right side of a question. Were there not even these inducements to moderation, nothing could be more ill judged than that intolerant spirit, which has, at all times,

characterized political parties. For, in politics as in religion, it is equally absurd to aim at making proselytes by fire and sword. Heresies in either can rarely be cured by persecution.

And yet, just as these sentiments must appear to candid men, we have already sufficient indications, that it will happen in this as, in all former cases of great national discussion. A torrent of angry and malignant passions will be let loose. To judge from the conduct of the opposite parties, we shall be led to conclude, that they will mutually hope to evince the justness of their opinions, and to increase the number of their converts, by the loudness of their declamations, and by the bitterness of their invectives. An enlightened zeal for the energy and efficiency of government, will be stigmatized as the offspring of a temper fond of power and hostile to the principles of liberty. An over scrupulous jealousy of danger to the rights of the people, which is more commonly the fault of the head than of the heart, will be represented as mere pretense and artifice, the stale bait for popularity at the expense of public good. It will be forgotten, on the one hand, that jealousy is the usual concomitant of violent love, and that the noble enthusiasm of liberty is too apt to be infected with a spirit of narrow and illiberal distrust. On the other hand, it will be equally forgotten, that the vigor of government is essential to the security of liberty; that, in the contemplation of a sound and well informed judgment, their interests can never be separated; and that a dangerous ambition more often lurks behind the specious mask of zeal for the rights of the people, than under the forbidding appearances of zeal for the firmness and efficiency of government. History will teach us, that the former has been found a much more certain road to the introduction of despotism, than the latter, and that of those men who have overturned the liberties of republics, the greatest number have begun their career, by paying an obsequious court to the people; commencing demagogues, and ending tyrants.

In the course of the preceding observations, it has been my aim, my fellow-citizens, to put you upon your guard against all attempts, from whatever quarter, to influence your decision in a matter of the utmost moment to your welfare, by any impressions, other than those which may result from the evidence of truth. You will, no doubt, at the same time, have collected from the general scope of them, that they proceed from a source not unfriendly to the new constitution. Yes, my countrymen, I own to you, that, after having given it an attentive consideration, I am clearly of opinion it is your interest to adopt it. I am convinced, that this is the safest course for your liberty, your dignity, and your happiness. I affect not reserves,[1] which I do not feel. I will not amuse you with an appearance of deliberation, when I have decided. I frankly acknowledge to you my convictions, and I will freely lay before you the reasons on which they are founded. The consciousness of good intentions disdains ambiguity. I shall not however multiply professions on this head. My motives must remain in the depository of my own breast: my arguments will be open to all and may be judged of by all. They shall at least be offered in a spirit, which will not disgrace the cause of truth.

I propose, in a series of papers, to discuss the following interesting particulars . . . The utility of the UNION to your political prosperity . . . The insufficiency of the present confederation to preserve that Union . . . The necessity of a government at least equally energetic with the one proposed, to the attainment of this object . . . The conformity of the proposed constitution to the true principles of republican government . . . Its analogy to your own state constitution . . . and lastly, The additional security, which its adoption will afford to the preservation of that species of government, to liberty and to property.

In the progress of this discussion, I shall endeavor to give a satisfactory answer to all the objections which shall have made their appearance, that may seem to have any claim to attention.

It may perhaps be thought superfluous to offer arguments to prove the utility of the UNION, a point, no doubt, deeply engraved on the hearts of the great body of the people in every state, and one which, it may be imagined, has no adversaries. But the fact is, that we already hear it whispered in the private circles of those who oppose the new constitution, that the Thirteen States are of too great extent for any general system, and that we must of necessity resort to separate confederacies of distinct portions of the whole. This doctrine will, in all probability, be gradually propagated, till it has votaries enough to countenance its open avowal. For nothing can be more evident, to those who are able to take an enlarged view of the subject, than the alternative of an adoption of the constitution, or a dismemberment of the Union. It may, therefore, be essential to examine particularly the advantages of that Union, the certain evils, and so the probable dangers, to which every state will be exposed from its dissolution. This shall accordingly be done.

Federalist #10 – James Madison

Read and annotate the document. Then choose 5 of the most significant and impactful quotations from the text. List them below along with an explanation of what they mean in regular language.

Quote	Explanation / analysis

What are the main, central arguments of this document? What point is the author trying to make? What evidence does the author use to back up those arguments?	

How does this document relate to anything from our AP Government and Politics course?	

Federalist 10 (1787)

Partisan bickering is not new. At our founding the Federalists and the Anti-Federalists had two very different visions for the new American government. Federalists, scarred by the weaknesses under the Articles of Confederation, realized a stronger central government was necessary. The Anti-Federalists preferred smaller more localized governmental units. Debates took on many different forms. Both sides submitted a series of essays that were printed in newspapers across the country. The Federalist Papers were a series of 85 essays written to persuade the state legislatures to ratify our new constitution. Federalist 10 was one of the most important. It addressed two vital questions. First it tried to argue the merits of a republic over a direct democracy. Second its purpose was to convince the states that a large republic could best guard against the dangers of factions than a small republic. Large republics, in essence, could dilute the potency of factions that hoped to kidnap public policy for its own purposes. History could provide little support for both arguments. This is why early on the American government was called a grand experiment. A large union best served as a safeguard against domestic faction and insurrection. History serves as both judge and jury of Madison's claims.

Federalist 10

November 22, 1787

To the people of the State of New York

AMONG the numerous advantages promised by a well-constructed Union, none deserves to be more accurately developed than its tendency to break and control the violence of faction. The friend of popular governments never finds himself so much alarmed for their character and fate, as when he contemplates their propensity to this dangerous vice. He will not fail, therefore, to set a due value on any plan which, without violating the principles to which he is attached, provides a proper cure for it. The instability, injustice, and confusion introduced into the public councils, have, in truth, been the mortal diseases under which popular governments have everywhere perished; as they continue to be the favorite and fruitful topics from which the adversaries to liberty derive their most specious declamations. The valuable improvements made by the American constitutions on the popular models, both ancient and modern, cannot certainly be too much admired; but it would be an unwarrantable partiality, to contend that they have as effectually obviated the danger on this side, as was wished and expected. Complaints are everywhere heard from our most considerate and virtuous citizens, equally the friends of public and private faith, and of public and personal liberty, that our governments are too unstable, that the public good is disregarded in the conflicts of rival parties, and that measures are too often decided, not according to the rules of justice and the rights of the minor party, but by the superior force of an interested and overbearing majority. However anxiously we may wish that these complaints had no foundation, the evidence, of known facts will not permit us to deny that they are in some degree true. It will be found, indeed, on a candid review of our situation, that some of the distresses under which we labor have been erroneously charged on the operation of our governments; but it will be found, at the same time, that other causes will not alone account for many of our heaviest misfortunes; and, particularly, for that prevailing and increasing distrust of public engagements, and alarm for private rights, which are echoed from one end of the continent to the other. These must be chiefly, if not wholly, effects of the unsteadiness and injustice with which a factious spirit has tainted our public administrations.

By a faction, I understand a number of citizens, whether amounting to a majority or a minority of

he whole, who are united and actuated by some common impulse of passion, or of interest, adversed to the rights of other citizens, or to the permanent and aggregate interests of the community.

There are two methods of curing the mischiefs of faction: the one, by removing its causes; the other, by controlling its effects.

There are again two methods of removing the causes of faction: the one, by destroying the liberty which is essential to its existence; the other, by giving to every citizen the same opinions, the same passions, and the same interests.

It could never be more truly said than of the first remedy, that it was worse than the disease. Liberty is to faction what air is to fire, an aliment without which it instantly expires. But it could not be less folly to abolish liberty, which is essential to political life, because it nourishes faction, than it would be to wish the annihilation of air, which is essential to animal life, because it imparts to fire its destructive agency.

The second expedient is as impracticable as the first would be unwise. As long as the reason of man continues fallible, and he is at liberty to exercise it, different opinions will be formed. As long as the connection subsists between his reason and his self-love, his opinions and his passions will have a reciprocal influence on each other; and the former will be objects to which the latter will attach themselves. The diversity in the faculties of men, from which the rights of property originate, is not less an insuperable obstacle to a uniformity of interests. The protection of these faculties is the first object of government. From the protection of different and unequal faculties of acquiring property, the possession of different degrees and kinds of property immediately results; and from the influence of these on the sentiments and views of the respective proprietors, ensues a division of the society into different interests and parties. The latent causes of faction are thus sown in the nature of man; and we see them everywhere brought into different degrees of activity, according to the different circumstances of civil society. A zeal for different opinions concerning religion, concerning government, and many other points, as well of speculation as of practice; an attachment to different leaders ambitiously contending for pre-eminence and power; or to persons of other descriptions whose fortunes have been interesting to the human passions, have, in turn, divided mankind into parties, inflamed them with mutual animosity, and rendered them much more disposed to vex and oppress each other than to co-operate for their common good. So strong is this propensity of mankind to fall into mutual animosities, that where no substantial occasion presents itself, the most frivolous and fanciful distinctions have been sufficient to kindle their unfriendly passions and excite their most violent conflicts. But the most common and durable source of factions has been the various and unequal distribution of property. Those who hold and those who are without property have ever formed distinct interests in society. Those who are creditors, and those who are debtors, fall under a like discrimination. A landed interest, a manufacturing interest, a mercantile interest, a moneyed interest, with many lesser interests, grow up of necessity in civilized nations, and divide them into different classes, actuated by different sentiments and views. The regulation of these various and interfering interests forms the principal task of modern legislation, and involves the spirit of party and faction in the necessary and ordinary operations of the government.

No man is allowed to be a judge in his own cause, because his interest would certainly bias his judgment, and, not improbably, corrupt his integrity. With equal, nay with greater reason, a body of men are unfit to be both judges and parties at the same time; yet what are many of the most important acts of legislation, but so many judicial determinations, not indeed concerning the rights of single persons, but concerning the rights of large bodies of citizens? And what are the different classes of legislators but advocates and parties to the causes which they determine? Is a law proposed concerning private debts? It is a question to which the creditors are parties on one side and the debtors on the other. Justice ought to hold the balance between them. Yet the parties are, and must be, themselves the judges; and the most numerous party, or, in other words, the most

powerful faction must be expected to prevail. Shall domestic manufactures be encouraged, and in what degree, by restrictions on foreign manufactures? are questions which would be differently decided by the landed and the manufacturing classes, and probably by neither with a sole regard to justice and the public good. The apportionment of taxes on the various descriptions of property is an act which seems to require the most exact impartiality; yet there is, perhaps, no legislative act in which greater opportunity and temptation are given to a predominant party to trample on the rules of justice. Every shilling with which they overburden the inferior number, is a shilling saved to their own pockets.

It is in vain to say that enlightened statesmen will be able to adjust these clashing interests, and render them all subservient to the public good. Enlightened statesmen will not always be at the helm. Nor, in many cases, can such an adjustment be made at all without taking into view indirect and remote considerations, which will rarely prevail over the immediate interest which one party may find in disregarding the rights of another or the good of the whole. The inference to which we are brought is, that the CAUSES of faction cannot be removed, and that relief is only to be sought in the means of controlling its EFFECTS.

If a faction consists of less than a majority, relief is supplied by the republican principle, which enables the majority to defeat its sinister views by regular vote. It may clog the administration, it may convulse the society; but it will be unable to execute and mask its violence under the forms of the Constitution. When a majority is included in a faction, the form of popular government, on the other hand, enables it to sacrifice to its ruling passion or interest both the public good and the rights of other citizens. To secure the public good and private rights against the danger of such a faction, and at the same time to preserve the spirit and the form of popular government, is then the great object to which our inquiries are directed. Let me add that it is the great desideratum by which this form of government can be rescued from the opprobrium under which it has so long labored, and be recommended to the esteem and adoption of mankind.

By what means is this object attainable? Evidently by one of two only. Either the existence of the same passion or interest in a majority at the same time must be prevented, or the majority, having such coexistent passion or interest, must be rendered, by their number and local situation, unable to concert and carry into effect schemes of oppression. If the impulse and the opportunity be suffered to coincide, we well know that neither moral nor religious motives can be relied on as an adequate control. They are not found to be such on the injustice and violence of individuals, and lose their efficacy in proportion to the number combined together, that is, in proportion as their efficacy becomes needful.

From this view of the subject it may be concluded that a pure democracy, by which I mean a society consisting of a small number of citizens, who assemble and administer the government in person, can admit of no cure for the mischiefs of faction. A common passion or interest will, in almost every case, be felt by a majority of the whole; a communication and concert result from the form of government itself; and there is nothing to check the inducements to sacrifice the weaker party or an obnoxious individual. Hence it is that such democracies have ever been spectacles of turbulence and contention; have ever been found incompatible with personal security or the rights of property; and have in general been as short in their lives as they have been violent in their deaths. Theoretic politicians, who have patronized this species of government, have erroneously supposed that by reducing mankind to a perfect equality in their political rights, they would, at the same time, be perfectly equalized and assimilated in their possessions, their opinions, and their passions.

A republic, by which I mean a government in which the scheme of representation takes place, opens a different prospect, and promises the cure for which we are seeking. Let us examine the points in which it varies from pure democracy, and we shall comprehend both the nature of the cure and the efficacy which it must derive from the Union.

The two great points of difference between a democracy and a republic are: first, the delegation of the government, in the latter, to a small number of citizens elected by the rest; secondly, the greater number of citizens, and greater sphere of country, over which the latter may be extended.

The effect of the first difference is, on the one hand, to refine and enlarge the public views, by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country, and whose patriotism and love of justice will be least likely to sacrifice it to temporary or partial considerations. Under such a regulation, it may well happen that the public voice, pronounced by the representatives of the people, will be more consonant to the public good than if pronounced by the people themselves, convened for the purpose. On the other hand, the effect may be inverted. Men of factious tempers, of local prejudices, or of sinister designs, may, by intrigue, by corruption, or by other means, first obtain the suffrages, and then betray the interests, of the people. The question resulting is, whether small or extensive republics are more favorable to the election of proper guardians of the public weal; and it is clearly decided in favor of the latter by two obvious considerations:

In the first place, it is to be remarked that, however small the republic may be, the representatives must be raised to a certain number, in order to guard against the cabals of a few; and that, however large it may be, they must be limited to a certain number, in order to guard against the confusion of a multitude. Hence, the number of representatives in the two cases not being in proportion to that of the two constituents, and being proportionally greater in the small republic, it follows that, if the proportion of fit characters be not less in the large than in the small republic, the former will present a greater option, and consequently a greater probability of a fit choice.

In the next place, as each representative will be chosen by a greater number of citizens in the large than in the small republic, it will be more difficult for unworthy candidates to practice with success the vicious arts by which elections are too often carried; and the suffrages of the people being more free, will be more likely to centre in men who possess the most attractive merit and the most diffusive and established characters.

It must be confessed that in this, as in most other cases, there is a mean, on both sides of which inconveniences will be found to lie. By enlarging too much the number of electors, you render the representatives too little acquainted with all their local circumstances and lesser interests; as by reducing it too much, you render him unduly attached to these, and too little fit to comprehend and pursue great and national objects. The federal Constitution forms a happy combination in this respect; the great and aggregate interests being referred to the national, the local and particular to the State legislatures.

The other point of difference is, the greater number of citizens and extent of territory which may be brought within the compass of republican than of democratic government; and it is this circumstance principally which renders factious combinations less to be dreaded in the former than in the latter. The smaller the society, the fewer probably will be the distinct parties and interests composing it; the fewer the distinct parties and interests, the more frequently will a majority be found of the same party; and the smaller the number of individuals composing a majority, and the smaller the compass within which they are placed, the more easily will they concert and execute their plans of oppression. Extend the sphere, and you take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens; or if such a common motive exists, it will be more difficult for all who feel it to discover their own strength, and to act in unison with each other. Besides other impediments, it may be remarked that, where there is a consciousness of unjust or dishonorable purposes, communication is always checked by distrust in proportion to the number whose concurrence is necessary.

Hence, it clearly appears, that the same advantage which a republic has over a democracy, in

controlling the effects of faction, is enjoyed by a large over a small republic,--is enjoyed by the Union over the States composing it. Does the advantage consist in the substitution of representatives whose enlightened views and virtuous sentiments render them superior to local prejudices and schemes of injustice? It will not be denied that the representation of the Union will be most likely to possess these requisite endowments. Does it consist in the greater security afforded by a greater variety of parties, against the event of any one party being able to outnumber and oppress the rest? In an equal degree does the increased variety of parties comprised within the Union, increase this security. Does it, in fine, consist in the greater obstacles opposed to the concert and accomplishment of the secret wishes of an unjust and interested majority? Here, again, the extent of the Union gives it the most palpable advantage.

The influence of factious leaders may kindle a flame within their particular States, but will be unable to spread a general conflagration through the other States. A religious sect may degenerate into a political faction in a part of the Confederacy; but the variety of sects dispersed over the entire face of it must secure the national councils against any danger from that source. A rage for paper money, for an abolition of debts, for an equal division of property, or for any other improper or wicked project, will be less apt to pervade the whole body of the Union than a particular member of it; in the same proportion as such a malady is more likely to taint a particular county or district, than an entire State.

In the extent and proper structure of the Union, therefore, we behold a republican remedy for the diseases most incident to republican government. And according to the degree of pleasure and pride we feel in being republicans, ought to be our zeal in cherishing the spirit and supporting the character of Federalists.

Publius.

Federalist #51 – James Madison

Read and annotate the document. Then choose 5 of the most significant and impactful quotations from the text. List them below along with an explanation of what they mean in regular language.

Quote	Explanation / analysis

What are the main, central arguments of this document? What point is the author trying to make? What evidence does the author use to back up those arguments?	

How does this document relate to anything from our AP Government and Politics course?	

Federalist 51 (1788)

In Federalist #51 Madison again proves to be the guiding light ready and willing to answer the opposition with unyielding wit. Federalist #51 was not just for the state of New York as they contemplated ratifying the new constitution. It continues to speak to us today. This essay one of Madison's most quoted. "If men were angels," Madison wrote, "no government would be necessary." Our constitution was not only a charter for a new government but an accurate reflection of nature itself. Years later Lord Acton would famously record that "all power corrupts." Our constitution continues to be a living testament to that natural tendency. Power here, at every turn, is diluted, checked and balanced against it. Madison also addressed the possibility of an oppressive class of people. Government is not the only possible villain. Segments of the population can tyrannize too. One part of society must be able to guard itself from another. Pluralism is the remedy. The best means to prevent this tyranny of the majority is to foster an independent will and welcome diversity. A world of difference does not just divide us but it actually strengthens our compact. The Federalist Papers not only helped to convince a young nation that their new constitution was a legitimate answer to their problems but a living source that informs us today about ourselves.

Federalist 51

February 6, 1788

To the people of the State of New York

TO WHAT expedient, then, shall we finally resort, for maintaining in practice the necessary partition of power among the several departments, as laid down in the Constitution? The only answer that can be given is, that as all these exterior provisions are found to be inadequate, the defect must be supplied, by so contriving the interior structure of the government as that its several constituent parts may, by their mutual relations, be the means of keeping each other in their proper places. Without presuming to undertake a full development of this important idea, I will hazard a few general observations, which may perhaps place it in a clearer light, and enable us to form a more correct judgment of the principles and structure of the government planned by the convention.

In order to lay a due foundation for that separate and distinct exercise of the different powers of government, which to a certain extent is admitted on all hands to be essential to the preservation of liberty, it is evident that each department should have a will of its own; and consequently should be so constituted that the members of each should have as little agency as possible in the appointment of the members of the others. Were this principle rigorously adhered to, it would require that all the appointments for the supreme executive, legislative, and judiciary magistracies should be drawn from the same fountain of authority, the people, through channels having no communication whatever with one another. Perhaps such a plan of constructing the several departments would be less difficult in practice than it may in contemplation appear. Some difficulties, however, and some additional expense would attend the execution of it. Some deviations, therefore, from the principle must be admitted. In the constitution of the judiciary department in particular, it might be inexpedient to insist rigorously on the principle: first, because peculiar qualifications being essential in the members, the primary consideration ought to be to select that mode of choice which best secures these qualifications; secondly, because the permanent tenure by which the appointments are held in that department, must soon destroy all sense of dependence on the authority conferring them.

It is equally evident, that the members of each department should be as little dependent as possible on those of the others, for the

emoluments annexed to their offices. Were the executive magistrate, or the judges, not independent of the legislature in this particular, their independence in every other would be merely nominal.

But the great security against a gradual concentration of the several powers in the same department, consists in giving to those who administer each department the necessary constitutional means and personal motives to resist encroachments of the others. The provision for defense must in this, as in all other cases, be made commensurate to the danger of attack. Ambition must be made to counteract ambition. The interest of the man must be connected with the constitutional rights of the place. It may be a reflection on human nature, that such devices should be necessary to control the abuses of government. But what is government itself, but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions.
This policy of supplying, by opposite and rival interests, the defect of better motives, might be traced through the whole system of human affairs, private as well as public. We see it particularly displayed in all the subordinate distributions of power, where the constant aim is to divide and arrange the several offices in such a manner as that each may be a check on the other -- that the private interest of every individual may be a sentinel over the public rights. These inventions of prudence cannot be less requisite in the distribution of the supreme powers of the State.

But it is not possible to give to each department an equal power of self-defense. In republican government, the legislative authority necessarily predominates. The remedy for this inconveniency is to divide the legislature into different branches; and to render them, by different modes of election and different principles of action, as little connected with each other as the nature of their common functions and their common dependence on the society will admit. It may even be necessary to guard against dangerous encroachments by still further precautions. As the weight of the legislative authority requires that it should be thus divided, the weakness of the executive may require, on the other hand, that it should be fortified. An absolute negative on the legislature appears, at first view, to be the natural defense with which the executive magistrate should be armed.

But perhaps it would be neither altogether safe nor alone sufficient. On ordinary occasions it might not be exerted with the requisite firmness, and on extraordinary occasions it might be perfidiously abused. May not this defect of an absolute negative be supplied by some qualified connection between this weaker department and the weaker branch of the stronger department, by which the latter may be led to support the constitutional rights of the former, without being too much detached from the rights of its own department?

If the principles on which these observations are founded be just, as I persuade myself they are, and they be applied as a criterion to the several State constitutions, and to the federal Constitution it will be found that if the latter does not perfectly correspond with them, the former are infinitely less able to bear such a test. There are, moreover, two considerations particularly applicable to the federal system of America, which place that system in a very interesting point of view.

First. In a single republic, all the power surrendered by the people is submitted to the administration of a single government; and the usurpations are guarded against by a division of the government into distinct and separate departments. In the compound republic of America, the power surrendered by the people is first divided between two distinct governments, and then the portion allotted to each subdivided among distinct and separate departments. Hence a double security arises to the rights of the people. The different governments will control each other,

at the same time that each will be controlled by itself.

Second. It is of great importance in a republic not only to guard the society against the oppression of its rulers, but to guard one part of the society against the injustice of the other part. Different interests necessarily exist in different classes of citizens. If a majority be united by a common interest, the rights of the minority will be insecure.

There are but two methods of providing against this evil: the one by creating a will in the community independent of the majority -- that is, of the society itself; the other, by comprehending in the society so many separate descriptions of citizens as will render an unjust combination of a majority of the whole very improbable, if not impracticable. The first method prevails in all governments possessing an hereditary or self-appointed authority. This, at best, is but a precarious security; because a power independent of the society may as well espouse the unjust views of the major, as the rightful interests of the minor party, and may possibly be turned against both parties. The second method will be exemplified in the federal republic of the United States. Whilst all authority in it will be derived from and dependent on the society, the society itself will be broken into so many parts, interests, and classes of citizens, that the rights of individuals, or of the minority, will be in little danger from interested combinations of the majority. In a free government the security for civil rights must be the same as that for religious rights. It consists in the one case in the multiplicity of interests, and in the other in the multiplicity of sects. The degree of security in both cases will depend on the number of interests and sects; and this may be presumed to depend on the extent of country and number of people comprehended under the same government. This view of the subject must particularly recommend a proper federal system to all the sincere and considerate friends of republican government, since it shows that in exact proportion as the territory of the Union may be formed into more circumscribed Confederacies, or States oppressive combinations of a majority will be facilitated: the best security, under the republican forms, for the rights of every class of citizens, will be diminished: and consequently the stability and independence of some member of the government, the only other security, must be proportionately increased. Justice is the end of government. It is the end of civil society. It ever has been and ever will be pursued until it be obtained, or until liberty be lost in the pursuit. In a society under the forms of which the stronger faction can readily unite and oppress the weaker, anarchy may as truly be said to reign as in a state of nature, where the weaker individual is not secured against the violence of the stronger; and as, in the latter state, even the stronger individuals are prompted, by the uncertainty of their condition, to submit to a government which may protect the weak as well as themselves; so, in the former state, will the more powerful factions or parties be gradually induced, by a like motive, to wish for a government which will protect all parties, the weaker as well as the more powerful. It can be little doubted that if the State of Rhode Island was separated from the Confederacy and left to itself, the insecurity of rights under the popular form of government within such narrow limits would be displayed by such reiterated oppressions of factious majorities that some power altogether independent of the people would soon be called for by the voice of the very factions whose misrule had proved the necessity of it. In the extended republic of the United States, and among the great variety of interests, parties, and sects which it embraces, a coalition of a majority of the whole society could seldom take place on any other principles than those of justice and the general good; whilst there being thus less danger to a minor from the will of a major party, there must be less pretext, also, to provide for the security of the former, by introducing into the government a will not dependent on the latter, or, in other words, a will independent of the society itself. It is no less certain than it is important, notwithstanding the contrary opinions which have been entertained, that the larger the society, provided it lie within a practical sphere, the more duly capable it will be of self-government. And happily for the republican cause, the practicable sphere may be carried to a very great extent, by a judicious modification and mixture of the federal principle.

PUBLIUS

Federalist #70 – Alexander Hamilton

Read and annotate the document. Then choose 5 of the most significant and impactful quotations from the text. List them below along with an explanation of what they mean in regular language.

Quote	Explanation / analysis

What are the main, central arguments of this document? What point is the author trying to make? What evidence does the author use to back up those arguments?	

How does this document relate to anything from our AP Government and Politics course?	

Federalist 70 (1788)

In Federalist #70 Hamilton turns to address the disputes targeting the U.S. President. Isn't an energetic president inconsistent with a republic? Hamilton postulated that we all could agree that a poorly executed government is a poor government. Therefore creating a weak president would in fact be creating a weak government. An energetic president would be essential to the protection of the community against foreign attacks; for the steady administration of the laws; for the protection of property; for securing our liberty against the assaults of personal ambition. But what are the ingredients of an energetic president? In this essay Hamilton emphasizes the unity of the office. The U.S. presidency cannot be shared. To be truly energetic it must be held by one person. Later Hamilton would unpack the president's length of term, the adequate provisions of power and expected set of prerequisite skills. Under the Articles of Confederation there was no independent executive branch. The young government had little means to enforce its policies. The new constitution was written, in part, to address this weakness. In Federalist #70 Hamilton argues forthrightly that a king, perhaps, was too strong but a president just right.

Federalist 70

March 18, 1788

To the people of the State of New York

THERE is an idea, which is not without its advocates, that a vigorous Executive is inconsistent with the genius of republican government. The enlightened well wishers to this species of government must at least hope that the supposition is destitute of foundation; since they can never admit its truth, without at the same time admitting the condemnation of their own principles. Energy in the Executive is a leading character in the definition of good government. It is essential to the protection of the community against foreign attacks; it is not less essential to the steady administration of the laws; to the protection of property against those irregular and high-handed combinations which sometimes interrupt the ordinary course of justice; to the security of liberty against the enterprises and assaults of ambition, of faction, and of anarchy. Every man the least conversant in Roman story, knows how often that republic was obliged to take refuge in the absolute power of a single man, under the formidable title of Dictator, as well against the intrigues of ambitious individuals who aspired to the tyranny, and the seditions of whole classes of the community whose conduct threatened the existence of all government, as against the invasions of external enemies who menaced the conquest and destruction of Rome.

There can be no need, however, to multiply arguments or examples on this head. A feeble Executive implies a feeble execution of the government. A feeble execution is but another phrase for a bad execution; and a government ill executed, whatever it may be in theory, must be, in practice, a bad government.

Taking it for granted, therefore, that all men of sense will agree in the necessity of an energetic Executive, it will only remain to inquire, what are the ingredients which constitute this energy? How far can they be combined with those other ingredients which constitute safety in the republican sense? And how far does this combination characterize the plan which has been reported by the convention?

The ingredients which constitute energy in the Executive are, first, unity; secondly, duration; thirdly, an adequate provision for its support; fourthly, competent powers.

The ingredients which constitute safety in the republican sense are, first, a due dependence on the people, secondly, a due responsibility.

Those politicians and statesmen who have been the most celebrated for the soundness of their principles and for the justice of their views, have declared in favor of a single Executive and a numerous legislature. They have with great propriety, considered energy as the most necessary qualification of the former, and have regarded this as most applicable to power in a single hand, while they have, with equal propriety, considered the latter as best adapted to deliberation and wisdom, and best calculated to conciliate the confidence of the people and to secure their privileges and interests.

