

AP[®] U.S. GOVERNMENT

Study Guide Pack



MARBURY v. MADISON (1803)

The decision that established the authority of American courts to overturn laws and invalidate government actions that violate the Constitution.

KEY TERMS

Judicial Review

The power of the federal courts to declare laws and government actions invalid when those laws or actions conflict with the Constitution

Separation of Powers/Checks and Balances

The American model of government wherein the legislative, executive, and judicial branches have independent powers and areas of responsibility; no individual branch has unchecked power

Writ of mandamus

An order from a court to a government official to fulfill their official duties

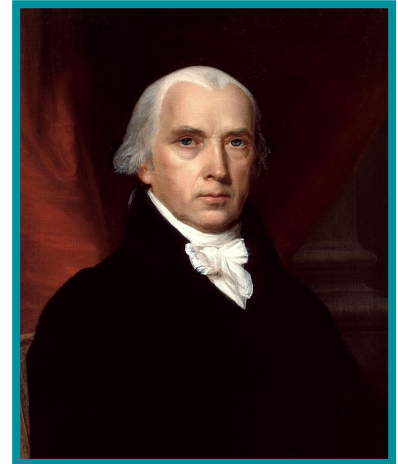
PRECEDENT AND SUBSEQUENT CASES

There is no precedent for *Marbury v. Madison*, but nearly all subsequent Supreme Court cases rely upon the precedent set in **this** case

FACTS OF THE CASE

At the end of his presidency, Federalist John Adams appointed numerous individuals to positions within the government. The formalized appointments, known as commissions, were not delivered before the presidential turnover for four of these individuals, including William Marbury. When Democratic-Republican President Thomas Jefferson assumed office, his Secretary of State James Madison refused to deliver the commissions.

Marbury and the other three individuals who were refused their commissions sued and asked the Supreme Court to deliver a writ of mandamus, or judicial command, to force James Madison to deliver the commissions. The plaintiffs argued that Section 13 of the Judiciary Act of 1789 gave the Court the authority to deliver a mandamus that would compel Madison to act.



James Madison



William Marbury

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THE DECISION

In a unanimous opinion, the Court ruled that the relevant provision within the Judiciary Act of 1789 was unconstitutional, noting that issuing writs of mandate was outside of the “original jurisdiction” of the Supreme Court as established in Article III of the Constitution. Furthermore, the Court ruled that the Congress, in creating the Judiciary Act, had exceeded its authority. When an act of Congress is in conflict with the Constitution, Marshall wrote, the Court must uphold the Constitution as supreme.

IMPACT

The decision in *Marbury v. Madison*, written by Chief Justice John Marshall, was one of the most influential Supreme Court findings in American history. For the first time, the Court used the Constitution to overrule Congress. The decision played a crucial role in establishing the judiciary as equal to the executive and legislative branches of government and remains one of the foundational pillars of the American system of checks and balances. Because the Constitution itself says little about the specific functions of the federal court system, the decision in *Marbury v. Madison* has become the pillar upon which every other Supreme Court decision stands.

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MCCULLOCH v. MARYLAND (1819)

The decision that established the supremacy of the Constitution, the expansion of Congress' powers beyond those enumerated, and the inferior status of state laws in relation to federal laws.

KEY TERMS

Federalism

The system of distributing power between state and national governmental institutions

Supremacy Clause

The clause within the Constitution that makes the Constitution and federal laws stemming from it authoritative over all other laws

Necessary and Proper Clause

The clause within the Constitution that authorizes Congress to make laws necessary to fulfill its other duties established by the Constitution

Implied Powers

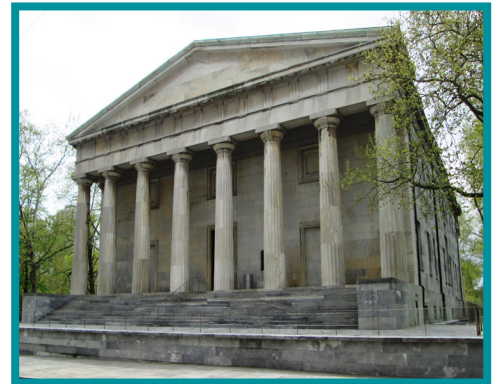
Powers of the government that are not explicitly granted by the Constitution (the enumerated powers) but implied by the Necessary and Proper Clause

PRECEDENT AND SUBSEQUENT CASES

There is no precedent for *McCulloch v. Maryland*, but nearly every subsequent case dealing with the scope of federal power rests upon the foundation laid in this case.

FACTS OF THE CASE

Controversy existed surrounding the legitimacy of a national bank since Alexander Hamilton proposed its creation in 1791 and it was chartered that same year. Hamilton, who favored a strong federal government, argued that Congress could do whatever was necessary to stimulate economic growth and recover from debts incurred during the Revolutionary War. Thomas Jefferson, who opposed the bank, argued that the creation of a national bank was not granted under the enumerated powers of the Constitution and that the Congress' action was illegitimate.



The Second Bank of the United States, Philadelphia

In the aftermath of the War of 1812, there was a revival of support for a strong central bank, and the Second Bank of the United States was chartered in 1816. In 1818, the state of Maryland imposed taxes on the national bank, and a Baltimore branch cashier named James McCulloch refused to pay those taxes. The state of Maryland sued McCulloch, and McCulloch, arguing that the state tax was illegitimate, took his case to the Supreme Court after a state appeals court ruled against him.



\$1000 note from Bank of the United States, 1840

THE DECISION

In a unanimous opinion, the Court ruled that the Second Bank of the United States' charter was constitutionally legitimate, while the state of Maryland's tax on that bank was illegitimate. Chief Justice John Marshall argued that while the creation of a national bank was not an enumerated power granted to the Congress by the Constitution, it is an implied power (the Constitution explicitly grants the Congress the power to levy money and regulate currency). Furthermore, the Court ruled that Maryland's tax was an unconstitutional attempt to violate federal supremacy and that states could not interfere with federal powers.

IMPACT

The decision in *McCulloch v. Maryland* has impacted innumerable subsequent cases dealing with American federalism and the scope of governmental authority. It established that the federal government has the authority to act beyond what is explicitly outlined in the Constitution, and it cemented the supremacy of federal over state law.

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SCHENCK v. UNITED STATES (1919)

The landmark decision that established that the First Amendment does not protect speech that creates a “clear and present danger.”

KEY TERMS

The Draft

During times of war, the federal government of the United States can force male citizens to enter the military and engage in the conflict. Social protests had historically accompanied attempts to impose the draft, such as those seen during the Civil War, WWI, WWII, and the Cold War conscription efforts. Although there are a few exceptions under the current law, male citizens between the ages of 18 and 25 are still required to register with the Selective Service System.

