

## Marbury v. Madison (1803)

This decision, perhaps the single most important one in the history of the Supreme Court, took place against a background of political rivalry. Marbury v. Madison was not about individual rights, but *about the powers of the Court itself*. It laid the foundation for many later decisions by the Court.

### The Political Background

John Adams was the second President of the United States. Adams was defeated by Thomas Jefferson in the Presidential election of 1800. In December 1800, Adams' party in Congress passed laws creating new judicial posts. Their aim was to fill the judiciary with similar-minded judges before Jefferson took power.

President Adams nominated new judges to fill all of these posts. The Senate only completed confirmation of his new appointments on March 3, 1801-Adams' last day in office. The new appointments were quickly signed by Adams and sealed by his Secretary of State, John Marshall. Most of the new commissions (certificates of appointment) were delivered, but in the last-minute rush, a few were not.

Meanwhile, the Chief Justice of the Supreme Court had resigned in January. Adams appointed John Marshall to take his place. In February 1801, Marshall assumed office as Chief Justice of the Supreme Court, but Marshall also remained as Secretary of State during Adams' final month in office.

On March 4, 1801, Thomas Jefferson took the oath of office as the third President of the United States. He appointed James

Madison as his Secretary of State. Jefferson and Madison refused to deliver any remaining last-minute commissions made by the former president. One of these undelivered commissions was to William Marbury.

### Marbury's Lawsuit

Marbury sued Madison for failing to deliver his commission.

The *Judiciary Act of 1789* had given the U.S. Supreme Court the power to issue a court order to a government official to perform his duties (writ of mandamus). Marbury filed his suit in the Supreme Court, seeking such an order to Madison, requiring him to deliver the commission.

The lawsuit placed Chief Justice Marshall in a delicate situation. As former Secretary of State, Marshall had sealed the very commission he was now asked to enforce. Could his decision be impartial in these circumstances?

### Outcome:

- (1) William Marbury did not receive his position in the courts.
- (2) Justice Marshall established **Judicial Review** and the Supreme Court's powers to decide the constitutionality/validity of a law or act in our country.

### Significance:

Establishing **Judicial Review** gave the Supreme Court its main powers that had not yet been clarified in the constitution. The Supreme Court now oversees over 150 high profile constitutional court cases per year .

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

### The Facts

In the 1960s, the United States was involved in an unpopular war in Vietnam. Americans were sharply divided.

A group of junior high and high school students in Des Moines, Iowa, decided to show their opposition to the war by wearing black armbands to school. Their parents supported their protest. School officials feared a disruption and banned the wearing of armbands two days before the students had planned their demonstration.

When the students still wore the armbands, school authorities suspended them from school until they returned without the armbands. Even though their protest was a silent, symbolic act rather than spoken words, the students claimed that the school authorities had violated their "free speech" rights under the First Amendment.

### **The Legal Issues**

1. Do students have the right to free speech guaranteed in the First Amendment?
2. Was the wearing of armbands to school an exercise of "free speech"?

### **The Decision/Outcome**

The Supreme Court ruled that the actions of school officials had indeed violated the students First Amendment rights. First, the students were individuals entitled to the protections of the First Amendment. Students and teachers did not "shed their

constitutional rights to freedom of speech or expression at the schoolhouse gate." The wearing of armbands was seen as an expression of the student's views on a public issue and therefore a form of "pure speech" entitled to the protections of the First Amendment. School officials had not shown that the wearing of armbands by the students had threatened such a disruption that the prohibition was necessary:

*"Clearly, the prohibition of expression of one particular opinion, at least without evidence that it is necessary to avoid material and substantial interference with schoolwork or discipline, is not constitutionally permissible... In our system, state-operated schools may not be enclaves of totalitarianism. School officials do not possess absolute authority over their students. Students in school as well as out of school are 'persons' under our Constitution. They are possessed of fundamental rights. In the absence of a specific showing of constitutionally valid reasons to regulate their speech, students are entitled to freedom of expression of their views."*

- Tinker v. Des Moines, 1969

### **Significance:**

The decision established that students were citizens entitled to the freedom of speech guaranteed by the First Amendment

In the aftermath of Tinker, there was a flourishing of student expression. Several lower courts ruled against censorship of school-sponsored student publications. Censorship refers to the revising of a publication by authorities before it is made public, or even a refusal to permit its publication at all. In Hazelwood, the U.S. Supreme Court defined some of the limits on student's free-speech rights.

## **Hazelwood School District v. Kuhlmeier (1988)**

### **The Facts**

Students in a journalism class in Hazelwood East High School in Missouri published their own student newspaper. The school district paid for the printing and as well as their academic adviser's salary. In 1983, the academic adviser showed the next issue to

the school principal for approval. The principal objected to a story on teenage pregnancy in which student reporters had interviewed three pregnant students. The principal also objected to a story about

divorce. The paper was printed without the two stories.

