Landmark Decisions
Of
The U.S. Supreme Court

Question * History * Opinion * Precedent

Spring 2015

BRANCHES OF GOVERNMENT

Legislative, Executive, Judicial

Marbury v. Madison (1803)

Question: According to the Constitution and Judiciary Act of 1789, did Marbury have the right to sue for his commission in a federal court and could the court, if finding for Marbury order Secretary of State Madison to deliver his commission?

History: As one of his last official duties, outgoing second President of the United States John Adams appointed William Marbury to the position of Justice of the Peace of the District of Columbia. In order to complete the appointment process, Marbury's letter of commission was to be delivered to him by then Secretary of State, John Marshall. Marbury never received his commission papers. Upon his swearing in, newly elected President Thomas Jefferson ordered his newly appointed Secretary of State, James Madison, to withhold the leftover commissions from the Adams presidency. Marbury was thus denied his appointment to the Justice of the Peace position. Marbury decided to retaliate against Jefferson and Madison by suing them in federal court, asking that they be ordered by the court to deliver his commission so that he may take the position of Justice of the Peace.

Opinion: In a 4-0 decision, the U.S. Supreme Court found that while Marbury could sue in court, the Court could not order the Congress or executive branch to deliver his commission.

Precedent: *Marbury v. Madison* is probably the most important court case in U.S. history. This is because the case set the precedent of judicial review. The fate of Marbury's commission papers are not of primary concern in this case because the Court, using this case, took the opportunity to establish the right of the federal courts to review laws passed by Congress. In this case the Judiciary Act of 1789. Before *Marbury*, it was not certain if federal courts would have this power. After *Marbury*, a firm tradition of court judicial review of laws has been an established as a foundation for checks and balances in our federal system.

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

Question: Can the President of the United States seize private property for what is perceived as a national emergency?

History: The United States was involved in the Korean War in 1950 when troops from North Korea invaded the Republic of Korea. President Harry Truman sent troops to South Korea without asking for a Congressional declaration of war on North Korea. With involvement in this military conflict President Truman chose to create a Wage Stabilization Board that sought to keep down the inflation of consumer prices and wages while avoiding labor disputes whenever possible. The Korean War effort increased the demand for steel. Disputes arose between steel industry management and labor that culminated in an announcement of a strike by the union. President Truman authorized Secretary of Commerce Sawyer to take possession of the steel

industry and keep the mills operating. The Truman administration believed that a strike of any length would cause severe problems for defense contractors and for the domestic economy as a whole. Unable to mediate the differences between the union and the industry, Truman decided to seize their production facilities, while he kept the current operating management of the companies in place to run the plants under federal direction.

Truman might have, rather than seizing the plants, invoked the national emergency provisions of the *Taft-Hartley Act* to prevent the union from striking. The administration rejected that option, however, both from a distaste for the act, which had been passed over Truman's veto five years earlier, and because the administration saw the steel industry, rather than the union, as the cause of the crisis. The administration also rejected use of the statutory procedure provided under Section 18 of the *Selective Service Act of 1948* that might have permitted seizure of the industry's steel plants on emergency grounds. Rejection of these options left only the President's inherent authority to act in response to a national emergency.

Opinion: Justice Black wrote for the majority holding that the President had no power to act except in those cases expressly or implicitly authorized by the Constitution or an act of Congress. Within minutes of the Court's ruling, Truman ordered Commerce Secretary Charles Sawyer to return the steel mills to their owners. Sawyer did so immediately. The steelworkers went out on strike again shortly thereafter. The strike lasted for more than fifty days until the President threatened to use the somewhat cumbersome procedures under the *Selective Service Act* to seize the mills.

Precedent: This decision limited the power of the President of the United States to seize private property in the absence of either specifically enumerated authority under Article Two of the United States Constitution or statutory authority conferred by Congress. The decision represented a check on the most extreme claims of executive power at the time. It also represented the Court's assertion of its own role in intervening in political questions.

Baker v. Carr (1962)

Question: Can federal courts intervene in and resolve reapportionment (determining boundaries for representation) issues related to legislative districts?

History: Plaintiff Charles Baker was a Republican who lived in Shelby County, Tennessee, the county in which Memphis is located. The Tennessee State Constitution required that legislative districts be redrawn every ten years according to the Federal Census to provide for districts of substantially equal population. Baker's complaint was that Tennessee had not in fact followed this procedure since 1901. By the time of Baker's lawsuit, the population had shifted such that his district in Shelby County had about ten times as many residents as some of the rural districts. Representationally, the votes of rural citizens were worth more than the votes of urban citizens. Baker's argument was that this discrepancy was causing an inconsistency with the "equal protection of the laws" required by the Fourteenth Amendment. Defendant Joe Carr was sued in his position as Secretary of State for Tennessee. The state of Tennessee argued that legislative districts were essentially political questions, not judicial ones, as had been held previously by the Court.

Opinion: The opinion was finally handed down in March 1962, nearly a year after it was initially

argued. Overturning precedent, the Court split 6 to 2 in ruling that Baker's case was a judicial, not political, issue.

Precedent: "One person, one vote" was established as a standard for legislative district representation. *Baker v. Carr* and subsequent cases fundamentally altered the nature of political representation in the Unites States, requiring nearly every state to redistrict during the 1960s. This reapportionment increased the political power of urban areas and reduced the influence of more rural areas. After he left the Court, Chief Justice Earl Warren called the *Baker v. Carr* line of cases the most important in his tenure as Chief Justice. The case also enhanced the power of the judiciary in dealings with the legislative branch of government as well as the power of the federal courts over the states.

***United States v. Nixon* (1974)**

Question: Is the President of the Unites States entitled to an absolute, unqualified privilege of immunity (executive privilege) from judicial process under all circumstances?

History: The Watergate scandal began during the 1972 presidential campaign between Democratic Senator George McGovern of South Dakota and President Richard Nixon. On June 17, months before Nixon won the election, five burglars were apprehended for breaking into Democratic National Headquarters located in the Watergate building complex in Washington, D.C.

Nixon appointed Archibald Cox to the position of Special Prosecutor, charged with investigating the break-in, but then arranged to have Cox fired for his independence in the so-called “Saturday Night Massacre.” However, public outrage forced Nixon to appoint a new special prosecutor, Leon Jaworski, who was charged with conducting the Watergate investigation for the government. In April 1974, Jaworski obtained a subpoena ordering Nixon to release certain tapes and papers related to specific meetings between the President and those indicted for the Watergate break-in by the grand jury (the so-called White House Plumbers). Those tapes and the conversations were believed to contain damaging evidence involving the indicted men and perhaps the President himself. Hoping Jaworski and the public would be satisfied, Nixon turned over edited transcripts of forty-three conversations, including portions of twenty conversations demanded by the subpoena. James D. St. Clair, Nixon's attorney, then requested that Judge John Sirica of the U.S. District Court for the District of Columbia quash (stop) the subpoena. Sirica denied St. Clair's motion and ordered the president to turn the tapes over by May 31.

Both St. Clair and Jaworski appealed directly to the Supreme Court. St. Clair argued the matter should not be subject to "judicial resolution" since it involved a dispute taking place within the executive branch. Also, he claimed Special Prosecutor Jaworski had not proven the requested materials were absolutely necessary for the trial of the seven indicted men. Besides, he claimed Nixon had an absolute “executive privilege” to protect communications "between high government officials and those who advise and assist them" in carrying out their duties.

Opinion: It was a unanimous 8-0 ruling falling against President Richard Nixon and was important to the late stages of the Watergate scandal. After ruling that the Court could indeed resolve the matter and that Jaworski had proven a "sufficient likelihood that each of the tapes

contained conversations relevant to the offenses charged in the indictment," the Court went to the main issue of executive privilege. The Court rejected Nixon's claim to "an absolute, unqualified presidential privilege of immunity from judicial process under all circumstances."

Precedent: This case established a crucial precedent on limiting the power of any U.S. President. Nixon, the only person to resign the presidency did so 15 days after the decision.

Hamdan v. Rumsfeld (2006)

Questions: (1) Can the United States Congress pass legislation preventing the U.S. Supreme Court from hearing the case of an accused combatant before a military commission trial takes place? (2) Can the executive branch set up special military commissions that are inconsistent with the Uniform Code of Military Justice and various treaty obligations? (3) Can the U.S. Congress determine whether courts can require enforcement of the articles of the 1949 Geneva Convention?

History: The plaintiff was Salim Ahmed Hamdan, a citizen of Yemen who worked as a bodyguard and chauffeur for Osama bin Laden. He had formerly worked in Afghanistan on an agricultural project that Bin Laden had developed and was captured by militia forces during the invasion of Afghanistan in the fall of 2001 and turned over to the United States. In 2002, he was sent by the U.S. to its new Guantanamo Bay detention camp (Gitmo) at its naval base in Cuba. In July 2004, Hamdan was charged with conspiracy to commit terrorism, and the Bush administration made arrangements to try him before a special military commission, established by the Department of Defense under Military Commission Order No. 1 of March 21, 2002. He was assigned a defense counsel, LCDR Charles D. Swift from the Navy JAG, who with a legal team filed a petition for Hamdan in U.S. District Court for a writ of habeas corpus, challenging the constitutionality of the special military commission, and saying that it lacked the protections required under the Geneva Conventions and United States Uniform Code of Military Justice.

Decision: On June 29, 2006, the U.S. Supreme Court issued a 5-3 decision holding that it had jurisdiction to review such cases and that the Bush administration did not have authority to set up these particular military commissions without congressional authorization.

Precedent: A military commission set up by the executive branch to try detainees at Guantanamo Bay did not have "the power to proceed because its structures and procedures violate both the Uniform Code of Military Justice and the four Geneva Conventions signed in 1949."

LEVELS OF GOVERNMENT

Federal, State, Local

McCulloch v. Maryland (1819)

Question: Does the Necessary and Proper Clause to Article I Section 8 of the Constitution allow for the creation of an unspecified bank in order to properly establish a mandated system of currency?

History: With an interest in damaging the credibility and operation of the Second Bank of the United States, the state of Maryland passed a series of laws that placed a tax on all bank notes not chartered explicitly in the state of Maryland. Maryland leaders passed the taxes in part because of the belief that the Second Bank of the United States was unconstitutional, since nowhere in the Constitution of the United States was it written that such a bank would be created or may exist. Federal officials, however, argued that while it is true that the Constitution does not specifically mention such a bank, the language of the Constitution implies such a bank can be created. The Necessary and Proper Clause, located in Article I Section 8 of the Constitution says that the Congress can make all laws that shall be necessary and proper for carrying out the powers of the Constitution. One such power is the creation of a national currency, thus, the federal government would be justified in creating a national bank in order to fulfill this constitutional responsibility.

Opinion: In a 7-0 decision, the U.S. Supreme Court ruled in favor of the federal government. The Court found that the Necessary and Proper Clause did indeed allow for the creation of a bank.

Precedent: The *McCulloch* case is extremely important because it allows the federal government to use its "implied powers" to create laws or entities that are often not directly mentioned in the Constitution. The Court affirmed the right of the federal government to create "all laws which shall be necessary and proper" to carry out powers listed in the Constitution of the United States. One such power at stake is the coining of a United States currency. Today, a broad range or laws and entities not specifically mentioned by the Constitution are created by the federal government, always with the provision that those laws or entities are intended to carry out some specific provision or power with constitutional intent.

Barron v. Mayor of Baltimore (1833)

Question: Does the Takings Clause (no property may be taken unless for public use and with just compensation) of the Fifth Amendment apply to state governments who take private property?

History: John Barron, a successful wharf master in Baltimore, Maryland found his profitable wharf space rendered unserviceable due to a construction project launched under the direction of the City of Baltimore. Barron sued the Mayor and City Council of Baltimore for damages to his wharf space. Barron's case first began in the lower trial court and Barron won a judgment of $4500 (today adjusted for inflation approximately $129,000 in purchasing power). The City of Baltimore brought the case to an appellate court and Barron's judgment was reversed. Barron

then appealed the case to the U.S. Supreme Court seeking relief under the Takings Clause of the Fifth Amendment.

Opinion: In a unanimous decision, the Court ruled in favor of the City of Baltimore. Any relief against the city's actions would only be accomplished within the state court system.

