# AP United States Government and Politics
# Summer Assignment
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Dear Students and Parents:

I am excited that you have decided to accept the challenge of taking an Advanced Placement class, which is a university-level course taught in high school. I promise that you will strengthen your academic, intellectual, observation, and discussion skills. As individuals and as citizens, we all confront the consequences of government actions and decisions. A federal or state regulation, a law, an executive decision or a court ruling can determine how we will live our lives in significant ways. In short, the American government commands and exercises enormous power. This course is designed to help you understand not only the nature and function of this power but also your relationship to it.

Although this course will prove to be quite challenging, I guarantee that, when it is over, not only will it be meaningful to you but you will know more about our government and politics than your peers and even many adults.

AP government students must be dedicated whole-heartedly to this course. It is expected that you will spend several hours each week preparing for this course. As a part of this course you will be consistently reading several different sources. Failure to stay up on the reading is unacceptable for a college-level course and will result in poor performance in this course. Part of entering an AP class is an assumption of a certain level of background knowledge and skills. With this in mind, the course requires the completion of a summer assignment and familiarity with the required Supreme Court Cases and Federalist Papers. If you fail any portion of the entrance examinations I will ask that you transfer to a regular offering of the course.

During my summer break, I am always available to help students via email. Students, and parents, may feel free to email me at: jraines@tka.net. Regardless of where I am, I always have access to this email. I will almost always respond within 24 hours of receiving your email. If you email, please be specific about who you are and what exactly you need help with. I am looking forward to seeing you in the Fall!

## Assignment #1: Supreme Court Cases

***You must know each of the required Supreme Court cases below. There will be a test on this the first day of class in the Spring.***

## *#1 Baker v. Carr* (1962)

### *Facts*

In the late 1950s, Tennessee was still using boundaries between electoral districts that had been determined by the 1900 census. Each of Tennessee's 95 counties elected one member of the state's General Assembly. The problem with this plan was that the population of the state changed substantially between 1901 and 1950. The distribution of the population had changed too. Many more people lived in Memphis (and its district—Shelby County) in 1960 than had in 1900. But the entire county was still only represented by one person in the state legislature, while rural counties with far fewer people also each had one representative.

In fact, the state constitution required revising the legislative district lines every 10 years to account for changes in population. But state lawmakers ignored that requirement and refused to redraw the districts.

An eligible voter who lived in an urban area of Shelby County (Memphis), Charles Baker, believed that he and similar residents of more heavily populated legislative districts were being denied "equal protection of the laws" under the 14th Amendment because their votes were "devalued." He argued that his vote, and those of voters in similar situations, would not count the same as those of voters residing in less populated, rural areas. He sued the state officials responsible for supervising elections in the U.S. District Court for the Middle District of Tennessee.

### *Issue*

Do federal courts have the power to decide cases about the apportionment of population into state legislative districts?

### *Constitutional Articles and Amendments*

- **14th Amendment to the U.S. Constitution's Equal Protection Clause**

  No State shall…deny to any person within its jurisdiction the equal protection of the laws."

### *Decision*

The U.S. Supreme Court decided in favor of Baker.

### Majority

The Supreme Court decided that federal courts have the authority to enforce the requirement of equal protection of the law against state officials— including, ultimately, the state legislature itself—if the legislative districts that the state creates are so disproportionally weighted as to deny the residents of the overpopulated districts equivalent treatment with underpopulated districts. The majority concluded that there is no inherent reason why courts cannot determine whether state districts are irrationally drawn in ways that result in substantially differing populations. The constitutional guarantee of equal protection is judicially enforceable.

The Court did not decide whether Tennessee's districts actually were unconstitutional, however. Instead, the justices instructed the District Court to allow a hearing on the merits of Baker's claim that the state's

legislative districts violated his 14th Amendment rights. That course established a precedent that dozens of federal courts later followed in allowing disgruntled residents to try to prove that legislative districts are unconstitutionally unbalanced.

## *#2 Brown v. Board of Education of Topeka* (1954)

### *Facts*

In the early 1950s, Linda Brown was a young African-American student in Topeka, Kansas. Every day she and her sister, Terry Lynn, had to walk through the Rock Island Railroad Switchyard to get to the bus stop for the ride to the all-black Monroe School. Linda Brown tried to gain admission to the Sumner School, which was closer to her house, but her application was denied by the Board of Education of Topeka because of her race. The Sumner School was for white children only.

At the time of the Brown case, a Kansas statute permitted, but did not require, cities of more than 15,000 people to maintain separate school facilities for black and white students. On that basis, the Board of Education of Topeka elected to establish segregated elementary schools.

The Browns felt that the decision of the Board violated the Constitution. They and a group of parents of students denied permission to white-only schools sued the Board of Education of Topeka, alleging that the segregated school system deprived Linda Brown of the equal protection of the laws required under the 14th Amendment.

The federal district court decided that segregation in public education had a detrimental effect upon black children, but the court denied that there was any violation of Brown's rights because of the "separate but equal" doctrine established in *Plessy.* The court said that the schools were substantially equal with respect to buildings, transportation, curricula, and educational qualifications of teachers. The Browns asked the U.S. Supreme Court to review that decision, and the Supreme Court agreed to do so. The Court combined the Browns' case with similar cases from South Carolina, Virginia, and Delaware.

### *Issue*

Does segregation of public schools by race violate the Equal Protection Clause of the 14th Amendment?

### *Constitutional Amendments and Precedents*

- **14th Amendment to the U.S. Constitution's Equal Protection Clause**

  "No State shall…deny to any person within its jurisdiction the equal protection of the laws."

### *Decision*

The Supreme Court ruled for Linda Brown and the other students, and the decision was unanimous. Segregation in public schools violates the 14th Amendment's Equal Protection Clause.