That unity is conducive to energy will not be disputed. Decision, activity, secrecy, and dispatch will generally characterize the proceedings of one man in a much more eminent degree than the proceedings of any greater number; and in proportion as the number is increased, these qualities will be diminished.

This unity may be destroyed in two ways: either by vesting the power in two or more magistrates of equal dignity and authority; or by vesting it ostensibly in one man, subject, in whole or in part, to the control and co-operation of others, in the capacity of counselors to him. Of the first, the two Consuls of Rome may serve as an example; of the last, we shall find examples in the constitutions of several of the States. New York and New Jersey, if I recollect right, are the only States which have entrusted the executive authority wholly to single men.1 Both these methods of destroying the unity of the Executive have their partisans; but the votaries of an executive council are the most numerous. They are both liable, if not to equal, to similar objections, and may in most lights be examined in conjunction.

The experience of other nations will afford little instruction on this head. As far, however, as it teaches any thing, it teaches us not to be enamored of plurality in the Executive. We have seen that the Achaeans, on an experiment of two Praetors, were induced to abolish one. The Roman history records many instances of mischiefs to the republic from the dissensions between the Consuls, and between the military Tribunes, who were at times substituted for the Consuls. But it gives us no specimens of any peculiar advantages derived to the state from the circumstance of the plurality of those magistrates. That the dissensions between them were not more frequent or more fatal, is a matter of astonishment, until we advert to the singular position in which the republic was almost continually placed, and to the prudent policy pointed out by the circumstances of the state, and pursued by the Consuls, of making a division of the government between them. The patricians engaged in a perpetual struggle with the plebeians for the preservation of their ancient authorities and dignities; the Consuls, who were generally chosen out of the former body, were commonly united by the personal interest they had in the defense of the privileges of their order. In addition to this motive of union, after the arms of the republic had considerably expanded the bounds of its empire, it became an established custom with the Consuls to divide the administration between themselves by lot one of them remaining at Rome to govern the city and its environs, the other taking the command in the more distant provinces. This expedient must, no doubt, have had great influence in preventing those collisions and rival ships which might otherwise have embroiled the peace of the republic.

But quitting the dim light of historical research, attaching ourselves purely to the dictates of reason and good se se, we shall discover much greater cause to reject than to approve the idea of plurality in the Executive, under any modification whatever.

Wherever two or more persons are engaged in any common enterprise or pursuit, there is always danger of difference of opinion. If it be a public trust or office, in which they are clothed with equal dignity and authority, there is peculiar danger of personal emulation and even animosity. From either, and especially from all these causes, the most bitter dissensions are apt to spring. Whenever these happen, they lessen the respectability, weaken the authority, and distract the plans and operation of those whom they divide. If they should unfortunately assail the supreme

executive magistracy of a country, consisting of a plurality of persons, they might impede or frustrate the most important measures of the government, in the most critical emergencies of the state. And what is still worse, they might split the community into the most violent and irreconcilable factions, adhering differently to the different individuals who composed the magistracy.

Men often oppose a thing, merely because they have had no agency in planning it, or because it may have been planned by those whom they dislike. But if they have been consulted, and have happened to disapprove, opposition then becomes, in their estimation, an indispensable duty of self-love. They seem to think themselves bound in honor, and by all the motives of personal infallibility, to defeat the success of what has been resolved upon contrary to their sentiments. Men of upright, benevolent tempers have too many opportunities of remarking, with horror, to what desperate lengths this disposition is sometimes carried, and how often the great interests of society are sacrificed to the vanity, to the conceit, and to the obstinacy of individuals, who have credit enough to make their passions and their caprices interesting to mankind. Perhaps the question now before the public may, in its consequences, afford melancholy proofs of the effects of this despicable frailty, or rather detestable vice, in the human character.

Upon the principles of a free government, inconveniences from the source just mentioned must necessarily be submitted to in the formation of the legislature; but it is unnecessary, and therefore unwise, to introduce them into the constitution of the Executive. It is here too that they may be most pernicious. In the legislature, promptitude of decision is oftener an evil than a benefit. The differences of opinion, and the jarrings of parties in that department of the government, though they may sometimes obstruct salutary plans, yet often promote deliberation and circumspection, and serve to check excesses in the majority. When a resolution too is once taken, the opposition must be at an end. That resolution is a law, and resistance to it punishable. But no favorable circumstances palliate or atone for the disadvantages of dissension in the executive department. Here, they are pure and unmixed. There is no point at which they cease to operate. They serve to embarrass and weaken the execution of the plan or measure to which they relate, from the first step to the final conclusion of it. They constantly counteract those qualities in the Executive which are the most necessary ingredients in its composition, vigor and expedition, and this without any counterbalancing good. In the conduct of war, in which the energy of the Executive is the bulwark of the national security, every thing would be to be apprehended from its plurality.

It must be confessed that these observations apply with principal weight to the first case supposed that is, to a plurality of magistrates of equal dignity and authority a scheme, the advocates for which are not likely to form a numerous sect; but they apply, though not with equal, yet with considerable weight to the project of a council, whose concurrence is made constitutionally necessary to the operations of the ostensible Executive. An artful cabal in that council would be able to distract and to enervate the whole system of administration. If no such cabal should exist, the mere diversity of views and opinions would alone be sufficient to tincture the exercise of the executive authority with a spirit of habitual feebleness and dilatoriness.

But one of the weightiest objections to a plurality in the Executive, and which lies as much against the last as the first plan, is, that it tends to conceal faults and destroy responsibility. Responsibility is of two kinds to censure and to punishment. The first is the more important of the two, especially in an elective office. Man, in public trust, will much oftener act in such a manner as to render him unworthy of being any longer trusted, than in such a manner as to make him obnoxious to legal punishment. But the multiplication of the Executive adds to the difficulty of detection in either case. It often becomes impossible, amidst mutual accusations, to determine on whom the blame or the punishment of a pernicious measure, or series of pernicious measures, ought really to fall. It is shifted from one to another with so much dexterity, and under such plausible appearances,

that the public opinion is left in suspense about the real author. The circumstances which may have led to any national miscarriage or misfortune are sometimes so complicated that, where there are a number of actors who may have had different degrees and kinds of agency, though we may clearly see upon the whole that there has been mismanagement, yet it may be impracticable to pronounce to whose account the evil which may have been incurred is truly chargeable. "I was overruled by my council. The council were so divided in their opinions that it was impossible to obtain any better resolution on the point." These and similar pretexts are constantly at hand, whether true or false. And who is there that will either take the trouble or incur the odium, of a strict scrutiny into the secret springs of the transaction? Should there be found a citizen zealous enough to undertake the unpromising task, if there happen to be collusion between the parties concerned, how easy it is to clothe the circumstances with so much ambiguity, as to render it uncertain what was the precise conduct of any of those parties?

In the single instance in which the governor of this State is coupled with a council that is, in the appointment to offices, we have seen the mischiefs of it in the view now under consideration. Scandalous appointments to important offices have been made. Some cases, indeed, have been so flagrant that ALL PARTIES have agreed in the impropriety of the thing. When inquiry has been made, the blame has been laid by the governor on the members of the council, who, on their part, have charged it upon his nomination; while the people remain altogether at a loss to determine, by whose influence their interests have been committed to hands so unqualified and so manifestly improper. In tenderness to individuals, I forbear to descend to particulars.

It is evident from these considerations, that the plurality of the Executive tends to deprive the people of the two greatest securities they can have for the faithful exercise of any delegated power, first, the restraints of public opinion, which lose their efficacy, as well on account of the division of the censure attendant on bad measures among a number, as on account of the uncertainty on whom it ought to fall; and, secondly, the opportunity of discovering with facility and clearness the misconduct of the persons they trust, in order either to their removal from office or to their actual punishment in cases which admit of it.

In England, the king is a perpetual magistrate; and it is a maxim which has obtained for the sake of the public peace, that he is unaccountable for his administration, and his person sacred. Nothing, therefore, can be wiser in that kingdom, than to annex to the king a constitutional council, who may be responsible to the nation for the advice they give.
Without this, there would be no responsibility whatever in the executive department an idea inadmissible in a free government. But even there the king is not bound by the resolutions of his council, though they are answerable for the advice they give. He is the absolute master of his own conduct in the exercise of his office, and may observe or disregard the counsel given to him at his sole discretion.

But in a republic, where every magistrate ought to be personally responsible for his behavior in office the reason which in the British Constitution dictates the propriety of a council, not only ceases to apply, but turns against the institution. In the monarchy of Great Britain, it furnishes a substitute for the prohibited responsibility of the chief magistrate, which serves in some degree as a hostage to the national justice for his good behavior. In the American republic, it would serve to destroy, or would greatly diminish, the intended and necessary responsibility of the Chief Magistrate himself.

The idea of a council to the Executive, which has so generally obtained in the State constitutions, has been derived from that maxim of republican jealousy which considers power as safer in the hands of a number of men than of a single man. If the maxim should be admitted to be applicable to the case, I should contend that the advantage on that side would not counterbalance the numerous disadvantages on the opposite side. But I do not think the rule at all applicable to the executive power. I clearly concur in opinion, in this particular, with a writer whom the celebrated

Junius pronounces to be "deep, solid, and ingenious," that "the executive power is more easily confined when it is ONE";2 that it is far more safe there should be a single object for the jealousy and watchfulness of the people; and, in a word, that all multiplication of the Executive is rather dangerous than friendly to liberty.

A little consideration will satisfy us, that the species of security sought for in the multiplication of the Executive, is unattainable. Numbers must be so great as to render combination difficult, or they are rather a source of danger than of security. The united credit and influence of several individuals must be more formidable to liberty, than the credit and influence of either of them separately. When power, therefore, is placed in the hands of so small a number of men, as to admit of their interests and views being easily combined in a common enterprise, by an artful leader, it becomes more liable to abuse, and more dangerous when abused, than if it be lodged in the hands of one man; who, from the very circumstance of his being alone, will be more narrowly watched and more readily suspected, and who cannot unite so great a mass of influence as when he is associated with others. The Decemvirs of Rome, whose name denotes their number,3 were more to be dreaded in their usurpation than any ONE of them would have been. No person would think of proposing an Executive much more numerous than that body; from six to a dozen have been suggested for the number of the council. The extreme of these numbers, is not too great for an easy combination; and from such a combination America would have more to fear, than from the ambition of any single individual. A council to a magistrate, who is himself responsible for what he does, are generally nothing better than a clog upon his good intentions, are often the instruments and accomplices of his bad and are almost always a cloak to his faults.

I forbear to dwell upon the subject of expense; though it be evident that if the council should be numerous enough to answer the principal end aimed at by the institution, the salaries of the members, who must be drawn from their homes to reside at the seat of government, would form an item in the catalogue of public expenditures too serious to be incurred for an object of equivocal utility. I will only add that, prior to the appearance of the Constitution, I rarely met with an intelligent man from any of the States, who did not admit, as the result of experience, that the UNITY of the executive of this State was one of the best of the distinguishing features of our constitution.

PUBLIUS.

Federalist #78 – Alexander Hamilton

Read and annotate the document. Then choose 5 of the most significant and impactful quotations from the text. List them below along with an explanation of what they mean in regular language.

Quote	Explanation / analysis

What are the main, central arguments of this document? What point is the author trying to make? What evidence does the author use to back up those arguments?	

How does this document relate to anything from our AP Government and Politics course?	

Federalist 78 (1788)

In Federalist 78 Hamilton's assessment of the judicial branch could not be clearer. The judicial branch would be "the least dangerous branch." Montesquieu had called the courts "next to nothing." Do not be seduced by Hamilton's humility here. The Supreme Court of the United States had a significant role to play, from the very beginning. As soon as Hamilton professes the court's lack of influence he described a power later to be attributed to Chief Justice Marshall and the landmark case Marbury *v.* Madison *(1803). Here in Federalist #78 Hamilton describes what we today call judicial review. What may look like judicial superiority, Hamilton acknowledged, would be a mistake. Nevertheless the court would invariably have the power and authority to rule an act of Congress or the President unconstitutional. "No legislative act…contrary to the Constitution can be valid." Furthermore, Hamilton wrote: "No servant is above his master." Our master is not found in men but in our laws. And who decides what those laws mean? But of course the courts. The least dangerous branch? You decide.*

Federalist 78

May 28, 1788

To the people of the State of New York

WE PROCEED now to an examination of the judiciary department of the proposed government.

In unfolding the defects of the existing Confederation, the utility and necessity of a federal judicature have been clearly pointed out. It is the less necessary to recapitulate the considerations there urged, as the propriety of the institution in the abstract is not disputed; the only questions which have been raised being relative to the manner of constituting it, and to its extent. To these points, therefore, our observations shall be confined.

The manner of constituting it seems to embrace these several objects: 1st. The mode of appointing the judges. 2d. The tenure by which they are to hold their places. 3d. The partition of the judiciary authority between different courts, and their relations to each other.

First. As to the mode of appointing the judges; this is the same with that of appointing the officers of the Union in general, and has been so fully discussed in the two last numbers, that nothing can be said here which would not be useless repetition.

Second. As to the tenure by which the judges are to hold their places; this chiefly concerns their duration in office; the provisions for their support; the precautions for their responsibility.

According to the plan of the convention, all judges who may be appointed by the United States are to hold their offices DURING GOOD BEHAVIOR; which is conformable to the most approved of the State constitutions and among the rest, to that of this State. Its propriety having been drawn into question by the adversaries of that plan, is no light symptom of the rage for objection, which disorders their imaginations and judgments. The standard of good behavior for the continuance in office of the judicial magistracy, is certainly one of the most valuable of the modern improvements in the practice of government. In a monarchy it is an excellent barrier to the despotism of the prince; in a republic it is a no less excellent barrier to the encroachments and oppressions of the representative body. And it is the best expedient which can be devised in any government, to secure a steady, upright, and impartial administration of the laws.

Whoever attentively considers the different departments of power must perceive, that, in a

government in which they are separated from each other, the judiciary, from the nature of its functions, will always be the least dangerous to the political rights of the Constitution; because it will be least in a capacity to annoy or injure them. The Executive not only dispenses the honors, but holds the sword of the community. The legislature not only commands the purse, but prescribes the rules by which the duties and rights of every citizen are to be regulated. The judiciary, on the contrary, has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society; and can take no active resolution whatever. It may truly be said to have neither FORCE nor WILL, but merely judgment; and must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments.

This simple view of the matter suggests several important consequences. It proves incontestably, that the judiciary is beyond comparison the weakest of the three departments of power; that it can never attack with success either of the other two; and that all possible care is requisite to enable it to defend itself against their attacks. It equally proves, that though individual oppression may now and then proceed from the courts of justice, the general liberty of the people can never be endangered from that quarter; I mean so long as the judiciary remains truly distinct from both the legislature and the Executive. For I agree, that "there is no liberty, if the power of judging be not separated from the legislative and executive powers." And it proves, in the last place, that as liberty can have nothing to fear from the judiciary alone, but would have every thing to fear from its union with either of the other departments; that as all the effects of such a union must ensue from a dependence of the former on the latter, notwithstanding a nominal and apparent separation; that as, from the natural feebleness of the judiciary, it is in continual jeopardy of being overpowered, awed, or influenced by its co-ordinate branches; and that as nothing can contribute so much to its firmness and independence as permanency in office, this quality may therefore be justly regarded as an indispensable ingredient in its constitution, and, in a great measure, as the citadel of the public justice and the public security.

The complete independence of the courts of justice is peculiarly essential in a limited Constitution. By a limited Constitution, I understand one which contains certain specified exceptions to the legislative authority; such, for instance, as that it shall pass no bills of attainder, no ex-post-facto laws, and the like. Limitations of this kind can be preserved in practice no other way than through the medium of courts of justice, whose duty it must be to declare all acts contrary to the manifest tenor of the Constitution void. Without this, all the reservations of particular rights or privileges would amount to nothing.

Some perplexity respecting the rights of the courts to pronounce legislative acts void, because contrary to the Constitution, has arisen from an imagination that the doctrine would imply a superiority of the judiciary to the legislative power. It is urged that the authority which can declare the acts of another void, must necessarily be superior to the one whose acts may be declared void. As this doctrine is of great importance in all the American constitutions, a brief discussion of the ground on which it rests cannot be unacceptable.

There is no position which depends on clearer principles, than that every act of a delegated authority, contrary to the tenor of the commission under which it is exercised, is void. No legislative act, therefore, contrary to the Constitution, can be valid. To deny this, would be to affirm, that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves; that men acting by virtue of powers, may do not only what their powers do not authorize, but what they forbid.

If it be said that the legislative body are themselves the constitutional judges of their own powers, and that the construction they put upon them is conclusive upon the other departments, it may be answered, that this cannot be the natural presumption, where it is not to be collected from any particular provisions in the Constitution. It is not otherwise to be supposed, that the Constitution

could intend to enable the representatives of the people to substitute their WILL to that of their constituents. It is far more rational to suppose, that the courts were designed to be an intermediate body between the people and the legislature, in order, among other things, to keep the latter within the limits assigned to their authority. The interpretation of the laws is the proper and peculiar province of the courts. A constitution is, in fact, and must be regarded by the judges, as a fundamental law. It therefore belongs to them to ascertain its meaning, as well as the meaning of any particular act proceeding from the legislative body. If there should happen to be an irreconcilable variance between the two, that which has the superior obligation and validity ought, of course, to be preferred; or, in other words, the Constitution ought to be preferred to the statute, the intention of the people to the intention of their agents.

Nor does this conclusion by any means suppose a superiority of the judicial to the legislative power. It only supposes that the power of the people is superior to both; and that where the will of the legislature, declared in its statutes, stands in opposition to that of the people, declared in the Constitution, the judges ought to be governed by the latter rather than the former. They ought to regulate their decisions by the fundamental laws, rather than by those which are not fundamental.

This exercise of judicial discretion, in determining between two contradictory laws, is exemplified in a familiar instance. It not uncommonly happens, that there are two statutes existing at one time, clashing in whole or in part with each other, and neither of them containing any repealing clause or expression. In such a case, it is the province of the courts to liquidate and fix their meaning and operation. So far as they can, by any fair construction, be reconciled to each other, reason and law conspire to dictate that this should be done; where this is impracticable, it becomes a matter of necessity to give effect to one, in exclusion of the other. The rule which has obtained in the courts for determining their relative validity is, that the last in order of time shall be preferred to the first. But this is a mere rule of construction, not derived from any positive law, but from the nature and reason of the thing. It is a rule not enjoined upon the courts by legislative provision, but adopted by themselves, as consonant to truth and propriety, for the direction of their conduct as interpreters of the law. They thought it reasonable, that between the interfering acts of an EQUAL authority, that which was the last indication of its will should have the preference.

But in regard to the interfering acts of a superior and subordinate authority, of an original and derivative power, the nature and reason of the thing indicate the converse of that rule as proper to be followed. They teach us that the prior act of a superior ought to be preferred to the subsequent act of an inferior and subordinate authority; and that accordingly, whenever a particular statute contravenes the Constitution, it will be the duty of the judicial tribunals to adhere to the latter and disregard the former.

It can be of no weight to say that the courts, on the pretense of a repugnancy, may substitute their own pleasure to the constitutional intentions of the legislature. This might as well happen in the case of two contradictory statutes; or it might as well happen in every adjudication upon any single statute. The courts must declare the sense of the law; and if they should be disposed to exercise WILL instead of JUDGMENT, the consequence would equally be the substitution of their pleasure to that of the legislative body. The observation, if it prove any thing, would prove that there ought to be no judges distinct from that body.

If, then, the courts of justice are to be considered as the bulwarks of a limited Constitution against legislative encroachments, this consideration will afford a strong argument for the permanent tenure of judicial offices, since nothing will contribute so much as this to that independent spirit in the judges which must be essential to the faithful performance of so arduous a duty.

This independence of the judges is equally requisite to guard the Constitution and the rights of individuals from the effects of those ill humors, which the arts of designing men, or the influence of particular conjunctures, sometimes disseminate

among the people themselves, and which, though they speedily give place to better information, and more deliberate reflection, have a tendency, in the meantime, to occasion dangerous innovations in the government, and serious oppressions of the minor party in the community. Though I trust the friends of the proposed Constitution will never concur with its enemies, in questioning that fundamental principle of republican government, which admits the right of the people to alter or abolish the established Constitution, whenever they find it inconsistent with their happiness, yet it is not to be inferred from this principle, that the representatives of the people, whenever a momentary inclination happens to lay hold of a majority of their constituents, incompatible with the provisions in the existing Constitution, would, on that account, be justifiable in a violation of those provisions; or that the courts would be under a greater obligation to connive at infractions in this shape, than when they had proceeded wholly from the cabals of the representative body. Until the people have, by some solemn and authoritative act, annulled or changed the established form, it is binding upon themselves collectively, as well as individually; and no presumption, or even knowledge, of their sentiments, can warrant their representatives in a departure from it, prior to such an act. But it is easy to see, that it would require an uncommon portion of fortitude in the judges to do their duty as faithful guardians of the Constitution, where legislative invasions of it had been instigated by the major voice of the community.

But it is not with a view to infractions of the Constitution only, that the independence of the judges may be an essential safeguard against the effects of occasional ill humors in the society. These sometimes extend no farther than to the injury of the private rights of particular classes of citizens, by unjust and partial laws. Here also the firmness of the judicial magistracy is of vast importance in mitigating the severity and confining the operation of such laws. It not only serves to moderate the immediate mischiefs of those which may have been passed, but it operates as a check upon the legislative body in passing them; who, perceiving that obstacles to the success of iniquitous intention are to be expected from the scruples of the courts, are in a manner compelled, by the very motives of the injustice they meditate, to qualify their attempts. This is a circumstance calculated to have more influence upon the character of our governments, than but few may be aware of. The benefits of the integrity and moderation of the judiciary have already been felt in more States than one; and though they may have displeased those whose sinister expectations they may have disappointed, they must have commanded the esteem and applause of all the virtuous and disinterested. Considerate men, of every description, ought to prize whatever will tend to beget or fortify that temper in the courts: as no man can be sure that he may not be to-morrow the victim of a spirit of injustice, by which he may be a gainer to-day. And every man must now feel, that the inevitable tendency of such a spirit is to sap the foundations of public and private confidence, and to introduce in its stead universal distrust and distress.

That inflexible and uniform adherence to the rights of the Constitution, and of individuals, which we perceive to be indispensable in the courts of justice, can certainly not be expected from judges who hold their offices by a temporary commission. Periodical appointments, however regulated, or by whomsoever made, would, in some way or other, be fatal to their necessary independence. If the power of making them was committed either to the Executive or legislature, there would be danger of an improper complaisance to the branch which possessed it; if to both, there would be an unwillingness to hazard the displeasure of either; if to the people, or to persons chosen by them for the special purpose, there would be too great a disposition to consult popularity, to justify a reliance that nothing would be consulted but the Constitution and the laws.

There is yet a further and a weightier reason for the permanency of the judicial offices, which is deducible from the nature of the qualifications they require. It has been frequently remarked, with great propriety, that a voluminous code of laws is one of the inconveniences necessarily connected with the advantages of a free government. To avoid an arbitrary discretion in the courts, it is indispensable that they should be bound down by

strict rules and precedents, which serve to define and point out their duty in every particular case that comes before them; and it will readily be conceived from the variety of controversies which grow out of the folly and wickedness of mankind, that the records of those precedents must unavoidably swell to a very considerable bulk, and must demand long and laborious study to acquire a competent knowledge of them. Hence it is, that there can be but few men in the society who will have sufficient skill in the laws to qualify them for the stations of judges. And making the proper deductions for the ordinary depravity of human nature, the number must be still smaller of those who unite the requisite integrity with the requisite knowledge. These considerations apprise us, that the government can have no great option between fit character; and that a temporary duration in office, which would naturally discourage such characters from quitting a lucrative line of practice to accept a seat on the bench, would have a tendency to throw the administration of justice into hands less able, and less well qualified, to conduct it with utility and dignity. In the present circumstances of this country, and in those in which it is likely to be for a long time to come, the disadvantages on this score would be greater than they may at first sight appear; but it must be confessed, that they are far inferior to those which present themselves under the other aspects of the subject.

Upon the whole, there can be no room to doubt that the convention acted wisely in copying from the models of those constitutions which have established GOOD BEHAVIOR as the tenure of their judicial offices, in point of duration; and that so far from being blamable on this account, their plan would have been inexcusably defective, if it had wanted this important feature of good government. The experience of Great Britain affords an illustrious comment on the excellence of the institution.

Letter from a Birmingham Jail (1963)

The Reverend Martin Luther King, Jr. at a critical turning point in time wrote "Letter from a Birmingham Jail." The American civil rights movement was facing a serious challenge. King and other civil rights leaders were arrested and incarcerated for being agitators of disorder. Eight liberal Alabama ministers, open to bringing about racial justice, had written "An Appeal for Law and Order and Common Sense." King's strategy for bringing about change was untimely and impatient. King's letter was his response. If the civil rights movement was going to win broad support King would need to address their criticism. "Letter from a Birmingham Jail" was his response. It became King's Manifesto. The letter "soon became the most widely-read, widely-reprinted and oft quoted document of the civil rights movement." King's message was clear and forthright. The letter legitimized the civil rights movement. The time for action was now. King wrote, "For years now I have heard the word 'wait!'...This 'wait' has almost always meant 'never.'" Patience cannot endure forever. King's manifesto, his "Letter from a Birmingham Jail," proclaimed that this was the "precious time," the decisive hour. The civil rights movement could no longer wait. King's letter is as important today as it was back in 1963.

Letter from a Birmingham Jail

April 16, 1963

To the people of the State of New York

My Dear Fellow Clergymen:

While confined here in the Birmingham city jail, I came across your recent statement calling my present activities "unwise and untimely." Seldom do I pause to answer criticism of my work and ideas. If I sought to answer all the criticisms that cross my desk, my secretaries would have little time for anything other than such correspondence in the course of the day, and I would have no time for constructive work. But since I feel that you are men of genuine good will and that your criticisms are sincerely set forth, I want to try to answer your statement in what I hope will be patient and reasonable terms.

I think I should indicate why I am here in Birmingham, since you have been influenced by the view which argues against "outsiders coming in." I have the honor of serving as president of the Southern Christian Leadership Conference, an organization operating in every southern state, with headquarters in Atlanta, Georgia. We have some eighty five affiliated organizations across the South, and one of them is the Alabama Christian Movement for Human Rights. Frequently we share staff, educational and financial resources with our affiliates. Several months ago the affiliate here in Birmingham asked us to be on call to engage in a nonviolent direct action program if such were deemed necessary. We readily consented, and when the hour came we lived up to our promise. So I, along with several members of my staff, am here because I was invited here. I am here because I have organizational ties here.

But more basically, I am in Birmingham because injustice is here. Just as the prophets of the eighth century B.C. left their villages and carried their "thus saith the Lord" far beyond the boundaries of their home towns, and just as the Apostle Paul left his village of Tarsus and carried the gospel of Jesus Christ to the far corners of the Greco Roman world, so am I compelled to carry the gospel of freedom beyond my own home town. Like Paul, I must constantly respond to the Macedonian call for aid.

Moreover, I am cognizant of the interrelatedness of all communities and states. I cannot sit idly by in Atlanta and not be concerned about what happens in Birmingham. Injustice anywhere is a

threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly, affects all indirectly. Never again can we afford to live with the narrow, provincial "outside agitator" idea. Anyone who lives inside the United States can never be considered an outsider anywhere within its bounds.

You deplore the demonstrations taking place in Birmingham. But your statement, I am sorry to say, fails to express a similar concern for the conditions that brought about the demonstrations. I am sure that none of you would want to rest content with the superficial kind of social analysis that deals merely with effects and does not grapple with underlying causes. It is unfortunate that demonstrations are taking place in Birmingham, but it is even more unfortunate that the city's white power structure left the Negro community with no alternative.

In any nonviolent campaign there are four basic steps: collection of the facts to determine whether injustices exist; negotiation; self purification; and direct action. We have gone through all these steps in Birmingham. There can be no gainsaying the fact that racial injustice engulfs this community. Birmingham is probably the most thoroughly segregated city in the United States. Its ugly record of brutality is widely known. Negroes have experienced grossly unjust treatment in the courts. There have been more unsolved bombings of Negro homes and churches in Birmingham than in any other city in the nation. These are the hard, brutal facts of the case. On the basis of these conditions, Negro leaders sought to negotiate with the city fathers. But the latter consistently refused to engage in good faith negotiation.

