SUPREME COURT CASES

Early Republic

Marbury v. Madison (1803)
Before his term as President ended, a defeated President John Adams appointed William Marbury as a Justice of the Peace for the District of Columbia. Adams' Secretary of State John Marshall failed to deliver Marbury his appointment papers before the new President Thomas Jefferson and the new Secretary of State James Madison assumed office. The new President and the new Secretary of State declined to give Marbury the position. After hiring an attorney and using part of a 1789 law passed by Congress, Marbury filed suit directly with the Supreme Court asking that Court to direct President Jefferson and Secretary of State Madison to give Marbury the position. The Supreme Court did not rule for or against Marbury. In other words, the Court did not order Secretary of State Madison and President Jefferson to give Marbury the position. What the Court did was something far more important. For the first time, in *Marbury v Madison*, the Supreme Court declared unconstitutional an act of Congress (a section of the Judiciary Act of 1789 under which Marbury had brought his case directly to the Supreme Court). This was an exercise of the power of judicial review—the power of the Supreme Court to interpret laws of Congress and declare them unconstitutional if in the judgment of the Court they are in conflict with the Constitution. Speaking for a unanimous Supreme Court, Chief Justice John Marshall thus established the Court as an equal partner in government with the executive and legislative branches, something it had not been prior to Marshall becoming Chief Justice. The Supreme Court became the final authority on what the Constitution means. Marshall wrote: "It is emphatically the province and duty of the judicial department to say what the law is." Marshall continued, "The Constitution of the United States confirms and strengthens the principle… that a law repugnant to the Constitution is void." The Supreme Court, further, was the proper authority to decide if a law is in conflict with the Constitution. He called this responsibility "the very essence of judicial duty."

Fletcher v. Peck (1810)
A corrupt Georgia legislature sold millions of acres of public lands for pennies per acre to four land companies which in turn sold the land to private individuals. When the corruption was discovered, the voters of Georgia defeated the corrupt members of the state's legislature and chose a new legislature. This new Georgia legislature then passed a law rescinding the sale of the land. Fletcher had purchased land from Peck and wanted to make sure he had legal title to it so he challenged the constitutionality of the new Georgia legislature's rescinding law. Speaking through Chief Justice John Marshall, the Supreme Court ruled that the original sale, even though tainted by corruption, was legal because the Georgia legislature legally had the right to sell public lands. In addition, both Fletcher and Peck were innocent third parties untainted by the corruption. Most importantly, however, the Court ruled that the contracts clause of Article I, Section 10 of the Constitution applies to states as well as private parties. For the first time, in *Fletcher v Peck*, the Supreme Court declared a state law unconstitutional, thus establishing the Court's power under judicial review to do so.

Dartmouth College v. Woodward (1819)

After a dispute over the governance of Dartmouth College, the New Hampshire legislature enacted legislation that essentially converted Dartmouth from a private college to a state operated college. The state argued that Dartmouth's charter had been granted by the British king and that, as heirs to British sovereignty, like the king before it, the state now had the right to cancel contracts. The Supreme Court reasoned that while that may have been true in the past, the adoption of the new U. S. Constitution changed things. Speaking through Chief Justice John Marshall, the Court held that New Hampshire could not seize Dartmouth College and turn the institution into a state school. The school's private charter with the British Crown involved private property and was a contract. Marshall and the Court invoked the Contracts Clause of Article I, Section 10 of the Constitution which provides that "no state shall pass any law impairing the obligation of contracts." The prohibition against impairing the obligation of contracts thus applies to states as well as to private parties.

In one of his numerous appearances before the Supreme Court, a young Daniel Webster successfully argued and won the case on behalf of Dartmouth College.

McCulloch v. Maryland (1819)

The U. S. Congress' constitutional power to create a national bank had been controversial since Secretary of the Treasury Alexander Hamilton first successfully argued for it during President George Washington's first term as President. Secretary of State Thomas Jefferson, also in Washington's Cabinet, had argued against Congress' power to create the bank. The charter of the first Bank of the United States had been allowed to expire, but in 1816, Congress chartered the Second Bank of the U. S. The largest branch of this bank was located in Baltimore, Maryland. Like Jefferson at an earlier time, Maryland did not believe that Congress had the power under the Constitution to create banks. The state decided to drive the bank out of business by passing a law placing a tax on all banks "not incorporated by the state" which meant the Baltimore branch of the Bank of the United States. Maryland asserted that Congress had no constitutional power to charter banks and that even if it did, a state could tax the bank. In this early federalism case, speaking through Chief Justice John Marshall, the Supreme Court unanimously ruled that Congress had the power to create a national bank. The creation of a bank was an implied power of Congress.

Marshall pointed out that while the power to charter banks does not appear in the list of Congress' enumerated powers found in Article I, Section 8 of the Constitution, the creation of a bank was a means of executing its enumerated powers: "Although, among the enumerated powers of government, we do not find the word 'bank,'…we find the great powers to lay and collect taxes; to borrow money; to regulate commerce…" Those enumerated powers, when combined with the power given Congress in Paragraph 18 of Section 8 "to make all laws necessary and proper for carrying into execution the foregoing powers," authorized Congress' action. This interpretation broadly expanded the power of Congress to enact laws over subjects not specifically mentioned in the Constitution.

Marshall asserted that the people, not the states, were the agents of the Constitution's establishment. He invoked the supremacy clause of Article VI, Paragraph 2 of the Constitution in the Court's ruling that Maryland could not tax the national bank. Marshall noted that "the power to tax involves the power to destroy." By that he meant that a state could impose a tax so burdensome that the entity, in this case the national bank, would not be able to survive.

Gibbons v. Ogden (1824)
In 1808 the New York Legislature awarded Robert Fulton's steamboat company the exclusive right to issue licenses to steamboats operating in New York waters. In 1811, Fulton in turn granted Aaron Ogden a license to operate steamboats between New York and New Jersey. In 1818, the U. S. Congress, using the power given Congress by the commerce clause of Article I, Section 8 of the Constitution, granted Thomas Gibbons a license to engage in the coastal trade and operate steamboats between New York and New Jersey. Ogden sued and won an injunction in a New York state court forbidding Gibbons from operating his boats in New York waters. After obtaining the services of Daniel Webster as his lawyer, Gibbons appealed to the U. S. Supreme Court. Speaking through Chief Justice John Marshall, the Supreme Court unanimously ruled in favor of Gibbons and thus Congress' power. Writing about Congress' power under the commerce clause, Marshall stated: "This power, like all others vested in Congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations, other than are prescribed in the Constitution." According to Marshall, one important purpose of the new Constitution was to "rescue the United State] from the embarrassing and destructive consequences, resulting from the legislation of so many different States, and to place it under the protection of a uniform law." Furthermore, Marshall and the Court invoked the supremacy clause of Article VI, Paragraph 2 of the Constitution and affirmed that state laws that contradict constitutional acts of Congress must yield. The Court acknowledged that states can enact laws that regulate interstate commerce but only if these laws do not interfere with national laws. If a state law does interfere, national law preempts state law and the state law is invalid.

Age of Jackson

Worcester v. Georgia (1832)
In 1830, at the urging of President Andrew Jackson, the U. S. Congress passed the Indian Removal Act which authorized the President to grant the Indians unsettled land west of the Mississippi river in exchange for Indian land within existing state borders. The U. S Supreme Court under Chief Justice John Marshall first addressed the Indian lands question in an 1831 case *Cherokee Nation v. Georgia*. That case developed out of Georgia's attempt to assert its jurisdiction over Cherokee land within the state of Georgia that was protected by federal treaty. The Supreme Court in that case ruled that it had no jurisdiction to hear the Cherokee request to prevent Georgia's attempt. Marshall and the Court determined that the Cherokees were "a domestic, dependent nation (a ward of the United States), rather than "a sovereign nation." By refusing to hear the case, the Court left the Cherokees at the mercy of the land-hungry state of Georgia. The Georgia legislature meanwhile passed a law requiring anyone other than Cherokees who lived on Indian territory to obtain a license from the state. Samuel Worcester and some other non-Cherokee missionaries settled and established a mission on Cherokee land at the request of the Cherokees but without a license from the state. The state then charged them with violation of the Georgia law. They were tried, convicted, and sentenced to four years of hard labor. Worcester and the other missionaries then appealed to the U. S. Supreme Court.

Speaking through Chief Justice John Marshall in *Worcester v. Georgia*, the Supreme Court ruled in favor of Worcester and the Cherokees. Marshall wrote that citizens of Georgia had no right to enter Cherokee land "but with the assent of the Cherokees themselves, or in conformity with treaties, and with the acts of Congress. The whole intercourse between the United States and

this nation, is, by our Constitution and laws, vested in the government of the United States." Therefore, Marshall concluded, "the acts of Georgia are repugnant to the Constitution, laws, and treaties of the United States."

The Indians thus achieved a significant legal victory. However, this significant legal victory became an unfortunate chapter in American history. When President Andrew Jackson heard of the Supreme Court's decision, he supposedly remarked, "John Marshall has made his decision, now let him enforce it." In one of the dark pages in American history, the Indians were compelled to leave their native land and move west to Oklahoma Territory. In what is referred to as "the Trail of Tears," many did not survive the move.

Barron v. Baltimore (1833)

In the process of making improvements to the city's streets, the city of Baltimore essentially destroyed access by large ships to a deep-water wharf owned by Barron. Barron believed his private property had thus been "taken for a public purpose" and that, as a result, he was entitled to just compensation under the Constitution's Fifth Amendment which provides that "nor shall private property be taken for public use without just compensation." Barron won in a lower state court, but the decision was reversed by the Maryland Supreme Court. Barron then appealed to the U. S. Supreme Court. Speaking through Chief Justice John Marshall, the Supreme Court ruled that it lacked jurisdiction because the Fifth Amendment's "takings clause" did not apply to state governments. Marshall explained that because the Bill of Rights only applied to the national government "The provision in the Fifth Amendment to the Constitution declaring that private property shall not be taken for public use without just compensation is intended solely as a limitation on the exercise of power by the Government of the United States, and is not applicable to the legislation of the States."

In the late 1890s the Supreme Court overturned its decision in *Barron v. Baltimore* and ruled that the Fifth Amendment's "takings clause" does apply to the states. Decades later, a majority of the Supreme Court in a series of cases used the due process of law clause of the Fourteenth Amendment and a doctrine called "incorporation" to hold that most of the specific rights of the Bill of Rights are now also limitations on the states.

Charles River Bridge v. Warren Bridge (1837)

In 1785, to provide the public better access from Charlestown to Boston the state legislature of Massachusetts granted the Charles River Bridge company the right to operate a ferry and then a toll bridge across the Charles River from Charlestown to Boston for 70 years. In 1828, before the 70 years had elapsed, the state legislature authorized merchants in Charlestown to build another bridge known as the Warren Bridge virtually next to the Charles River bridge. The merchants were authorized to collect tolls on the Warren Bridge until they had been reimbursed at which time Warren Bridge would become a free bridge and revert to state ownership. With Daniel Webster as its attorney, the Charles River Bridge company sued the state citing the clause of Article I, Section 10 of the Constitution which forbids states to impair the obligation of contracts. Speaking through Chief Justice Roger Taney, a majority of the Supreme Court invoked the so-called "four corners" doctrine which holds that a court must interpret only what is actually written in a contract, not what might be implied from it. Massachusetts had not granted the Charles River Bridge company an exclusive right to operate a toll bridge across the river. A

ruling in favor of the Charles River Bridge company would infringe upon a state's right to build its own roads, bridges, canals and other forms of transportation to the detriment of the public good. Taney asserted that while "the rights of private property must be sacredly guarded," at the same time "the object and end of all government is to promote the happiness and prosperity of the community …; and it can never be assumed, that the government intended to diminish its power of accomplishing the end for which it was created.

Sectionalism

Dred Scott v. Sanford (1857)

The question whether slavery should be allowed in territories acquired by the U.S. was a controversial one prior to the Civil War. Dred Scott, a slave, was taken by his master from Missouri (a slave state) first to Illinois (a free state) and then to Wisconsin Territory where slavery under the Missouri Compromise of 1820 was forbidden. Later, with his owner, Dred Scott returned to Missouri. Dred Scott and his wife filed a petition in a Missouri court requesting permission to file suit in order to establish their right to be freed since they had resided on free soil. After two trials and the Scotts temporarily winning their freedom, the Missouri Supreme Court reversed the lower court's judgment and held that the Scotts' residence on free soil had not changed their status as slaves. The Scotts then brought suit in a U. S. Circuit Court where the verdict once more was that they were still slaves. The case was then appealed to the U. S. Supreme Court.

Seven of the nine Supreme Court Justices concluded that the Scotts remained slaves. Chief Justice Roger Taney authored the most important opinion for a majority of the Court. Taney first addressed the question of whether the Scotts were citizens and thus entitled to bring suit in a U. S. court. He wrote: "We think they are not, and that they are not included, and were not intended to be included, under the word 'citizens' in the Constitution and can, therefore, claim none of the rights and privileges which that instrument provides for and secures to citizens of the United States." Still writing for a majority of the Court, Taney also wrote: "…it is the opinion of the Court that the Act of Congress (the Missouri Compromise of 1820) which prohibited a citizen from holding and owning property of this kind in the territory of the United States north of the line therein mentioned, is not warranted by the Constitution, and is therefore void." The Court thus declared the Missouri Compromise unconstitutional and in the process emphasized the importance of protecting property rights, in this case property being slaves.

The first sentence of Section 1 of the Fourteenth Amendment added to the Constitution in 1868 declares that "all persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside." It was written and added to the Constitution for the specific purpose of overruling the Supreme Court's decision in *Dred Scott v Sanford*.

Civil War / Reconstruction

Ex parte Milligan (1866)

In 1864 during the Civil War, U. S. Army officers in Indiana where there was no fighting occurring arrested Lambdin P. Milligan and some other anti-war Democrats. They were charged with conspiracy to seize munitions at a federal arsenal and to free Confederate prisoners being held in northern prisons. The defendants could have been tried in civilian courts in Indiana which were open and operating, but military officials chose to have them tried instead by military commissions. These military commissions found Milligan and two other defendants guilty and sentenced them to be hanged. On appeal to the Supreme Court, all nine justices agreed that the military courts had no jurisdiction to hear the cases and that Milligan and the other defendants had to be released. In his opinion for the Court, Justice David Davis noted that the Constitution was not suspended in time of emergency and wrote that it was "a law for rulers and people, equally in time of war and peace." He pointed out that military trial of civilians was not permitted where civilian courts were open and operating and that neither the president nor Congress could otherwise authorize such trials. The Court's ruling also defined conditions necessary for martial law to be declared and asserted civilian power over the military. "Martial law cannot arise from a threatened invasion. The necessity must be actual and present; the invasion real, such as effectually closes the courts and deposes the civil administration….As necessity creates the rule, so it limits its duration; for, if this government is continued after the courts are reinstated, it is a gross usurpation of power. Martial rule can never exist where the courts are open, and in the proper and unobstructed exercise of their jurisdiction. It is also confined to the locality of actual war."

Slaughterhouse Cases (1873)

Based on its power to protect the public health, safety, and welfare, the Louisiana legislature passed a law that put about a thousand local slaughterhouses out of business by granting a monopoly in New Orleans to the Crescent City Landing and Slaughterhouse Company. The butchers who were put out of business were white, and they argued that their right to pursue a lawful profession was protected from state interference by either the Privileges and Immunities Clause or the Due Process of Law Clause of the Fourteenth Amendment. This was the Supreme Court's first opportunity to interpret the meaning of the Fourteenth Amendment which had only recently been added to the Constitution in 1868.