Precedent: The *Barron* case is important because the precedent set by the Court would not be overturned for almost one hundred years. The Court's ruling in the *Barron* case sent a message throughout the federal court system that the federal Bill of Rights only applied to federal cases. Those individuals who were seeking relief in state cases would not be able to reliably claim Bill of Rights protections and would have to instead look to their own state constitutions. The *Barron* precedent would be later replaced by the case *Gitlow v. New York* and the Fourteenth Amendment, both of which began to apply federal Bill of Rights protections to most cases throughout the United States. The process of applying federal Bill of Rights protections to state cases is termed incorporation.

National League of Cities v. Usery and California v. Usery (1976)

Question: Does the Tenth Amendment prevent Congress from exercising its commerce powers to regulate wages, hours, and benefits of state employees, when doing so is a power traditionally reserved to states?

History: This case involved a dispute concerning the extent of the government's Commerce Clause powers over the direct activities of a state. The Fair Labor Standards Act (FLSA) was amended to remove state exemptions pertaining to employees of state institutions. The FLSA imposed on all public employers certain minimum wage standards and maximum work hours that were previously restricted to only those individual businesses and private employees engaged in interstate commerce. The amended FLSA now applied equally to all state employees including those in hospitals and schools that are areas typically thought to be outside the area of "interstate commerce" regulatory powers.

Opinion: By a 5-4 vote the Court ruled the U.S. Congress did not have such authority because the 1974 Amendments to the Fair Labor Standards Act were unconstitutional.

Precedent: The significance of these companion cases is that they represented a sharp break with a long tradition in which the Court had broadly interpreted the Interstate Commerce Clause, thereby giving Congress great power. At the time these cases also represented an unusual affirmation of the principles of states' rights and decentralization.

Garcia v. San Antonio Metropolitan Transit Authority (1985)

Question: Does the U.S. Congress have the power under the Commerce Clause of the Constitution to extend the Fair Labor Standards Act (which requires that employers provide minimum wage and overtime pay to their employees) to state and local governments?

History: When Congress passed the Fair Labor Standards Act (FLSA) in 1938, it did not apply either to employees of private transit companies or to employees of state and local governments. Congress extended coverage of the FLSA's minimum wage provisions to employees of private

transit companies of a certain size in 1961, then amended the FLSA to cover some employees of state and local governments in 1966 by withdrawing the minimum wage and overtime exemptions for public hospitals, schools, and mass transit carriers whose rates and services were subject to state regulation. At the same time, Congress eliminated the overtime exemption for all mass transit employees other than drivers, operators, and conductors. Congress later phased out these overtime exemptions when amending the FLSA in 1974.

As we have just seen, in 1976 the Court held in *National League of Cities* that Congress lacked authority to regulate the wages and hours of governmental employees performing "traditional governmental functions." The San Antonio Metropolitan Transit Authority which had been observing the overtime requirements of federal law up to that point, responded by informing employees that it was no longer obliged to provide them with overtime pay.

In 1979, the Wage and Hour Division of the United States Department of Labor took the position that SAMTA's operations were covered by the FLSA because they were not a traditional governmental function. SAMTA then filed suit in the United States District Court for the Western District of Texas seeking a judgment that its transit operations were beyond Congress' power to regulate. The Department of Labor filed a counterclaim seeking enforcement of the act. Joe G. Garcia and other employees of SAMTA brought their own suit in the same court seeking to recover the overtime pay they claimed they were owed.

Opinion: In its decision the Court ruled 5-4 that the concept of "traditional governmental functions" was analytically unsound and that Congress had the power under the Interstate Commerce Clause to apply the FLSA to employees of state and local governments.

Precedent: The Court now rejected the theoretical underpinnings of the *National League of Cities v. Usery* decision—that the Constitution's recognition of the sovereignty of the states necessarily implies limits on the power of the federal government to regulate their employment relations. In the majority's view, the constitutional grant of authority to Congress to regulate interstate commerce was not qualified by any implied limitation on the right to regulate the activities of the states when they engaged in interstate commerce; on the contrary, the Commerce Clause invalidates state regulations that interfere with commerce, while the Supremacy Clause allows Congress to preempt state laws that conflict with federal law in this area.

Arizona v. United States (2012)

Question: Does Arizona's *Support Our Law Enforcement and Safe Neighborhoods Act* improperly usurp the federal government's authority to regulate immigration laws and enforcement of such laws?

History: The case was filed by the United States Justice Department in the United States District Court for the District of Arizona challenging Arizona's *Support Our Law Enforcement and Safe Neighborhoods Act.* The act made it a state misdemeanor crime for an illegal immigrant to be in Arizona without carrying registration documents required by federal law, authorized state and local law enforcement of federal immigration laws, and cracked down on those sheltering, hiring and transporting illegal immigrants. The plaintiffs also referenced the notion of federal preemption and stated, "The Constitution and the federal immigration laws do not permit the

development of a patchwork of state and local immigration policies throughout the country." In addition, the law sparked concerns over potential civil rights violations and racial profiling. The Federal District Court issued an order denying in part and granting in part the U.S. Justice Department's request for changes. Among the provisions that went into effect were the following: (1) prohibiting Arizona officials, agencies, and political subdivisions from limiting enforcement of federal immigration laws; (2) requiring that state officials work with federal officials with regard to undocumented immigrants; and, (3) allowing legal residents to sue any state official, agency, or political subdivision for adopting a policy of restricting enforcement of federal immigration laws to less than the full extent permitted by federal law. An appeal of the U.S. District Court's ruling was filed. The U.S. Court of Appeals for the Ninth Circuit ruled against Arizona and in favor of the Obama Administration by upholding the district court's ban on parts of the law.

Opinion: The Court struck down three of the four provisions of the law including: (1) requiring legal immigrants to carry registration documents at all times; (2) allowing state police to arrest any individual for suspicion of being an illegal immigrant; and (3) making it a crime for an illegal immigrant to search for or to hold a job in the state. All Justices agreed to uphold the provision of the law allowing Arizona state police to investigate the immigration status of an individual stopped, detained, or arrested if there is reasonable suspicion that individual is in the country illegally.

Precedent: The case provides an interesting clarification on the nature of states' rights vs. national supremacy in the area of immigration policy.

***National Federation of Independent Business, et al., v. Sebelius, Secretary of Health and Human Services, et al.* (2012)**

Question: Is a legal mandate by the U.S. Congress that citizens secure health insurance constitutional?

History: Congressional Democrats' decades-long effort to enact a health care law evolved into the *Patient Protection and Affordable Care Act*. The law was passed in 2010, but didn't take full effect until 2014. At the core of the legislation is the mandate that Americans obtain health insurance by the 2014 deadline. The legal battles over the health care legislation began, literally, moments after President Obama signed it into law. Dozens of lawsuits nationwide challenged it. The U.S. Supreme Court agreed to hear a suit brought by Florida and 25 other states, as well as a challenge brought by the National Federation of Independent Business.

Opinion: Chief Justice John G. Roberts Jr. joined the Supreme Court's liberals to save the heart of President Obama's landmark health care law. In a 5-4 ruling the Court agreed that the law's requirements were permissible under Congress's taxing authority. Roberts summed up the split-the-difference decision: "The federal government does not have the power to order people to buy health insurance," he wrote. "The federal government does have the power to impose a tax on those without health insurance." The Court's four liberal justices Ruth Bader Ginsburg, Stephen G. Breyer, Sonia Sotomayor and Elena Kagan joined Roberts in the majority. In another part of the decision, the Court ruled that a section of the law involving Medicaid must change. The law

calls for an expansion of eligibility for Medicaid coverage to millions more poor and disabled people including a requirement that states rapidly participate in the extension of coverage to new beneficiaries or risk losing existing Medicaid funding. The Court said the government must remove that threat.

Precedent: The decision keeps in place the largest new social program in a generation, a major overhaul of the health care system that could extend coverage to about 30 million Americans. It creates state-run insurance exchanges and eliminates what have been some of the most unpopular insurance practices including the provisions that prohibit insurers from denying coverage for pre-existing medical conditions and allow parents to keep their children on family policies to the age of 26. It also requires individuals to have health insurance, either through their employers or a state, or face a fine beginning in 2014. There are, however, a number of exemptions. For instance, the penalty will be waived for people with very low incomes who are members of certain religious groups, or who face insurance premiums that would exceed 8% of family income after including employer contributions and federal subsidies.

Gonzales v. Raich (2005)

Question: Can the U.S. Congress, under the Commerce Clause of the Constitution, criminalize the production and use of home grown cannabis even where states approve its use for medicinal purposes?

History: Angel Raich of Oakland, California, Diane Monson of Oroville, California, and two anonymous caregivers sued on October 9, 2002 to stop the federal government from interfering with their right to produce and use medical marijuana claiming that the Controlled Substances Act was not constitutional as applied to their conduct. Angel Raich claimed she used marijuana to keep herself alive. She and her doctor claimed to have tried dozens of prescription medicines for her numerous medical conditions, and that she was allergic to most of them. Her doctor declared under oath that Raich's life was at stake if she could not continue to use marijuana. Diane Monson suffered from chronic pain due to a car accident a decade before the case. She used marijuana to relieve the pain and muscle spasms around her spine. The Controlled Substances Act does not recognize the medical use of marijuana. Agents from the federal Drug Enforcement Administration (DEA) were assigned to break up California's medical marijuana co-ops and seize their assets.

Opinion: The ruling was 6-3 with Justice Scalia joining Justices Kennedy, Stevens, Ginsburg, Souter and Breyer for the majority and indicating that federal regulation is squarely within Congress' commerce power because production of any commodity meant for home consumption has a substantial effect on supply and demand in the national market for that commodity.

Precedent: This case supports the contention that federal law can preempt state law when federal regulation is required to protect interstate commerce. The federal government successfully argued that if a single exception were made to the Controlled Substances Act, it would become unenforceable in practice. The government also contended that consuming one's locally grown marijuana for medical purposes affects the interstate market for marijuana, and hence that the federal government may regulate—and prohibit—such consumption. In 2009,

the Department of Justice under Attorney General Eric Holder issued new guidelines allowing for non-enforcement of the federal ban in some situations:

"It will not be a priority to use federal resources to prosecute patients with serious illnesses or their caregivers who are complying with state laws on medical marijuana, but we will not tolerate drug traffickers who hide behind claims of compliance with state law to mask activities that are clearly illegal."

FIRST AMENDMENT

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

Schenck v. United States (1919)

Question: Does the free speech portion of the First Amendment to the Constitution protect speech that may be potentially dangerous to public safety?

History: Charles Schenck, a member of the Socialist Party, attempted to circulate a flyer to men reporting to the draft for entry into World War I. Schenck's flyer described the draft as a violation of the Thirteenth Amendment to the Constitution of the United States, which forbids slavery. The purpose of the flyer was to urge men to avoid being drafted for the war. Schenck was arrested by the New York authorities for violating the Espionage Act, which made it a crime to assist enemies of the United States during times of war.

Opinion: In a 9-0 ruling, the Supreme Court ruled that Charles Schenck's trial court conviction was constitutional. The court concluded that Schenck's flyer, which argued for men to avoid the draft and thus deprive the country of required military strength while fighting its enemies, constituted a "clear and present danger" to public safety.

Precedent: The Court established the "clear and present danger" rule, which allows for federal and state governments to create statutes that criminalize various forms of speech that may place members of the public in danger. In the words of Chief Justice Oliver Holmes, "The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic."

Gitlow v. New York (1925)

Question: Does the Free Speech portion of the First Amendment to the Constitution protect speech that argues for the overthrow of the United States government?

History: Benjamin Gitlow, author of a pamphlet titled *"The Left Wing Manifesto"* that urged members of society to resort to strikes and means other than the ballot box for radical social change, was convicted in a state of New York trial court for violating laws banning criminal anarchy. Gitlow's lawyers argued that he was simply exercising his First Amendment free speech rights when he wrote the pamphlet. The New York appellate courts affirmed the lower trial court conviction. Gitlow then appealed his case to the U.S. Supreme Court.

Opinion: In a 7–2 ruling, the Supreme Court upheld Gitlow's lower court conviction and further defined the clear and present danger doctrine regarding speech. Writing for the majority, Justice Sanford reasoned that, "it is a fundamental principle, long established, that the freedom of speech and of the press which is secured by the Constitution, does not confer an absolute right to speak

or publish, without responsibility, whatever one may choose, or an unrestricted and unbridled license that gives immunity for every possible use of language and prevents the punishment of those who abuse this freedom."