The Court noted that public education was central to American life. Calling it "the very foundation of good citizenship," they acknowledged that public education was not only necessary to prepare children for their future professions and to enable them to actively participate in the democratic process, but that it was also "a principal instrument in awakening the child to cultural values" present in their communities. The justices found it very unlikely that a child would be able to succeed in life without a good education. Access to such an education was thus "a right which must be made available to all on equal terms."

The justices then compared the facilities that the Board of Education of Topeka provided for the education of African-American children against those provided for white children. Ruling that they were substantially equal in "tangible factors" that could be measured easily, (such as "buildings, curricula, and qualifications and salaries of teachers"), they concluded that the Court must instead examine the more subtle, intangible effect of segregation on the system of public education. The justices then said that separating children solely on the basis of race created a feeling of inferiority in the "hearts and minds" of African-American children. Segregating children in public education created and perpetuated the idea that African-American children held a lower status in the community than white children, even if their separate educational facilities were substantially equal in "tangible" factors. This deprived black children of some of the benefits they would receive in an integrated school. The opinion said, "We conclude that in the field of public education the doctrine of 'separate but equal' has no place." Separate educational facilities are inherently unequal. This ruling was a clear departure from the reasoning in *Plessy v. Ferguson*.

## *#3 Citizens United v. FEC* (2010)

***Background***

Each election cycle billions of dollars are spent on congressional and presidential campaigns, both by candidates and by outside groups who favor or oppose certain candidates. Americans disagree about the extent to which fundraising and spending on election campaigns should be limited by law. Some believe that unlimited fundraising and spending can have a corrupting influence—that politicians will "owe" the big donors who help them get elected. They also say that limits on fundraising and spending help make elections fair for those who don't have a lot of money. Others believe that more spending on election campaigns supports broader debate and allows more people to learn about and discuss political issues. Those supporting more spending say that giving and spending money on elections is a basic form of political speech protected by the First Amendment.

Over the past 100 years, Congress has attempted to set some limits on campaign fundraising in order to reduce corruption or anything that can be perceived as corruption.

The Supreme Court has decided that both donating and spending money on elections is a form of speech. For candidates, the money pays for ways to share his or her views with the electorate—through advertisements, mail and email, and travel to give speeches. For donors, giving money to a candidate is a way to express political views. Therefore, any law that limits donating or spending money on elections limits free speech, and the government must have a very good reason for making such laws.

The Supreme Court has ruled that laws that restrict how much candidates can spend on a campaign are unconstitutional, since candidates spend money to get their message out, which is a very important form of political speech. However, the Court has said that laws that restrict how much individuals and groups can donate directly to candidates are allowed, because that spending is slightly removed from core political speech, and such laws can prevent corruption. In 2018, the maximum amount an individual could give directly to a federal candidate was $2,700.

This case, however, is not about direct donations to candidates. Instead, this case is about how and when companies and other organizations can spend their own money to advocate the election or defeat of a candidate.

***Facts***

One of the federal laws that regulates how election money can be raised and spent is the Bipartisan Campaign Reform Act (BCRA), also known as the McCain-Feingold Act. Passed in 2002, one part of this law dealt with how corporations and unions could spend money to advocate the election or defeat of a candidate. The law said that corporations and unions could not spend their own money on campaigns. Instead, they could set up political action committees (PACs). Employees or members could donate to the PACs, which could then donate directly to candidates or spend money to support candidates. The law prohibited corporations and unions from directly paying for advertisements that supported or denounced a specific candidate within 30 days of a primary election or 60 days of a general election. It is this part of the BCRA that is at issue in *Citizens United v. Federal Election Commission.*

In 2008, Citizens United, a non-profit organization funded partially by corporate donations, produced *Hillary: The Movie*, a film created to persuade voters not to vote for Hillary Clinton as the 2008 Democratic

presidential nominee. Citizens United wanted to make the movie available to cable subscribers through video-on-demand services and wanted to broadcast TV advertisements for the movie in advance. The Federal Election Commission said that *Hillary: The Movie* was intended to influence voters, and, therefore, the BCRA applied. That meant that the organization was not allowed to advertise the film or pay to air it within 30 days of a primary election. Citizens United sued the FEC in federal court, asking to be allowed to show the film. The district court heard the case and decided that even though it was a full length movie and not a traditional television ad, the film was definitely an appeal to vote against Hillary Clinton. This meant that the bans in the BCRA applied: corporations and organizations could not pay to air this sort of direct appeal to voters so close to an election.

Because of a special provision in the BCRA, Citizens United was allowed to appeal the decision directly to the U.S. Supreme Court, which the organization did. Citizens United asked the Court to decide whether a feature-length film really fell under the rules of the BCRA and whether the law violated the organization's First Amendment rights to engage in political speech

***Issue***

Does a law that limits the ability of corporations and labor unions to spend their own money to advocate the election or defeat of a candidate violate the First Amendment's guarantee of free speech?

***Constitutional Issue***

- **The First Amendment's Right to Free Speech**

***Decision***

**Majority**

The Court ruled that the First Amendment prohibits limits on corporate funding of independent broadcasts in candidate elections. The Court reversed two earlier decisions that held that political speech by corporations may be limited. The justices said that the government's rationale for the limits on corporate spending—to prevent corruption—was not persuasive enough to restrict political speech. A desire to prevent corruption can justify limits on donations to candidates, but not on independent expenditures (spending that is not coordinated with a candidate's campaign) to support or oppose candidates for elected office. Moreover, the Court said, corporations have free speech rights and their political speech cannot be restricted any more than that of individualsThe majority did not strike down parts of the BCRA that require that televised electioneering communications include disclosures about who is responsible for the ad and whether it was authorized by the candidate.