When the *Slaughterhouse Cases* reached the Supreme Court on appeal in 1873, a majority of the Court began its decision by declaring that the meaning of the recently added Fourteenth Amendment needed to be considered in light of its original purpose: namely ensuring the freedom of former slaves. The majority then proceeded to define the scope of the Privileges and Immunities Clause very narrowly by arguing that the clause referred only to "very few express limitations which the Federal Constitution imposed upon the States-such, for instance, as the prohibition against ex post facto laws, bills of attainder, and laws impairing the obligation of contracts," along with seeking the government's protection while "on the high seas" as well as a general right to interact with government. However, the majority continued, the clause did not "bring within the power of Congress the entire domain of civil rights heretofore belonging exclusively to the States." This severe limitation of the meaning of the privileges and immunities

clause remains controversial and has never been overruled. As a result, the clause is hardly ever invoked in litigation today.

Next, the majority of the Court dismissed the due process of law claim. Even assuming a liberty interest in the right to pursue a lawful profession, the Court's majority held that the legislature's monopoly law was a legitimate regulation as a public health measure. Using its so-called "police power," a state could legitimately decide that the concentration of the slaughterhouse business in one area would reduce the spread of disease associated with the slaughtering of animals.

Munn v. Illinois (1877)

In 1875, the Illinois legislature, dominated by members sympathetic to the Grange (a group supporting agriculture), passed a law creating a commission to set the rates that privately owned grain elevators could charge farmers for grain storage. The law only applied to one city: Chicago. In the city of Chicago nine owners controlled 31 grain elevators thereby having a virtual monopoly over the rates they could charge farmers to store their wheat. Munn, one of these owners, sued on the grounds that the Illinois law denied him his property rights in violation of the due process of law clause of the Fourteenth Amendment.

A majority of the Supreme Court upheld the Illinois law and ruled that it was clearly within the police power of the state to protect public health, safety, and welfare. The majority reasoned that once private property is "affected with a public interest" the state may use its police power to regulate it in the public interest. For example, taxi companies are privately owned but their rates can be regulated by the state in the public interest. The case was considered progressive for its time because the usually conservative Supreme Court was noted for protecting property rights. Munn had argued that the power to set rates, if it existed at all, belonged to Congress under its constitutionally granted power to regulate interstate commerce. While conceding that interstate commerce was affected, the Court's majority held that, in the absence of Congressional action, Illinois was free to do so under its police power.

Civil Rights Cases (1883)

Section 5 of the Fourteenth Amendment added to the Constitution in 1868 authorized the U. S. Congress to enforce the amendment by appropriate legislation. Using this enforcement clause as its constitutional authority, Congress passed the Civil Rights Act of 1875 which made it unlawful to discriminate on the basis of race in hotels, theatres, places of amusement, and other places of public accommodation. African Americans in five cases from lower courts in California, Kansas, Missouri, New Jersey, and Tennessee sued theaters, hotels, and railroads that refused to serve them. The issue in the five cases, which the Supreme Court consolidated and decided together as The *Civil Rights Cases*, was the constitutionality of the Civil Rights Act of 1875.

By a vote of 8-1, with only Justice John Marshall Harlan I dissenting, the Supreme Court declared the Civil Rights Act of 1875 unconstitutional on the grounds that the Amendment was added only to outlaw public, not private, discrimination. The Court's majority introduced the concept of "state action" for purposes of showing discrimination. The majority pointed out that the amendment provides that "no state" shall deny a person the equal protection of the law. The majority interpreted this to mean that states may not adopt laws that discriminate on the basis of race, but the refusal of a hotel owner to serve African Americans is private discrimination, and the

Amendment has nothing to do with that. In a powerful dissent, Justice Harlan wrote that in his view "the substance and spirit of the recent amendments to the Constitution have been sacrificed by a subtle and ingenious verbal criticism."

In 1964, the U. S. Congress adopted the Civil Rights Act of 1964 which, like the 1875 Civil Rights Act, outlawed racial discrimination in public accommodations. However, recalling the reasoning of the Supreme Court's majority in the 1883 *Civil Rights Cases*, this time Congress based its constitutional authority for passing the law not on the Fourteenth Amendment but on the commerce clause of Article I, Section 8 of the Constitution. When the Civil Rights Act of 1964 was challenged as to its constitutionality, unlike the Civil Rights Act of 1875, the Supreme Court unanimously upheld its constitutionality.

Gilded Age

United States v. E.C. Knight Company (1895)

In 1890 Congress passed the Sherman Antitrust Act which made it illegal for businesses to contract, combine, or conspire to create a trust or monopoly for the purpose of restraining free trade and monopolizing interstate or foreign commerce. The American Sugar Refining Company, which already controlled a majority of the sugar-refining companies in the U. S., purchased stock in and sought to control four other companies, including E. C. Knight. As a result, the American Sugar Refining Company would then control over 98% of the nation's sugar refining. The U. S. Department of Justice sought a court order forbidding the sale as a violation of the Sherman Antitrust Act. A lower federal court denied the Justice Department's request. The lower court held that the companies were engaged in manufacturing, not interstate commerce, and thus were not subject to the Sherman Antitrust Act.

By an 8-1 vote, with only Justice John Marshall Harlan I dissenting, the Supreme Court, while conceding that this was a monopoly, ruled that Congress had exceeded its power under the commerce clause. The Court held that the manufacture of an item was done entirely within a state and therefore was properly a matter of intrastate commerce. While the sugar was intended eventually to move in interstate commerce, until it did so the power to regulate its manufacture was within the state's police power. The majority held that any effect on interstate commerce was "indirect" and Congress could only regulate those activities that had a "direct effect" on interstate commerce.

Plessy v. Ferguson (1896)

In 1890, the Louisiana legislature passed the Separate Car Act which required railroads "to provide equal but separate accommodations for the white and colored races" in order to protect the safety and comfort of all passengers. In 1891, a group of African Americans and Creoles formed the "Citizens Committee to Test the Constitutionality of the Separate Car Law." The Committee chose Homer Plessy, who was one-eighth African American, to test the law by violating it. He bought a first-class ticket on the East Louisiana Railway that traveled from New Orleans to Covington, Louisiana. He boarded the train, walked past the coach clearly marked "For Coloreds Only," and took a seat in the coach clearly marked "For Whites Only." When the train conductor asked Plessy to move to the other coach, he refused, was arrested, and charged with violation of the Separate Car Act. Tried in an Orleans Parish court, Plessy was found guilty

and sentenced to jail. After his conviction was upheld by the Louisiana Supreme Court, he appealed to the U. S. Supreme Court.

By a 7-1 vote, with only Justice John Marshall Harlan I dissenting, the Supreme Court upheld the Louisiana law and Plessy's conviction. The majority concluded that the Louisiana law requiring "separate but equal" facilities for African Americans and whites did not violate either the Privileges and Immunities Clause or the Equal Protection of the laws Clause of the Fourteenth Amendment. The law mandating racial segregation, the majority reasoned, was in line with "the established usages, customs and traditions of the people, and with a view to the promotion of their comfort, and the preservation of the public peace and good order." In his powerful solo dissent, Justice Harlan I wrote: "In view of the Constitution, in the eye of the law, there is in this country no superior, dominant, ruling class of citizens. There is no caste here. Our Constitution is color-blind, and neither knows nor tolerates classes among citizens."

The Supreme Court's decision in *Plessy v Ferguson* upholding racial segregation by law under the so-called "separate but equal rule" led more states to enact such laws. Plessy remained the law until the Supreme Court overruled the decision in 1954 in the case of *Brown v Board of Education*.

Insular Cases (1901)

Scholars who have written about the so-called Insular Cases identify between three and thirty-five Supreme Court decisions between 1901 and 1922. The cases developed after the United States acquired certain territory as a result of the outcome of the Spanish-American War. Three important questions involving the U. S. Constitution and laws of Congress were involved in these cases: (1) Can the government of the U. S. acquire territory by treaty? (2) Do certain congressional laws apply to American territories? and (3) Does the Bill of Rights apply to U. S. territories? or, put another way, Does "the Constitution follow the flag"?

The Supreme Court in 1901 in one of the earliest *Insular Cases* ruled that the U. S. did have the power to acquire territory by treaty. In other *Insular Cases*, a very divided Supreme Court ruled that American territories were of two types: "incorporated" and "unincorporated." "Incorporated" territories were those which were supposedly destined for eventual statehood while "unincorporated" territories were those which were not destined for statehood. A majority of the Court determined that in the so-called "incorporated" territories, all the rights and privileges of the Constitution apply except those clearly available only to state citizens. In the so-called "unincorporated" territories, on the other hand, a majority of the Court concluded that only certain "fundamental" rights are guaranteed. Since Congress' admission of Alaska and Hawaii to the union as states in the 1950s, there are no "incorporated" territories.

Northern Securities Company v. United States (1904)

By the end of the nineteenth century, the Supreme Court had begun to provide some support for enforcement of the Sherman Antitrust Act of 1890. However, it was not until President Theodore Roosevelt sought to use the law to break up the Northern Securities Company that the question arose whether the law reached stock ownership. The Northern Securities Company had acquired the stock of three major railroads: the Great Northern Railway, the Northern Pacific Railway, and the Burlington Railroad. This gave Northern Securities a monopoly over the routes

that the three had previously competed for as separate companies. At Roosevelt's urging, the U. S. government sought to prevent the merger by invoking the Sherman Antitrust Act. The Act forbids actions that will result in a loss of competition. In a victory for the government and Congress' 1890 Sherman Antitrust Act, the Court held that the merger did result in a restraint of trade in violation of the Act. The Court's decision in the Northern Securities case breathed new life into the Sherman Antitrust Act. Prior to this case, the government had not enthusiastically enforced the law, and when the government had attempted to do so, the Supreme Court had not provided great support for the government's action.

Lochner v. New York (1905)

In 1895 the New York legislature passed the Bakeshop Act that limited the number of hours bakers could work to 10 per day and 60 per week. The law was championed as a health measure because breathing flour dust for long periods of time could result in numerous lung-related diseases. Joseph Lochner owned a bakeshop in Utica, New York. He was charged by the state with having allowed an employee to work more than 60 hours per week, tried, convicted, and fined $50. He appealed to higher New York state courts which upheld his conviction, and he then appealed to the U. S. Supreme Court. Lochner challenged the constitutionality of the law by asserting that it violated the due process of law clause of the Fourteenth Amendment in that it infringed upon the "liberty of contract." In essence, Lochner argued that the law infringed upon the right of both the employer and the employee to negotiate the terms of the latter's employment. Lochner's position was based on the premise that employer and employee were "equals" in the negotiation of hours and wages. By a 5-4 vote, the Supreme Court struck down the New York law and thus ruled in Lochner's favor. The Court's decision was widely criticized for creating a "substantive" right to contract when no such right to contract exists in the Constitution. It was also seen as a setback for progressive labor laws that tried to protect the rights of workers.

Muller v. Oregon (1908)

In 1903, the state legislature of Oregon passed a law limiting to a maximum of ten hours per day that women could work in factories and laundries in the state. Curt Muller's Grand Laundry in Portland, Oregon, required a female employee to work more than ten hours. Previously, in 1905 in *Lochner v. New York*, the Supreme Court had ruled that a state law restricting the number of hours bakers could be employed per day and per week was an unconstitutional violation of the "liberty of contract" of the due process of law clause of the Fourteenth Amendment. In Lochner the Supreme Court reasoned that employers and employees should be free to contract for wages and labor free of state interference. However, in *Muller v Oregon*, the Court unanimously upheld the Oregon law. The Court reasoned that women were not as capable of negotiating terms of employment as were men and that the state had a valid interest in protecting women from harsh labor conditions. The Court's decision was an example of the patronizing attitude which courts had at this time toward women.

Apparently of great influence on the Court's decision in Muller was a brief filed by a well-known attorney (and future Supreme Court justice) named Louis Brandeis who argued the case for Oregon before the Supreme Court. Brandeis utilized a very innovative strategy that became known as "the Brandeis Brief" and led to significant changes in future legal analysis and Supreme Court litigation. Brandeis devoted only two pages to his discussion of the legal issues. In the

over one-hundred pages of the remainder of his brief, Brandeis presented evidence of the harmful effects of long hours of labor on the health, safety, morals, and welfare of women. He included evidence from a great variety of sources such as medical reports, psychological and sociological writings, and statistical reports which he used to show that there was basis for the Oregon law.

US Becomes a World Power

Schenck v. United States (1919)

After the United States entered World War I, the U. S. Congress in 1917 instituted a military draft when it passed the Selective Service Act. Also in 1917, Congress passed the Espionage Act which made it a crime to cause or attempt to cause insubordination in the military and naval forces or to obstruct the recruitment or enlistment of persons into the military service of the United States. Charles Schenck, the General Secretary of the Socialist Party, opposed U. S. participation in World War I. He was arrested and prosecuted for violation of the Espionage Act after 15,000 leaflets traced to Socialist Party headquarters urging resistance to the draft were sent to men who had been drafted. The leaflet quoting the Constitution's Thirteenth Amendment prohibiting slavery or involuntary servitude, asserted that the Selective Service Act violated the amendment, and that a draftee was little better than a convict. It suggested that the draft was despotism in its worst form and was a wrong against humanity in the interest of "Wall Street's chosen few." It urged draftees not to submit to intimidation and to assert their rights. It described even silent consent to the draft law as helping to support an infamous conspiracy. Schenck was convicted in a U. S. District Court and appealed his conviction to the Supreme Court where he argued that the leaflets should be protected by the First Amendment's freedom of speech and press.

A unanimous Supreme Court upheld Schenck's conviction. In one of the most memorable Supreme Court opinions in history, Justice Oliver Wendell Holmes wrote for the Court: "We admit that in many places and in ordinary times the defendants in saying all that was said in the circular would have been within their constitutional rights. But the character of every act depends upon the circumstances in which it is done. The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic. … The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent." Thus, the Court ruled that speech can be limited in wartime.

The so-called "clear and present danger rule" first enunciated by Justice Holmes in Schenck quickly became the test by which a majority of the Supreme Court judged freedom of speech cases for many years to come.

The Roaring 20's

Gitlow v. New York (1925)

Benjamin Gitlow was a member of the left-wing section of the Socialist Party. The New York legislature had passed a law making it a crime to advocate the violent overthrow of the government. Gitlow was arrested and charged with having violated this law by writing, publishing, and distributing a pamphlet called the Left-wing Manifesto. The pamphlet urged the establishment of socialism by strikes and "class action … in any form." At Gitlow's trial in a New York court, his famous attorney, Clarence Darrow, argued that the pamphlet was speech and press protected by the First Amendment since it advocated nothing but only urged abstract doctrine. Furthermore, he argued, it did not call for immediate action, but instead called for action at some indefinite time in the future. Even though no evidence was introduced that the pamphlet's publication had led to any unlawful action, Gitlow was convicted, and then appealed to the Supreme Court.

