Views on the Judicial Branch

"... [T]he judiciary from the nature of its functions, will always be the least dangerous to the political rights of the Constitution; because it will be least in the capacity to annoy or injure them."

– Alexander Hamilton in *Federalist No. 78* (1788), arguing for the ratification of the Constitution, including Article III concerning the judicial branch.

"It is, emphatically, the province and duty of the judicial department to say what the law is."

– U.S. Supreme Court Chief Justice John Marshall in *Marbury v. Madison* (1803), establishing the power of judicial review.

"Stop and Jot" Prompts

- **How does each quotation view the power and role of the judicial branch in the federal government?**
- **How might the historical context have influenced each author's view about the judicial branch?**
- **How might each author's perspective have influenced his views?**

The Judicial Branch and Constitutional Principles

- The judicial branch is the third of three branches of the limited national government the Constitution establishes: the Congress in Article I, the presidency in Article II, and the U.S. Supreme Court in Article III.

- The judicial branch is subject to the same constitutional principles as the other branches:

  - Under the principle of *separation of powers*, the judicial branch has its own principal power—to interpret the laws, but that power is limited by the Constitution to certain types of cases.

  - Under the principle of *checks and balances*, the judicial branch limits the other branches' exercise of their powers, but the other branches also limit the judicial branch's exercise of its power.

  - Under the principle of *rule of law*, judicial branch officials must obey the law, including the limits of the Constitution itself.

  - Under the principle of *federalism,* in addition to the national judicial branch made up of the U.S. Supreme Court and other federal courts, each state has a separate and parallel judicial branch of its own, and the two court systems relate to each other in limited ways.

- Still, as a co-equal, independent branch at the national level, the judicial branch, with the U.S. Supreme Court at its head, has its own role to play and powers to exercise in our constitutional system of government.

The Constitution of the United States
Article III: The Judicial Branch

Section 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behavior, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;--to all Cases affecting Ambassadors, other public ministers and Consuls;--to all Cases of admiralty and maritime Jurisdiction;--to Controversies to which the United States shall be a Party;--to Controversies between two or more States;--between a State and Citizens of another State;--between Citizens of different States;--between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

Section 3. Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

Source: http://caselaw.lp.findlaw.com/data/constitution/article03/

What Does Article III *SAY* About Judicial Branch Power?

Article III, Sections 1-2 Say …	**Student Interpretations, Inferences, Conjectures, Questions**	**Purpose, Significance, Related Concepts**
Section 1 "The judicial Power of the United States shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish."		
"The Judges both of the supreme and inferior Courts shall hold their Offices during good behavior, and shall, at stated Times, receive for their Services a Compensation, which shall not be diminished during their Continuance in Office."		

Article III, Sections 1-2 Say …	Purpose, Significance, Related Concepts
Section 2 "The judicial Power shall extend [1] to all Cases, …, arising under this Constitution, the Laws of the United States, and Treaties made, …, under their Authority;--[2] to all cases affecting Ambassadors, other public Ministers and Counsels;[3] to all Cases of admiralty and maritime Jurisdiction;--[4] to Controversies to which the United States shall be a party;--[5] to Controversies between two or more States;--[6] to between Citizens of different States; --[7] between Citizens of the same State claiming Lands under Grants of different States, and [8] between a State, or the Citizens thereof, and foreign States, Citizens or Subjects."	
"In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. …"	

Article III, Sections 1-2 Say …	Purpose, Significance, Related Concepts
"In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, … ."	

Teacher Reference Guide - What Does Article III *SAY* About Judicial Branch Power?

Article III, Sections 1-2 Say …	**Purpose, Significance, Related Concepts**
Section 1 "The judicial Power of the United States shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish."	• Only one court is directly created and named—an independent *U.S. Supreme Court*—at the top of a judicial branch; the branch under the Supreme Court is filled out by Congress, which gets the power to create a *federal court system* made up of "inferior" or lower courts under the Supreme Court. • Just as the first sections of Articles I and II grant legislative power to Congress and executive power to the president, Article III gives the *judicial power* of the federal government—basically, the power to interpret laws, including the Constitution—to the Supreme Court and those other federal courts created by Congress.
"The Judges both of the supreme and inferior Courts shall hold their Offices during good behavior, and shall, at stated Times, receive for their Services a Compensation, which shall not be diminished during their Continuance in Office."	• *Judicial independence* is established by giving federal judges (including Supreme Court justices) *life-tenure*, whose compensation (pay) cannot be decreased during their term of office. • Thus, once one is nominated by the president and confirmed by the Senate as a federal judge, one serves until death, unless the judge voluntarily retires or is impeached, tried, and convicted by Congress.

Article III, Sections 1-2 Say …	Purpose, Significance, Related Concepts
Section 2 "The judicial Power shall extend **[1]** to all Cases, …, arising under this Constitution, the Laws of the United States, and Treaties made, …, under their Authority;--**[2]** to all cases affecting Ambassadors, other public Ministers and Counsels**;[3]** to all Cases of admiralty and maritime Jurisdiction;--**[4]** to Controversies to which the United States shall be a party;--**[5]** to Controversies between two or more States;--**[6]** to between Citizens of different States; --**[7]** between Citizens of the same State claiming Lands under Grants of different States, and **[8]** between a State, or the Citizens thereof, and foreign States, Citizens or Subjects."	• This specifies the ***jurisdiction***—the courts' legal authority to hear and decide cases—of the federal judicial branch. • The federal courts' jurisdiction depends upon the ***subject matter*** of a case (what kind of law the case is about) and the ***parties*** to the case (who is really in legal conflict and stands to win or lose). (Note: The bracketed numbers correspond to those in the left column.) o The kinds of subject matter within the federal courts' jurisdiction under ▪ **"[1]"** is the most important, and ▪ **"[3]"** involves cases connected with watercraft and events on the high seas and navigable waters. o The kinds of parties within the federal courts' jurisdiction under ▪ "**[2]"** are official representatives of foreign nations, ▪ "**[4]"** are cases by or against the U.S. or any part or official of or in the federal government, ▪ "**[5]**" are States suing each other, ▪ **"[6]"** a resident of one state suing s resident of another state (this "diversity jurisdiction" has monetary limits, ▪ **"[7]"** are currently irrelevant. • Moreover, the federal courts can only use their judicial power to resolve ***cases*** properly brought to them—that is, actual legal disputes (civil lawsuits and criminal charges) initiated by conflicting *parties* who have something real to win or lose. • So this section grants *and* limits the exercise of judicial power by the Supreme Court and by the lower federal courts Congress creates. • And, by implication (as well as explicitly by the later 10th Amendment), whatever jurisdiction (power) is *not* delegated to the federal courts in the Constitution is reserved to the states and their courts.

Article III, Sections 1-2 Say …	Purpose, Significance, Related Concepts
"In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. …"	• *Original jurisdiction* specifies those cases a court can hear directly, rather than through an appeal from a lower court. • The Supreme Court has ***original jurisdiction*** over those very rare cases involving states against each other or involving official representatives of foreign governments; these cases must start and have their initial trial in the Supreme Court.
"In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, … ."	• *Appellate jurisdiction* specifies those cases a court reviews and decides based on an appeal from a lower court. • The Supreme Court has ***appellate jurisdiction*** over all federal court and constitutional law cases; within its jurisdiction are all appeals from federal courts, and any appeals from state courts where the Constitution or federal law is involved. • An ***appeal*** does *not* involve a trial, the presentation of evidence, or jury decisions. Instead, judges (9 justices at the Supreme Court's level) review the record of the case in the lower court(s) to determine if the law was properly interpreted and applied, and if the proceedings were legal and fair. While almost all cases begin and have trials in lower courts, which have *original jurisdiction*, the last *appeal* possible lies in the Supreme Court. • The Supreme Court makes the final and binding interpretation and application of constitutional and federal law, which *all* lower courts must follow.

Marbury v. Madison (*1803*)

Republican Thomas Jefferson won the election of 1800. Before Jefferson took office, John Adams, the outgoing President who was a Federalist, quickly appointed 58 members of his own party to fill government jobs created by Congress. He did this because he wanted people from his political party in office. It was the responsibility of Adams' Secretary of State, John Marshall, to finish the paperwork and give it to each of the newly appointed officials. Although Marshall signed and sealed all of the papers—called job commissions, he failed to deliver 17 of them to the appointees. Marshall thought his successor would finish the job. But when Jefferson became president, he directed his new Secretary of State, James Madison, not to deliver some of the papers. Those individuals could not take office until they actually had their commissions in hand.

William Marbury was appointed by President Adams to be justice of the peace of the District of Columbia. Marbury was one of the “midnight appointees” who did not receive his commission. He sued Jefferson's Secretary of State, James Madison, and asked the Supreme Court of the United States to issue a special kind of court order, called a writ of mandamus, requiring that Madison deliver his commission.

Marbury argued that he was entitled to the job and that he could sue Madison in the Supreme Court because a federal law, the Judiciary Act of 1789, gave that court original jurisdiction to order what Marbury wanted. When the case came before the Court, John Marshall — the person who had failed to deliver the commission in the first place — was the new Chief Justice. The Court had to decide whether Marbury was entitled to his job, and if so, whether the Judiciary Act of 1789 gave the Court the authority to order the secretary of state to permit Marbury to take his position.

Chief Justice Marshall understood the danger this case posed to the power of the Court. The dilemma rested on party politics: whereas, Madison and Jefferson lead the Republican Party (different than today's Republican party), Marshall and Marbury belonged to the opposing political party, the Federalists. Jefferson and Madison had already refused to deliver the commissions because they wanted Republicans not Federalists in government office. As a result, if the Court ruled for Marbury, ordering Madison to deliver the commission, and Madison continued to refuse, the Court had no practical way to force him to comply. Marbury would still without his government job, and the Court would look weak and ineffective. Yet, if the Court ruled against Marbury, declining to order Madison to deliver the commission, the Court would still look weak and ineffective. It would look like it was backing down from the just decision for fear Madison would ignore its order.

The Court unanimously decided *not* to require Madison to deliver the commission to Marbury. But through Marshall's brilliant reasoning in his opinion for the Court, the justices not only struck a middle ground between its equally undesirable alternatives, but also increased the Court's power in the future. Thus, first the Court ruled that Marbury was entitled to his commission. But the Court then ruled that it lacked the power under the Constitution to order Madison to deliver it to Marbury.