Precedent: The *Gitlow* case is notable for two very important reasons. First, the Court reaffirmed its position regarding the curtailing of speech that is deemed a "clear and present danger" to the public safety. Established in the case *Schenck v. United States*, the clear and present danger doctrine would be modified by the case *Brandenburg v. Ohio*. Second, as an almost incidental note to the case, the Supreme Court held that the Due Process clause of the Fourteenth Amendment applied the Bill of Rights to not only federal cases but state cases as well. This was a clear reversal of the precedent established in *Barron v. Baltimore* that the federal Bill of Rights only applied to federal court cases. Because of *Gitlow*, the Court was signaling the beginning of its commitment to what is now referred to as incorporation of the Bill of Rights.

***Everson v. Board of Education* (1947)**

Question: Does using tax money to pay for transportation to private religious schooling violate the Establishment Clause of the First Amendment?

History: A New Jersey law was passed that allowed local school boards to help pay for the costs of transporting students to and from private schools. Arch Everson, a resident of New Jersey, filed suit against the Ewing Township school board alleging that using tax money to pay for transporting children to private religious schools was in violation of the Establishment Clause of the First Amendment. After losing his case in a New Jersey appellate court, Everson appealed to the U.S. Supreme Court.

Opinion: In a 5-4 ruling, the Supreme Court determined that the New Jersey law did not violate the Establishment Clause of the First Amendment. In the decision, however, Justice Hugo Black laid down the most sweeping description of the intention of the Establishment Clause before or since the case.

Precedent: Black's description of the Establishment Clause creates the following conditions for constitutionality: (1) the federal or state governments may not set up a church; (2) the federal or state governments may not establish an official religion; (3) the federal or state governments cannot force an individual to go to or stay away from a church; (4) the federal government or state governments cannot compel an individual to believe or disbelieve in a religion; (5) the federal government or state governments cannot use tax money to support a church; (6) no laws may be passed that aid a religion, all religions, or prefer one religion over another.

Dennis v. United States (1951)

Question: Does the free speech provision of the First Amendment protect speech that advocates an overthrow of the U.S. government?

History: Eugene Dennis, General Secretary of the Communist Party USA, and several other members of the party were arrested for violating the Smith Act. The Smith Act criminalized any teaching or discussion that advocated the overthrow of the government of the United States. Dennis argued through his lawyers that his activities as General Secretary of the Communist Party USA were legal as he was merely exercising his free speech rights to discuss principles of communism included in books often found in public libraries.

Opinion: In a 6-2 ruling, the Court affirmed the conviction of Dennis in a lower federal trial court. The Court ruled that a "clear and present danger" allowed for such convictions and that the level of "evil" in speech, regardless of its improbability, may in fact outweigh the free speech protection afforded by the First Amendment.

Precedent: The Court established a test by which the gravity of "evil" present in speech may help to illustrate its "clear and present danger" to public safety. This test would later be replaced by the "imminent lawless action" rule that exchanged the level of "evil" in speech for the probability that said speech may actually lead to imminent (immediate) danger to the public.

Roth v. United States (1957)

Question: Does the "free speech" provision to the First Amendment protect material the federal government or a state government consider to be "obscene"?

History: Samuel Roth, a New York publisher, sent out a mass mailing for his magazine *American Aphrodite*. This publication featured tales of erotica and several nude photographs. Roth was arrested by the federal government for violating federal laws prohibiting the sending of obscene material through the U.S. Post Office. Roth was convicted in a U.S. district court but his lawyer appealed to the U.S. Supreme Court arguing that the First Amendment protected Roth's mailings.

Opinion: The Supreme Court, in a 6-3 ruling, found that the federal court conviction of Roth was constitutionally valid. Justice Brennan, writing in the majority, found that the free speech provision of the First Amendment protects only speech that is "socially redeeming" or significant, and that pornographic material did not meet this requirement. Obscene or pornographic material appeals, according to Brennan, to our "prurient" interests, which is simply our lustful nature.

Precedent: The Roth case allowed communities to establish laws against the sale or distribution of obscene or pornographic material. The case did not, however, establish a clear guideline as to what constitutes the definition of obscene or pornographic.

Engle v. Vitale (1962)

Question: Does a voluntary school sanctioned non-sectarian prayer violate the Establishment Clause of the First Amendment?

History: Students at New York's Herricks Senior High School (as well as other schools in the district), opened each school day with a voluntary non-sectarian prayer sanctioned by the school board that read, "Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessings upon us, our parents, our teachers and our country. Amen." Several parents of the students brought forth a case regarding the prayer under the claim that the prayer violated the Establishment Clause of the First Amendment.

Opinion: In a 6-1 ruling, the Supreme Court found that the Herricks Senior High School prayer violated the Establishment Clause of the First Amendment. Because of the fact that the school sanctioned the prayer, the Court was not swayed by the voluntary nature of the prayer. This is because the Court upheld the principle of non-advancement of religion by the government as established by the *Everson v. Board of Education* case.

Precedent: The Engle case set the legal stage for the removal of school sanctioned prayer from schools across the United States. Private prayer by a student, done in a way that does not interrupt class instruction, remained legal after Engle and is still legal to this day.

Stanley v. Georgia (1969)

Question: Does the free speech provision of the First Amendment to the Constitution protect the private possession of obscene or pornographic material?

History: Federal and state law enforcement authorities raided the home of Robert Stanley, a suspected bookmaker, in an effort to gain evidence of his alleged crimes. During the search of his home, police came across three films that depicted graphic sexual activities. Stanley was arrested and convicted of violating a Georgia law prohibiting private possession of obscene or pornographic material. Stanley ultimately appealed his conviction to the U.S. Supreme Court arguing that his private pornography was protected by the free speech provision of the First Amendment.

Opinion: In a unanimous decision, the Supreme Court reversed Stanley's lower court conviction. The Court reasoned that private possession of obscene material featuring adults did not constitute a danger to the public, and that "whatever may be the justification for other statutes regulating obscenity, we do not think they reach into the privacy of one's home. If the First Amendment means anything, it means that a state has no business telling a man, sitting alone in his own house, what books he may read or what films he may watch."

Precedent: The opinion of the Court struck down laws in the states forbidding the ownership of adult related pornographic material. The Court, in *Osborne v. Ohio*, would not apply this precedent to laws related to child pornography.

***Tinker v. Des Moines* (1969)**

Question: Does a nonverbal demonstration, such as the wearing of a black armband, receive the same level of free speech protection afforded by the First Amendment to the U.S. Constitution as a verbal demonstration? Does a school board have the legal right to ban forms of symbolic political speech?

History: John Tinker and his sister Mary Beth Tinker, of Des Moines, Iowa, decided to wear black armbands to their schools in protest of the war in Vietnam. The school board of Des Moines passed a policy that barred such acts as the wearing of symbolic protest material. If students violated the policy, they would be subjected to suspension. The Tinkers violated the policy and were dismissed from school. Their parents soon filed a lawsuit against the school board; however, a U.S. District Court decided in favor of the school board. A U.S. Court of Appeals also sided with the school board. The Tinkers then appealed for relief to the U.S. Supreme Court.

Opinion: In a 7-2 decision, the Supreme Court ruled in favor of the Tinkers.

Precedent: The Court's decision established a firm precedent for nonverbal political demonstrations and also gave a limited scope of protection for public school students seeking to engage in such nonverbal political acts.

***Brandenburg v. Ohio* (1969)**

Question: Does the free speech provision of the First Amendment to the U.S. Constitution protect forms of political speech that seem to advocate violence, even if in a vague way?

History: Clarence Brandenburg, an Ohio Ku Klux Klan leader, appeared in an Ohio KKK rally filmed by a local Cincinnati television station. During his appearance, Brandenburg and his fellow Klansmen burned a cross and gave a speech advocating "vengeance" against blacks, Jews, the President of the United States, and the Congress of the United States. Brandenburg was arrested and charged with violating an Ohio statute that made it illegal to advocate violent acts for political or social reform. Brandenburg's attorneys argued that his speech was protected by the Free Speech provision to the First Amendment. After being rejected by the Supreme Court of Ohio, Brandenburg appealed his case to the U.S. Supreme Court.

Opinion: The U.S. Supreme Court reversed Brandenburg's Ohio trial court conviction. The Court concluded that the speech given by Brandenburg did not present a clear and present danger to public safety, as established in *Schenck v United States*, because his speech made vague references to violent acts. In order for speech to truly qualify as a clear and present danger to public safety, the Court established the "imminent lawless action" test specifying that speech, which advocates lawlessness, must be seen as creating a condition that will immediately lead to such lawlessness. In Brandenburg's case, no immediate lawlessness would reasonably be seen to occur as a result of his words.

Precedent: The "imminent lawless action" test would be the last major statement from the Court regarding the issue of speech and clear and present danger to public safety.

Lemon v. Kurtzman (1971)

Question: Do laws passed to help private religious schools cover their costs of operation violate the Establishment Clause of the First Amendment?

History: A 1968 law passed in the Commonwealth of Pennsylvania allowed the government to help pay for the costs of teaching salaries and materials in private religious schools. Alton Lemon, a resident of the Commonwealth of Pennsylvania filed suit against the Superintendent of Public Instruction for the Commonwealth of Pennsylvania based on his belief that the law violated the Establishment Clause of the First Amendment.

Opinion: In a 7-1 ruling, the Supreme Court found the Commonwealth of Pennsylvania's laws to be unconstitutional. The Court based its decision on a strict reading of the Establishment Clause of the First Amendment.

Precedent: The Court's decision allowed the majority to establish the *Lemon* test for the constitutionality of government aid to any religious institution, which directs that: (1) the government action must be secular in purpose; (2) the government action may not advance nor inhibit a religion; (3) the government action may not place the government into an entangled relationship with a religion.

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

Question: Does the constitutional freedom of the press, guaranteed by the First Amendment, supersede a claimed need of the executive branch of government to maintain the secrecy of information?

History: President Richard Nixon had claimed executive authority to force the *Times* to suspend publication of classified information in its possession. Federal district and appellate courts supported the position of the *New York Times* and their right to publish such information.

Opinion: In a 6-3 decision, the Supreme Court agreed with the two lower courts that had originally decided that the government had not met its "heavy burden" of showing a justification for a prior restraint. The Court issued a very opinion, stating only that the Court concurred with the decisions of the two lower courts to reject the government's request to stop publication. The Justices' opinions included different degrees of support for the clear *superiority* of the First Amendment and no Justice fully supported the government's case.

Precedent: This was a landmark decision by the U.S. Supreme Court on the First Amendment. The ruling made it possible for the *New York Times* and *Washington Post* newspapers to publish the then-classified *Pentagon Papers* without risk of government censorship or punishment. The significance of the case and the wording of the Justices' opinions have added important statements to the history of precedents for exceptions to the First Amendment, which have been cited in numerous Supreme Court cases since.

***Miller v. California* (1973)**

Question: Can a state regulate expression that is determined to be obscene, and under what conditions can a state declare material obscene?

History: Marvin Miller, owner of a large pornographic mail order company, sent out a mass mailing advertising his pornographic books titled *Intercourse, Man-Woman, Illustrated History of Pornography*, and *Sex Orgies Illustrated*. The advertisements contained pictures and drawings featuring explicit sex acts. One such advertisement was sent to a pizzeria in Newport Beach, California and the restaurant's owner complained to police about the graphic nature of the advertisements. Miller was arrested and convicted in a California court for distribution of obscene material, which was illegal under California law. Miller's attorney ultimately appealed the case to the U.S. Supreme Court claiming First Amendment protection for Miller's right to advertise his products.

Opinion: The U.S. Supreme Court, in a 5-4 decision, ruled that a state may declare expression obscene if all of the following conditions apply to the material in question: (1) if an average person, applying contemporary community standards, finds the work, taken as a whole, appeals to a prurient interest in sex, (2) if the material depicts, in a patently offensive way, sexual conduct and (3) if the material, taken as a whole, lacks serious redeeming artistic, literary, political, or scientific merit.