By a 7-2 vote, with only Justices Oliver Wendell Holmes and Louis Brandeis dissenting, the Supreme Court upheld Gitlow's conviction. Of great significance, however, the Court, using the "incorporation" doctrine, declared that the freedom of speech and press were "among the fundamental rights and liberties protected by the due process clause of the Fourteenth Amendment from impairment by the states." Nevertheless, the Court's majority ruled that "states can punish utterances endangering the foundations of government and threatening its overthrow by unlawful means" because such speech would "present a sufficient danger to the public peace and to the security of the State." The majority used the analogy of a smoldering campfire that could burst into flame at any time and noted that the state does not have to wait until the fire starts to take action to prevent it.

In their famous dissent, Justices Holmes and Brandeis stuck to the "clear and present danger rule" which Holmes had first enunciated in the 1919 Schenck case. They argued that what they called "the redundant discourse" in the pamphlet had "no chance of starting a present conflagration. Holmes wrote: "Every idea is an incitement. It offers itself for belief and if believed it is acted on unless some other belief outweighs it or some failure of energy stifles the movement at its birth. … If in the long run the beliefs expressed in proletarian dictatorship are destined to be accepted by the dominant forces of the community, the only meaning of free speech is that they should be given their chance and have their way."

Great Depression / New Deal

Near v. Minnesota (1931)

Jay Near was the editor of a newspaper in Minneapolis, Minnesota, called *The Saturday Press* in which he often displayed his anti-Semitic, anti-African American, anti-Catholic, and anti-labor views. He also used it to attack public officials such as the mayor and police chief in the city of Minneapolis for corruption. In 1927, his newspaper was closed down under a Minnesota Public Nuisance Abatement Law (called by some the Minnesota Gag Law). This law permitted a judge, acting without a jury, to stop the publication of a newspaper if the judge found it "obscene, lewd, and lascivious" or creating a public nuisance by "malicious, scandalous, and defamatory"

publication. Minnesota courts all upheld the closing of Near's newspaper under the law, and Near appealed to the Supreme Court.

By a 5-4 vote, the Supreme Court declared the Minnesota law unconstitutional as a violation of the freedom of the press guarantee of the First Amendment. Using the so-called "incorporation doctrine," the Court thus used the due process clause of the Fourteenth Amendment to apply the First Amendment's freedom of the press to the states. In his opinion for the majority, Chief Justice Charles Evans Hughes wrote: "In determining the extent of the constitutional protection, it has been generally, if not universally, considered that it is the chief purpose of the guaranty to prevent previous restraints upon publication." Hughes went on to note that, while the prohibition against previous restraint of the press is not absolute, it is allowed "only in exceptional cases." The remedy, Hughes pointed out, for those who feel that they have been wronged by false accusations in the press is a suit for libel.

Schechter Poultry Corp. v. United States (1936)

In 1933, using its constitutional power to regulate interstate commerce, Congress passed the National Industrial Recovery Act as part of President Franklin D. Roosevelt's New Deal to help stimulate the economy and reduce unemployment. This was Roosevelt's first and major instrument for dealing with the Great Depression. Under the law, all industry groups were authorized to draw up "codes of fair competition" for businesses, including standard and acceptable practices in business and fair wages, hours, and working conditions for workers. The Live Poultry Code was one such example. The Schechter brothers operated slaughterhouses in New York City which received live chickens from outside the state, slaughtered them, and then sold them to local stores. They were charged, prosecuted, and found guilty in a U. S. District Court of violating the wage and hour provisions of their industry's code and with selling an "unfit chicken." (For this reason, the case is sometimes called "the Sick Chicken case.") After their conviction was affirmed by an appellate court, they appealed to the Supreme Court.

The Supreme Court unanimously ruled in favor of the Schechters. The Court found that the Schechters were engaged in intrastate commerce which had only an indirect effect on interstate commerce and thus was beyond Congress' regulatory power over interstate commerce. Second, the Court found that the law which empowered groups outside Congress to make the codes was an unconstitutional delegation of legislative power. The Court's decision in the Schechter case was considered a major blow to the New Deal and Roosevelt's plan for recovery from the Great Depression.

World War II

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

In 1940, in *Minersville School District v Gobitis*, the Supreme Court upheld a public school district's policy requiring students to salute the flag and recite the pledge of allegiance. The Court did so over the objections of Jehovah's Witnesses who argued that saluting the flag was tantamount to worshiping "graven images" which the Bible forbids and thus a violation of their free exercise of religion of the First Amendment. Following that Supreme Court decision, the West Virginia State Board of Education directed all teachers and students to salute the flag as part of daily school activities. Failure to comply could lead to students being expelled. Like the

Gobitis family, the Barnettes were Jehovah's Witnesses who believed that flag saluting was a violation of their First Amendment's free exercise of religion. The Barnettes sought and won an injunction in a U. S. District Court against enforcement of the Board's directive, and the Board then appealed to the Supreme Court.

By a 6-3 vote, the Supreme Court overruled its prior decision in the Gobitis case. The Court ruled that the West Virginia Board's policy was an unconstitutional violation of the First Amendment's guarantee of freedom of speech, rather than its guarantee of free exercise of religion. In what is regarded as one of the truly great, passionate opinions in Supreme Court history, Justice Robert Jackson wrote for the majority: "The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials… Those who begin coercive elimination of dissent soon find themselves exterminating dissenters. Compulsory unification of opinion achieves only the unanimity of the graveyard. … If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein."

Korematsu v. United States (1944)

After the Japanese Empire's attack on Pearl Harbor on December 7, 1941, there was a fear among some Americans that the West Coast might be invaded. Adding to that fear was the fact that there were thousands of Japanese Americans living on the nation's West Coast, and some Americans feared that they might become spies for the Japanese Empire. Acting on the advice and recommendation of military advisors, President Franklin D. Roosevelt issued Executive Order 9066 directing the forced internment of all persons of Japanese descent living on the West Coast in relocation centers located in the interior of the country. Fred Korematsu, an American born citizen of Japanese descent refused to leave his home in California, was arrested, and was convicted in District Court of violation of the exclusion order.

By a 6-3 vote, the Supreme Court ruled that the President's action was a constitutional exercise of government power during a time of "emergency and peril" for the nation. Writing for the majority, Justice Hugo Black explained that the internments had "a definite and close relationship to the prevention of espionage and sabotage." He went on to explain that the government needed to act quickly in wake of the attack on Pearl Harbor. Black wrote: "There was evidence of disloyalty on the part of some, the military authorities considered that the need for action was great, and time was short."

One of the dissenting justices wrote that he dissented "from this legalization of racism" and went on to assert that racial discrimination "is unattractive in any setting but it is utterly revolting among a free people who have embraced the principles set forth in the Constitution of the United States."

Everson v. Board of Education (1947)

Following a New Jersey law, the Board of Education of Ewing Township adopted a plan to reimburse parents, including those whose children attended private and parochial schools (most of which in the area were Catholic), for the costs of bus transportation to and from school. Arch Everson, a local resident and taxpayer, filed a suit challenging this policy for including students

attending parochial schools as a violation of the no establishment of religion clause of the First Amendment. A lower New Jersey court struck down the program, but a higher New Jersey court reversed that judgment, and Everson then appealed to the Supreme Court.

By a 5-4 vote, the Supreme Court held that New Jersey's reimbursement to parents of parochial and private school students for the costs of busing their children to school was constitutional because the assistance went to the child, not the church. This became known as the "child benefit theory." The majority reasoned that as long as the child or his parents were the beneficiaries, and not the church itself, the reimbursement was constitutional. Writing for the majority, Justice Hugo Black made clear that the First Amendment's no establishment of religion clause now applied to the actions of state governments through the due process of law clause of the Fourteenth Amendment and the doctrine of incorporation. Black continued by writing: "In the words of Jefferson, the clause against establishment of religion by law was intended to erect 'a wall of separation between Church and State. …The First Amendment has erected a wall between church and state. That wall must be kept high and impregnable. We could not approve the slightest breach. New Jersey has not breached it here."

Cold War

Youngstown Sheet and Tube Company v. Sawyer (1952)
In 1951, a dispute between the owners of the nation's steel mills and the steelworkers union during the nation's involvement in the Korean War eventually led to the union calling for a strike to shut down all of the nation's steel mills. President Truman issued Executive Order 10340 directing Secretary of Commerce Sawyer to seize control of and operate the mills. Although there was no congressional statute authorizing the President to take such action, Truman based his authority to do this on his constitutional power as Commander-in-Chief. After a U. S. District Court ruled against the President's action, the case was appealed to the Supreme Court.

By a 6-3 vote, the Supreme Court ruled that the President had exceeded his power and thus could not take possession of the country's steel mills in order to avert a nation-wide strike. Speaking for the majority, Justice Hugo Black wrote: "The President's power, if any, to issue the [executive order] must stem either from an act of Congress or from the Constitution itself…The Order cannot properly be sustained as an exercise of the President's military power as Commander-in-Chief ….Nor can the Order be sustained because of the several provisions of Article II which grant executive power to the President… The power here sought to be exercised is the lawmaking power, which the Constitution vests in the Congress alone, in both good and bad times."

American Civil Rights Movement

Sweatt v. Painter (1950)
Heman Sweatt was a 33 year old African-American from Houston, Texas, who wanted to be a lawyer. He applied for and was denied admission to the University of Texas Law School because he was an African-American. He sought and received assistance of the NAACP and its chief legal counsel, Thurgood Marshall (a future Supreme Court justice). At this time, the Supreme Court's decision in 1896 in *Plessy v Ferguson* allowing states to segregate by race as long as

the separate facilities were equal was still the law of the land. The problem in Texas was that the state had no law school for African-Americans. In 1947, the Texas legislature authorized the University of Texas to establish a law school for African-Americans in four rooms at a building in Austin. Sweatt declined to accept the offer, arguing that while this law school for African-Americans was certainly separate, it was not equal to the University of Texas Law School. After losing his argument in Texas courts, Sweatt appealed to the Supreme Court.

The Supreme Court unanimously ruled against the state of Texas and in favor of Heman Sweatt and declared that "the equal protection clause of the Fourteenth Amendment requires that petitioner be admitted to the University of Texas Law School." The Court found that in terms of volumes in the library, reputation of faculty, offering of courses, and available scholarships, the University of Texas Law School was far superior. Even in terms of intangibles like the ability to interact with his colleagues in the legal profession and the reputation of the University, the new law school for African-Americans was lacking. The Court thus held that Texas had not met the "equal" part of the "separate but equal" requirement.

Brown v. Board of Education (1954)

A Kansas law permitted cities with more than 15,000 population to maintain separate public schools for African-American and white students. The Board of Education of Topeka, Kansas, maintained segregated elementary schools. Linda Brown, an African-American third grader, and her family lived a few blocks from an all-white school in Topeka but was required to travel twenty-one blocks from her home to attend a school reserved for African-American children only. The NAACP chose this case to be a "test case" for several reasons. First, the case came from a northern state, not a southern state. Second, for all practical purposes Linda Brown's school was equal to the white schools in Topeka. Linda Brown's parents joined with parents of other African-American children and brought suit against the Topeka Board of Education. Thurgood Marshall, chief legal counsel for the NAACP and a future Supreme Court justice, represented the African-American parents. At the same time, class action suits were filed in three other states – South Carolina, Virginia, and Delaware – where African-American children were also compelled by state law to attend racially segregated public schools. The Kansas case and the cases from the other three states were consolidated and appealed to the Supreme Court where they were argued and decided together. Marshall argued that the African-American and white schools were not equal in a number of ways, but more than that, he argued that segregated schools were harmful to African-American children.

The Supreme Court unanimously ruled in favor of the African-American parents and their children. In doing so, the Court overruled the Court's 1896 decision in *Plessy v Ferguson* and its "separate but equal" rule. Speaking through Chief Justice Earl Warren, the Court declared: "We conclude that in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment."

On the same day the Court handed down its decision in Brown, the Court also ended racial segregation in the public schools of the District of Columbia in *Bolling v Sharpe*.

In 1955, the Supreme Court heard reargument in *Brown v Board of Education II*. The Court was again unanimous, and this time, directed the public schools involved to admit "with all deliberate speed" students on a racially nondiscriminatory basis.

Hernandez v. Texas (1954)

Pete Hernandez, a 21 year-old Mexican American, was drinking at a bar in Edna, Texas, when he became disruptive and was removed from the bar. He left, obtained a gun, returned, and shot another man in the presence of a number of eyewitnesses. He was indicted for murder by an all-white grand jury. His lawyers sought to quash the indictment and the empaneling of an all-white trial jury because persons of Mexican American descent were excluded from both panels. In the previous 25 years, in fact, no person of Mexican American descent had been selected to serve on a grand or trial jury or as a jury commissioner in Jackson County. The trial judge denied the motions, and Hernandez was found guilty by an all-white jury and sentenced to life in prison. The Texas Court of Criminal Appeals held that because Mexican American citizens were classified as "white" under Texas law, no discrimination was found, and thus that court affirmed Hernandez' conviction. The Supreme Court agreed to review that decision.

Chief Justice Earl Warren delivered the opinion for a unanimous Supreme Court which agreed with the arguments made by Hernandez' attorneys and thus overturned his conviction. Warren wrote: "In numerous decisions, this Court has held that it is a denial of the equal protection of the laws of the Fourteenth Amendment to try a defendant of a particular race or color under an indictment issued by a grand jury, or before a petit jury, from which all persons of his race or color have, solely because of that race or color, been excluded by the state, whether acting through its legislature, its courts, or its executive or administrative officers. … Petitioner's only claim is the right to be indicted and tried by juries from which all members of his class are not systematically excluded – juries selected from among all qualified persons regardless of national origin or descent. To this much, he is entitled by the Constitution."

Contemporary America

Mapp v. Ohio (1961)

In 1914, the Supreme Court ruled that evidence seized illegally in violation of the Fourth Amendment's prohibition on unreasonable searches and seizures is inadmissible in federal courts. The so-called "exclusionary rule" was thus born. In 1949, the Supreme Court ruled that the Fourth Amendment is "incorporated" by the due process of law clause of the Fourteenth Amendment and thus now applies to the states. However, the Court declined to apply "the exclusionary rule" to the states. Thus, evidence seized illegally in violation of the Fourth Amendment was still admissible against the accused in state courts.

In 1957, Cleveland, Ohio, police arrived at Dollree Mapp's home searching for a man believed to be involved in a recent car bombing and for evidence involving an illegal gambling operation. Mapp refused to admit them, and they had no search warrant. The officers left, but soon returned, knocked on the door, and when Mapp did not immediately answer, they opened the door and entered. When Mapp appeared and demanded to see a search warrant, she was shown a piece of paper which she snatched away from the officer. The officer retrieved the paper

and handcuffed Mapp. The police then searched the entire house but found no bombing suspect and no evidence of an illegal gambling operation. However, they did find some obscene material, possession of which was at the time a violation of Ohio law. At her trial in an Ohio court on a charge of possession of obscene literature, no search warrant was produced, and the failure to produce one was not explained. After her conviction, Mapp appealed to higher Ohio courts which upheld her conviction, and she then appealed to the Supreme Court.

By a 6-3 vote, the Supreme Court overturned Mapp's conviction and for the first time applied "the exclusionary rule" to state courts. As a result, evidence obtained by police in violation of the Fourth Amendment cannot be used against the defendant in either a federal or a state court.

Engel v. Vitale (1962)

The New York Board of Regents, a government agency created by the New York Constitution, composed a prayer and recommended its use to the state's public schools. The Board of Education for a public school district in the state then required its schools to begin each school day with the Regents composed prayer. Parents of ten students brought suit in a New York court challenging the constitutionality of the prayer because it was contrary to their religious beliefs and those of their children. They argued that the prayer was a violation of the no establishment of religion clause of the First Amendment. The trial court upheld use of the prayer so long as the school did not compel any student to participate over parents' objections. A New York Court of Appeals upheld the trial court's judgment, and the parents then appealed to the Supreme Court.