The Clear and Present Danger Test

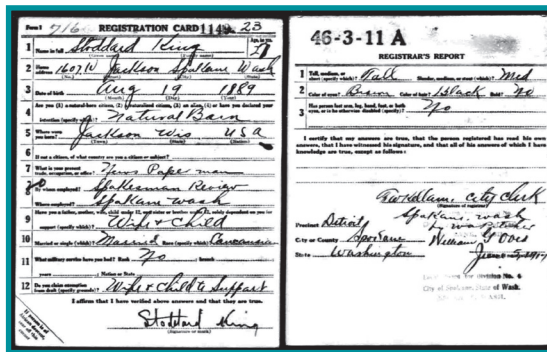
The “clear and present danger test,” established in *Schenck v. United States*, limited free speech under the First Amendment by outlawing speech that posed a threat to the common good. The ruling that developed this judicial test argued that the culture of war time had more dangers, and therefore speech could be more severely restricted during times of conflict.

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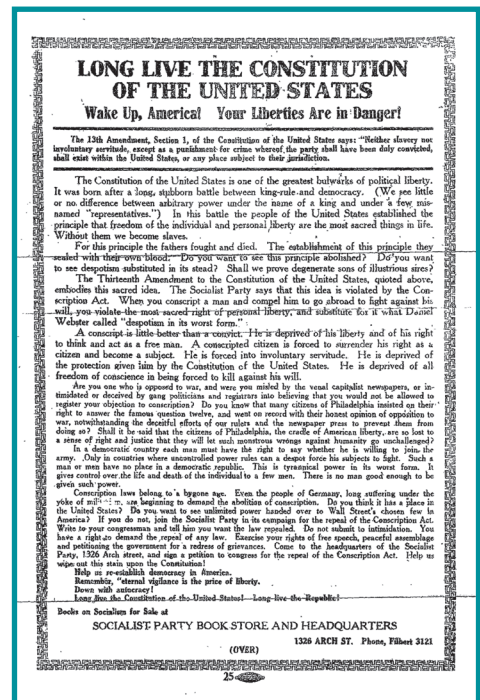
FACTS OF THE CASE

The U.S. entry into WWI on April 6, 1917 was strongly opposed within U.S. society by far-left political activists and citizens with ties to Germany. The Socialist Party of Philadelphia took particular objection to the use of the draft to swell the ranks of the nation’s military, arguing in a



A WWI draft card

widely distributed pamphlet that the draft represented a violation of the Thirteenth Amendment’s prohibition against involuntary servitude. The General Secretary of the Socialist Party in Philadelphia, Charles Schenck, arranged for the pamphlets to be delivered to men about to be drafted. The flyer called on men to resist the draft as part of their civic duty. Charles Schenck and Elizabeth Baer, both members of the Executive Committee of the Socialist Party, were convicted of violating the Espionage Act of 1917 because the language of that law expressly forbid any attempts to interfere with military operations or recruitment efforts. Schenck and Baer appealed to the Supreme Court, arguing that the Espionage Act of 1917, and their conviction under it, violated the First Amendment.



The leaflet urging men to resist the draft at the center of Schenck v. United States

SCHENCK v. UNITED STATES (1919)**PRECEDENT**

Patterson v. Colorado (1907)—developed the “bad tendency test,” which used English common law to argue that speech was not protected under the First Amendment if it had a tendency to harm the public good.

SUBSEQUENT CASE

Tinker v. Des Moines Independent Community School District (1969)—ruled that public-school students could engage in nondisruptive, symbolic protest against the Vietnam War because there was no evidence that their actions constituted a “clear and present danger.” The *Tinker v. Des Moines* decision expanded the rights of students to express unpopular ideas under the First Amendment.

THE DECISION

In an unanimous decision, the Court ruled that the criminal convictions of Schenck and Baer were constitutional because wartime allowed a country to impose greater restrictions on free speech than would otherwise be permissible under the First Amendment. The decision established the “clear and present danger test,” which asserted that free speech could be curtailed if the speech would “bring about substantive evils that Congress has a right to prevent.”

OVERRULED BY: *Brandenburg v. Ohio* (1969)

IMPACT

The ruling in *Schenck v. United States* and the “clear and present danger test” served as long standing precedent to determine when free speech could be limited under the Constitution. It was referenced in many of the most significant Supreme Court cases on civil liberties, including *Tinker v. Des Moines* (1969) and *New York Times Co. v. United States* (1971). In *Brandenburg v. Ohio* (1969), the language of the “clear and present danger test” was abandoned in favor of a stricter test that speech could only be prosecuted if it could result in “imminent lawless action.”

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BROWN v. BOARD OF EDUCATION (1954)

The landmark decision that established that racial segregation in public schools was unconstitutional.

KEY TERMS

Segregation

In the aftermath of the Civil War, African Americans and Caucasians were socially separated throughout the United States through overlapping systems of *de facto segregation* and *de jure segregation* like the Jim Crow laws in the South.

Equal Protection Clause

The Equal Protection Clause of the Fourteenth Amendment argues that States do not have the power to “deny to any person within its jurisdiction the equal protection of the laws” that is granted to them by the Federal government.

PRECEDENT

Plessy v. Ferguson (1896)—argued that public facilities could be racially separated as long as the facilities available to African Americans and Caucasians were “separate, but equal.”

SUBSEQUENT CASE

Cooper v. Aaron (1958)—the Warren Court continued to assert federal responsibility for civil rights by denying states the right to delay desegregation by upholding the judicial supremacy precedent established in *Marbury v. Madison* (1803).

FACTS OF THE CASE

In 1951, Oliver Brown attempted to enroll his daughter at the public elementary school closest to their home. The school refused to accept his daughter’s enrollment because she was African American, forcing her to take a bus to a segregated Black elementary school that was significantly farther away. The Browns joined with twelve other local families and filed a class action lawsuit against the Topeka Board of Education, arguing that the racial segregation in public schools violated the Fourteenth Amendment. A lower court initially ruled against the Browns, arguing that racially segregation was allowed under the 1896 *Plessy v. Ferguson* ruling that allowed “separate but equal” facilities. The National Association for the Advance of Colored People (NAACP) supplied lawyers to the families to appeal the case up the Supreme Court, Thurgood Marshall, who would later be appointed as a Supreme Court Justice, argued on behalf of the plaintiffs.



U.S. Marshalls escort Ruby Bridges from school after the Supreme Court ordered the desegregation of public schools.