## *#4 Engel v. Vitale* (1962)

### *Facts*

Each day, after the bell opened the school day, students in New York classrooms would salute the U.S. flag. After the salute, students and teachers voluntarily recited this school-provided prayer, which had been drafted by the state education agency, the New York Regents: "Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessings upon us, our parents, our teachers and our country." The prayer was said aloud in the presence of a teacher, who either led the recitation or selected a student to do so. Students were not required to say this prayer out loud; they could choose to remain silent. Two Jewish families (including Stephen Engel), a member of the American Ethical Union, a Unitarian, and a non-religious person sued the local school board, which required public schools in the district to have the prayer recited. The plaintiffs argued that reciting the daily prayer at the opening of the school day in a public school violated the First Amendment's Establishment Clause. After the New York courts upheld the prayer, the objecting families asked the U.S. Supreme Court to review the case, and the Court agreed to hear it.

### *Issue*

Does the recitation of a prayer in public schools violate the Establishment Clause of the First Amendment?

### *Constitutional Amendment*

- **First Amendment to the U.S. Constitution's Free Exercise Clause**

  "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof…;"

### *Decision*

The Supreme Court ruled in favor of the objecting parents.

### Majority

The Court ruled that the school-sponsored prayer was unconstitutional because it violated the Establishment Clause. The prayer was a religious activity composed by government officials (school administrators) and used as a part of a government program (school instruction) to advance religious beliefs. The Court rejected the claim that the prayer was nondenominational and voluntary. The Court's opinion provided an example from history: "…this very practice of establishing governmentally composed prayers for religious services was one of the reasons which caused many of our early colonists to leave England and seek religious freedom in America." The Court also explained that, while the most obvious effect of the Establishment Clause was to prevent the government from setting up a particular religious sect of church as the "official" church, its underlying objective is broader:

> "Its first and most immediate purpose rested on the belief that a union of government and religion tends to destroy government and to degrade religion. The history of governmentally established religion, both in England and in this country, showed that whenever government had allied itself with one particular form of religion, the inevitable result had been that it had incurred the hatred,

> disrespect and even contempt of those who held contrary beliefs. That same history showed that many people had lost their respect for any religion that had relied upon the support of government to spread its faith."

The Court also said that preventing the government from sponsoring prayer does not indicate hostility toward religion.

## *#5 Gideon v. Wainwright (1963)*

### *Facts*

In 1961, a burglary occurred at the Bay Harbor Pool Room in Panama City, Florida. Police arrested Clarence Earl Gideon after he was found nearby with a pint of wine and some change in his pockets. Gideon, who could not afford a lawyer, asked the Florida court to appoint one for him, arguing that the Sixth Amendment entitles everyone to a lawyer. The judge denied his request. Florida state law required appointment of counsel for indigent defendants only in capital (death penalty) cases. Gideon defended himself at trial and did not do well. He was found guilty of breaking and entering and petty larceny, a felony under Florida law. While serving his five-year sentence in a Florida state prison, Gideon began studying law. His study reaffirmed his belief that his rights were violated when the Florida Circuit Court refused his request for appointed counsel. Gideon filed a *habeas corpus* petition, arguing that he was improperly imprisoned because he had been refused the right to counsel during his trial, thus violating his constitutional rights guaranteed by the Sixth Amendment. The Florida Supreme Court ruled against him. From his prison cell, Gideon wrote a petition to the U.S. Supreme Court, asking the Court to hear his case. The Supreme Court agreed to hear Gideon's case.

### *Issue*

Does the Sixth Amendment's right to counsel in criminal cases extend to defendants in state courts, even in cases in which the death penalty is not at issue?

### *Constitutional Amendments*

- **U.S. Constitution, Amendment 6**

  "In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense."

- **U.S. Constitution, 14th Amendment's Due Process Clause**

  "…nor shall any State deprive any person of life, liberty, or property, without due process of law…."

### *Decision*

The Supreme Court ruled unanimously for Gideon and said that the right to the assistance of counsel in felony criminal cases is a fundamental right essential to a fair trial. Therefore, this protection from the Sixth Amendment applied to state courts as well as federal courts. State courts must appoint counsel to represent defendants who cannot afford to pay for their own lawyers if charged with a felony.

The Court said that the best proof that the right to counsel is fundamental and essential is that governments spend a lot of money to try to convict defendants and those defendants who can afford to almost always hire the best lawyer they can get. This indicates that both the government and defendants consider the aid

of a lawyer in criminal cases absolutely necessary. In addition, the opinion noted that the Constitution places great emphasis on procedural safeguards designed to guarantee that defendants get fair trials.

*NOTE:* The decision in *Gideon* did not have any legal impact in terms of providing free legal counsel for the poor in civil cases. In fact the decision only applied to criminal defendants charged with felonies.

## *#6 Marbury v. Madison* (1803)

### *Facts*

William Marbury, who had been appointed a justice of the peace of the District of Columbia, was one of the appointees who did not receive his commission. Marbury sued James Madison and asked the Supreme Court to issue a writ of *mandamus* requiring Madison to deliver the commission.

The politics involved in this dispute were complicated. The new chief justice of the United States, who was being asked to decide this case, was John Marshall, the Federalist secretary of state, who had failed to deliver the commission. President Jefferson and Secretary of State Madison were Democratic-Republicans who were attempting to prevent the Federalist appointees from taking office. If Chief Justice Marshall and the Supreme Court ordered Madison to deliver the commission, it was likely that he and Jefferson would refuse to do so, which would make the Court look weak. However, if they didn't require the commission delivered, it could look like they were backing down out of fear. Chief Justice Marshall instead framed the case as a question about whether the Supreme Court even had the power to order the writ of *mandamus.*

### *Issues*

Does Marbury have a right to his commission, and can he sue the federal government for it? Does the Supreme Court have the authority to order the delivery of the commission?

### *Constitutional Clauses and Federal Law*

- **Article III, Section 2, Clause 2 of the U.S. Constitution**

  "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 Judiciary Act of 1789**

  This Act authorized the Supreme Court to "issue writs of *mandamus* … to persons holding office under the authority of the United States."