By a 6-1 vote, with two justices not participating, the Supreme Court overturned the judgment of the New York courts and ruled that requiring public school students to recite a government composed prayer is a violation of the no establishment of religion clause of the First Amendment. Writing for the majority, Justice Hugo Black stated: "It is no part of the business of government to compose official prayers for any group of the American people to recite as part of a religious program carried on by government."

Baker v. Carr (1962)

The Tennessee Constitution requires apportionment of both houses of the state legislature on the basis of population after the census every ten years. However, since 1901, no apportionment had been carried out in spite of changes in population growth and the movement of large numbers of people from rural areas to urban areas of the state. As a result, by 1960, the state's House districts varied in population from 3,454 to 79,301, and the state's Senate districts varied in population from 39,727 to 237,905. Residents of several Tennessee urban areas filed suit in a federal court against Joe Carr, the Tennessee Secretary of State, and other state officials. They argued that Tennessee's failure to reapportion since 1901 denied them the equal protection of the laws guaranteed by the Fourteenth Amendment. The lower federal court dismissed the suit for lack of jurisdiction based on the Supreme Court's decision in the 1946 case *Colegrove v Green*. In that case, the Court ruled that federal courts did not have jurisdiction to hear cases involving the drawing of legislative districts because this was a "political question" to be answered by the elected branches of government. The plaintiffs then appealed to the Supreme Court.

By a 6-2 vote (one justice not participating), the Supreme Court overturned the *Colegrove v Green* ruling. The Court held that under the equal protection of the laws clause of the Fourteenth Amendment, federal courts do have jurisdiction to hear cases involving the drawing of legislative districts.

The Court's decision in *Baker v Carr* led to later Court decisions often referred to as the Court's "one man-one vote" rulings which had a major impact on the distribution of political power between urban and rural areas in state legislatures, the U. S. House of Representatives, and county commissioners courts.

After his retirement as Chief Justice of the U. S. from 1953-1969, Earl Warren was asked what he regarded as the most significant case decided during his tenure as Chief Justice. His answer was *Baker v Carr*.

Gideon v. Wainwright (1963)

In 1961, Clarence Earl Gideon was arrested in Florida and charged with breaking and entering a poolroom with intent to commit petty larceny. Gideon was indigent and thus unable to afford a lawyer. At his trial in a state court, he asked the judge to appoint a lawyer to represent him. His request was denied because under Florida law at that time, an indigent was entitled to the assistance of a lawyer provided by the state only if charged with a capital offense. Under U. S. constitutional law at that time, as decided by the Supreme Court, a state was only required to appoint a lawyer if the accused was a victim of "special circumstances" such as feeblemindedness, illiteracy, youth, etc. Gideon did not claim any "special circumstances." Gideon defended himself, but a jury found him guilty, and he was sentenced to five years in prison. After losing an appeal to the Florida Supreme Court, he prepared a handwritten petition asking the U. S. Supreme Court to consider his appeal. The Supreme Court agreed to do so, and furthermore, the Supreme Court appointed a lawyer to argue his case before the Supreme Court. The Supreme Court chose Abe Fortas, a prominent Washington, D. C. attorney who had appeared frequently before that Court and a future Supreme Court justice.

A unanimous Supreme Court overturned Gideon's conviction. The Court ruled that the Sixth Amendment's right to counsel now applies to the states using the due process of law clause of the Fourteenth Amendment and the doctrine of "incorporation" and requires that in any serious criminal case in a state court, if the accused cannot afford a lawyer, the state must provide one. The Court called the right to a lawyer "fundamental" and necessary for a fair trial.

Gideon was retried before the same judge in the same courtroom, but this time he had a court-appointed lawyer and was acquitted.

In another case some years later, the Supreme Court extended the right to a lawyer to any criminal case in a state court in which a jail sentence of any length is a possible outcome.

New York Times v. Sullivan (1964)

L. B. Sullivan, an elected City Commissioner in Montgomery, Alabama, brought a libel suit against four African American ministers and the *New York Times*. He argued that he had been libeled by certain statements in a full-page advertisement entitled "Heed Their Rising Voices"

which appeared in the *Times*. The advertisement described the civil rights movement in the South. Although Sullivan was not mentioned by name, he argued that the word "police" in the ad referred to him because he was the city commissioner who supervised the Police Department. It was not disputed that some statements in the ad were not accurate descriptions which had occurred in Montgomery. A jury in a lower Alabama found for Sullivan and awarded him $500,000 in damages, a judgment affirmed by the Alabama Supreme Court. The *New York Times* appealed to the Supreme Court.

The Supreme Court unanimously reversed the Alabama Supreme Court's judgment and thus ruled in favor of the *New York Times*. In doing so, the Court interpreted the First Amendment's guarantee of freedom of the press to establish the following rule for what public officials must prove to win a libel suit for defamatory falsehoods relating to their official conduct: a public official must prove that the defamatory statement about his official conduct was made with "actual malice" – that is, with knowledge that it was false or with reckless disregard of whether it was false or not.

This "actual malice" rule in reality has meant that it is very difficult, if not impossible, for a public official to win a libel suit relating to his official conduct.

Escobedo v. Illinois (1964)

Danny Escobedo, a 22 year-old Mexican American, was a suspect in the murder of his brother-in-law. Several times during the police interrogation, he requested to see his attorney but was told he was not available. At the same time, the lawyer was at the police station asking to see his client. Escobedo had not yet been formally charged, but the police later testified that "he was not free to leave." Escobedo was interrogated for four hours, was not informed of his right to remain silent, finally made some incriminating statements, and confessed. At his trial, the state, over his objections, introduced the confession against him, and he was convicted of the murder. The Illinois Supreme Court at first held his confession inadmissible and reversed his conviction, but on rehearing, that court affirmed his conviction, and Escobedo appealed to the Supreme Court.

By a 5-4 vote, the Supreme Court reversed Escobedo's conviction. The Court held that, under the circumstances of this case, where a police investigation is no longer a general inquiry into an unsolved crime, but has begun to focus on a particular suspect in police custody who has been refused an opportunity to consult with his counsel and has not been warned of his right to remain silent, the accused has been denied the assistance of counsel of the Sixth Amendment. Thus, no statement obtained by police during the interrogation can be used against him at trial.

Because of some confusion concerning the Supreme Court's ruling in Escobedo, two years later in *Miranda v Arizona*, the Court announced that it was reexamining that decision and the principles it announced and reaffirming it.

Griswold v. Connecticut (1965)

A Connecticut law adopted in 1879 made it a crime for any person to give information about or use any drug, article, or instrument to prevent contraception. The Executive Director, Estelle Griswold, and Medical Director of the Planned Parenthood of Connecticut were charged, tried,

and convicted of violating the law by giving information, instruction, and medical advice to married persons regarding means of preventing conception. Their conviction was affirmed by the Connecticut Supreme Court, and they then appealed to the Supreme Court.

By a 7-2 vote, the Supreme Court reversed their conviction and ruled that the Connecticut law was unconstitutional because it infringed on the constitutionally protected right to "privacy" of married people. The majority concluded that "specific guarantees in the Bill of Rights have penumbras, formed by emanations from those guarantees that help give them life and substance," and that "various guarantees create zones of privacy" into which government cannot intrude. The majority asserted that the right to privacy was inherent in the First, Third, Fourth, Fifth, and Ninth Amendments and that states must honor it based on the Fourteenth amendment's due process of law clause and the doctrine of incorporation.

Miranda v. Arizona (1966)

On March 3, 1963, an eighteen year-old girl was kidnapped and raped near Phoenix, Arizona. Ten days afterwards, the police arrested Ernesto Miranda, a twenty-three year-old, and charged him with kidnapping and rape. At the police station, the rape victim identified Miranda in a police lineup as her attacker. He was interrogated by police and never told he had the right to remain silent and the right to an attorney. At first he denied his guilt but eventually confessed and wrote and signed a statement admitting and describing the crime. At his trial, the confession was admitted into evidence, and he was convicted of kidnapping and rape. The Arizona Supreme Court affirmed his conviction, and Miranda appealed to the Supreme Court.

By a 5-4 vote, the Supreme Court overturned Miranda's conviction. Speaking through Chief Justice Earl Warren, the majority held that if police do not inform the accused of certain constitutional rights, including their Fifth Amendment's right against self-incrimination, then their confessions may not be used as evidence against them at trial. Warren summarized the Court's holding: "When an individual is taken into custody or otherwise deprived of his freedom by the authorities in any significant way and is subjected to questioning, the privilege against self-incrimination is jeopardized. … The accused must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires."

Loving v. Virginia (1967)

Mildred Loving, an African American woman, and Richard Loving, a white man, were charged, tried, and convicted of violating Virginia's miscegenation law that prohibited whites and African Americans from marrying. They then appealed to the Supreme Court.

By a 9-0 vote, the Supreme Court overturned their conviction and declared the Virginia law banning interracial marriage unconstitutional. The Court held: "There can be no doubt that restricting the freedom to marry solely because of racial classifications violates the central meaning of the Equal Protection of the Laws clause of the Fourteenth Amendment." The Court also found that the Virginia law deprived citizens of liberty without due process of law: "To deny this fundamental freedom [marriage] on so unsupportable a basis as racial classification…is surely to deprive all the State's citizens of liberty without due process of law."

Brandenburg v. Ohio (1969)
Clarence Brandenburg, the leader of a Ku Klux Klan group, was arrested, tried, and convicted of violating an Ohio criminal law for "advocating … the duty, necessity, or propriety of crime, sabotage, violence or unlawful methods of terrorism as a means of accomplishing industrial or political reform." He had addressed a small group of hooded men, some of whom carried guns, and, standing before a burning cross, declared, among other things, that if the president, Congress, and the Court continued "to suppress the white, Caucasian race, it's possible that there might have to be revenge-nance taken." Brandenburg unsuccessfully appealed to higher state courts and then appealed to the Supreme Court.

The Supreme Court unanimously overturned Brandenburg's conviction and declared the Ohio law unconstitutional as a violation of the freedom of speech of the First Amendment. In doing so, the Court formulated a new test for judging freedom of speech cases more protective of speech than the previous "clear and present danger test" announced by Justice Oliver Wendell Holmes in the 1919 Schenck case and subsequently followed by the Court. The new test announced in Brandenburg allows government to punish the advocacy of illegal action only if "such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action."

Tinker v. Des Moines School District (1969)
At a meeting in Des Moines, Iowa, in late 1965, some adults and students discussed how they could publicize their opposition to American involvement in the Vietnam War. The students later decided that they would wear black armbands to school to show their opposition to the war and their support for a proposed truce. When the principals of their schools became aware of the students' plan, they adopted a policy that any student joining the protest would be asked to remove the armbands and that any student who refused to do so would be suspended until agreeing to return without the armband. Mary Beth Tinker, a thirteen year-old junior high student, and Christopher Eckhardt, a high school student, wore black armbands to their schools. John Tinker and several other students at another high school did the same. No disturbances on school property occurred. The students were sent home and told that they could come back to school if they removed the armbands. The students' parents filed a complaint in a U. S. District Court and asked for an injunction restraining school officials from disciplining the students, but the court dismissed the complaint. The parents unsuccessfully appealed to a U. S. Court of Appeals and then appealed to the Supreme Court.

By a 7-2 vote, the Supreme Court overturned the lower court's judgment and ruled in favor of the First Amendment speech rights of public school students. The majority noted that wearing the arm bands was "closely akin to pure speech" protected by the First Amendment. In a memorable, famous statement, the Court held: "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…"

Lemon v. Kurtzman (1971)
State laws in Pennsylvania and Rhode Island allowed the state to provide financial support for the salaries of teachers of secular subjects in parochial and other nonpublic schools and for the cost of textbooks and instructional materials in specified secular subjects in those schools. A U. S. District Court found that the Rhode Island law violated the no establishment of religion clause of the First Amendment, but another U. S. District Court found that the Pennsylvania law did not do so. The two cases were appealed to the Supreme Court which consolidated them for decision purposes.

A unanimous Supreme Court declared both state laws unconstitutional as violations of the no establishment of religion clause of the First Amendment. In doing so, the Court established a new test now called "the Lemon test" for deciding cases involving the First Amendment's establishment clause. The "Lemon test" has three prongs. For a law not to be a violation of the establishment clause, it must meet the following conditions: (1) it must have a secular purpose; (2) its principle or primary effect must be one that neither advances nor inhibits religion; and (3) it must not result in excessive government entanglement with religion. If a law does not satisfy any one of the three prongs, the law is unconstitutional.

New York Times v. United States (1971)
In 1971, with growing opposition to American involvement in the Vietnam War, the *New York Times*, and a few days later, the *Washington Post* began publishing articles based on a top-secret Rand Corporation but government commissioned study of American involvement in Vietnam. The *New York Times* had received copies of the study called "the Pentagon Papers" from a man named Daniel Ellsberg who had worked at the Rand Corporation. After the *New York Times* began publishing selected items from the study, the U. S. government sought an injunction from a U. S. District Court prohibiting further publication. When the *Washington Post* a few days later also began publishing items from the study, the government filed a similar suit against the Posts' further publication. The *New York Times* and the *Washington Post* promptly appealed to the Supreme Court, and the Court granted expedited consideration of the two cases.

By a 6-3 vote, the Supreme Court ruled in favor of the *New York Times* and the *Washington Post*. The majority concluded that the U. S. government had violated the First Amendment's freedom of the press when it attempted to stop publication of "the Pentagon Papers." Citing the Court's 1931 decision in *Near v Minnesota*, the majority noted that "prior restraint" by government of publication by the press is hardly ever permitted.

Wisconsin v. Yoder (1972)
Jonas Yoder and two other men were Amish. The Amish believe that salvation requires life in a church community separate and apart from the world and that members of the community must make their living by farming or closely related activities. Yoder and the other Amish men lived in Wisconsin where a compulsory school attendance law required children to attend public or private school until reaching sixteen-years-of-age. The Amish men's children had finished the eighth grade in public school but had not attended any school thereafter. The Amish object to their children attending high school because values taught there were very different from Amish values and the Amish way of life. They believe that their children in the high school years should be acquiring Amish attitudes toward manual work and acquiring specific skills needed to perform

the adult role of an Amish farmer or housewife. The local public school district brought a complaint against the men charging them with violating Wisconsin's compulsory school attendance law. The Amish argued that the law violated their free exercise of religion as guaranteed by the First Amendment. The parents were convicted by a Wisconsin trial court, but the Wisconsin Supreme Court reversed their convictions, and the state appealed to the Supreme Court.

By a 6-1 vote, with two justices not participating, the Supreme Court ruled in favor of the Amish and held that the First Amendment's free exercise of religion clause prevents a state from compelling Amish children to attend school to the age of sixteen. The Court concluded that the state's interest in making sure students attend two more years of school was not enough to outweigh the individual's right to free exercise of religion.