Then, last September, came the opportunity to talk with leaders of Birmingham's economic community. In the course of the negotiations, certain promises were made by the merchants--for example, to remove the stores' humiliating racial signs. On the basis of these promises, the Reverend Fred Shuttlesworth and the leaders of the Alabama Christian Movement for Human Rights agreed to a moratorium on all demonstrations. As the weeks and months went by, we realized that we were the victims of a broken promise. A few signs, briefly removed, returned; the others remained. As in so many past experiences, our hopes had been blasted, and the shadow of deep disappointment settled upon us. We had no alternative except to prepare for direct action, whereby we would present our very bodies as a means of laying our case before the conscience of the local and the national community. Mindful of the difficulties involved, we decided to undertake a process of self purification. We began a series of workshops on nonviolence, and we repeatedly asked ourselves: "Are you able to accept blows without retaliating?" "Are you able to endure the ordeal of jail?" We decided to schedule our direct action program for the Easter season, realizing that except for Christmas, this is the main shopping period of the year. Knowing that a strong economic-withdrawal program would be the by product of direct action, we felt that this would be the best time to bring pressure to bear on the merchants for the needed change.

Then it occurred to us that Birmingham's mayoral election was coming up in March, and we speedily decided to postpone action until after election day. When we discovered that the Commissioner of Public Safety, Eugene "Bull" Connor, had piled up enough votes to be in the run off, we decided again to postpone action until the day after the run off so that the demonstrations could not be used to cloud the issues. Like many others, we waited to see Mr. Connor defeated, and to this end we endured postponement after postponement. Having aided in this community need, we felt that our direct action program could be delayed no longer.

You may well ask: "Why direct action? Why sit ins, marches and so forth? Isn't negotiation a better path?" You are quite right in calling for negotiation. Indeed, this is the very purpose of direct action. Nonviolent direct action seeks to create such a crisis and foster such a tension that a community which has constantly refused to negotiate is forced to confront the issue. It seeks so to dramatize the issue that it can no longer be ignored. My citing the creation of tension as part of the work of the nonviolent resister may sound

rather shocking. But I must confess that I am not afraid of the word "tension." I have earnestly opposed violent tension, but there is a type of constructive, nonviolent tension which is necessary for growth. Just as Socrates felt that it was necessary to create a tension in the mind so that individuals could rise from the bondage of myths and half truths to the unfettered realm of creative analysis and objective appraisal, so must we see the need for nonviolent gadflies to create the kind of tension in society that will help men rise from the dark depths of prejudice and racism to the majestic heights of understanding and brotherhood. The purpose of our direct action program is to create a situation so crisis packed that it will inevitably open the door to negotiation. I therefore concur with you in your call for negotiation. Too long has our beloved Southland been bogged down in a tragic effort to live in monologue rather than dialogue.

One of the basic points in your statement is that the action that I and my associates have taken in Birmingham is untimely. Some have asked: "Why didn't you give the new city administration time to act?" The only answer that I can give to this query is that the new Birmingham administration must be prodded about as much as the outgoing one, before it will act. We are sadly mistaken if we feel that the election of Albert Boutwell as mayor will bring the millennium to Birmingham. While Mr. Boutwell is a much more gentle person than Mr. Connor, they are both segregationists, dedicated to maintenance of the status quo. I have hope that Mr. Boutwell will be reasonable enough to see the futility of massive resistance to desegregation. But he will not see this without pressure from devotees of civil rights. My friends, I must say to you that we have not made a single gain in civil rights without determined legal and nonviolent pressure. Lamentably, it is an historical fact that privileged groups seldom give up their privileges voluntarily. Individuals may see the moral light and voluntarily give up their unjust posture; but, as Reinhold Niebuhr has reminded us, groups tend to be more immoral than individuals.

We know through painful experience that freedom is never voluntarily given by the oppressor; it must be demanded by the oppressed. Frankly, I have yet to engage in a direct action campaign that was "well timed" in the view of those who have not suffered unduly from the disease of segregation. For years now I have heard the word "Wait!" It rings in the ear of every Negro with piercing familiarity. This "Wait" has almost always meant "Never." We must come to see, with one of our distinguished jurists, that "justice too long delayed is justice denied."

We have waited for more than 340 years for our constitutional and God given rights. The nations of Asia and Africa are moving with jetlike speed toward gaining political independence, but we still creep at horse and buggy pace toward gaining a cup of coffee at a lunch counter. Perhaps it is easy for those who have never felt the stinging darts of segregation to say, "Wait." But when you have seen vicious mobs lynch your mothers and fathers at will and drown your sisters and brothers at whim; when you have seen hate filled policemen curse, kick and even kill your black brothers and sisters; when you see the vast majority of your twenty million Negro brothers smothering in an airtight cage of poverty in the midst of an affluent society; when you suddenly find your tongue twisted and your speech stammering as you seek to explain to your six year old daughter why she can't go to the public amusement park that has just been advertised on television, and see tears welling up in her eyes when she is told that Funtown is closed to colored children, and see ominous clouds of inferiority beginning to form in her little mental sky, and see her beginning to distort her personality by developing an unconscious bitterness toward white people; when you have to concoct an answer for a five year old son who is asking: "Daddy, why do white people treat colored people so mean?"; when you take a cross county drive and find it necessary to sleep night after night in the uncomfortable corners of your automobile because no motel will accept you; when you are humiliated day in and day out by nagging signs reading "white" and "colored"; when your first name becomes "nigger," your middle name becomes "boy" (however old you are) and your last name becomes "John," and your wife and mother are never given the respected title "Mrs."; when you are harried by day and haunted by night by the fact that you are a Negro, living

constantly at tiptoe stance, never quite knowing what to expect next, and are plagued with inner fears and outer resentments; when you are forever fighting a degenerating sense of "nobodiness"--then you will understand why we find it difficult to wait. There comes a time when the cup of endurance runs over, and men are no longer willing to be plunged into the abyss of despair. I hope, sirs, you can understand our legitimate and unavoidable impatience. You express a great deal of anxiety over our willingness to break laws. This is certainly a legitimate concern. Since we so diligently urge people to obey the Supreme Court's decision of 1954 outlawing segregation in the public schools, at first glance it may seem rather paradoxical for us consciously to break laws. One may well ask: "How can you advocate breaking some laws and obeying others?" The answer lies in the fact that there are two types of laws: just and unjust. I would be the first to advocate obeying just laws. One has not only a legal but a moral responsibility to obey just laws. Conversely, one has a moral responsibility to disobey unjust laws. I would agree with St. Augustine that "an unjust law is no law at all."

Now, what is the difference between the two? How does one determine whether a law is just or unjust? A just law is a man made code that squares with the moral law or the law of God. An unjust law is a code that is out of harmony with the moral law. To put it in the terms of St. Thomas Aquinas: An unjust law is a human law that is not rooted in eternal law and natural law. Any law that uplifts human personality is just. Any law that degrades human personality is unjust. All segregation statutes are unjust because segregation distorts the soul and damages the personality. It gives the segregator a false sense of superiority and the segregated a false sense of inferiority. Segregation, to use the terminology of the Jewish philosopher Martin Buber, substitutes an "I it" relationship for an "I thou" relationship and ends up relegating persons to the status of things. Hence segregation is not only politically, economically and sociologically unsound, it is morally wrong and sinful. Paul Tillich has said that sin is separation. Is not segregation an existential expression of man's tragic separation, his awful estrangement, his terrible sinfulness? Thus it is that I can urge men to obey the 1954 decision of the Supreme Court, for it is morally right; and I can urge them to disobey segregation ordinances, for they are morally wrong.

Let us consider a more concrete example of just and unjust laws. An unjust law is a code that a numerical or power majority group compels a minority group to obey but does not make binding on itself. This is difference made legal. By the same token, a just law is a code that a majority compels a minority to follow and that it is willing to follow itself. This is sameness made legal. Let me give another explanation. A law is unjust if it is inflicted on a minority that, as a result of being denied the right to vote, had no part in enacting or devising the law. Who can say that the legislature of Alabama which set up that state's segregation laws was democratically elected? Throughout Alabama all sorts of devious methods are used to prevent Negroes from becoming registered voters, and there are some counties in which, even though Negroes constitute a majority of the population, not a single Negro is registered. Can any law enacted under such circumstances be considered democratically structured?

Sometimes a law is just on its face and unjust in its application. For instance, I have been arrested on a charge of parading without a permit. Now, there is nothing wrong in having an ordinance which requires a permit for a parade. But such an ordinance becomes unjust when it is used to maintain segregation and to deny citizens the First-Amendment privilege of peaceful assembly and protest.

I hope you are able to see the distinction I am trying to point out. In no sense do I advocate evading or defying the law, as would the rabid segregationist. That would lead to anarchy. One who breaks an unjust law must do so openly, lovingly, and with a willingness to accept the penalty. I submit that an individual who breaks a law that conscience tells him is unjust, and who willingly accepts the penalty of imprisonment in order to arouse the conscience of the community over its injustice, is in reality expressing the highest respect for law.

Of course, there is nothing new about this kind of civil disobedience. It was evidenced sublimely in the refusal of Shadrach, Meshach and Abednego to obey the laws of Nebuchadnezzar, on the ground that a higher moral law was at stake. It was practiced superbly by the early Christians, who were willing to face hungry lions and the excruciating pain of chopping blocks rather than submit to certain unjust laws of the Roman Empire. To a degree, academic freedom is a reality today because Socrates practiced civil disobedience. In our own nation, the Boston Tea Party represented a massive act of civil disobedience.

We should never forget that everything Adolf Hitler did in Germany was "legal" and everything the Hungarian freedom fighters did in Hungary was "illegal." It was "illegal" to aid and comfort a Jew in Hitler's Germany. Even so, I am sure that, had I lived in Germany at the time, I would have aided and comforted my Jewish brothers. If today I lived in a Communist country where certain principles dear to the Christian faith are suppressed, I would openly advocate disobeying that country's antireligious laws.

I must make two honest confessions to you, my Christian and Jewish brothers. First, I must confess that over the past few years I have been gravely disappointed with the white moderate. I have almost reached the regrettable conclusion that the Negro's great stumbling block in his stride toward freedom is not the White Citizen's Counciler or the Ku Klux Klanner, but the white moderate, who is more devoted to "order" than to justice; who prefers a negative peace which is the absence of tension to a positive peace which is the presence of justice; who constantly says: "I agree with you in the goal you seek, but I cannot agree with your methods of direct action"; who paternalistically believes he can set the timetable for another man's freedom; who lives by a mythical concept of time and who constantly advises the Negro to wait for a "more convenient season." Shallow understanding from people of good will is more frustrating than absolute misunderstanding from people of ill will. Lukewarm acceptance is much more bewildering than outright rejection.

I had hoped that the white moderate would understand that law and order exist for the purpose of establishing justice and that when they fail in this purpose they become the dangerously structured dams that block the flow of social progress. I had hoped that the white moderate would understand that the present tension in the South is a necessary phase of the transition from an obnoxious negative peace, in which the Negro passively accepted his unjust plight, to a substantive and positive peace, in which all men will respect the dignity and worth of human personality. Actually, we who engage in nonviolent direct action are not the creators of tension. We merely bring to the surface the hidden tension that is already alive. We bring it out in the open, where it can be seen and dealt with. Like a boil that can never be cured so long as it is covered up but must be opened with all its ugliness to the natural medicines of air and light, injustice must be exposed, with all the tension its exposure creates, to the light of human conscience and the air of national opinion before it can be cured.

In your statement you assert that our actions, even though peaceful, must be condemned because they precipitate violence. But is this a logical assertion? Isn't this like condemning a robbed man because his possession of money precipitated the evil act of robbery? Isn't this like condemning Socrates because his unswerving commitment to truth and his philosophical inquiries precipitated the act by the misguided populace in which they made him drink hemlock? Isn't this like condemning Jesus because his unique God consciousness and never ceasing devotion to God's will precipitated the evil act of crucifixion? We must come to see that, as the federal courts have consistently affirmed, it is wrong to urge an individual to cease his efforts to gain his basic constitutional rights because the quest may precipitate violence. Society must protect the robbed and punish the robber. I had also hoped that the white moderate would reject the myth concerning time in relation to the struggle for freedom. I have just received a letter from a white brother in Texas. He writes: "All Christians know that the colored people will receive equal rights eventually, but it is possible that you are in too great a religious hurry. It has

taken Christianity almost two thousand years to accomplish what it has. The teachings of Christ take time to come to earth." Such an attitude stems from a tragic misconception of time, from the strangely irrational notion that there is something in the very flow of time that will inevitably cure all ills. Actually, time itself is neutral; it can be used either destructively or constructively. More and more I feel that the people of ill will have used time much more effectively than have the people of good will. We will have to repent in this generation not merely for the hateful words and actions of the bad people but for the appalling silence of the good people. Human progress never rolls in on wheels of inevitability; it comes through the tireless efforts of men willing to be co workers with God, and without this hard work, time itself becomes an ally of the forces of social stagnation. We must use time creatively, in the knowledge that the time is always ripe to do right. Now is the time to make real the promise of democracy and transform our pending national elegy into a creative psalm of brotherhood. Now is the time to lift our national policy from the quicksand of racial injustice to the solid rock of human dignity.

You speak of our activity in Birmingham as extreme. At first I was rather disappointed that fellow clergymen would see my nonviolent efforts as those of an extremist. I began thinking about the fact that I stand in the middle of two opposing forces in the Negro community. One is a force of complacency, made up in part of Negroes who, as a result of long years of oppression, are so drained of self respect and a sense of "somebodiness" that they have adjusted to segregation; and in part of a few middle-class Negroes who, because of a degree of academic and economic security and because in some ways they profit by segregation, have become insensitive to the problems of the masses. The other force is one of bitterness and hatred, and it comes perilously close to advocating violence. It is expressed in the various black nationalist groups that are springing up across the nation, the largest and best known being Elijah Muhammad's Muslim movement. Nourished by the Negro's frustration over the continued existence of racial discrimination, this movement is made up of people who have lost faith in America, who have absolutely repudiated Christianity, and who have concluded that the white man is an incorrigible "devil."

I have tried to stand between these two forces, saying that we need emulate neither the "do nothingism" of the complacent nor the hatred and despair of the black nationalist. For there is the more excellent way of love and nonviolent protest. I am grateful to God that, through the influence of the Negro church, the way of nonviolence became an integral part of our struggle. If this philosophy had not emerged, by now many streets of the South would, I am convinced, be flowing with blood. And I am further convinced that if our white brothers dismiss as "rabble rousers" and "outside agitators" those of us who employ nonviolent direct action, and if they refuse to support our nonviolent efforts, millions of Negroes will, out of frustration and despair, seek solace and security in black nationalist ideologies--a development that would inevitably lead to a frightening racial nightmare.

Oppressed people cannot remain oppressed forever. The yearning for freedom eventually manifests itself, and that is what has happened to the American Negro. Something within has reminded him of his birthright of freedom, and something without has reminded him that it can be gained. Consciously or unconsciously, he has been caught up by the Zeitgeist, and with his black brothers of Africa and his brown and yellow brothers of Asia, South America and the Caribbean, the United States Negro is moving with a sense of great urgency toward the promised land of racial justice. If one recognizes this vital urge that has engulfed the Negro community, one should readily understand why public demonstrations are taking place. The Negro has many pent up resentments and latent frustrations, and he must release them. So let him march; let him make prayer pilgrimages to the city hall; let him go on freedom rides -and try to understand why he must do so. If his repressed emotions are not released in nonviolent ways, they will seek expression through violence; this is not a threat but a fact of history. So I have not said to my people: "Get rid of your discontent." Rather, I have tried to say that this normal and healthy

discontent can be channeled into the creative outlet of nonviolent direct action. And now this approach is being termed extremist. But though I was initially disappointed at being categorized as an extremist, as I continued to think about the matter I gradually gained a measure of satisfaction from the label. Was not Jesus an extremist for love: "Love your enemies, bless them that curse you, do good to them that hate you, and pray for them which despitefully use you, and persecute you." Was not Amos an extremist for justice: "Let justice roll down like waters and righteousness like an ever flowing stream." Was not Paul an extremist for the Christian gospel: "I bear in my body the marks of the Lord Jesus." Was not Martin Luther an extremist: "Here I stand; I cannot do otherwise, so help me God." And John Bunyan: "I will stay in jail to the end of my days before I make a butchery of my conscience." And Abraham Lincoln: "This nation cannot survive half slave and half free." And Thomas Jefferson: "We hold these truths to be self evident, that all men are created equal . . ." So the question is not whether we will be extremists, but what kind of extremists we will be. Will we be extremists for hate or for love? Will we be extremists for the preservation of injustice or for the extension of justice? In that dramatic scene on Calvary's hill three men were crucified. We must never forget that all three were crucified for the same crime--the crime of extremism. Two were extremists for immorality, and thus fell below their environment. The other, Jesus Christ, was an extremist for love, truth and goodness, and thereby rose above his environment. Perhaps the South, the nation and the world are in dire need of creative extremists.

I had hoped that the white moderate would see this need. Perhaps I was too optimistic; perhaps I expected too much. I suppose I should have realized that few members of the oppressor race can understand the deep groans and passionate yearnings of the oppressed race, and still fewer have the vision to see that injustice must be rooted out by strong, persistent and determined action. I am thankful, however, that some of our white brothers in the South have grasped the meaning of this social revolution and committed themselves to it. They are still all too few in quantity, but they are big in quality. Some -such as Ralph McGill, Lillian Smith, Harry Golden, James McBride Dabbs, Ann Braden and Sarah Patton Boyle--have written about our struggle in eloquent and prophetic terms. Others have marched with us down nameless streets of the South. They have languished in filthy, roach infested jails, suffering the abuse and brutality of policemen who view them as "dirty nigger-lovers." Unlike so many of their moderate brothers and sisters, they have recognized the urgency of the moment and sensed the need for powerful "action" antidotes to combat the disease of segregation. Let me take note of my other major disappointment. I have been so greatly disappointed with the white church and its leadership. Of course, there are some notable exceptions. I am not unmindful of the fact that each of you has taken some significant stands on this issue. I commend you, Reverend Stallings, for your Christian stand on this past Sunday, in welcoming Negroes to your worship service on a nonsegregated basis. I commend the Catholic leaders of this state for integrating Spring Hill College several years ago.

But despite these notable exceptions, I must honestly reiterate that I have been disappointed with the church. I do not say this as one of those negative critics who can always find something wrong with the church. I say this as a minister of the gospel, who loves the church; who was nurtured in its bosom; who has been sustained by its spiritual blessings and who will remain true to it as long as the cord of life shall lengthen.

When I was suddenly catapulted into the leadership of the bus protest in Montgomery, Alabama, a few years ago, I felt we would be supported by the white church. I felt that the white ministers, priests and rabbis of the South would be among our strongest allies. Instead, some have been outright opponents, refusing to understand the freedom movement and misrepresenting its leaders; all too many others have been more cautious than courageous and have remained silent behind the anesthetizing security of stained glass windows.

In spite of my shattered dreams, I came to Birmingham with the hope that the white religious leadership of this community would see the justice

of our cause and, with deep moral concern, would serve as the channel through which our just grievances could reach the power structure. I had hoped that each of you would understand. But again I have been disappointed.

I have heard numerous southern religious leaders admonish their worshipers to comply with a desegregation decision because it is the law, but I have longed to hear white ministers declare: 'Follow this decree because integration is morally right and because the Negro is your brother." In the midst of blatant injustices inflicted upon the Negro, I have watched white churchmen stand on the sideline and mouth pious irrelevancies and sanctimonious trivialities. In the midst of a mighty struggle to rid our nation of racial and economic injustice, I have heard many ministers say: "Those are social issues, with which the gospel has no real concern." And I have watched many churches commit themselves to a completely other worldly religion which makes a strange, un-Biblical distinction between body and soul, between the sacred and the secular.

I have traveled the length and breadth of Alabama, Mississippi and all the other southern states. On sweltering summer days and crisp autumn mornings I have looked at the South's beautiful churches with their lofty spires pointing heavenward. I have beheld the impressive outlines of her massive religious education buildings. Over and over I have found myself asking: "What kind of people worship here? Who is their God? Where were their voices when the lips of Governor Barnett dripped with words of interposition and nullification? Where were they when Governor Wallace gave a clarion call for defiance and hatred? Where were their voices of support when bruised and weary Negro men and women decided to rise from the dark dungeons of complacency to the bright hills of creative protest?"

Yes, these questions are still in my mind. In deep disappointment I have wept over the laxity of the church. But be assured that my tears have been tears of love. There can be no deep disappointment where there is not deep love. Yes, I love the church. How could I do otherwise? I am in the rather unique position of being the son, the grandson and the great grandson of preachers. Yes, I see the church as the body of Christ. But, oh! How we have blemished and scarred that body through social neglect and through fear of being nonconformists.

There was a time when the church was very powerful--in the time when the early Christians rejoiced at being deemed worthy to suffer for what they believed. In those days the church was not merely a thermometer that recorded the ideas and principles of popular opinion; it was a thermostat that transformed the mores of society. Whenever the early Christians entered a town, the people in power became disturbed and immediately sought to convict the Christians for being "disturbers of the peace" and "outside agitators.'" But the Christians pressed on, in the conviction that they were "a colony of heaven," called to obey God rather than man. Small in number, they were big in commitment. They were too God-intoxicated to be "astronomically intimidated." By their effort and example they brought an end to such ancient evils as infanticide and gladiatorial contests. Things are different now. So often the contemporary church is a weak, ineffectual voice with an uncertain sound. So often it is an archdefender of the status quo. Far from being disturbed by the presence of the church, the power structure of the average community is consoled by the church's silent--and often even vocal--sanction of things as they are.

But the judgment of God is upon the church as never before. If today's church does not recapture the sacrificial spirit of the early church, it will lose its authenticity, forfeit the loyalty of millions, and be dismissed as an irrelevant social club with no meaning for the twentieth century. Every day I meet young people whose disappointment with the church has turned into outright disgust.

Perhaps I have once again been too optimistic. Is organized religion too inextricably bound to the status quo to save our nation and the world? Perhaps I must turn my faith to the inner spiritual church, the church within the church, as the true ekklesia and the hope of the world. But again I am thankful to God that some noble souls from the ranks of organized religion have broken loose

from the paralyzing chains of conformity and joined us as active partners in the struggle for freedom. They have left their secure congregations and walked the streets of Albany, Georgia, with us. They have gone down the highways of the South on tortuous rides for freedom. Yes, they have gone to jail with us. Some have been dismissed from their churches, have lost the support of their bishops and fellow ministers. But they have acted in the faith that right defeated is stronger than evil triumphant. Their witness has been the spiritual salt that has preserved the true meaning of the gospel in these troubled times. They have carved a tunnel of hope through the dark mountain of disappointment. I hope the church as a whole will meet the challenge of this decisive hour. But even if the church does not come to the aid of justice, I have no despair about the future. I have no fear about the outcome of our struggle in Birmingham, even if our motives are at present misunderstood. We will reach the goal of freedom in Birmingham and all over the nation, because the goal of America is freedom. Abused and scorned though we may be, our destiny is tied up with America's destiny. Before the pilgrims landed at Plymouth, we were here. Before the pen of Jefferson etched the majestic words of the Declaration of Independence across the pages of history, we were here. For more than two centuries our forebears labored in this country without wages; they made cotton king; they built the homes of their masters while suffering gross injustice and shameful humiliation -and yet out of a bottomless vitality they continued to thrive and develop. If the inexpressible cruelties of slavery could not stop us, the opposition we now face will surely fail. We will win our freedom because the sacred heritage of our nation and the eternal will of God are embodied in our echoing demands. Before closing I feel impelled to mention one other point in your statement that has troubled me profoundly. You warmly commended the Birmingham police force for keeping "order" and "preventing violence." I doubt that you would have so warmly commended the police force if you had seen its dogs sinking their teeth into unarmed, nonviolent Negroes. I doubt that you would so quickly commend the policemen if you were to observe their ugly and inhumane treatment of Negroes here in the city jail; if you were to watch them push and curse old Negro women and young Negro girls; if you were to see them slap and kick old Negro men and young boys; if you were to observe them, as they did on two occasions, refuse to give us food because we wanted to sing our grace together. I cannot join you in your praise of the Birmingham police department.

It is true that the police have exercised a degree of discipline in handling the demonstrators. In this sense they have conducted themselves rather "nonviolently" in public. But for what purpose? To preserve the evil system of segregation. Over the past few years I have consistently preached that nonviolence demands that the means we use must be as pure as the ends we seek. I have tried to make clear that it is wrong to use immoral means to attain moral ends. But now I must affirm that it is just as wrong, or perhaps even more so, to use moral means to preserve immoral ends. Perhaps Mr. Connor and his policemen have been rather nonviolent in public, as was Chief Pritchett in Albany, Georgia, but they have used the moral means of nonviolence to maintain the immoral end of racial injustice. As T. S. Eliot has said: "The last temptation is the greatest treason: To do the right deed for the wrong reason."

I wish you had commended the Negro sit inners and demonstrators of Birmingham for their sublime courage, their willingness to suffer and their amazing discipline in the midst of great provocation. One day the South will recognize its real heroes. They will be the James Merediths, with the noble sense of purpose that enables them to face jeering and hostile mobs, and with the agonizing loneliness that characterizes the life of the pioneer. They will be old, oppressed, battered Negro women, symbolized in a seventy two year old woman in Montgomery, Alabama, who rose up with a sense of dignity and with her people decided not to ride segregated buses, and who responded with ungrammatical profundity to one who inquired about her weariness: "My feets is tired, but my soul is at rest." They will be the young high school and college students, the young ministers of the gospel and a host of their elders, courageously and nonviolently sitting in at lunch counters and willingly going to jail for conscience' sake. One day the South will know that when

these disinherited children of God sat down at lunch counters, they were in reality standing up for what is best in the American dream and for the most sacred values in our Judaeo Christian heritage, thereby bringing our nation back to those great wells of democracy which were dug deep by the founding fathers in their formulation of the Constitution and the Declaration of Independence.

Never before have I written so long a letter. I'm afraid it is much too long to take your precious time. I can assure you that it would have been much shorter if I had been writing from a comfortable desk, but what else can one do when he is alone in a narrow jail cell, other than write long letters, think long thoughts and pray long prayers?

If I have said anything in this letter that overstates the truth and indicates an unreasonable impatience, I beg you to forgive me. If I have said anything that understates the truth and indicates my having a patience that allows me to settle for anything less than brotherhood, I beg God to forgive me.

I hope this letter finds you strong in the faith. I also hope that circumstances will soon make it possible for me to meet each of you, not as an integrationist or a civil-rights leader but as a fellow clergyman and a Christian brother. Let us all hope that the dark clouds of racial prejudice will soon pass away and the deep fog of misunderstanding will be lifted from our fear drenched communities, and in some not too distant tomorrow the radiant stars of love and brotherhood will shine over our great nation with all their scintillating beauty.

Yours for the cause of Peace and Brotherhood,
Martin Luther King, Jr.

Questions:

1. What are Kings reasons for being in Birmingham? How does King answer to the charge of being an outsider?

2. *"Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny."*

   This is considered one of King's most famous quotes. What does this mean?

3. What are the four basic steps of nonviolent direct action? For each of the steps state the example in Birmingham.

4. What does King mean by "constructive nonviolent tension" and how does he define its goal?

We know through painful experience that freedom is never voluntarily given by the oppressor; it must be demanded by the oppressed. Frankly, I have yet to engage in a direct action campaign that was "well timed" in the view of those who have not suffered unduly from the disease of segregation. For years now I have heard the word "Wait!" It rings in the ear of every Negro with piercing familiarity. This "Wait" has almost always meant "Never." We must come to see, with one of our distinguished jurists, that "justice too long delayed is justice denied."

The above paragraph is another of King's most well known statements.

5. Choose an example from United States history which represents the "painful experience that freedom is never voluntarily given by the oppressor."

6. Choose an example which illustrates his point that "justice too long delayed is justice denied."

7. King describes two types of law, just and unjust, how does he define each?

8. What does King warn will happen if the Negro Community is not allowed to demonstrate through nonviolent
actions? Is King threatening them?

9. What is your favorite quote? Why? How can you connect this to your life or issues in your community today?

SCOTUS "One-Pager" Case Summary Assignment

Directions: You will create a one-page summary of the important details, decision, and impact for the Supreme Court Case.

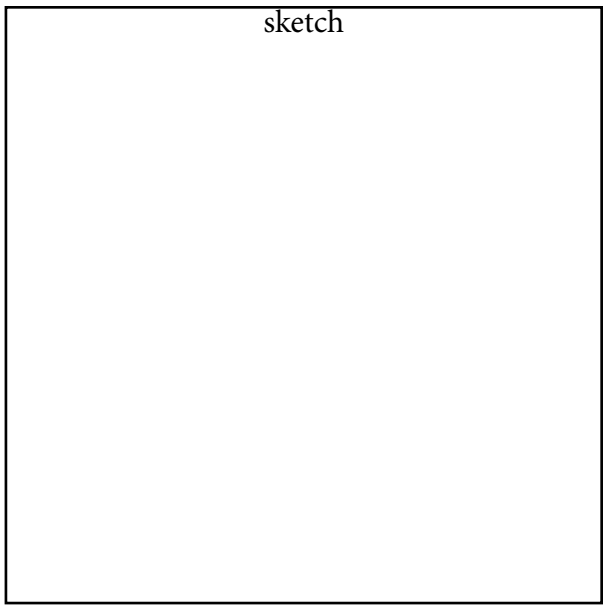
Your one-page must include the following:

- **S**ituation
  - Summarize the event(s) that spurred the case. Include any relevant background information that provides context to the case.
  - Look in: Background, Facts
- **C**onstitutional Question(s)
  - Identify the constitutional question(s) addressed by the case.
  - Look in: Issues
- **O**pinion(s)
  - Identify the answer to the constitutional question posed by the case and the votes of the Court. Explain the reasoning the Court posed for its decision. Include identification and explanation of any dissenting or concurring opinions (if applicable).
  - Look in: Decision
- **T**ime
  - Write the year that the case was decided.
  - Look in: Title
- **U**S Constitution
  - Identify what part (section, clause, amendment) of the Constitution applies to the case.
  - Look in: Constitutional clauses and/or Federal Law
- **S**ignificance
  - Explain the overall importance of the case to US history/government and/or case law.
  - Look in: Decision

You should also include one simple image/drawing that will help you remember the key details about the case.