The Court recognized that the Judiciary Act of 1789 gave it had original jurisdiction over cases like Marbury's (which was why he sued in the Supreme Court to begin with). However, as Marshall in his opinion pointed out, the Constitution itself in Article III, section 2, clause 2 limited the Supreme Court's original jurisdiction only to cases involving "ambassadors, other public ministers and consuls, and those [cases] in which a state shall be a party." "In all other cases," the Constitution said, "the Supreme Court shall have appellate jurisdiction." Of course, the case between Marbury and Madison did not involve ambassadors, public ministers, consuls, or states. Therefore, according to the Constitution, the Supreme Court had no original jurisdiction over this case, even though the Judiciary Act said it did. The federal law and the Constitution were in conflict: one said there was not original jurisdiction here, the other said there was.

Declaring the Constitution the "superior, paramount law," the Court ruled that when an ordinary law conflicts with the Constitution, it must be struck down as unconstitutional. In this case, the Constitution determined the Supreme Court's original jurisdiction, and Congress could not change or expand it by making a law. Furthermore, the Court stated that it was the job of judges, including the justices of the Supreme Court, to interpret laws and the Constitution to determine if and when they conflict. According to the Court, the Constitution gave the judicial branch this power to void laws passed by Congress, the legislative branch. This principle of judicial review has been recognized since *Marbury v. Madison,* for as Marshall put it in the Court's decision, it is "emphatically the province and duty of the judicial department to say what the law is."

By refusing to require Madison to deliver the commission Marbury, the Court did not give Madison the opportunity to disobey it, making it look powerless and irrelevant. But at the same time, by declaring and using judicial review, the Court made it clear that the judicial branch was not afraid to confront the other branches' exercise of their powers. Instead, the Court announced that the Constitution was the supreme law of the land, and established itself as the final authority for interpreting it. Through this decision, Chief Justice Marshall established judicial review as the great power of the judicial branch, and thus it a co-equal partner with the executive and legislative branches within the American constitutional system of government.

Adapted from: http://www.streetlaw.org//en/Page.Landmark.Marbury.background.two.aspx ;
http://www.streetlaw.org//en/Page.aspx?p=Landmark.Marbury.decision.summary.

Case Analysis

The Case • Name • Date	Facts of the Case, including what lower courts, if any, have ruled	Questions Presented to the Court, including • Government action under review • Laws and/or Constitutional provisions involved	Court's decision including • Rationale • Constitutional provision applied
Marbury v. Madison			
My case is:			

Case Analysis

The Case • **Name** • **Date**	**Facts of the Case, including what lower courts, if any, have ruled**	**Questions Presented to the Court, including** • **Government action under review** • **Laws and/or Constitutional provisions involved**	**Court's decision including** • **Rationale** • **Constitutional provision applied**

Case Analysis

The Case • **Name** • **Date**	**Facts of the Case, including what lower courts, if any, have ruled**	**Questions Presented to the Court, including** • **Government action under review** • **Laws and/or Constitutional provisions involved**	**Court's decision including** • **Rationale** • **Constitutional provision applied**

Teacher Reference Sheet
Judicial Review in Action—Analysis of U.S. Supreme Court Cases

The Case • **Name** • **Date**	**Facts of the Case, including** • **Criminal or Civil** • **What lower courts, if any, have ruled**	**Questions Presented to the Court, including** • **Government action under review** • **Laws and/or Constitutional provisions involved**	**Court's decision including** • **Rationale** • **Constitutional provision applied**
Marbury v. Madison (1803)	After his defeat in the 1800 election to Republican Thomas Jefferson, but before he left office, federalist President John Adams appointed a number of fellow federalists to open federal court judgeships. Some of the commissions necessary for the appointees to take office remained when the new secretary of state, James Madison, took office. When Madison refused to deliver the commissions, one of the appointees, William Marbury, sued Madison in the U.S. Supreme Court. He claimed that the Court had the direct authority under a federal law, the Judiciary Act of 1789, to order Madison to deliver his papers.	Was Marbury legally entitled to the job commission from Madison? Did the U.S. Supreme Court have the power to hear Marbury's case under federal law and the Constitution, and then to order that Madison deliver the commission to Marbury?	Yes and no. Marbury should have received his papers, the Court lacked the power to order Madison's compliance. Chief Justice Marshall's opinion for a unanimous Court emphasized that it had the constitutional power to interpret federal law including the Constitution itself. Marbury's case rested on a section of the Judiciary Act that conflicted with the U.S. Constitution. While the Act gave the Court original jurisdiction over Marbury's kind of case, the Constitution limited the Court's original jurisdiction to other kinds of cases only. Because the Constitution was the supreme law of the land, the Act could not expand the Court's original jurisdiction beyond what the Constitution provided. So the Act was unconstitutional, and Marbury had no case in the Supreme Court. The Court thus established its power of judicial review.

Case 1: Miranda v. Arizona, 1966

Ernesto Miranda was a poor Mexican immigrant living in Phoenix Arizona. In 1963, he was arrested after a crime victim identified him in a police lineup. Miranda was charged with rape and kidnapping. The police interrogated (questioned) Miranda for two hours while in police custody. The police officers questioning him did not inform him of his Fifth Amendment right against self-incrimination, or of his Sixth Amendment right to the assistance of an attorney.

As a result of the interrogation, he confessed to the crimes with which he was charged. He signed his written statement, which also contained a statement that he was aware of his right against self-incrimination. During his trial, the prosecution used his confession to obtain a conviction, and he was sentenced to 20 to 30 years in prison on each count.

Miranda appealed to the Arizona Supreme Court. He argued that his confession should not have been used as evidence in the trial because he had not been informed of his rights, nor had an attorney been present during his interrogation. The police officers involved admitted that they had not given Miranda any explanation of his rights. They argued, however, that because Miranda had been convicted of a crime in the past, he must have been aware of his rights. The Arizona Supreme Court denied Miranda's appeal and upheld his conviction

Miranda petitioned the Supreme Court of the United States to hear his case. The fundamental question the case presented was: What is the role of the police in protecting the rights of the accused, as guaranteed by the Fifth and Sixth Amendments to the Constitution? The Fifth Amendment states that no person "shall be compelled in any criminal case to be a witness against himself. . . ." The Sixth Amendment states that, "In all criminal prosecutions, the accused shall enjoy the right . . . to have the assistance of counsel for his defense."

Prior to this case, the U.S. Supreme Court had addressed similar cases. The Court had ruled that the Fifth Amendment protected individuals from being forced to confess. The Court held that persons accused of felonies have a fundamental right to an attorney, even if they cannot afford one. In 1964, after Miranda's arrest, the Court ruled that when an accused person is denied the right to consult with his attorney, his or her Sixth Amendment right to counsel is violated. In 1965, the U.S. Supreme Court agreed to hear Miranda's case.

In a 5-4 opinion, the Court ruled in favor of Miranda. The Court held that defendants arrested under state law must be informed of their constitutional rights against self-incrimination and to representation by an attorney before being interrogated when in police custody. The majority opinion explained that the 5th Amendment right against self-incrimination is fundamental to our system of justice, and is "one of our Nation's most cherished principles." This guarantee requires that only statements freely made by a defendant may be used in court. The justices described some of the techniques used by police officers in

interrogations. They observed that "the modern practice of in-custody interrogation is psychologically rather than physically oriented," and cited the advantage police officers hold in custodial interrogations (interrogations that take place while the subject is in police custody). Because of these advantages, they concluded that "the very fact of custodial interrogation exacts a heavy toll on individual liberty, and trades on the weakness of individuals."

The Court ruled that because of the pressures of custodial interrogations, the 5th Amendment guarantee to be free from self-incrimination requires that police must ensure that defendants are aware of their rights before they are interrogated in custody. Because the right against self-incrimination is so important to our system of justice, a case by case determination made by police officers of whether each defendant understands his or her rights is not sufficient. Before interrogating defendants in police custody, they must be warned 1) that they have the right to remain silent 2) that anything they say may be used against them in court, 3) that they have the right to an attorney, either retained by them or appointed by the court, and 4) that they may waive these rights, but they retain the right to ask for an attorney any time during the interrogation, at which point the interrogation can only continue in the presence of a lawyer.

The Court reasoned that because the right against self-incrimination is so fundamental, and because it is so simple to inform defendants of their rights, any statements made by defendants during a custodial interrogation in which the defendant has not been read his "Miranda rights" are inadmissible (cannot be used) in both state and federal courts.

The main dissent argued that the newly created rules did not protect against police brutality, coercion or other abuses of authority during custodial interrogations because officers willing to use such illegal tactics and deny their use in court were "equally able and destined to lie as skillfully about warnings and waivers." The dissent predicted that the new requirements would impair and substantially frustrate police officers in the use of techniques that had long been considered appropriate and even necessary, thus reducing the number of confessions police would be able to obtain. The dissent opinion concluded that the harmful effects of crime on society were "too great to call the new rules anything but a hazardous experimentation."

Adapted from: http://www.streetlaw.org//en/Page.Landmark.Miranda.background.three.aspx and
http://www.streetlaw.org//en/Page.Landmark.Miranda.decision.summary.aspx

Case 2: Bush v. Gore, 2000

In the 2000 Presidential Election, George W. Bush (Republican) ran against former Vice President Al Gore (Democrat). The election was hotly contested and a close one. The final result remained in limbo with the outcome dependent on the winner of the popular vote in Florida. The governor of Florida at the time was Jeb Bush, the Republican candidate's brother. Once the initial counting was completed, George W. Bush held a slim lead in the tally.

Under Florida election law, the results of the election needed to be certified by the Florida Secretary of State Kathryn Harris by November 14th. Another Florida law allowed for recounts of ballots in close and/or disputed elections. Although the recount was not completed by the November 14th deadline, Secretary of State Harris certified the election results. Democratic presidential candidate Al Gore challenged the actions of the Florida Secretary of State in certifying the results in the Florida courts. Gore also challenged the decision to ignore the outcome of manual recounts his campaign had requested in four Florida counties.

The Florida Supreme Court heard Gore's challenges and held that Harris could not finalize the outcome until November 26. The Florida Supreme Court also held that Harris must include the results of manual recounts in the certified results. Candidate Bush challenged this result. Harris and Bush appealed the Florida Supreme Court's decision to the U.S. Supreme Court.

In a unanimous opinion, the Court held that there was "considerable uncertainty" as to the reasons for the Florida Supreme Court's decision. The U.S. Supreme Court threw out the Florida Supreme Court's decision and sent the case back to the Florida Supreme Court for clarification. The fundamental question was whether the Florida Supreme Court's actions were based on Florida law or the US Constitution.

On December 8, 2000, the Florida Supreme Court ordered that the 9000 contested ballots from Miami-Dade County be counted by hand. It also ordered that every county in Florida must immediately begin manually recounting all "under-votes" (ballots which did not indicate a vote for president) because there were enough contested ballots to place the outcome of the election in doubt. Bush filed a request for review in the U.S. Supreme Court and the Court granted review.