Roe v. Wade (1973)

In 1970, Jane Roe, (a pseudonym) was an unmarried Dallas woman who wished to terminate her pregnancy. Texas, like many states, had a law that made abortion a crime except in cases of danger to the health of the mother. Roe filed a class action lawsuit "on behalf of herself and all other women similarly situated" in a U. S. District Court against Henry Wade, the District Attorney of Dallas County, to enjoin the enforcement of the statute. The District Court ruled that the Texas law was unconstitutional and that single women and married women had the constitutional right to choose whether to have children, but the court refused to issue an injunction against enforcement of the law. Roe then appealed to the Supreme Court, and at the same time, the District Attorney cross appealed to the Supreme Court the District Court's judgment against Texas' abortion law.

By a 7-2 vote, the Supreme Court upheld the District Court's judgment declaring the Texas abortion law unconstitutional. The majority held that "the right of personal privacy includes the abortion decision." The Court based its decision in part on the Court's previous 1965 decision in *Griswold v Connecticut* and the due process of law clause of the Fourteenth Amendment. Writing for the majority, Justice Harry Blackmun noted that "although the Constitution does not explicitly mention any right of privacy … the Court has recognized that a right of personal privacy, or a guarantee of certain areas or zones of privacy, does exist under the Constitution … This 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 reservations of rights to the people, is broad enough to encompass a woman's decision whether or not to terminate her pregnancy." However, the majority continued, the right is not unqualified.

The majority then announced the following rule. In the first trimester of a pregnancy, the abortion decision is left to the woman and her physician. In the second trimester, in the interest of the health of the mother, the state may regulate the procedure in ways reasonably related to maternal health. In the third trimester, the state, in promoting its interest in the potentiality of human life, may choose to regulate and even forbid abortion except where medical judgment is that abortion is necessary to preserve the life or health of the mother.

San Antonio ISD v. Rodriguez (1973)

Texas, like most states, funds its public schools with a combination of federal revenue, state revenue, and revenue raised through local property taxes. Because independent school districts have property of varying values, some districts raise more revenue than others. This results in great discrepancies between richer and poorer districts in how much is spent per pupil on public education. In 1968, Demetrio Rodriguez and parents of other Mexican American students in the Edgewood Independent School District in San Antonio, Texas, filed a class action suit in U. S. District Court challenging Texas' public school finance system. They argued that the Texas system led to a better education for students in wealthier school districts and worse education for students in poorer districts and thus violated the equal protection of the laws clause of the U. S. Constitution's Fourteenth Amendment. The District Court agreed with Rodriguez, ruled that education was a fundamental right, and that Texas' system for financing public schools was constitutionally suspect. The case was then appealed to the Supreme Court.

By a 5-4 vote, the Supreme Court reversed the lower court's decision and thus sustained Texas' public school finance system. The majority held that education is not a fundamental right under the U. S. Constitution since it is neither explicitly nor implicitly guaranteed by the Constitution.

Some years later, the Mexican American Legal Defense and Education Fund (MALDEF), Edgewood ISD, other school districts, Rodriguez and other parents of Mexican American students filed another suit challenging Texas' public school finance system. This time, they brought their suit in a lower Texas court, rather than in a federal court, and they argued that the Texas system violated the Texas Constitution, rather than the U. S. Constitution. Eventually, the Texas Supreme Court in 1989 in *Edgewood ISD v Kirby*, ruled that the Texas system was a violation of the Texas Constitution and directed the Texas Legislature to come up with a new system for financing Texas' public schools.

White v. Regester (1973)

In 1964, the U. S. Supreme Court ruled that members of both houses of a state legislature must be chosen from districts approximately equal in population. Following the 1970 census, in 1971 the Texas Legislative Redistricting Board released its proposed redistricting plans for both houses of the Texas Legislature. Four lawsuits, eventually consolidated, were filed in a U. S. District Court. With respect to the proposed districts for the Texas House of Representatives, the lawsuits argued first of all that there were impermissible deviations as high as 9.9% from population equality among the House districts. Second, again with respect to the Texas House districts, the lawsuits argued that the multi-member districts for Dallas and Bexar counties were constitutionally invalid because they diluted the voting strength of racial and ethnic minorities. The District Court agreed with both arguments made by the plaintiffs, and that judgment was then appealed to the Supreme Court.

The Supreme Court unanimously agreed with the District Court and the plaintiffs that, given the past history of discrimination against minority voters, the multi-member districts unfairly discriminated against African American and Mexican American voters in those counties. The Court thus directed that those multi-member districts be eliminated. However, by a 6-3 vote, the Supreme Court reversed the District Court's judgment on the other question. In other words, the majority found that the 9.9% variation in population equality among some of the House districts

was acceptable, but the majority did note that “very likely, larger differences between districts would not be tolerable.”

United States v. Nixon (1974)

In June, 1972, some men broke into the headquarters of the National Committee of the Democratic Party in the Watergate complex in Washington, D. C. The men were apprehended, and it soon emerged that they might have connections to President Richard Nixon’s reelection campaign. After Nixon was reelected, congressional committees began searching for possible links between the Watergate break-in and the White House, and at the same time, the trial of the five burglars began. Alexander Butterfield, a former White House aide, appeared as a witness before a Senate committee and revealed that Nixon had tape-recorded conversations in the Oval Office of the President. The Senate committee and a special prosecutor appointed to investigate illegal White House activities immediately sought access to the tapes. President Nixon claimed executive privilege which means he argued that conversations between a President and his advisors are confidential and privileged and that no one can compel that they be divulged. The special prosecutor subpoenaed Nixon to turn over the tapes, but again Nixon refused. The judge of the trial court where the burglars were being tried then ordered their release as did a Court of Appeals. Nixon announced that he would release a summary of the tapes. The Special Prosecutor found this unacceptable and was then fired. Within a few days, Nixon agreed to release some tapes. The House Judiciary Committee began hearings on the possible impeachment of the President. Nixon continued to refuse to turn over more tapes. Meanwhile, a federal grand jury investigating the Watergate affair indicted some top White House aides and secretly named Nixon as an unindicted coconspirator. Eventually, the entire dispute ended up before the Supreme Court.

In a significant defeat for President Nixon personally, a unanimous Supreme Court ruled that the President in this instance could not claim executive privilege, and thus the tapes had to be turned over. In the Court’s words: “The generalized assertion of privilege must yield to the demonstrated specific need for evidence in a pending criminal trial.” However, for the first time in U. S. history, in an important victory for the office of the President, the Court did declare that the President does have the right of executive privilege and it must be shown great respect and deference.

Gregg v. Georgia (1976)

In 1972 in *Furman v. Georgia* the Supreme Court ruled that the death penalty as then administered in Georgia and some other states was an unconstitutional violation of the no cruel and unusual punishment clause of the U. S. Constitution’s Eighth Amendment. However, the Court did not say it was unconstitutional in all cases. Georgia passed a new capital punishment law that addressed some of the problems the Supreme Court had identified in Furman.

By a 7-2 vote, the Supreme Court reaffirmed the constitutionality of the death penalty and rejected the argument that capital punishment was per se unconstitutional. Thus, the Eighth Amendment’s ban on cruel and unusual punishment prohibition does not render death sentences unconstitutional. Georgia’s law imposing the death penalty under very specific circumstances and guidelines was constitutional. The judicious and careful use of the penalty was justified in that it met contemporary standards of society, served as a deterrent, and was

not randomly applied. However, the Court did strongly imply that mandatory death penalty laws would violate the Eighth Amendment.

Buckley v. Valeo (1976)

In 1971, Congress adopted the Federal Election Campaign Act in an effort to prevent corruption in federal elections. The law limited how much money individuals could contribute to political candidates and how much money political candidates could spend. Senator James Buckley and others sued Frances Valeo, the Secretary of the Senate, and others and argued that certain parts of the law were unconstitutional in violation of the First Amendment's freedom of speech and association. After losing in a lower federal court, Buckley and the other plaintiffs appealed to the Supreme Court.

The Supreme Court was extremely divided, and many different opinions were written. The Court came to two very different decisions. First, congressional limits on individual money contributions to political candidates were permissible under the Constitution because of the government's interest in preventing corruption. On the other hand, congressional limits on the amount of money political candidates could spend were unconstitutional violations of First Amendment rights.

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

Allan Bakke, a white male, applied to but was denied admission to the medical school of the University of California, Davis which had only 100 openings each year. Sixteen of those positions were reserved for "disadvantaged" minority students (African Americans, Hispanics, and Native Americans). Bakke had twice before been denied admission while minorities with lower undergraduate grade point averages and lower scores on the Medical College Admission Test had been admitted. Bakke decided to challenge the constitutionality of the university's admissions policy. He argued that he was denied admission because of his race in violation of the equal protection of the laws clause of the U. S. Constitution's Fourteen Amendment. A lower state court ruled in Bakke's favor but declined to order his admission. On appeal, the California Supreme Court ordered Bakke's admission and held that the university's admissions policy did violate the Fourteenth Amendment's equal protection of the laws clause. The Regents of the University of California appealed to the Supreme Court.

In this first major constitutional test of so-called "affirmative action" programs, by a 5-4 vote, the Supreme Court upheld the California court's judgment and thus its decision in Bakke's favor. The Court ruled that state universities cannot use racial quotas in their admissions decisions. Such quotas based on race are unconstitutional violations of the equal protection of the laws clause of the Fourteenth Amendment. However, the majority determined that, using affirmative action as a way of righting past wrongs against racial and ethnic minorities, state universities can consider race as one of several criteria in making admissions decisions.

Stone v. Graham (1980)

A Kentucky law required the Kentucky Superintendent of Public Instruction (at the time James Graham) to insure that a copy of the Ten Commandments, provided with private contributions, be posted on the wall of every public school classroom in the state. Sydall Stone, a citizen of Kentucky, opposed the state's decision, argued that it violated the no establishment of religion and free exercise of religion clauses of the First Amendment, and sought an injunction against

the law's enforcement. A Kentucky trial court upheld the law, finding that its purpose was not religious, that the law did not advance or inhibit religion, and did not excessively involve the state with religion. The Kentucky Supreme Court affirmed the trial court's judgment, and Stone appealed to the Supreme Court.

By a 6-3 vote, the Supreme Court overturned the judgment of the Kentucky court and held that the Kentucky law was an unconstitutional violation of the no establishment of religion clause of the First Amendment. The Court held that the law failed that part of the so-called "Lemon test" announced in the Court's decision in the 1965 case *Lemon v Kurtzman* which requires that laws must have a secular, not a religious, purpose. In the majority's view, the Ten Commandments concern worshipping God and observing the Sabbath and are "plainly religious in nature" and therefore do not meet the secular requirement of *Lemon v Kurtzman*.

New Jersey v. T.L.O. (1985)

A teacher at a New Jersey high school discovered a 14 year- old girl and her companion smoking cigarettes in a school lavatory in violation of school rules. She took them to the Principal's office where they met the Vice Principal. The 14 year -old denied that she had been smoking and claimed that she did not smoke at all. The Assistant Principal demanded to see her purse, and after opening it, she found a pack of cigarettes and noticed a package of rolling papers commonly used with marijuana. A further search of the purse revealed the presence of marijuana, a pipe, plastic bags, a substantial amount of money, an index card with a list of students who owed her money, and two letters implicating the girl in dealing marijuana. The state brought charges against her in juvenile court. After denying a motion to suppress the evidence found in her purse, the court ruled that the Fourth Amendment applied to searches by school officials and that this search was reasonable. The court then judged her to be a delinquent. A New Jersey appeals court affirmed the trial court's judgment. The New Jersey Supreme Court reversed the appeals court and ordered suppression of the evidence on grounds that the search of the purse was unreasonable.

A divided Supreme Court overturned the New Jersey Supreme Court's judgment. The search of T. L. O.'s purse was not a violation of the Fourth Amendment. The Supreme Court ruled that the Fourth Amendment applies to searches by public school officials and that public school students have a legitimate expectation of privacy. However, the Court continued, the school's need to maintain an environment where learning can occur requires some easing of the restrictions to which searches are usually subject. Thus, the Court ruled, school officials do not need a warrant, and searches they conduct do not need to be based on "probable cause." Instead, the legality of their searches depends simply on the reasonableness of the search. A search in the public school environment is justified when there is "reasonable suspicion," rather than "probable cause," that the search will reveal evidence the student has violated or is violating the law or a school rule.

Bethel School District v. Fraser (1986)

Matthew Fraser, a student at Bethel High School in Bethel, Washington, delivered a speech nominating a fellow student for student elective office. About 600 students, many of whom were 14-year-olds, were in attendance. The assembly was part of a school-sponsored educational program in self-government. During the speech, Fraser referred to his candidate in graphic and

explicit sexual innuendo. Two teachers with whom Fraser had discussed the speech informed him that it was inappropriate, that he probably should not give it, and that it might result in severe consequences. A Bethel High School disciplinary rule prohibited the use of obscene, profane language or gestures. After the assembly, the Assistant Principal called Fraser into her office and informed him that the school considered his speech to have been a violation of school rules. Fraser appealed through the grievance procedure of his school but was still found to be in violation of school policy against disruptive behavior and use of vulgar, offensive speech. He was suspended from school for three days and prohibited from speaking at graduation. With the help of his parents and an American Civil Liberties Union lawyer, Fraser filed suit against the school in a U. S. District Court where he claimed a violation of his First Amendment freedom of speech. The District Court ruled in his favor as did a U. S. Court of Appeals. The school district then appealed to the Supreme Court.

By a 7-2 vote, the Supreme Court ruled for the school district and against Fraser. His suspension, the majority ruled, did not violate his freedom of speech of the First Amendment. The majority noted that "the First Amendment does not require school officials … to permit a vulgar and lewd speech that would undermine the school's basic educational mission." The majority pointed out the difference between this case and the Court's decision in *Tinker v Des Moines School District*: "The marked distinction between the political "message" of the armbands in Tinker and the sexual content of respondent's speech in this case seems to have been given little weight by the Court of Appeals. In upholding the students' right to engage in a nondisruptive, passive expression of a political viewpoint in Tinker, this Court was careful to note that the case did "not concern speech or action that intrudes upon the work of the schools or the rights of other students."

Edwards v. Aguillard (1986)

The Louisiana legislature adopted a law requiring public schools to teach "creation science" alongside "evolution." The law stated that either both or neither was to be taught. Don Aguillard, a parent of a Louisiana public school student, other parents of Louisiana schoolchildren, and some Louisiana public school teachers brought suit in a U. S. District Court against Edwin Edwards, Governor of Louisiana at the time, seeking an injunction against enforcement of the law. They argued that the law was a violation of the First Amendment's no establishment of religion clause. The District Court as well as a U. S. Court of Appeals ruled against the Louisiana law. Those courts ruled that the state's purpose in adopting the law was to promote the religious doctrine of "creation science" in clear violation of the establishment clause. The state appealed to the Supreme Court.

By a 7-2 vote, the Supreme Court upheld the judgment of the lower federal courts. The majority ruled that the Louisiana law failed all three parts of the so-called 'Lemon Test" announced by the Court in 1965 in *Lemon v Kurtzman*. The Louisiana law, the majority concluded, had no secular purpose, advanced a religious viewpoint, and resulted in excessive entanglement between government and religion.

South Dakota v. Dole (1987)

Statistics reveal a close correlation between teenage driving while under the influence of alcohol and automobile accidents. To encourage states to raise their legal drinking age to 21, Congress

passed a federal law that would withhold five percent of federal highway funds from states that did not raise their minimum drinking age to 21. In South Dakota individuals 19 years of age or older could purchase beer with a 3.2 percent alcohol content, and the state refused to change its law because the state considered Congress' action an intrusion on states' power under the Tenth and Twenty-First Amendments to the U. S. Constitution. The state stood to lose several million dollars if Congress' action took effect. Therefore, the state sued Elizabeth Dole, at the time the U. S. Secretary of Transportation. A U. S. District Court dismissed the suit, and a U. S. Court of Appeals affirmed that decision. The state appealed to the Supreme Court.