Cathy Kuhlmeier, the student editor of the newspaper, and the two student reporters sued the school district for violating their free speech. Their claims were upheld by the U.S. Court of Appeals for the Eighth Circuit.

**The Legal Issue**

Does the First Amendment protect school-sponsored publications from censorship by school authorities?

**The Decision/Outcome**

The Supreme Court reversed the ruling of the U.S. Circuit Court of Appeals. According to the Supreme Court, the right to publish in a school-sponsored newspaper was not the same as the right to wear armbands in Tinker. In the case of school-sponsored activities, school officials have the right to exercise control "so long as their actions are reasonably related to legitimate pedagogical (educational) concerns. The situation was seen as different from Tinker because here the school was actually promoting the publication through its sponsorship:

*"A school need not tolerate student speech that is inconsistent with its basic educational mission, even though the government could not censor similar speech outside the school." The Supreme Court concluded that school-sponsored student publications were not protected by the First Amendment. The school principal's refusal to publish the three articles thus did not violate the student's rights. Three of the Justices dissented from the majority opinion, arguing that it showed an "unthinking contempt for individual rights."*

**Significance**

Hazelwood qualified some of the free speech rights given to students by Tinker. It stated that school officials could censor school-sponsored student publications so long as such restrictions served a valid educational purpose. Several states own laws passed their granting students' rights to publish student publications more freely. Lower courts are divided on whether the same reasoning should apply to college newspapers.

**Bethel School District v. Fraser (1986)**

**The Facts**

At a school assembly of approximately 600 high school students, Matthew Fraser made a speech nominating a fellow student for elective office. In his speech, Fraser used what some observers believed was a graphic sexual metaphor to promote the candidacy of his friend. As part of its disciplinary code, Bethel High School enforced a rule prohibiting conduct which "substantially interferes with the educational process . . . including the use of obscene, profane language or gestures." Fraser was suspended from school for two days.

Does the First Amendment prevent a school district from disciplining a high school student for giving a lewd speech at a high school assembly?

**The Decision/Outcome:**

No. The Court found that it was appropriate for the school to prohibit the use of vulgar and offensive language. Chief Justice Burger distinguished between political speech which the Court previously had protected in **Tinker v. Des Moines Independent Community School District (1969)** and the supposed sexual content of Fraser's message at the assembly. Burger concluded that the First Amendment did not prohibit schools

**Question**

from prohibiting vulgar and lewd speech since such discourse was inconsistent with the "fundamental values of public school education."

**Significance:**

Fraser contended that he had a First Amendment right to political speech under the principles of Tinker, protects the vast

majority of student speech that does not create a substantial disruption. However, school officials argued that they had a duty to protect younger students from inappropriate and sexual speech.

"Bethel School District No. 403 v. Fraser."  
Oyez, [www.oyez.org/cases/1985/84-1667](http://www.oyez.org/cases/1985/84-1667).  
Accessed 16 Feb. 2021

## **Dred Scott v. Sandford (1857)**

**The Facts**

Dred Scott was born into slavery in Missouri, but from 1833 to 1843, he resided in the "free state" of Illinois and also temporarily lived in the Louisiana Territory (where slavery was forbidden). After returning to Missouri, Scott filed a lawsuit with the Missouri court for his freedom. He claimed that his residence in free territory made him a free man. After losing, Scott brought a new suit in federal court. Dred Scott's master maintained that no "negro" or descendant of slaves could be a citizen in the sense of Article III of the Constitution.

**The Legal Issue:**

If a slave enters a "free state" but then returns to a "slave state", will they maintain their new freedom?

**The Decision/Outcome**

The majority held that "a negro, whose ancestors were imported into [the U.S.], and sold as slaves," whether enslaved or free, could not be an American citizen and therefore did not have a right to sue in federal court. Because the Court lacked jurisdiction, Taney dismissed the case on procedural grounds.

Taney further held that the Missouri Compromise of 1820 was unconstitutional and forbade Congress from freeing slaves within Federal territories. The opinion showed deference to the Missouri courts, which held that moving to a free state did

not render Scott emancipated. Finally, Taney ruled that slaves were property under the Fifth Amendment, and that any law that would deprive a slave owner of that property was unconstitutional.

In dissent, Benjamin Robbins Curtis criticized Taney for addressing the claim's substance after finding the Court lacked jurisdiction. He pointed out that invalidating the Missouri Compromise was not necessary to resolve the case.

John McLean echoed Curtis, finding the majority improperly reviewed the claim's substance, overly favoring the perspective of pro-slavery arguments. McLean also argued that men of African descent could be citizens because they already had the right to vote in five states.