BROWN v. BOARD OF EDUCATION (1954)**THE DECISION**

In a unanimous decision, the Court ruled that that “separate educational facilities are inherently unequal” because racial segregation had a negative effect on the minority group. The ruling overturned *Plessy v. Ferguson* by arguing that separation was harmful, even if the “tangible qualities” of the situations were the same.

OVERTURNED: *Plessy v. Ferguson* (1896)

IMPACT

Although the ruling was a major victory of the Civil Rights Movement, it was resisted by local governments across the South. Politicians in the Deep South implemented a program dubbed “Massive Resistance” to do whatever necessary to stop school integration. The federal government sent in the National Guard to integrate schools in Alabama and Arkansas. In other districts in the South, segregation was implemented after numerous subsequent lawsuits.

NOTES

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BAKER v. CARR (1962)

The decision that facilitated the development of the “one person, one vote” doctrine and enabled federal courts to weigh in on legislative redistricting questions.

KEY TERMS

Justiciable

The types of matters for which it is appropriate and legal for a court to make pronouncements.

Legislative apportionment

The process by which legislative seats are distributed among the areas entitled to representation.

PRECEDENT

Colegrove v. Green (1946)—argued that the federal judiciary did not have the power to interfere with issues related to the appointment of state legislatures.

SUBSEQUENT CASES

Reynolds v. Sims (1964)—established that the legislative districts of state governments must be approximately equal in population.

Shaw v. Reno (1993)—established that redistricting based on race must be held to strict scrutiny under the Fourteenth Amendment.

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FACTS OF THE CASE

The Tennessee State Constitution mandated that legislative districts be redrawn every ten years to ensure that those districts be substantially proportional according to population. In 1962, Charles Baker and other Tennessee citizens sued Joe Carr, Secretary of State for Tennessee, alleging that the state had failed to redraw its legislative districts since 1901. At issue was the fact that the population of Shelby County, in which Baker had been mayor, had drastically shifted such that the urban areas contained about 10 times as many citizens as the rural areas and that the rural areas were therefore overrepresented in the old legislative districts.



Seal from Shelby County, TN

In response to the suit, the state of Tennessee argued that the issue of legislative redistricting was a “non-judicial” political question, as the Supreme Court had ruled in *Colegrove v. Green* (1946). As such, the state argued, redistricting was not properly within the jurisdiction of the Supreme Court.



One Man, One Vote Protester at the 1964 Democratic National Convention

BAKER v. CARR (1962)**THE DECISION**

In a 6-2 opinion, the Court ruled that the Tennessee case did not contain any pertinent political questions and that legislative redistricting was indeed an appropriate matter on which the Supreme Court could intervene. Justice William Brennan provided past examples of the Court intervening to correct errors in state administration and stated that the Fourteenth Amendment's equal protection guarantee warranted judicial intervention in Tennessee.

PARTIALLY OVERTURNED: *Colegrove v. Green* (1946)

IMPACT

The decision in *Baker v. Carr* did not immediately lead to major shifts in electoral maps but laid an important precedent for the ability of the judiciary to weigh in on issues of legislative apportionment. Moreover, it strengthened the centrality of the principle of “one person, one vote” in the American political landscape.

NOTES

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ENGEL v. VITALE (1962)

The landmark decision that established that it was unconstitutional for public schools to lead students in prayer.

KEY TERMS

Amicus Curiae Brief

Supreme Court cases are often supplemented by *amicus curiae* briefs (literally “friend of the court” briefs) filed by people or groups not directly involved in the case that lay the broader implications of the ruling.

Establishment Clause

The Establishment Clause of the First Amendment states that “Congress shall make no law respecting an establishment of the religion.” Judicial interpretations of the clause have ranged from broad interpretations that say the clause prevents any state support of religion to narrow interpretations that argue that the clause only prohibits the development of a state-sponsored church.

PRECEDENT

West Virginia State Board of Education v. Barnette (1943)—argued that students could not be punished for refusing to salute the American flag because doing so was an expression of free speech under the First Amendment.

FACTS OF THE CASE

The state of New York passed legislation requiring public school teachers to start the school day by leading the classroom in the Pledge of Allegiance and a short, nondenominational prayer to “Almighty God” that was composed by the state legislature. Students who objected to the prayer or who did not want to participate were not forced to do so. A group of families led by Steven Engel sued the school board president William J. Vitale, arguing that the prayer violated their religious beliefs. The families came from a variety of different religious backgrounds. They argued that even a nondenominational prayer violated the Establishment Clause of the First Amendment. The New York Court of Appeals upheld the right of the state of New York to encourage prayer in the classroom. When the decision was appealed to the Supreme Court, the governments of twenty-two states sent *amicus curiae* briefs in support of prayer in public schools.

First Amendment to the U.S. Constitution:

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

THE DECISION

In a 6-1 decision, the Court ruled that public schools could not promote prayer because the promotion of religion was considered a violation of the Establishment Clause. The ruling set a precedent for the interpretation of the Establishment Clause that differed from previous rulings because coercion was not required to show a violation of the First Amendment.

ENGEL v. VITALE (1962)**SUBSEQUENT CASE**

Santa Fe Independent School District v. Doe (2000)—The issue of school prayer continues to be controversial. In 2000, the Supreme Court ruled that student-led, student-initiated prayer on public school property using a school loudspeaker system violated the Establishment Clause of the First Amendment.

IMPACT

The ruling in *Engel v. Vitale* established a precedence that was used to significantly limit government-directed prayer in public school systems through several subsequent landmark Supreme Court decisions. Since the 1960s, the ruling was been used to determine that silent prayer, clergy-led prayers at graduation ceremonies, and student-led prayer at public school events all violate the First Amendment.

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GIDEON v. WAINWRIGHT (1963)

This landmark decision guaranteed the right to an attorney for those who could not afford one.

KEY TERMS

Selective Incorporation

The Supreme Court, at its discretion, has applied (incorporated) portions of the Bill of Rights to the states.

Rights of the Accused

An American who is accused of a crime has several constitutional rights, including *habeas corpus*, legal counsel, a speedy and public trial, and the right to remain silent.

PRECEDENT

Betts v. Brady (1942)—denied the right to attorney to those who could not afford one when they were prosecuted in state cases.

SUBSEQUENT CASE

Miranda v. Arizona (1966)—the Warren Court extended more protections to the accused by ensuring that they are informed of their Fifth Amendment right to remain silent.