Precedent: The Burger test, named after Chief Justice Warren Burger, would set up our current legal understanding of obscenity. The first provision provides that obscenity would largely be determined at the local level and be judged by juries. The second provision establishes that, from a legal standpoint, it is sexual material that will be subject to obscenity law. The third provision, often seen as a loophole, will limit the use of obscenity charges to those cases where no redeeming qualities appear in the work, which in effect might exclude example such as a nude painting or sculpture by a Renaissance master artist.

Jenkins v. Georgia (1974)

Question: Can the courts monitor local community standards and judgments on what is considered obscene in order to protect the First Amendment's guarantee of freedom of expression?

History: A theatre in Albany, Georgia showed the film *Carnal Knowledge*. The local police served a search warrant on the theatre, and seized the film. In March 1972, the theatre manager, Mr. Jenkins, was convicted of the crime of "distributing obscene material depicting sexual conduct" and the Supreme Court of Georgia upheld the conviction.

Opinion: The U.S. Supreme Court found that the State of Georgia had gone too far in classifying material as obscene in view of its prior decision and standards established in *Miller v. California* and overturned the conviction. The Court did not feel this particular film was either obscene or pornographic.

Precedent: Changes in the morals of American society and the general receptiveness of the public to frank discussion of sexual issues can sometimes be at odds with local community standards. Therefore, local communities can be determined to be in error and corrected regarding their interpretations of the First Amendment.

***Nebraska Press Association v. Stuart* (1976)**

Question: Can the press be prevented from releasing, through publication, information that could impact the guilt or innocence of a criminal defendant?

History: In relation to a sexual assault in Sutherland, Nebraska, six people in a family were killed. Police discovered the bodies of the six individuals from the family of Henry Kellie on October 18, 1975. After the defendant Erwin Charles Simants was detained by law enforcement, there was a high level of media coverage of the criminal justice proceedings. Police talked to media who had traveled to the location of the incident, and informed them of descriptive characteristics of the suspect. The attorney for the defendant, in addition to the prosecutor handling the case, requested the state court system in Nebraska to reduce the intensity of the reporting on the incident due to a concern over neutral jury selection. Simants had given law enforcement a confession during the course of the case. After the requests by the attorneys for the defense and the prosecution, the County Court (subsequently affirmed and changed by the Nebraska Supreme Court) ruled media coverage would be barred from information "strongly implicative" of the defendant, in addition to the confession. After a challenge of the ruling by a group of representatives of the press, the trial court judge in the case declined to remove the order indicating that there was a clear and present danger that pre-trial publicity could impinge upon the defendant's right to a fair trial.

Opinion: In a unanimous vote, the Court ruled that a gag order imposed on the press by trial judge Stuart violated the First Amendment's guarantee of freedom of the press. According to the ruling, it was inappropriate to bar media reporting on a criminal case prior to the trial itself, except in matters where a "clear and present danger" existed that would impede the process of a fair trial. The Court noted that the trial court had other means to ensure the process of a fair trial guaranteed by the Sixth Amendment, including: (1) moving the location of the trial to "a place less exposed to the intense publicity", (2) delaying the criminal proceedings until after media attention had died down, (3) querying jurors to make certain they are impartial, (4) issuing instructions to the jury telling them to only consider the evidence presented in the trial, (5) and sequestering the jury instead of silencing the media.

Precedent: Prior to the 1976 ruling by the U.S. Supreme Court, lower courts in the United States had initiated a practice of barring intense levels of reporting on certain issues in criminal matters; media coverage of such rulings referred to them as "gag orders." In terms of media coverage of criminal trials First Amendment freedom of the press took priority over potential concerns with Sixth Amendment right to a fair trial by an impartial jury.

***New York v. Ferber* (1982)**

Question: Does the free speech provision of the First Amendment protect the sale of material that depicts the sexual activities of children?

History: The New York City police arrested bookstore owner Paul Ferber for selling a set of child pornography films. He was charged with violating a local statute that criminalized the sale of any material depicting sexual activities of a child under 16. Convicted in a local trial court, Ferber appealed his conviction to a New York appellate court that ruled in favor of Ferber, citing protection of the material under the free speech provision to the First Amendment. The New York court system asked for a review of the case by the U.S. Supreme Court.

Opinion: In a unanimous ruling, the U.S. Supreme Court ruled in favor of the New York anti-child pornography law and affirmed their conviction of Ferber. The Court argued that the federal and state government has a compelling interest in protecting the sexual exploitation of children and that the sale or distribution of child pornography is related to the sexual abuse of children.

Precedent: The *Ferber* case established the economic argument for banning child pornography, as the sale or distribution of child pornography establishes a demand-based market for the material and thus brings more children into the network of child pornography production. A seller of child pornography is equally to blame for the exploitation of the children depicted in the work as those who actually produce the work.

***Wallace v. Jaffree* (1985)**

Question: Does the Establishment Clause of the First Amendment prohibit administration led moments of silence for prayer in public schools?

History: According to a 1978 law, teachers in the Alabama public school system were required to set aside a moment of silence before school started in order to allow for student meditation, reflection, or prayer. The Alabama legislature revisited the school prayer issue once again in 1981 enacting a new law that allowed teachers to provide a one-minute period of "voluntary prayer." In 1982 the Alabama legislature proposed another law, this time allowing a teacher to lead a class of "willing students" in prayer within the public school system. Ishmael Jaffree, originally raised a Baptist but later an agnostic, and his wife, Mozelle, a Bahai, initiated a legal challenge to the 1981 law on behalf of his three children, all attending the Mobile Public School System. Eventually the case reached the U.S. Supreme Court.

Opinion: In a 6-3 ruling, the Supreme Court found the Alabama laws to be in violation of the Establishment Clause of the First Amendment. Writing for the majority, Justice Stevens pointed out that, "whenever the State itself speaks on a religious subject, one of the questions that we must ask is whether the government intends to convey a message of endorsement or disapproval of religion."

Precedent: Because of the *Jaffree* ruling, the Court reaffirmed its position that any type of public school administration led activity meant to promote prayer would be struck down. The key

feature here is that the Alabama laws indicated that the moment of silence was meant for prayer time, and since this case moments of silence in public schools have been reserved for "silent reflection."

Texas v. Johnson (1989)

Question: Does the free speech provision of the First Amendment protect the symbolic act of burning the American flag?

History: Gregory Lee Johnson, a member of a Communist Party front group, engaged in a political demonstration outside of the 1984 Republican Party National Convention in Dallas, Texas. The group of protesters Johnson found himself in soon rallied around Johnson as he burned an American flag while the crowd chanted "America, the red, white, and blue, we spit on you." By burning the flag as a sign of protest, Johnson fell afoul of a Texas statute that criminalizes the "desecration of a venerated object" in the state of Texas. Johnson was tried and convicted in a Texas trial court and sentenced to one year in prison with a fine of $2,000. Johnson appealed the case to a higher Texas appellate court and had his conviction reversed because the court found that his burning of the flag did not place anyone in danger. Johnson further appealed to the U.S. Supreme Court in order to argue that the law itself violated his free speech rights.

Opinion: In a 5-4 ruling, the majority found that flag desecration is a protected form of free speech according to the First Amendment. Desecration of the flag is an act meant to convey significant political meaning, thus the act is a form of symbolic speech that must be protected even if unpopular.

Precedent: The controversial ruling, while unpopular with many Americans, upheld the right of the people to speak in symbolic ways against their own country. The Court in effect nullified state laws against flag burning.

Employment Division of Oregon v. Smith (1990)

Question: Does the Free Exercise Clause of the First Amendment protect an individual's use of illegal drugs for religious practice?

History: The Council on Alcohol and Drug Abuse Prevention and Treatment facility in Cascadia, Oregon, forbid employees from using alcohol or nonprescription drugs as a condition of their employment. Galen Black, one of the clinic's drug and alcohol counselors, was fired in October 1983 after ingesting a small amount of peyote, a hallucinogen. Alfred Smith, another counselor, was fired six months later for ingesting peyote. Both men were members of the Native American Church, a several centuries old church in North America that regularly promotes the use of peyote as a sacrament. Smith and Black both applied to the state of Oregon's unemployment compensation program but were denied due to being fired for drug use. Smith and Black both argued to the courts that they were fired as a result of their religious beliefs. A state compensation board heard their claim and awarded the men unemployment compensation, but the state of Oregon appealed the decision to the U.S. Supreme Court, arguing that the men should

not receive any compensation benefits.

Opinion: In a 6–3 ruling, the Supreme Court decided in favor of the state of Oregon, denying Smith and Black's unemployment claims. Justice Scalia, speaking for the majority, stated that the right to violate state laws because of one's religious beliefs is not constitutionally protected, provided that the laws are part of an effort to ensure public safety. Oregon's drug laws are meant to protect public safety, therefore the state of Oregon was not targeting Smith and Black's religious beliefs when their claims were denied. The state's interest in protecting the public from the danger of illegal drugs overrides Smith and Black's right to practice their religious sacrament.

Precedent: The ruling set a precedent regarding religious practice and public safety, as the Court preferred to side with the state's need to provide for public safety rather than an individual's need to practice their religious beliefs freely.

***Lee v. Weisman* (1992)**

Question: Do public schools have the ability to include religious prayer at an officially sanctioned school gathering such as a graduation ceremony?

History: A Jewish Rabbi was invited to give a prayer at the 1989 graduation ceremony for Nathan Bishop Middle School in Providence, Rhode Island. The parents of Deborah Weisman, a student at Nathan Bishop, sued the principal of the middle school on the grounds that the invitation of the Rabbi violated the Establishment Clause of the First Amendment.

Opinion: In a 5-4 ruling, the U.S. Supreme Court found the invitation of Rabbi Weisman to be unconstitutional based upon the Establishment Clause of the First Amendment. The Court found that the invitation gave implied consent to the validity of religious belief and served to promote the belief in religion.

Precedent: The *Lee v. Weisman* case affirmed the Court's position since *Engle v. Vitale* that administration sanctioned school prayer is a violation of the Establishment Clause of the First Amendment. The Court also created the "coercion" test for constitutionality, which directs that school prayer requests create an atmosphere of intimidation and coercion for those students who do not wish to participate in such observances. The Court was particularly careful to apply this principle to minors, who do not have the ability to make as informed a decision as an adult.

***Boy Scouts of America et al. v. Dale* (2000)**

Question: Can a private organization exclude a person from membership when the presence of that person affects in a significant way the group's ability to advocate public or private viewpoints?

History: The Boy Scouts of America is a private, non-profit organization engaged in instilling its system of values in young people. At the time of the case, it asserted that homosexuality was inconsistent with those values. When Dale was a student at Rutgers University, he became co-

president of the Lesbian/Gay student alliance. In July 1990, he attended a seminar on the health needs of lesbian and gay teenagers, where he was interviewed. An account of the interview was published in a local newspaper and Dale was quoted as stating he was gay. BSA officials read the interview and expelled Dale from his position as assistant Scoutmaster of a New Jersey troop. Dale, an Eagle Scout, filed suit in the New Jersey Superior Court, alleging, among other things, that the Boy Scouts had violated the state statute prohibiting discrimination on the basis of sexual orientation in places of public accommodation. The New Jersey Supreme Court ruled against the Boy Scouts, saying that they violated the State's public accommodations law by revoking Dale's membership based on his homosexuality. The Boy Scouts appealed to the United States Supreme Court, which accepted the appeal to determine whether the application of New Jersey's public accommodations law violated the First Amendment.

Decision: In a 5-4 decision, the U.S. Supreme Court reversed a decision of the New Jersey Supreme Court and ruled that opposition to homosexuality is part of BSA's "expressive message" and that allowing homosexuals to serve as adult leaders would interfere with that message.

Precedent: The Court established that we cannot be guided by our views of whether the Boy Scouts' teachings with respect to homosexual conduct are right or wrong. Public or judicial disapproval of an organization's principles, does not justify the State's effort to compel the organization to accept members where such acceptance would detract from the organization's expressive message. While the law is free to promote all sorts of conduct in place of harmful behavior, it is not free to interfere with speech for no better reason than promoting an approved message or discouraging a disfavored one, however enlightened either purpose may seem to the government.

SECOND AMENDMENT

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

District of Columbia v. Heller (2008)

Question: What rights are protected by the Second Amendment?