**Significance:**

In Dred Scott v. Sandford, the courts ruled in favor of supporting the southern state's rights and jurisdiction; as a result, supporting the continuation of slavery and the lack of citizenship for a majority of African-Americans. This ruling would spark outrage in the abolitionists and give momentum to the anti-slavery movement just as the American Civil War was becoming an inevitable reaction to the differences between the North and the South.

One of the most important issues ever to face American courts has been that of racial segregation. Following the Civil War and Reconstruction, Southern states passed "Jim Crow" laws imposing racial segregation on public places, such as trains, buses, parks and schools. These laws required African Americans to use different facilities than whites did. Yet the Fourteenth Amendment had promised all American citizens the "equal protection of the laws." Southerners argued that so long as the facilities offered to African Americans were "separate but equal," the requirements of the Fourteenth Amendment were satisfied.

## Plessy v. Ferguson (1896)

### The Facts

In 1890, Louisiana passed a "Jim Crow" law requiring railroad companies to "provide equal but separate" passenger cars to members of different races. Opponents of segregation persuaded Homer Plessy, who was one-eighth African American and appeared to be white, to challenge this law. Plessy sat in a railroad passenger car reserved for whites, told the conductor of his mixed ancestry, and was arrested. He fought his case all the way up to the U.S. Supreme Court.

### The Legal Issue

Can a state impose racial segregation by offering "separate-but-equal" facilities, without violating the "Equal Protection Clause" of the Fourteenth Amendment?

### The Decision/Outcome

The U.S. Supreme Court saw nothing in the Louisiana law itself that stated that some races were inferior to others. Therefore, the separation of races it required did not violate the "Equal Protection" Clause of the Fourteenth Amendment. If African Americans or others chose to see themselves as inferior, the Court said, this had nothing to do with the law itself. The law merely separated these races without indicating that either one of them was superior or inferior. "We cannot say that a law which requires the separation of two races is unreasonable. *We consider the [error] of [Plessy's] argument*

*to consist in the assumption that the enforced separation of the two races stamps the colored race with a badge of inferiority. If this be so, it is not by reason of anything found in the act, but solely*

*because the colored race chooses to put that construction upon it. ...*

*When the government .. has secured to each of its citizens equal rights before the law, and equal opportunities for improvement and progress, it has accomplished the end for which it was organized, and performed all of the functions respecting social advantages with which it is endowed. If the civil and political rights of both races be equal, one cannot be inferior to the other civilly or politically. If one race be inferior to the other socially, the constitution of the United States cannot put them upon the same plane."*

-Plessy v. Ferguson, 1896

### Significance

In Plessy v. Ferguson, the U.S. Supreme Court affirmed the constitutionality of state segregation laws, so long as the facilities offered to each race were of "equal standards." This became known as the "separate-but-equal" doctrine. In Plessy, the Court held that such segregation did not violate the "Equal Protection" Clause of the Fourteenth Amendment. As a result of this decision, states across the South strengthened their segregation laws.

For the next 50 years after Plessy v. Ferguson, white and African-American children continued to attend separate public schools across the South. Starting in the 1930s, African-American lawyers at the National Association for the Advancement of Colored People, or "NAACP," began challenging the "separate-but-equal" doctrine in public education. They launched an ambitious strategy by filing a series of lawsuits challenging state laws.

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

### **The Facts**

Linda Brown was a schoolgirl in Topeka, Kansas. Her father sued the local school board because Linda was forced to attend an all-black school when an all-white school was closer to their home. Brown lost the case in state court. In 1953, the NAACP appealed Linda Brown's case along with a number of others to the U.S. Supreme Court.

### **The Legal Issue**

Did racial segregation in public schools violate the "Equal Protection" Clause of the Fourteenth Amendment?

The NAACP's Legal Argument Thurgood Marshall, the NAACP lawyer handling the case, did not argue that the facilities given to African-American children were inferior (although this was generally the case). Instead, he argued that the system of segregated education was, by Thurgood Marshall its very nature, unequal because it sent a psychological message to African-American children that they were not "good enough" to be taught with whites. Marshall supported his argument with the findings of an African-American psychologist, Dr. Kenneth Clark. Clark showed white and black dolls to young African-American children and found that these children preferred the white dolls to black ones. Clark concluded that the system of racial segregation had led to this painful sense of inferiority.

