

# Unit 5: The Judicial Branch and Individual Rights

## *Lesson 1: The Constitutional Role and Power of the Judicial Branch*



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# 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.

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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.

# Section 1

Just as the Article I grants legislative power to Congress and Article II grants 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.

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- 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.

# Section 1, continued

**“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.

Once 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.

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

Article III, Sections 1-2 Say ...	Student Interpretations, Inferences, Conjectures, Questions	Purpose, Significance, Related Concepts
<p style="text-align: center;"><b><u>Section 1</u></b></p> <p>“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.”</p>		<ul style="list-style-type: none"> <li>• Only one court is directly created and named—an independent <u>U.S. Supreme Court</u>—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 <u>federal court system</u> made up of “inferior” or lower courts under the Supreme Court.</li> <li>• Just as the first sections of Articles I and II grant legislative power to Congress and executive power to the president, the <u>judicial power</u> 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.</li> </ul>
<p>“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.”</p>		<ul style="list-style-type: none"> <li>• <u>Judicial independence</u> is established by giving federal judges (including Supreme Court justices) <u>life-tenure</u>, whose compensation (pay) cannot be decreased during their term of office.</li> <li>• 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.</li> </ul>

# **Consider these questions about Section 1**

- ❖ Can the justices of the Supreme Court or the judges of the federal courts exercise the “judicial power” anytime, anywhere, in any legal dispute?
- ❖ Can they interpret and apply any law they wish?
- ❖ How might the constitutional principles of limited government, rule of law, separation of powers or federalism affect your answer?

TURN and TALK.....



## Section 2

“The judicial Power shall extend to all Cases:—

[1] arising under

United States

Authority

[2] and Cases

and Controversies

[3] of all

This specifies the  
jurisdiction—the courts’  
legal authority to hear and  
decide cases—of the  
federal judicial branch.

and maritime Jurisdiction;

## Section 2: Judicial Power Extends to all Controversies

[4] to which the parties are a party;

[5] 1

[6] This specifies the  
[7] jurisdiction—the courts’  
legal authority to hear and  
decide cases—of the  
federal judicial branch.

claimants from the State  
State courts of different

[8] between a State, or the Citizens thereof,  
and foreign States, Citizens or Subjects.”

# Jurisdiction

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).

# Subject Matter Jurisdiction (what the case is about)

“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;--**

**[3] to all Cases of admiralty and maritime Jurisdiction**

These are cases connected with watercraft and events on the high seas and navigable waters.

# Jurisdiction based on the Parties to the case

(who is really in legal conflict and stands to win or lose)

[2] official representatives of foreign nations,

[4] cases by or against the U.S. or any part or official of  
or in the federal government,

[5] States suing each other,

[6] a resident of one state suing a resident of another  
state (this “diversity jurisdiction” has monetary limits).

# Case or Controversy Required

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

Section 2 both grants *and* limits the exercise of judicial power by implication (as well as explicitly by the later Tenth Amendment)

Whatever jurisdiction (power) is *not* delegated to the federal courts in the Constitution is reserved to the states and their courts.

# Types of Cases

Type of Court Proceeding	Civil Case	Criminal Case
Parties	Plaintiff / Defendant	Prosecutor / Defendant
Cause of Action (reason case is brought)	May be based either on a particular law or on one of many recognized causes of action for wrongdoing, such as breach of contract or negligence.	<ul style="list-style-type: none"> <li>Prosecutor brings "charges" against the defendant.</li> <li>Each charge must correspond to a criminal law in the jurisdiction where the charge is filed</li> </ul>
Burdens of Proof	<ul style="list-style-type: none"> <li>Plaintiff must prove that it is "more likely than not" the defendant did what the plaintiff says he or she did.</li> <li>Another name for the "more likely than not" standard is the "preponderance of the evidence" standard.</li> </ul>	<ul style="list-style-type: none"> <li>Prosecutor must prove that the defendant did whatever the plaintiff or prosecutor has alleged.</li> <li>Prosecutor must prove the defendant violated a specific law "beyond a reasonable doubt."</li> </ul>
Penalties	<ul style="list-style-type: none"> <li>No jail</li> <li>Defendants usually pay money to the plaintiff in the amount the plaintiff has proved the defendant owes him.</li> </ul>	Defendant may be sentenced to a number of punishments or corrective actions, including jail, fines, or probation.

## 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.) 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.
  - 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 a 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 10<sup>th</sup> Amendment), whatever jurisdiction (power) is *not* delegated to the federal courts in the Constitution is reserved to the states and their courts.



“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 means cases must start and have their initial trial in the Supreme Court
- These are rare cases
  - States against each other
  - Involving official representatives of foreign governments

<p>“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. ...”</p>		<ul style="list-style-type: none"> <li>• <i>Original jurisdiction</i> specifies those cases a court can hear directly, rather than through an appeal from a lower court.</li> <li>• The Supreme Court has <u>original jurisdiction</u> 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.</li> </ul>
<p>“In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, ... .”</p>		<ul style="list-style-type: none"> <li>• <i>Appellate jurisdiction</i> specifies those cases a court reviews and decides based on an appeal from a lower court.</li> <li>• The Supreme Court has <u>appellate jurisdiction</u> 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.</li> <li>• An <u>appeal</u> does <i>not</i> 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 <i>original jurisdiction</i>, the last <i>appeal</i> possible lies in the Supreme Court.</li> <li>• The Supreme Court makes the final and binding interpretation and application of constitutional and federal law, which <i>all</i> lower courts must follow.</li> </ul>

# “In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, ... .”

- *Appellate jurisdiction* is when a court reviews and decides based on an appeal from a lower court.
  - 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**.