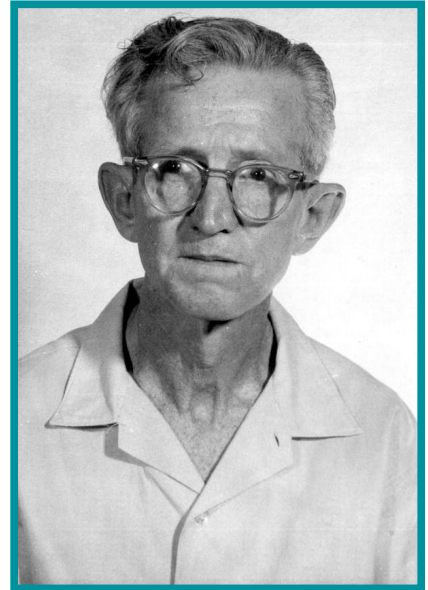
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FACTS OF THE CASE

In 1963, Clarence Gideon was arrested in Florida for breaking into a pool hall and stealing money out of a cigarette machine. Since Gideon was unable to afford an attorney, he represented himself in court. At the time, Florida only provided an attorney to defendants in capital cases (cases that can result in the death penalty). Without legal counsel, Gideon was unable to defend himself adequately and was convicted.

Gideon petitioned for a writ of certiorari from prison in a note written by hand with a pencil, claiming that he had been denied his Sixth Amendment right to an attorney. At the time, the Sixth Amendment only applied to federal courts, since the Supreme Court had previously refused to incorporate the right to an attorney in *Betts v. Brady* (1942).



of Florida

COT. TERM 1961
U. S. Supreme Court

To: The Honorable Earl Warren, Chief Justice of the United States

Comes now the petitioner, Clarence Earl Gideon, a citizen of the United States of America, in proper person, and appearing as his own counsel, who petitions this Honorable Court for a Writ of Certiorari directed to The Supreme Court of the State of Florida, to review the order and judgment of the court below denying the petitioner a Writ of Habeas Corpus.

Gideon's handwritten petition for a writ of certiorari

THE DECISION

In a unanimous decision, the Court ruled to incorporate the Sixth Amendment right to an attorney, making it binding on the states for all criminal defendants. Clarence Gideon's case was retried, and he was acquitted with the help of legal counsel.

OVERTURNED: *Betts v. Brady* (1942)

IMPACT

Gideon v. Wainwright was a landmark decision that expanded the rights of the accused through selective incorporation of the Sixth Amendment. This was consistent with the tendency of the Warren Court (1953–1969) to expand the rights of criminal defendants. The Warren Court also decided *Miranda v. Arizona*, which required state authorities to inform accused persons of their rights upon arrest.

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TINKER v. DES MOINES (1969)

The landmark decision that established that students may exercise their First Amendment rights in public school as long as their actions do not cause a “substantial disruption.”

KEY TERMS

Symbolic Speech

In *Stromberg v. California* (1931) the Supreme Court ruled that “expressive conduct,” such as saluting a flag, could be considered a form of speech covered under the First Amendment even if it is not accompanied with verbal expressions or the published word. Some examples of protected symbolic speech include marching, wearing armbands or clothing, sit-ins, flag burning, and the display of signs.

Clear and Present Danger Test

The Clear and Present Danger Test was developed in the judicial opinion for *Schenck v. United States* (1919) to determine whether free speech could be limited. It established that free speech rights could be curtailed if the exercise of those rights would lead to a “clear and present danger” that the U.S. government had a right to prevent.

FACTS OF THE CASE

In 1965, five students in the Des Moines Independent Community School District wore black armbands to school in order to protest U.S. involvement in the Vietnam War. Prior to the planned protest on December 16th, school district officials developed a policy stating that any child wearing an armband to school would be asked to remove it. Failure to do so would result in suspension until the student agreed to come to school without the armband. Mary Beth Tinker, John Tinker, and Christopher Eckhardt were suspended from school when they refused to remove their armbands. The younger Tinker children were not suspended because the school district policy did not apply to elementary school students. There was no evidence that the armbands led to violence or disruption at school. The ACLU provided aid to the Tinker family and Christopher Eckhardt to appeal to the Supreme Court.



Mary Beth Tinker was suspended from Warren Harding Junior High School for wearing a black armband protesting the Vietnam War.

NOTES

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TINKER v. DES MOINES (1969)**PRECEDENT**

Schenck v. United States (1919)—argued that First Amendment rights could be limited by the states if the speech posed a “clear and present danger.”

SUBSEQUENT CASE

Bethel School District v. Fraser (1986)—the Burger Court continued to refine the judicial understanding of the limits of the First Amendment by arguing that a public school could punish speech that was considered sexually vulgar.

THE DECISION

In a 7-2 decision, the Court ruled that the armbands did not cause a disruption in the school environment and therefore represented an appropriate and constitutionally protected expression of symbolic speech. The ruling substantively expanded the First Amendment rights of students, asserting that students’ rights could only be limited if their actions would “materially and substantively interfere with the requirements of appropriate discipline in the operation of the school.”

IMPACT

The ruling in *Tinker v. Des Moines* continues to be cited in court cases that seek to either expand or limit the free speech of students on public school grounds. Although the case developed a broad understanding of students’ First Amendment rights, subsequent court decisions have placed limits on the rights of students by ruling that schools could limit speech considered vulgar, likely to cause “substantial disruption,” or “racially hostile,” even if it was not disruptive.

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NEW YORK TIMES v. UNITED STATES (1971)

The landmark decision that established that the freedom of the press could not be curtailed by presidential claims of executive privilege.

KEY TERMS

Prior Restraint

Prior restraint is a type of censorship in which a government limits certain expression of free speech before they occur. This typically takes the form of attempting to stop publication of materials thought to be dangerous, threatening, or indecent, but it can also take the form of overly burdensome regulations that effectively prevent controversial speech.

Pentagon Papers

The Pentagon Papers, which was officially titled *Report of the Office of the Secretary of Defense Vietnam Task Force*, provided a detailed history of the role of the United States in Vietnam. The top-secret document was published by the *The New York Times* as part of an exposé that argued that the United States government had ordered the execution of President Diem, secretly enlarged the scope of its military effort to include Cambodia and Laos, and did not have an exit strategy for the conflict.

PRECEDENT

Schenck v. United States (1919)—argued that First Amendment rights could be limited by the states if the speech posed a “clear and present danger.”

FACTS OF THE CASE

In 1971, with the United States six years into a military action in North Vietnam and civil protests throughout the United States, the Secretary of Defense commissioned an extensive report of the United States’ involvement in Vietnam. The classified and top-secret report was leaked to *The New York Times* by Daniel Ellsberg, a contractor who helped compile the document. The newspaper began publishing articles outlining the information contained in the study, which



would come to be known as the Pentagon Papers. Almost immediately, the White House administration under President Nixon issued a cease and desist order to *The New York Times* and *The Washington Post* to try to prevent any future publication of materials from the Pentagon Papers. The presidential administration argued that the publication of this information needed to be prevented due to national security concerns. *The New York Times* and *The Washington Post* both challenged the cease and desist orders. The court appeal for the *The New York Times* restricted the publication of the materials, while the court challenge by *The Washington Post* resulted in a ruling that determined that the newspaper did not have to follow the government’s order. *The New York Times* challenged the lower court’s decision through an emergency appeal to the Supreme Court.