This time, the U.S. Supreme Court addressed two questions:

- Did the Florida Supreme Court violate the Constitution (Article II Section 1 Clause 2) by making new election law? The Constitution says that state legislatures make laws about elections.
- Do manual recounts without set standards violate the 14th Amendment's Equal Protection and Due Process Clauses?

In its decision (7-2), the Supreme Court held that the Florida Supreme Court's way of recounting ballots was unconstitutional. The Court reasoned that the Equal Protection Clause guarantees individuals that their votes will count. The Court found that even if the recount was fair in theory, it was unfair in

practice. The record suggested that different standards were applied from ballot to ballot, precinct to precinct, and county to county. Therefore, the court held that no constitutional recount could be done in the time remaining for the election as set by law.

Although seven justices agreed the Florida Supreme Court's recount was unconstitutional, they did not agree on how to resolve the election results. Three justices argued that the recount scheme was also unconstitutional because the Florida Supreme Court's decision made new election law, which only the state legislature may do. Two other justices disagreed. These justices believed that a recount could be fashioned to resolve the constitutionality issues. They reasoned that time does not matter when constitutional rights are at stake. A third group of justices argued that for reasons of federalism, the Florida Supreme Court's decision should be respected. Moreover, these justices believed that the Florida decision was fundamentally right -- the Constitution requires that every vote be counted.

Adapted from: http://old.nationalreview.com/comment/comment-berkowitz121201.shtml; and http://www.oyez.org/cases/2000-2009/2000/2000_00_836; http://www.oyez.org/cases/2000-2009/2000/2000_00_949/

Case 3: Baker v. Carr, 1962

Redistricting is the process of redrawing state legislative and congressional district boundaries every 10 years by state legislatures following the decennial U.S. Census. The idea of redistricting is based on the idea that state legislative and congressional districts are supposed to have the same proportion of people in them. The idea of redistricting was at issue in the case of Baker vs. Carr, a U.S. Supreme Court case decided in 1962.

The Tennessee State Constitution required redistricting according to the federal census every ten years. Charles Baker, a Republican, was a resident of Shelby County, Tennessee. In 1959, Baker filed suit against Joe Carr, the Secretary of State of Tennessee. Baker complained that the Tennessee legislature had not redrawn its legislative districts since 1901, in violation of the Tennessee State Constitution. Baker, who lived in an urban part of the state (the City of Memphis is located in Shelby County), asserted that a greater proportion of the population had moved to the cities since 1901. Baker argued that because the political districts are supposed to have the same proportion of people in them, failure to redraw lines are drawn based on the number of people living in an area diluted his vote in violation of the Equal Protection Clause of the Fourteenth Amendment.

Baker asked the court to prohibit further elections, and asked for reapportionment or at-large elections. The district court denied relief on the grounds that the issue of redistricting posed a political question and would therefore not be heard by the court. The idea behind the “political question doctrine” is based on separation of powers and concerns the limits of a court’s judicial authority or considers whether the court has the ability to adequately resolve the dispute in question. The U.S. Supreme Court agreed to hear the case.

In its decision, the Court held that the case was justiciable and did not present a political question. The case did not present an issue to be decided by another branch of the government. The court noted that judicial standards under the Equal Protection Clause were well developed and familiar, and it had been open to courts since the enactment of the Fourteenth Amendment to determine if an act by another branch of government is arbitrary and capricious. The majority opinion stated that “courts cannot reject as `no law suit' a bona fide controversy as to whether some action denominated as `political' exceeds constitutional authority."

Once the Court determined it had the power to hear the case, it found that the appellants' claim had merit. The Court concluded that “the complaint's allegations of a denial of equal protection present a justifiable constitutional cause of action upon which appellants are entitled to a trial and a decision. The right asserted is within reach of judicial protection under the Fourteenth Amendment.

As a result of this Supreme Court decision, doubt was cast upon legislative districting throughout the country. The decision made it possible for unrepresented voters to have their districts redrawn by federal courts. This, in turn, initiated a decade of lawsuits that eventually resulted in a redrawing of the nation's political map. In many states it reduced the disproportionate power of rural voters and their legislative representation and increased that of urban and suburban voters and their representation. Chief Justice Warren called Baker v. Carr "the most vital decision" handed down during his long and eventful tenure on the Court. It started a reapportionment revolution that helped to establish the "one person, one vote" principle. Now that voters had access to federal courts, they had the power to enforce the principle of equal protection under the laws that the Fourteenth Amendment had codified nearly 100 years before.

Adapted from: http://law.jrank.org/pages/24894/Baker-v-Carr-Significance.html; and
http://www.lawnix.com/cases/baker-carr.html

Case 4: Vernonia School District v, Acton, 1995

School official discovered that high school athletes in the Vernonia, Oregon School District participated in illegal drug use. School athletes were actually leaders in the expanding drug culture in the school district. School officials were concerned that drug use increases the risk of sports-related injury.

Initially, the School District responded to the drug problem by offering special classes, speakers, and presentations to deter drug use. It even brought in a specially trained dog to detect drugs, but the drug problem remained. It appeared that a large part of the student body, particularly those involved in high school athletics, was in a state of rebellion. Disciplinary actions had reached epidemic proportions. There was almost three-fold increase in classroom disruptions and disciplinary reports. The teaching staff observed students using drugs or glamorizing drug and alcohol use. School administrators believed that the chaos was being fueled by alcohol and drug abuse as well as the students' views about the drug culture.

At that point, School District officials considered a drug-testing program. They held a parent "input night" to discuss the proposed Student Athlete Drug Policy, and the parents in attendance gave their unanimous approval. The School Board approved the Student Athlete Drug Policy for implementation in the fall of 1989. Its expressed purpose is to prevent student athletes from using drugs, to protect their health and safety, and to provide drug users with assistance programs. It authorized random urinalysis drug testing of its student athletes.

In the fall of 1991, James Acton, then a seventh grader, signed up to play football at one of the School District's grade schools. He was not allowed to play, however, because he and his parents refused to sign the testing consent forms. The Actons filed a lawsuit, challenging the Student Athlete Drug Policy on the grounds that it violated the Fourth and Fourteenth Amendments to the United States Constitution.

The case made its way to the U.S. Supreme Court. The Court explained the question they were seeking to address: Does random drug testing of high school athletes violate the reasonable search and seizure clause of the Fourth Amendment? The Court found the search reasonable under the Fourth Amendment.

In its decision, the Court explained that the Fourth Amendment to the United States Constitution provides that the Federal Government shall not violate "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures . . . ." The Court has held that the Fourteenth Amendment extends this constitutional guarantee to searches and seizures by state officers, including public school officials. The Supreme Court has also held that state-compelled collection and testing of urine, such as that required by the Policy, was a "search" under the Fourth Amendment.

The Court then considered whether the search in question was constitutional. For a search to be constitutional, it must be "reasonable." In making that decision, the Court determined the reasonableness of a search by "balancing the intrusion on the individual's Fourth Amendment interests against the promotion of legitimate governmental interests." The Court reasoned that high school

athletes are under State supervision during school hours. Therefore, they are subject to greater regulation. The Court then considered the privacy interest at issue in the collection of urine samples. The Court found the taking of urine samples a minor intrusion on the right of privacy. They reasoned that the conditions of collection were similar to how students use public restrooms, and the results were viewed only by a few school officials. The Court balanced these two concerns, finding that the governmental concern over the safety of minors under school supervision was greater than the minimal, if any, intrusion in student-athletes' privacy.

Adapted from: http://www.oyez.org/cases/1990-1999/1994/1994_94_590; and http://www.law.umkc.edu/faculty/projects/ftrials/conlaw/veronia.html; http://caselaw.lp.findlaw.com/cgi-bin/getcase.pl?court=US&vol=000&invol=U10263

Case 5: Mapp v. Ohio, 1961

On May 23, 1957, three Cleveland police officers went to the home of Dollree Mapp in Cleveland, Ohio. They believed that Mapp might be hiding a person suspected in a bombing. They knocked on her door and demanded entrance. Mapp refused to let them in because they did not have a warrant. After observing her house and recruiting more officers to the scene, police forced their way into Mapp's house. Mapp demanded to see their search warrant, so one of the officers held up a piece of paper claiming it was the search warrant. Mapp grabbed the paper but an officer recovered it and handcuffed Mapp. The police dragged her upstairs and searched her bedroom. Finding nothing there they went to other rooms in the house, including the basement. As a result of their search of the basement, the police found a trunk containing pornographic books, pictures, and photographs. They arrested Mapp and charged her with violating an Ohio law against the possession of obscene materials.

At the trial the police officers did not show Mapp the alleged search warrant or explain why they refused to do so. Nevertheless, the court found Mapp guilty and sentenced her to jail.

Mapp appealed the case to the Supreme Court of Ohio. Mapp's attorney argued that because the police had no warrant, their search of her basement was illegal. Because the search was illegal, he said, the evidence gained from the search was also illegal. Illegal evidence should not have been allowed in Mapp's trial. In the ruling, the Ohio Court disagreed and said that because the evidence was taken peacefully from the trunk, rather than by force from Mapp, it was legal. As a result, Mapp's appeal was denied and her conviction upheld. Mapp then appealed her case to the Supreme Court of the United States.

The U.S. Supreme Court agreed to hear the case. The question the Court considered was whether evidence obtained through a search that violates the Fourth Amendment is admissible in state courts?

The Fourth Amendment states "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 . . . and particularly describing the place to be searched, and the persons or things to be seized." But, the Fourth Amendment does not define when a search or seizure becomes "unreasonable". It also does not explain how evidence obtained from an "unreasonable" search should be treated.

In a 5-3 decision, the Court ruled in favor of Mapp. The majority opinion applied what is called the exclusionary rule. That rule required federal courts to not to use evidence that was obtained in violation of the Constitution’s ban on unreasonable searches and arrests. The Court said that the exclusionary rule applied to states as well. The Court explained that the prohibitions stated in the Fourth Amendment applied to both federal and state governments based on the Fourteenth Amendment’s Due Process Clause. Since the guarantees of the Fourth Amendment applied to both the federal and state governments, the Court reasoned that it should be enforced the same way in both federal and state courts. Evidence obtained unlawfully is not admissible in federal court, so it should not be admissible in state courts either.

The Court reasoned that requiring states to obey to the exclusionary rule created “no war between the Constitution and common sense.” They responded to the argument that the exclusionary rule would make it possible for criminals to go free due to police error by pointing out that “the criminal goes free, if he must, but it is the law that sets him free.” The justices stated that the exclusionary rule was necessary to make state authorities abide by the requirements of the Fourth Amendment, for “nothing can destroy a government more quickly than its failure to observe its own laws.” Thus, the Court decided that “the exclusionary rule is an essential part of both the Fourth and Fourteenth Amendments.”