By a 7-2 vote, the Supreme Court upheld the judgment of the lower federal courts and ruled against the state of South Dakota. The majority believed Congress passed the law in the interest of the "general good" and by "reasonable means." In its authority under Congress' constitutional power to tax and spend, the Court also emphasized, the 5 percent penalty was not enough to render it "coercive." The majority further noted that Congress has the power to attach conditions to the receipt of federal funds provided that the spending power is being exercised in pursuit of "the general welfare."

Hazelwood School District v. Kuhlmeier (1988)

The Spectrum was a student newspaper at Hazelwood East High School in St. Louis, Missouri. The paper was written and published as part of a journalism class at the school and paid for by funds from the local school board. The school's principal reviewed page proofs of each issue of the paper before it was published. When he received the proposed issue involved in this litigation, the principal removed two articles. One of these articles described school students' experiences with teen pregnancy. The principal believed that the pregnant students, though not named, might be identified from the text, and furthermore he believed that references to sexual activity and birth control were not appropriate for some younger students. The other article concerned the impact of divorce on students. He objected to this article because the page proof he was given identified by name (deleted by the journalism teacher in the final version) a student who complained in the article about a father's conduct. He also believed that the student's parents should have had an opportunity to respond to remarks made in the article. Catherine Kuhlmeier and two other former staff members of The Spectrum sued in a U. S. District Court claiming their First Amendment freedom of the press rights had been violated. This court upheld the school's decision, but a U. S. Court of Appeals overturned the lower court's judgment and agreed with the student plaintiffs. The school district then appealed to the Supreme Court.

By a 5-3 vote, the Supreme Court reversed the Court of Appeals decision and ruled in favor of the school district's action. The school district had not violated the students' First Amendment freedom of the press rights. The majority ruled that public school officials can censor school-sponsored, student produced newspapers because the papers are part of the school curriculum rather than a forum for public expression as long as the censorship is "reasonably related to legitimate pedagogical concerns."

Texas v. Johnson (1989)

In August 1984, the Republican Party was holding its National Convention in Dallas, Texas. A group of about 100 demonstrators marched through the streets of Dallas to dramatize the consequences of nuclear war and to protest certain policies of the Reagan administration.

Gregory Johnson was a leader and organizer of the group. When the group reached Dallas City Hall, an American flag was handed to Johnson who soaked it in kerosene and set it on fire. Several individuals who witnessed this were offended by Johnson's action. However, no violence occurred, and no one was physically injured or threatened. Shortly after the event, police arrived and arrested Johnson. He was charged with desecration of a venerated object in violation of the Texas Penal Code. Johnson was convicted in a Texas trial court, sentenced to one year in jail, and assessed a $2,000 fine. A Texas Court of Appeals upheld his conviction, but the Texas Court of Criminal Appeals reversed the judgment of the lower court and thus overturned Johnson's conviction. The state of Texas appealed to the Supreme Court.

By a 5-4 vote, the Supreme Court upheld the judgment of the Texas Court of Criminal Appeals overturning Johnson's conviction. The majority held that burning a flag as political protest is a form of symbolic speech protected by the First Amendment. The majority wrote: "If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable… We do not consecrate the flag by punishing its desecration, for in doing so we dilute the freedom that this cherished emblem represents."

Lee v. Weisman (1992)

Robert Lee, the principal of a Providence, Rhode Island middle school, invited a rabbi to give an invocation at the school's graduation ceremony. The rabbi was given a pamphlet with certain guidelines for the prayer which indicated it should be nonsectarian. The rabbi's invocation thanked God "for the legacy of America where diversity is celebrated," and in his benediction he observed, "Oh, God, we are grateful for the learning which we have celebrated on this joyous commencement. … We give thanks to you, Lord, for keeping us alive, sustaining us, and allowing us to reach this special, happy occasion." Daniel Weisman, Jewish and a parent of a student at the school, filed suit in a U. S. District Court against the practice of having clergy offer prayers at public school graduation ceremonies. The District Court as well as a U. S. Court of Appeals ruled that the practice was unconstitutional based on the Supreme Court's ruling in *Lemon v Kurtzman* in 1971.

By a 5-4 vote, the Supreme Court upheld the judgment of the lower courts and held that officially approved, clergy-led prayer at public school graduations led to subtle religious coercion and thus violated the no establishment of religion clause of the First Amendment. The majority wrote: "The government involvement with religious activity in this case is pervasive, to the point of creating a state-sponsored and state-directed religious exercise in a public school." Further, the majority noted, "the state, in a school setting, in effect required participation in a religious exercise."

Shaw v. Reno (1993)

After the 1990 census, North Carolina was eligible to gain a twelfth seat in the U. S. House of Representatives. Complying with Section 5 of the Voting Rights Act of 1965, the state submitted to the U. S. Department of Justice a plan with only one majority-African American district. The plan was rejected because a second majority-African American district could have been created. The North Carolina legislature created a second majority-African American district approximately 160 miles along an interstate highway and for much of its length no wider than the interstate corridor. Several white voters, including a Duke University law professor, attacked the

constitutionality of that district in a U. S. District Court. They argued that the new district paid no attention to traditional districting concerns such as compactness, contiguousness, geographical boundaries, or existing political subdivisions. They asserted that the sole purpose was to create two districts that were likely to elect African American representatives. The District Court dismissed the complaint on the grounds that under a previous Supreme Court decision, favoring minority voters was not constitutionally discriminatory and the plan did not proportionally underrepresent white voters statewide. The plaintiffs then appealed to the Supreme Court.

By a 5-4 vote, the Supreme Court ruled that Shaw and the other plaintiffs had stated a "claim upon which relief can be granted under the Equal Protection Clause" of the Fourteenth Amendment. The majority thus invalidated North Carolina's plan on the grounds that any gerrymander based on race, even one designed to benefit a minority, is subject to strict scrutiny equal protection analysis.

United States v. Lopez (1995)

In 1990, basing its authority to do so on the Constitution's commerce clause of Article I, Section 8, the U. S. Congress adopted the Gun-Free School Zones Act. The law made it a federal crime to possess a firearm within 1,000 feet of a public or private school. Alfonso Lopez, a twelfth-grade student at Edison High School in San Antonio, Texas, was arrested for carrying a .38 caliber handgun into the school. Initially, he was charged with violating a Texas law forbidding firearm possession on school premises. However, those charges were dropped after federal agents charged him with violating Congress' Gun-Free School Zones Act. Lopez was convicted in a U. S. District Court, but on appeal, his attorneys argued that Congress' Gun-Free School Zones Act was unconstitutional because Congress exceeded its power under the commerce clause. A U. S. Court of Appeals agreed and reversed Lopez's conviction. The U. S. then appealed to the Supreme Court.

By a 5-4 vote, the Supreme Court agreed with the Court of Appeals and ruled that Congress did not have constitutional authority under the commerce clause to pass the Gun-Free School Zones Act. The majority held that "the possession of a gun in a local school zone is in no sense an economic activity that might, through repetition elsewhere, substantially affect any sort of interstate commerce."

This was the first time since 1937 that the Supreme Court had declared an act of Congress based on the commerce clause of Article I, Section 8 unconstitutional.

Reno v. ACLU (1997)

When Congress passed the Communications Decency Act in 1996, it was seeking to protect persons under 18 from "indecent or obscene" material available on the Internet. This was Congress' first attempt to regulate this new means of communication. The law made it a crime to knowingly transmit "indecent or obscene" material to persons under 18 and to transmit similar material that offends contemporary community standards. The American Civil Liberties Union and some businesses and interest groups filed suit in U. S. District Court challenging the constitutionality of sections of the law. The district court issued a preliminary injunction against enforcement of the law, and the U. S. government through the U. S Attorney General at the time, Janet Reno, appealed to the Supreme Court.

By a 7-2 vote, the Supreme Court declared the Communications Decency Act unconstitutional. The majority ruled that the law was overly broad and vague in its regulation of speech on the Internet and attempted to regulate "indecent" speech which the First Amendment protects. The majority further noted that in its attempt to keep certain material out of the hands of minors, the Congress failed to take safeguards to ensure the availability of material that might legally be viewed by adults.

Clinton v. Jones (1997)

While he was Governor of Arkansas in 1991, prior to his becoming President in 1992, Paula Jones, a resident of Arkansas at the time, alleged that Bill Clinton had made unwanted sexual advances to her. Even though Clinton was now President of the U. S., in 1994, Jones sought to recover damages for Clinton's alleged behavior before he became President. She sued in a U. S. District Court under Arkansas and federal law for sexual harassment. Clinton argued that in all but the most exceptional cases, the Constitution requires courts to defer such litigation until the President's term ends and that respect for the office warrants such a stay. The District Court rejected President Clinton's claim of immunity and agreed to allow discovery in the case to go forward. However, the court ordered a stay for any trial until after the President's term of office ended in January, 2001. A U. S. Court of Appeals ruled in Jones' favor, and Clinton then appealed to the Supreme Court.

A unanimous Supreme Court ruled on both President Clinton's claim of immunity and the postponement. The Court held that executive immunity extended neither to acts allegedly committed before becoming President nor to acts unrelated to the President's official duties. As to the postponement, the Court ruled that the case could proceed because delay could result in witnesses dying and memories fading. The Court held that instances where sitting Presidents have been parties to law suits have been so infrequent that fear of harassment suits against the President are merely speculative. Finally, the Court said that if such suits should become a problem, Congress could pass legislation to remedy it.

The case was eventually settled out of court.

Santa Fe Independent School District v. Doe (2000)

The Santa Fe Independent School District is located in Santa Fe, Texas and has schools in Santa Fe and parts of other cities in the Galveston-Houston area. Before 1995, a student elected as Santa Fe High School's chaplain delivered a prayer over the public address system before each home football game. Some Mormon and Catholic students or former students and their mothers filed suit in U. S. District Court challenging this practice as a violation of the no establishment of religion clause of the First Amendment. While the suit was pending, the school district adopted a different policy which authorized two student elections, the first to determine whether prayers should be delivered at football games, and the second to select the student to deliver the prayer. After the students held elections authorizing such prayers and selected a student to deliver it, the District Court entered an order modifying the policy to permit only non-sectarian and non-proselytizing prayer. A U. S. Court of Appeals ruled that, even as modified by the District Court, the prayer at football games was unconstitutional.

By a 6-3 vote, the Supreme Court upheld the judgment of the Court of Appeals and held that a public school district's policy allowing students to vote on a prayer to be read by a student at football games violated the no establishment of religion clause of the First Amendment. The majority held that the voting policy resulted in religious coercion of the minority by the majority. The majority noted that the prayer was public speech authorized by government policy on government property at a government/school sponsored event. Finally, the majority asserted that the policy involved both perceived and actual state endorsement of the prayer.

United States v. Morrison (2000)

In 1994, Congress held hearings on gender-motivated violence and concluded that such violence costs the U. S. economy several billion dollars annually. Congress then used the commerce clause of Article I, Section 8 of the Constitution and the enforcement clause of the Fourteenth Amendment to adopt the Violence Against Women Act. The law made violence against women a federal crime and created as a remedy a private cause of action for victims to sue their attackers for damages. In 1994 a female Virginia Tech student alleged that two members of the football team, Antonio Morrison and James Crawford, had raped her in her campus dormitory room. After the school's repeated failure to provide her justice or relief, she sued her attackers and the university in a U. S. District Court. The District Court concluded that the Violence Against Women law was an unconstitutional invasion of traditional state government business, and a U. S. Court of Appeals agreed.

By a 5-4 vote, the Supreme Court affirmed the decision of the Court of Appeals and declared Congress' Violence Against Women Act unconstitutional. The majority agreed that Congress did not have the constitutional authority under the commerce clause or the Fourteenth Amendment to allow rape victims to sue their attackers in a federal court.

Bush v. Gore (2000)

The presidential election of 2000 was one of the closest in American history with the outcome depending on the narrow popular vote in Florida. At issue was the problem of so-called non-votes on punch card ballots. If a voter failed to punch through on the ballot and left a "hanging chad," then the vote might not be counted. If a voter failed to punch through on the ballot and left only an indent, then the vote might not count. On December 8, 2000, the Florida Supreme Court ordered a recount in some Florida counties and a recount in all the counties for these types of ballots.

On December 12 the U.S. Supreme Court reversed the decision of the Florida Supreme Court. By a 7-2 vote, the Court held that the Florida Supreme Court's decision violated the equal protection of the laws clause of the Fourteenth Amendment. By a different 5-4 vote, the Court held that there was no remedy available. Since December 13 was the deadline for states to verify their presidential election elections, the majority felt that it would be impossible to create a recount procedure that would be uniform throughout the state during that time, and thus, a recount was not possible without offending the Equal Protection clause. The recount standards and procedures would vary from county to county and even from one election judge to another. Under those circumstances, there was no guarantee that each vote would be treated equally.

What the majority of the Supreme Court did was to order a stop to any recount of the Florida vote. That in turn meant that since George W. Bush had slightly more popular votes in the state than did Al Gore, Bush won all of Florida's electoral votes. That in turn meant that Bush became President because, with all of Florida's electoral votes, he ended up with 271 electoral votes, one more than the 270 needed to win.

Board of Education of Pottawatomie County v. Earls (2002)

In 1995, in *Vernonia School District v Acton*, the Supreme Court upheld the constitutionality of a public school's policy requiring random drug testing of high school over a student's argument that the policy violated the Fourth Amendment's prohibition of unreasonable searches and seizures. Following that Supreme Court decision, in 1998, the public school district of Tecumseh, Oklahoma, a rural community near Oklahoma City, adopted a policy which required all middle and high school students who wished to participate in any extracurricular activity to consent to random drug testing. Lindsey Earls, an honor student and member of the choir and marching band, had never been suspected of any drug use. With the support of her parents, she challenged in a U. S. District Court the constitutionality of the policy as a violation of the Fourth Amendment's protection against unreasonable searches and seizures. The District Court rejected her argument, but a U. S. Court of Appeals reversed the lower court's judgment, and the school board appealed to the Supreme Court.

By a 5-4 vote, the Supreme Court overruled the decision of the Appeals Court and ruled that a public school can require all students who participate in extracurricular activities to submit to such random drug testing. The majority held that given the "nationwide epidemic of drug use," the requirement was constitutional. The policy "reasonably served the School District's important interest in detecting and preventing drug use among its students."

Zelman v. Simmons-Harris (2002)

As part of a plan to improve educational opportunities in Cleveland, Ohio, the Ohio legislature adopted a law providing tuition-aid to low-income parents. Rather than sending their children to public schools, these parents could use a state-subsidized voucher to send their children to participating public or private schools. In the 1999-2000 school year, no public school participated in the program. 82 percent of the participating schools were religious, and 96 percent of students participating in the program attended these religiously affiliated schools. Doris Simmons-Harris and some other Ohio taxpayers brought suit in a U. S. District Court against the state in the person of Susan Zelman, the Superintendent for Public Instruction of Ohio. They argued that the Ohio voucher program was a violation of the no establishment of religion clause of the First Amendment. Both the District Court and a U. S. Court of Appeals ruled in favor of the taxpayer plaintiffs. The state in the person of Zelman appealed to the Supreme Court.