Richard Nixon discusses U.S. policy in Vietnam for a publicity photo.

NEW YORK TIMES v. UNITED STATES (1971)**SUBSEQUENT CASE**

Nebraska Press Association v. Stuart (1976)—The Burger Court used the case to underscore the idea that prior restraint on speech and publication was an intolerable restriction on the First Amendment. The ruling argued that the state could not restrict the press from publishing information about a confession made by a suspect before the trial had occurred.

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THE DECISION

In a 6-3 decision, the Court ruled that *The New York Times* could continue to publish excerpts from the Pentagon Papers because the government had not met the burden of showing that prior restraint was justified. The ruling established that prior restraint of the First Amendment right of freedom of the press could only occur if the government could meet a “heavy burden of showing justification for the imposition of such a restraint.”

IMPACT

The ruling in *The New York Times v. United States* provided a broad precedent for limiting prior restraint in the press, even in cases of national security. Although this case is often seen as a victory for a free press, its utility is hindered by the fact that the Court’s decision was divided among six different concurring opinions, each of which provided a different rationale for the ruling. Justice William Brennan Jr., for example, cited the clear and present danger test from *Schenck v. United States* (1919) to argue that the prior censorship could be allowed if specific consequences of publishing were articulated. The government’s claim of national security, in Justice Brennan Jr.’s opinion, was simply too vague to meet this benchmark. Meanwhile, Justice Hugo Black argued in his opinion that it is never constitutional for the government to attempt prior restraint of the press. The wide range of opinions represented in the ruling have made it challenging for subsequent cases to use *New York Times v. United States* as precedent.

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WISCONSIN v. YODER (1972)

The landmark decision that established that Amish families could not be required to send their children to public education past the eighth grade.

KEY TERMS**Free Exercise Clause**

The First Amendment protects individuals from any act of Congress that “prohibits the free exercise” of religion.

The Amish

The Amish are a group of Christian traditionalists who reject much of modern technology in the belief that simple living, plain dress, and strict adherence to the rules of the Church will help them find favor with God.

PRECEDENT

Pierce v. Society of Sisters (1925)—argued that the “liberty” of the Fourteenth Amendment granted parents the right to choose whether to enroll their children in public school, private school, or homeschool. Children could not be forced to attend public education.

SUBSEQUENT CASE

United States v. Lee (1982)—ruled that religious exemptions to federal law were limited when the good of the country outweighed the good of the individual. The *United States v. Lee* decision required an Amish business owner to pay social security taxes over his objections that these taxes violated his First Amendment right.

FACTS OF THE CASE

In 1971, three Amish families refused to enroll their children in public school after they completed the eighth grade in the belief that doing so would violate their religious convictions. The Amish believe that attendance at a public high school would teach their children ideas that were contrary to the Amish religion and way of life. The Amish families involved in the case sincerely believed that sending their children to public high school would threaten their children’s salvation and interfere with their ability to integrate into the Amish lifestyle after they finished their schooling. They were convicted of violating the Wisconsin Compulsory School Attendance Law, which required that all students to attend public school until they were 16 years old, and fined \$5 per family. The case was appealed to the U.S. Supreme Court. The Amish families were represented by a coalition of non-Amish religious leaders who had an interest in the religious freedom aspects of the case.



An Amish family driving a traditional horse-drawn buggy in Pennsylvania.

THE DECISION

In a unanimous decision, the Court ruled that public high school education was “in sharp conflict with the fundamental mode of life mandated by the Amish religion,” and that it would be a violation of the First Amendment’s free exercise clause to force Amish children to attend public school past the eighth grade.

IMPACT

The ruling in *Wisconsin v. Yoder* developed the precedent that parents were allowed to educate their children outside of either the public school system or traditional private schools. In doing so, it prioritized the free exercise of religion over state interests. The ruling is often cited by homeschooling advocates, who believe that requirements regarding state requirements about education interfere with the free exercise of their religion.

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ROE v. WADE (1973)

The landmark decision that established pregnant women have a right to abortion without excessive government restriction as an expression of their right to privacy.

KEY TERMS

Abortion

The decision in *Roe v. Wade* focused on the right of Jane Roe to access an abortion, which is the medical termination of a pregnancy through either medication or surgery. The *Roe v. Wade* ruling framed abortion as a private medical decision between a woman and her physician.

Viability

While the ruling for *Roe v. Wade* used the trimester system to determine when abortion could be performed, subsequent rulings on the topic have focused on viability. Viability is the point at which a fetus can live outside a mother's womb. The point of viability is generally considered to be 28 weeks, but advances in medical technology have moved that up to 24 weeks.

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FACTS OF THE CASE

In June 1969, a 21-year-old woman named Norma McCorvey learned that she was pregnant with her third child. After determining that she did not want to continue her pregnancy, she attempted to obtain an abortion in Texas, but was rejected because Texas law restricted abortion “for the purpose of saving the life of the mother.” She did not attempt to obtain an illegal abortion. Two attorneys filed suit on behalf of Norma McCorvey using the pseudonym “Jane Roe” against Henry Wade, the Dallas County District Attorney who represented Texas. Jane Roe’s legal team argued that the Texas law should be overturned both because it was overly vague and because it violated her right to privacy protected under the First, Fourth, Fifth, Ninth, and Fourteenth Amendments. A lower court ruled that the Texas law was unconstitutional on the grounds that it violated the Ninth Amendment and its implicit right to privacy. The case was appealed to the Supreme Court in 1970 and was scheduled to be heard in December 1971.

THE DECISION

In a 7-2 decision, the Court ruled that the “right to privacy” of the Fourteenth Amendment constitutionally protects a woman’s right to have an abortion. The Texas Law that was at the heart of the case was considered unconstitutional because it was too broad in that it did not balance the different stages of pregnancy or any other mitigating factors. The decision established a constitutional right to abortion under a woman’s right to privacy. It balanced the state’s interests in protecting its citizens



*A rally on the steps of the Supreme Court in 2005 on the anniversary of the decision in *Roe v. Wade**

ROE v. WADE (1973)

PRECEDENT

Miller v. Johnson (1995)—*Roe v. Wade* was the first Supreme Court case to specifically legislate issues around abortion. While it does not have a direct judicial precedent, the court ruling relied extensively on the due process clause of the Fourteenth Amendment, which argues that “...nor shall any state deprive any person of life, liberty, or property, without due process of the law” and rights to privacy extended by the Constitution.