Marbury v. Madison

sketch



Situation

Constitutional Question(s)

Opinion(s)

Time

US Constitution

Significance

Marbury v. Madison (1803)

Argued: There was no oral argument at the appeals stage in this case.
Decided: February 24, 1803

Background

Article III of the U.S. Constitution, which provides the framework for the judicial branch of government, is relatively brief and broad. It gives the Supreme Court the authority to hear two types of cases: original cases and appeals. "Original jurisdiction" cases start at the Supreme Court—it is the first court to hear the case. "Appellate jurisdiction" cases are first argued and decided by lower courts and then appealed to the Supreme Court, which can review the decision and affirm or reverse it.

In order to build the court system and clarify the role of the courts, Congress passed the Judiciary Act of 1789. This law authorized the Supreme Court to "issue writs of *mandamus* … to persons holding office under the authority of the United States." A writ of *mandamus* is a command by a superior court to a public official or lower court to perform a special duty. These are common in court systems.

In 1801, at the end of President John Adams' time in office, he appointed many judges from his own political party before the opposing party took office. It was the responsibility of the secretary of state, John Marshall, to finish the paperwork and give it to each of the newly appointed judges—this was called "delivering the commissions." Although Marshall signed and sealed all of the commissions, he failed to deliver 17 of them to the respective appointees. Marshall assumed that his successor would finish the job. However, when Thomas Jefferson became president, he told his new secretary of state, James Madison, not to deliver some of the commissions because he did not want members of the opposing political party to assume these judicial positions. Those individuals couldn't take office until they actually had their commissions in hand.

Facts

William Marbury, who had been appointed a justice of the peace of the District of Columbia, was one of the appointees who did not receive his commission. Marbury sued James Madison and asked the Supreme Court to issue a writ of *mandamus* requiring Madison to deliver the commission.

The politics involved in this dispute were complicated. The new chief justice of the United States, who was being asked to decide this case, was John Marshall, the Federalist secretary of state, who had failed to deliver the commission. President Jefferson and Secretary of State Madison were Democratic-Republicans who were attempting to prevent the Federalist appointees from taking office. If Chief Justice Marshall and the Supreme Court ordered Madison to deliver the commission, it was likely that he and Jefferson would refuse to do so, which would make the Court look weak. However, if they didn't require the commission delivered, it could look like they were backing down

out of fear. Chief Justice Marshall instead framed the case as a question about whether the Supreme Court even had the power to order the writ of *mandamus*.

Issues

Does Marbury have a right to his commission, and can he sue the federal government for it? Does the Supreme Court have the authority to order the delivery of the commission?

Constitutional Clauses and Federal Law

- **Article III, Section 2, Clause 2 of the U.S. Constitution**

  "In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make."

- **The Judiciary Act of 1789**

  This Act authorized the Supreme Court to "issue writs of *mandamus* … to persons holding office under the authority of the United States."

Arguments

There was no oral argument at the appellate stage of this case. Below are arguments that can be made for the parties in the case.

Arguments for Marbury

- Marbury's commission was valid, whether it was physically delivered or not before the end of President Adams' term, because the president had ordered it.
- The Judiciary Act of 1789 clearly gives the Supreme Court the power to order the commission be delivered.
- Secretary of State Madison, as an official of the executive branch, was required to obey President Adams' official act. Therefore, the Court should exercise its authority under the Judiciary Act to issue a writ of *mandamus* against Madison.
- Article III states that Congress can make exceptions to which cases have original jurisdiction in the Courts. The case falls under original jurisdiction of the Supreme Court.

Arguments for Madison

- The appointment of Marbury to his position was invalid because his commission was not delivered before the expiration of Adams' term as president.

- The appointment of commissions raised a political issue, not a judicial one. Therefore, the Supreme Court should not be deciding this case.
- The case falls under the appellate, not original, jurisdiction of the Supreme Court. It should be tried in the lower courts first.

Decision

The decision in *Marbury v. Madison* ended up being much more significant than the resolution of the dispute between Marbury and the new administration. The Supreme Court, in this decision, established a key power of the Supreme Court that continues to shape the institution today.

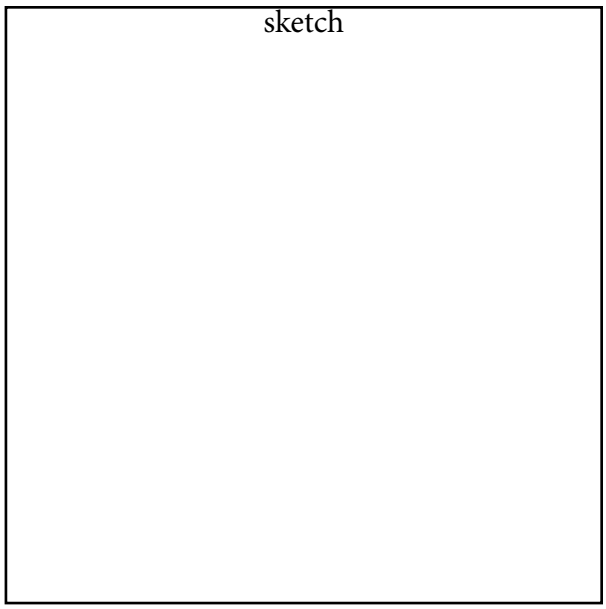
The Court unanimously decided not to require Madison to deliver the commission to Marbury. In the opinion, written by Chief Justice Marshall, the Court ruled that Marbury was entitled to his commission, but that according to the Constitution, the Court did not have the authority to require Madison to deliver the commission to Marbury in this case. They said that the Judiciary Act of 1789 conflicted with the Constitution because it gave the Supreme Court more authority than it was given in Article III. The Judiciary Act of 1789 authorized the Supreme Court to "issue writs of *mandamus* … to persons holding office under the authority of the United States" as a matter of its original jurisdiction. However, Article III, section 2, clause 2 of the Constitution, as the Court read it, authorizes the Supreme Court to exercise original jurisdiction only in cases involving "ambassadors, other public ministers and consuls, and those [cases] in which a state shall be a party. In all other cases, the Supreme Court shall have appellate jurisdiction." The dispute between Marbury and Madison did not involve ambassadors, public ministers, consuls, or states. Therefore, according to the Constitution, the Supreme Court did not have the authority to exercise its original jurisdiction in this case. Thus the Judiciary Act of 1789 and the Constitution were in conflict with each other.

Declaring the Constitution "superior, paramount law," the Supreme Court ruled that when ordinary laws conflict with the Constitution, they must be struck down. Furthermore, the Court said, it is the job of judges, including the justices of the Supreme Court, to interpret laws and determine when they conflict with the Constitution. According to the Court, the Constitution gives the judicial branch the power to strike down laws passed by Congress (the legislative branch) and actions of the president and his executive branch officials and departments. This is the principle of judicial review. The opinion said that it is "emphatically the province and duty of the judicial department to say what the law is."

This decision established the judicial branch as an equal partner with the executive and legislative branches within the government, with the power to rule actions of the other branches unconstitutional. The ruling said that the Constitution is the supreme law of the land and established the Supreme Court as the final authority for interpreting it.

McCulloch v. Maryland

sketch



Situation

Constitutional Question(s)

Opinion(s)

Time

US Constitution

Significance

McCulloch v. Maryland (1819)

Argued: February 22–26, 1819
Reargued: March 1–3, 1819
Decided: March 6, 1819

Background

In 1791, the First Bank of the United States was established to serve as a central bank for the country. It was a place for storing government funds, collecting taxes, and issuing sound currency. At the time it was created, the government was in its infancy and there was a great deal of debate over exactly how much power the national government should have. In particular, many individuals focused on the fact that the Constitution did not expressly grant the power to Congress to charter corporations or banks. Many thought that the only way to justify the federal government's creation of a central bank would be to interpret the Constitution as giving the federal government "implied" powers. This idea of implied powers worried many individuals who feared that this interpretation of the Constitution—providing implied powers—would create an all-powerful national government that would threaten the presumed sovereignty of the states.

The debate about the constitutionality of the First Bank was intense. Some people, such as Alexander Hamilton, argued for the supremacy of the national government and a broad interpretation of its powers, which would include the ability to establish a bank. Others, such as Thomas Jefferson, advocated states' rights, limited government, and a narrower interpretation of the national government's powers under the Constitution and, therefore, no bank. While James Madison was president, the First Bank's charter was not renewed. Congress proposed a Second Bank of the United States in 1816. President Madison, who was a staunch opponent of the creation of the First Bank, approved the charter, believing that its constitutionality had been settled by prior practices and understandings.

The Second Bank established branches throughout the United States. Many states opposed opening branches of this bank within their boundaries for several reasons. First, the Bank of the United States competed with their own banks. (At this point in history, there was no single currency in the U.S. Each state issued its own money, and the Bank of the United States also had authority to issue currency.) Second, the states found many of the managers of the Second Bank to be corrupt. Third, the states felt that the federal government was exerting too much power over them by attempting to curtail the state practice of issuing more paper money than they were able to redeem on demand.

Facts

Maryland attempted to close the Baltimore branch of the national bank by passing a law that forced all banks chartered outside of the state to pay a yearly tax (the Second Bank was the only such bank

in the state). James McCulloch*, the chief administrative officer of the Baltimore branch, refused to pay the tax. The state of Maryland sued McCulloch, saying that Maryland had the power to tax any business in its state and that the Constitution does not give Congress the power to create a national bank. McCulloch was convicted, but he appealed the decision to the Maryland Court of Appeals. His attorneys argued that the establishment of a national bank was a "necessary and proper" function of Congress, one of many implied, but not explicitly stated, powers in the Constitution.

The Maryland Court of Appeals ruled in favor of Maryland, and McCulloch appealed again. The case was heard by the Supreme Court of the United States.

Issues

Did Congress have the authority under the Constitution to commission a national bank? If so, did the state of Maryland have the authority to tax a branch of the national bank operating within its borders?

Constitutional Text and Amendments

- **U.S. Constitution, Article I, Section 8, Clause 18 (Necessary and Proper Clause)**

  "The 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."

- **U.S. Constitution, Article VI, Clause 2 (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 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."

- **U.S. Constitution, 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."

Arguments for McCulloch (petitioner)

- The Necessary and Proper Clause permits Congress to make laws as they see fit. A law creating a national bank is necessary for the running of the country.

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* In the Supreme Court's opinion for this case, James McCulloch's surname was spelled M'Culloch.

- While the Constitution does not specifically say that Congress has the power to establish a national bank, there is also nothing in the Constitution restricting the powers of Congress to those specifically enumerated.
- The Constitution does give Congress the power to levy taxes, borrow or spend money, and raise and support an army and navy, among other things. Establishing a national bank is "necessary and proper" to the exercise of all of those other powers.
- If Congress passed a law within its authority under the Constitution, a state cannot interfere with that action. Maryland is attempting to interfere with Congress's action and might try to tax the bank so heavily that that it would be unable to exist. The Supremacy Clause prohibits that kind of state interference with federal law.

Arguments for Maryland (respondent)

- The Constitution never says that Congress may establish a national bank.
- The Constitution says that the powers not delegated to the United States are reserved to the states.
- The federal government shares the ability to raise taxes with the states—it is a concurrent power. Taxation within a sovereign state's border, including of federal entities, is a state's exercise of a Constitutional power.
- The establishment of a national bank interferes with the states' abilities to control their own supply of money and their own economies.

Decision

The decision was unanimous in favor of McCulloch and the federal government. Chief Justice John Marshall authored the opinion of the Court.

The Supreme Court determined that Congress did have the power under the Constitution to create a national bank. Even though the Constitution does not explicitly include that power, there is also nothing in the Constitution that restricts Congress's powers to those specifically enumerated. The Necessary and Proper Clause gives Congress the authority to make "all laws which shall be necessary and proper" for exercising the powers that are specifically enumerated, and the establishment of a national bank is "necessary and proper" to exercising other enumerated powers.

The Court also ruled that Maryland could not tax the Bank of the United States. In their decision the justices declared that "the constitution and the laws made in pursuance thereof are supreme; that they control the constitution and laws of the respective states, and cannot be controlled by them." Allowing a state to tax a branch of the national bank created by Congress would allow that state to interfere with the exercise of Congress's constitutional powers. Thus because "states have no power, by taxation or otherwise, to retard, impede, burden or in any manner control" the operation of constitutional laws passed by Congress, Maryland could not be allowed to tax a branch of the national bank, even though that branch was operating within its borders.

Baker v. Carr

sketch

Situation

Constitutional Question(s)

Opinion(s)

Time

US Constitution

Significance

Baker v. Carr (1962)

Argued: April 19–21, 1961
Re-argued: October 9, 1961
Decided: March 26, 1962

Background

In the U.S. each state is responsible for determining its legislative districts. For many decades states drew districts however they wanted. By the 1950s and 1960s, questions arose about whether the states' division of voting districts was fair. Many states had not changed their district lines in decades. During that time many people moved from rural areas to cities. As a result, a significant number of legislative districts became uneven—for example, a rural district with 500 people and an urban district with 5,000 people each would have only one representative in the state legislature. Some voters filed lawsuits to address the inequities, but federal courts deferred to state laws and would not hear these cases.

Federal courts did not hear these cases because they were thought to be "political" matters. Courts were reluctant to interfere when another branch of government (the executive or legislative) made a decision on an issue that was assigned to it by the Constitution. For example, if the president negotiated a treaty with another country (a power granted to the president by the Constitution), the courts would generally not decide a case questioning the legality of the treaty. The power of state legislatures to create voting districts was one of those "political questions" that the courts traditionally had avoided.

This is a case about whether federal courts could rule on the way states draw their state boundaries for the purpose of electing members of the state legislature.

Facts

In the late 1950s, Tennessee was still using boundaries between electoral districts that had been determined by the 1900 census. Each of Tennessee's 95 counties elected one member of the state's General Assembly. The problem with this plan was that the population of the state changed substantially between 1901 and 1950. The distribution of the population had changed too. Many more people lived in Memphis (and its district—Shelby County) in 1960 than had in 1900. But the entire county was still only represented by one person in the state legislature, while rural counties with far fewer people also each had one representative.

In fact, the state constitution required revising the legislative district lines every 10 years to account for changes in population. But state lawmakers ignored that requirement and refused to redraw the districts.

An eligible voter who lived in an urban area of Shelby County (Memphis), Charles Baker, believed that he and similar residents of more heavily populated legislative districts were being denied "equal

protection of the laws" under the 14th Amendment because their votes were "devalued." He argued that his vote, and those of voters in similar situations, would not count the same as those of voters residing in less populated, rural areas. He sued the state officials responsible for supervising elections in the U.S. District Court for the Middle District of Tennessee.

The state of Tennessee argued that courts could not provide a solution for this issue because this was a "political question" that federal courts could not decide. The state said that its political process should be allowed to function independently. The District Court dismissed Baker's complaint on the grounds that it lacked authority to decide the case. Baker appealed that decision up to the U.S. Supreme Court, which agreed to hear his case.

Issue

Do federal courts have the power to decide cases about the apportionment of population into state legislative districts?

Constitutional Articles and Amendments and Supreme Court Precedents

- **Article III, section 2 of the U.S. Constitution**

  "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, or which shall be made, under their Authority. . . ."

- **14th Amendment to the U.S. Constitution**

  No State shall…deny to any person within its jurisdiction the equal protection of the laws."

- *Colegrove v. Green* **(1946)**

  An Illinois resident sued Illinois officials to prevent them from holding an upcoming election. He argued that the boundaries for congressional districts drawn by the Illinois legislature were irregularly shaped and did not include the same number of people in each. The Supreme Court was asked to decide whether Illinois' congressional districts violated constitutional requirements for fair districting.

  The Court dismissed the case, concluding that federal courts lack the competence to decide whether a state's districting decisions are consistent with the Constitution. The Court decided that, because the legislative districting process is inherently political in nature, the courts cannot second-guess the political judgment of a state as to how best to draw districts or order a state to draw its districts any particular way.

Arguments for Baker (petitioner)

- The courts should be able to decide this issue. The text of Article III, section 2 of the U.S. Constitution is clear: "judicial Power shall extend to all Cases, in Law and Equity, arising

under this Constitution." This is an issue that arises under the Constitution because the right of the residents of Tennessee to "equal protection of the law" under the 14th Amendment was in question.

- "Political questions" that the courts should not address are not neatly defined and are determined by a number of factors. Just because an issue involves politics does not mean it is a "political question" that courts cannot decide. By refusing to decide political questions, courts are trying to avoid a situation where a co-equal branch of government is telling another what to do. But the courts would not be drawing new districts (that is the legislature's responsibility). The courts would simply be instructing the legislature to fix any constitutional violations.
- Courts should not follow a long-held practice merely because it is a tradition. There needs to be an important and constitutional reason why the courts should not decide a case.
- Baker's complaint—that his vote does not count equally—is a very serious violation of his rights. Many states have been unwilling to address this violation. In a case like this, the courts must get involved to protect people's rights and prevent the harm that would happen if the situation is not addressed immediately.
- The states suggest that voters' concerns can be remedied by elected officials—that voters can lobby for state laws and practices. That solution is flawed. Most of the members of the Tennessee legislature benefited from the districting plan as it existed.

Arguments for Carr (respondent)

- The federal courts do not have the constitutional authority to review legislative districts. One branch of the government should not tell another what to do on a question that is committed to the discretion of that branch alone. All three branches—legislative, judicial, and executive—are equal in the Constitution, and co-equal bodies cannot interfere with each other's basic functions.
- If the courts decide this case, they will overstep their authority and abuse their power. The state of Tennessee can enforce its own laws and decide what legislative districts it thinks achieve the fairest representational system. The federal government should respect the state's sovereignty and not force uniformity in an area where the Constitution left it to the states to decide how best to draw districts.
- Federal courts have always viewed districting as a uniquely political function that states do not have to carry out in any particular way.
- Even if the courts had authority to hear the case, there is nothing in the Constitution that says that state legislative districts must each have the same number of people. Nor is there any objective way to decide whether a state's districting decisions are sufficiently "fair."

- The courts do not need to interfere with the democratic process. If the residents of Tennessee want to change how their legislature draws the state's districts, they can encourage their elected officials to make that change through the existing democratic process.

Decision

In a 6–2 decision, the U.S. Supreme Court decided in favor of Baker. Justice Brennan wrote the opinion of the Court and was joined by Justice Black and Chief Justice Warren. Justices Douglas, Clark, and Stewart also joined in Justice Brennan's majority opinion and wrote separate concurring opinions. Justice Frankfurter and Justice Harlan wrote dissenting opinions.

Majority

The Supreme Court decided that the lower court's decision that courts could not hear this case was incorrect. In a dramatic break with tradition and practice, the majority concluded that federal courts have the authority to enforce the requirement of equal protection of the law against state officials—including, ultimately, the state legislature itself—if the legislative districts that the state creates are so disproportionally weighted as to deny the residents of the overpopulated districts equivalent treatment with underpopulated districts. The majority concluded that there is no inherent reason why courts cannot determine whether state districts are irrationally drawn in ways that result in substantially differing populations. Even though politics may enter into the drawing of districts, the constitutional guarantee of equal protection is judicially enforceable. A challenge to the differing populations of legislative districts does not present a "political question" that courts are unable to decide.

The Court did not decide whether Tennessee's districts actually were unconstitutional, however. Instead, the justices instructed the District Court to allow a hearing on the merits of Baker's claim that the state's legislative districts violated his 14th Amendment rights. That course established a precedent that dozens of federal courts later followed in allowing disgruntled residents to try to prove that legislative districts are unconstitutionally unbalanced.

Dissents

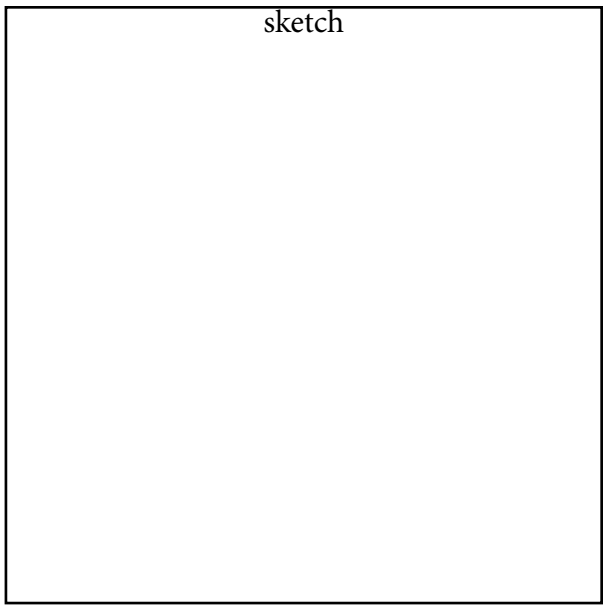
Justices Frankfurter and Harlan disagreed with the majority. They asserted that the Court's own precedents were clear and consistent in refusing to review a state's districting decisions, and they saw no reason for federal courts to decide these types of cases. This case was seen as an entirely "different matter from denial of the franchise [right to vote] to individuals because of race, color, religion or sex." Because they found nothing in the Constitution that would require states to draw districts in a particular manner, there was no basis for federal courts to interfere with a political task that the Constitution left to the state legislatures.

Justice Harlan's dissent highlighted just how significant the majority decision was. As he noted:

"I can find nothing in the Equal Protection Clause or elsewhere in the Federal Constitution which expressly or impliedly supports the view that state legislatures must be so structured as to reflect with approximate equality the voice of every voter. Not only is that proposition refuted by history … but it strikes deep into the heart of our federal system. Its acceptance would require us to turn our backs on the regard which this Court has always shown for the judgment of state legislatures and courts on matters of basically local concern."

Shaw v. Reno

sketch



Situation

Constitutional Question(s)

Opinion(s)

Time

US Constitution

Significance

Shaw v. Reno (1993)

Argued: April 20, 1993
Decided: June 28, 1993

Background

After the Civil War, the 13th, 14th, and 15th Amendments ended slavery, granted citizenship to formerly enslaved persons, and gave African-American men the right to vote. Soon thereafter, state governments, primarily in the south, institutionalized black codes and Jim Crow laws to prevent former slaves from voting. Poll taxes, literacy tests, and felon disenfranchisement were among the practices commonly used to suppress black voting.

In order to prevent states from suppressing the right of African-Americans and other minorities to vote, Congress passed the Voting Rights Act in 1965. This law prohibited voting rules that discriminated on the basis of race. The law also placed cities, counties, and states with a history of discriminatory practices in a special category. These jurisdictions had to request pre-clearance from the federal government before changing their voting rules and were required to prove that the proposed change did not limit a person's right to vote because of their race. The courts concluded that the Voting Rights Act, including this "pre-clearance" requirement, applied to the drawing of legislative district boundaries, which each state must do every 10 years to account for changing populations. While states generally can adopt their own criteria for districting—which typically include making districts that are reasonably compact and contiguous (where all parts of the district are connected to one another) and that align with existing geographical boundaries like cities or counties—they may not draw districts in a way that discriminates on the basis of race.

In *Thornburg v. Gingles* (1986), the Supreme Court ruled that if voting is racially polarized, and if a minority group is both large enough and geographically compact enough to make up a majority of the voters in a new district, then the Voting Rights Act requires the district to be drawn to comprise a majority of minority voters—i.e., to be drawn as a "majority-minority" district. The Court concluded that drawing majority-minority districts in such circumstances is necessary to give minority groups "the opportunity to elect their candidate of choice."

Facts

Between 1865 and 1993, the state of North Carolina elected only seven African-Americans to the U.S. House of Representatives. In 1990, none of the state's 11 members of Congress were black, while 20% of the state's population was. After the 1990 census, the state gained a 12th Congressional seat, and the state legislature tried to ensure the election of an African-American representative through the creation of a legislative district that would be majority African-American. Forty of North Carolina's counties were covered by the Voting Rights Act requirement that redistricting plans be pre-cleared by the federal government, so the state submitted its plans to the U.S. Department of Justice. The attorney general rejected the North Carolina state legislature's first

redistricting plan because it created only one majority-minority district. The Department of Justice said that a second majority-minority district could also be created.

The General Assembly (North Carolina's legislature) redrew the district lines to create a second majority-minority district, District 12. District 12 ran along Interstate 85 in snake-like fashion for 160 miles, breaking up several counties, towns, and districts to connect geographically separate areas densely populated by minority voters into a single district that, in some places, was only as wide as the highway. The attorney general did not object to this new districting plan. In 1992, Melvin Watt won the 12th district, becoming one of North Carolina's first two black members of Congress in the 20th century.

Five white voters filed a lawsuit against both state and federal officials in the U.S. District Court for the Eastern District of North Carolina. They argued that District 12 violated the 14th Amendment's Equal Protection Clause because it was motivated by racial discrimination and resulted in a district drawn almost entirely on racial lines, with the sole purpose of electing black Congressional representatives. The District Court dismissed the case, concluding that using race-based districting to benefit minority voters does not violate the Constitution. The voters appealed to the Supreme Court, which is required by law to hear most redistricting cases.

Issue

Did the North Carolina residents' claim that the 1990 redistricting plan discriminated on the basis of race raise a valid constitutional issue under the 14th Amendment's Equal Protection Clause?

Constitutional Amendments and Supreme Court Precedents

- **14th Amendment to the U.S. Constitution**

  "Nor shall any state…deny to any person within its jurisdiction the equal protection of the laws."

- **15th Amendment to the U.S. Constitution**

  "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."

- *Gomillion v. Lightfoot* **(1960)**

  In 1957, the Alabama legislature decided to redraw the boundaries of the city of Tuskegee. While the city had long been shaped as a square, the legislature redrew it as "a strangely irregular twenty-eight-sided figure." The result of this redistricting was to remove all but four or five of the city's 400 black voters from its boundaries, while removing no white voters or residents. The black voters sued, but the lower courts dismissed their case, concluding that courts have no power to interfere with how state legislatures draw district lines. The U.S. Supreme Court reversed. The Court found it difficult to explain the bizarrely shaped district as anything other than an effort to segregate black voters and deprive them of their right to

vote. The Court concluded that courts have the power under the 15th Amendment to invalidate districts that are drawn to abridge the right to vote on the basis of race.

- *United Jewish Organizations of Williamsburgh, Inc. v. Carey* **(1977)**

  A Hasidic Jewish community in New York was divided into two districts as a result of a reapportionment plan that reorganized several districts to achieve a minimum nonwhite representation of 65% in each district. The U.S. Supreme Court upheld the plan, holding that considering race when drawing districts does not necessarily violate the 14th or 15th Amendments. Although New York deliberately increased nonwhite majorities, the Court concluded that this use of racial criteria was permissible because there was no "fencing out" of the white population in the county from participating in the election processes, and whites were not subsequently underrepresented relative to their representation of the population.

Arguments for Shaw (petitioner)

- The Constitution is "color-blind," meaning it prohibits using race as the basis for how to draw districts. This redistricting plan is the opposite of color-blind and amounts to unconstitutional discrimination on the basis of race.
- The snake-like shape of District 12 makes it neither compact nor truly contiguous, which are the traditional criteria for district maps. The legislature's obvious disregard for these criteria confirms that its sole purpose was to create a seat to represent a particular racial group.
- In *Gomillion v. Lightfoot* (1960), the Court held that dividing voters into districts on the basis of their race is impermissible racial segregation. That does not change just because race is used to advance the interests of a minority group rather than limit them.
- Drawing districts on the basis of race advances the stereotype that black voters will only vote for a black candidate and white voters for a white candidate. Minority voters have different views and interests, and do not necessarily have a single, unified "candidate of choice."

Arguments for Reno (respondent)

- The courts have ruled that the use of race in redistricting is permissible and might even be more important than traditional districting features such as contiguousness and compactness, as long as the configurations are not too extreme. Oddly shaped districts are sometimes necessary if states are to elect representatives who are reflective of the people of the state.
- The Voting Rights Act of 1965 encourages the creation of districts with majorities of black, Hispanic, and other minority voters, especially where there has been voting discrimination in the past.
- In *Gomillion v. Lightfoot* (1960), the Court held that districts can't be drawn to discriminate against minorities. But that does not mean that race can't be used to draw districts that advance the interests of minorities.