Adapted from: http://www.streetlaw.org//en/Page.Landmark.Mapp.decision.summary.aspx and http://www.streetlaw.org//en/Page.Landmark.Mapp.background.two.aspx

Case 6: Grutter v. Bollinger (and companion case Gratz v. Bollinger), 2003

These cases were both challenges to the affirmative action admissions policies of the University of Michigan. *Grutter v. Bollinger* involved the Law School admissions policy, whereas *Gratz v. Bollinger* challenged the undergraduate admissions policy.

Grutter, a white female, was denied admission to the University of Michigan Law School. She sued on the school claiming that the school's consideration of race and ethnicity in its admissions decisions violated the Equal Protection Clause of the Fourteenth Amendment and a federal law that banned discrimination based on race.[1]

The Law School based its admission decisions on the following information: a combination of the LSAT score (Law School Admissions Test) and undergraduate grade-point average. It also considered "soft" variables like recommendations, the reputation of the undergraduate institution, the applicant's essay, residency, leadership and work experience, unique talents or interests, and difficulty of undergraduate course selection.

The Law School's admissions policy described two types of students who may be admitted with relatively low composite scores. One of those included students who "may help achieve that diversity which has the potential to enrich everyone's education and thus make a law school class stronger than the sum of its parts." In considering race and ethnicity, the Law School did not set aside or reserve seats for minority students. The Law School did, however, consider the number of under-represented minority students, and ultimately seeks to enroll a meaningful number.
According to the Law School's statistical expert, eliminating race as a factor in the admissions process would dramatically lower minority admissions.

Although the lower court found for Grutter, the appellate court found no violations and reversed that decision. Grutter sought review by the U.S. Supreme Court. The question before the Court was: Does the University of Michigan Law School's use of racial preferences in student admissions violate the Equal Protection Clause of the Fourteenth Amendment and a federal law that prohibits discrimination based on race, color or national origin?

The U.S. Supreme Court approved the law school's approach. The Court held that the 14th Amendment's Equal Protection Clause does not prohibit the Law School's method for determining admission. The Court found that a state's interest in achieving a racially diverse student body was a compelling state interest because of the educational benefits that flow from diversity. The court then found that the law school's admissions policy was narrowly tailored to achieve that end.

Although the school gave some weight to the race of an applicant, it was not a quota and it guaranteed individualized consideration. The Court reasoned that, because the Law School conducts highly individualized review of each applicant, no acceptance or rejection is based automatically on a variable

[1] Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d) which prohibits discrimination based on race, color or national origin.

such as race and that this process ensures that all factors that may contribute to diversity are meaningfully considered alongside race.

In a companion case, *Gratz v. Bollinger*, the Supreme Court of the United States considered the admissions policy at the University of Michigan's undergraduate school. The school's affirmative action admission policy used a point system that automatically awarded points to underrepresented ethnic groups. Out of a scale of 150 points, 100 points were needed to guarantee admissions. Points were awarded for a variety of factors including high school grades, standardized test scores, high school quality, curriculum strength, geography, alumni relationships, leadership, and race. The University considered African-Americans, Hispanics, and Native Americans to be "underrepresented minorities." It was undisputed that the University admits virtually every qualified applicant from these groups. Members of the underrepresented groups also automatically receive 20 points of the 100 needed to guarantee admission.
Gratz was a qualified white applicant but were not admitted to the school. Similar to the law school case, he claimed that the school's point policy violated the Equal Protection Clause of the 14th Amendment.[2]

The claim in Gratz was that the University's use of race in undergraduate admissions had denied white applicants the opportunity to compete for admission on an equal basis. In this case the white student was denied admission to the University as a freshman applicant even though an underrepresented minority applicant with his qualifications would have been admitted.

The Supreme Court of the United States held that the undergraduate admissions policy violated the Equal Protection Clause of the 14th Amendment. They explained that the University's use of race in its undergraduate admissions policy was not narrowly tailored to achieve the University's interest in diversity. The Court found that the University's current policy, which automatically distributes 20 points, or one-fifth of the points needed to guarantee admission, to every single "underrepresented minority" applicant solely because of race, is not narrowly tailored to achieve educational diversity. Here, the current undergraduate admissions policy does not provide the individualized consideration. The only consideration that accompanies the 20-point automatic distribution to all applicants from underrepresented minorities is a factual review to determine whether an individual is a member of one of these minority groups. The 20-point distribution has the effect of making "the factor of race … decisive" for virtually every minimally qualified underrepresented minority applicant.

The Court further stated that it might be difficult to provide individualized consideration for such a large applicant group, but the Constitution must still be followed.

Sources: http://www.npr.org/news/specials/michigan/index.html;
http://www.law.duke.edu/publiclaw/supremecourtonline/certgrants/2002/gruvbol.html

[2] He also claimed the policy violated the Civil Rights Act of 1964.

Case 7: Caperton v. A. T. Massey Coal Co., 2009

In October 1998, Hugh Caperton (Caperton) filed suit against A.T. Massey Coal Co., Inc. (Massey). Caperton claimed that Massey deliberately tried to steal its workers in an attempt to cripple or destroy Caperton's company. If true, such action would be illegal. Massey lost the trial and was ordered to pay $50 million in damages. Massey then appealed the case to the state supreme court in West Virginia, which agreed to hear the case.

Prior to the appeal, Caperton asked that one of the judges excuse themself from the case because of a potential conflict. Caperton argued that the head of the Massey Company had donated $3 million to the judge's election campaign. The judge refused to step off the case. The court voted to reverse the trial court judgment and dismiss the case on legal grounds. The vote was 3-2, with the questioned judge voting in the majority (his vote tipped the scale).

Caperton appealed to the Supreme Court of the United States. He claimed that the judge's participation in the case was fundamentally unfair and violated his constitutional rights to due process. The Court agreed to hear the case. The question before the Court was whether the judge's decision to participate in a case where one of the parties donated $3 million to his election campaign violated the Due Process Clause of the 14th Amendment. The Supreme Court held that 14th Amendment's Due Process Clause required the justice to step off (not participate in) the case.

The Court explained that it did not matter if the justice was actually biased in making his decision. If it could be shown that "under a realistic appraisal of psychological tendencies and human weakness," the justice's interest one of the parties posed "a risk of actual bias", he should have not participated in the case. The Court stated that such a risk of bias exists where a judge has a "direct, personal, substantial, pecuniary interest," as this justice did. The Court worried that when a person who has a personal stake in the outcome of a case had a significant and disproportionate influence in getting the judge elected when the case was already sitting before the court. Therefore, the Court reasoned, he improperly failed to step off the case.

Sources: http://www.oyez.org/cases/2000-2009/2008/2008_08_22;
http://www.brennancenter.org/content/resource/caperton_v_massey/

Case 8: Texas v. Johnson, 1989

Gregory Lee Johnson participated in a political demonstration during the Republican National Convention in Dallas, Texas, in 1984. The purpose of the demonstration was to protest policies of the Reagan Administration and of certain corporations based in Dallas. Demonstrators marched through the streets and held protests outside the offices of several corporations. At one point, another demonstrator handed Johnson an American flag. When the demonstrators reached Dallas City Hall, Johnson doused the flag with kerosene and set it on fire. During the burning of the flag, the demonstrators shouted, "America, the red, white, and blue, we spit on you." No one was hurt or threatened with injury, but some witnesses to the flag burning said they were seriously offended.

Johnson was charged with the damaging a venerated (adored) object in violation of a Texas law. He was convicted, sentenced to one year in prison, and fined $2,000. He appealed his conviction to the highest court in Texas. That court overturned his conviction saying that the State, under the First Amendment, could not punish Johnson for burning the flag.

The state of Texas filed a petition to the Supreme Court of the United States. The issue before the Court was whether burning an American flag could be considered expressive conduct protected by the First Amendment to the Constitution. In other words, was the desecration of an American flag, by burning or otherwise, a form of speech that is protected under the First Amendment?
The state of Texas claimed that the restriction on expression was necessary to prevent breaches of the peace (safety). The state also argued that they needed to prohibit flag burning to preserve the flag as a symbol of national unity.

In a 5-4 decision, the Supreme Court ruled for Johnson. The Court ruled that Johnson's act of burning the American flag was protected by the First Amendment. The Court reasoned that the "[First Amendment] protection does not end at the spoken or written word." Conduct may have elements of communication that brings in within the reach of the First and Fourteenth Amendments. The Court explained that conduct is expressive when "intent to convey a particularized message was present, and the likelihood was great that the message would be understood by those who viewed it." Given the context of political protest in which Johnson's conduct occurred, the justices concluded that it was sufficiently expressive to invoke First Amendment protection.

The Court acknowledged that "the government generally has a freer hand in restricting expressive conduct than it has in restricting the written or spoken word." However, it still cannot prohibit certain conduct just because it disapproves of the ideas expressed. The government may not prohibit the expression of an idea "simply because society finds the idea itself offensive or disagreeable." The government must have reasons for regulating the conduct. These reasons must be unrelated to the

popularity of the ideas the conduct expresses. The first was that the government can prevent expressive speech to prevent breaches of the peace.

The Court recognized that states could limit speech when it would incite "imminent lawless action." But, the Court found that the Texas law prohibiting flag burning was not limited to situations in which it would incite "imminent lawless action." In this case, no such violent disturbance of the peace occurred when Johnson burned the flag. Finding Johnson's act of burning the flag expressive conduct, the Court declared the Texas law unconstitutional because it violated the First Amendment.

Sources: http://www.streetlaw.org/en/Page.Landmark.Johnson.background.three.aspx
http://www.oyez.org/cases/1980-1989/1988/1988_88_155
http://www.streetlaw.org//en/Page.Landmark.Johnson.decision.summary.aspx

Case 9: California v. Greenwood, 1988

Local police suspected Billy Greenwood was dealing drugs from his residence. Police did not have enough evidence for a warrant to search his home. Instead, they searched the garbage bags Greenwood had left at the curb for pickup. The police uncovered evidence of drug use. This evidence was then used to obtain a warrant to search the house. That search turned up illegal substances, and Greenwood was arrested on felony charges.

At trial, Greenwood challenged the search. The trial court found that probable cause to search the house would not have existed without the evidence obtained from the trash searches. The court dismissed the charges against Greenwood on the grounds that the warrantless trash search violated the Fourth Amendment and the California Constitution.

The state of California petitioned the Supreme Court of the United States for review. The Court agreed to hear the case. The question the Court sought to resolve was whether the warrantless search and seizure of Greenwood's garbage violate the Fourth Amendment's search and seizure guarantee?