SUBSEQUENT CASE

Planned Parenthood v. Casey (1992)—ruled that while the essential holding of *Roe v. Wade* (1973) was valid, it needed to be modified. The Court rejected the trimester standard in favor of a viability standard. The Court determined that states could impose some restrictions on abortions prior to the point of a fetus’s viability as long as those restrictions did not represent an “undue burden.”

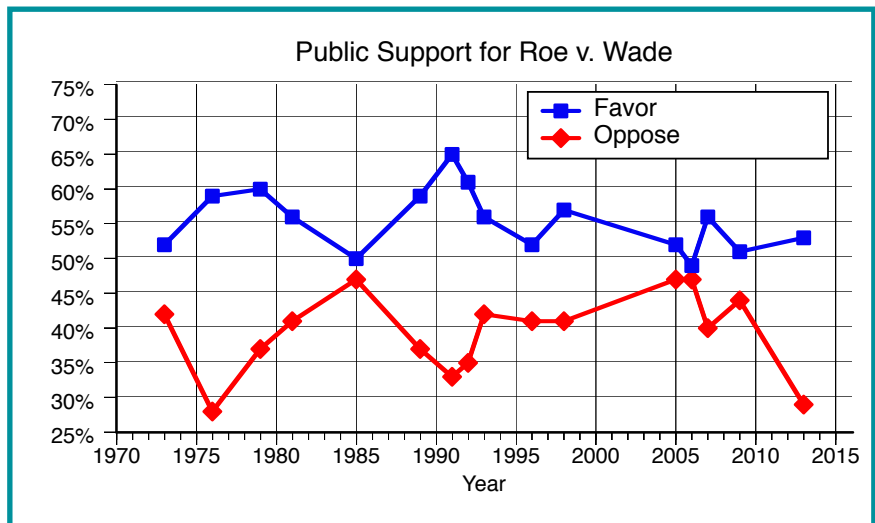
against the individual liberties of citizens by regulating each trimester of the pregnancy differently. The Court argued that the State may not regulate abortion in the first trimester, although it could regulate abortion for maternal health concerns in the second trimester and could prohibit abortion entirely in the third trimester.

IMPACT

The ruling in *Roe v. Wade* was controversial when it was first formed and continues to be divisive today. The two dissenting Supreme Court judges wrote scathing dissents that criticized the Court’s use of the Fourteenth Amendment to regulate abortion. Justice Bryon White asserted that the decision showed that “The Court simply fashions and announces a new constitutional right for pregnant women” without sufficient constitutional backing. Justice William Rehnquist, who also dissented, argued that “to reach its result, the Court necessarily has had to find within the scope of the Fourteenth Amendment a right that was apparently completely unknown to the drafters of the Amendment.” These objections have become major points of criticism in the ongoing debate over *Roe v. Wade*. As it stands, *Roe v. Wade* continues to provide precedent for abortion law in the United States, although subsequent cases have modified the trimester structure in the ruling and allowed states to place more regulations on first trimester abortions as long as they do not represent an “undue burden” on women.

NOTES

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SHAW v. RENO (1993)

The decision that used the Equal Protection Clause to mandate strict scrutiny for redistricting on the basis of race.

KEY TERMS

Equal Protection Clause

The clause within the 14th Amendment that guarantees all citizens equal protection under the law

Gerrymandering

The practice of manipulating the boundaries of legislative districts to provide an advantage to one political party or group

Majority-Minority Area

A jurisdiction in which one or more racial minorities constitute the majority of that area's population

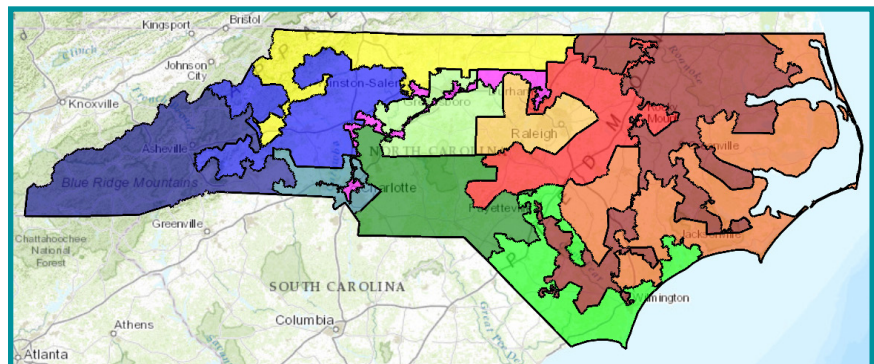
SUBSEQUENT CASE

Miller v. Johnson (1995)—declared that a gerrymandered district in Georgia (very similar to the one in North Carolina) was unconstitutional because it was predominantly race-based.

FACTS OF THE CASE

After the 1990 Census, the state of North Carolina submitted a redistricting map to the Department of Justice that contained one majority-minority Black district. Attorney General Janet Reno instructed North Carolina to revise its map to add a second majority-minority district in order to comply with 1982 amendments to the 1965 Voting Rights Act. The 12th district of North Carolina's new proposal was extremely long and oddly shaped, thinly stretching through various parts of the state to connect areas with large Black populations.

In 1991, a group of white voters led by Ruth Shaw challenged the proposed redistricting, arguing that the way in which the map was drawn violated the Equal Protection Clause of the 14th Amendment and amounted to legislative gerrymandering.



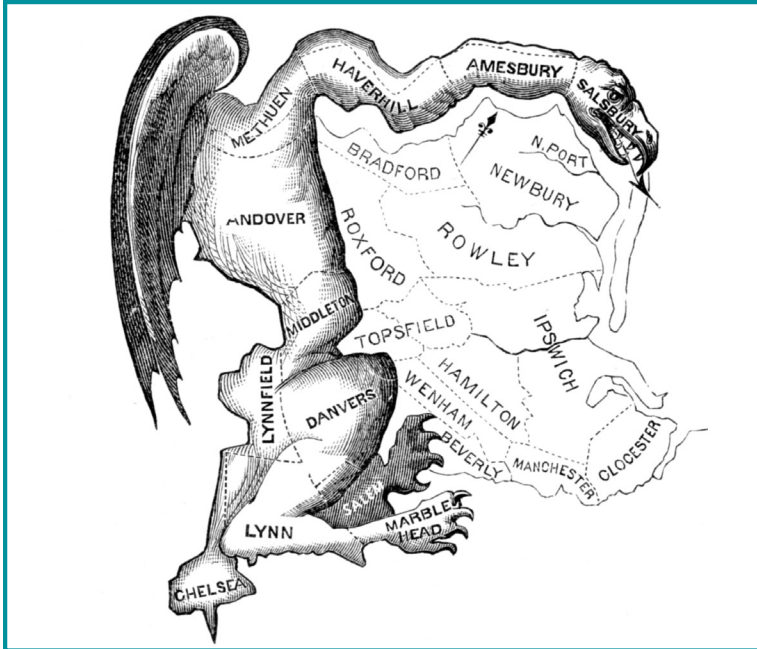
North Carolina's Congressional Districts, 1993–1998 (12th District in pink)