### *Decision*

The decision in *Marbury v. Madison* ended up being much more significant than the resolution of the dispute between Marbury and the new administration. The Supreme Court, in this decision, established a key power of the Supreme Court that continues to shape the institution today.

The Court unanimously decided not to require Madison to deliver the commission to Marbury. In the opinion, written by Chief Justice Marshall, the Court ruled that Marbury was entitled to his commission, but that according to the Constitution, the Court did not have the authority to require Madison to deliver the commission to Marbury in this case. They said that the Judiciary Act of 1789 conflicted with the Constitution because it gave the Supreme Court more authority than it was given in Article III. The Judiciary Act of 1789 authorized the Supreme Court to "issue writs of *mandamus* … to persons holding office under the authority of the United States" as a matter of its original jurisdiction. However, Article III, section 2,

clause 2 of the Constitution, as the Court read it, authorizes the Supreme Court to exercise original jurisdiction only in cases involving "ambassadors, other public ministers and consuls, and those [cases] in which a state shall be a party. In all other cases, the Supreme Court shall have appellate jurisdiction." The dispute between Marbury and Madison did not involve ambassadors, public ministers, consuls, or states. Therefore, according to the Constitution, the Supreme Court did not have the authority to exercise its original jurisdiction in this case. Thus the Judiciary Act of 1789 and the Constitution were in conflict with each other.

Declaring the Constitution "superior, paramount law," the Supreme Court ruled that when ordinary laws conflict with the Constitution, they must be struck down. Furthermore, the Court said, it is the job of judges, including the justices of the Supreme Court, to interpret laws and determine when they conflict with the Constitution. According to the Court, the Constitution gives the judicial branch the power to strike down laws passed by Congress (the legislative branch) and actions of the president and his executive branch officials and departments. This is the principle of judicial review. The opinion said that it is "emphatically the province and duty of the judicial department to say what the law is."

This decision established the judicial branch as an equal partner with the executive and legislative branches within the government, with the power to rule actions of the other branches unconstitutional. The ruling said that the Constitution is the supreme law of the land and established the Supreme Court as the final authority for interpreting it.

## *#7 McCulloch v. Maryland (1819)*

### *Facts*

Maryland attempted to close the Baltimore branch of the national bank by passing a law that forced all banks chartered outside of the state to pay a yearly tax (the Second Bank was the only such bank in the state). James McCulloch*, the chief administrative officer of the Baltimore branch, refused to pay the tax. The state of Maryland sued McCulloch, saying that Maryland had the power to tax any business in its state and that the Constitution does not give Congress the power to create a national bank. McCulloch was convicted, but he appealed the decision to the Maryland Court of Appeals. His attorneys argued that the establishment of a national bank was a "necessary and proper" function of Congress, one of many implied, but not explicitly stated, powers in the Constitution.

The Maryland Court of Appeals ruled in favor of Maryland, and McCulloch appealed again. The case was heard by the Supreme Court of the United States.

### *Issues*

Did Congress have the authority under the Constitution to commission a national bank? If so, did the state of Maryland have the authority to tax a branch of the national bank operating within its borders?

### *Constitutional Text and Amendments*

- **U.S. Constitution, Article I, Section 8, Clause 18 (Necessary and Proper Clause)**

  "The Congress shall have Power... To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof."

- **U.S. Constitution, Article VI, Clause 2 (Supremacy Clause)**

  "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any state to the Contrary notwithstanding."

- **U.S. Constitution, Amendment X**

  "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people."

### *Decision*

The decision was unanimous in favor of McCulloch and the federal government.

The Supreme Court determined that Congress did have the power under the Constitution to create a national bank. Even though the Constitution does not explicitly include that power, there is also nothing in the

Constitution that restricts Congress's powers to those specifically enumerated. The Necessary and Proper Clause gives Congress the authority to make "all laws which shall be necessary and proper" for exercising the powers that are specifically enumerated, and the establishment of a national bank is "necessary and proper" to exercising other enumerated powers.

The Court also ruled that Maryland could not tax the Bank of the United States. Allowing a state to tax a branch of the national bank created by Congress would allow that state to interfere with the exercise of Congress's constitutional powers. Thus because "states have no power, by taxation or otherwise, to retard, impede, burden or in any manner control" the operation of constitutional laws passed by Congress, Maryland could not be allowed to tax a branch of the national bank, even though that branch was operating within its borders.

## *#8 McDonald v. City of Chicago* (2010)

### *Facts*

In 1982, the city of Chicago adopted a handgun ban to combat crime and minimize handgun related deaths and injuries. Chicago's law required anyone who wanted to own a handgun to register it. The registration process was complex, and possession of an unregistered firearm was a crime. In practice, most Chicago residents were banned from possessing handguns.

In 2008, after the Court decided that the Second Amendment includes an individual right to keep and bear arms, Otis McDonald and other Chicago residents sued the city for violating the Constitution. They claimed that Chicago's handgun regulations violate their 14th Amendment rights. Specifically, the residents argued that the 14th Amendment makes the Second Amendment right to keep and bear arms applicable to state and local governments.

The federal district court ruled for Chicago. McDonald appealed. The Seventh Circuit Court of Appeals decided for Chicago, as well. That court ruled that the Second Amendment right to keep and bear arms protects individuals only from regulation by the federal government. McDonald asked the U.S. Supreme Court to hear the case, and it agreed to do so.

### *Issue*

Does the Second Amendment right to keep and bear arms apply to state and local governments through the 14th Amendment and thus limit Chicago's ability to regulate guns?

### *Constitutional Amendments*

- **Second Amendment to the U.S. Constitution**

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

- **14th Amendment to the U.S. Constitution's Due Process Clause**

  "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law…."