The Fourth Amendment to the United States Constitution prohibits “unreasonable searches and seizures.” What the term “unreasonable” means has been repeatedly addressed by the courts.

Voting 6 to 2, the Court held that garbage placed at the curbside is unprotected by the Fourth Amendment. The Court explained that there was no reasonable expectation of privacy for trash on public streets because it was "readily accessible to animals, children, scavengers, snoops, and other members of the public." The Court also noted that the police cannot be expected to ignore criminal activity that can be observed by "any member of the public."
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The Court explained that the Fourth Amendment protects only “reasonable expectations of privacy.” In order for there to be a “reasonable expectation of privacy,” society must see that expectation of privacy as objectively reasonable”. Because others have access to the garbage, society as a whole has no expectations of privacy for garbage left by the curb for trash collection.

Thus, the Court held that the search did not violate the 4th Amendment to the U.S. Constitution, made applicable to the states through the 14th Amendment. Police were allowed to use the evidence found in the trash as evidence to support a warrant to search Greenwood’s house.

Sources: http://caselaw.lp.findlaw.com/cgi-bin/getcase.pl?court=US&vol=486&invol=35
http://www.oyez.org/cases/1980-1989/1987/1987_86_684

Case 10: United States v. Nixon, 1974

In 1972, five burglars broke into the Democratic National Committee Headquarters. This was where party members made decisions relating to political campaigns and how to raise money for candidates.

The burglars were caught. Later it was discovered that President Nixon and his aides were involved in the burglary. They had hired people to break into the offices. They wanted to get information that would help Nixon get re-elected. Investigators also discovered that the president and his aides had committed other illegal acts.

In the United States, the president has to follow the rule of law. If he breaks the law, he can be put on trial. Since President Nixon broke the law, the federal government decided to prosecute him. The government gathered evidence against him. They discovered that President Nixon had a tape recorder in the Oval Office. He taped most of what happened in his office. The tapes included conversations he had with his aides.

The prosecutor in the case believed that the tapes probably had information about the illegal things President Nixon and his aides had done. He asked President Nixon to turn over the tapes. Nixon said no. A federal judge told him he had to give the tapes to the prosecutor.

The president appealed the decision to the U.S. Circuit Court of Appeals. The prosecutor asked the Supreme Court of the United States to hear the case instead. The Court agreed to hear the case because it was so important.

President Nixon's lawyers argued that the president's tapes were protected by executive privilege. This is the belief that the conversations between the president and his aides are confidential. Sometimes, these discussions need to be private to protect the country. Other times, privacy is needed to protect the president’s advisors. They need to be able to give the president advice without worrying about being criticized by other people. That way, they can be honest with the president. Their honest opinions help the president to make decisions.

The lawyers for the United States said that the tapes were necessary to prove that the president had committed a crime. They argued that justice in this criminal case was more important than protecting the privacy of the president and his aides. Therefore, President Nixon should turn over the tapes.

In a unanimous decision, the Court ruled in favor of the United States and against President Nixon. The Court concluded that presidents do enjoy a constitutionally protected executive privilege, but that the privilege was not absolute. The Court decided that in this case, the President’s interest in keeping his communications secret was outweighed by the interests of the judiciary in providing a fair trial with full factual disclosure.

President Nixon’s attorneys argued that the doctrine of separation of powers prevented the Supreme Court from hearing this case at all. They asserted that the judicial branch should not be allowed to interfere with the functioning of the executive branch. The Court rejected this argument. Since the

case raised a constitutional question, the Court stated it clearly fell within the functions of the judicial branch as the interpreter of the Constitution. The justices cited the decision of Marbury v. Madison, where the Court declared that "it is the province and duty of the judicial department to say what the law is."

President Nixon's lawyers also claimed the president was entitled to absolute executive privilege. This meant that he could not be forced to reveal any of his confidential communications unless he chose to. The lawyers set out two reasons to support their argument. First, the president needed honest advice from his advisors, and these advisors might be uncomfortable giving advice if they knew that it could become public. Second, these confidential communications were essential for the president to carry out the duties assigned to the executive branch by the Constitution.

The Court acknowledged that the president was entitled to a degree of executive privilege. This privilege was not, however, determined to be absolute. In this case, the interest of President Nixon in keeping his communications secret conflicted with the interests of the judicial branch in providing a full and fair trial. A fair trial required full disclosure of all facts and relevant information. The interests of the president must be balanced against the interests of the judicial branch when these interests conflict.

The justices reasoned that the judiciary's interest in the "fair administration of criminal justice" outweighed President Nixon's interest in keeping the content of his tapes secret. Only the trial judge would be privately inspecting the tapes to determine whether they were essential to a fair trial. The Court recognized that there might be cases in which the president's need for confidentiality would outweigh the interests of the judicial branch, such as when the secret communication involved "military, diplomatic or sensitive national security secrets." This was not one of those cases.

The results of the case brought compelled Richard Nixon to resign his office and demonstrated that no citizen is above the law. When Gerald Ford assumed the presidential office he gave Richard Nixon a full pardon for any crimes he may have committed while in office. This meant that he was not actually punished for his wrong doing, a fact which disturbed many citizens at the time. Ford claimed that it was important for the American people to put Watergate behind them.

Adapted from: http://www.streetlaw.org//en/Page.Landmark.Nixon.background.one.aspx
http://www.streetlaw.org//en/Page.Landmark.Nixon.decision.summary.aspx

Case 11: Youngstown Sheet & Tube Co. v. Sawyer, 1952

The case *Youngstown Sheet & Tube Co. v. Sawyer* arose from a labor dispute. The dispute was between American steel companies and their employees over the terms of a collective bargaining agreement that was under negotiation in 1951. Employees wanted higher wages, but management protested that such increases could only be met through drastic price hikes. President Harry S. Truman opposed further price hikes because the economy was already suffering from inflation. In addition, Truman feared that any disruption in domestic steel production would hurt the American war effort in Korea. The US was entering its second year in the war and President Truman was worried about the safety of U.S. military troops.

When negotiations between labor and management reached a deadlock, the employees' representative, the steelworkers' union, announced it intended to begin a nationwide strike on April 12, 1952, at 12:01 A.M. A few hours before the strike was to begin, Truman issued Executive Order 10340. The order commanded the secretary of commerce, Charles Sawyer, to seize most of the nation's steel mills and keep them running.

In carrying out this order, the secretary directed the presidents of the seized steel companies to serve as operating managers for the U.S. government. Until directed otherwise, each president was to operate his plant in accordance with the rules and regulations prescribed by the secretary. While obeying these orders under protest, the steel companies filed a lawsuit to stop the enforcement of the executive order.

The Supreme Court invalidated the President's executive order. The Court explained that President Truman's power to issue the order derived, if at all, from an act of Congress or from the U.S. Constitution. The Court found that Truman had not acted under congressional authority. Prior to issuing the order, Truman had given Congress formal notice of the impending seizure. However, neither house responded. The Court also observed that Congress had considered amending the Labor-Management Relations Act of 1947 (popularly known as the Taft-Hartley Act) to include a provision authorizing the seizure of steel mills in times of national crisis. Yet Congress rejected the idea. No other federal statutory authority existed, the Court stressed, from which presidential power to seize a private business could be fairly implied.

The Court next turned to the president's constitutional powers. Article II of the Constitution delegates certain enumerated powers to the executive branch. Unlike Article I, which gives Congress a broad grant of authority to make all laws that are "necessary and proper" in exercising its legislative function, Article II limits the authority of the executive branch to narrowly specified powers.

Consistent with Article II, the Court said, a president may recommend the enactment of a particular bill, veto objectionable legislation, and "faithfully execute" laws that have been passed by both houses of Congress. As commander in chief, the president of the United States is vested with ultimate responsibility for the nation's armed forces. However, the Court emphasized, the office of the president has no constitutional authority outside the language contained within the Constitution.

Lawyers for the executive branch had argued that the presidency carries with it certain inherent powers that may be reasonably inferred from the express provisions of the Constitution. During times of national emergency, the government's lawyers argued, the president may exercise these inherent powers without violating the Constitution. Since wartime is traditionally considered a time of national emergency, the president's seizure of the steel mills represented a legitimate exercise of his inherent powers.

The Supreme Court disagreed with these arguments. The Court agreed that a strike could threaten national security by restricting the production of armaments. However, the Court said that the commander in chief's authority to prosecute a foreign war does not give him power to seize private property in an effort to resolve a domestic labor dispute. The Court reminded the executive branch that only Congress can authorize the taking of private property for public use under the Eminent Domain Clause of the Fifth Amendment to the U.S. Constitution.

Two justices of the Supreme Court disagreed with the decision. They claimed that President Truman's seizure of the steel mills was supported by history. They pointed out that during the Civil War, President Abraham Lincoln ordered the seizure of all rail and telegraph lines leading to Washington, D.C., even though he lacked congressional approval.

Youngstown Sheet & Tube is considered a groundbreaking case regarding the separation of powers among the branches of the federal government. The constitutional authority of each branch is limited by the express language of the Constitution and by the powers delegated to the branches. The popular notion of "checks and balances" rests upon this conception of the separation of powers.
Despite the clear separation of constitutional powers, presidents, members of Congress, judges, and laypeople have debated whether the executive branch is vested with additional inherent or implied powers. On one side of the debate are those who believe the presidency enjoys a residue of autocratic power. According to these individuals, such power may be exercised by the president in times of national emergency and is limited only by the president's good judgment. On the other side of the debate are those who believe the executive branch may not exercise any power that is not explicitly granted by the federal Constitution or federal statute.

Adapted from: http://legal-dictionary.thefreedictionary.com/Steel+Seizure+Case

Case 12: United States v. Lopez, 1995

High school senior Alfonso Lopez walked into Edison High School in San Antonio, Texas carrying a concealed .38 caliber revolver along with five cartridges. School authorities were informed by an anonymous source. Lopez was confronted and subsequently acknowledged his possession of a firearm. He was charged with violating a Texas law that banned firearms in schools. The next day, the state charges against him were dismissed after he was charged with violating a federal law: the Gun Free School Zones Act of 1990. This Act made it a federal offense "for any individual knowingly to possess a firearm [in] a school zone." Lopez was indicted by a grand jury and subsequently found guilty. He was sentenced to six months in prison followed by two years of probation.

Lopez and his attorneys challenged his conviction, arguing that the Gun Free School Zones Act was an unconstitutional exercise of Congress's power. Schools were controlled by state and local governments and were not under the authority of the federal government. The federal government claimed that it had the authority to ban guns in schools under its commerce power. The Commerce Clause of the Constitution gives Congress the power to "regulate commerce with foreign nations, and among the several states, and with the Indian tribes."