- In *United Jewish Organizations of Williamsburgh, Inc. v. Carey*, the Court approved "racial redistricting where appropriate to avoid abridging the right to vote on account of race." Though whites had lost one legislative seat as a result of redistricting, the Court found that their constitutional rights were not violated because they were not deprived of effective representation or the right to vote.

Decision

In a 5–4 decision, the U.S. Supreme Court decided in favor of Shaw, and sent the case back to the lower court to be reheard. Justice O'Connor authored the majority decision, which was joined by Chief Justice Rehnquist and Justices Scalia, Kennedy, and Thomas. Justices White, Blackmun, Stevens, and Souter dissented.

Majority

Justice O'Connor detailed the troublesome history of racial gerrymandering and explained how North Carolina District 12 was similar in many ways to past districts that had been held unconstitutional, like the bizarrely shaped district in *Gomillion*. The justices said that classifications of citizens predominantly on the basis of race are undesirable in a free society and conflict with the American political value of equality.

The majority said that any redistricting plan that includes people in one district who are geographically disparate and share little in common with one another but their skin color, bears a strong resemblance to racial segregation. They wrote that racial classifications of any sort promotes the belief that individuals should be judged by the color of their skin. They also said that drawing districts to advance the perceived interests of one racial group may lead elected officials to see their obligation as representing only members of that group, rather than their constituency as a whole. The justices concluded that racial gerrymandering, even for remedial purposes, may "balkanize us into competing racial factions; it threatens to carry us further from the goal of a political system in which race no longer matters."

The Court was tasked with deciding the grounds on which voters could challenge voting districts as racial gerrymanders. They decided that if a redistricting plan cannot rationally be understood as anything other than an effort to divide voters based on their race, voters may challenge such a district under the Equal Protection Clause. Therefore, the case was sent back to the lower court to determine if the North Carolina plan could be justified in terms other than race.

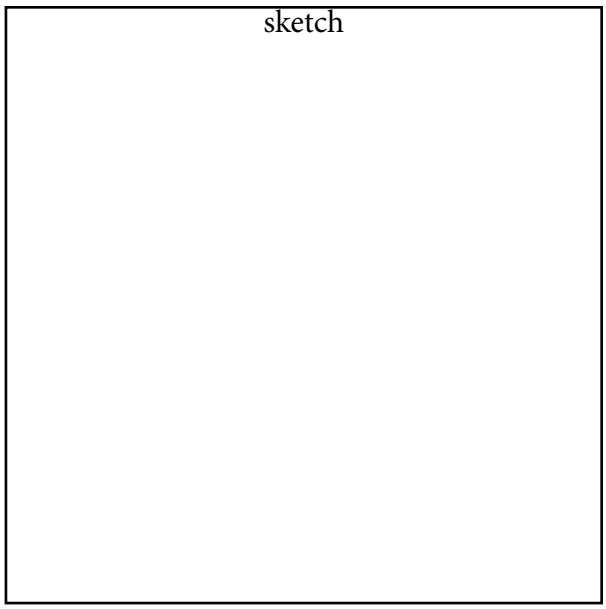
Dissents

In a series of separate dissents, the dissenters argued that consideration of race in the districting process is inevitable, and that it does not violate the Constitution unless the party challenging a district shows that the district was drawn in a way that deprives a racial group of an equal opportunity to participate in the political process. Some of the dissenters also argued that there are legitimate reasons to consider race because people of the same race share interests and often vote

together, and that race-conscious gerrymandering only violates the Equal Protection Clause if the purpose of those drawing the boundaries is to enhance the power of the group in control of the process, at the expense of minority voters.

Engel v. Vitale

sketch



Situation

Constitutional Question(s)

Opinion(s)

Time

US Constitution

Significance

Engel v. Vitale (1962)

Argued: April 3, 1962
Decided: June 25, 1962

Background

The First Amendment to the Constitution protects the right to religious worship yet also shields Americans from the establishment of state-sponsored religion. Courts are often asked to decide tough cases about the convergence of those two elements—the Free Exercise and Establishment Clauses of the First Amendment.

The United States has a long history of infusing religion into its political practices. For instance, "In God We Trust" is printed on currency. Congress opens each session with a prayer. Before testifying in court, citizens typically pledge an oath to God that they will tell the truth. Traditionally, presidents are sworn in by placing their hand on a bible. Congress employs a chaplain, and Supreme Court sessions are opened with the invocation "God save the United States and this Honorable Court." Public schools are a bedrock of institution in U.S. democracy, where the teaching of citizenship, rights, and freedoms are common. This is a case about whether public schools may also play a role in teaching faith to God through the daily recitation of prayer.

Facts

Each day, after the bell opened the school day, students in New York classrooms would salute the U.S. flag. After the salute, students and teachers voluntarily recited this school-provided prayer, which had been drafted by the state education agency, the New York Regents: "Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessings upon us, our parents, our teachers and our country." The prayer was said aloud in the presence of a teacher, who either led the recitation or selected a student to do so. Students were not required to say this prayer out loud; they could choose to remain silent. Two Jewish families (including Stephen Engel), a member of the American Ethical Union, a Unitarian, and a non-religious person sued the local school board, which required public schools in the district to have the prayer recited. The plaintiffs argued that reciting the daily prayer at the opening of the school day in a public school violated the First Amendment's Establishment Clause. After the New York courts upheld the prayer, the objecting families asked the U.S. Supreme Court to review the case, and the Court agreed to hear it.

Issue

Does the recitation of a prayer in public schools violate the Establishment Clause of the First Amendment?

Constitutional Amendment and Supreme Court Precedents

- **First Amendment to the U.S. Constitution**

  "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof…;"

- *West Virginia State Board of Education v. Barnette* **(1943)**

  The West Virginia Board of Education required that all public schools include a salute of the American flag as a part of their activities. Everyone, including teachers and pupils, was required to salute the flag. If they did not, they could be charged with "insubordination" and punished. Students who were members of a religious sect, the Jehovah's Witnesses, cited a religious objection to saluting the flag, claiming that it was equivalent to "idolatry." Their parents sued the state board of education asserting that the compulsory flag salute was a violation of the Establishment Clause. The Supreme Court ruled that the mandatory salute was unconstitutional. They said that a flag salute was a form of speech, because it was a way to communicate ideas. In *Barnette,* the Court ruled that in most cases the government cannot require people to express ideas that they disagree with, especially when the ideas conflict with their own religious beliefs.

- *McCollum v. Board of Education* **(1948)**

  In *McCollum v. Board of Education,* the Court said a public school violated the Establishment Clause when it allowed the school to teach religious instruction during school hours on school property. The schools set aside time for religious instruction, organized selection of religious community members to teach the school children, and administered the instruction. The court ruled in an 8–1 decision this violated the Establishment Clause by establishing a government preference for certain religions.

Arguments for Engel (petitioner)

- This school-sponsored prayer violates the Establishment Clause of the First Amendment as applied to the states. Public schools are part of the government, and the Establishment Clause says that the government cannot favor any one religion over another. The prayer includes the words "Almighty God" and thus favors monotheistic religions.
- It also violates the Free Exercise part of the First Amendment, because it has the effect of coercing children to participate in a religious proceeding. Children are required to attend school; they cannot choose to skip school if the prayer conflicts with their beliefs.
- A teacher leads the students in prayer and cooperates in carrying out the mandate requiring religious training in the public schools. This prayer is religious instruction and teachers are state officials; therefore, the government is forcing a belief in organized religion.

- Although the prayer is voluntary, few parents or students would choose not to participate because students would be singled out for their religious (or non-religious) beliefs.
- In earlier cases like *Barnette* and *McCollum,* the Supreme Court made it clear that public schools cannot promote specific religions over others and cannot force children to participate in activities that violate their religious beliefs.

Arguments for Vitale (respondent)

- This prayer safeguards the religious heritage of the nation. Beginning with the Mayflower Compact, the country's founders have publicly and repeatedly recognized the existence of a supreme being or God. In the Declaration of Independence, there are four references to the creator who endowed humans with "unalienable rights." Congress opens its session with a prayer, and presidents often conclude speeches with "God bless the United States of America."
- The New York schools' prayer is a declaration of faith. It is non-denominational and does not imply preference of any one religion over others.
- Schools fulfill a function of character- and citizenship-education, supplementing the training that often occurs at home. A short, nondenominational prayer aligns with this character education function.
- The New York Regents prayer is voluntary, not mandatory. Any child could remain silent or be excused by parental request with principal approval.
- The Pledge of Allegiance includes the word "God" and is widely accepted and recited in schools. In previous cases the Supreme Court did not strike references to God down as violations of the First Amendment.

Decision

The Supreme Court ruled, 6–1, in favor of the objecting parents. Justice Black wrote the majority opinion, and was joined by Chief Justice Warren and Justices Douglas, Clark, Harlan, and Brennan. Justices Frankfurter and White did not participate. Justice Stewart dissented.

Majority

The Court ruled that the school-sponsored prayer was unconstitutional because it violated the Establishment Clause. The prayer was a religious activity composed by government officials (school administrators) and used as a part of a government program (school instruction) to advance religious beliefs. The Court rejected the claim that the prayer was nondenominational and voluntary. The Court's opinion provided an example from history: "…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 Court also

explained that, while the most obvious effect of the Establishment Clause was to prevent the government from setting up a particular religious sect of church as the "official" church, its underlying objective is broader:

> "Its first and most immediate purpose rested on the belief that a union of government and religion tends to destroy government and to degrade religion. The history of governmentally established religion, both in England and in this country, showed that whenever government had allied itself with one particular form of religion, the inevitable result had been that it had incurred the hatred, disrespect and even contempt of those who held contrary beliefs. That same history showed that many people had lost their respect for any religion that had relied upon the support of government to spread its faith."

The Court also said that preventing the government from sponsoring prayer does not indicate hostility toward religion.

Dissent

Justice Stewart argued in his dissent that the majority opinion misapplied the Constitution in this case. He emphasized that the prayer was voluntary and that students were free to choose not to say it. "I cannot see how an 'official religion' is established by letting those who want to say a prayer say it. On the contrary, I think that to deny the wish of these school children to join in reciting this prayer is to deny them the opportunity of sharing in the spiritual heritage of our Nation." Stewart described the history of religious traditions reflected in American institutions and government, from the invocation that "God save the United States and this Honorable Court" at the opening of each Supreme Court session, to the references to God in the Star-Spangled Banner and the employment of a chaplain in the House of Representatives. None of these things established an "official religion," and neither did New York's school prayer. Stewart argued that the Establishment Clause was meant to keep the government from forming a state-sponsored church (like the Church of England), not prohibit all types of government involvement with religion.

Schenck v. US

sketch

Situation

Constitutional Question(s)

Opinion(s)

Time

US Constitution

Significance

Schenck v. U.S. (1919)

Argued: January 9, 10, 1919
Decided: March 3, 1919

Background

The First Amendment to the U.S. Constitution protects the freedom of speech. This right, however, like all rights protected by the Constitution, is not absolute. The government can place reasonable limits on protected rights in many instances. The extent to which the government can limit free speech depends on the context, and, generally, the government cannot exert much control over the content of someone's speech. At various points in history, the government has argued that national security concerns, or times of war, permit the government to place additional restrictions on speech.

Two months after the United States formally entered World War I, Congress passed the Espionage Act of 1917. Many elected officials were worried about foreign spies or American sympathizers with our opponents in the war. The Espionage Act made it a crime to "cause insubordination, disloyalty, mutiny, refusal of duty, in the military" or to obstruct military recruiting. A number of Americans were arrested and convicted under this law during World War I. In this case the Supreme Court had to decide whether the speech that was punished was protected by the First Amendment.

Facts

Charles T. Schenck was the general secretary for the Socialist Party chapter in Philadelphia. Along with fellow executive committee member, Elizabeth Baer, Schenck was convicted of violating the Espionage Act. He had printed and mailed 15,000 fliers to draft-age men arguing that conscription (the draft) was unconstitutional and urging them to resist.

On the side of the flier entitled "Long Live the Constitution of the United States," the Socialist Party argued that conscription was a form of "involuntary servitude" and thereby outlawed by the 13th Amendment. Schenck's flier also implored its recipients "to write to your Congressman and tell him you want the [conscription] law repealed. Do not submit to intimidation. You have the right to demand the repeal of any law. Exercise your rights of free speech, peaceful assemblage, and petitioning the government for a redress of grievances."

On the reverse side entitled "Assert Your Rights!", Schenck adopted more fiery language. He implored his audience to "do your share to maintain, support and uphold the rights of the people of this country" or else "you are helping condone a most infamous and insidious conspiracy" fueled by "cunning politicians and a mercenary capitalist press."

After Schenck's conviction for violating the Espionage Act in 1917, he asked the trial court for a new trial. This request was denied. He then appealed to the Supreme Court, which agreed to review his case in 1919.

Issue

Did Schenck's conviction under the Espionage Act for criticizing the draft violate his First Amendment free speech rights?

Constitutional Provisions and Federal Statutes

- **First Amendment to the U.S. Constitution**

  Congress shall make no law… 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.

- **Espionage Act, Section 3**

  "Whoever, when the United States is at war, …shall willfully cause or attempt to cause insubordination, disloyalty, mutiny, refusal of duty, in the military or naval forces of the United States, or shall willfully obstruct the recruiting or enlistment service of the United States, to the injury of the service or of the United States, shall be punished by a fine of not more than $10,000 or imprisonment for not more than twenty years, or both."

Arguments for Schenck

- The First Amendment not only prevents Congress from prohibiting criticism of government action. It also protects the speaker from punishment after the expression.
- The First Amendment must protect the free discussion of public matters. This practice helps hold government officials accountable and promotes transparency. Schenck was simply sharing his opinions about important government actions and policies.
- There is an important difference between words and actions. While the government may punish those who refuse to serve in the military once drafted (action), the effort to persuade people not to serve is protected by the Constitution as speech (words).
- Schenck exercised his free speech rights to communicate his opinions on important public issues. He was not directly calling on readers to break the law, only to exercise their right to redress grievances by writing their Congressional representatives.

Arguments for the United States

- Congress is empowered to declare war and ensure the functioning of the U.S. military. In a time of war, it may limit the expression of opinions if necessary to make sure the military and government can function—which includes the necessary recruitment and enlistment of soldiers.

- In distributing the flier, Schenck and Baer possessed a clear intent to persuade others to not enlist. That is a violation of the Espionage Act, which prohibits "willfully…obstruct[ing] the recruiting or enlistment service of the United States."
- War time is different from peace time; during war the government should have extra power to ensure the safety and security of the American people, even if that means limiting certain kinds of speech.

Decision

Justice Oliver Wendell Holmes delivered the unanimous opinion for the Court in favor of the United States, joined by Chief Justice White and Justices McKenna, Day, van Devanter, Pitney, McReynolds, Brandeis, and Clarke.

Justice Holmes accepted the possibility that the First Amendment did not only prevent Congress from exercising prior restraint (preemptively stopping speech). He said that the First Amendment could also be interpreted to prevent the punishment of speech after its expression.

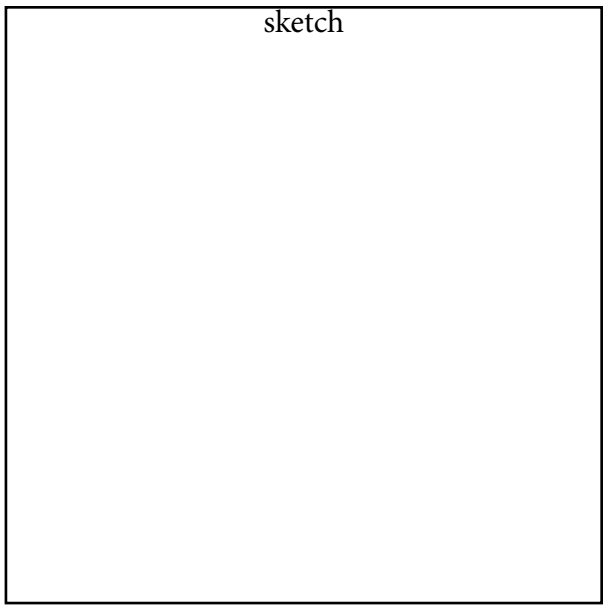
Yet, according to Holmes, "the character of every act depends upon the circumstances in which it is done." In the context of the U.S. effort to mobilize for entry into World War I, the Espionage Act's criminalization of speech that caused or attempted to cause a disruption of the operation of the military was not a violation of the First Amendment. According to Holmes, "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."

Holmes held that some speech does not merit constitutional protection. He said that statements that "create a clear and present danger" of producing a harm that Congress is authorized to prevent, fall in that category of unprotected speech. Just as "free speech would not protect a man in falsely shouting fire in a theatre and causing a panic," the Constitution does not protect efforts to induce the criminal act of resisting the draft during a time of war.

Schenck was the first case decided by the Court that created a test for punishing a speaker solely because of the content of her or his speech, as opposed to punishing speech that had already caused harm. The "clear and present danger" test provided the framework for many later cases brought against unpopular speakers under both the Espionage Act and similar state laws. Under the "clear and present danger" test, the government typically won and the speakers usually lost. The Court later abandoned this test in favor of rulings more protective of free speech rights.

Tinker v. Des Moines

sketch



Situation

Constitutional Question(s)

Opinion(s)

Time

US Constitution

Significance

Tinker v. Des Moines Independent Community School District (1969)

Argued: November 12, 1968
Decided: February 24, 1969

Facts

In 1966, in Des Moines, Iowa, five students, ages 13–16, decided to show opposition to the Vietnam War. The students planned to wear two-inch-wide black armbands to school for two weeks. The school district found out about the students' plan and preemptively announced a policy that any student who wore a black armband, or refused to take it off, would be suspended from school after the student's parents were called.

Mary Beth Tinker, an eighth-grader, and John Tinker and Christopher Eckardt, both high school students, wore black armbands to their respective schools. All three teens were sent home for violating the announced ban and told not to return until they agreed not to wear the armbands. Their parents filed suit against the school district for violating the students' First Amendment right to free speech. The federal district court dismissed the case and ruled that the school district's actions were reasonable to uphold school discipline. The U.S. Court of Appeals for the Eighth Circuit agreed with the district court. The Tinkers asked the U.S. Supreme Court to review that decision, and the Court agreed to hear the case.

Issue

Does a prohibition against the wearing of armbands in public school, as a form of symbolic speech, violate the students' freedom of speech protections guaranteed by the First Amendment?

Constitutional Amendment and Supreme Court Precedents

- **U.S. Constitution, Amendment I**

  Congress shall make no law … abridging the freedom of speech….

- *West Virginia State Board of Education v. Barnette* **(1943)**

  The West Virginia Board of Education required that all public schools include a salute of the American flag as a part of their activities. All teachers and pupils were required to salute the flag. If they did not, they could be charged with "insubordination" and punished. Students who were Jehovah's Witnesses and had a religious objection to saluting the flag sued the state board of education. The Supreme Court ruled that this mandatory salute was unconstitutional. The Court said that a flag salute was a form of speech, because it was a way

to communicate ideas. The justices ruled that, in most cases, the government could not require people to express ideas that they disagree with.

Arguments for Tinker (petitioner)

- Students, whether in school or out of school, are "persons" under the Constitution. They possess fundamental rights that all levels of government must respect.
- Public schools are part of state government. The 14th Amendment protects people from state infringement of their First Amendment rights to free speech.
- Wearing the armbands was a form of speech. It was a silent, passive expression of opinion.
- The students' speech was not disruptive. The schools gave no evidence that the armbands were a distraction or disrupted the learning process. Just because the schools were afraid that there might be a disruption is not enough to infringe students' speech.
- The students wearing the armbands did not infringe any other student's rights. Wearing the armbands did not intrude upon the work of the school, teachers, or other students.
- Schools are meant to act as an environment for discourse and a forum for different ideas; allowing students the ability to express their ideals is an inevitable part of the educational process.

Arguments for Des Moines Independent Community School District (respondent)

- Free speech is not an absolute right. The First Amendment does not say that anyone may say anything, at any place, at any time. Schools are not an appropriate forum for protest.
- The function of a school is to teach the curriculum. Students in academic classes could have been distracted from their lessons by the armbands. The school has a legitimate interest in ensuring that instruction remains the focus of classrooms and, to that end, acted within appropriate authority to prohibit the armbands.
- The Vietnam War is a controversial issue. Wearing the armbands could be an explosive situation that disrupts learning. It is the school's duty to prevent substantial and serious disruption to the learning environment.
- Voicing controversial opinions in class or in school areas such as the hallways, lunchroom, and gym classes may lead to bullying or violence directed against the protesting students. It is the responsibility of the school to prevent such behavior and protect the safety of all students.
- The school did not ban all types of expressions, just the armbands. They were banned because of their inflammatory nature and potential for significant disruption. Students could still express opinions in other ways, by for example, wearing political emblems such as "Vote for Candidate X" buttons.

- If the Supreme Court rules in favor of the children, it would be overstepping its bounds and interfering with state and local government powers that govern day-to-day school operations.

Decision

The Supreme Court ruled in favor of the Tinkers, 7–2. Justice Fortas wrote the majority opinion for the Court and was joined by Chief Justice Warren and Justices Douglas, Brennan, Stewart, White, and Marshall. Justices Black and Harlan dissented.

The justices said that students retain their constitutional right to freedom of speech while in public schools. They said that wearing the armbands was a form of speech, because they were intended to express the wearer's views about the Vietnam War. The Court said, "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...."

The Court stressed that this does not mean that schools can never limit students' speech. If schools could make a reasonable prediction that the speech would cause a "material and substantial disruption" to the discipline and educational function of the school, then schools may limit the speech. In this case, though, there was not evidence that the armbands would substantially interfere with the educational process or with other students' rights.

Dissent

In the primary dissent, Justice Black said that the First Amendment does not give people the right to express any opinion at any time. He said that a person does not "carry with him into the United States Senate or House, or into the Supreme Court, or any other court, a complete constitutional right to go into those places contrary to their rules and speak his mind on any subject he pleases. It is a myth to say that any person has a constitutional right to say what he pleases, where he pleases, and when he pleases. Our Court has decided precisely the opposite."

The armbands, he argued, did cause a disturbance, by taking students' minds of their classwork and diverting them to "the highly emotional subject of the Vietnam War." A ruling that limits school officials' ability to maintain order and discipline would negatively affect their ability to run the school. School discipline is an important part of training children to become good citizens. Schools, he warned, could become beholden to "the whims and caprices of their loudest-mouthed…students."

Wisconsin v. Yoder

sketch

Situation

Constitutional Question(s)

Opinion(s)

Time

US Constitution

Significance

Wisconsin v. Yoder (1972)

Argued: December 8, 1971
Decided: May 15, 1972

Background

The First Amendment protects the right of people to exercise their religion freely. This means that the government cannot outlaw any religious beliefs. Sometimes, however, conduct related to those beliefs conflicts with government laws and regulations. In these cases, courts are asked to rule on whether the government is allowed to forbid some conduct required by someone's religious belief or compel conduct that is forbidden by that belief. This is a case about the free exercise of the religious beliefs of Amish and Mennonite communities.

The Amish and Mennonite sects of Christianity view individualism, competition, and self-promotion as vices that separate members from God, one another, and their own salvation. In order to preserve these values, each rural community seeks to become largely self-sufficient, providing for its members' needs with minimal support from those outside the community. These beliefs led many communities to stop formal education, in the form of public, private, or home schooling, for their children after the age of 14. For generations that approach aligned with state and local laws related to the number of years children were required to be in school. In the mid-20th century, however, many U.S. states raised the age to which children must attend school, and that created conflict with Old Order Amish and Mennonite practices.

Facts

The state of Wisconsin convicted three members of Old Order Amish and Mennonite communities for violating the state's compulsory education law, which requires attendance at school until the age of 16. Frieda Yoder and two other students had stopped attending school at the end of eighth grade. The Amish claimed that their religious faith and their mode of life are inseparable and interdependent. They sincerely believe that exposure to competitive pressures of formal schooling, the content of higher learning, and removal from their religiously-infused practices of daily life will endanger children's salvation, the parents' own salvation, and the continuation of the Amish community itself. The Amish community provides an alternative education that adequately prepares children for their adult roles within their community. This alternative education also prepares them to be law abiding and self-sufficient.

Mr. Yoder and the other parents were convicted in Wisconsin Circuit Court for their students' truancy (failure to attend compulsory schooling). They were required to pay a five dollar fine, which they refused to do as a matter of conscience. The Yoders appealed to the Wisconsin Supreme Court on the grounds that their families' First Amendment free exercise rights were violated. The state Supreme Court agreed and reversed the Circuit Court's decision, ruling in favor of Yoder. The state of Wisconsin sought review by the U.S. Supreme Court, which agreed to hear the case.

Issue

Under what conditions does the state's interest in promoting compulsory education override parents' First Amendment right to free exercise of religion?

Constitutional Amendments and Supreme Court Precedents

- **First Amendment to the U.S. Constitution**

  "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof…"

- **14th Amendment to the U.S. Constitution**

  "...nor shall any State deprive any person of life, liberty, or property, without due process of law..."

- *Pierce v. Society of Sisters* **(1925)**

  Oregon had banned private school attendance in an effort to eliminate religious schools, and required parents or guardians to send children to local public schools between the ages of eight and 16. The Society of Sisters, an order of nuns that cared for orphans and provided Catholic schooling, sued the state, arguing that the requirement to attend public schools violated the First Amendment's protection for free exercise of religion. The Supreme Court ruled that the Oregon law was unconstitutional under the Due Process Clause of the 14th Amendment, implicitly incorporating the right to religious liberty. The Court explained that, while the state has an important interest in providing public education, even that important objective must be balanced against the interests of parents in the free exercise of religion. As long as privately-provided education would adequately prepare students, the state could not prevent religious parents or communities from educating students in private schools.

- *Prince v. Massachusetts (1944)*

  Sarah Prince challenged her conviction under Massachusetts child labor laws that prevented boys under the age of 12 and girls under the age of 18 from selling any publications or other forms of merchandise in public places. Sarah Prince was a member of a religious sect, the Jehovah's Witnesses, and the aunt and guardian for Betty Simmons, age nine. While under Ms. Prince's care, and with her knowledge, young Betty distributed religious literature on the street and accepted donations. The Supreme Court upheld the state law prohibiting the distribution of religious literature in a public place by a minor. The Court reasoned that a state's generally applicable regulation to protect child welfare (a prohibition against child labor) could override the parents' free exercise of religion, if there was a demonstrated threat to the child's physical or mental health or to the public order.

Arguments for Wisconsin (petitioner)

- Compulsory education up to the age of 16 is a "compelling governmental interest" that benefits the larger society. That compelling interest should override the Amish community's claims that school attendance negatively affects the practice of their religion.

- The final years of high school prepare students for employment and civic participation. The government has a compelling interest in requiring all students to complete secondary education in order to participate effectively in the American political system and become self-sufficient.
- At some point in the future, students may choose to leave the Amish community. In order to avoid being a burden to society, students need to have a full and proper education to be successful outside of the religious community.
- Mandatory school attendance laws apply neutrally and equally to everyone regardless of their religion and do not discriminate in favor of or against any particular religion. Therefore, they are beyond protection of the First Amendment.

Arguments for Yoder (respondent)

- The Amish and Mennonite communities' beliefs about the danger of formal education to their religion are sincere. They should not be forced to violate their own religious beliefs.
- The Amish community provides an alternative vocational education that prepares children for their adult roles in the Amish community, so they do not need to send their children to school past eighth grade. That alternative education prepares the Amish to become self-sufficient.
- Additional years of compulsory schooling would not better prepare Amish students for their lives of agrarian and manual labor, even if they choose to leave Amish life.
- The Amish and Mennonite communities are law-abiding and have been for centuries. That is evidence that the requirements of citizenship had been met by the Amish without the required additional years of secondary education.
- Leaving school after eighth grade does not create physical or mental harm to the students and does not disrupt the school or the community.

Decision

The Court decided the case unanimously, 7–0, in favor of Yoder. Chief Justice Burger delivered the opinion of the court. Justices Powell and Rehnquist did not take part in the case. Justice Douglas delivered a partial dissent.

Majority

The Supreme Court held that the Free Exercise Clause of the First Amendment, as incorporated by the 14th Amendment, prevented the state of Wisconsin from compelling the respondents to send their children to formal secondary school beyond the age of 14.

The Court ruled that the families' religious beliefs and practices outweighed the state's interests in making the children attend school beyond the eighth grade. The Court first satisfied itself that, according to expert testimony in the record, the requirement to send their children to school beyond the eighth grade would actually interfere with well-established and deeply held religious convictions:

> "In sum, the unchallenged testimony of acknowledged experts in education and religious history, almost 300 years of consistent practice, and strong evidence of a sustained faith pervading and regulating respondents' entire mode of life support the claim that enforcement of the State's requirement of compulsory formal education after the eighth grade would gravely endanger, if not destroy, the free exercise of respondents' religious beliefs."