History: Handgun possession is banned under District of Columbia law. The law prohibits the registration of handguns and makes it a crime to carry an unregistered firearm. Furthermore all lawfully owned firearms must be kept unloaded and dissembled or bound by a trigger lock unless they are being used for lawful recreational activities or located in a place of business. Dick Heller is a special police officer in the District of Columbia. The District refused Heller's application to register a handgun he wished to keep in his home. Heller filed this lawsuit in the Federal District Court for the District of Columbia on Second Amendment grounds. Heller sought an injunction against enforcement of the bar on handgun registration, the licensing requirement prohibiting the carrying of a firearm in the home without a license, and the trigger-lock requirement insofar as it prohibits the use of functional firearms within the home. The District Court dismissed Heller's complaint. The Court of Appeals for the District of Columbia Circuit reversed and directed the District Court to enter summary judgment in favor of the District of Columbia. The Court of Appeals construed Heller's complaint as seeking the right to render a firearm operable and carry it in his home only when necessary for self defense, and held that the total ban on handguns violated the individual right to possess firearms under the Second Amendment. The Supreme Court accepted an appeal.

Opinion: Writing for a 7-2 majority Justice Scalia indicated that the Second Amendment protects an individual right to possess a firearm unconnected with service in a militia, and to use that arm for traditionally lawful purposes, such as self-defense within the home. Assuming Heller is not otherwise disqualified from exercising Second Amendment rights, the District of Columbia must permit him to register his handgun and must issue him a license to carry it in the home.

Precedent: The prefatory clause "A well regulated Militia, being necessary to the security of a free State" merely announces a purpose. It does not limit or expand the scope of the operative clause "the right of the people to keep and bear Arms, shall not be infringed." The operative clause's text and history demonstrate that it connotes an individual right to keep and bear arms. The handgun ban and the trigger-lock requirement (as applied to self-defense) violate the Second Amendment. The total ban on handgun possession in the home amounts to a prohibition on an entire class of arms that Americans overwhelmingly choose for the lawful purpose of self-defense. This prohibition would fail constitutional muster under any standard of scrutiny. Similarly, the requirement that any lawful firearm in the home be disassembled or bound by a trigger lock makes it impossible for citizens to use arms for the core lawful purpose of self-defense and is therefore unconstitutional. However, the Second Amendment right is not a right to keep and carry any weapon in any manner and for any purpose. The Court has upheld gun

control legislation including (1) prohibitions on concealed weapons and possession of firearms by felons and the mentally ill, (2) laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, and (3) laws imposing conditions and qualifications on the commercial sale of arms. The historical tradition of prohibiting the carrying of dangerous and unusual weapons supports the holding in *United States v. Miller* that the sorts of weapons protected are those in common use at the time.

RIGHT TO PRIVACY

While not specifically cited in the U.S. Constitution, several areas, individually or in some combination, have been used to establish an implied right of privacy including the First, Third, Fourth, Fifth, Ninth, and Fourteenth Amendment, Section 1.

1 - Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.
3 - No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.
4 - The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.
5 - No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.
9 - The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.
14 - SECTION. 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Griswold v. Connecticut (1965)

Question: Does the Fourteenth Amendment to the U.S. Constitution provide for a right of privacy regarding questions of family planning?

History: In 1879 the state of Connecticut passed a law prohibiting both state and private services from advocating any form of birth control or family planning. By 1961 advocates of birth control were ready to challenge the archaic law. Estelle Griswold, the executive director of the Connecticut Office of Planned Parenthood, opened up a family planning clinic knowing full well that her clinic's services would cause her to be arrested in accordance with Connecticut law. Griswold's lawyers would argue that the Fourteenth Amendment, if read broadly, granted U.S. citizens a right to privacy which would include married couples receiving birth control information and services without governmental intrusion. While a Connecticut court would convict Griswold, the U.S. Supreme Court accepted her case for review.

Opinion: In a 7-2 decision, the Connecticut law was struck down and Estelle Griswold's conviction was overturned. Justice Goldberg, writing for the majority, cited not only the Fourteenth Amendment but the Ninth Amendment as well, stating that, "the language and

history of the Ninth Amendment reveal that the Framers of the Constitution believed that there are additional fundamental rights, protected from governmental infringement, which exist alongside those fundamental rights specifically mentioned in the first eight constitutional amendments." In other words, Goldberg's assertion is that the Ninth Amendment to the Constitution allows for rights to exist that are not explicitly mentioned in the Bill of Rights. Goldberg continued by saying that, "although the Constitution does not speak in so many words of the right of privacy in marriage, I cannot believe that it offers these fundamental rights no protection."

Precedent: The *Griswold v. Connecticut* ruling created, for the first time, a very limited form of federally protected privacy rights. Other cases regarding privacy issues would follow this case.

***Roe v. Wade**, Doe v. Bolton* **(1973)**

Question: Does the right to privacy created by *Griswold v. Connecticut* apply to a woman's decision to have an abortion?

History: Norma Jean McCorvey, pregnant with her third child, returned to her home in Texas after traveling across the United States in a carnival. McCorvey, whose financial situation was unsuited to having another child, met with lawyers in Dallas in an effort to find out how to have an abortion in the state of Texas. McCorvey's circumstances were not acceptable under Texas state law for an abortion, given that abortions in Texas would only be allowed if the pregnancy was the result of rape or incest, or if the child birthing process represented a threat to the life of the mother. Neither of these permissible conditions applied to McCorvey. McCorvey's lawyers agreed to pay for McCorvey's childbirth costs as well as adoption procedures in exchange for her agreeing to be a part of a legal challenge to the Texas abortion laws. McCorvey agreed and became "Jane Roe" in the most important case regarding the right to an abortion. One of McCorvey's lawyers, Sarah Weddington, presented a woman's right to abortion as a matter for the Fourteenth Amendment to the U.S. Constitution. According to Weddington, the Fourteenth Amendment had been employed to establish a right to privacy in previous cases (see *Griswold v. Connecticut*). The companion case *Doe v. Bolton* involved a parallel challenge to Georgia law by a woman using the pseudonym "Mary Doe."

Opinion: In a 7-2 ruling, the U.S. Supreme Court applied the right of privacy to a woman's decision to have an abortion. The right to privacy would, however, be dependent on what stage of pregnancy a woman was currently going through and as a result would not be guaranteed in the later stages of pregnancy. Writing for the majority, Justice Blackmun stated that, "we, therefore, conclude that the right of personal privacy includes the abortion decision, but that this right is not unqualified, and must be considered against important state interests in regulation…the pregnant woman cannot be isolated in her privacy. She carries an embryo and, later, a fetus, if one accepts the medical definitions of the developing young in the human uterus…the woman's privacy is no longer sole and any right of privacy she possesses must be measured accordingly."

Precedent: The *Roe* ruling established the trimester model of abortion that would serve as a template for all state laws on abortion. States would have to follow three distinct phases when

shaping their own abortion laws: (1) During the three months of a pregnancy states must leave the decision to have an abortion up to the woman in question; (2) During the second three months of a pregnancy states may regulate the abortion procedure in relation to the health of the mother; (3) During the final three months of a pregnancy states may prohibit abortion procedures based on the protection of the "potentiality of human life."

Cruzan, by Her Parents and Co-Guardians v. Director, Missouri Department of Health (1990)

Question: Does the right of privacy, established in earlier cases (*Griswold v. Connecticut, Roe v. Wade*) extend to family members who would like to remove another from life support based upon private conversations?

History: Nancy Beth Cruzan was severely injured in an automobile accident on January 11, 1983. The injuries sustained in the crash left Cruzan in a bedridden state whereby her brain activity ceased, but her body continued to breath and carry on nervous system functions. Doctors pronounced Cruzan to be in a "vegetative state" and that her chances of exiting in such a state were almost nil. Unable to eat or drink without medical technology and without any hope of exiting her unconscious state, Cruzan's mother and father asked that she be taken off her diet and allowed to die. A trial court allowed the Cruzans to terminate her diet based on Nancy's once telling family members and friends that if she were ever in such a state she would not have wanted to live on life support. Several groups filed a motion to put her back on her diet and the Missouri State Supreme Court ruled that there was insufficient evidence that Nancy Cruzan would have wanted to be taken off life support. Her family petitioned the U.S. Supreme Court for a judgment.

Opinion: In a 5-4 decision, the U.S. Supreme Court denied Nancy Cruzan's family the right to terminate her life support. According to Chief Justice William Rehnquist, the right of privacy did not extend to one person being able to make decisions for another when no clear intent of action existed.

Precedent: The Court did not apply their decision to living wills. According to the majority, if Nancy Cruzan had left a living will explicitly stating that she would want to be removed from life support if such a situation ever occurred, her wishes would have had to have been followed. The Court did not, however, believe that it was violation of her Fourteenth Amendment rights to insist that her family have a higher degree of proof of her desires than mere hearsay.

Planned Parenthood v. Casey (1992)

Question: Does the right of privacy, in regard to abortion, established under *Roe v. Wade* and *Doe v. Bolton*, invalidate the Pennsylvania abortion law?

History: Pennsylvania Governor Robert Casey signed a bill creating a number of changes to Pennsylvania abortion law which included the following controversial stipulations: (1) that any minor who wished to have an abortion must have approval from a parent or guardian; (2) that any married woman who wished to have an abortion must give notice of their intentions to their

husband; and (3) that any woman who wished to have an abortion must wait at least 24 hours upon application for the procedure before actually having the abortion. The American Civil Liberties Union contested the law in the courts and the case eventually went to the U.S. Supreme Court.

Opinion: In a 5–4 ruling, the U.S. Supreme Court invalidated several portions of the Pennsylvania law while upholding others. The Court struck down the spousal notification provision, while upholding the state's requirement for minors to have parental or guardian consent. The Court also upheld the state's right to require a 24-hour waiting period.

Precedent: As a result of the Casey case, many states have passed laws requiring minors to gain the consent for an abortion from a parent or guardian and including prescribed waiting periods.

Lawrence v. Texas (2003)

Question: Does the right of privacy established in earlier court cases (*Griswold, Roe*) extend to the matter of consensual sex acts between adults?

History: John Geddes Lawrence and Tyron Garner were found having consensual sex in Lawrence's home in Houston, Texas, by a Harris County officer who entered the home investigating a report of a weapons disturbance. Not finding any weapons or violent acts, the officer nonetheless arrested Lawrence and Garner for violating a Texas statute that forbid sodomy (explicit types of sex) in the state of Texas. Lawrence and Garner were convicted by a Justice of the Peace but requested review of their case by an appellate court arguing that their consensual sex act was protected by the right of privacy established in earlier cases (see *Griswold v. Connecticut, Roe v. Wade*). After losing their appeal in a Texas high court of appeals, the couple asked for the U.S. Supreme Court to accept their case.

Opinion: In a 6–3 decision, the U.S. Supreme Court struck down the Texas anti-sodomy law and ruled that consensual sex acts between adults is a private matter beyond the purview of state or federal laws.

Precedent: The Lawrence case is important because it once again, along with the *Griswold* and *Roe* cases, extended the Supreme Court's definition of the right of privacy.

Gonzales v. Carhart (2007)

Question: Is the Partial-Birth Abortion Ban Act of 2003 a violation of a woman's right to privacy?

History: This law prohibits a form of late-term abortion termed "partial-birth abortion," referred to in medical literature as intact dilation and extraction. Under this law, "Any physician who, in or affecting interstate or foreign commerce, knowingly performs a partial-birth abortion and thereby kills a human fetus shall be fined or imprisoned not more than 2 years, or both." The case reached the U.S. Supreme Court after U.S. Attorney General Alberto Gonzales appealed a ruling of the United States Court of Appeals for the Eighth Circuit in favor of LeRoy Carhart that

struck down the Partial-Birth Abortion Ban Act. The appellate court held that the Partial-Birth Abortion Ban Act was unconstitutional because it lacked an exception for the health of the woman.

Decision: In a 5-4 ruling, Justice Anthony Kennedy wrote that the respondents had failed to prove that Congress lacked authority to ban this abortion procedure. Chief Justice John Roberts, Justice Samuel Alito, Justice Clarence Thomas, and Justice Antonin Scalia agreed with the Court's judgment, joining Kennedy's opinion.