The government asserted that the law was related to interstate commerce because guns in school led to gun violence. People would then be reluctant to travel through the areas where the violence occurred. The government also argued that the disruptions to the learning environment created by guns in schools result in a less educated citizenry, negatively affecting commerce.

In a 5 to 4 decision, the Supreme Court rejected the government's claim. The Court held that the Gun Free School Zones Act was not substantially related to commerce because the possession of a gun in a school zone did not have a clearly noticeable economic impact. The Court explained, "Under the theories that the Government presents…it is difficult to perceive any limitation on federal power, even in areas…where States historically have been sovereign. Thus, if we were to accept the Government's arguments, we are hard-pressed to find any activity by an individual that Congress is without power to regulate...."

The Supreme Court also cited the Founders' speeches and writings on the balance between state and federal power, and in particular their belief in limited government. The federal government does not have any powers except those delegated to it in the Constitution. The Court held that the Commerce Clause could not be used to address the problem of guns in school.

United States v. Lopez is a particularly significant case because it marked the first time in half a century that the Court held that Congress had overstepped its power under the Commerce Clause. Congress responded to *Lopez* by rewriting the Gun Free Schools Act in 1995 in a manner that made it more in accord with other Federal laws about firearms, their possession and transport.

Adapted from: http://www.billofrightsinstitute.org/page.aspx?pid=681

Teacher Reference Sheet
Judicial Review in Action—Analysis of U.S. Supreme Court Cases

The Case • **Name** • **Date**	**Facts of the Case, including what lower courts, if any, have ruled**	**Questions Presented to the Court, including** • **Government action under review** • **Laws and/or Constitutional provisions involved**	**Court's decision including** • **Rationale** • **Constitutional provision applied**
Marbury v. Madison (1803)	After his defeat in the 1800 election to Republican Thomas Jefferson, but before he left office, federalist President John Adams appointed a number of fellow federalists to open federal court judgeships. Some of the commissions necessary for the appointees to take office remained when the new secretary of state, James Madison, took office. When Madison refused to deliver the commissions, one of the appointees, William Marbury, sued Madison in the U.S. Supreme Court. He claimed that the Court had the direct authority under a federal law, the Judiciary Act of 1789, to order Madison to deliver his papers.	Was Marbury legally entitled to the job commission from Madison? Did the U.S. Supreme Court have the power to hear Marbury's case under federal law and the Constitution, and then to order that Madison deliver the commission to Marbury?	Yes and no. Marbury should have received his papers, the Court lacked the power to order Madison's compliance. Chief Justice Marshall's opinion for a unanimous Court emphasized that it had the constitutional power to interpret federal law including the Constitution itself. Marbury's case rested on a section of the Judiciary Act that conflicted with the U.S. Constitution. While the Act gave the Court original jurisdiction over Marbury's kind of case, the Constitution limited the Court's original jurisdiction to other kinds of cases only. Because the Constitution was the supreme law of the land, the Act could not expand the Court's original jurisdiction beyond what the Constitution provided. So the Act was unconstitutional, and Marbury had no case in the Supreme Court. The Court thus established its power of judicial review.

Teacher Reference Sheet
Judicial Review in Action – Analysis of Supreme Court Cases

The Case • **Name** • **Date**	**Facts of the Case, including what lower courts, if any, have ruled**	**Questions Presented to the Court, including** • **Government action under review** • **Laws and/or Constitutional provisions involved**	**Court's decision including** • **Rationale** • **Constitutional provision applied**
Miranda v. Arizona (1966)	Arrested for kidnapping and sexual assault, Ernesto Miranda after interrogation in police custody signed a voluntary confession. The confession was used against him at trial, and he was convicted. He appealed, claiming that in obtaining the confession, police officers had violated his rights during questioning to have legal counsel and to remain silent (not to incriminate himself). Miranda argued that since he was unaware of his rights, the police had to warn him of them for the resulting confession to be truly "voluntary" and therefore admissible against him.	Given the right to remain silent during police interrogation (Fifth Amendment), the right to a lawyer during questioning (Sixth Amendment), as included in the right to due process in all state legal proceedings (Fourteenth Amendment), should Miranda's confession be excluded from the evidence against him because the police failed to warn him of his rights before getting the confession?	Yes (5-4 vote). Since the police obtained Miranda's confession unconstitutionally, it could not be used against him. He was entitled to a new trial with his confession kept out of evidence. The Court explained that a truly voluntary confession must be knowingly given, meaning that the accused knows what rights he/she gives up by confessing. The police have many advantages during interrogation. Warning an accused would take little police time or effort, and it would help ensure that confessions were freely and fairly made. Thus, the Court established the constitutional requirement that police give the now-famous "*Miranda* warnings" to those they want to question while in custody.
Bush v. Gore (2000)	The winner of an extremely close presidential election between Republican George W. Bush and Democrat Al Gore, Jr. depended on the popular vote in Florida. Based on the initial vote count and an automatic machine recount, the Florida secretary of state certified Bush as the winner. Gore sued in state court for further re-counts, and eventually the Florida Supreme Court ordered a state-wide manual recount of all "under-votes." These ballots were to be individually examined to try and determine the "voter's intent." Bush appealed to the U.S. Supreme court.	Should the manual recount ordered by the Florida Supreme Court stop because it was proceeding without a sufficiently clear standard in violation of the Equal Protection Clause of the Fourteenth Amendment? If so, is the result to let stand the secretary of state's original certification of Bush as the winner of the presidential election in Florida because there is no practical way of conducting a constitutional recount in the time required by state and federal law?	Yes (7-2 vote). Since the Equal Protection Clause guarantees individuals that their ballots cannot be devalued by "later arbitrary and disparate treatment," the Florida Supreme Court's method for recounting ballots was unconstitutional. Even if a recount based on trying to determine the "intent of the voter" was fair in theory, it was unfair in practice because different standards were applied from ballot to ballot, precinct to precinct, and county to county. And yes (5-4 vote). Because of the standard problem and other procedural difficulties, no constitutional recount could be fashioned in the time left under state and federal law. The certification by the Florida secretary of state was the official result.

Teacher Reference Sheet
Judicial Review in Action – Analysis of Supreme Court Cases

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Baker v. Carr (1962)	Due to inevitable population changes and movements, the boundaries of state and federal legislative districts must be redrawn periodically if each elected legislator is to represent about the same number of people. Charles W. Baker and other Tennessee citizens alleged that a state law designed to require such "re-districting" (or involving "apportionment") for the state's general assembly was virtually ignored. The unfair and unequal result was that a citizen's vote had a different weight in elections depending on where in the state he/she happened to live.	Under principles of separation of powers and federalism versus those of due process and equal protection, did the federal courts, including the U.S. Supreme Court, have the power to review state apportionment laws and actions (or inactions), especially where they present "political questions" that might be better left to other branches or levels of government?	Yes (6-2 vote). This case properly presented a question subject to judicial review under the Equal Protection Clause of the Fourteenth Amendment. After exploring the nature of "political questions" and the appropriateness of judicial action in such cases, the Court concluded that this case presented no such question, and therefore legislative apportionment was a justiciable issue. The Court in past cases had intervened to correct constitutional violations in matters concerning the administration of state law and the state officers who conducted state affairs. This case merited similar consideration.
Vernonia School District v. Acton (1995)	The Vernonia School District conducted an investigation into the nature and scope of the drug use among its students. The investigation revealed a substantial problem, which included participation by student-athletes. Concerned for the safety of its student-athletes, and determined to discourage illegal drug use, the district adopted a policy that required random urinalysis drug testing of its student athletes. When James Acton and his parents refused to consent to the testing program, the district prevented his participation on his school's football team. He sued the district, alleging that the testing policy violated his rights under the Fourth Amendment.	Is requiring a student to undergo random drug testing in order to participate in public school athletics an "unreasonable search" prohibited by the Fourth Amendment?	No (6-3 vote). The reasonableness of a search is judged by "balancing the intrusion on the individual's Fourth Amendment interests against the promotion of legitimate governmental interests." High school athletes who are under state supervision during school hours in a school setting. They are subject to greater control compared to free adults. The privacy interest infringed by the taking of urine samples is small since the conditions of collection are similar to public restrooms, and the results are seen only by authorized personnel. Yet the governmental interest in the heath and safety of minors under its supervision is substantial. It outweighs the minimal intrusion into student-athletes' privacy. The district's policy was constitutional.

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Mapp v. Ohio (1962)	Police officers claimed to suspect that a fugitive was evading arrest in Dollree Mapp's home. They forcibly searched her house without a warrant or probable cause. Their illegal search discovered pornography in the basement. Mapp was convicted of possessing obscene materials. Ohio did not at the time follow the "exclusionary rule," under which illegally obtained evidence cannot be used against an accused at trial.	May evidence obtained through a search and seizure that violated the Fourth Amendment be admitted in a state criminal proceeding consistent with due process under the Fourteenth Amendment?	No (5-3 vote). While the exclusionary rule had limited federal law enforcement officials for some time, the Court now applied the same principle to the states as part of the Fourteenth Amendment's due process guarantee. The Court declared that "all evidence obtained by searches and seizures in violation of the Constitution is, by [the Fourth Amendment], inadmissible in a state court." Thus the Fourth Amendment protection against "unreasonable searches and seizures" was extended from federal government action to state (and local) government action.
Grutter v. Bollinger -and- ***Gratz v. Bollinger (2003)***	Two schools within the University of Mich. used different methods of affirmative action (giving a racial preference) in admissions. The goal of both was student diversity. The Law School holistically considered each applicant's qualifications, with race as one factor. The Undergraduate College gave race a fixed number of the total points needed for admission. A disappointed white applicant to each school sued, claiming that less qualified applicants were admitted due to race. They also claimed that "diversity" was not a legally sufficient justification for the racial preferences here. After separate initial appeals, the cases were consolidated for decision by the U.S. Supreme Court.	Does the University of Michigan Law School's use of a racial preference as one factor in a holistic admissions process to ensure a diverse student body violate the Equal Protection Clause of the Fourteenth Amendment? Does the University of Michigan award of a fixed number of points toward admission as a racial preference to ensure a diverse undergraduate student body violate the Equal Protection Clause of the Fourteenth Amendment?	No (5-4 vote). The Equal Protection Clause did not prohibit the Law School's racial preference that was "narrowly tailored" to further a "compelling interest": the educational benefits of student diversity. Because the Law School conducted a highly individualized review of each applicant, no admission decision was based automatically on race, which was one factor that contributed to diversity. Yes (6-3 vote). Although the goal of diversity may justify a racial preference in college admission, the automatic grant of points toward admission based only on race was *not* "narrowly tailored." Instead two applicants could have the same number of points toward admission based on all other qualifications, only to have the points for race be the deciding factor. This admission process violated the Equal Protection Clause.