### **The Decision/Outcome**

Earl Warren, a former governor, had only just been appointed as Chief Justice of the Supreme Court. Warren wanted to avoid a divided decision. With great effort, he obtained the support of all nine Justices. They were persuaded in part by Thurgood Marshall's reasoning. Warren wrote the Court's unanimous opinion, which declared racial segregation in

public schools to be a violation of the Fourteenth Amendment:

*"Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other 'tangible' factors may be equal, deprive the children of the minority group of equal educational opportunities? We believe that it does..."*

*Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of the law, for the policy of separating the races is usually interpreted as denoting the inferiority of the [African-American] group. A sense of inferiority affects the motivation of a child to learn...*

*We conclude that, in the field of public education, the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal."*

-Brown v. Board of Education, 1954

### **Significance**

Southern Senators in Congress immediately signed a public protest against the Brown decision. Local officials across the South swore they would never enforce it. Violence in the South increased. Southern resistance required the U.S. Supreme Court to make a separate ruling on how the Brown decision was to be carried out a year later. Enforcement of the Brown decision was handed over to the lower federal courts, which were to see that local school districts carried out the desegregation order "with all deliberate speed." The Brown decision would take many years to carry out. As a result of the Brown decision, the first steps were taken towards ending racial segregation in the South and creating the diverse, multicultural society we enjoy today

## **Loving v. Virginia (1967)**

### **The Facts**

In 1958, two residents of Virginia, Mildred Jeter, a black woman, and Richard Loving, a white man, were married in the District of Columbia. The Lovings returned to Virginia shortly thereafter. The couple was then charged with violating the state's anti-miscegenation\* statute, which banned inter-racial marriages. The Lovings were found guilty and sentenced to a year in jail (the trial judge agreed to suspend the sentence if the Lovings would leave Virginia and not return for 25 years).

### **The Legal Issue**

Did Virginia's anti-miscegenation\* law violate the Equal Protection Clause of the Fourteenth Amendment?

### **The Decision/Outcome**

Yes. In a unanimous decision, the Court held that distinctions drawn according to race were generally "odious to a free people" and were subject to "the most rigid scrutiny" under the Equal Protection Clause. The Virginia law, the Court found, had no legitimate purpose "independent of invidious racial discrimination." The Court

rejected the state's argument that the statute was legitimate because it applied equally to both blacks and whites and found that racial classifications were not subject to a "rational purpose" test under the Fourteenth Amendment. The Court also held that the Virginia law violated the Due Process Clause of the Fourteenth Amendment. "Under our Constitution," wrote Chief Justice Earl Warren, "the freedom to marry, or not marry, a person of another race resides with the individual, and cannot be infringed by the State."

### **Significance:**

Loving v. Virginia ruled that specific states could not interfere with an individual's right to marriage based on race.

"Loving v. Virginia." Oyez, [www.oyez.org/cases/1966/395](http://www.oyez.org/cases/1966/395). Accessed 16 Feb. 2021.

\***Anti-miscegenation** laws or **miscegenation** laws are laws that enforce racial segregation at the level of marriage and intimate relationships by criminalizing these actions

## **Romer v. Evans (1996)**

### **The Facts**

Colorado voters adopted Amendment 2 to their State Constitution precluding any (preventing any new) judicial, legislative, or executive action designed to protect persons from discrimination based on their "homosexual, lesbian, or bisexual orientation, conduct, practices or relationships." Following a legal challenge by homosexual and other aggrieved parties, the state trial court entered a permanent injunction enjoining Amendment 2's enforcement. The Colorado Supreme Court affirmed on appeal.

### **The Legal Issue:**

Does Amendment 2 of Colorado's State Constitution, forbidding the extension of official protections to those who suffer discrimination due to their sexual orientation, violate the Fourteenth Amendment's Equal Protection Clause?

### **The Decision/Outcome**

Yes. In a 6-to-3 decision, the Court held that Amendment 2 of the Colorado State Constitution violated the equal protection clause. Amendment 2 singled out homosexual and bisexual persons, imposing on them a broad disability by denying them the right to seek and receive specific legal protection from discrimination. In his

opinion for the Court, Justice Anthony Kennedy noted that oftentimes a law will be sustained under the equal protection clause, even if it seems to disadvantage a specific group, so long as it can be shown to "advance a legitimate government interest." Amendment 2, by depriving persons of equal protection under the law due to their sexual orientation failed to advance such a legitimate interest. Justice Kennedy concluded: "If the constitutional conception of 'equal protection of the laws' means anything, it must at the very least mean that a bare desire to harm a politically unpopular

group cannot constitute a legitimate governmental interest."

**Significance:**

In *Romer v. Evans*, the court cited the 14<sup>th</sup> Amendment, saying that preemptively excluding groups from future protections is both unconstitutional and goes directly against the purpose of the Amendment.

"*Romer v. Evans*." Oyez, [www.oyez.org/cases/1995/94-1039](http://www.oyez.org/cases/1995/94-1039). Accessed 16 Feb. 2021.