Precedent: The U.S. Supreme Court's decision upheld Congress's ban and held that it did not impose an undue burden on the due process right of women to obtain an abortion. However, *Gonzales* was widely interpreted as signaling a shift in Supreme Court jurisprudence toward a restriction of abortion rights, impacted in part by the retirement of Sandra Day O'Connor (pro-choice) and her replacement by Samuel Alito (pro-life). The Court found that there is "medical uncertainty over whether the barred procedure is ever necessary to preserve a woman's health"; and in the past the Court "has given state and federal legislatures wide discretion to pass legislation in areas where there is medical and scientific uncertainty." Nevertheless, an editorial in the *New England Journal of Medicine* identified the case as a landmark: "This is the first time the Court has held that physicians can be prohibited from using a medical procedure deemed necessary by the physician to benefit the patient's health."

FOURTH AMENDMENT

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

Mapp v. Ohio (1961)

Question: Does the search warrant provision of the Fourth Amendment to the U.S. Constitution prohibit the use of any material seized in a search if the material in question was produced without a search warrant?

History: Dollree Mapp, one time girlfriend of boxing champion Archie Moore and various underworld figures, was known as Dolly to her friends. The Cleveland police were not her friends and on May 23, 1957, they decided to follow up on a tip that the suspected bomber of boxing promoter Don King's house was hiding out with Mapp in her apartment. Knocking on her door, the police were greeted by Dollree Mapp's head sticking out a side window informing the police that they needed a warrant to enter the home. Later in the day the police returned with what they claimed to be a warrant and proceeded to search Mapp's apartment. No suspect was found, but the police did find some sexually explicit books and magazines. Police also searched the first floor apartment where they found the bombing suspect, Virgil Ogiltree. Mapp confessed that she knew his whereabouts all along. Mapp was booked on possessing obscene material, but her lawyer argued that the material could not be included in her case because the police never produced a search warrant. An Ohio trial court convicted Mapp on obscenity crimes and her lawyers ultimately appealed the case to the U.S. Supreme Court.

Opinion: In a 6-3 decision, the Court held that the obscene material should have never been included in Dollree Mapp's trial because a search warrant was never obtained. Writing for the majority, Justice Clark reasoned that if courts allowed evidence into a trial that has been illegally obtained, then "the ignoble shortcut to conviction left open to the State tends to destroy the entire system of constitutional restraints on which the liberties of the people rest."

Precedent: The Mapp case affirmed the "exclusionary rule," which requires the prohibition of material seized in a warrantless search from any use as evidence in a court of law.

Terry v. Ohio (1969)

Question: Does the warrant provision of the Fourth Amendment apply to an officer conducting a pat down of an individual suspected of committing a crime?

History: On October 31, 1963, John Terry and Richard Chilton spent the afternoon casing a downtown Cleveland, Ohio storefront. Taking turns walking up and down the street in front of the store the men were spotted by Detective Martin McFadden. McFadden concluded that their actions were preliminary moves for a robbery. McFadden questioned the two men, who were unresponsive to his queries, and then ordered them to assume the position for a pat

down. McFadden, upon going through the pat down, discovered a gun on both men. Terry and Chilton were arrested on concealed weapon charges. The two men obtained a team of lawyers who would argue to the Ohio courts that Detective McFadden had no right to pat down either of the two men as such a pat down was an invasion of their private belongings (coats, clothing). The case would make its way to the U.S. Supreme Court.

Opinion: In an 8–1 ruling, the U.S. Supreme Court decided in favor of the state of Ohio, concluding that upon reasonable suspicion that a crime is going to take place, the police may conduct pat down searches without violating the Fourth Amendment. Writing for the majority, Chief Justice Warren stated that the police officers do not need to obtain search warrants in order to conduct pat down searches of citizens who are reasonably suspected of criminal activity. The searches are done in order to check for weapons that, given certain situations, could lead to harm or loss of life. Any contraband seized during such a search, a gun for example, could be used later in court as evidence.

Precedent: With the *Terry* case, the Court established the precedent that certain forms of search and seizure were not protected by the warrant provision to the Fourth Amendment. In order to establish the "pat down rule," the Court reasoned that such a search of a person was primarily related to the officer's need for safety rather than in a random attempt at discovering evidence.

United States v. Robinson (1973)

Question: Does a search by police incident to a lawful custodial arrest violate the Fourth Amendment's protection against unreasonable search and seizure?

History: A Washington D.C. Metro officer stopped a 1965 Cadillac based on reliable information that the driver's operating license had been revoked. All three occupants exited the car, and the officer arrested the driver, Robinson. The officer proceeded to search Robinson, and felt a package whose contents the officer could not immediately identify. Upon removing the package—a crumpled cigarette packet—and opening it, the officer discovered "14 gelatin capsules of white powder" that turned out to be heroin.

Opinion: The U.S. Supreme Court upheld lower court convictions on possession of illegal drugs stating that "in the case of a lawful custodial arrest a full search of the person is not only an exception to the warrant requirement of the Fourth Amendment, but is also a reasonable search under that Amendment."

Precedent: This case further expanded the search and seizure flexibility accorded to law enforcement.

South Dakota v. Opperman (1976)

Question: Does a routine warrantless search of a motor vehicle impounded for a parking or traffic violation violate the Fourth Amendment's prohibition against unreasonable search and seizure?

History: Opperman's car was found illegally parked on a street in Vermillion, South Dakota, in

the early morning hours of December 10, 1973. Acting pursuant to police procedures, Opperman's car was impounded. Because there were items scattered about in the passenger cabin, the police decided to inventory the contents of the car. During the inventory, police found some marijuana in the glove compartment. When Opperman came to the police station to claim his property, he was arrested for possession of marijuana. At trial, he asked to suppress the marijuana, but the trial court denied his request. Opperman was sentenced to 14 days in jail and fined $100. He appealed, and the Supreme Court of South Dakota reversed his conviction on the grounds that the inventory search was an unreasonable one under the Fourth Amendment. At South Dakota's request, the U.S. Supreme Court agreed to review the case.

Opinion: The Court in a 5-4 vote ruled that these inventory searches did not violate the Fourth Amendment. In addition to their law enforcement duties, the police must engage in what the Court has termed a community caretaking role, including such duties as removing obstructions from roadways in order to ensure the free flow of traffic. When the police act in this role, they may inventory cars they have seized without "unreasonably" searching those cars. It would be incongruous to allow the police the authority to hold the car itself but deny them the authority to search inside it.

Precedent: A distinction had emerged in Fourth Amendment jurisprudence between searches of the home and searches of automobiles. Because automobiles were inherently mobile, typically kept outside the home, and subject to regulation and licensing by state and local governments, the law recognized a lesser expectation of privacy in an automobile. Inventory searches of automobiles must necessarily extend to the trunk and the glove compartment, since these are places where people keep important documents and valuables.

Board of Education v. Earls (2002)

Question: Is mandatory drug testing by public schools of students participating in extracurricular activities a violation of the Fourth Amendment?

History: The legal challenge to the practice was brought by two students: Lindsay Earls and Daniel James, and their families against the school board of Tecumseh, Oklahoma alleging that their policy requiring students to consent to random urinalysis testing for drug use violated the Fourth Amendment to the United States Constitution. The Student Activities Drug Testing Policy requires all middle and high school students to consent to urinalysis testing for drugs in order to participate in any extracurricular activity. The U.S. Court of Appeals held that the policy violated the Fourth Amendment. The appellate court concluded that before imposing a random drug-testing program a school must demonstrate some identifiable drug abuse problem among a sufficient number of those tested, and establish that testing will actually redress its drug problem, which the school district had failed to demonstrate.

Decision: In a majority opinion delivered by Justice Clarence Thomas, the Court held that students in extracurricular activities had a diminished expectation of privacy, and that the policy furthered an important interest of the school in prevention of drug use among students.

Precedent: The U.S. Supreme Court established that although the tests were searches under the Fourth Amendment, they were reasonable based on preventing teenage drug use.

***Groh v. Ramirez* (2004)**

Question: Is it a violation of the Warrant Clause of the Fourth Amendment for law enforcement to use a search warrant, based on a valid application, when the warrant is incorrectly filled out?

History: Jeff Groh, an officer with the Bureau of Alcohol, Tobacco, and Firearms, placed an application to a court for a search warrant in order to search for illegal weapons at the home of Joseph Ramirez. Groh's application detailed the place to be searched and the contraband searched for, but the final search warrant produced by the court did not specify exactly what items the search was intended to produce. Instead of indicating the "person or property" to be seized the form also incorrectly gave a description of the home of the defendant rather than a list of the alleged firearms to be seized. A judge did, however, sign off on the legality of the warrant after hearing Groh's application and oath. Later the officer and his team conducted their search. Lawyers for Ramirez filed a lawsuit against Officer Groh on the grounds that the search was illegal due to the incorrect details of the search warrant. The case was ultimately argued before the U.S. Supreme Court.

Opinion: In a 5–4 ruling, the U.S. Supreme Court reversed the Ramirez conviction. Writing for the majority, Justice Stevens held that, "….the warrant was plainly invalid. The Fourth Amendment states clearly that no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and *particularly describing* the place to be searched, and *the persons or things to be seized.*" (Emphasis added.) The warrant in this case complied with the first three of these requirements: it was based on probable cause, supported by a sworn affidavit, and described particularly the place of the search. On the fourth requirement, however, the warrant failed altogether."

Precedent: The *Groh* case clearly established that the Court is committed to strict enforcement of the warrant requirement established in the Fourth Amendment (see *Mapp v. Ohio*). Search warrants, from the Court's perspective, will need to stringently adhere to Fourth Amendment requirements for future searches to be considered legal.

FIFTH AMENDMENT

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Miranda v. Arizona (1966)

Question: Does the self-incrimination provision of the Fifth Amendment invalidate confessions made by suspects who were never informed of their right to remain silent?

History: Ernesto Arturo Miranda, a twenty year old with a history of sexual assault and indecent exposure charges, was picked up by the Phoenix police and arrested in connection with the abduction and rape of an Arizona woman on March 3, 1963. The rape victim claimed that her attacker bound and gagged her and drove her for a while until reaching some unknown location in the desert. She also claimed that her attacker left a rope on the front seat of his car. After searching Miranda's car the police did find a rope and the victim identified Miranda as her attacker. Nearly two hours of questioning led to Miranda's confession and an Arizona court later found him guilty as charged. Miranda was sentenced to thirty years in prison but the American Civil Liberties Union took Miranda's case and argued that the Fifth Amendment required that suspects be informed of their right to remain silent during any questioning by law enforcement. The case was appealed to the U.S. Supreme Court in 1966.

Opinion: In a 5–4 ruling, the U.S. Supreme Court held that Ernesto Miranda should have been advised of his Fifth Amendment rights. Chief Justice Warren, writing for the majority stated, that, "a recurrent argument made in these cases is that society's need for interrogation outweighs the privilege [to have police inform suspects of their constitutional rights]. This argument is not unfamiliar to this Court. …the Constitution has proscribed the rights of the individual when confronted with the power of the government when it provided in the Fifth Amendment that an individual cannot be compelled to be a witness against himself. That right cannot be abridged…"

Precedent: The *Miranda* case provided for the Court a vehicle for outlining some basic rules for advising suspects of their Fifth Amendment rights upon any questioning by law enforcement officials. These rules include (1) suspects must be informed of their right to remain silent; (2) that anything a suspect says can be used against them in court later; (3) that the suspect must be informed of their right to have an attorney present at questioning; (4) that the suspect must be informed of their right to a court appointed attorney if they cannot afford legal representation.

SIXTH AMENDMENT

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

Gideon v. Wainwright (1963)

Question: Does the Denial of Representation Clause of the Sixth Amendment apply to those cases where a state denies a suspect, who is unable to pay for representation, a court appointed attorney?

History: Fifty-three year-old career petty criminal Clarence Earl Gideon was arrested on June 19, 1961 for breaking and entering with intent to burglarize the Bay Harbor Pool Room in Panama City, Florida. Gideon, who possessed an eighth grade education, was familiar with the justice system, as he had spent about 17 years in various prisons for at least four different felonies. His familiarity with court procedures would have to aid him because in the state of Florida the law held that those who could not afford an attorney would not have one provided to them by the courts. Gideon attempted to defend himself but lost his case and was sentenced to a five-year prison term. Gideon claimed that it was unconstitutional to deny him an attorney because he could not afford one. The state of Florida's position was that he was never denied an attorney because if he could have afforded one the state would have accepted the representation as legal. While in jail, Gideon petitioned the U.S. Supreme Court on a handwritten sheet of paper that declared, "the question is very simple, I requested the court to appoint me [an] attorney and the court refused."