By a 5-4 vote, the Supreme Court overruled the judgment of the lower courts and ruled that Ohio's voucher program did not violate the no establishment of religion clause of the First Amendment. The majority emphasized that the program was facially "neutral in all respects toward religion" and that "previous court decisions have drawn a consistent distinction between government programs that provide aid directly to religious schools, and programs of true private choice, in which government aid reaches religious schools only as a result of the genuine and independent choice of private individuals."

Grutter v. Bollinger (2003)

Barbara Grutter, a white student, had a 3.8 GPA and a 161 score on the LSAT but was denied admission to the University of Michigan Law School. Grutter maintained that the Law School's admission of minority students with lesser scores constituted reverse discrimination in violation of the Equal Protection of the Laws Clause of the Fourteenth Amendment. Michigan Law School, in order to achieve a more diverse student body, considered grades, LSAT scores, personal statements, letters of recommendation, life experiences and race in making admission decisions. In *Regents of the University of California v Bakke* in 1978, the Supreme Court rejected the use of racial quotas in the admissions process but held that race could be one of several factors that affect the admissions decision. Grutter filed a class action law suit in a U. S. District Court which ruled for Grutter and enjoined the law school from continuing to use race in its admissions decisions. The law school appealed to a U. S. Court of Appeals which overturned the lower court's judgment. This court reasoned that the law school had tailored its admissions procedure in compliance with the Supreme Court's ruling in the Bakke case which at the time was the controlling legal precedent on this issue in the nation. Grutter then appealed to the Supreme Court.

By a 5-4 vote, Court ruled here that the Law School's admission process was narrowly tailored to achieve the constitutionally permissible goal of creating a diverse student body. The majority noted that "not every decision influenced by race is equally objectionable" and that "we have never held that that the only governmental use of race that can survive strict scrutiny is remedying past discrimination." The majority stated that they also "accepted the law school's argument that admitting 'a critical mass' of minority students was essential to achieving student diversity and the educational benefits that diversity is designed to produce." Finally, the majority pointed out, "the law school engages in a highly individualized, holistic review of each applicant's file in which race counts as a factor but is not used in a mechanical way."

Kelo v. New London (2005)

Years of economic decline led the state of Connecticut in 1990 to designate New London, Connecticut "a distressed municipality." The city's unemployment was nearly double that of the rest of the state and the city's population was at its lowest since 1920. As a result, state and local officials targeted New London for economic revitalization. The pharmaceutical company Pfizer announced it would build a research facility in the Fort Trumbull area of New London. The hope was that this would draw new business to the area. This would not only create jobs but also generate new tax revenue. The New London City Council authorized the New London Development Corporation to purchase property or to acquire property by using the power of eminent domain in the city's name. The NLDC managed to purchase most real estate in the area, but when negotiations with some homeowners failed, the NLDC initiated condemnation proceedings against them under the city's eminent domain power. Susette Kelo lived in the area, and in December, 2000, she and some other homeowners of condemned property sued the city of New London in a state trial court. They argued that the taking of their property, even with just compensation, violated "the public use" requirement of the U. S. Constitution's Fifth Amendment because their property would not be used for a "public purpose" like building a road but would instead be sold to private parties for development that the city claimed would benefit the community economically. The trial court issued a restraining order prohibiting New London's

taking of the property, but on appeal, the Connecticut Supreme Court for the city. Kelo and the others then appealed to the Supreme Court.

By a 5-4 vote, the Supreme Court affirmed the Connecticut Supreme Court's decision and thus ruled against Susette Kelo and the other property owners. A majority of the Court "rejected a literal interpretation" of the term "public use" in the takings clause of the Fifth Amendment and ruled that the words "public use" can be interpreted to mean "public benefit." Consequently, the majority determined that government can take private property from an individual in order to turn it over to a private developer where the taking will result in "economic development" for the area.

Morse v. Frederick (2007)

Juneau-Douglas High school in Juneau, Alaska, released students to observe the Winter Olympics Torch Relay as it passed through Juneau. Joseph Frederick and other students stood on the sidewalk across from the school in this school-sponsored, off- campus, televised event. Frederick and some of his friends unfurled a banner that read "Bong Hits for Jesus" as the television cameras operated. The school principal, Deborah Morse, grabbed and took down the banner. Frederick was suspended for ten days for violating the school's policy against displaying offensive material and promoting the use of illegal drugs. Frederick argued that their action was humorous and meaningless. After his appeal to the school board failed, he filed a lawsuit in U. S. District Court where he argued that his First Amendment freedom of speech had been violated and asked that his suspension be removed from his high school records. The District Court rejected Frederick's argument, but on appeal, a U. S. Court of Appeals reversed the lower court's judgment. The Appeals Court ruled that the Supreme Court's decision in the 1969 Tinker case was the controlling precedent, and as a result, Frederick could not be punished for speech which did not disrupt the functioning of the school. Morse appealed to the Supreme Court.

By a 5-4 vote, the Supreme Court reversed the judgment of the Appeals Court and ruled in favor of Principal Morse. Thus, the majority ruled that Frederick's First Amendment speech rights had not been violated. The majority held that the First Amendment does not protect student speech that could reasonably be understood to promote illegal drugs. The majority concluded that the free speech rights of public school students must be considered in light of the "special characteristics" of the public school environment and that it is an important responsibility of the schools to deter drug use among young people.

District of Columbia v. Heller (2008)

A District of Columbia law banned the possession of handguns by making it a crime to carry an unregistered firearm and prohibited the registration of handguns. The law provided separately that no person could carry an unlicensed handgun but authorized the police chief to issue 1-year licenses. The law also required residents to keep lawfully owned firearms unloaded and dissembled or bound by a trigger lock or similar device. Dick Heller, a D. C. special policeman, applied to register a handgun he wished to keep at home, but was refused. He then filed suit in U. S. District Court seeking, on grounds of the Second Amendment, an injunction forbidding the city from enforcing the law. The District Court dismissed the suit, but the D. C. Court of Appeals reversed the lower court's judgment. The Court of Appeals held that the Second Amendment protects an individual's right to possess firearms and that the D. C. law violated that right. The District then appealed to the Supreme Court.

By a 5-4 vote, the Supreme Court upheld the judgment of the D. C. Court of Appeals and found that D. C.'s law banning virtually all handguns and requiring firearms to be kept disassembled or trigger locked was unconstitutional. The majority declared that the Second Amendment protects an individual's right to keep suitable firearms unconnected to service in a militia and to use that firearm for lawful purposes such as self-defense in one's home. However, the majority continued, the right is not unlimited. For example, the majority elaborated, it is not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose. Moreover, the majority noted, this decision should not be interpreted to cast doubt on laws forbidding the carrying of firearms in sensitive places such as schools and public buildings or on laws forbidding possession by felons and mentally ill individuals.

McDonald v. City of Chicago (2010)

The City of Chicago had a law which effectively banned handgun possession by almost all private citizens. After the Supreme Court's decision in *District of Columbia v Heller* in 2008, Otis McDonald and some other citizens of Chicago filed suit in U. S. District Court against the City. They argued that Chicago's ban left them vulnerable to criminals and sought a declaration that the City's ban violated the Second Amendment. The District Court rejected their argument. A U. S. Court of Appeals affirmed the lower court's judgment, and McDonald appealed to the Supreme Court.

By a 5-4 vote, the Supreme Court reversed the Court of Appeals judgment and ruled in favor of McDonald. The majority held that the due process of law clause of the Fourteenth Amendment "incorporates" the Second Amendment's right to keep and bear arms for self-defense and thus applies this right to state and local governments.

The Supreme Court thus for the first time in U. S. history ruled that the Second Amendment, like most of the other rights of the Bill of Rights, now applies to and limits the power of state and local governments through its "incorporation" by the Fourteenth Amendment's due process of law clause.

Citizens United v. Federal Election Commission (2010)

For nearly a century, in order to reduce the influence of big money in politics, Congress has restricted political campaign contributions in federal elections in a variety of ways. As adopted by Congress, the Bipartisan Campaign Reform Act of 2002, popularly known as McCain-Feingold, prohibited corporations and unions from using their general treasury funds to make independent expenditures for speech that expressly advocated the election or defeat of a specified candidate. This case arose as a result of a conservative, non-profit organization, Citizens United, wanting to air a film critical of Hillary Clinton and to advertise it during television broadcasts before the 2008 Democratic Party's primary elections in which Hillary Clinton was a candidate for the Democratic Party's nomination for President. This would have violated provisions of McCain-Feingold prohibiting certain electioneering communications near an election. Citizens United filed a motion in U. S. District Court for a preliminary injunction against enforcement of that provision of McCain-Feingold. The District Court denied Citizen United's motion and granted judgment for the Federal Elections Commission. Citizens United appealed to the Supreme Court.

By a 5-4 vote, the Supreme Court overturned the lower court's judgment and ruled in favor of Citizens United. The majority held that portions of Congress' McCain-Feingold law were unconstitutional violations of the freedom of speech of the First Amendment. The majority declared that "if the First Amendment has any force, it prohibits Congress from fining or jailing citizens, or associations of citizens, for simply engaging in political speech." The majority noted that "corporations, as associations of individuals, have free speech rights. Spending money is essential to disseminating speech, and limiting a corporation's ability to spend money is unconstitutional because it limits the ability of its members to associate effectively and to speak on political issues." Finally, the majority noted, "speech would be suppressed in the realm where its necessity is most evident: in the public dialogue preceding a real election." Government cannot make political speech a crime, the majority stated, and "yet this is the statute's purpose and design."

National Federation of Independent Business v. Sebelius (2012)

In 2010, Congress adopted the Patient Protection and Affordable Care Act, popularly called Obamacare, in order to increase the number of Americans covered by health insurance and to decrease the cost of health care. A key provision of the law is "an individual mandate" which requires most Americans to maintain "minimum essential" health insurance coverage. For individuals who are not exempt, and who do not receive health insurance through an employer or a government program, the means of satisfying the requirement is to purchase insurance from a private company. Beginning in 2014, those who do not comply with the mandate must pay a penalty to the Internal Revenue Service with an individual's taxes. The law also expanded Medicaid and the number of individuals states must cover. The National Federation of Independent Business and twenty-six states brought suit in U. S. District Court against Kathleen Sebelius, the Secretary of Health and human Services, challenging the constitutionality of the individual mandate and Medicaid expansion. The District Court ruled that Congress lacked constitutional authority to pass the individual mandate and struck down the Act in its entirety. A U. S. Court of Appeals upheld the Medicaid expansion as a valid exercise of Congress' spending power but agreed that Congress did not have authority to pass the individual mandate. However, this court left the rest of the law intact. The National Federation of Independent Business then appealed to the Supreme Court.

By a 5-4 vote, the Supreme Court affirmed part of the Court of Appeals' judgment and reversed part of it. The government had argued that Congress' constitutional authority to adopt the law and its individual mandate was the commerce and necessary and proper clauses of Article I, Section 8. A majority of the Court ruled that the Act was not a valid use of the commerce and necessary and proper clauses, but that it was a constitutional use of Congress' power to tax. However, a majority of the Court ruled that the Medicaid expansion called for by the Act violated the Constitution by threatening the states with the loss of existing Medicaid funds if they declined to comply with its expansion.

Miller v. Alabama (2012)

Evan Miller, a 14 year old, and a friend, while in the act of robbing a neighbor, severely beat him with a bat. The two left the neighbor's trailer but later returned and set fire to the trailer. The neighbor died of severe injuries as a result of the beating and smoke inhalation. Under Alabama

law, Miller was convicted in an Alabama trial court and sentenced to mandatory life in prison without the possibility of parole. Miller's counsel moved for a new trial arguing that Miller's sentence was a violation of the Eighth Amendment's prohibition of cruel and unusual punishment. An Alabama Court of Appeals denied this motion, and Miller appealed to the Alabama Court of Criminal Appeals which held that Miller's sentence was not unconstitutional. Counsel for Miller then appealed to the Supreme Court.

By a 5-4 vote, the Supreme Court overruled the judgment of the Alabama courts. The Court ruled that imposing on a juvenile under the age of 18 at the time of their crime a mandatory life sentence without the possibility of parole does violate the Eighth Amendment's prohibition on cruel and unusual punishment. A majority of the Court concluded that "mandatory life without parole for a juvenile precludes consideration of his chronological age and its hallmark features – among them, immaturity, impetuosity, and failure to appreciate risks and consequences."

Arizona v. United States (2012)

Concerned about the large number of unlawful aliens in the state, the Arizona legislature passed a law that made misdemeanor criminal offenses an alien's failure to comply with federal alien registration requirements and to seek employment in the state. It also permitted state law enforcement officers to arrest a person without a warrant if the officer had probable cause to believe the person had committed an offense that makes the person removable from the United States. Finally, the law required officers making a stop, detention, or arrest to verify with the Federal Government the person's immigration status. The U. S. government sought an injunction in U. S. District Court to prevent the law's enforcement on grounds of federal preemption. The District Court issued a preliminary injunction preventing most of the law's provisions from taking effect. A U. S. Court of Appeals affirmed the lower court's judgment, and Arizona appealed to the Supreme Court.

By a 5-3 vote with one justice not participating, the Supreme Court upheld the judgment of the lower courts. The majority ruled that the states are preempted from enacting laws which interfere with an exclusive power of the national government which in this case is the Congress' power "to establish an (sic) uniform Rule of Naturalization." The majority also noted that the state cannot pass laws which may interfere with the national government's sovereign power to control and conduct foreign affairs. The Court thus struck down as unconstitutional all but one of the Arizona law's four provisions, namely the one which allows officers to verify a person's immigration status with the federal government. While the Court expressed the opinion that this provision may also be unconstitutional, it held that until the provision was actually implemented, the Court would withhold a ruling on its constitutionality.

United States v. Jones (2012)

Antoine Jones owned and operated a nightclub in the District of Columbia. He came under suspicion of narcotics trafficking. Based on information gathered through a variety of investigative techniques, the FBI and Metro Police obtained a warrant authorizing use of a GPS tracking device on a vehicle registered to Jones' wife (of which Jones was the exclusive driver). However, the warrant authorized installation in the District of Columbia within 10 days, but agents installed it on the 11th day and in Maryland. The government tracked the vehicle's movements for 28 days. Using data obtained through the 28 days usage of the GPS device, the U. S.

government obtained an indictment against Jones which included charges of conspiracy to deliver cocaine. The District Court granted Jones' pre-trial motion to in part to suppress the evidence, only suppressing the evidence obtained while the vehicle was parked in Jones' home garage. The remaining data, the court ruled, was admissible because Jones had no reasonable expectation of privacy while the vehicle was in public streets. A hung jury at his first trial led to a second trial where Jones was found guilty. A D. C. Court of Appeals reversed Jones' conviction, holding that the admission of evidence from the GPS device was obtained by an invalid warrant and thus violated the Fourth Amendment. The U. S. appealed to the Supreme Court.

By a 9-0 vote, the Supreme Court affirmed the judgment of the Court of Appeals overturning Jones' conviction. The Court held that the placing of the GPS on the vehicle was a search and was unconstitutional under the Fourth Amendment. Following the precedent set in *Katz v. United States*, the Court held that Jones had a reasonable expectation of privacy while the car was being driven on public highways and streets.