**Obergefell v. Hodges (2015)**

**The Facts**

Groups of same-sex couples sued their relevant state agencies in Ohio, Michigan, Kentucky, and Tennessee to challenge the constitutionality of those states' bans on same-sex marriage or refusal to recognize legal same-sex marriages that occurred in jurisdictions that provided for such marriages. The plaintiffs in each case argued that the states' statutes violated the Equal Protection Clause and Due Process Clause of the Fourteenth Amendment, and one group of plaintiffs also brought claims under the Civil Rights Act. In all the cases, the trial court found in favor of the plaintiffs. The U.S. Court of Appeals for the Sixth Circuit reversed and held that the states' bans on same-sex marriage and refusal to recognize marriages performed in other states did not violate the couples' Fourteenth Amendment rights to equal protection and due process.

**The Legal Issue**

- (1) Does the Fourteenth Amendment require a state to license a marriage between two people of the same sex?
- (2) Does the Fourteenth Amendment require a state to recognize a marriage between two people of the same sex that was legally licensed and performed in another state?

**The Decision/Outcome**

Yes, yes. The Court held that the Due Process Clause of the Fourteenth Amendment guarantees the right to marry as one of the fundamental liberties it protects, and that analysis applies to same-sex couples in the same manner as it does to opposite-sex couples. Judicial precedent has held that the right to marry is a fundamental liberty because it is inherent to the concept of individual autonomy, it protects the most intimate association between two people, it safeguards children and families by according legal recognition to building a home and raising children, and it has historically been recognized as the keystone of social order. Because there are no differences between a same-sex union and an opposite-sex union with respect to these principles, the exclusion of same-sex couples from the right to marry violates the Due Process Clause of the Fourteenth Amendment. The Equal Protection Clause of the Fourteenth Amendment also guarantees the right of same-sex couples to marry as the denial of that right would deny same-sex couples equal protection under the law. Marriage rights have traditionally been addressed through both parts of the

Fourteenth Amendment, and the same interrelated principles of liberty and equality apply with equal force to these cases; therefore, the Constitution protects the fundamental right of same-sex couples to marry. The Court also held that the First Amendment protects the rights of religious organizations to adhere to their principles, but it does not allow states to deny same-sex couples the right to marry on the same terms as those for opposite-sex couples.

**Significance:**

Obergefell v. Hodges decision resulted in the rights for same-sex marriage throughout the U.S. while also being legally recognized in every state outside of the original state where the marriage license was given and took place. This court decision effectively took away the states' jurisdiction and judgment on the matter and made the issue a national matter rather than a state matter.

"Obergefell v. Hodges." Oyez, [www.oyez.org/cases/2014/14-556](http://www.oyez.org/cases/2014/14-556). Accessed 16 Feb. 2021.

## **Minersville School District v. Gobitis (1940)**

**The Facts**

In 1935, Lillian and William Gobitis were expelled from Pennsylvania public schools for refusing to salute the flag as part of a daily school exercise. The Gobitis children were Jehovah's Witnesses and believed that saluting the flag was forbidden by the Bible. They argued the expulsions violated their First Amendment rights.

**The Legal Issue:**

Did the mandatory flag salute infringe upon liberties protected by the First and Fourteenth Amendments?

**The Decision/Outcome**

The Court upheld the mandatory flag salute. Writing for the majority, Justice Felix Frankfurter relied primarily on the "secular regulation" rule, which weighs the secular purpose of a nonreligious government regulation against the religious practice it makes illegal or otherwise burdens the exercise of religion. The Court held that the state's interest in "national cohesion" was "inferior to none in the hierarchy of legal values," and that national unity was "the basis of national security." Frankfurter wrote that the school district's interest in creating

national unity was enough to allow them to require students to salute the flag.

The Court declined to make itself "the school board for the country."

Justice Harlan Stone dissented, writing that the "very essence of the liberty" guaranteed by the Constitution "is the freedom of the individual from compulsion as to what he shall think and what he shall say." Stone's position soon became the majority; the decision was reversed in 1943 in *West Virginia State Board of Education v. Barnette*

**Significance:**

This early court case on school regulation and the rights of students originally kept the power with the states and local school boards to make decisions on freedom of expression while on school property.

"Minersville School District v. Gobitis." Oyez, [www.oyez.org/cases/1940-1955/310us586](http://www.oyez.org/cases/1940-1955/310us586). Accessed 16 Feb. 2021.

## West Virginia State Board of Education v. Barnette (1943)

### The Facts

In 1942, the West Virginia Board of Education required public schools to include salutes to the flag by teachers and students as a mandatory part of school activities. The children in a family of Jehovah's Witnesses refused to perform the salute and were sent home from school for non-compliance. They were also threatened with reform schools used for criminally active children, and their parents faced prosecutions for causing juvenile delinquency.

### The Legal Issues

Does punishment for the refusal of flag-saluting for public schoolchildren violate the First Amendment?

### The Decision/Outcome

Compelling school children to salute the flag violates freedom of speech protected by the First Amendment.