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Caperton v. A.T. Massey Coal Co. (2009)	Hugh Caperton sued A.T. Massey Coal Co. in a West Virginia state court, and won $50 million at trial. Before the state supreme court decided Massey's appeal, Caperton asked Justice Benjamin to recuse himself (not participate in the case) because Massey's president had donated $3 million—by far the largest donation—to Benjamin's campaign for his seat on the court. Benjamin's participation after the campaign contribution at least gave the appearance of impropriety that violated the Fourteenth Amendment's Due Process Clause. Benjamin refused, instead casting the deciding vote in the court's 3-2 decision for Massey and against Caperton.	Did Justice Benjamin's failure to recuse himself from participation in a case where he had received a huge campaign donation from one of the parties in that case deny the other party in the case due process of law under Fourteenth Amendment?	Yes (5-4 vote). Due process required that Benjamin not participate in the case. Even if Benjamin were not actually biased in favor of Massey due to Massey's campaign contribution, his deciding vote for Massey not only gave the appearance of bias, but created too large a risk of bias to provide Caperton with due process. The Court found that "under a realistic appraisal of psychological tendencies and human weakness," Benjamin's interest posed "a risk of actual bias" that invalidated a decision that included his participation. The Court stated that such a risk of bias exists where a judge has a "direct, personal, substantial, pecuniary interest," as Benjamin did. Therefore, the state court's decision could not stand.
Texas v. Johnson (1989)	The 1984 Republican Party held its national convention in Dallas, Texas. During a public demonstration at Dallas city hall, Gregory Lee Johnson burned an American flag to protest policies of the Republican Reagan administration. Johnson was arrested, tried, and convicted under a Texas law outlawing the desecration of the flag. He was sentenced to jail and fined despite his claim that his action was protected "speech" under the First Amendment. After the state appellate courts reversed his conviction on free speech grounds, the state appealed to the U.S. Supreme Court.	Can a state criminally punish one for desecrating the American flag, even if the desecrating act (here, burning) constituted symbolic speech within the protection of the First Amendment?	No (5-4 vote). Johnson's burning of a flag was protected expression under the First Amendment. His actions fell into a category of protected expressive conduct due to its symbolic political message. The fact that the audience took offense to the expressive message and the mode of expression does not justify a limitation on or punishment of the speech. Further, state officials could not designate certain symbols as outside First Amendment protection. "If there is a bedrock principle underlying the First Amendment, it is that the Government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.

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California v. Greenwood (1988)	Although police suspected that Billy Greenwood was dealing illegal drugs from his house, they did not have enough evidence to get a search warrant. The police instead obtained the trash he had left at the curb for pick up. They searched his trash and found evidence of drug use. They used this evidence to get a warrant, and when they searched Greenwood's home, the police seized illegal substances and other evidence of illegal drug use and sale. Greenwood appealed his conviction, claiming that police obtained the evidence in his trash in violation of his Fourth Amendment rights.	Where Greenwood had voluntarily made his trash publically accessible, did the warrantless search and seizure of that trash violate the Fourth Amendment because he still had a "reasonable expectation of privacy" in its content?	No (6-2 vote). The Fourth Amendment does not protect from the search of trash placed at the curbside. There was no reasonable expectation of privacy in trash voluntarily placed on public streets where it was "readily accessible to animals, children, scavengers, snoops, and other members of the public." Moreover, the police could not be expected to ignore criminal activity that could be observed by "any member of the public." The police acted reasonably in their initial search and seizure.
U.S. v. Nixon (1974)	A grand jury indicted 7 of President Richard Nixon's closest aides as part of its investigation of the Watergate scandal. The special prosecutor in the case subpoenaed audio tapes of conversations Nixon had recorded in the Oval Office because they represented important evidence. Nixon claimed absolute "executive privilege." This was the president's asserted right to withhold information from other government branches to preserve confidential communications within the executive branch or to secure the national interest. The federal district court ordered the subpoena enforced and the tapes turned over. Nixon appealed.	Could the federal court enforce the special prosecutor's subpoena and require Nixon to turn the tapes in to the court, despite Nixon's claim of executive privilege implied by the Constitution and the principle of separation of powers?	Yes (8-0 vote). Neither the separation of powers principle, nor a constitutionally implied privilege based on the generalized need for confidentiality of high-level communications, could sustain absolute presidential control over information that might be important evidence in judicial proceedings. The Court agreed that a qualified executive privilege existed, for example in the areas of military or diplomatic affairs. But in this case the limited privilege had to give way to "the fundamental demands of due process of law in the fair administration of justice." Therefore, Nixon had to obey the subpoena and produce the tapes. (He resigned shortly after doing so—and after a House committee voted articles of impeachment against him.)

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Youngstown Sheet & Tube Co. ***v.*** ***Sawyer*** ***(1952)***	As the Korean War raged in1952, a labor dispute led to threatened strikes by steelworkers that would disrupt the nation's steel production. Without congressional authorization, President Truman relied on his executive power to issue an order directing Secretary of Commerce Charles Sawyer to seize and operate most of the nation's steel mills. Truman claimed that he could act on his own as president in the face of a war time national emergency.	Did the president have the constitutional authority based on his Article II executive power, and even in the absence of congressional authorization, to order the government's seizure and operation of private property (the steel mills) in order to prevent an interruption in production that could harm national security?	No (6-3 vote). Under the circumstances, the president did not have the constitutional authority to issue such an order on his own. There was no congressional statute (law) that authorized the president to take possession of private property, even though the U.S. was in a war and Congress had recently amended the federal labor law. Moreover, the president's power as military commander in chief did not extend to the seizure and use of private property, as well as the preemption of a potentially lawful strike, in order to resolve a domestic labor dispute. The president's unilateral action was far too broad, exceeding his power under the Constitution.
U.S. ***v.*** ***Lopez*** ***(1995)***	In 1990, Congress passed the Gun-Free School Zones Act. The Act forbade "any individual knowingly to possess a firearm at a place that [he] knows . . . is a school zone." Congress based the law on its power under the Commerce Clause. Alfonso Lopez, a Texas high school student, was convicted for carrying a gun into his school in violation of the Act. He appealed his federal conviction, arguing that the Act exceeded the constitutional power of Congress.	Did Congress have the power under the Commerce Clause of the Constitution, Article I, section 8, clause 3, to pass the Gun-Free School Zones Act, which law authorized the federal criminal prosecution of Lopez?	No (5-4 vote). The Act exceeded Congress' Commerce Clause authority. Gun possession in a local school zone, while certainly subject to state regulation, was not economic activity that might affect interstate commerce subject to regulation by Congress. The Act was a criminal law that purported to regulate behavior that had nothing to do with "commerce" or other economic activity. Nor was the regulated behavior—gun possession—an essential part of larger economic activity. Congress when it passed the Act failed to show a sufficient link between gun violence in schools and interstate commerce.

Adapted from: Lesson 1 case summaries found in the *Supplemental Materials (Unit 5)*; http://www.oyez.org/cases/; "Supreme Court Glossary" in William A. McClenaghan, *Magruder's American Government,* 2006 ed. (Boston, MA: Pearson Prentice-Hall), pp. 799-806.

Citizens United v. Federal Election Commission, 2010

In 2002 Congress passed a new law regulating the financing of federal election campaigns, the Bipartisan Campaign Reform Act (commonly called the McCain-Feingold Act after its two Senate sponsors). This federal law, as later amended, prohibited corporations and unions from using their general treasury funds to pay for "electioneering communications" or for other media that expressly advocated the election or defeat of a candidate. An "electioneering communication" was defined as "any broadcast, cable, or satellite communication" that "refers to a clearly identified candidate for Federal office" and is made within 30 days of a primary election or within 60 days of a general election. (A corporation or union could still establish a political action committee, or PAC, to collect and spend money to support or oppose candidates in election campaigns.) The federal law also required that the sponsors or campaign communications make certain disclaimers and disclosures about their ads. A person or group who broke the law faced potential civil and criminal punishment. The law gave primary enforcement authority to the Federal Election Commission (FEC).

The federal law was motivated by several concerns. One was that the huge amounts of money leaders of corporations and unions controlled could overwhelm the media in a campaign, thereby distorting the fairness and legitimacy of the election. In addition, the actual spending of money on advertising for a candidate, or even the threat of spending money on advertising against a candidate, could easily lead to the corruption of candidates and elected officials. Even the appearance or suspicion of corruption would likewise seriously harm the democratic process. Large, one-sided spending on electronic media (television) presented a particular danger, especially if ads flooded the airwaves so close to an election day that a meaningful response was practically impossible. In a case called *Austin* v. *Michigan Chamber of Commerce* (1990), the U.S. Supreme Court had held that a *state law* prohibition on corporate campaign spending did *not* violate the First or Fourteenth Amendments. And in another previous case, *McConnell v. Federal Election Comm'n* (2003), the Court upheld the *federal law* limits on "electioneering communications" as well.

At the beginning of the presidential primary season in January 2008, Citizens United, a nonprofit corporation that also received some donations from for-profit corporations, released a documentary called *Hillary: The Movie.* It was extremely critical of then-Senator Hillary Clinton, a

candidate for her party's presidential nomination. Anticipating that it would make *Hillary* available on cable television through video-on-demand within 30 days of the upcoming primary elections, Citizens United produced television ads to run on broadcast and cable television. Concerned about possible civil and criminal penalties for violating the federal law, Citizens United sued the FEC to prevent its enforcement of the federal law against its planned distribution of *Hillary* and the related ads. Citizens United argued that both the limits on the nature and timing of corporate spending and the reporting requirements were unconstitutional. When the federal district court rejected its claims and ruled for the FEC, Citizens United appealed to the U.S. Supreme Court.

By a 5-4 vote, the Court in a majority opinion by Justice Anthony Kennedy held that the federal limits on the timing and amount spent on independent corporate "speech" conflicted with the First Amendment.: "If the First Amendment has any force, it prohibits Congress from fining or jailing citizens, or associations of citizens, for simply engaging in political speech." Political speech, after all, is essential to democratic government regardless of the speaker. Yet the federal law, much like unconstitutional prior restraints on expression, actually suppressed speech just because the speaker took one kind of legal form. The Court majority emphasized that "the First Amendment stands against attempts to disfavor certain subjects or viewpoints or to distinguish among different speakers, which may be a means to control content." The Court further emphasized that corporations already had recognized First Amendment rights, and that these included the same free speech protections from government regulation as individuals, or other associations of individuals, enjoyed. Obviously media corporations (newspaper, book and magazine publishers; TV stations, networks, production companies; etc.) had free speech (and press) rights, which even the federal law exempted from its limits.

