

Vital Constitutional Issues and Court Cases

Federalism

Gibbons v Ogden

Ogden held a New York State license allowing him to operate a ferry across the Hudson between New York and New Jersey. Gibbons received a Federal license and claimed that his license superceded that of Ogden.

The court ruled that Gibbon's federal license took precedence over that of Ogden because the federal government was given the power to regulate interstate trade.

McCulloch v Maryland

Angered by the existence of the new Federal bank, the state of Maryland decided to tax the bank. McCulloch, a cashier for the bank refused to pay the tax claiming that a state had no power or right to tax the federal government.

The Supreme Court affirmed McCulloch's position. This precedent established the superiority of the federal government.

Freedom of Speech/Expression

Schenck v United States (1919)

Charles Schenck was arrested for violating the Espionage Act, passed by Congress in 1917. The Espionage Act made it illegal to defame the government or do anything that might retard the war effort. Schenck, a member of the Socialist Party, opposed the war and printed and distributed pamphlets urging citizens to oppose the draft which he likened to slavery. Schenck claimed his first amendment rights were violated.

The court ruled against Schenck saying that the Espionage Act did not violate the first amendment and that in times of war the government may place reasonable limitations on freedom of speech. Justice Oliver Wendell Holmes outlined the courts opinion by explaining that when a "clear and present danger" existed such as shouting fire in a crowded theater, freedom of speech may be limited.

Debs v. United States (1919)

Eugene V. Debs, a well known socialist, gave a public speech to an assembly of people in Canton, Ohio. The speech was about the growth of socialism and contained statements which were intended to interfere with recruiting and advocated insubordination, disloyalty, and mutiny in the armed forces. Debs was arrested and charged with violating the Espionage Act of 1917. At issue was whether the United States violated the right of freedom of speech given to Debs in the First Amendment of the United States Constitution.

The Supreme Court of the United States upheld the lower court's decision in favor of the United States. The Court said that Debs had actually planned to discourage people from enlisting in the Armed Forces. The Court refused to grant him protection under the First Amendment freedom of speech clause, stating that Debs "used words [in his speech] with the purpose of obstructing the recruiting service." Debs' conviction under the Espionage

Act would stand, because his speech represented a "clear and present danger" to the safety of the United States.

Dennis v. United States (1951)

Eugene Dennis was a leader of the Communist Party in the United States between 1945 and 1948. He was arrested in New York for violation of Section 3 of the "Smith Act." The Act prohibited avocations of the overthrow of the United States Government by force and violence. The government felt that the speeches made by Dennis presented a threat to national security. Dennis appealed his conviction to the Supreme Court of the United States, claiming that the Smith Act violated his First Amendment right to Free Speech. At issue was whether the Smith Act violated the First Amendment provision for freedom of speech or the Fifth Amendment due process clause.

The Court found that the Smith Act did not violate Dennis' First Amendment right to free speech. Although free speech is a guaranteed right, it is not unlimited. The right to free speech may be lifted if the speech presents a clear and present danger to overthrow any government in the United States by force or violence. Since the speech made by Dennis advocated his position that the government should be overthrown, it represented a clear and present danger to the national security of the United States. (From P.A.T.C.H - see link below)

Yates v. United States (1957)

In 1951, fourteen persons were charged with violating the Smith Act for being members of the Communist Party in California. The Smith Act made it unlawful to advocate or organize the destruction or overthrow of any government in the United States by force. Yates claimed that his party was engaged in passive actions and that any violation of the Smith Act must involve active attempts to overthrow the government.

At issue was whether Yates' First Amendment right to freedom of speech protected his advocating the forceful overthrow of the government. The Supreme Court of the United States said that for the Smith Act to be violated, people must be encouraged to do something, rather than merely to believe in something. The Court drew a distinction between a statement of an idea and the advocacy that a certain action be taken. The Court ruled that the Smith Act did not prohibit "advocacy of forcible overthrow of the government as an abstract doctrine." The convictions of the indicted members were reversed. (From P.A.T.C.H - see link below)

Tinker v Des Moines (1969)

Several students and parents in Des Moines organized a protest of the Vietnam War. Students were to wear black arm bands to school in protest. When the school found out they warned all the students and parents that anyone wearing the armbands would be suspended. The Tinker children wore their armbands to school (they were the only ones of the group to do so) and were suspended. Mr. and Mrs. Tinker filed suit claiming that the school violated the children's right to freedom of speech and expression. The school claimed that the armbands were disruptive.

The court ruled against the school district saying that "students do not shed their constitutional rights at the school house gates. In doing so the court protected what has come to be known as "symbolic speech."

Island Trees School District v. Pico - 1982 - Freedom of Speech/Censorship

The Board of Education of the Island Trees School District in New York directed the removal of nine books from the libraries of the Island Trees senior and junior high schools because in the Board's opinion the books were "anti-American, antichristian, anti-Semitic, and just plain filthy." Some books included were: *The Fixer*, *Soul on Ice*, *Slaughterhouse Five*, *Go Ask Alice*, *The Best Stories by Negro Writers*, and others. Four students from the high school and one from the junior high school sued the school district, claiming that the removal of the books was a violation of the First Amendment's guarantee of freedom of speech.