The Court overruled its decision in *Minersville School District v. Gobitis* and held that compelling public schoolchildren to salute the flag was unconstitutional. In an

opinion written by Robert H. Jackson, the Court found that the First Amendment cannot enforce a unanimity of opinion on any topic, and national symbols like the flag should not receive a level of deference that trumps constitutional protections. He argued that curtailing or eliminating dissent was an improper and ineffective way of generating unity.

### Significance:

The Courts decision to overturn their own earlier ruling came due to the additional actions taken by the school board to punish students who refused to salute the national flag. The argument of unity is thereby invalidated when outlier groups are compelled to do so with fear of punishment; these insincere actions of unity and patriotism devalue its meaning and do not justify the suppression of an individual's First Amendment rights.

"West Virginia State Board of Education v. Barnette."  
Oyez, [www.oyez.org/cases/1940-1955/319us624](http://www.oyez.org/cases/1940-1955/319us624).  
Accessed 16 Feb. 2021.

## Texas v. Johnson (1989)

### The Facts

In 1984, in front of the Dallas City Hall, Gregory Lee Johnson burned an American flag as a means of protest against Reagan administration policies. Johnson was tried and convicted under a Texas law outlawing flag desecration. He was sentenced to one year in jail and assessed a \$2,000 fine. After the Texas Court of Criminal Appeals reversed the conviction, the case went to the Supreme Court.

### The Legal Issue

Is the desecration of an American flag, by burning or otherwise, a form of speech that is protected under the First Amendment?

### The Decision/Outcome

The Court held that Johnson's burning of a flag was protected expression under the First Amendment. The Court found that Johnson's actions fell into the category of expressive conduct and had a distinctively political nature. The fact that an audience takes offense to certain ideas or expression, the Court found, does not justify prohibitions of

speech. The Court also held that state officials did not have the authority to designate symbols to be used to communicate only limited sets of messages, noting that "[i]f there is a bedrock principle underlying the First Amendment, it is that the Government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable."

**Significance:**

The court's decision to uphold the freedom of expression when committing acts deemed "unpatriotic" helped enable individuals continue to speak out through their own forms of political protest without fear of unjust repercussions from their government.

"Texas v. Johnson." Oyez, [www.oyez.org/cases/1988/88-155](http://www.oyez.org/cases/1988/88-155). Accessed 16 Feb. 2021.

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

**The Facts**

The New York State Board of Regents authorized a short, voluntary prayer for recitation\* at the start of each school day. A group of organizations joined forces in challenging the prayer, claiming that it violated the Establishment Clause of the First Amendment. The New York Court of Appeals originally rejected their arguments.

**The Legal Issue**

Does the reading of a nondenominational prayer at the start of the school day violate the "establishment of religion" clause of the First Amendment?

**The Decision/Outcome**

The state cannot hold prayers in public schools, even if participation is not required and the prayer is not tied to a particular religion.

The Court held that school board's decision to use its school system to facilitate recitation\* of the official prayer violated the

Establishment Clause. Specifically, the policy breached the constitutional wall of separation between church and state. The Court ruled that the constitutional prohibition of laws establishing religion meant that government had no business drafting formal prayers for any segment of its population to repeat in a government-sponsored religious program. The Court held that respondent's provision of the contested daily prayer was inconsistent with the Establishment Clause.

**Significance:**

The court's decision helped establish more power towards the concept of 'separation of church and state.' By doing so, schools cannot require students to take part in prayer or even provide the option of voluntary group prayer within school walls.

\*Recitation: to recite or speak out loud

"Engel v. Vitale." Oyez, [www.oyez.org/cases/1961/468](http://www.oyez.org/cases/1961/468). Accessed 16 Feb. 2021.

We occasionally learn of tragic assaults against students by intruders with handguns and other dangerous weapons. Such events are often followed by demands for stricter gun control.

At the same time, the Second Amendment guarantees our right to "bear arms." How far should the right to buy and bear arms go? Does this constitutional right prevent local governments from banning certain types of guns?

## **District of Columbia v. Heller (2008)**

### **The Facts**

In 1975, Washington, D.C., passed its Firearms Control Regulations Act. This law prohibited residents from registering or carrying handguns. In addition, all lawfully owned firearms had to be kept unloaded and disassembled or bound by a trigger lock when in the owner's home. Richard Heller, a police officer, applied for a handgun permit for his home and was denied. He challenged the law in court.

### **The Legal Issue**

Do local laws prohibiting handgun ownership violate Second Amendment rights to keep handguns and other firearms for private use in one's home?