### *Decision*

### Majority

The Court concluded that the Second Amendment right to keep and bear arms for the purpose of self-defense is fully applicable to the states under the 14th Amendment. The Court considered whether the right to keep guns "is fundamental to our scheme of ordered liberty and system of justice." Relying on a variety of historical records, the Court determined that both the Framers of and those who ratified the 14th Amendment considered the right to keep and bear arms among the fundamental rights "necessary to our

system of ordered liberty." They said that self-defense is a basic right, and that individual self-defense is the central component of the Second Amendment right to bear arms.

## *#9 New York Times Co. vs. U.S.* (1971)

### *Facts*

Daniel Ellsberg, a former military analyst, was disillusioned with the U.S.'s continued role in the Vietnam War. He felt so strongly that the U.S. should not be in Vietnam that in 1971, he illegally copied over 7,000 pages of classified reports kept at the RAND Corporation, a research institution where he worked. These pages would come to be known as the "Pentagon Papers." Some of these documents were leaked to major publications, such as The New York Times and The Washington Post. These documents contained intimate details about the decision-making plans behind the U.S.'s intervention in the Vietnam conflict, as well as details that revealed contradictions between President Lyndon Johnson's motivations in Southeast Asia and his public remarks.

Neil Sheehan, the New York Times reporter who received the lead from Ellsberg, knew he had the story of the year, but the paper ran the risk of violating the Espionage Act if they published the papers. After printing two stories about the Pentagon Papers, President Nixon directed his attorney general to order the Times to stop, claiming the publications would cause "irreparable injury to the defense interests of the United States." The Times refused and the U.S. government sued the newspaper for violating the Espionage Act.

A federal judge issued a restraining order to stop further publication until trial. However, during that time, the Washington Post also printed portions of Ellsberg's papers. The government asked a federal court to stop the Post from publishing future stories about the papers, citing again the Espionage Act. Both newspapers argued that the First Amendment protected their right to publish. Two different federal courts heard the Times and Post cases. Both newspapers won at the trial court, and the government appealed. The Court of Appeals for the D.C. Circuit ruled for the Washington Post, while the Court of Appeals for the Second Circuit ruled for the government (against the New York Times). The U.S. Supreme Court agreed to hear both cases, combining them and holding oral argument just one day after the justices agreed to take the cases.

### *Issue*

Did the government's efforts to prevent two newspapers from publishing classified information given to them by a government leaker violate the First Amendment protection of freedom of the press?

### *Constitutional Amendments*

- **First Amendment to the U.S. Constitution**

  "Congress shall make no law…abridging the freedom of speech, or of the press"

### *Decision*

The Supreme Court ruled for the newspapers. The Government carries a heavy burden of showing justification for the imposition of such a restraint against the press.

## *#10 Roe v. Wade* (1973)

### *Facts*

In 1969, an unmarried and pregnant resident of Texas known as Jane Roe (a pseudonym used to protect her identity) wanted to terminate her pregnancy. Texas law made it a felony to abort a fetus unless "on medical advice for the purpose of saving the life of the mother." Roe and her attorneys filed a lawsuit on behalf of her and all other women who were or might become pregnant and seek abortions. The lawsuit was filed against Henry Wade, the district attorney of Dallas County, Texas, and claimed that the state law violated the U.S. Constitution.

A three-judge federal district court ruled the Texas abortion law unconstitutional under the Ninth Amendment, which states that "[t]he enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." In particular, the district court concluded that "[t]he fundamental right of single women and married persons to choose whether to have children is protected by the Ninth Amendment," which applies to the states through the 14th Amendment. The case was then appealed directly to the U.S. Supreme Court, which agreed to hear it.

### *Issue*

Does the U.S. Constitution protect the right of a woman to obtain an abortion?

### *Constitutional Amendments and Supreme Court Precedents*

- **14th Amendment to the U.S. Constitution's Due Process Clause**

  "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

### *Decision*

The U.S. Supreme Court decided in Roe's favor. Justice The Court recognized that a woman's choice whether to have an abortion is protected by the Constitution.

### Majority

The majority rooted a woman's right to decide whether to have an abortion in the Due Process Clause of the 14th Amendment, which prohibits states from "depriv[ing] any person of … liberty … without due process of law." According to the majority, the "liberty" protected by the 14th Amendment includes a fundamental right to privacy. The majority began by surveying the history of abortion laws, and concluded that "the restrictive criminal abortion laws in effect in a majority of States today are of relatively recent vintage," and "are not of ancient or even of common-law origin." The Court then held that "[t]his right of privacy, whether it be founded in the Fourteenth Amendment's concept of personal liberty and restrictions upon state action, as we feel it is, or, as the District Court determined, in the Ninth Amendment's reservation of rights to the people, is broad enough to encompass a woman's decision whether or not to terminate her pregnancy." Further, after considerable discussion of the law's historical lack of recognition of rights of a

fetus, the majority concluded "the word 'person,' as used in the Fourteenth Amendment, does not include the unborn." A woman's right to choose to have an abortion falls within this fundamental right to privacy and is protected by the Constitution.

While holding that "the right of personal privacy includes the abortion decision," however, the Court also emphasized that "this right is not unqualified and must be considered against important state interests in regulation." In particular, the Court noted, "[w]here certain 'fundamental rights' are involved, the Court has held that regulation limiting these rights may be justified only by a 'compelling state interest,' and that legislative enactments must be narrowly drawn to protect only the legitimate state interests at stake." The Court recognized that "the State does have an important and legitimate interest in preserving and protecting the health of a pregnant woman" and "still another important and legitimate interest in protecting the potentiality of human life." Striking a balance between a woman's fundamental right to privacy and these state interests, the Court set up a framework laying out when states could regulate and even prohibit abortions.