The Court then rejected the state's arguments for overriding the parents' religious beliefs. The Court commented that an additional one or two years of high school (until the required age of 16) would not produce enough educational benefits for the Amish to constitute a "compelling government interest." The Court cited the endurance of their law-abiding community for centuries as evidence that the Amish meet the responsibilities of citizenship without the required additional years of secondary education.

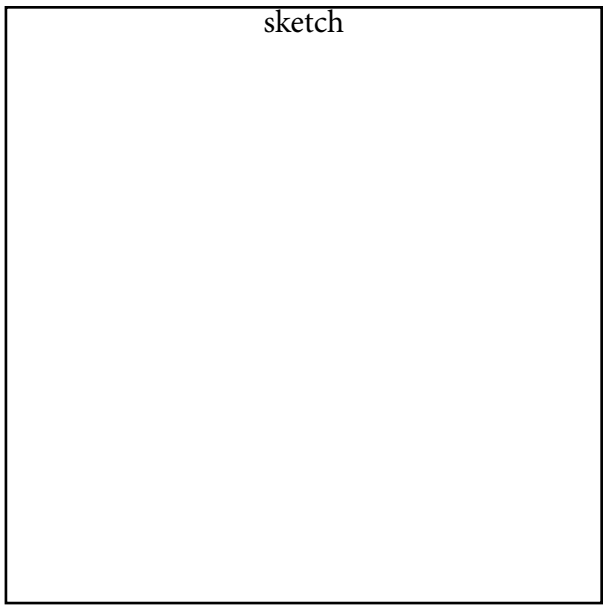
The justices also noted that nothing in their decision undermined general state compulsory school attendance laws for non-Amish people and emphasized that states may still set reasonable standards for church-sponsored schools, including for Amish agricultural vocational education, as long as those rules do not impair the free exercise of religion.

Dissent, in part

Justice Douglas joined the majority decision as applied to Mr. Yoder but disagreed with the majority's ruling regarding some of the other families. Because the majority opinion focused only on the free exercise claims of the parents (the ones who were charged with a crime) and not the children, Justice Douglas would have sent the cases of the other children back to lower courts to learn whether or not the children wanted to attend school past eighth grade. Mr. Yoder's daughter had testified in lower court that she wished to be educated at home.

McDonald v. Chicago

sketch



Situation

Constitutional Question(s)

Opinion(s)

Time

US Constitution

Significance

McDonald v. City of Chicago (2010)

Argued: March 2, 2010
Decided: June 28, 2010

Background

The Second Amendment protects "the right of the people to keep and bear Arms," but there has been an ongoing national debate about exactly what that phrase means. The debate only intensified after the U.S. Supreme Court struck down a handgun ban in the District of Columbia in 2008 (*District of Columbia v. Heller*). Because of its unique constitutional status as the home of the federal government (and not a state), the District of Columbia is treated as subject to the restrictions that the Constitution places on the federal government. As a result, the *Heller* decision left open the question whether the Second Amendment applies to state and local governments. In this case, which is about a ban on guns in Chicago, the Court was presented with that question.

When the Constitution was written, the Bill of Rights applied only to the federal government—not to the state or local governments. After the Civil War, however, the Constitution was amended to include the 14th Amendment, which guarantees that the states shall not deprive anyone of life, liberty, or property without due process of law. In the decades after the 14th Amendment, the Supreme Court began to rule that different parts of the Bill of Rights did apply to state and local governments—the process of selective incorporation. The Court said that some of the liberties protected in the Bill of Rights are *fundamental* to our concept of liberty and that it would violate the 14th Amendment's guarantee of due process if states interfered with those liberties. Over time, the Court has ruled that almost all of the Bill of Rights do apply to the states. Before 2010, the Supreme Court had never ruled on whether the Second Amendment's right to bear arms was one of those fundamental rights that states could not infringe.

Facts

In 1982, the city of Chicago adopted a handgun ban to combat crime and minimize handgun related deaths and injuries. Chicago's law required anyone who wanted to own a handgun to register it. The registration process was complex, and possession of an unregistered firearm was a crime. In practice, most Chicago residents were banned from possessing handguns.

In 2008, after the Court decided *Heller* (see the summary below) and said that the Second Amendment includes an individual right to keep and bear arms, Otis McDonald and other Chicago residents sued the city for violating the Constitution. They claimed that Chicago's handgun regulations violate their 14th Amendment rights. Specifically, the residents argued that the 14th Amendment makes the Second Amendment right to keep and bear arms applicable to state and local governments.

The federal district court ruled for Chicago. McDonald appealed. The Seventh Circuit Court of Appeals decided for Chicago, as well. That court ruled that the Second Amendment right to keep and bear arms protects individuals only from regulation by the federal government. McDonald asked the U.S. Supreme Court to hear the case, and it agreed to do so.

Issue

Does the Second Amendment right to keep and bear arms apply to state and local governments through the 14th Amendment and thus limit Chicago's ability to regulate guns?

Constitutional Amendments and Supreme Court Precedents

- **Second Amendment to the U.S. Constitution**

  "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."

- **14th Amendment to the U.S. Constitution**

  "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…."

- *Duncan v. Louisiana* **(1968)**

  In this case the Supreme Court incorporated a provision of the Bill of Rights, making it applicable to state and local governments. Duncan was charged with simple battery, a crime that Louisiana law allowed to be tried without a jury. Duncan was convicted and then appealed his conviction. He argued that his conviction should be overturned because the state violated his Sixth Amendment right to a jury trial in a criminal case. At that time the right to a jury trial was guaranteed only in federal cases. When the Supreme Court considered whether a portion of the Bill of Rights should apply to the states under the 14th Amendment, the justices considered whether the right at issue was fundamental and rooted in the tradition and conscience of the American people. When his case reached the U.S. Supreme Court, the Court considered whether the right to a jury trial for criminal offenses is "fundamental to the American scheme of justice." Noting the long tradition of jury trials for criminal offenses, wide state recognition of the right, and the importance of having a jury, the Court ruled that the Sixth Amendment right to a jury trial applies to the states.

- *District of Columbia v. Heller* **(2008)**

  The District of Columbia (which is not a state) had a ban on handguns, and the U.S. Supreme Court ruled that ban unconstitutional. The Court decided that the Second Amendment guarantees an individual right to gun ownership, which the federal (or D.C.) government may not infringe. Laws from the 1600s and 1700s, which included a right for

individuals to possess weapons for self-defense, indicated that the Framers recognized an individual right to bear arms as a fundamental right.

The Court observed, however, that the right is not absolute. It applies only to weapons in common use, such as handguns. The government may still impose reasonable regulations on weapons possession without infringing the right to bear arms. For example, it seemed likely that government could prohibit felons from having guns and prohibit the possession of guns in sensitive places such as schools. The Court also noted that its ruling in *Heller* was not a decision that applied directly to state and local gun regulations. It bound the District of Columbia because the District is an instrument of the federal government.

Arguments for McDonald (petitioner)

- The Second Amendment applies to the states because the right to keep and bear arms is deeply rooted in American history. Possessing a gun is a right that pre-dates even the founding of the country, and guns are still an important part of American culture and liberty.
- Most provisions of the first eight amendments already apply to the states, and the Second Amendment should not be treated differently. Rights articulated in the Bill of Rights are assumed to be fundamental.
- The Second Amendment affords American citizens the ability to defend themselves against a tyrannical government. It would not make sense to allow citizens to defend themselves against the federal government but not state or local governments.
- The Chicago ban obstructs the core right the Court recognized in *Heller*: keeping a common weapon, like a handgun, for protection in one's home.
- The Chicago ban is nearly the same as the one the Court struck down in *Heller,* so it cannot be described as a reasonable gun regulation. In practice, it is a total ban on gun ownership, and that is not reasonable.
- Applying the Second Amendment to the states will not create a public safety crisis. *Heller* suggested that the right to keep and bear arms is limited to weapons in common use and that traditional regulations that keep guns out of the hands of felons and out of places such as schools are not threatened by the Second Amendment.

Arguments for Chicago (respondent)

- The Constitution and Bill of Rights have traditionally been understood as limits on the federal government, not the states.
- Although *Heller* recognized an individual right to keep and bear arms that the federal government may not infringe, that decision did not prohibit states from controlling guns.

- Even if guns were an important part of this country at the time of the founding, much has changed since then. There is an ongoing national debate on guns and a variety of state approaches to gun control. The right to keep a handgun cannot be described as fundamental or an established American tradition that warrants incorporation.
- The Court's decision in *Heller* noted that the right to keep and bear arms is not absolute. States, like the federal government, should be able to impose some reasonable regulations to keep their citizens safe given that crime, injury, and death are all linked to handguns.
- Unlike D.C.'s complete ban on handguns, which was struck down in *Heller*, Chicago simply establishes procedures that residents must follow in order to possess a gun. Given the particulars of Chicago's history of gun violence, the regulation is reasonable.
- The Court should defer to state judgments regarding gun control. States and the cities within them each face their own particular public safety issues. Applying the Second Amendment to the states would likely strike down thousands of gun regulations across the country and create dangerous uncertainty for states and cities that face serious problems linked to guns.

Decision

Justice Alito announced the judgment and opinion of the Court. Chief Justice Roberts and Justices Scalia and Kennedy joined Justice Alito's opinion in full, and Justice Thomas joined only in part. Justices Stevens, Breyer, Ginsburg, and Sotomayor dissented.

Majority

Writing for a majority of the Court, Justice Alito concluded that the Second Amendment right to keep and bear arms for the purpose of self-defense is fully applicable to the states under the 14th Amendment. The Court considered whether the right to keep guns "is fundamental to our scheme of ordered liberty and system of justice." Relying on a variety of historical records, the Court determined that both the Framers of and those who ratified the 14th Amendment considered the right to keep and bear arms among the fundamental rights "necessary to our system of ordered liberty." They said that self-defense is a basic right, and that, under *Heller*, individual self-defense is the central component of the Second Amendment right to bear arms.

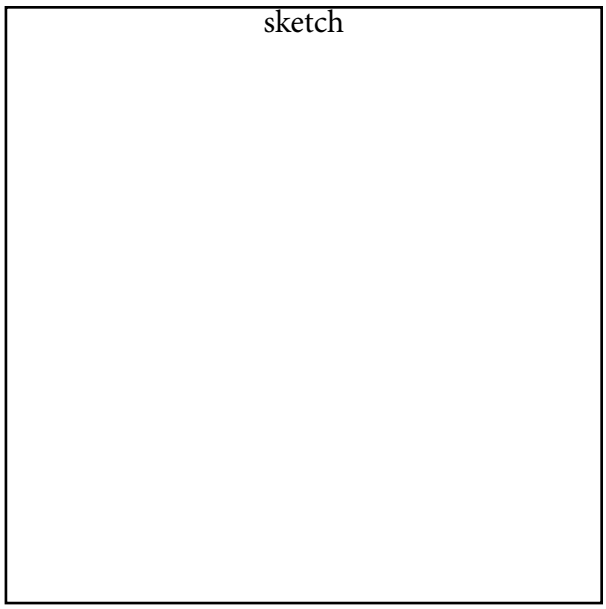
Four of the five justices in the majority also said that applying the Second Amendment against state and local governments "does not imperil every law regulating firearms." Echoing the *Heller* decision, the plurality suggested that reasonable gun restrictions—such as a ban on felons owning guns or on carrying guns on school property—would still be allowed. Since there was not a *majority* for that part of the opinion, however, it is not the law.

Dissents

Justices Stevens and Breyer each wrote lengthy dissenting opinions. Justice Stevens argued that the Second Amendment was adopted to protect the states from federal encroachment and that, therefore, it made no sense to apply that provision *against* state and local governments. Justice Breyer, joined by Justices Ginsburg and Sotomayor, argued that the Second Amendment should not be incorporated against the states under the 14th Amendment. He asserted that nothing in the Second Amendment's text, history, or underlying rationale made it "fundamental" and protective of the keeping and bearing of arms for private self-defense. Justice Breyer criticized the Court for transferring the regulation of private firearm use away from democratically elected legislatures and states to the courts and the federal government.

US v. Lopez

sketch



Situation

Constitutional Question(s)

Opinion(s)

Time

US Constitution

Significance

United States v. Lopez (1995)

Argued: November 8, 1994
Decided: April 26, 1995

Background

The U.S. Constitution sets up a system of government in which the federal government and the states share power. The powers of the federal government are limited and are described in the Constitution. Other powers, not delegated to the federal government, are reserved for the states. Article 1, Section 8, of the Constitution lists many of Congress's powers, including the power to create post offices, raise an army, coin money, and declare war. One of Congress's broadest powers is the power to regulate commerce among the states. Many of the laws Congress passes depend on this power to regulate interstate commerce. In this case, however, it is argued that Congress passed a law that exceeded this constitutional power.

Facts

In 1990, Congress passed the Gun Free School Zones Act (GFSZA). In an effort to reduce gun violence in and around schools, the GFSZA prohibited people from knowingly carrying a gun in a school zone. A school zone was defined as any area within 1,000 feet of a school. A 12th grade student, Alfonso Lopez Jr., was convicted of possessing a gun at a Texas school. Lopez appealed his conviction, arguing that Congress never had the authority to pass the GFSZA in the first place. The U.S. Court of Appeals for the Fifth Circuit agreed with Lopez and reversed his conviction. The United States government asked the Supreme Court to hear the case. The Court agreed to do so.

Issue

Did Congress have the power to pass the Gun Free School Zones Act?

Constitutional Clauses and Supreme Court Precedents

- **Article 1, Section 8, Clause 3 of the U.S. Constitution**

  "The Congress shall have the power …to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes…"

- **Article 1, Section 8, Clause 18 of the U.S. Constitution**

  "The Congress shall have the 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."

- *Wickard v. Filburn* **(1942)**

  In an effort to increase wheat prices during the Great Depression, Congress passed a law limiting the amount of wheat that some farmers could grow. One farmer argued that Congress could not use the Commerce Clause to stop him from growing wheat for personal consumption because that wheat would not be sold, and, therefore, would not be part of interstate commerce. The Supreme Court ruled that Congress could regulate a farmer's personal wheat crop, because the production of wheat is a commercial activity that has interstate consequences. The Court reasoned that Congress may regulate *intrastate* activities that, if taken all together, would substantially affect interstate commerce. If many farmers decided to grow their own wheat and not buy it on the market, they would substantially affect interstate commerce.

- *Heart of Atlanta Motel v. U.S.* **(1964)**

  The Civil Rights Act of 1964 made racial discrimination in public places, including hotels, illegal. An Atlanta hotel refused to serve black customers. The hotel argued that Congress did not have the power to pass the law under the Commerce Clause. The Supreme Court ruled against the hotel, concluding that "commerce" includes travel from state to state, and that racial discrimination in hotels can affect travel from state to state. Congress can therefore prohibit discrimination in hotels because, in the aggregate, it affects interstate commerce.

Arguments for the United States (petitioner)

- Congress had the authority to pass the GFSZA under the Commerce Clause. The Supreme Court, in earlier cases such as *Wickard* and *Heart of Atlanta Motel*, ruled that Congress can regulate things that are not by themselves interstate commerce if, when accumulated together, they affect interstate commerce.
- Although possession of a gun in a school zone is not a direct form of interstate commerce, it can be classified as commerce because the costs associated with violent crime are substantial and affect many people across the country.
- The presence of guns near schools also negatively affects students' ability to learn, which will impede their future success, and thus affect the economy of the nation.
- Insurance costs for activities related to gun violence are high and gun violence at schools interferes with the willingness of people to travel to some parts of the country. Both of these activities, insurance and travel, are forms of commerce.
- The GFSZA does not encroach on state authority as most states had their own laws prohibiting possession of guns on school property. Federal regulation in this case is concurrent with state regulation and does not displace it.

Arguments for Lopez (respondent)

- The GFSZA is not related to interstate commerce. The Constitution says that Congress can only pass certain types of laws, including laws that regulate "interstate commerce." Commerce means commercial activities, and this law is not related to any commercial activities.
- The Gun Free Schools Zone Act is not like the law at issue in *Wickard,* which was about buying and selling crops, nor is it like the laws in *Heart of Atlanta Motel,* which were about customers paying for hotel rooms. Those are both economic activities.
- Mere possession of a gun at or near a school is not a form of commerce and does not involve more than one state.
- If mere possession of an object were classified as commerce, then anything could be classified as commerce. This would give Congress virtually unlimited powers; there would be no limits to the reach of the national government in a federal system.
- The Constitution limited Congress's power to make laws for a reason. Some things are best left to the states. If Congress could call possession of a gun "interstate commerce," then Congress would be allowed to regulate anything and the states will have less authority to set their own laws.
- Different communities have different needs and standards. It should be up to states to decide whether people may carry guns near schools.

Decision

The Supreme Court ruled in favor of Lopez, 5–4. Chief Justice Rehnquist wrote the majority opinion for the Court, and was joined by Justices O'Connor, Kennedy, Scalia, and Thomas. Justices O'Connor and Thomas filed separate concurring opinions. Justices Breyer, Ginsburg, Stevens, and Souter dissented.

The Supreme Court ruled that the law exceeded Congress's authority under the Commerce Clause because carrying a gun in a school zone is not an *economic* activity. It said that Congress may regulate only:

- Channels of interstate commerce, including highways, waterways, and air traffic.
- People, machines, and things moving in, or used in carrying out, interstate commerce.
- Economic activities that have a substantial effect on interstate commerce.

The Court rejected the government's argument that merely because crime negatively affected education, Congress could conclude that crime in schools affects commerce in a substantial way. Finally, the opinion stated that the Constitution created a national government with only limited, delegated powers. To claim that any kind of activity is commerce means that the power of Congress would be unlimited, which directly contradicts the principle of limited government and explicit

powers. As the Court explained, "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."

Dissent

Justice Breyer argued that the Commerce Clause includes the right to regulate local activity so long as the activity significantly affects interstate commerce. In addition, the Court must consider the cumulative effect of regulations, not just one instance. Finally, he argued, the Court's role is not to determine if an activity like possession of a gun was commerce but instead if Congress had a "rational basis" for doing so.

Justice Stevens filed a separate dissent, arguing that the national interest in safeguarding the education system would benefit the overall economy, which provided sufficient authority under the Commerce Clause to protect against gun possession near schools.

Justice Souter's separate dissent emphasized his view that the courts should defer to Congress's informed judgment about the potential economic effects of activity that Congress seeks to regulate, so long as there is a "rational basis" for the judgment that Congress has made.

Gideon v. Wainwright

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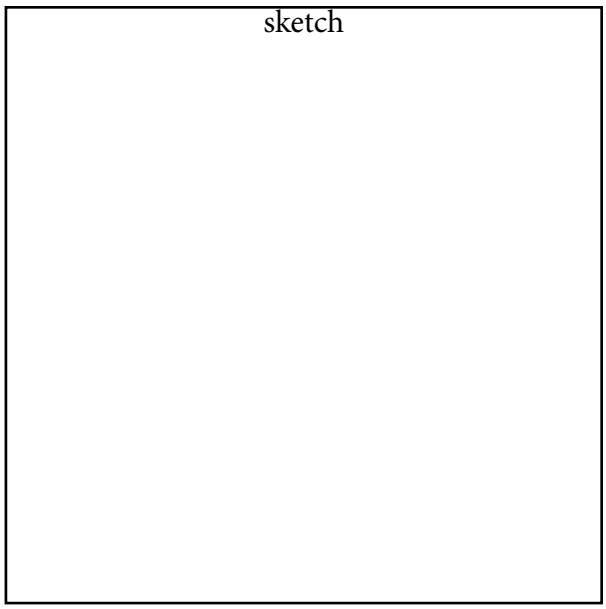


Situation

Constitutional Question(s)

Opinion(s)

Time

US Constitution

Significance

Gideon v. Wainwright (1963)

Argued: January 15, 1963
Decided: March 16, 1963

Background

The Sixth Amendment to the U.S. Constitution protects the rights of people accused of crimes. Among these protections is the right to have the assistance of a lawyer for one's defense. That means that the government cannot prevent someone from consulting with a lawyer and having a lawyer represent them in court. However, not everyone who has been accused of a crime can afford to hire a lawyer. In 1938, the Supreme Court ruled that, in federal criminal courts, the government must pay for a lawyer for defendants who cannot afford one themselves. *Gideon v. Wainwright* is a case about whether or not that right must also be extended to defendants charged with crimes in state courts.

The 14th Amendment says that states shall not "deprive any person of life, liberty, or property, without due process of law." The Supreme Court has ruled that some of the constitutional rights that, at first, only protected people from infringement by the federal government, are so fundamental to our concept of liberty (protected by the 14th Amendment) that they must also apply to state governments. In 1963, the Supreme Court had to decide whether, in criminal cases, the right to counsel paid for by the government was one of those fundamental rights.

Facts

In 1961, a burglary occurred at the Bay Harbor Pool Room in Panama City, Florida. Police arrested Clarence Earl Gideon after he was found nearby with a pint of wine and some change in his pockets. Gideon, who could not afford a lawyer, asked the Florida court to appoint one for him, arguing that the Sixth Amendment entitles everyone to a lawyer. The judge denied his request. Florida state law required appointment of counsel for indigent defendants only in capital (death penalty) cases. Gideon defended himself at trial and did not do well. He was found guilty of breaking and entering and petty larceny, a felony under Florida law. While serving his five-year sentence in a Florida state prison, Gideon began studying law. His study reaffirmed his belief that his rights were violated when the Florida Circuit Court refused his request for appointed counsel. Gideon filed a *habeas corpus* petition, arguing that he was improperly imprisoned because he had been refused the right to counsel during his trial, thus violating his constitutional rights guaranteed by the Sixth Amendment. The Florida Supreme Court ruled against him. From his prison cell, Gideon wrote a petition to the U.S. Supreme Court, asking the Court to hear his case. The Supreme Court agreed to hear Gideon's case.

Issue

Does the Sixth Amendment's right to counsel in criminal cases extend to defendants in state courts, even in cases in which the death penalty is not at issue?

Constitutional Amendments and Supreme Court Precedents

- **U.S. Constitution, Amendment VI**

  "In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense."

- **U.S. Constitution, Amendment XIV**

  "…nor shall any State deprive any person of life, liberty, or property, without due process of law…."

- *Powell v. Alabama* **(1932)**

  Nine teenagers were accused of assaulting two women. All nine were tried on one day within a week after being indicted and were found guilty in Alabama state court and sentenced to death. No lawyer represented the teens. The Supreme Court ruled that accused persons in a capital case have the right to counsel for their defense, which includes the right to have sufficient time to consult with counsel and to prepare a defense. The Court said that this is one of the fundamental rights that must be applied to the states under the 14th Amendment. The Court also said that state courts must appoint counsel, whether requested or not, when the defendant is incapable of making an adequate defense because of "ignorance, feeble-mindedness, illiteracy or the like."

- *Johnson v. Zerbst* **(1938)**

  The Supreme Court said that the Sixth Amendment requires that, in federal criminal cases that could be punishable by imprisonment, counsel must be appointed for defendants too poor to hire their own lawyer, unless the accused person waives that right.

- *Betts v. Brady* **(1942)**

  Betts was charged with robbery in Maryland. He requested that a lawyer be appointed for him since he was unable to afford one. The judge in the case denied the request. Betts argued his own defense and was convicted. The Supreme Court ruled that the 14th Amendment did not require states to provide counsel to the poor in non-death-penalty cases.

Arguments for Gideon (petitioner)

- We cannot assure fair trials unless everyone has the assistance of a lawyer. The average person does not have the knowledge, resources, and skill required to provide an adequate legal defense themselves.
- The Supreme Court has ruled that the right to counsel in death penalty cases is fundamental and applies to the states (*Powell v. Alabama*), but not in non-death-penalty cases (*Betts v. Brady*). This is not logical, and *Betts v. Brady* should be overturned. The Sixth Amendment does not distinguish between types of criminal cases, and neither does the 14th Amendment. Even non-capital crimes can result in long prison sentences, which is depriving someone of their liberty. There is no "trivial" criminal case because someone's liberty is at stake.
- There was a change in thinking about the right to counsel between 1942, when *Betts v. Brady* was decided and 1963, when *Gideon* was in front of the Court. At the time of the *Betts v. Brady* decision, fewer than half of the states required appointment of counsel to the poor. At the time of Gideon's arrest, over 45 states required it.
- There is broad support to overturn *Betts v. Brady*. Twenty-two states filed amicus curiae briefs to support the application of the Sixth Amendment right to counsel to state courts regardless of type of offense.

Arguments for Wainwright (respondent)

- *Betts v. Brady* established that in any criminal case a defendant is entitled to counsel if he can claim special circumstances that show he would be denied a fair trial without counsel. Gideon did not claim such circumstances.
- The U.S. has a federal system in which the federal government may not exercise arbitrary power over the states. Imposing an inflexible rule on states that all defendants are entitled to counsel if they cannot afford one would allow the Supreme Court (the federal government) to intrude into states' powers. A state should be free to adopt any system it chooses, experimenting and adopting the types of rules and procedures it feels are necessary in its own courts.
- It is possible for a defendant without a lawyer to have a fair trial. Several judges may be involved in the processing of a defendant including arraignment, pretrial, and the trial. This exposure to multiple judges protects the defendant who is without a lawyer, as each judge knows the law and will ensure that the defendant is treated fairly. In any case, representation by a lawyer does not automatically guarantee a fair trial.
- The Supreme Court should uphold *Betts v. Brady,* which was decided only 20 years before *Gideon*. The Court considered this issue then and issued a ruling that should remain.

- If *Betts v. Brady* is overturned, states would have to provide lawyers to the indigent in all criminal prosecutions, no matter how small or trivial they are. This would place a tremendous burden on the taxpayers of every state.

Decision

The Supreme Court ruled unanimously for Gideon. Justice Black delivered the opinion. Justices Harlan and Clark wrote concurring opinions.

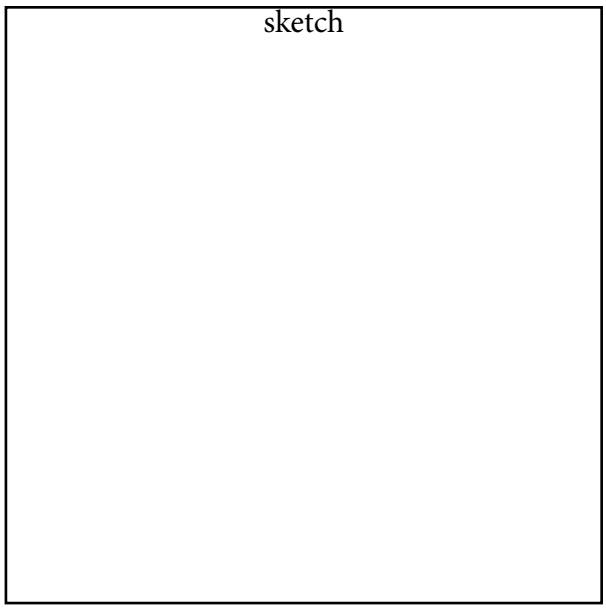
The Supreme Court overturned part of *Betts v. Brady,* in which it had concluded that the Sixth Amendment's guarantee of counsel is not a fundamental right. Instead, the Court in *Gideon* said that the right to the assistance of counsel in felony criminal cases is a fundamental right essential to a fair trial. Therefore, this protection from the Sixth Amendment applied to state courts as well as federal courts. State courts must appoint counsel to represent defendants who cannot afford to pay for their own lawyers if charged with a felony.

The Court said that the best proof that the right to counsel is fundamental and essential is that governments spend a lot of money to try to convict defendants and those defendants who can afford to almost always hire the best lawyer they can get. This indicates that both the government and defendants consider the aid of a lawyer in criminal cases absolutely necessary. In addition, the opinion noted that the Constitution places great emphasis on procedural safeguards designed to guarantee that defendants get fair trials.

NOTE: The decision in *Gideon* did not have any legal impact in terms of providing free legal counsel for the poor in civil cases. In fact the decision only applied to criminal defendants charged with felonies. In 1972, the Court decided the case of *Argersinger v. Hamlin,* which extended the *Gideon* rule so that indigent misdemeanants could not be imprisoned unless they had received free legal counsel.

Brown v. Board of Ed.

sketch



Situation

Constitutional Question(s)

Opinion(s)

Time

US Constitution

Significance

Brown v. Board of Education of Topeka (1954)

Argued: December 9–11, 1952
Reargued: December 7–9, 1953
Decided: May 17, 1954

Background

The 14th Amendment to the U.S. Constitution was adopted in the wake of the Civil War and says that states must give people equal protection of the laws. It also empowered Congress to pass laws to enforce the provisions of the Amendment. Although Congress attempted to outlaw racial segregation in places like hotels and theaters with the Civil Rights Act of 1875, the Supreme Court ruled that law was unconstitutional because it regulated private conduct. A few years later, the Supreme Court affirmed the legality of segregation in public facilities in their 1896 decision in *Plessy v. Ferguson*. There, the justices said that as long as segregated facilities were qualitatively equal, segregation did not violate the U.S. Constitution. This concept was known as "separate but equal" and provided the legal foundation for Jim Crow segregation. In *Plessy*, the Supreme Court said that segregation was a matter of social equality, not legal equality, and therefore the justice system could not interfere. In that 1896 case the Court stated, "If one race be inferior to the other socially, the constitution of the United States cannot put them on the same plane."