The Court concluded that its previous decisions otherwise in the *Austin* and *McConnell* cases—that is, decisions upholding state and federal limits on corporate campaign spending—were wrong. It rejected the concerns about how unlimited corporate spending for or against a candidate would definitely distort and possibly corrupt the election process that those decisions had expressed. Under the Court's current interpretation of the First Amendment and use of judicial review, these past decisions were overruled.

All the Justices voted to uphold the disclosure and disclaimer requirements of the federal law. On this issue, the Court reasoned that, although such requirements might "burden" speech, they were justified in most cases by the government's legitimate interest in providing information and avoiding confusion about the speaker's identity. Finally the Court pointed out that its decision did not affect a long-standing ban on direct corporate contributions to a political candidate, since in those circumstances the danger of corruption, or its appearance, was much greater and chilling effect on speech much less.

In the principal dissenting opinion, Justice Stevens argued that the Court's ruling "threatens to undermine the integrity of elected institutions across the Nation." In his view, the federal law was properly addressed the dangers presented by unlimited corporate spending on "speech" for or against candidates for elective office. In the name of more and freer speech, the majority's decision would actually harm the democratic process the First Amendment is supposed to protect and enhance: "[T]he Court's opinion is thus a rejection of the common sense of the American people, who have recognized the a need to prevent corporations from undermining self government … " Moreover, according to the dissent, the Court's ruling rested upon the erroneous determination that corporations are entitled to the same rights under the First Amendment as individuals. Given the purpose and nature of corporations, this equation of rights was simply not what the First Amendment, or its drafters, had in mind.

Sources: **http://www.hblr.org/2011/01/citizens-united-and-the-nexus-of-contracts-presumption/** **http://www.oyez.org/cases/2000-2009/2008/2008_08_205**; the Court opinion *Syllabus* by the Reporter of Decisions, found at http://www.law.cornell.edu/supct/html/08-205.ZS.html

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Citizens United v. Federal Election Commission (2010)	Citizens United is a nonprofit political group who made a movie about Hillary Clinton when she was running for the nomination to be president. They wanted to show the movie during the 2008 election campaign. The Campaign Reform Act prohibited corporations and unions from using their general monies to pay for election advertising in favor or in opposition to a candidate. The law also made it illegal for communication like the Hillary movie to be shown within a certain time frame of the election. The law required certain disclaimers and disclosures be made about who gave money to support the ad. In a civil case, Citizens United sued the Federal Election Committee to prevent the enforcement of the law so they could show the movie. Lower court ruled against Citizen United and found the law constitutional.	The enforcement of the Campaign Reform Act First Amendment The question presented was whether the bans and disclosure requirement of the federal campaign reform act violated the First Amendment.	The First Amendment protects corporate (and union) funding of independent political broadcasts. Reasoning that political speech is indispensable to a democracy, the Court did not find this to be less true when the speech comes from a corporation. The Court also explained that corporations and unions are associations of citizens and limiting their speech rights violated the First Amendment. The Court found the law's disclosure requirements as applied to *The Movie* were constitutional. The Court reasoned that disclosure is justified by a "governmental interest" in providing the "electorate with information" about election-related spending resources.

Commentary #1

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Citizens United Decision Means More Free Speech

By Paul Sherman

Posted on January 21, 2010 1:42 PM

Supreme Court observers have been waiting a long time for the decision in *Citizens United* v. *FEC*, the "*Hillary: The Movie* case" that was first argued last March, reargued in September, and finally decided today. For fans of the First Amendment, it was worth the wait.

First, some background. During the 2008 election, the nonprofit group Citizens United wanted to make a film available on cable-on-demand that was critical of then-candidate Hillary Clinton. But because Citizens United is organized as a corporation, its speech was banned under the McCain-Feingold campaign-finance law. Citizens United challenged this ban, and on Thursday, Jan. 21, 2010, the U.S. Supreme Court handed down its ruling, striking down this provision of McCain-Feingold and reversing a previous ruling — *Austin* v. *Michigan Chamber of Commerce* — that permitted the government to ban corporations and labor unions from promoting or opposing political candidates.

The ruling represents a tremendous victory for free speech and a serious blow to proponents of campaign-finance "reform," who have roundly denounced the ruling and have all but predicted the downfall of the Republic as a result. But the reformers' rhetoric is just that; the Court's ruling will simply result in a more diverse mix of political speech, and that is a good thing for American democracy.

The ruling in Citizens United is a straightforward application of basic First Amendment principles: "When Government seeks to use its full power . . . to command where a person may get his or her information or what distrusted source he or she may not hear, it uses censorship to control thought. This is unlawful. The First Amendment confirms the freedom to think for ourselves."

Despite this logic, the campaign-finance clique has denounced the ruling as "judicial activism" and claimed that it contradicts a century of laws banning corporate money in elections. But this view of history is simply wrong. Although corporations have been prohibited from giving money directly to candidates since 1907, bans on independent corporate spending in elections did not go before the

U.S. Supreme Court until 1990 in *Austin* v. *Michigan Chamber of Commerce* – a mere 20 years ago. The Court upheld the prohibition by a narrow 5–4 vote, but Austin was hardly a bedrock of constitutional law — indeed, it was the first case in Supreme Court history to uphold a limit on independent political speech, which the Court in *Citizens United* correctly recognized as "a significant departure from ancient First Amendment principles." By reversing Austin, the Court has now corrected its error and brought the regulation of corporate and union speech in line with the rest of First Amendment doctrine.

When you hear reformers howl about the downfall of elections as a result of this ruling, consider that states like Missouri, Utah, and Virginia already allow corporations to spend unlimited amounts on political ads, and there's no evidence that these states' elections have been "corrupted" or "overwhelmed" by this additional political speech. And that is not surprising. After all, no matter how much money is spent to promote or oppose candidates, voters remain free to disagree with those views. And they often do, as well-financed but failed candidates Ross Perot, Steve Forbes, Mitt Romney, and, more recently, Jon Corzine can attest.

But the reformers are not content to leave something as important as election results to voter free will. Their real complaint is not with the Supreme Court or its ruling in *Citizens United*, but with the First Amendment itself, which prohibits their efforts to empower government to micromanage political debate. The Founders saw the folly of that approach and gave us a First Amendment that rejected it in clear terms: "Congress shall make no law . . . abridging the freedom of speech." Despite the reformers' complaints, the ruling in *Citizens United* is faithful to the First Amendment, and that, ultimately, is the only test that matters.

— Paul Sherman is an attorney with the Institute for Justice, which litigates free-speech cases nationwide and filed a friend-of-the-court brief in the Citizens United *case.*

PERMALINK

The New York Times

Commentary #2

January 22, 2010

EDITORIAL

The Court's Blow to Democracy

With a single, disastrous 5-to-4 ruling, the Supreme Court has thrust politics back to the robber-baron era of the 19th century. Disingenuously waving the flag of the First Amendment, the court's conservative majority has paved the way for corporations to use their vast treasuries to overwhelm elections and intimidate elected officials into doing their bidding.

Congress must act immediately to limit the damage of this radical decision, which strikes at the heart of democracy.

As a result of Thursday's ruling, corporations have been unleashed from the longstanding ban against their spending directly on political campaigns and will be free to spend as much money as they want to elect and defeat candidates. If a member of Congress tries to stand up to a wealthy special interest, its lobbyists can credibly threaten: We'll spend whatever it takes to defeat you.

The ruling in Citizens United v. Federal Election Commission radically reverses well-established law and erodes a wall that has stood for a century between corporations and electoral politics. (The ruling also frees up labor unions to spend, though they have far less money at their disposal.)

The founders of this nation warned about the dangers of corporate influence. The Constitution they wrote mentions many things and assigns them rights and protections — the people, militias, the press, religions. But it does not mention corporations.

In 1907, as corporations reached new heights of wealth and power, Congress made its views of the relationship between corporations and campaigning clear: It banned them from contributing to candidates. At midcentury, it enacted the broader ban on spending that was repeatedly reaffirmed over the decades until it was struck down on Thursday.

This issue should never have been before the court. The justices overreached and seized on a case involving a narrower, technical question involving the broadcast of a movie that attacked Hillary Rodham Clinton during the 2008 campaign. The court elevated that case to a forum for striking down the entire ban on corporate spending and then rushed the process of hearing the case at breakneck speed. It gave lawyers a month to prepare briefs on an issue of enormous complexity, and it scheduled arguments during its vacation.

Chief Justice John Roberts Jr., no doubt aware of how sharply these actions clash with his confirmation-time vow to be judicially modest and simply "call balls and strikes," wrote a separate opinion trying to excuse the shameless judicial overreaching.

The majority is deeply wrong on the law. Most wrongheaded of all is its insistence that corporations are just like people and entitled to the same First Amendment rights. It is an odd claim since companies are creations of the state that exist to make money. They are given special privileges, including different tax rates, to do just that. It was a fundamental misreading of the Constitution to say that these artificial legal constructs have the same right to spend money on politics as ordinary Americans have to speak out in support of a candidate.

The majority also makes the nonsensical claim that, unlike campaign contributions, which are still prohibited, independent expenditures by corporations "do not give rise to corruption or the appearance of corruption." If Wall Street bankers told members of Congress that they would spend millions of dollars to defeat anyone who opposed their bailout, and then did so, it would certainly look corrupt.

After the court heard the case, Senator John McCain told reporters that he was troubled by the "extreme naïveté" some of the justices showed about the role of special-interest money in Congressional lawmaking.

In dissent, Justice John Paul Stevens warned that the ruling not only threatens democracy but "will, I fear, do damage to this institution." History is, indeed, likely to look harshly not only on the decision but the court that delivered it. The Citizens United ruling is likely to be viewed as a shameful bookend to Bush v. Gore. With one 5-to-4 decision, the court's conservative majority stopped valid votes from being counted to ensure the election of a conservative president. Now a similar conservative majority has distorted the political system to ensure that Republican candidates will be at an enormous advantage in future elections.

Congress and members of the public who care about fair elections and clean government need to mobilize right away, a cause President Obama has said he would join. Congress should repair the presidential public finance system and create another one for Congressional elections to help ordinary Americans contribute to campaigns. It should also enact a law requiring publicly traded corporations to get the approval of their shareholders before spending on political campaigns.

These would be important steps, but they would not be enough. The real solution lies in getting the court's ruling overturned. The four dissenters made an eloquent case for why the decision was wrong on the law and dangerous. With one more vote, they could rescue democracy.