Under that framework, in the first trimester (the first three months of the pregnancy), a woman's right to privacy surrounding the choice to have an abortion outweighs a state's interests in regulating this decision. During this stage, having an abortion does not pose a grave danger to the mother's life and health, and the fetus is still undeveloped. The state's interests are not yet compelling, so it cannot regulate or prohibit her from having an abortion. During the second trimester, the state's interests become more compelling as the danger of complications increases and the fetus becomes more developed. During this stage, the state may regulate, but not prohibit, abortions, as long as the regulations are aimed at protecting the health of the mother. During the third trimester, the danger to the woman's health becomes the greatest and fetal development nears completion. In the final trimester, the state's interests in protecting the health of the mother and in protecting the life of the fetus become their most compelling. The state may regulate or even prohibit abortions during this stage, as long as there is an exception for abortions necessary to preserve the life and health of the mother.

## *#11 Schenck v. U.S.* (1919)

### *Facts*

Charles T. Schenck was the general secretary for the Socialist Party chapter in Philadelphia. Along with fellow executive committee member, Elizabeth Baer, Schenck was convicted of violating the Espionage Act. He had printed and mailed 15,000 fliers to draft-age men arguing that conscription (the draft) was unconstitutional and urging them to resist.

On the side of the flier entitled "Long Live the Constitution of the United States," the Socialist Party argued that conscription was a form of "involuntary servitude" and thereby outlawed by the 13th Amendment. Schenck's flier also implored its recipients "to write to your Congressman and tell him you want the [conscription] law repealed. Do not submit to intimidation. You have the right to demand the repeal of any law. Exercise your rights of free speech, peaceful assemblage, and petitioning the government for a redress of grievances."

On the reverse side entitled "Assert Your Rights!", Schenck adopted more fiery language. He implored his audience to "do your share to maintain, support and uphold the rights of the people of this country" or else "you are helping condone a most infamous and insidious conspiracy" fueled by "cunning politicians and a mercenary capitalist press."

After Schenck's conviction for violating the Espionage Act in 1917, he asked the trial court for a new trial. This request was denied. He then appealed to the Supreme Court, which agreed to review his case in 1919.

### *Issue*

Did Schenck's conviction under the Espionage Act for criticizing the draft violate his First Amendment free speech rights?

### *Constitutional Provisions and Federal Statutes*

- **First Amendment to the U.S. Constitution**

  Congress shall make no law… 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.

### *Decision*

In the context of the U.S. effort to mobilize for entry into World War I, the Espionage Act's criminalization of speech that caused or attempted to cause a disruption of the operation of the military was not a violation of the First Amendment.

The Court stated that some speech does not merit constitutional protection. He said that statements that "create a clear and present danger" of producing a harm that Congress is authorized to prevent, fall in that category of unprotected speech. Just as "free speech would not protect a man in falsely shouting fire in a theatre and causing a panic," the Constitution does not protect efforts to induce the criminal act of resisting the draft during a time of war.

*Schenck* was the first case decided by the Court that created a test for punishing a speaker solely because of the content of her or his speech, as opposed to punishing speech that had already caused harm. The "clear and present danger" test provided the framework for many later cases brought against unpopular speakers under both the Espionage Act and similar state laws. Under the "clear and present danger" test, the government typically won and the speakers usually lost. The Court later abandoned this test in favor of rulings more protective of free speech rights.

## *#12 Shaw v. Reno* (1993)

### *Facts*

Between 1865 and 1993, the state of North Carolina elected only seven African-Americans to the U.S. House of Representatives. In 1990, none of the state's 11 members of Congress were black, while 20% of the state's population was. After the 1990 census, the state gained a 12th Congressional seat, and the state legislature tried to ensure the election of an African-American representative through the creation of a legislative district that would be majority African-American. Forty of North Carolina's counties were covered by the Voting Rights Act requirement that redistricting plans be pre-cleared by the federal government, so the state submitted its plans to the U.S. Department of Justice. The attorney general rejected the North Carolina state legislature's first redistricting plan because it created only one majority-minority district. The Department of Justice said that a second majority-minority district could also be created.

The General Assembly (North Carolina's legislature) redrew the district lines to create a second majority-minority district, District 12. District 12 ran along Interstate 85 in snake-like fashion for 160 miles, breaking up several counties, towns, and districts to connect geographically separate areas densely populated by minority voters into a single district that, in some places, was only as wide as the highway. The attorney general did not object to this new districting plan. In 1992, Melvin Watt won the 12th district, becoming one of North Carolina's first two black members of Congress in the 20th century.

Five white voters filed a lawsuit against both state and federal officials in the U.S. District Court for the Eastern District of North Carolina. They argued that District 12 violated the 14th Amendment's Equal Protection Clause because it was motivated by racial discrimination and resulted in a district drawn almost entirely on racial lines, with the sole purpose of electing black Congressional representatives. The District Court dismissed the case, concluding that using race-based districting to benefit minority voters does not violate the Constitution. The voters appealed to the Supreme Court, which is required by law to hear most redistricting cases.

### *Issue*

Did the North Carolina residents' claim that the 1990 redistricting plan discriminated on the basis of race raise a valid constitutional issue under the 14th Amendment's Equal Protection Clause?

### *Constitutional Amendments*

- **14th Amendment to the U.S. Constitution's Equal Protection Clause**

  "Nor shall any state…deny to any person within its jurisdiction the equal protection of the laws."

- **15th Amendment to the U.S. Constitution**

  "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude."

### *Decision*

The Supreme Court decided in favor of Shaw, and sent the case back to the lower court to be reheard.

**Majority**

The majority said that any redistricting plan that includes people in one district who are geographically disparate and share little in common with one another but their skin color, bears a strong resemblance to racial segregation. They wrote that racial classifications of any sort promotes the belief that individuals should be judged by the color of their skin. They also said that drawing districts to advance the perceived interests of one racial group may lead elected officials to see their obligation as representing only members of that group, rather than their constituency as a whole. The justices concluded that racial gerrymandering, even for remedial purposes, may "balkanize us into competing racial factions; it threatens to carry us further from the goal of a political system in which race no longer matters."