Opinion of the Court: In a unanimous ruling, the U.S. Supreme Court held that Clarence Earl Gideon should have had an attorney appointed to him by the state of Florida. Writing for the majority, Justice Black expressed that the Sixth Amendment guarantees the right of counsel. The Sixth Amendment assures only that counsel cannot be denied, but if states do not help the poor with legal representation then this is akin to denial of counsel by the state. Furthermore, "any person hauled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided to him. This seems to us to be an obvious truth."

Precedent: The *Gideon* case resulted in the requirement that all states must establish a system of court appointed legal representation for those who are accused of felony criminal charges and who cannot afford private legal counsel. Such legal representation was extended to poor persons accused of misdemeanors or petty crimes in *Argersinger v. Hamlin* (1972).

EIGHTH AMENDMENT

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

Louisiana ex rel. Francis v. Resweber (1947)

Question: Does a second attempted execution deny due process of law because of double jeopardy guaranteed by the Fifth Amendment and because of cruel and unusual punishment of the Eighth Amendment as made applicable to the State of Louisiana via the Due Process Clause of the Fourteenth Amendment?

History: Willie Francis, a 16-year-old, was convicted of murder in Louisiana and sentenced to death by electrocution. On the appointed day, Francis was strapped in the chair and the executioner threw the switch. Electric current passed through Francis's body but it was insufficient to kill him. The malfunction required a repair of the chair. In the meantime Francis sought to prevent the second execution attempt.

Opinion: By a 5-4 vote the U.S. Supreme Court held that re-executing Francis did not constitute double jeopardy prohibited by the Fifth Amendment or cruel and unusual punishment prohibited by the Eighth Amendment. Furthermore, the equipment failure in this case did not bring Fourteenth Amendment due process into play.

Precedent: The Court clarified that the no cruel and unusual punishment provision of the Eighth Amendment refers to cruelty in method, not that cruelty which is part of the actual suffering accompanying a lawful sentence of death. This was not the wanton infliction of unnecessary pain in carrying out a death sentence. In addition, procedurally there was no difference from a constitutional point of view between a new trial for an error of law and an execution that follows a failure of equipment. When an accident, with no suggestion of malevolence, prevents the carrying out of a sentence, the state's subsequent course in the administration of its criminal law is not affected by any requirement of due process under the Fourteenth Amendment.

Furman v. Georgia (1972)

Question: Can capital punishment be applied without violating the Eighth Amendment?

History: The victim in this case, a Georgia resident, awoke in the middle of the night to find William Henry Furman committing robbery in his house. At trial, in an unsworn statement allowed under Georgia criminal procedure, Furman said that while trying to escape, he tripped and the weapon he was carrying fired accidentally, killing the victim. This contradicted his prior statement to police that he had turned and blindly fired a shot while fleeing. In either event, because the shooting occurred during the commission of a felony, Furman would have been guilty of murder and eligible for the death penalty under existing state law, according to the felony murder rule. Furman was tried for murder and was found guilty based largely on his own statement. Although he was sentenced to death, the punishment was never carried out.

Opinion: In a 5-4 decision, the Court's opinion held that the imposition of the death penalty in this and a series of related cases constituted cruel and unusual punishment and violated the

Constitution. Concurring opinions focused on the arbitrary nature with which death sentences have been imposed, often indicating a racial bias against black defendants.

Precedent: The case led to a *de facto* moratorium on capital punishment throughout the United States, which came to an end when *Gregg v. Georgia* was decided in 1976. The Court's decision forced states to rethink their statutes for capital offenses to assure that the death penalty would not be administered in a capricious or discriminatory manner. In the following four years, 37 states enacted new death penalty laws aimed at overcoming the Court's concerns about arbitrary imposition of the death penalty. Several statutes mandated two-part trials, with separate guilt-innocence and sentencing phases, and imposing standards to guide the discretion of juries and judges in imposing capital sentences. Statutes enacted that mandated imposition of the death penalty for conviction of "a certain crime" were struck down struck down by the Court during the same year of 1972.

Gregg v. Georgia, *Proffitt v. Florida*, *Jurek v. Texas*, *Woodson v. North Carolina*, and *Roberts v. Louisiana* **(1976)**

Question: Can capital punishment be applied without violating the Eighth Amendment?

History: All five cases shared the same basic procedural history. After the *Furman v. Georgia* (1972) decision outlawing the use of the death penalty, the states of Georgia, Florida, Texas, North Carolina, and Louisiana amended their death penalty statutes to meet the *Furman* guidelines. The question the Court resolved in these cases was not whether the death sentence imposed on each of the individual defendants was cruel, but rather whether the process by which those sentences were imposed was rational and objectively reviewable. Subsequently, the five defendants were convicted of murder and sentenced to death in their respective states. The respective state Supreme Court upheld the death sentences. The defendants then asked the U.S. Supreme Court to review their death sentences, asking the Court to go beyond *Furman* and declare once and for all the death penalty to be "cruel and unusual punishment" and thus in violation of the Constitution.

Opinion: The Court set out two broad guidelines that legislatures must follow in order to craft a constitutional death penalty process:

1. The process must provide objective criteria to direct and limit the death sentencing discretion. The objectivity of these criteria must in turn be ensured by appellate review of all death sentences.

2. The process must allow the sentencing authority (whether judge or jury) to take into account the character and record of an individual defendant.

In *Gregg*, *Proffitt*, and *Jurek*, the Court found that the capital sentencing processes of Georgia, Florida, and Texas, respectively, met these criteria; whereas in *Woodson* and *Roberts*, the Court found that the sentencing processes of North Carolina and Louisiana did not.

Precedent: These companion cases reaffirmed the U.S. Supreme Court's acceptance of the use of the death penalty in the United States. The decision essentially ended the *de facto* moratorium on the death penalty imposed by the Court's 1972 decision in *Furman v. Georgia*.

Roper v. Simmons (2005)

Question: Is it unconstitutional to impose capital punishment for crimes committed while under the age of 18?

History: This case, in Missouri, involved Christopher Simmons, who, in 1993 at the age of 17, concocted a plan to murder Shirley Crook, bringing two younger friends, Charles Benjamin and John Tessmer, into the plot. The plan was to commit burglary and murder by breaking and entering, tying up a victim, and tossing the victim off a bridge. The three met in the middle of the night; however, Tessmer then dropped out of the plot. Simmons and Benjamin broke into Mrs. Crook's home, bound her hands and covered her eyes. They drove her to a state park and threw her off a bridge. Once the case was brought to trial, the evidence was overwhelming. Simmons had confessed to the murder, performed a videotaped reenactment at the crime scene, and there was testimony from Tessmer against him that showed premeditation (he discussed the plot in advance and later bragged about the crime). The jury returned a guilty verdict. Even considering mitigating factors (no criminal history and his age), the jury recommended a death sentence, which the trial court imposed. Simmons first moved for the trial court to set aside the conviction and sentence, citing, in part, ineffective assistance of counsel. His age, and thus impulsiveness, along with a troubled background were brought up as issues that Simmons claimed should have been raised at the sentencing phase. The trial court rejected the motion, and Simmons appealed. The case worked its way up the court system, with the courts continuing to uphold the death sentence. However, in light of a 2002 U.S. Supreme Court ruling, in *Atkins v. Virginia* (2002), that overturned the death penalty for the mentally retarded, Simmons filed a new petition for state post-conviction relief, and the Supreme Court of Missouri concluded that "a national consensus has developed against the execution of the mentally ill," and held that such punishment now violates the Eighth Amendment's prohibition of cruel and unusual punishment. Thus, they sentenced Simmons to life imprisonment without parole. The State of Missouri appealed the decision to the U.S. Supreme Court, which agreed to hear the case. (Donald P. Roper, the superintendent of the correctional facility where Simmons was held, was a party to the action because it was brought as a petition for a writ of habeas corpus.)

Decision: The 5-4 decision overruled the Court's prior ruling upholding such sentences on offenders above or at the age of 16.

Precedent: Under the "evolving standards of decency" test, the Court held that it was cruel and unusual punishment to execute a person who was under the age of 18 at the time of the murder. Writing for the majority, Justice Kennedy cited a body of sociological and scientific research that found that juveniles have a lack of maturity and sense of responsibility compared to adults. Adolescents were found to be overrepresented statistically in virtually every category of reckless behavior. The Court noted that in recognition of the comparative immaturity and irresponsibility of juveniles, almost every state prohibited those under age 18 from voting, serving on juries, or marrying without parental consent. The studies also found that juveniles are also more

vulnerable to negative influences and outside pressures, including peer pressure. In support of the "national consensus" position, the Court noted the increasing infrequency with which states were applying capital punishment for juvenile offenders. The Court also looked to practices in other countries to support the ruling. Between 1990 and the time of the case, the Court said, "only seven countries other than the United States had executed juvenile offenders ... : Iran, Pakistan, Saudi Arabia, Yemen, Nigeria, the Democratic Republic of the Congo, and China." Justice Kennedy noted that since 1990 each of those countries had either abolished the death penalty for juveniles or made public disavowal of the practice, and that the United States stood alone in allowing execution of juvenile offenders. The Court also noted that only the United States and Somalia had not ratified Article 37 of the United Nations Convention on the Rights of the Child (September 2, 1990), which expressly prohibits capital punishment for crimes committed by juveniles.

CIVIL RIGHTS AND THE FOURTEENTH AMENDMENT

SECTION. 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Plessy v. Ferguson (1896)

Question: Do the Louisiana state laws that provide for separation of the races in public facilities violate the Fourteenth Amendment's provision for equal protection of the laws for all citizens of the United States?

History: Homer A. Plessy, a resident of the state of Louisiana, boarded a "whites only" railroad car bound for Texas. Plessy, who was known to be one eighth black and seven eighths white (using the old "one eighth drop of blood" rule in the South), was told by the railroad company that he was to move to a separate car labeled "colored only" and sit with the African-American patrons. Plessy refused to move to the colored only car maintaining that he was, in fact white and entitled to sit in the whites only car. Plessy filed suit against the railroad for violating the Fourteenth Amendment, which orders equal protection of the laws for all citizens of the United States. After losing his case in both a lower Louisiana state court and the Louisiana State Supreme Court, Plessy brought his suit to the U.S. Supreme Court.

Opinion: In a 7-1 ruling, the U.S. Supreme Court ruled that Louisiana's separation laws did not violate the Fourteenth Amendment's Equal Protection Clause. Writing for the majority, Justice Henry Billings Brown argued that while the Louisiana laws did provide for separation of the races in respect to the railroad cars, there was no proof that those separate "colored only" cars were inferior to the "whites only" cars. If the cars were indeed equal, then in this case citizens were being treated equally and thus Louisiana was not violating the Equal Protection Clause of the Fourteenth Amendment.

Precedent: *Plessy v. Ferguson* validated the use of "separate but equal" provisions in the laws that were the foundation of the Jim Crow South. Court challenges to separation of public facilities would not be successful until the *Brown v. Board of Education of Topeka* ruling in 1954, which ordered the integration of public schools and signaled an end to the separate but equal doctrine.

Brown v. Board of Education of Topeka (1954)

Question: Does the Topeka, Kansas segregated school system violate the "equal protection of the laws" provision of the Fourteenth Amendment?

History: *Plessy v. Ferguson* legitimized the "separate but equal" doctrine used throughout much of the South and Midwest. The separate but equal doctrine directed that the states and local

governments could establish separate public facilities (such as restrooms, water fountains, seats on buses) for the races as long as those facilities were considered to be equal in form or function. While the separateness of the facilities was enforced, the equality of the facilities was often neglected. Those facilities being reserved for whites were normally much better in quality and accessibility. In 1951 thirteen parents filed suit in a U.S. district court on behalf of their children who were attending racially segregated schools. The thirteen parents argued that their children, who were African-American, were being denied their Fourteenth Amendment right to equal protection of the laws. The basis of their Fourteenth Amendment argument was that the Topeka segregated schools were separate but not equal, and that no such laws could be allowed due the Fourteenth Amendment's equal protection provisions. After making its way through lower federal courts, the case was brought up for review by the U.S. Supreme Court.