# U.S. Supreme Court Appellate Jurisdiction

- The Supreme Court has appellate jurisdiction over
  - all federal court and constitutional law cases
  - Include all appeals from federal courts, and any appeals from state courts where the Constitution or federal law is involved.
- The Supreme Court makes the final and binding interpretation and application of constitutional and federal law, which *all* lower courts must follow.

## **Now consider these questions about** **Section 2:**

- ❑ What's missing from the analysis of Article II?
- ❑ Where is the courts' power of judicial review (what is that power anyway)?
- ❑ If Article III does not grant the power of judicial review to the courts, where did it come from?

**TURN and TALK**

Name and Date of Case	The Facts of the Case	Questions Presented Concerning the Govt. Actions Under Judicial Review and Relevant Const Provisions	U.S. Supreme Court Decision and Rationale
<p><b><i>Marbury v. Madison (1803)</i></b></p>	<p>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.</p>	<p>Was Marbury legally entitled to the job commission from Madison?</p> <p>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?</p>	<p>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.</p>

Now consider these questions about judicial review since the *Marbury decision*:

- ❑ How has the Court used judicial review since *Marbury*?
- ❑ How expansive is the power of judicial review? Does it have any limits?

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

Name and Date of Case	The Facts of the Case	Questions Presented Concerning the Govt. Actions Under Judicial Review and Relevant Const Provisions	U.S. Supreme Court Decision and Rationale
<b><i>Miranda v. Arizona</i> (1966)</b>	<p>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.</p>	<p>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?</p>	<p>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 “<i>Miranda</i> warnings” to those they want to question while in custody.</p>



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<p><b><i>Bush v. Gore (2000)</i></b></p>	<p>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.</p>	<p>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?</p>	<p>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.</p>

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<b><i>Baker v. Carr (1962)</i></b>	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.

Name and Date of Case	The Facts of the Case	Questions Presented Concerning the Govt. Actions Under Judicial Review and Relevant Const Provisions	U.S. Supreme Court Decision and Rationale
<b><i>Vernonia School District v. Acton (1995)</i></b>	<p>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.</p>	<p>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?</p>	<p>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 health and safety of minors under its supervision is substantial. It outweighs the minimal intrusion into student-athletes' privacy. The district's policy was constitutional.</p>

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<b><i>Mapp v. Ohio (1962)</i></b>	Police officers claimed to suspect that a fugitive was evading arrest in Dolree 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.

Name and Date of Case	The Facts of the Case	Questions Presented Concerning the Govt. Actions Under Judicial Review and Relevant Const Provisions	U.S. Supreme Court Decision and Rationale
<b><i>Grutter v. Bollinger -and- Gratz v. Bollinger (2003)</i></b>	<p>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.</p>	<p>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?</p> <p>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?</p>	<p>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 <i>not</i> "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.</p>

Name and Date of Case	The Facts of the Case	Questions Presented Concerning the Govt. Actions Under Judicial Review and Relevant Const Provisions	U.S. Supreme Court Decision and Rationale
<b>Caperton v. A.T. Massey Coal Co. (2009)</b>	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.

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<p><b><i>Texas v. Johnson (1989)</i></b></p>	<p>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.</p>	<p>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?</p>	<p>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."</p>

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<b>California v. Greenwood (1988)</b>	<p>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.</p>	<p>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?</p>	<p>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 place 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.</p>



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<p><b><i>U.S. v. Nixon (1974)</i></b></p>	<p>A grand jury indicted seven 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 moved to have a federal court quash the subpoena based upon a claim of 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.</p>	<p>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?</p>	<p>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.)</p>

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<b><i>Youngstown Sheet &amp; Tube Co. v. Sawyer (1952)</i></b>	<p>As the Korean War raged in 1952, 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.</p>	<p>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?</p>	<p>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.</p>

Name and Date of Case	The Facts of the Case	Questions Presented Concerning the Govt. Actions Under Judicial Review and Relevant Const Provisions	U.S. Supreme Court Decision and Rationale
<p><b><i>U.S. v. Lopez (1995)</i></b></p>	<p>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.</p>	<p>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?</p>	<p>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.</p>

## Now consider these questions about the nature and scope of judicial review:

1. What provisions of the Constitution has the Court interpreted in applying judicial review?
2. What parts and levels of government have subjected to judicial review?
3. What types of government action has judicial review affected? How?
4. What kinds of people or organizations has judicial review affected? How?
5. How could one describe the scope of judicial review based on these examples?
6. Given the breadth of judicial review shown by these examples, which branch of the federal government is the most powerful? Why?

# Property of Oakland Schools

Author: Dirk Zuschlag

Editor: Amy Bloom



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