## *#13 Tinker v. Des Moines Independent Community School District* (1969)

### *Facts*

In 1966, in Des Moines, Iowa, five students, ages 13–16, decided to show opposition to the Vietnam War. The students planned to wear two-inch-wide black armbands to school for two weeks. The school district found out about the students' plan and preemptively announced a policy that any student who wore a black armband, or refused to take it off, would be suspended from school after the student's parents were called.

Mary Beth Tinker, an eighth-grader, and John Tinker and Christopher Eckardt, both high school students, wore black armbands to their respective schools. All three teens were sent home for violating the announced ban and told not to return until they agreed not to wear the armbands. Their parents filed suit against the school district for violating the students' First Amendment right to free speech. The federal district court dismissed the case and ruled that the school district's actions were reasonable to uphold school discipline. The U.S. Court of Appeals for the Eighth Circuit agreed with the district court. The Tinkers asked the U.S. Supreme Court to review that decision, and the Court agreed to hear the case.

### *Issue*

Does a prohibition against the wearing of armbands in public school, as a form of symbolic speech, violate the students' freedom of speech protections guaranteed by the First Amendment?

### *Constitutional Amendment and Supreme Court Precedents*

- **U.S. Constitution, Amendment I**

  Congress shall make no law … abridging the freedom of speech….

### *Decision*

The Supreme Court ruled in favor of the Tinkers.

The justices said that students retain their constitutional right to freedom of speech while in public schools. They said that wearing the armbands was a form of speech, because they were intended to express the wearer's views about the Vietnam War. The Court said, "First Amendment rights, applied in light of the special characteristics of the school environment, are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate...."

The Court stressed that this does not mean that schools can never limit students' speech. If schools could make a reasonable prediction that the speech would cause a "material and substantial disruption" to the discipline and educational function of the school, then schools may limit the speech. In this case, though, there was not evidence that the armbands would substantially interfere with the educational process or with other students' rights.

## *#14 United States v. Lopez* (1995)

### *Facts*

In 1990, Congress passed the Gun Free School Zones Act (GFSZA). In an effort to reduce gun violence in and around schools, the GFSZA prohibited people from knowingly carrying a gun in a school zone. A school zone was defined as any area within 1,000 feet of a school. A 12th grade student, Alfonso Lopez Jr., was convicted of possessing a gun at a Texas school. Lopez appealed his conviction, arguing that Congress never had the authority to pass the GFSZA in the first place. The U.S. Court of Appeals for the Fifth Circuit agreed with Lopez and reversed his conviction. The United States government asked the Supreme Court to hear the case. The Court agreed to do so.

### *Issue*

Did Congress have the power to pass the Gun Free School Zones Act?

### *Constitutional Clauses and Supreme Court Precedents*

- **Article 1, Section 8, Clause 3 of the U.S. Constitution – Commerce Clause**

  "The Congress shall have the power …to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes…"

- **Article 1, Section 8, Clause 18 of the U.S. Constitution – Necessary and Proper Clause**

  "The Congress shall have the power …to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof."

### *Decision*

The Supreme Court ruled in favor of Lopez.

The Supreme Court ruled that the law exceeded Congress's authority under the Commerce Clause because carrying a gun in a school zone is not an *economic* activity. It said that Congress may regulate only:

- Channels of interstate commerce, including highways, waterways, and air traffic.
- People, machines, and things moving in, or used in carrying out, interstate commerce.
- Economic activities that have a substantial effect on interstate commerce.

The Court rejected the government's argument that merely because crime negatively affected education, Congress could conclude that crime in schools affects commerce in a substantial way. Finally, the opinion stated that the Constitution created a national government with only limited, delegated powers. To claim that any kind of activity is commerce means that the power of Congress would be unlimited, which directly contradicts the principle of limited government and explicit powers. As the Court explained, "Thus, if we were to accept the Government's arguments, we are hard pressed to posit any activity by an individual that Congress is without power to regulate."

## *#15 Wisconsin v. Yoder* (1972)

### *Facts*

The state of Wisconsin convicted three members of Old Order Amish and Mennonite communities for violating the state's compulsory education law, which requires attendance at school until the age of 16. Frieda Yoder and two other students had stopped attending school at the end of eighth grade. The Amish claimed that their religious faith and their mode of life are inseparable and interdependent. They sincerely believe that exposure to competitive pressures of formal schooling, the content of higher learning, and removal from their religiously-infused practices of daily life will endanger children's salvation, the parents' own salvation, and the continuation of the Amish community itself. The Amish community provides an alternative education that adequately prepares children for their adult roles within their community. This alternative education also prepares them to be law abiding and self-sufficient.

Mr. Yoder and the other parents were convicted in Wisconsin Circuit Court for their students' truancy (failure to attend compulsory schooling). They were required to pay a five dollar fine, which they refused to do as a matter of conscience. The Yoders appealed to the Wisconsin Supreme Court on the grounds that their families' First Amendment free exercise rights were violated. The state Supreme Court agreed and reversed the Circuit Court's decision, ruling in favor of Yoder. The state of Wisconsin sought review by the U.S. Supreme Court, which agreed to hear the case.

### *Issue*

Under what conditions does the state's interest in promoting compulsory education override parents' First Amendment right to free exercise of religion?

### *Constitutional Amendments*

- **First Amendment to the U.S. Constitution's Free Exercise Clause**

  "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof…"

- **14th Amendment to the U.S. Constitution's Due Process Clause**

  "...nor shall any State deprive any person of life, liberty, or property, without due process of law..."

### *Decision*

The Court decided the case unanimously, 7–0, in favor of Yoder.