### **The Decision/Outcome**

The Second Amendment protects an individual's right to bear arms and to use those arms for lawful purposes, such as self-defense. The Supreme Court criticized Washington D.C.'s total ban on handgun ownership in the home because it prohibited guns in the very place where they were most needed for the lawful defense of self, family, and property. Such a prohibition was therefore not permitted under the Second

Amendment. The Second Court also ruled against the city's requirement that all lawful firearms at home be disassembled or bound by a trigger lock. This requirement made it impossible for citizens to use arms for the lawful purpose of defending themselves, and therefore was also unconstitutional.

### **Significance**

The right to bear arms under the Second Amendment is an individual right closely tied to the right of self-defense. Local governments cannot totally ban handguns, although they can control licensing procedures and impose other reasonable requirements.

## **Mapp v. Ohio (1961)**

### **The Facts:**

Dollree Mapp was convicted of possessing obscene materials after an admittedly illegal police search of her home for a fugitive. She appealed her conviction on the basis of freedom of expression.

### **The Legal Issue**

Were the confiscated materials protected from seizure by the Fourth Amendment?

### **Decision/Outcome**

In an opinion authored by Justice Tom C. Clark, the majority brushed aside First Amendment issues and declared that all

evidence obtained by searches and seizures in violation of the Fourth Amendment is inadmissible in a state court. The decision launched the Court on a troubled course of determining how and when to apply the exclusionary rule.

### **Significance**

Mapp v. Ohio strengthened the Fourth Amendment protection against unreasonable searches and seizures, making it illegal for evidence obtained without a warrant to be used in a criminal trial in state court.

"Mapp v. Ohio." Oyez, [www.oyez.org/cases/1960/236](http://www.oyez.org/cases/1960/236). Accessed 16 Feb. 2021.

Several of the rights in the Bill of Rights protect those who have been accused of a crime. These safe-guards actually serve two different purposes:

1. They protect innocent persons who may be wrongfully accused; and
2. They protect us all from arbitrary actions by the government. Although the rights of the accused were defined by the Bill of Rights, several Court decisions were required to determine the extent of these rights in different situations.

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

#### **The Facts**

Clarence Gideon was arrested in Florida. He was accused robbing the jukebox in a pool hall. A witness had seen Gideon walking from it with a bottle of wine and change in his pockets. Gideon faced a prison sentence but was too poor to afford a lawyer. He requested a lawyer but was told that, under the laws of Florida, the court would only pay for a lawyer if he faced the death penalty. Gideon defended himself and was sentenced to five-years imprisonment. From prison, Gideon appealed his case in a

hand-written letter to the U.S. Supreme Court.

#### **The Legal Issue**

Does the Sixth Amendment require a court to provide counsel (a lawyer) to an indigent (poor) defendant accused of a felony (a crime punishable with imprisonment of one year or more)?

#### **The Decision/Outcome**

The U.S. Supreme Court held that the government must provide a lawyer to

anyone accused of a felony who is too poor to afford one. The right to a lawyer was a fundamental right, essential to a fair trial. The Sixth Amendment guaranteed this right, while the Fourteenth Amendment imposed this requirement on state as well as federal courts. When Gideon was tried again with the help of a lawyer, Gideon was acquitted (found to be innocent) and released.

### **Significance**

Ever since Gideon, states must provide counsel to defendants charged with felonies who cannot pay for their own attorney. Public defenders generally fill this role.

The Fifth Amendment protects us from self-incrimination, and the Sixth Amendment guarantees a person accused of a serious crime the right to an attorney.

## **Miranda v. Arizona (1966)**

### **The Facts**

In 1963, Ernesto Miranda was arrested in Arizona for kidnapping and rape. After two hours of police questioning, Miranda signed a confession. However, Miranda was never informed that he had the right to remain silent or to have a lawyer present during the questioning. Miranda was convicted and sentenced to 20 to 30 years of imprisonment. Miranda appealed on the grounds that he had not been informed of his rights to remain silent or to see an attorney before he gave his confession.

*"The person in custody must, prior to interrogation, be clearly informed that he has the right to remain silent, and that anything he says will be used against him in court; he must be clearly informed that he has the right to consult with a lawyer and to have the lawyer with him during interrogation, and that, if he is indigent, a lawyer will be appointed to represent him..."*

-Miranda v. Arizona, 1966

### **The Legal Issue**

Can the police interrogate (question) a suspect without informing him of his rights to remain silent and to have a lawyer present?

### **Significance**

The rights established by the Supreme Court in this case are now referred to as "Miranda" rights. Police must state them before interrogating suspect; otherwise, any self-incriminating statements or confession cannot be used in court. Miranda himself was retried and convicted a second time without the use of his confession. Miranda was released in 1972, but he was killed in a fight four years later.