By the 1950s, many public facilities had been segregated by race for decades, including many schools across the country. This case is about whether such racial segregation violates the Equal Protection Clause of the 14th Amendment.

Facts

In the early 1950s, Linda Brown was a young African-American student in Topeka, Kansas. Every day she and her sister, Terry Lynn, had to walk through the Rock Island Railroad Switchyard to get to the bus stop for the ride to the all-black Monroe School. Linda Brown tried to gain admission to the Sumner School, which was closer to her house, but her application was denied by the Board of Education of Topeka because of her race. The Sumner School was for white children only.

At the time of the Brown case, a Kansas statute permitted, but did not require, cities of more than 15,000 people to maintain separate school facilities for black and white students. On that basis, the Board of Education of Topeka elected to establish segregated elementary schools.

The Browns felt that the decision of the Board violated the Constitution. They and a group of parents of students denied permission to white-only schools sued the Board of Education of Topeka, alleging that the segregated school system deprived Linda Brown of the equal protection of the laws required under the 14th Amendment.

The federal district court decided that segregation in public education had a detrimental effect upon black children, but the court denied that there was any violation of Brown's rights because of the

"separate but equal" doctrine established in *Plessy*. The court said that the schools were substantially equal with respect to buildings, transportation, curricula, and educational qualifications of teachers. The Browns asked the U.S. Supreme Court to review that decision, and the Supreme Court agreed to do so. The Court combined the Browns' case with similar cases from South Carolina, Virginia, and Delaware.

Issue

Does segregation of public schools by race violate the Equal Protection Clause of the 14th Amendment?

Constitutional Amendments and Precedents

- **14th Amendment to the U.S. Constitution**

  "No State shall…deny to any person within its jurisdiction the equal protection of the laws."

- *Plessy v. Ferguson* **(1896)**

  A Louisiana law required railroad companies to provide equal, but separate, facilities for white and black passengers. A mixed-race customer named Homer Plessy rode in the whites-only car and was arrested. Plessy argued that the Louisiana law violated the 14th Amendment by treating black passengers as inferior to white passengers. The Supreme Court declared that segregation was legal as long as facilities provided to each race were equal. The justices reasoned that the legal separation of the races did not automatically imply that the black race was inferior and that legislation and court rulings could not overcome social prejudices. Justice Harlan wrote a strong dissent, arguing that segregation violated the Constitution because it permitted and enforced inequality among people of different races.

- *Sweatt v. Painter* **(1950)**

  Herman Sweatt was rejected from the University of Texas Law School because he was black. He sued school officials alleging a violation of the 14th Amendment. The Supreme Court examined the educational opportunities at the University of Texas Law School and a new law school at the Texas State University for Negroes and determined that the facilities, curricula, faculty, and other tangible factors were not equal. Therefore, they ruled that Sweatt's rights had been violated. In addition to the more straightforward criteria, the justices examined at the two schools, they reasoned that other factors, such as the reputation of the faculty and influence of the alumni, could not be equalized.

Arguments for Brown

- The 14th Amendment's Equal Protection Clause promises equal protection of the laws. That means that states cannot treat people differently based on their race, without an extremely

good reason. There is not a good reason to keep black children and white children from attending the same schools.

- Racial segregation in public schools reduces the benefits of education to black children, solely based on their race. Schools for black children were often inadequate and had less money and other resources than white schools.
- Even if states were ordered by courts to "equalize" their segregated schools, the problems would not go away. State-sponsored segregation creates and reinforces feelings of superiority among whites and inferiority among blacks. Segregation places a badge of inferiority on the black students, perpetuates a system of separation beyond school, and gives unequal benefits to white students as a result of their informal contacts with one another. It undermines black students' motivation to seek educational opportunities and damages identity formation.
- At least two of the high schools in Topeka, Kansas, had already been desegregated with no negative effects. The policy should be consistent in all of Topeka's public primary and secondary schools.
- Segregation is morally wrong.

Arguments for Board of Education

- The 14th Amendment states that people should be treated equally; it does not state that people should be treated the same. Treating people equally means giving them what they need. This could include providing an educational environment in which they are most comfortable learning. White students are probably more comfortable learning with other white students; black students are probably more comfortable learning with other black students. These students do not have to attend the same schools to be treated equally under the law; they must simply be given an equal environment for learning.
- In Topeka, unlike in *Sweatt v. Painter*, the schools for black and white students have similar, equal facilities.
- The United States has a federal system of government that leaves educational decision-making to state and local legislatures. States should make decisions about the best environments for their school-aged children.
- Housing and schooling have become interdependent. The segregation of schools has reinforced segregation in housing, making it likely that a change in school admission policies will have a dramatic effect on neighborhoods. Students might need to travel far away from their local school to attend an integrated school. This places a heavy burden on local government to deal with the changes.

Decision

The Supreme Court ruled for Linda Brown and the other students, and the decision was unanimous. Chief Justice Earl Warren delivered the opinion of the Court, ruling that segregation in public schools violates the 14th Amendment's Equal Protection Clause.

The Court noted that public education was central to American life. Calling it "the very foundation of good citizenship," they acknowledged that public education was not only necessary to prepare children for their future professions and to enable them to actively participate in the democratic process, but that it was also "a principal instrument in awakening the child to cultural values" present in their communities. The justices found it very unlikely that a child would be able to succeed in life without a good education. Access to such an education was thus "a right which must be made available to all on equal terms."

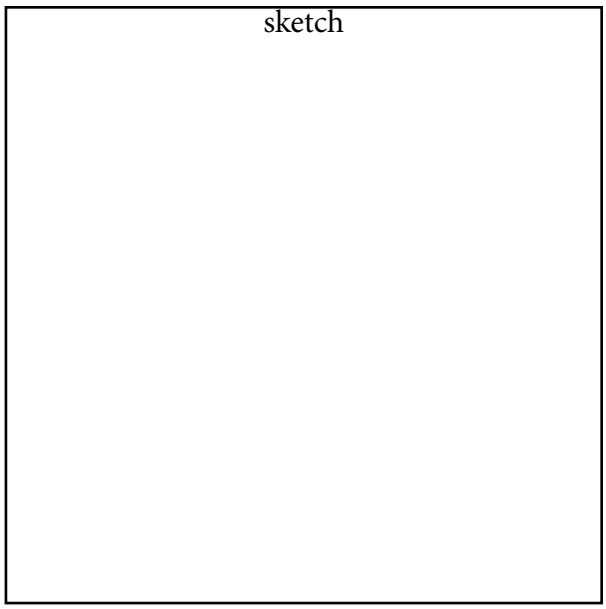
The justices then compared the facilities that the Board of Education of Topeka provided for the education of African-American children against those provided for white children. Ruling that they were substantially equal in "tangible factors" that could be measured easily, (such as "buildings, curricula, and qualifications and salaries of teachers"), they concluded that the Court must instead examine the more subtle, intangible effect of segregation on the system of public education. The justices then said that separating children solely on the basis of race created a feeling of inferiority in the "hearts and minds" of African-American children. Segregating children in public education created and perpetuated the idea that African-American children held a lower status in the community than white children, even if their separate educational facilities were substantially equal in "tangible" factors. This deprived black children of some of the benefits they would receive in an integrated school. The opinion said, "We conclude that in the field of public education the doctrine of 'separate but equal' has no place." Separate educational facilities are inherently unequal. This ruling was a clear departure from the reasoning in *Plessy v. Ferguson*, and in many ways it echoed aspects of Justice Harlan's dissent in that earlier case.

One year later, the Court addressed the implementation of its decision in a case known as *Brown v. Board of Education II*. Chief Justice Warren once again wrote an opinion for the unanimous court. The Court acknowledged that desegregating public schools would take place in various ways, depending on the unique problems faced by individual school districts. After charging local school authorities with the responsibility for solving these problems, the Court instructed federal trial courts to oversee the process and determine whether local authorities were desegregating schools in good faith, mandating that desegregation take place with "with all deliberate speed."

That language proved unfortunate, as it gave the Southern States in particular an incentive to delay compliance with the Court's mandate. This led to further litigation, culminating in the Court's declaration in *Griffin v. County School Board of Prince Edward County* (1964) that "[t]he time for mere 'deliberate speed' has run out, and that phrase can no longer justify denying . . . school children their constitutional rights."

NY Times v. US

sketch



Situation

Constitutional Question(s)

Opinion(s)

Time

US Constitution

Significance

New York Times Co. vs. U.S. (1971)

Argued: June 26, 1971
Decided: June 30, 1971

Background

The United States' involvement in the Vietnam War became increasingly controversial and unpopular among Americans as the conflict persisted over a decade.

Since security and secrecy were important to the U.S.'s aims in the war, the government enforced laws to punish spying or breaches of national security. The Espionage Act, which was enacted at the beginning of World War I, made it a crime for anyone to obtain information relating to America's national defense with the intent to use it (or reason to believe it will be used) to the injury of the U.S. or to the advantage of a foreign nation. Additionally, anyone who willfully received such information without reporting it to the appropriate government agent was also at risk for criminal prosecution. The law was used to punish traditional spying and sabotage, but it was also used sometimes to prosecute people for speaking out against wars or other government actions.

This case is about when laws intended to protect American security interests come into conflict with the First Amendment's freedom of the press. How much power does the government have to prevent the media from publishing sensitive information?

Facts

Daniel Ellsberg, a former military analyst, was disillusioned with the U.S.'s continued role in the Vietnam War. He felt so strongly that the U.S. should not be in Vietnam that in 1971, he illegally copied over 7,000 pages of classified reports kept at the RAND Corporation, a research institution where he worked. These pages would come to be known as the "Pentagon Papers." Some of these documents were leaked to major publications, such as The New York Times and The Washington Post. These documents contained intimate details about the decision-making plans behind the U.S.'s intervention in the Vietnam conflict, as well as details that revealed contradictions between President Lyndon Johnson's motivations in Southeast Asia and his public remarks.

Neil Sheehan, the New York Times reporter who received the lead from Ellsberg, knew he had the story of the year, but the paper ran the risk of violating the Espionage Act if they published the papers. After printing two stories about the Pentagon Papers, President Nixon directed his attorney general to order the Times to stop, claiming the publications would cause "irreparable injury to the defense interests of the United States." The Times refused and the U.S. government sued the newspaper for violating the Espionage Act.

A federal judge issued a restraining order to stop further publication until trial. However, during that time, the Washington Post also printed portions of Ellsberg's papers. The government asked a federal court to stop the Post from publishing future stories about the papers, citing again the

Espionage Act. Both newspapers argued that the First Amendment protected their right to publish. Two different federal courts heard the Times and Post cases. Both newspapers won at the trial court, and the government appealed. The Court of Appeals for the D.C. Circuit ruled for the Washington Post, while the Court of Appeals for the Second Circuit ruled for the government (against the New York Times). The U.S. Supreme Court agreed to hear both cases, combining them and holding oral argument just one day after the justices agreed to take the cases.

Issue

Did the government's efforts to prevent two newspapers from publishing classified information given to them by a government leaker violate the First Amendment protection of freedom of the press?

Constitutional Amendments and Supreme Court Precedents

- **First Amendment to the U.S. Constitution**

  "Congress shall make no law…abridging the freedom of speech, or of the press"

- *Near v. Minnesota* **(1931)**

  J.M. Near published The Saturday Press in Minneapolis, Minnesota; the paper was widely viewed as anti-Semitic, anti-labor, and anti-Catholic. Minnesota's "public nuisance" law prohibited the publication of scandalous, defamatory, or malicious newspapers. Near was sued under this law by someone the paper had frequently targeted. In a 5–4 decision, the U.S. Supreme Court decided that the state's statute was an infringement of the First Amendment. The Court held that, except in rare cases, censorship is unconstitutional. This case made the freedom of press protection applicable to the states, through the 14th Amendment, and emphasized that prior restraint (preventing the publication of something in advance) is almost always unconstitutional.

- *Dennis v. United States* **(1951)**

  The Supreme Court upheld the Smith Act, which made it a criminal offense for a person or group to advocate the violent overthrow of the government or to be a member of any group that supports such advocacy. This case involved members of the American Communist Party, which petitioned for socialist reforms. The Court said speech from a person or group so grave it poses a vital threat to the security of the nation is not protected under the First Amendment.

Arguments for The New York Times (petitioner)

- In the First Amendment, the Framers gave the press the protection it must have to fulfill its essential role in our democracy. People must have access to uncensored information in order

to make decisions and choose leaders. The press was created to serve the governed, not the government.

- Congress has not made laws that abridge the freedom of the press in the name of national security and presidential power. The courts should not take it upon themselves to make law that would do so simply because the executive branch requests it.
- The newspaper did not publish the information in order to hurt the U.S. Instead, it published the information to help the country, by informing citizens about their government's actions on an important public issue.
- Secrecy in government is fundamentally anti-democratic, perpetuating government misdeeds or errors. Open, robust debate of public issues is vital to our national health. Publishing materials that reveal misjudgments, miscalculations, or mistakes made by government officials is exactly why we want a free press to have unrestrained publishing authority.

Arguments for the U.S. Government (respondent)

- During times of war, the executive branch must be given broad authority to restrict publication of sensitive information that could harm U.S. national security.
- The judicial branch and the executive branch are co-equal branches of government. The courts should refrain from passing judgment on the executive branch's assessment of national security and foreign affairs. Our system of government rests on the concept of separation of powers, and the Constitution assigns decisions about foreign affairs to the political departments of the government—the executive and legislative branches.
- The newspapers knew the Pentagon Papers contained sensitive information that was obtained illegally. Both media outlets could certainly anticipate that the government would object to publication. It would have been reasonable to give the government an opportunity to review the entire collection and determine whether agreement could be reached on which sections of the papers could be published.
- One of the basic duties of every citizen is to report to police the discovery or possession of stolen property or secret government documents. This duty applies to everyone equally—from regular citizens, to high officials, and certainly also to The New York Times and The Washington Post.

Decision

Only four days after hearing oral arguments, the Supreme Court ruled, 6–3, for the newspapers. The Court issued a short majority opinion not publicly attributed to any particular justice—called a *per curiam* (or "by the Court") opinion—and each of the six justices in the majority (Justices Black, Douglas, Stewart, White, Brennan, and Marshall) wrote a separate concurring opinion. Chief Justice

Burger and Justices Harlan and Blackmun each filed a dissenting opinion. It is one of the few modern cases in which each of the nine Justices wrote an opinion.

Per Curiam

The Court reaffirmed its longstanding rule that "[a]ny 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." The *per curiam* opinion concluded, without analysis, that that "the Government had not met that burden" in these cases.

Concurrences

Justice Black, in an opinion joined by Justice Douglas, expressed the view that a court can **never** enjoin the publication of news consistent with the First Amendment. In his view, the First Amendment's freedom of the press is absolute, and "the press must be left free to publish news, whatever the source, without censorship, injunctions, or prior restraints." This freedom is part of the basic constitutional structure: when creating the federal government, "the Founding Fathers gave the free press the protection it must have to fulfill its essential role in our democracy," in which "[t]he press was to serve the governed, not the governors." When the First Amendment says that Congress shall pass "no law" abridging freedom of the press, it means "no law," not "some laws." And the government cannot evade this absolute command by invoking national security concerns: "The word 'security' is a broad, vague generality whose contours should not be invoked to abrogate the fundamental law embodied in the First Amendment."

Justice Douglas, joined by Justice Black, wrote that the executive branch does not have any "inherent power" to protect "national security" sufficient to overcome the heavy presumption against the constitutionality of a prior restraint on publication.

Justice Brennan concurred to emphasize that the cases represented the first time in American history that the government sought to enjoin a newspaper from publishing information in its possession, and that none of the lower courts ever should ever have ruled for the government. Justice Brennan recognized that there is only "a single, extremely narrow" exception to the prior restraint doctrine, involving an imminent threat in a time of war, and that exception did not apply here.

Justice Stewart, joined by Justice White, recognized the government's interest in "confidentiality and secrecy," but emphasized that it is primarily the executive branch's obligation to protect its own secrets. Because "I cannot say that the disclosure of any of [the documents] will surely result in direct, immediate, and irreparable damage to our Nation or its people," prohibiting publication would violate the First Amendment.

Justice White, joined by Justice Stewart, emphasized that "I do not say that in no circumstances would the First Amendment permit an injunction against publishing information about government plans or operations." He noted that the government had tools to punish leakers and drew a fundamental distinction between such permissible punishment and an injunction against the

publication of the information by the press. He suggested that the government might even be able to charge the newspapers with a crime for having published the information but held that this possibility did not justify a prior restraint on the publication.

Justice Marshall concluded that no statute authorized the executive or judicial branch to enjoin the publication of information on national security grounds, and that neither branch had the "inherent power" to issue such an injunction. Congress' authorization of criminal punishment for certain disclosures is not tantamount to authorization to enjoin such disclosures.

Dissents

In his dissent, Chief Justice Burger complained that the Court had rushed its decision in the cases (it accepted, heard, and decided them in less than a week), and that the justices (and the lower court judges) "do not know the facts." And, he argued, the facts are critical because "the First Amendment right itself is not absolute." Given his lack of knowledge of the facts, he declared that he was "not prepared to reach the merits" of the cases, and characterized the Court's rushed decision as "a parody of the legal process."

Justice John Harlan, joined by Chief Justice Burger and Justice Blackmun, also complained that "the Court has been almost irresponsibly feverish in dealing with these cases," and the justices had not had time to consider many of the "difficult questions of fact, of law, and of judgment." He did, however, reach the merits, and concluded that the judiciary did not have the right to second-guess the executive branch on matters of national security beyond (1) satisfying itself that "the subject matter of the dispute does lie within the proper compass of the President's foreign relations power," and (2) insisting that "the determination that disclosure of the subject matter would irreparably harm the national security be made by the head of the Executive Department concerned."

Justice Blackmun emphasized that "[t]he First Amendment … is only one part of an entire Constitution," and that "Article II of the great document vests in the Executive Branch primary power over the conduct of foreign affairs, and places in that branch the responsibility for the Nation's safety." In his view, "[e]ach provision of the Constitution is important, and I cannot subscribe to a doctrine of unlimited absolutism for the First Amendment at the cost of downgrading other provisions." He, therefore, would have sent the case back to the lower courts for a further review of the documents and assessment of the national security implications of publishing them.

Roe v. Wade

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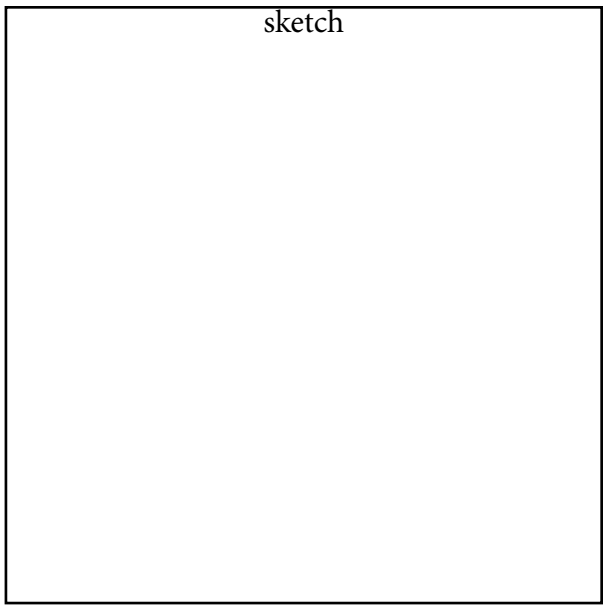


Situation

Constitutional Question(s)

Opinion(s)

Time

US Constitution

Significance

Roe v. Wade (1973)

Argued: December 13, 1971
Reargued: October 11, 1972
Decided: January 22, 1973

Background

The Constitution does not explicitly guarantee a right to privacy. The word privacy does not appear in the Constitution. However, the Bill of Rights includes protections for specific aspects of privacy, such as the Fourth Amendment's "right of the people to be secure in their persons, houses, papers and effects" from unreasonable government searches and seizures and the Fifth Amendment's right to be free of compelled self-incrimination in criminal cases. In early rulings about privacy, the Supreme Court connected the right to privacy to particular locations, with emphasis on a person's home as a private space where the government could not intrude without a warrant. During the 21st century, the Court began interpreting the Constitution, including the Due Process Clause of the 14th Amendment, as providing a broader right to privacy protecting people as well as places. Over the decades the Court interpreted this right to privacy to include decisions about child rearing, marriage, and birth control. This is a case about whether that constitutionally-protected right to privacy includes the right to obtain an abortion.

In the 19th and early 20th centuries, most states adopted laws banning or strictly regulating abortion. Many people felt that abortion was morally or religiously wrong, and so many states outlawed abortion except in cases where the mother's life was in jeopardy. But illegal abortions were widespread and often dangerous for women who underwent them because they were performed in unsanitary conditions. Wealthier women could travel to states or other countries with looser laws to obtain abortions, while poorer women often did not have that option. In the 1960s, a movement to make abortion legal gained ground. The movement advocated for changes in state laws (and four states did repeal their bans) and brought cases in courts challenging the abortion bans as unconstitutional.

Facts

In 1969, an unmarried and pregnant resident of Texas known as Jane Roe (a pseudonym used to protect her identity) wanted to terminate her pregnancy. Texas law made it a felony to abort a fetus unless "on medical advice for the purpose of saving the life of the mother." Roe and her attorneys filed a lawsuit on behalf of her and all other women who were or might become pregnant and seek abortions. The lawsuit was filed against Henry Wade, the district attorney of Dallas County, Texas, and claimed that the state law violated the U.S. Constitution.

A three-judge federal district court ruled the Texas abortion law unconstitutional under the Ninth Amendment, which states that "[t]he enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." In particular, the district court

concluded that "[t]he fundamental right of single women and married persons to choose whether to have children is protected by the Ninth Amendment," which applies to the states through the 14th Amendment. The case was then appealed directly to the U.S. Supreme Court, which agreed to hear it.

Issue

Does the U.S. Constitution protect the right of a woman to obtain an abortion?

Constitutional Amendments and Supreme Court Precedents

- **Ninth Amendment to the U.S. Constitution**

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

- **14th Amendment to the U.S. Constitution**

  "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."

- *Griswold v. Connecticut* **(1965)**

  A married couple sought advice about contraception from a Planned Parenthood employee named Griswold. Connecticut law criminalized providing counseling to married people for the purpose of preventing conception. The Supreme Court ruled that the Connecticut law violated the Constitution because it invaded the privacy of married couples to make decisions about their families. The Court identified privacy as an important value, fundamental to the American way of life, and to the other basic rights outlined in the Bill of Rights (including the First, Third, Fourth, and Ninth Amendments). Seven years later, the Court decided a case that extended access to contraception to unmarried persons, as well.

- *U.S. v. Vuitch* **(1971)**

  Washington, DC, had a law that prohibited abortions unless a woman's life or health was endangered by the pregnancy. Dr. Vuitch was arrested for violating that law, and he argued that only a doctor (not a prosecutor) could determine whether an abortion was necessary to protect a woman's life or health. The Supreme Court did not overturn the DC law. Instead it ruled that "health" should include both psychological and physical well-being.

Arguments for Roe

- A woman's right to privacy is implicitly guaranteed in the First, Fourth, Fifth, Ninth, and 14th Amendments. As the Court ruled in Griswold, there are certain matters—including the decision about whether or not to have a child—that are individual decisions protected by the Constitution.
- Many women had unwanted pregnancies, which had a major impact on their lives. In the 1970s, women could be asked to leave their jobs if they became pregnant, and most employers did not provide maternity leave. Women could be endangering their careers or finances in addition to their psychological and physical health by being forced to carry a pregnancy to term.
- Women in Texas who wish to have an abortion must either travel to another state where abortion is legal or undergo an illegal abortion where conditions could be unsafe. Travel is costly and inconvenient, thus making access to a safe, legal abortion more difficult for poor women. Illegal abortions put women's life, health, and well-being at risk.
- The law criminalizes a safe medical procedure, and it is too vague for doctors to know what they may or may not do. Doctors must determine that a woman's life is at risk in order to perform a legal abortion, and their decision and professional interpretation of "at risk" could land them in jail.
- An unborn fetus is not recognized as a person and does not have rights equal to the mother. Abortions were more common in the 19th century, so it is clear that the framers of the 14th Amendment did not intend to include fetuses in the definition of "persons." No Supreme Court case has established that a fetus is a person and, therefore, entitled to constitutional rights.

Arguments for Wade

- There is no right to abortion guaranteed in the Constitution. It is mentioned nowhere in the text, and there is no reason to believe that those who wrote the 14th Amendment intended to protect that right.
- A fetus, from the date of conception, is a person and has constitutional rights. The state has an important interest in protecting its future citizens. The right to life of the unborn child is superior to the right to privacy of the mother. The balancing of the two interests should favor the most vulnerable, the unborn child.
- In previous decisions where the Court protected individual or marital privacy, that right was not absolute. All protected rights are subject to reasonable regulation, and Texas has a strong interest in protecting life and protecting women's health, so the abortion restrictions are reasonable.

- Abortion is different from contraception, so the Court's decision in *Griswold v. Connecticut* does not apply here. Contraception prevents creation of life whereas abortion destroys existing life.
- Abortion is a policy matter best left to the state legislatures to decide. As elected officials, legislators make laws that reflect the popular will and morality of the people—as they have done here. The prohibition against abortion in Texas has existed since 1854.

Decision

In a 7–2 decision, the U.S. Supreme Court decided in Roe's favor. Justice Blackmun wrote the opinion of the Court, which recognized that a woman's choice whether to have an abortion is protected by the Constitution. Chief Justice Burger and Justices Stewart and Douglas wrote concurring opinions. Justices White and Rehnquist wrote dissenting opinions.

Majority

The majority rooted a woman's right to decide whether to have an abortion in the Due Process Clause of the 14th Amendment, which prohibits states from "depriv[ing] any person of … liberty … without due process of law." According to the majority, the "liberty" protected by the 14th Amendment includes a fundamental right to privacy. The majority began by surveying the history of abortion laws, and concluded that "the restrictive criminal abortion laws in effect in a majority of States today are of relatively recent vintage," and "are not of ancient or even of common-law origin." The Court then held that "[t]his right of privacy, whether it be founded in the Fourteenth Amendment's concept of personal liberty and restrictions upon state action, as we feel it is, or, as the District Court determined, in the Ninth Amendment's reservation of rights to the people, is broad enough to encompass a woman's decision whether or not to terminate her pregnancy." Further, after considerable discussion of the law's historical lack of recognition of rights of a fetus, the majority concluded "the word 'person,' as used in the Fourteenth Amendment, does not include the unborn." A woman's right to choose to have an abortion falls within this fundamental right to privacy and is protected by the Constitution.

While holding that "the right of personal privacy includes the abortion decision," however, the Court also emphasized that "this right is not unqualified and must be considered against important state interests in regulation." In particular, the Court noted, "[w]here certain 'fundamental rights' are involved, the Court has held that regulation limiting these rights may be justified only by a 'compelling state interest,' and that legislative enactments must be narrowly drawn to protect only the legitimate state interests at stake." The Court recognized that "the State does have an important and legitimate interest in preserving and protecting the health of a pregnant woman" and "still another important and legitimate interest in protecting the potentiality of human life." Striking a balance between a woman's fundamental right to privacy and these state interests, the Court set up a framework laying out when states could regulate and even prohibit abortions.

Under that framework, in the first trimester (the first three months of the pregnancy), a woman's right to privacy surrounding the choice to have an abortion outweighs a state's interests in regulating this decision. During this stage, having an abortion does not pose a grave danger to the mother's life and health, and the fetus is still undeveloped. The state's interests are not yet compelling, so it cannot regulate or prohibit her from having an abortion. During the second trimester, the state's interests become more compelling as the danger of complications increases and the fetus becomes more developed. During this stage, the state may regulate, but not prohibit, abortions, as long as the regulations are aimed at protecting the health of the mother. During the third trimester, the danger to the woman's health becomes the greatest and fetal development nears completion. In the final trimester, the state's interests in protecting the health of the mother and in protecting the life of the fetus become their most compelling. The state may regulate or even prohibit abortions during this stage, as long as there is an exception for abortions necessary to preserve the life and health of the mother.