### Majority

The Supreme Court held that the Free Exercise Clause of the First Amendment, as incorporated by the 14th Amendment, prevented the state of Wisconsin from compelling the respondents to send their children to formal secondary school beyond the age of 14.

The Court ruled that the families' religious beliefs and practices outweighed the state's interests in making the children attend school beyond the eighth grade. The Court first satisfied itself that, according to expert

testimony in the record, the requirement to send their children to school beyond the eighth grade would actually interfere with well-established and deeply held religious convictions.

The Court then rejected the state's arguments for overriding the parents' religious beliefs. The Court commented that an additional one or two years of high school (until the required age of 16) would not produce enough educational benefits for the Amish to constitute a "compelling government interest." The Court cited the endurance of their law-abiding community for centuries as evidence that the Amish meet the responsibilities of citizenship without the required additional years of secondary education.

The justices also noted that nothing in their decision undermined general state compulsory school attendance laws for non-Amish people and emphasized that states may still set reasonable standards for church-sponsored schools, including for Amish agricultural vocational education, as long as those rules do not impair the free exercise of religion.

# Assignment #2: Federalists Papers

***You must know each of the required Federalist Papers (10, 51, 70, 78) below. There will be a <u>test</u> on this the second day of class in the Spring.***

**<u>Federalist #10</u>**

• The great thing about a strong Union is that it's really good at cutting down the influence of factions.
• Factions are bad news to a just government. They end up causing instability, injustice, and confusion.
• Lots of governments have fallen to one group gaining too much power over the whole.
• Sadly, America also has factions. Try not to panic.
• People are worried that the common good is being ignored in favor of the conflicts between rival factions.
• Not only that, but also the rights of the minor party are getting steamrolled by the power of the majority.
• But what are factions, anyways?
• They're a group of citizens, however big or small, who are united by a specific interest that puts them a against another group of citizens and their specific interests.
• There are two ways to stop factions: Remove its causes, or control its effects.
• The downside to the first thing is that factions are a by-product of having opinions in general and the freedom to express them.
• You can't go into someone's brain and get rid of their opinions and getting rid of people's freedom of expression kind of flies in the face of the whole democracy thing.
• Fire can't burn without that pesky oxygen (pesky freedom, in this analogy)
• So, that's a no-go on cause-preventing. But luckily, we can cut down on the worst effects of Factions by governing.
• By changing the US to a Representative Democracy, big potentially dangerous ideas get filtered down.
• But does a large Republic work better than a tiny one?
• Actually, the bigger the United States are, the better—more people mean more opinions, and thus the powers of faction are kept at bay.
• Faction leaders may be able to start a spark in their necks of the woods, but the proverbial fire won't spread to the rest of the government thanks to our representative system.

**<u>Federalist # 51</u>**

• Now that there are 3 branches how are we going to balance power?
• We're going to set them up so that they keep each other in line.
• If we're going to have a government with separate, independent branches, then each branch should have a will of its own.
• The Constitution should prevent any one branch from taking too much power, and to prevent any one person from doing the same.
• People like power. The government's run by people.
• If people were perfect, we wouldn't need government. If the people running the government were perfect, we wouldn't have to worry about it abusing its power.
• Therefore you gotta build a system that regulates itself, and splitting the power-share does that pretty well.
• However, you can't split power three ways evenly down the middle.
• The legislative branch in a republic is usually the most powerful, since they get to make the laws.

• The Constitution totally has an answer for that, and that's to split the legislative branch in half, forming the Senate and the House of Representatives.
• The Executive branch is, naturally, kind of weak. No strong rulers and all, we learned that lesson the last time.
• So it gets the power to veto the legislative branch, which gives it some power and takes some more power away from the legislative branch.
• Long story short, breaking the government down into branches, then breaking those further down, gives you governments that will control each other while they get to control themselves at the same time.

**Federalist #70**

Many people think that a vigorous and strong president is incompatible with a republican form of government. Hamilton, however, does not agree. National defense, sound administration of the law, and the protection of property rights all depend upon the vitality of the Presidency.

An energetic executive branch must be characterized by unity, sufficient powers, and a certain degree of secrecy. For these reasons, one chief executive is better than two or more. Two people, granted equal power and authority, are bound to differ. Personal ambition can never be totally subdued, and a dual presidency would be marked by dissension, weakened authority, and the growth of conflicting factions. It is unnecessary and unwise to establish an executive branch that would make this form of divisiveness possible and likely. Conflict and argument are dangerous in the executive branch where decisions must be prompt. Furthermore, in case of war, when so much depends upon a strong presidency, divisiveness could destroy the national security.

This essay concerning the powers of the executive department is one of the most referenced federalist papers concerning the presidency. Hamilton writes, "energy in the executive" is one of the most important parts of the executive department of the country, as defined in the Constitution. This "energy" is one of the most written about components and excuses for expansion of presidential power, especially in the 20th century.

**Federalist #78**

This paper discusses the importance of an independent judicial branch and the meaning of judicial review. The Constitution proposes the federal judges hold their office for life, subject to good behavior (not breaking a law themselves). Permanency in office frees judges from political pressures (they don’t have to worry about getting voted out if someone does not like their decisions).

The framers believed that the judicial branch of government is by far the weakest branch. The judicial branch posses only the power to judge, not to act, and even its judgments or decisions depend upon the executive branch to carry them out.

Hamilton cites one other important reason for judges to have life tenure. In a free government there are bound to be many laws, some of them complex and contradictory. It takes many years to fully understand the meaning of these laws and a short term of office would discourage able and honest men from seeking an appointment to the courts; they would be reluctant to give up lucrative law practices to accept a

temporary judicial appointment. Life tenure, modified by good behavior, is a superb device for assuring judicial independence and protection of individual rights.

With a view toward creating a judiciary that would constitute a balance against Congress, the framers provided for the independence of the courts from Congress. Hamilton, therefore, praises the Constitution for establishing courts that are separated from Congress.