Florida v. Jardines (2013)

In 2006, police in Miami, Florida, received an unverified, anonymous tip that a home was being used to grow marijuana. They led a drug-sniffing dog to the front door of Joelis Jardine's' home, and the dog signaled the presence of drugs. On that basis, the police secured a search warrant and found marijuana plants in the house. Jardines was arrested and charged with trafficking in marijuana. A Florida trial court granted Jardines' motion to suppress the evidence obtained from his home. The state appealed that decision, and a Florida Court of Appeals reversed the trial court's decision. Jardines appealed to the Florida Supreme Court which agreed with Jardines. Florida then appealed to the Supreme Court.

By a 5-4 vote, the Supreme Court ruled that police use of a trained drug-sniffing dog at the front door of a private home is a search within the meaning of the Fourth Amendment, and therefore, without consent of the home owner, requires both probable cause and a search warrant. The Court thus overturned Jardines' conviction as a violation of the Fourth Amendment.

United States v. Windsor (2013)

Edith Windsor and Clara Spyer were a same-sex couple residing in New York, They were legally married in Canada, and the state of New York recognized the legality of the same-sex marriage. When Clara died in 2009, she left her entire estate to Windsor. Windsor sought to claim the federal estate tax exemption for surviving spouses. Under the congressionally adopted Defense of Marriage Act (DOMA), the term "spouse" only applied to marriages between a man and a woman. The Internal Revenue Service ruled that the exemption did not apply to same-sex marriages, denied her request, and forced her to pay $363,053 in estate taxes. Windsor sued for a refund in U. S. District Court. The U. S. Attorney General announced that the Department of Justice would not defend DOMA. The District Court ruled in her favor and declared DOMA unconstitutional. A U. S. Court of Appeals affirmed the District Court's decision. The Bipartisan Legal Advisory Group agreed to defend DOMA and appealed to the Supreme Court.

By a 5-4 vote, the Supreme Court upheld the judgment of the lower federal courts and ruled in favor of Edith Windsor. The majority ruled that DOMA was an unconstitutional exercise of Congressional power. The majority concluded that restricting "marriage" and "spouse" only to

opposite sex unions as the DOMA did was unconstitutional. DOMA, the majority continued, seeks to injure a class of citizens that New York seeks to protect. As such, the Act denies Windsor equal protection and thus violates the liberty component of the due process of law clause of the Fifth Amendment.

Shelby County v. Holder (2013)

Congress adopted the Voting Rights Act in 1965 to address entrenched racial discrimination in voting. Most sections of the law only applied to certain parts of the country. Section 4 of the law provided "the coverage formula" defining the "covered jurisdictions" as states or their political subdivisions that maintained tests or devices as prerequisites for voting and had low voter registration or turnout in the 1960s and 1970s. In these "covered jurisdictions," Section 5 of the law provided that no change in voting procedures can take effect until "pre-cleared" by specified federal authorities in Washington, D. C. Congress had renewed the Act several times without making changes to the original coverage area. Shelby County in "covered jurisdiction" Alabama sued U. S. Attorney General Eric Holder in U. S. District Court in Washington, D. C. seeking a declaratory judgment that Sections 4 and 5 were unconstitutional and an injunction against the enforcement of the Act. The District Court and the D.C. Circuit Court upheld the constitutionality of the law. Shelby County then appealed to the Supreme Court.

By a 5-4 vote, the Supreme Court reversed the judgment of the lower courts and declared Section 4 of the Act and its "coverage formula" unconstitutional. As a result, the majority confirmed, its formula can no longer be used as a basis for subjecting jurisdictions to the "pre-clearance" requirement of Section 5 of the Act. The majority noted that much has changed in the last 50 years. Literacy tests and other qualifying requirements have been banned for 40 years. The majority stated: "There is no denying, however, that the conditions that originally justified these measures no longer characterize voting in the covered jurisdictions." By 2009, the majority pointed out, "the racial gap in voter registration and turnout was lower in the states originally covered by Section 5 than it was nationwide." Furthermore, the majority noted, "African American turnout in 5 of the 6 states originally covered by the law has come to exceed white voter turnout."

Maryland v. King (2013)

After Alonzo King, Jr. was arrested in 2009 on assault charges, he was processed through a Maryland facility where booking officers used a cheek swab to take a DNA swab pursuant to the Maryland DNA Collection Act. The swab matched to an unsolved 2003 rape case, and King was charged with that offense. King moved to suppress the DNA evidence, arguing that it violated the Fourth Amendment. The trial court ruled the Maryland law was constitutional and rejected King's motion. He was convicted of rape. A Maryland Court of Appeals vacated King's conviction after ruling that portions of the law authorizing DNA collection from felony arrestees unconstitutional. Maryland then appealed to the Supreme Court.

By a 5-4 vote, the Supreme Court ruled that "taking a cheek swab is like fingerprinting and photographing a legitimate booking procedure that is reasonable under the Fourth Amendment." Taking a cheek swab is painless and poses no threat to the person's health or safety. DNA identification is extremely accurate and may even lead to the exoneration of a totally innocent person.

Missouri v. McNeely (2013)
Tyler McNeely was stopped by a Missouri policeman for speeding and crossing the centerline. The officer noticed signs of intoxication, including the smell of alcohol on McNeely's breath. McNeely failed field sobriety tests. After McNeely refused to blow into a breathalyzer, the officer drove McNeely to a medical center. There the officer asked McNeely to consent to a blood test, but he refused. Without attempting to obtain a search warrant, the officer ordered a hospital lab technician to take a blood sample from McNeely. The results of the blood test showed McNeely's BAC was well above the state's legal limit. He was charged with DWI. In a Missouri trial court, McNeely moved to suppress the blood test result, arguing that taking his blood without a warrant violated the Fourth Amendment's protection against unreasonable searches and seizures. The trial court agreed, and the Missouri Supreme Court affirmed the trial court's decision. Missouri appealed to the Supreme Court.

By a 5-4 vote, the Supreme Court affirmed the Missouri Supreme Court's judgment and ruled that an involuntary blood draw is a search and nonconsensual, warrantless blood draws violate the Fourth Amendment. The majority noted that prior Court decisions have made it clear that blood samples may not be taken without a warrant unless "exigent circumstances" exist. Missouri sought a per se rule that because alcohol quickly begins to dissipate in the blood stream, that fact alone constitutes an exigent circumstance. The Supreme Court refused to adopt such an across the board rule and reaffirmed that, absent exigent circumstances, the state must get a warrant in order to take a blood sample from someone suspected of DWI.

Burwell v. Hobby Lobby Stores, Inc. (2014)
The Affordable Care Act passed by Congress and upheld by the Supreme Court in 2012 required for profit corporations with 50 or more workers which offer health insurance to their workers to provide contraceptive coverage as part of a preventive care package for their female employees. Twenty contraceptives were covered including four "morning after" contraceptives that work after conception. The Obama administration argued that the contraceptive mandate is about health care. It pointed out that the policy is based on an Institute of Medicine report which lists contraception as a "preventive service" that, like immunizations and cholesterol and diabetes screening and dozens of other services, should be provided by a comprehensive health insurance policy. Hobby Lobby and two other closely held for profit corporations challenged the requirement based on the Religious Freedom Restoration Act of 1993. This Act forbids government from imposing obligations on persons or corporations that violate their sincerely held religious beliefs. Hobby Lobby claimed that providing the four "morning after" contraceptives violated their sincerely held religious belief that life begins at conception.

By a 5-4 vote, the Supreme Court ruled that as applied to "closely held corporations" such as Hobby Lobby, the Department of Health and Human Services regulations imposing the contraceptive mandate of the Affordable Care Act violate the Religious Freedom Restoration Act. In striking down the requirement, the majority held that the government had not shown that requiring the coverage was "the least restrictive means" of infringing on religious liberty.

Town of Greece, New York v. Galloway (2014)
Since 1999, the Town of Greece near Rochester in upstate New York has opened town hall meetings with a prayer led by citizen-volunteers or a local minister. All faiths are invited to participate, but the vast majority have been Christian. Most of the prayers contained uniquely Christian language such as "Jesus," "Christ," and "Holy Spirit." Susan Galloway and Linda Stephens, who are Jewish and atheist respectively and residents of Greece, attended many town meetings. They complained about the prayers and argued that as non-Christians they felt coerced to participate and isolated during the prayers. The town argues that the fact that most prayer-givers are Christian simply reflects the fact that most residents of Greece are Christian. Galloway and Stephens sued the Town of Greece in U. S. District Court where they argued that the Town was violating the no establishment of religion clause of the First Amendment. The District Court granted summary judgment for the Town of Greece. Galloway and Stephens then appealed to a U. S. Court of Appeals which reversed the District Court's judgment. The Town of Greece appealed to the Supreme Court.

By a 5-4 vote, the Supreme Court ruled that the Town of Greece had not violated the no establishment of religion clause of the First Amendment. The majority begins by noting that there is a long tradition of legislative prayers in the U.S. The first Congress hired a chaplain, and the practice has continued uninterrupted to this day. The majority noted that legislative prayers need not be nonsectarian because to require them to be would place legislators and judges in the position of religious censors. However, the majority pointed out, that does not mean there are no constraints on content. As long as the content does not proselytize or disparage other religions, it is permitted. The Court noted that spectators are free to leave, arrive late, or even protest the prayer at the meeting.

Riley v. California (2014)
David Riley was driving a vehicle in San Diego, California, when a police officer stopped him because the vehicle's registration tags were expired. The officer soon learned that Riley was also driving with a suspended driver's license. The officer asked Riley to get out of the car because, following police department policy, he was going to impound the vehicle. Then, again in accordance with San Diego Police Department policy, when an automobile is being impounded, the officer was required to do a thorough search/inventory of the contents of the vehicle, including enumerating specifically parts of the auto under the hood. Searching under the hood, the officer found two handguns. After the guns were found, police arrested Riley and, among other things, seized several items found either in the auto or on Riley's person, including his smart phone. A detective searching the contents of the cellphone found a number of items which were introduced as evidence to charge him with several criminal offenses and were also introduced as evidence at Riley's trial in a San Diego trial court. Riley moved to suppress the evidence obtained in the warrantless search of his vehicle and his cell phone. The trial court denied his motion, and he was convicted and sentenced to a prison term of 15 years to life. A California Court of Appeals upheld the lower court's judgment, and Riley appealed to the Supreme Court. The Supreme Court decided *Riley v California* along with a similar federal case, *United States v Wurie*.

By a 9-0 vote, the Supreme Court overturned the decisions of the California courts and decided that, as a general rule, under the Fourth Amendment, without a warrant, police may not search

information on a cell phone seized from an individual who has been lawfully arrested. The Court emphasized that searches incident to a valid arrest are limited to the area within the immediate reach of the person arrested for police safety and to prevent the destruction of evidence, and the information on Riley's cell phone could not pose a danger to officers and no evidence related to the weapons charge for which he was arrested was in danger of destruction. Therefore, the Court concluded, there being no "exigent circumstances" in this case to justify a warrantless search, the evidence was inadmissible.

Obergefell v. Hodges (2015)

Ohio defined marriage as a union between one man and one woman. James Obergefell met John Arthur decades ago, and they started a life together. In 2011, Arthur was diagnosed with an incurable disease. In 2013, the two men, resolving to marry before Arthur died, went to Maryland where they were legally wed. Three months later, Arthur died. Ohio law did not permit Obergefell to be listed as surviving spouse on Arthur's death certificate. Obergefell brought suit in U. S. District Court to be shown as surviving spouse on Arthur's death certificate. He challenged Ohio law on grounds that it denied same-sex couples the right to marry in the state or to have their out-of-state legal marriages recognized by Ohio and was thus a violation of the equal protection of the laws clause of the Fourteenth Amendment. The District Court ruled in Obergefell's favor. At the same time, similar or identical cases arose and were decided by U. S. District Courts in Michigan, Kentucky, and Tennessee, and in every one of these, as in Obergefell's case, the District Court ruled in favor of the plaintiffs challenging state laws like Ohio's. All four cases arose in District Courts within the appellate jurisdiction of the same U. S. Court of Appeals which consolidated the cases for decision purposes and reversed the decisions of all four District Courts. The four cases were then appealed to the Supreme Court which consolidated them for purposes of decision.

By a 5-4 vote, the Supreme Court rejected the judgment of the Court of Appeals in all four cases and ruled in favor of the plaintiffs. The majority ruled that the due process of law and equal protection of the law clauses of the Fourteenth Amendment require a state to license marriage between two people of the same sex and to recognize such marriages legally licensed and performed in other states. According to the majority, the hope of the couples in these cases "is not to be condemned to live in loneliness, excluded from one of civilization's oldest institutions. They ask for equal dignity in the eyes of the law. The Constitution grants them that right."

Evenwell v Abbott (2016)

In 1964, in what are called the Supreme Court's "one-man-one-vote" decisions, the Court ruled that members of both houses of a state legislature must be chosen from districts approximately equal in population. When drawing legislative districts, Texas and all other states use the decennial census to determine the population of these districts. After the 2010 census, the Texas Legislature created Texas Senate districts that had a population variance within the parameters allowed (less than 10% variance). Indeed, the Justice Department had approved the districts as drawn. Some Texas citizens, including Evenwell, filed suit against Texas Governor Greg Abbott in a U. S. District Court. They argued that if registered voters and eligible voters, as opposed to total population, were used to determine the population of Senate districts, the variance was as high as 40% between districts. They asserted that the dilution of their votes in relation to voters in other Senate districts was a violation of the one-person-one-vote principle of the equal

protection of the laws clause of the Fourteenth Amendment. They thus argued that district population should be based on registered voters and eligible voters and not on the total population. They sought an injunction barring the use of the existing Senate map. The District Court dismissed the suit, and the plaintiffs then appealed to the Supreme Court.

By an 8-0 vote, the Supreme Court noted that from the beginning of the Republic legislative districts have always been based on total population. The Three-fifths Compromise, which counted slaves for purposes of representation, illustrates that the Framers understood that total population was the basis of representation. Women and children were not voters at the time the Constitution was written, but nowhere was it suggested they should not be counted for purposes of representation. The Court thus concluded that states can continue to use total population as the basis for drawing legislative districts.

Fisher v. University of Texas II (2016)

The University of Texas, Austin uses an undergraduate admissions program with two components. First, as required by Texas' Top Ten Percent law, it offers admission to any student who graduates from a Texas high school in the top 10% of a class. It then fills the remainder of its incoming freshman class, some 25%, by combining an applicant's "Academic Index" (student's SAT score and high school academic performance) with the student's "Personal Achievement Index" (a holistic review containing numerous factors, including race). The University adopted this policy in 2004 after a long study. Abigail Fisher, who was not in the top 10% of her graduating class, was denied admission in 2008. She filed suit in U. S. District Court arguing that the University's use of race as part of its holistic review process disadvantaged her and other Caucasian applicants in violation of the equal protection of the laws clause of the Fourteenth Amendment. The District Court entered judgment for the University, and a U. S. Court of Appeals affirmed that judgment.

By a 4-3 vote (one vacancy and one justice not participating), the Supreme Court ruled that the race-conscious admissions program in use by the University when Fisher applied was lawful under the equal protection of the laws clause of the Fourteenth Amendment. The majority held that it was satisfied that the University's affirmative action program was necessary to achieve a legitimate educational purpose (diversity) and that race-neutral approaches would not be able to achieve that legitimate purpose. However, the majority noted, the University does have a duty to continue to monitor its program to ensure that its constitutionality and efficacy are still valid.