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THE DECISION

In a 5-4 opinion, the Supreme Court ruled that the shape of the proposed district in North Carolina was bizarre enough that it could not be explained as anything other than an attempt to separate voters along racial lines. In the majority decision, Justice Sandra Day O'Connor noted that while redistricting may take race into account and must not violate the Voting Rights Act, race cannot be the primary consideration when a jurisdiction redraws legislative district lines.

SHAW v. RENO (1993)


"The Gerry-Mander." Political cartoon from 1812 depicting Massachusetts district designed to favor Democratic-Republican Party candidates over Federalists

IMPACT

The decision in *Shaw v. Reno* led to nationwide changes after the 2000 Census. The case established that any legislative redistricting must be strictly scrutinized and that any laws related to racially motivated redistricting must be held to narrow standards and compelling government interests.

NOTES

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UNITED STATES v. LOPEZ (1995)

The decision that limited congressional powers under the Commerce Clause by ruling that Congress is not authorized to regulate the carrying of firearms.

KEY TERMS

Commerce Clause

The section within Article I of the Constitution that gives Congress the authority to regulate commerce with foreign nations, among states (interstate commerce), and with Native American tribes

Supremacy Clause

The clause within the Constitution that makes the Constitution and federal laws stemming from it authoritative over all other laws

PRECEDENTS

Schechter v. United States (1935)—invalidated federal regulation of the poultry industry as an invalid use of congressional power under the Commerce Clause.

Wickard v. Filburn (1942)—established that the federal government has the authority to regulate the price at which goods are sold under the Commerce Clause.

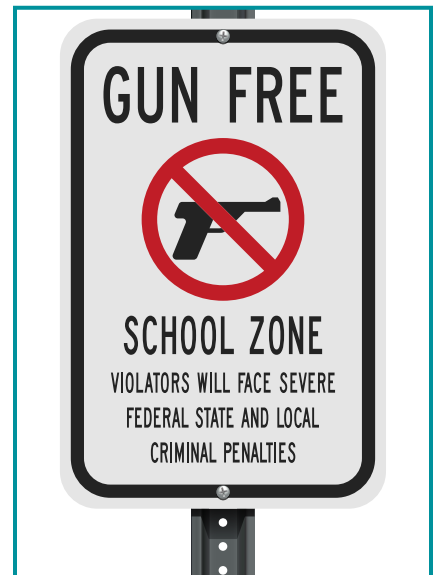
SUBSEQUENT CASE

United States v. Morrison (2000)—invalidated parts of the Violence Against Women Act of 1994 on the grounds that they weren't directly economic in nature and thus exceeded congressional authority under the Commerce Clause.

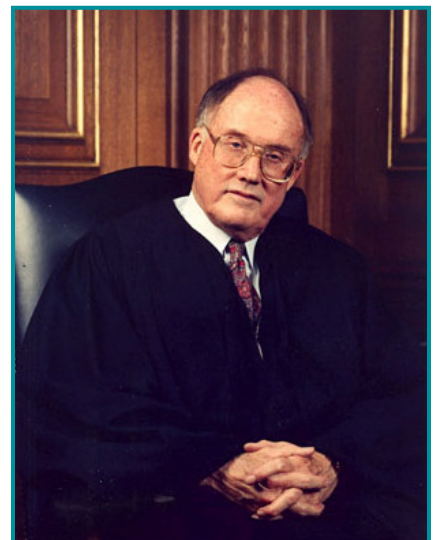
FACTS OF THE CASE

In 1990, Congress passed the Gun-Free School Zones Act, making it a federal crime for an individual to knowingly possess a firearm in a school zone. In 1992, high school senior Alfonso Lopez carried an unloaded revolver onto his school grounds in San Antonio, Texas. He was ultimately charged with violating the Gun-Free School Zones Act, was tried and convicted, and was sentenced to six months' imprisonment with two years' supervised release.

Lopez appealed his case, arguing that the Act under which he had been convicted was unconstitutional and that Congress had exceeded its scope of authority under the Commerce Clause by attempting to legislatively control public schools. The appeals court overturned Lopez's conviction, after which the government took the case before the Supreme Court, arguing that the possession of firearms in educational environments would lead to crime and would ultimately weaken the national economy, thus placing the issue under the purview of congressional authority to regulate economic issues under the Commerce Clause.



Gun Free School Zone Sign



Chief Justice William Rehnquist

UNITED STATES v. LOPEZ (1995)**THE DECISION**

In a 5-4 decision, the Court (led by Chief Justice William Rehnquist) upheld the appeals court's ruling, declaring in opposition to the government that the possession of a firearm in a local school zone does not constitute economic activity and therefore has no substantial effect on interstate commerce. As such, while it affirmed that Congress has broad law-making power under the Commerce Clause, the Court ruled that the Commerce Clause does not extend the power of Congress to the issue of firearm regulation.

IMPACT

The decision in *United States v. Lopez* was the first since 1937 to hold that Congress had exceeded its Constitutional authority under the Commerce Clause. The case continues to have relevance in debates about federal versus state powers, but it ultimately upheld the legal principle that states should control local issues such as firearm possession in school zones.

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MCDONALD v. CITY OF CHICAGO (2010)

The decision that ruled that the Second Amendment applies to the states through the doctrine of selective incorporation.

KEY TERMS**Selective Incorporation**

Under the Fourteenth Amendment, states cannot deny their citizens life, liberty, or property without the due process of the law. The Supreme Court has consistently used the policy of “selective incorporation” to argue that the Fourteenth Amendment means that most, if not all, of the Bill of Rights applies at the state level as well as the federal level.

Militia

Throughout the early history of the American colonies and through the Revolutionary War, military force was often provided by local groups, called militias, that consisted of local volunteers who served brief stints in the military. The text of the Second Amendment references the right to bear arms in the context of militias. This has led to a debate about whether the Second Amendment protects an individual right to bear arms or only the right in the context of militias.

