

JUDICIAL ACTIVIST OR STRICT CONSTRUCTIONIST?

Directions: Decide whether statements below best reflect an activist decision or a strict constructionist decision. Provide a brief rationale for your answer.

- (1) Justice Harry Blackmun in dissenting opinion in *Furman v. Georgia* (1972) (voided the death penalty) stated, "Cases such as these provide for me an excruciating agony of the spirit I yield to no one in the depth of my distaste antipathy and indeed abhorrence, for the death penalty. were I a legislator I would vote against the death penalty. . I do not sit, however as a legislator... our task here . . . is to vote pass on constitutionality of legislation that has been enacted and that is challenged. This is the sole task for judges. We should not allow our personal preferences as to the wisdom of legislative or congressional action, or our distaste for such action to guide our judicial decision."
- (2) Chief Justice Taney in the *Dred Scott* decision declared, "persons of color. . . were not included in the word citizens and they are described as a different class of persons" and could NOT sue in federal court based on Article IV Section 2.
- (3) Justice Stephens in *Clinton v. New York City* (line-item veto) argues that the law is unconstitutional in part, because Article II section 7 states that a bill be "presented to the President of the United States if he approve he shall sign it, if not he shall return it." This leaves no room for another option.
- (4) Justice Blackmun in *Roe v. Wade* (1974) said, "the Constitution does not explicitly mention any right of privacy. . . however in the line of decisions the court has recognized the right of personal privacy. . . (that is) broad enough to encompass a woman's decision whether or not to terminate her pregnancy."
- (5) In *Texas v. Johnson* (1989) Justice Brennan found that Johnson's conviction for flag desecration is inconsistent with the first amendment. "The first amendment forbids the abridgment only of 'speech' but we have long recognized that its protection does not end at the spoken word."
- (6) In March, 2005, after numerous appeals to the Florida state courts and an extraordinary law passed by Congress to give the federal judiciary jurisdiction in the case, the U.S. Supreme Court refused to intervene after the 11th U.S. Circuit Court of Appeals twice turned down a plea from the parents of Terry Schiavo that would have allowed for a feeding tube to be reinserted to save her life.