Opinion: In a 9-0 ruling, the U.S. Supreme Court declared that the Topeka, Kansas segregated school system was in violation of the Fourteenth Amendment. The school system, along with all school systems in the United States, would have to desegregate with "all deliberate speed."

Precedent: The *Brown* case reversed the earlier *Plessy v. Ferguson* ruling that legitimized the separate but equal doctrine. No longer would states or local governments be able to use the separate but equal doctrine when crafting their laws. The case also showed the Court's determination to implement the Fourteenth Amendment's equal protection provision in those states that had been ignoring equal protection since the Civil War.

In re Gault (1967)

In re (Latin for in the matter of) is used for a proceeding where one party makes an application to the court without necessarily charging an adversary. **Ex parte** (Latin for on one side only), an alternative term is used for a proceeding done by, for, or on the application of one party alone and signifies that a suit was brought by the person whose name follows the term. Ex parte judicial proceedings are usually reserved for urgent matters where requiring notice would subject one party to irreparable harm. The final decision on the style to be used for a particular lawsuit is usually made by the clerk of the court.

Question: Do juveniles have the right to the same constitutional protections guaranteed by the Bill of Rights and the Fourteenth Amendment as adults?

History: Fifteen year old Gerald Francis Gault, resident of the state of Arizona, was brought into police custody to answer questions regarding a neighbor's complaint of threatening phone calls. Gault was not given many of the same constitutional rights in custody as adults, such as the notification of his right to remain silent, his right to an attorney, or his right to be informed of the charges against him. After a swift trial, Gault was convicted of harassment and ordered to remain in state custody until his 21st birthday. His family sued the state of Arizona claiming that Gault should have been given the same rights as an adult while he was in custody.

Opinion: In an 8-1 decision, the U.S. Supreme Court found in favor of Gault. Arizona violated Gault's rights and Fourteenth Amendment protections.

Precedent: The *Gault* case is one of several cases that lay at the foundation of the juvenile justice system. While juveniles are treated somewhat differently than adults in American courts of law,

they are entitled to many of the same legal rights (right to be informed of charges, right to an attorney, right to remain silent) and Fourteenth Amendment protections given to adults in the justice system.

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

Question: The issue before the Court was twofold: (1) Was Bakke's exclusion from consideration in a UC Davis Medical School special admissions program for minorities because he was white unconstitutional and a violation of Section VI of the Civil Rights Act of 1964? (2) If such exclusion was unconstitutional, should UC Davis Medical School be required to admit him?

History: Allan Bakke, a 33-year-old white male, applied to twelve medical schools in 1973. He had been a National Merit Scholar at Coral Gables Senior High School, an all-white school in Florida. He was accepted as an undergraduate at the University of Minnesota, deferring tuition costs by joining ROTC. He graduated with the GPA of 3.51. In order to fulfill his ROTC requirements, he joined the Marines and later served a seven-month tour of duty in Vietnam. In 1967, he received an honorable discharge with the rank of Captain. He worked as an engineer at NASA. He stated that his interest in medicine started in Vietnam, and increased at NASA, as he had to consider the problems of space flight and the human body as part of his work there. However, twelve medical schools rejected his application for admission. Bakke first applied to the University of Southern California and Northwestern in 1972 and both rejected him, making a point of his age. His quantitative qualifications for acceptance were considered excellent. He took the Medical College Admissions Test, scoring in the top three percent. He also maintained a science GPA of 3.44 and an overall GPA of 3.46 after taking science courses at night to qualify for medical school. A UC Davis faculty member who participated in Bakke's 1973 interview believed that he was a "well-qualified candidate for admission whose main handicap was the unavoidable fact that he was 33 years of age."

Allan Bakke applied to the University of California, Davis School of Medicine in 1973 and 1974, but was rejected in both years, although "special applicants" were admitted with significantly lower academic scores than Bakke's. These special applicants were admitted under provisions either for members of a "minority groups," or because they were "economically and/or educationally disadvantaged." In 1974, in particular, a special admissions committee explicitly stated they would consider only candidates who were from designated minority groups.

After his second rejection, Bakke filed an action in state court to compel his admission to the UC Davis Medical School, alleging that the special admissions program excluded him on the basis of his race in violation of the Equal Protection Clause of the Fourteenth Amendment.

The trial court found that the special program operated as a racial quota, because minority applicants in that program were rated only against one another, and 16 places in the class were reserved for explicit groups. Further, the UC Davis Medical School could not satisfy its burden of demonstrating that, absent the special program, Bakke would not have been admitted. Following this case Bakke began his studies at the University of California at Davis Medical School in fall of 1978, graduated in 1982, and later served as a resident at the Mayo Clinic in Rochester, Minnesota.

Opinion: Justice Powell wrote the 5 to 4 majority opinion for the Court ordering UC Davis

Medical School to admit Allan Bakke. This concluded that while the school had a compelling interest in a diverse student body and therefore could consider race as a "plus" factor in its admissions program, it could not set aside seats for a particular race, resulting in the automatic exclusion of others based only on race. Though there was no clear-cut majority view on using race, as a factor in general, the majority agreed that the UC Davis Special Admissions Program was unconstitutional because it excluded applicants on the basis of race. Similarly, the same 5–4 majority concurred that the UC Davis School of Medicine be required to admit Bakke.

Precedent: Since the Supreme Court decided *Bakke*, California banned the state's use of race as a factor to consider in public schools' admission policies. California's Proposition 209 mandates that "the state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting." In 2003, in *Grutter v. Bollinger* and *Gratz v. Bollinger*, the Supreme Court affirmed Powell's opinion, rejecting "quotas," but allowing race to be "one factor" in college admissions to meet the compelling interest of diversity.

United States v. Virginia (1996)

Question: Is the male-only admission policy at Virginia Military Institute (VMI) a violation of the Fourteenth Amendment?

History: The Virginia Military Institute is a state-supported military college in Lexington, Virginia, the oldest such institution in the United States. Unlike any other senior military college in the United States, all students at VMI are military cadets pursuing bachelor's degrees. VMI offers cadets strict military discipline combined with a physically and academically demanding environment. The Institute grants degrees in 14 disciplines in engineering, the sciences, and the liberal arts. VMI was the last US military college to admit women, having excluded women from the Corps of Cadets until 1997. In 1990 the US Department of Justice filed a discrimination lawsuit against VMI for its all-male admissions policy. After VMI won its case in U.S. District Court, the case went through several appeals until 26 June 1996, when the U.S. Supreme Court ruled on this case.

Decision: In a 7-1 decision the Supreme Court of the United States struck down the Virginia Military Institute (VMI)'s long-standing male-only admission policy. Justice Clarence Thomas, whose son was enrolled at VMI at the time, recused himself.

Precedent: With the VMI decision, the high court effectively struck down any law which, as Justice Ginsburg wrote, "denies to women, simply because they are women, full citizenship stature — equal opportunity to aspire, achieve, participate in and contribute to society." Following the ruling, VMI contemplated going private to exempt itself from the 14th Amendment, and thus this ruling. The Department of Defense (DOD) warned the school that it would withdraw all ROTC programs from the school if this privatization took place. As a result of the DOD action, Congress amended federal statute10 USC 2111a, to prohibit the military from withdrawing or diminishing any ROTC program at one of the six senior military colleges, including VMI. However, VMI's Board of Visitors had already voted 8-7 to admit women and did not revisit the issue after the law was amended. VMI was the last all-male public university in the United States.

Bush v. Gore (2000)

Question: Was the state of Florida's method of counting ballots in the 2000 presidential election consistent with the Equal Protection Clause of the Fourteenth Amendment?

History: Only eight days earlier, the United States Supreme Court had unanimously decided the closely related case of *Bush v. Palm Beach County Canvassing Board*, and only three days earlier, had preliminarily halted the recount that was occurring in Florida.

Opinion: The Court ruled that the Florida Supreme Court's method for recounting ballots was a violation of the Equal Protection Clause of the Fourteenth Amendment. The reason for this was the unequal treatment of all the ballots cast in Florida. The Court also ruled that no alternative method could be established within the time limits set by Title III of the United States Code (Determination of controversy as to appointment of electors). Three concurring justices also asserted that the Florida Supreme Court had violated Article II, § 1, cl. 2 of the Constitution (Appointment of electors), by misinterpreting Florida election law that had been enacted by the Florida Legislature.

Precedent: The U.S. Supreme Court could effectively as act an arbiter in conflicts related to the conduct of presidential elections. This decision resolved the dispute surrounding the 2000 presidential election in favor of George W. Bush. The decision allowed Florida Secretary of State Katherine Harris's previous certification of George W. Bush as the winner of Florida's 25 electoral votes to stand. Florida's votes gave Bush, the Republican candidate, 271 electoral votes, one more than the required 270 electoral votes to win the Electoral College and defeat Democratic candidate Al Gore, who received 266 electoral votes (a District of Columbia elector abstained).

Grutter v. Bollinger (2003)

Question: Was the affirmative action admissions procedure used by the University of Michigan Law School fair and constitutionally valid?

History: When the University of Michigan Law School denied admission to Barbara Grutter, a Michigan resident with a 3.8 GPA and 161 LSAT score, she filed suit, alleging that respondents had discriminated against her on the basis of race in violation of the Fourteenth Amendment, Title VI of the Civil Rights Act of 1964, and pertinent federal statute; that she was rejected because the University of Michigan Law School used race as a "predominant" factor, giving applicants belonging to certain minority groups a significantly greater chance of admission than students with similar credentials from disfavored racial groups; and that respondents had no compelling interest to justify that use of race. Lee Bollinger, the President of the University of Michigan, was the named defendant of this case. The District Court found the University of Michigan Law School's use of race as an admissions factor unlawful. The Sixth Circuit reversed, holding that Justice Powell's opinion in *Bakke* was binding precedent establishing diversity as a compelling state interest, and that the use of race was narrowly tailored because race was merely a "potential plus factor" in the selection process.

Opinion: The Supreme Court affirmed the Sixth Circuit's reversal of the District Court decision,

thereby upholding the affirmative action admissions policy of the University of Michigan Law School. Justice Sandra Day O'Connor, writing for the majority in a 5-4 decision, ruled that the University of Michigan Law School had a compelling interest in promoting class diversity. The court held that a race-conscious admissions process that may favor "underrepresented minority groups," but that also took into account many other factors evaluated on an individual basis for every applicant, did not amount to a quota system that would have been unconstitutional under *Regents of the Univ. of Cal. v. Bakke*. The Constitution "does not prohibit the law school's narrowly tailored use of race in admissions decisions to further a compelling interest in obtaining the educational benefits that flow from a diverse student body."

Precedent: This decision reinforced the use of race as "one" factor that can be legitimately considered in admissions policies and procedures.

Gratz v. Bollinger (2003)

Question: Was the affirmative action admissions procedure used by the University of Michigan College of Literature, Science, and the Arts fair and constitutionally valid?

History: The petitioners, Jennifer Gratz and Patrick Hamacher, both white residents of Michigan, applied for admission to the University of Michigan's College of Literature, Science, and the Arts. Both were denied admission to the university. Gratz and Hamacher were contacted by the Center for Individual Rights, which filed a lawsuit on their behalf. The case was filed in the United States District Court for the Eastern District of Michigan against the University of Michigan. Their class-action lawsuit alleged "violations and threatened violations of the rights of the plaintiffs and the class they represent to equal protection of the laws under the Fourteenth Amendment... and for racial discrimination." Like *Grutter v. Bollinger,* the case was heard in Federal District Court, appealed to the Sixth Circuit Court of Appeals, and the U.S. Supreme Court.

Opinion: In a 6–3 decision Chief Justice Rehnquist, writing for the Court, ruled the University's point system based on "predetermined point allocations" that awarded 20 points to underrepresented minorities "ensures that the diversity contributions of applicants cannot be individually assessed" and was therefore unconstitutional. This case was heard in conjunction with *Grutter v. Bollinger.*

Precedent: This decision established the need for an appropriately designed system of admission that can fairly and effectively assess applicant qualifications whether based on race or other factors.