FACTS OF THE CASE

In 2010, a retired resident of Chicago named Otis McDonald attempted to legally purchase a handgun for personal home defense. According to McDonald, his neighborhood had gradually become unsafe due to an influx of gang activity and the increased presence of drug dealers. While he legally owned shotguns and was an experienced hunter, he felt that a handgun would provide better protection for his home after a combined five break-in attempts on his house and garage. He was unable to legally purchase a handgun due to a city-wide handgun ban that was enacted in 1982. He joined with three other Chicago residents to sue the city of Chicago for limiting their rights to keep and bear arms under the Second Amendment. After progressing through lower courts, the suit was heard by the Supreme Court in 2010.

**THE DECISION**

In a 5-4 decision, the Court ruled states could not impede their citizens' right to keep and bear arms under the Second Amendment. The ruling was ultimately based on the Court's understanding of the Fourteenth Amendment, which argues that states do not have the right to deprive citizens within their borders rights or privileges that are

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MCDONALD v. CITY OF CHICAGO (2010)**PRECEDENT**

District of Columbia v. Heller (2008)—a landmark 5-4 decision that the Second Amendment does, in fact, protect an individual's right to bear arms. The Court declared the District of Columbia's ban on handguns unconstitutional.

SUBSEQUENT CASE

Caetano v. Massachusetts (2016)—ruled that bearable arms that were not in use at the time of the drafting of the Second Amendment, such as stun guns, were still covered under the Second Amendment. This case broadened the types of weapons that could be considered lawful under the Second Amendment to weapons that were not historical and did not have a military purpose.

accorded to them under the Constitution. The Court ruled that since the Fourteenth Amendment ensured that the entirety of the Constitution applied to a state's inhabitants, Chicago could not restrict its citizens' rights to keep and bear arms by denying them the right to legally purchase a handgun for "lawful purposes."

IMPACT

The ruling in *McDonald v. Chicago* was claimed as a victory by both pro-gun and anti-gun advocates. Both sides were able to claim victory because the decision was narrowly tailored as to whether the Fourteenth Amendment caused the Second Amendment to pass to the states. Pro-gun advocacy groups felt that the decision set a precedent for overturning state laws restricting handgun ownership. Anti-gun advocacy groups were also able to claim victory because they argued that the narrow margin of victory, and strong dissent from some of the Supreme Court judges that argued that there is no "private right of armed self-defense," set the stage for future court battles that could restrict private gun ownership. New cases will undoubtedly open the question of how much, if any, states can restrict the keeping and bearing of arms within their jurisdiction.

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CITIZENS UNITED v. FEDERAL ELECTION COMMISSION (2010)

The decision that ruled that the Free Speech Clause of the First Amendment covers political spending by corporations, labor unions, and other groups.

KEY TERMS

Soft Money

Political donations that are given to a particular political party but not to a specific candidate—not heavily regulated

Hard Money

Political donations that are given to a particular candidate or political action committee (PAC)—some regulations

Disclosure

Informing the public who is behind political advertisements or spending

FACTS OF THE CASE

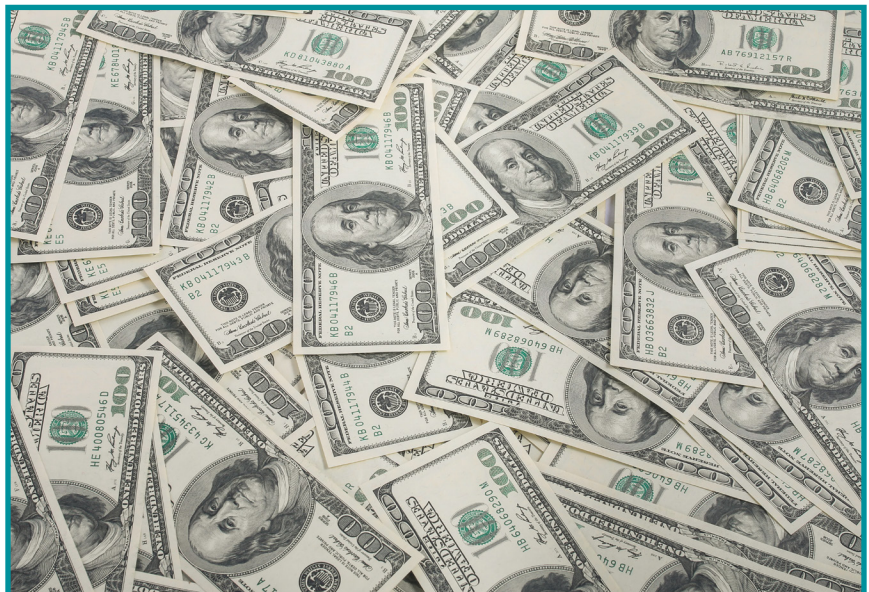
In 2008, a conservative non-profit organization called Citizens United made a film entitled *Hillary: The Movie*. The film was very negative in its portrayal of then-presidential candidate Hillary Clinton and was clearly intended to influence voters. A lower court ruled that Citizens United's film violated the 2002 Bipartisan Campaign Reform Act's prohibition on "electioneering communication" by a corporation or labor union immediately before an election.



When Citizens United appealed the lower court ruling before the Supreme Court, the justices faced a number of questions about previous court rulings and the BCRA, commonly known as McCain-Feingold. Ultimately, the case was broader in scope than Citizens United's film; the question before the Court was whether restrictions on political spending violated the First Amendment right to free speech.

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CITIZENS UNITED v. FEDERAL ELECTION COMMISSION (2010)**THE DECISION**

In a 5-4 opinion, the Court ruled that the First Amendment protects political spending by advocacy groups and political action committees and that the BCRA's restrictions on such spending were unconstitutional. In a separate 8-1 vote, the Court upheld the BCRA's disclosure requirements for political spending as well as the prohibition on corporations and unions contributing money directly to political candidates.

**OVERTURNED: *Austin v. Michigan Chamber of Commerce (1990)*
*McConnell v. FEC (2003) (in part)***

IMPACT

The decision in *Citizens United v. FEC* (2010), made along ideological lines in what many Americans view as an increasingly ideological Supreme Court, remains extremely controversial. The case illuminated a central tension in American politics: people are generally uncomfortable with the idea of elections being controlled by the wealthy but are simultaneously hesitant to restrict individual liberties, especially freedom of speech. Opponents of the ruling have developed mantras such as "Corporations aren't people" and "Money isn't speech," while defenders of the ruling view it as a crucial protection for their political advertising strategies. Numerous states had to change their campaign finance laws as a result of the ruling, and there has been a rise in the power of so-called "super-PACs," political action committees that are permitted to engage in unlimited political spending on behalf of candidates (but not to contribute directly to their campaigns).

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