### **The Decision/Outcome**

The U.S. Supreme Court overturned Miranda's conviction on the grounds that Miranda had not been properly informed of his rights:

## **Korematsu v. United States (1944)**

### **The Facts**

In response to the Japanese attack on Pearl Harbor during World War II, the U.S.

government decided to require Japanese-Americans to move into relocation

camps as a matter of national security. President Franklin Roosevelt signed Executive Order 9066 in February 1942, two months after Pearl Harbor. A Japanese-American man living in San Leandro, Fred Korematsu, chose to stay at his residence rather than obey the order to relocate. Korematsu was arrested and convicted of violating the order. He responded by arguing that Executive Order 9066 violated the Fifth Amendment. The Ninth Circuit affirmed Korematsu's conviction.

### **The Legal Issue**

Did the President and Congress go beyond their war powers by implementing exclusion and restricting the rights of Americans of Japanese descent?

### **The Decision/Outcome**

The Court ruled that the evacuation order violated by Korematsu was valid. The majority found that the Executive Order did not show racial prejudice but rather responded to the strategic imperative of keeping the U.S. and particularly the West Coast (the region nearest Japan) secure from invasion. The Court relied heavily on a 1943

decision, *Hirabayashi v. U.S.*, which addressed similar issues. Black argued that the validation of the military's decision by Congress merited even more deference.

Justice Frankfurter concurred (agreed), writing that the “martial necessity arising from the danger of espionage and sabotage” warranted the military’s evacuation order.

Justice Jackson dissented (disagreed), arguing that the exclusion order legitimized racism that violated the Equal Protection Clause of the Fourteenth Amendment.

### **Significance:**

Due to the xenophobic and racial fears of a foreign and lesser known county, the American government displaced over 112,000 Japanese-Americans (some of them second generation citizens) and justified its actions of suppression of this group’s rights for the sake of “national security”

"Korematsu v. United States." Oyez, [www.oyez.org/cases/1940-1955/323us214](http://www.oyez.org/cases/1940-1955/323us214). Accessed 16 Feb. 2021.

## **Clapper v. Amnesty International (2012)**

### **The Facts:**

This court case was a challenge to the *FISA Amendments Act of 2008* that authorizes surveillance without probable cause that the individual being surveilled is an agent of a foreign power. The government’s only requirement to surveil is knowing that the “persons reasonably believed to be located outside the United States” and seeks “foreign intelligence information.” The plaintiffs alleged that they “sustained greater inconvenience and higher costs because of the need to conduct secure communications with parties overseas whom the U.S. government had probably targeted for surveillance.”

### **The Legal Issue:**

Does the right to privacy outside our countries borders apply and is it protected by the Fourth and Fourteenth Amendment?

### **The Outcome/Decision**

The Court dismissed the court case with the rationale that no wrongdoing had occurred towards the prosecution. Without actual harm being done, speculation of future harm does not satisfy a constitution need for this case to be examined further.

**Significance:**

Due to the court's decision to dismiss the suit, U.S. intelligence can still monitor communications of persons outside of the U.S. that they believe are seeking information or conspiring against the interests of the U.S. government and our national security.

Sensitive to the separation of powers, the U.S. Supreme Court has only occasionally ruled on questions of Presidential power. In the next two cases, the Court ruled on whether "executive privilege" allowed a President to avoid producing documents in a criminal investigation, and whether an inconsistent recount of votes could be permitted in the most closely contested Presidential election in U.S. history.

## **United States v. Nixon**

**The Facts**

During the Presidential election campaign of 1972, a group of former government agents broke into Democratic Party headquarters in the Watergate Hotel and office complex in downtown Washington D.C. President Nixon, a Republican, tried to protect these agents from investigation by claiming that

they were acting for national security. At Congressional hearings, it was revealed that Nixon had taped all his conversations in the White House. Nixon refused to hand over the tapes to investigators, claiming that as President of the United States, he was entitled to "executive privilege."

**The Legal issue**

Does "executive privilege" -the need of the President of the United States for privacy and confidentiality in making high-level decisions of national importance-excuse the President from turning over documents needed as evidence in a criminal proceeding?

Nixon (19/4)

**The Decision/Outcome**

President Nixon's claim of "executive privilege" was overruled by the U.S. Supreme Court, which ordered the President to hand over the tapes.

*"A President and those who assist him must be free to explore alternatives in the process of shaping policies and making decisions, and to do so in a way manly would be*

*unwilling to express except privately. These are the considerations justifying a presumptive privilege for Presidential communications...But this presumptive privilege must be considered in light of our historic commitment to the rule of law. To ensure that justice is done, it is imperative to the function of courts that compulsory process be available for the production of evidence needed either by the prosecution or by the defense."*

- United States v. Nixon, 1974

**Significance**

The tapes revealed that President Nixon was indeed behind the Watergate "cover-up. President Nixon resigned rather than face impeachment. The decision proved that even the President of the United States is not above the "rule of law.