Concurrences

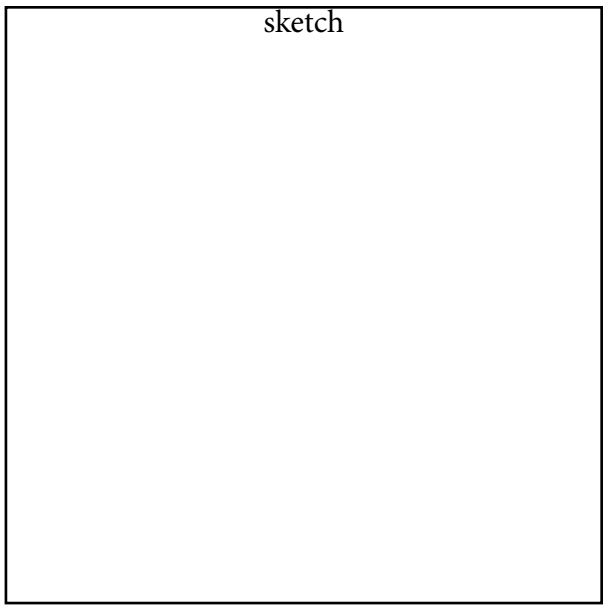
Three Justices filed concurring opinions in the case. Justice Stewart emphasized that the Court was basing its holding on the so-called "substantive" component of the Due Process Clause of the 14th Amendment. Justice Douglas rejected Justice Stewart's invocation of "substantive" due process, but agreed that the constitutional right at issue was based in the term "liberty" in the Due Process Clause of the 14th Amendment. Chief Justice Burger underscored that "the Court today rejects any claim that the Constitution requires abortions on demand."

Dissents

Two Justices filed dissenting opinions. In his dissenting opinion, Justice White, joined by Justice Rehnquist, argued that he found "nothing in the language or history of the Constitution to support" the right to an abortion. He characterized the decision as "an extravagant and improvident exercise of the power of judicial review that the Constitution extends to this Court," and noted that the decision prevents the people and the legislatures of the states from "weighing the relative importance of the continued existence and development of the fetus, on the one hand, against a spectrum of possible impacts on the mother, on the other hand." Justice Rehnquist filed a separate dissenting opinion, arguing that abortion did not fit within the right of "privacy" recognized in the Court's previous cases and characterizing the decision as "partak[ing] more of judicial legislation than … a determination of the intent of the drafters of the Fourteenth Amendment."

Citizens United v. FEC

sketch



Situation

Constitutional Question(s)

Opinion(s)

Time

US Constitution

Significance

Citizens United v. FEC (2010)

Argued: March 24, 2009
Reargued: September 9, 2009
Decided: January 21, 2010

Background

Each election cycle billions of dollars are spent on congressional and presidential campaigns, both by candidates and by outside groups who favor or oppose certain candidates. Americans disagree about the extent to which fundraising and spending on election campaigns should be limited by law. Some believe that unlimited fundraising and spending can have a corrupting influence—that politicians will "owe" the big donors who help them get elected. They also say that limits on fundraising and spending help make elections fair for those who don't have a lot of money. Others believe that more spending on election campaigns supports broader debate and allows more people to learn about and discuss political issues. Those supporting more spending say that giving and spending money on elections is a basic form of political speech protected by the First Amendment.

Over the past 100 years, Congress has attempted to set some limits on campaign fundraising in order to reduce corruption or anything that can be perceived as corruption.

The Supreme Court has decided that both donating and spending money on elections is a form of speech. For candidates, the money pays for ways to share his or her views with the electorate—through advertisements, mail and email, and travel to give speeches. For donors, giving money to a candidate is a way to express political views. Therefore, any law that limits donating or spending money on elections limits free speech, and the government must have a very good reason for making such laws.

The Supreme Court has ruled that laws that restrict how much candidates can spend on a campaign are unconstitutional, since candidates spend money to get their message out, which is a very important form of political speech. However, the Court has said that laws that restrict how much individuals and groups can donate directly to candidates are allowed, because that spending is slightly removed from core political speech, and such laws can prevent corruption. In 2018, the maximum amount an individual could give directly to a federal candidate was $2,700.

This case, however, is not about direct donations to candidates. Instead, this case is about how and when companies and other organizations can spend their own money to advocate the election or defeat of a candidate.

Facts

One of the federal laws that regulates how election money can be raised and spent is the Bipartisan Campaign Reform Act (BCRA), also known as the McCain-Feingold Act. Passed in 2002, one part of this law dealt with how corporations and unions could spend money to advocate the election or

defeat of a candidate. The law said that corporations and unions could not spend their own money on campaigns. Instead, they could set up political action committees (PACs). Employees or members could donate to the PACs, which could then donate directly to candidates or spend money to support candidates. The law prohibited corporations and unions from directly paying for advertisements that supported or denounced a specific candidate within 30 days of a primary election or 60 days of a general election. It is this part of the BCRA that is at issue in *Citizens United v. Federal Election Commission.*

In 2008, Citizens United, a non-profit organization funded partially by corporate donations, produced *Hillary: The Movie*, a film created to persuade voters not to vote for Hillary Clinton as the 2008 Democratic presidential nominee. Citizens United wanted to make the movie available to cable subscribers through video-on-demand services and wanted to broadcast TV advertisements for the movie in advance. The Federal Election Commission said that *Hillary: The Movie* was intended to influence voters, and, therefore, the BCRA applied. That meant that the organization was not allowed to advertise the film or pay to air it within 30 days of a primary election. Citizens United sued the FEC in federal court, asking to be allowed to show the film. The district court heard the case and decided that even though it was a full length movie and not a traditional television ad, the film was definitely an appeal to vote against Hillary Clinton. This meant that the bans in the BCRA applied: corporations and organizations could not pay to air this sort of direct appeal to voters so close to an election.

Because of a special provision in the BCRA, Citizens United was allowed to appeal the decision directly to the U.S. Supreme Court, which the organization did. Citizens United asked the Court to decide whether a feature-length film really fell under the rules of the BCRA and whether the law violated the organization's First Amendment rights to engage in political speech. The Supreme Court agreed to hear the case and heard oral argument in March 2009. Two months later the Supreme Court asked both parties to submit additional written responses to a further question: whether the Court should overrule its prior decisions about the constitutionality of the BCRA. The Court scheduled a second oral argument session for September 2009.

Issue

Does a law that limits the ability of corporations and labor unions to spend their own money to advocate the election or defeat of a candidate violate the First Amendment's guarantee of free speech?

Law and Supreme Court Precedents

- *Austin v. Michigan Chamber of Commerce* **(1990)**

  A state law in Michigan said that for-profit and non-profit corporations could not use their money to run ads that support or oppose candidates in state elections. The Supreme Court decided that the Michigan law was constitutional, even though it did restrict corporations' speech. First, the justices said that the government had a very important reason for

restricting speech—reducing corruption or the appearance of corruption. Corporations, they reasoned, can accumulate a lot of money and they might use that money to unfairly influence elections. The justices also pointed out that the Michigan law allowed corporations to set up separate special funds with money from donors and spend that money on election ads. That allowed the corporations other avenues for their speech.

- **The Bipartisan Campaign Reform Act (BRCA) of 2002 (Also known as the McCain-Feingold Act)**

  Among other things, this federal law banned any corporation (for-profit or non-profit) or union from paying for "electioneering communications." It defined an "electioneering communication" as a broadcast, cable, or satellite communication that named a federal candidate within 60 days of a general election or 30 days of a primary.

  In 2003, in a case called *McConnell v. FEC,* the Supreme Court said that the portion of the BCRA about electioneering communications was constitutional.

- ***Wisconsin Right to Life v. FEC*** **(2007)**

  The BCRA banned corporations and unions from paying broadcast advertisements that named specific candidates for office near election time. This included both "express advocacy" (ads that specifically appealed to voters to vote for or against a certain candidate) and "issue advocacy" (ads that expressed a view about a political issue and mentioned a candidate). The Supreme Court decided that the ban on issue advocacy was unconstitutional. The Court said that issue advocacy was political speech, and the government could not prevent organizations from discussing issues simply because the issues might be relevant in an upcoming election. The justices said that issue ads are not equivalent to contributions, and there is not a compelling reason that banning the issue ads would reduce corruption. They also said that issue ads can reasonably mention public officials, as long as they are not direct appeals to vote for or against a specific candidate.

Arguments for Citizens United (petitioner)

- Freedom of political speech is vital to our democracy and spending money on political advertisements is one way of spreading speech.
- The First Amendment applies equally to speech by individuals and speech by groups. Companies, unions, and other organizations should not face stricter rules about their speech than individuals do.
- Newspapers are corporations. Through editorials, news organizations and media companies try to influence elections. If Congress is allowed to ban corporations from placing political ads, what prevents them from regulating the media as well?

- If a movie about a political candidate produced by a corporation can be banned, then books about political candidates that are published within 60 days of an election might be banned as well. Government censorship of this kind would have far reaching implications.
- Though some people or organizations have more money and can therefore speak more, the First Amendment does not allow for making some forms of speech illegal in order to make things "fair."
- Merely spending money to support a candidate—particularly when the money is not given to the candidate, but rather spent independently—does not create or even suggest the corruption that campaign finance reform was originally created to address.
- Incumbents (the public officials already in office) have the most to gain by banning independent spending by companies and organizations. The incumbents have access to much more free visibility and media time. Americans, including organizations and corporations, should be able to criticize the existing government and advocate for a change in leadership.

Arguments for the Federal Election Commission (respondent)

- The First Amendment does not apply to corporations because the Constitution was established for "We the People" and was set up to protect individual, rather than corporate, liberties.
- The BCRA leaves corporations other ways to speak and to spend money on elections. The law allows corporations and unions to form Political Action Committees and to fund advertisements through the PAC. PACs can only use money that has been given to them for the purpose of political advocacy, unlike a corporation's general income, which comes from all sorts of people who might not agree with the corporation's message.
- The Supreme Court has ruled on these issues before in *Austin v. Michigan Chamber of Commerce* and in *McConnell v. FEC,* which upheld the BCRA's bans. The Court should not completely change the law, which has clear public support.
- Corruption is not limited to bribes and direct transactions. By being allowed to spend unlimited sums of money in support of a candidate, corporations and unions will have a certain amount of access to, if not power over, that candidate.
- Even if no corruption takes place, the public may view the vast sums spent by corporations and unions for specific candidates and see the appearance of corruption. That could cause people to lose faith in the electoral system.
- Corporations can accumulate so much money that they could overwhelm the conversation and drown out the speech of less wealthy individuals in an election.

Decision

Justice Kennedy wrote the majority opinion. He was joined by Chief Justice Roberts and Justices Scalia, Thomas, and Alito. Justice Stevens dissented and was joined by Justices Ginsburg, Breyer, and Sotomayor.

Majority

The Court ruled, 5–4, that the First Amendment prohibits limits on corporate funding of independent broadcasts in candidate elections. The Court reversed two earlier decisions that held that political speech by corporations may be limited (*Austin v. Michigan Chamber of Commerce* and portions of *McConnell v. FEC*). The justices said that the government's rationale for the limits on corporate spending—to prevent corruption—was not persuasive enough to restrict political speech. A desire to prevent corruption can justify limits on donations to candidates, but not on independent expenditures (spending that is not coordinated with a candidate's campaign) to support or oppose candidates for elected office. Moreover, the Court said, corporations have free speech rights and their political speech cannot be restricted any more than that of individuals. Justice Kennedy, writing for the majority, said that political speech is "indispensable to a democracy, which is no less true because the speech comes from a corporation." The majority did not strike down parts of the BCRA that require that televised electioneering communications include disclosures about who is responsible for the ad and whether it was authorized by the candidate.

Dissent

Justice Stevens, writing for the dissenters, said that the First Amendment protects people, not corporations. The dissenters felt that the government should be allowed to ban corporate money because it could overwhelm the debate and drown out non-corporate voices. They noted that Congress had imposed special rules on corporate campaign spending for more than 100 years. Without such limits, corporations' wealth could give them unfair influence in the electoral process and lead to elections where corporate domination of the airwaves would decrease the average voter's exposure to different viewpoints. They argued that the Court's ruling "threatens to undermine the integrity of elected institutions across the Nation." The dissenters argued that the BCRA left open ways for corporations to speak—through political action committees—and argued that PACs would better protect corporate shareholders from having their stake in a corporation used to support candidates they disagree with.

Concept Application Question (3 points)			
Rubric Row		**Scoring Criteria**	**Scoring Notes**
A	**Describe** (0–1 pt)	**1pt** Describe a political institution, behavior, or process in connection with a scenario.	The response must reference content from the scenario and provide a description.
B	**Explain** (0–1 pt)	**1pt** In the context of the scenario, explain how the response in part A affects a political process, government entity, or citizen behavior.	The response needs to demonstrate an action and the impact of that action.
C	**Explain** (0–1 pt)	**1pt** Explain how the scenario relates to a political institution, behavior, or process.	To earn this point, the response must demonstrate grasp of the appropriate Enduring Understanding

Quantitative Analysis Question (4 points)			
Rubric Row		**Scoring Criteria**	**Scoring Notes**
A	**Identify** (0–1 pt)	**1pt** Identify or describe the data	
B1	**Describe** (0–1 pt)	**1pt** Describe a pattern, trend, or similarity/difference as prompted	
B2	**Draw a conclusion** (0–1 pt)	**1pt** Draw a conclusion for that similarity or difference	
C	**Explain** (0–1 pt)	**1pt** Explain how _____ in the information graphic demonstrates _____.	To earn this point, the response must demonstrate grasp of the appropriate Enduring Understanding; focus must be on transfer of new concept.

SCOTUS Comparison Question (4 points)			
Rubric Row		**Scoring Criteria**	**Scoring Notes**
A	**Identify** (0–1 pt)	**1pt** Identify a similarity or difference between the two Supreme Court cases (as specified in the question).	
B1	**Identify** (0–1 pt)	**1 pt** Provide prompted information from the specified required Supreme Court case.	Point is earned for knowing facts for required Supreme Court case.
B2	**Explain** (0–1 pt)	**1 pt** Explain how or why that information from the specified required Supreme Court case is relevant to the non-required Supreme Court case provided in the question.	In order to earn the second point in part B, the response must correctly relate specific information from the required source to the new source by comparing similarities or differences between the two cases.
C	**Describe/ Explain** (0–1 pt)	**1 pt** Describe or explain an interaction between the holding in the non-required Supreme Court case and a relevant political institution, behavior, or process.	To earn this point, the response must demonstrate grasp of the appropriate Enduring Understanding.

Argumentation Essay (6 points)				
Rubric Row	**Scoring Criteria**			**Scoring Notes**
Claim/Thesis (0–1 pt)	**1 pt** Articulates a defensible claim or thesis that responds to the question and establishes a line of reasoning			The response cannot earn this point for simply restating the prompt.
Evidence (0–3 pts)	**1 pt** Provides one piece of evidence that is accurately linked to the topic of the question	**Or 2 pts** Uses one piece of specific and relevant evidence to support the argument	**Or 3 pts** Uses two pieces of specific and relevant evidence to support the argument	To earn more than one evidence point, the response must establish an argument, and have earned the point for claim/thesis (Row A).
Reasoning (0–1 pt)	**1 pt** Explain how or why the evidence supports the claim or thesis			The response must have a claim/thesis to earn a point. The response cannot simply restate the prompt to explain why the evidence supports the claim/thesis. The response cannot earn a point without previously supporting the claim/thesis in B. To earn the point the response must address at least one piece of evidence.
Responds to alternative perspectives (0–1 pt)	**1 pt** Responds to an opposing or alternate perspective using refutation, concession, or rebuttal			The response must have a claim or thesis to earn a point. The response must identify an alternative perspective; demonstrate a correct understanding of the perspective; and refute, concede, or rebut the perspective.

FRQ 3C CHEAT SHEET

Typically, 3C asks you to explain something a branch of government, group, or individual can do to minimize or get around a decision of the courts. If the Supreme Court were to find a law unconstitutional, there are methods that can be pursued that might still be able to enact the policy goal of the original legislation. When you answer this question, make sure you address that directly. State the action you believe could make a difference and identify who or what it is directed at.

- **FORMULA: ACTION-TARGET-OBJECTIVE**
  - **Example: Write to (ACTION) local representative (TARGET) to urge stronger gun control (OBJECTIVE).**

Legislative	Executive	Interest Group
Pass or amend a law tailored to address Court's decision	Issue a narrowly tailored executive order to address Court's decision	Protest (with a specific goal in mind)
Cut or increase funding to impact policy	Direct bureaucratic agency not to carry out a policy	Lobby or petition legislators to pass or change a law
Propose and pass (but not ratify) a constitutional amendment	Refuse to enforce the decision (but risk impeachment)	Donate to candidates whose goal is to do something on the Legislative list
Conduct oversight hearings to investigate and publicize		Write an amicus brief on future related cases.
Use fiscal federalism to encourage states to carry out action.		
Individual	**Media**	**States**
Protest to pressure public officials to take some specified action	Agenda setting (to spur public uproar and legislative or executive action)	Pass a law at the state level if national law struck down for violating federalism.
Lobby, petition, or contact legislators to pass or change a law	Issue framing (same)	Drag feet on enforcement of policy.
Donate to candidates whose goal is to do something on the Legislative list (or run for office)	Investigative journalism (same)	

Expectations for common FRQ verbs

Identify - While you can occasionally bullet-point identify questions, you are better served to write a complete sentence. This is asking you to specifically name something. For example, if the question said:

"Identify an amendment that expanded suffrage in the United States."

They want you to identify the amendment by number and who it expanded suffrage for. Generally speaking, acceptable responses would include something like the following:

Acceptable - "19th amendment - women could vote"

Better - "With the 19th amendment, women gained the right to vote."

FYI, questions that ask about expansion of suffrage are more common than I realized. There are multiple amendments that expand suffrage (voting rights) including the 15th, 19th, 23rd, 24th, and 26th. They generally want to know about one of these if they ask you this type of question. If they ask about policy that expands suffrage, always go with the standby Voting Rights Act of 1965 or the Motor Voter Act. If they ask about reduction of suffrage, you could include something like Voter ID laws.

Describe - A describe question is asking you to paint a picture so that the reader can see what you are describing without the benefit of an actual picture. Often, describe questions also need an identify as part of the description. Always write in complete sentences on a describe question. A description can often be accomplished with 1-2 sentences per item you must describe. For example, using the following question:

"Describe two strategies interest groups use to influence the electoral process."

You would need to both identify the strategies and then describe them. For example, here are some acceptable responses to that question:

"Interest groups may give money to candidates in order to help them win the election."

"Interest groups may endorse candidates for election to members of the interest group in order to influence them to vote for that candidate."

"Interest groups may form PAC's (political action committees) in order to raise money which can be used to support candidates for election."

Make sure that your response ties to the appropriate action that you were asked to describe. For instance, I stopped before talking about how the politician might act as a result of being elected. While I doubt I would be penalized for ADDING that information, if I had just responded "Interest groups give money to members of Congress in order to see their policy ideas enacted", I would not have received the point. That response leaves the reader in question as to whether I understand that they were asking about the electoral process rather than the influencing policymaking context that the question asked for, and we would be trained not to give credit for that.

Explain - An explain question is asking for you to explain HOW, WHY, WHAT, WHERE, or WHO and its effect on the stimulus of the question. This will usually require 3-4 sentences in order to adequately explain and make connections as they are asking you to do. For example,

"Choose two of the following twentieth-century developments and explain how each moved the United States from a less democratic system to a more democratic system.
*Primary Elections
*The 17th Amendment
*Expansion of suffrage"

For this question, you will choose the two developments you want to explain and then explain HOW they moved the U.S. from a less democratic system to a more democratic system. It doesn't hurt at all to identify the terms used in an explain question because that can help the reader know that you definitely know what you are talking about. Additionally, EXAMPLES are a wonderful thing to include. It often helps "seal the deal" on whether the reader KNOWS you know what you are talking about if your writing leaves them with any confusion. For example:

“The move from the caucus system and backroom deals of the party came to an end with the development of primary elections. This allowed ordinary citizens to make the decision as to who a nominee would be for the party, rather than leaving it to the party bosses, thereby more fully reflecting public opinion and making the system more democratic.

With the 17th amendment, the selection of senators shifted from state legislatures to the citizens themselves. Now the citizens voted for their senators and senators had to be answerable to the people rather than state governments, thereby increasing the democratic nature of Congress because they became answerable to the citizens directly..

As we moved through the 20th century, several amendments were added to the Constitution, such as the 19th amendment which gave women the right to vote and the 26th amendment which lowered the voting age to 18. Because new groups of people now had access to the voting booth, our government more fully reflects democracy, or rule by the people.”

Note that for each example, I only wrote 2-4 sentences. However, I made sure to CLOSE THE LOOP and provide the how for my answer response to the stimulus. Notice also that I provided a ‘spare tire’ by responding to all three rather than just the two they asked for. While I obviously did this for your benefit, I also did it to illustrate a point. What if one of my responses was wrong? If I was told to explain TWO and I explained THREE instead, I would NOT be penalized for the wrong response. I would earn the two points offered in this question.

Also, please note that any time they ask you about suffrage, your response needs to include an indication about voting. The CB has found that students don’t know that vocabulary term, so they often make it a requirement that you have to indicate that definition as part of your response or you won’t earn the point. For example, if you just said in the third example that the expansion of suffrage increased democracy because more people used their voice, that wouldn’t answer their question. It doesn’t show that you know what suffrage is….you could just as easily be trying to make a correlation to speaking out on social media for all the reader knows. Always say vote/voting rights somewhere if they ask you about suffrage.

Read the specific adverb used - sometimes students write beautiful explanations of WHY something happened, but the question didn’t ask WHY. It asked HOW. As a result, students will miss the point even though they clearly understood a lot about the topic of the question. The adverb points you to the type of process or motivation they want you to explain. That matters! Consider the difference between these two different prompts:

Explain how interest groups reduce the influence of public opinion on policy.

Explain why interest groups reduce the influence of public opinion on policy.

How and why lead us to very different parts of the political process and motivations. Pay close attention to that little adverb.

Other verbs used in recent years.

Compare - A comparison requires you to make statements about each of the items you are comparing in a context that compares similarities or differences clearly. A compare may be answerable in 1-2 sentences, but 3-4 sentences is a better estimate. Make sure you close the loop. For example,

“Compare state sovereignty under the Articles of Confederation and under the Constitution.”

Answer in complete sentences and make sure you are comparing what they asked you to compare. It doesn’t hurt at all to define what you are comparing. Again, this helps the reader give you points. Example response:

“Sovereignty refers to the right to make decisions without consulting a higher power or authority. Under the Articles of Confederation, the states were independent sovereign states who made all of their own decisions and had united for limited common purposes. While the national and state governments share powers under the Constitution, the national government is supreme and the states no longer have sovereignty.”

Note that a comparison will probably require AT LEAST 3 sentences; 1 sentence to define whatever you are comparing; 1 sentence to make the statement for one object; 1 sentence to compare the other object to the first object.

This verb has been uncommon in the past, but the recently redesigned course has comparison as a reasoning pro-

cess and so you should expect to see that task requested of you more frequently. The SCOTUS FRQ will specifically ask you to compare a non-required case to a required case.

Define - A define question is asking for a complete definition of the term you are asked to identify. This is probably one sentence. It will often be followed by another verb that asks you to relate something to the defined term. They generally prefer identify to define. The difference between the two is the requirement of a full definition to get this point as compared to an identify where you might be able to give a much simpler response for credit.

Charts and Graphs: There will be chart and graph questions on the AP exam in both the multiple choice section and the FRQ section. If the question has a chart or graph, make sure that you are using that chart/graph to answer the questions asked. You can only answer based on what you are actually told. For instance, if the chart provides you with percentages, make sure your response references percentages or ratios, not "numbers"....it didn't provide you with numbers and that may cause you to lose credit because you didn't do what you were asked to do and you may be providing an answer that isn't true.

If you are making a comparison using data in a chart or graph, use exact numbers or percentages as given, or modify them to a ratio. Use the information you are given because those ought to be easy points, but aren't always.

For example, using this chart:

PRESIDENTIAL APPOINTMENTS TO THE FEDERAL JUDICIARY BY SELECTED DEMOGRAPHIC CHARACTERISTICS, 2000–2011 (in percent)

President	African American	Hispanic	Asian American	White	Women	Men
Barack Obama	22%	11%	8%	59%	46%	54%
George W. Bush	7%	9%	1%	82%	22%	78%

Source: Alliance for Justice, August 2011
Percentages do not add up to 100.

Using the chart above, describe ONE difference between President Barack Obama's judicial appointments and those made by President George W. Bush.

Use your data! If you responded "President Bush appointed more men than President Obama did", you would not get the point. This chart doesn't tell you that information. It doesn't tell you how many justices were appointed by either president, so you can't talk about numbers!

So, what does it tell you? It tells you that President Obama appointed a significantly greater percentage of women than President Bush did, by a factor of almost 2:1 (or you could give specific percentages in your response, which is even better). It tells you that President Obama appointed a higher percentage of minorities in any single category than President Bush did, for example, 22% of President Obama's appointees were African American compared to only 7% from President Bush. USE THE DATA THEY GIVE YOU. They are trying to find out if you can read a chart and properly use the data in that portion of the question. They want to know if you can think and write like a political scientist. Questions will likely ask you to make conclusions about that data in another part of the question. That is where you will explain correlations of the data to other things. In the part that asks you to read the chart, READ THE CHART!

Argumentation Essay: This question requires you to write an essay where you make an argument and defend it. It also requires you to articulate the opposing argument and refute, rebut or concede.

Thesis/Claim - You must state a DEFENSIBLE claim. That means you will take a position with a BECAUSE statement. For instance, if you are asked:

"Develop an argument about whether the expanded powers of the national government benefits or hinders policy-making."

You must take a position. This is not the time to try and play both sides. If you are indecisive and try to argue both

here, you won't get credit for either. Additionally, you cannot simply restate the prompt. Before this directive, there was some background information about federalism. That stem serves as your cue that they are going to want you to make an argument from a basis of your understanding of federalism, but restating the stem and/or the prompt is not sufficient for points.

A good example:

The expanded powers of the national government benefits policymaking because it allows for more uniformity on important issues that affect the general welfare and safety of the citizens of the United States.

In this example, there is a clear position (benefits policymaking) and established a line of reasoning (uniformity for the benefit of citizens). From here, you would need to use the foundational documents provided in order to support my argument. For this particular question, the choices are Brutus 1, the Articles of Confederation and Federalist 10. Brutus 1 can only support the argument of hinders policymaking because it supported a smaller national government for a long list of reasons which you should be familiar with. Since the thesis has chosen the position of benefits, you would need to use the Articles of Confederation or Federalist 10.

The evidence needs to describe the purpose/significance of the document in question and use appropriate evidence from that document that supports the claim. You need two pieces of evidence. You can usually use one foundational document and then something else from your study of the course content, but read the question carefully to see what they tell you to do.

Example:
The Articles of Confederation show the ineffectiveness of a confederal system in providing uniform policy. Under the Articles of Confederation, the national government had no ability to tax the citizens or act directly upon the states. Additionally, it was difficult to pass any policy since it required a super majority to pass any law. This inability made it difficult to achieve any uniformity of policy or pass any policies that could benefit the citizens. Policies that will benefit the people are more easily passed with a Constitution that grants the national government policymaking power to directly tax and enact policies for all.

The italicized type is enough for the first evidence point. If there is a good thesis, this evidence will earn 2 points. The remaining type would earn you the reasoning point. You will still need a second piece of evidence. My strong advice would be to provide a description and reasoning for the second piece of evidence as well. That allows you to maximize your opportunities for points in the event that one of your pieces of reasoning is inaccurate or not expansive enough to earn a point.

Finally, you have to provide an alternative argument and why it is better or not good enough. Most students who earned the point do so by rebutting or refuting their initial argument. You must completely state the alternative perspective and then fully explain why it isn't good enough (or is better).

Example:

While some may argue that there is a greater possibility of corrupt policies with a stronger national government because of the concentrated power in that level of government, our Constitution divides the power under federalism and provides checks and balances by the states to the federal government as well as within the national government itself. As a result of this divided power and the many viewpoints that can be represented, policymaking has been much more effective with policies being made at the national level in addition to the state level.

In this example, there is an alternative perspective (italicized) and then reasoning as to why that was inaccurate (remaining text)

Other miscellaneous advice:

Organize your response the way the question is organized for you on the test, but DO NOT add the (a), (b), etc. labels. It has not been completely consistent from year to year, but readers have sometimes been told they cannot give credit for any information except in the labeled area if labels are given. So, for example, if you answer something in section (a), but it isn't complete enough for credit, and then in your response in part (b), you add information that shows you really did understand what they asked in part (a).....if you labeled the sections, they could NOT give you credit for that response since it was given in part (b). If, however, you did not label, you could be given the point.

Pre-Write the question. You have plenty of time to respond. If you don't want the reader to read the pre-write, you can make a large X through it. Take the time to organize your thoughts, however, and make sure you know what you want to say before you start.

If you add information after you are finished….for instance, you remember something you want to add to a section, but there isn't room to add it in that section, THEN, it would be appropriate to write something that indicates you have information to add to part (x). The reader will then go back and add that to their understanding of that part.

Include examples wherever possible. Those are really useful in showing the reader that you know what you are talking about.

Leave out your ideological opinions. The reader doesn't care about that. They want to know what you know about the topic of the question.

Please definitely write with blue or black ink. The APGOPO exam is now scanned in and read on a computer. Red ink (or other colors) don't scan in as cleanly and can make it difficult to read your response.