The Supreme Court of the United States ruled in favor of the students, saying that the books were not required reading. According to Justice Brennan, who cited *West Virginia Board of Education v. Barnette*, 319 U.S.624 (1943), "Local school boards may not remove books from school library shelves simply because they dislike the ideas contained in these books and seek by their removal to prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion." He also cited *Tinker v. Des Moines School District*, 393 U.S.503 (1969), saying that high school students have First Amendment rights in the classroom. Although the schools have a right to determine the content of their libraries, they may not interfere with a student's right to learn. Therefore, the schools may not control their libraries in a manner that results in a narrow, partisan view of certain matters of opinion. The Court stood against the removal or suppression of ideas in schools.

Bethel School District v. Fraser (1986) - Free Speech/Student Rights

Matthew Fraser, a high school student in Bethel, Washington, delivered a speech nominating a fellow student for a student elective office. The speech was made during school hours as a part of a school-sponsored educational program in self-government. The voluntary assembly was attended by about 600 students, many of whom were 14-year-olds. Throughout the speech, the student deliberately referred to his candidate in terms of an elaborate and explicit sexual metaphor. The reactions of the students varied from enthusiastic hooting and yelling to embarrassment and bewilderment. Before the speech, the student had discussed it with several teachers, and two teachers told him they thought it was not appropriate. The student was suspended for three days for having violated the school's "disruptive conduct" rule, which prohibited conduct that substantially interfered with the educational process, including the use of obscene, profane language or gestures.

The U.S. Supreme Court held that the school board acted entirely within its permissible authority in punishing Fraser for "his offensively lewd and indecent speech." This was not a situation where Fraser was sanctioned for expressing a political viewpoint as in the *Tinker* "armband" case; the sexual innuendo was incidental to the merits of the candidate who was being nominated. "It is a highly appropriate function of public school education

to prohibit the use of vulgar and offensive terms in public discourse . . . Schools must teach by example the shared values of a civilized social order."

The Court repeated its recognition of an interest in protecting minors from exposure to vulgar and offensive spoken language. Even in a heated political discourse among adults, the Court emphasized the need for consideration for the personal sensibilities of the audience. "A high school assembly or classroom is no place for a sexually explicit monologue directed towards an unsuspecting audience of teenage students." The Court also stated that the school regulation and the negative reactions of two teachers gave Fraser sufficient notice that his speech might result in his suspension.

Texas v. Johnson (1989)

Outside the Republican National Convention in Dallas, a protest of Ronald Reagan's policies had been organized, during which a United States flag was burned. Johnson, the man responsible for the flag burning, was arrested under Texas law, which made the desecration of the United States or Texas flags crimes. Johnson was convicted and sentenced to one year in jail and a two thousand dollar fine. Texas reasoned that the police were preventing the breach of peace that would be erupt due to the flag burning, and preserving the integrity of the flag as a symbol of national unity.

Johnson's conviction was overturned by the Supreme Court of Texas, which ruled that this mode of self-expression was protected under the First Amendment to the Constitution. The Supreme Court upheld this ruling, stating the flag burning was "expressive conduct" because it was an attempt to "convey a particularized message."

Presidential Privilege/Seperation of powers

United States v. Nixon - (1972) - Presidential Privilege

In the late 1970's, the Democratic National Headquarters at the Watergate Office Building in Washington, D.C., was broken into. The investigation that followed centered on staff members of then Republican President Richard M. Nixon. The Special Prosecutor subpoenaed certain tapes and documents of specific meetings held in the White House. The President's lawyer sought to deny the subpoena. The Special Prosecutor asked the Supreme Court of the United States to hear the case before the lower appeals court ruled on the President's appeal to deny the subpoena.

By an 80 vote, the Court decided that President Nixon must hand over the specific tapes and documents to the Special Prosecutor. Presidential power is not above the law. It cannot protect evidence that may be used in a criminal trial.

Freedom of the Press/Censorship

NY Times v United States (1971)

The New York Times received secret info about the US involvement in the Vietnam War, specifically what had "really" happened at the Gulf of Tonkin. It turned out that the President had exaggerated the incident and used that exaggeration to gain increased war powers from congress (the Gulf of Tonkin Resolution). The New York Times sought to publish the information and the government attempted to get an injunction barring them from going to press with it. The Times sued claiming that the government was infringing

upon their first amendment right of freedom of speech. The government claimed that a limitation of that right was in order because it was dangerous to the security of the nation.

The court affirmed the position of the New York Times. The court ruled that the information did not represent a clear and present danger to national security and that the governments attempt to suppress the information was an attempt at censorship and a violation of first amendment rights to freedom of the press.

Hazelwood School District v. Kuhlmeier (1988) - Censorship/State Rights v. Students' Free Press Rights

Kathy Kuhmeier and two other journalism students wrote articles on pregnancy and divorce for their school newspaper. Their teacher submitted page proofs to the principal for approval. The principal objected to the articles because he felt that the students described in the article on pregnancy, although not named, could be identified, and the father discussed in the article on divorce was not allowed to respond to the derogatory article. The principal also said that the language used was not appropriate for younger students. When the newspaper was printed, two pages containing the articles in question as well as four other articles approved by the principal were deleted.

The Supreme Court of the United States held that the Hazelwood School District did not violate the First Amendment right of the students. The Court ruled that School officials need not tolerate speech which is inconsistent with the school's basic educational mission. The Court distinguished this case from the Tinker decision (school officials could not punish students for wearing armbands in protest of the Vietnam War "students do not shed their constitutional rights at the schoolhouse gate") because the Tinker case involved a student's personal expression. This was, instead, a school newspaper, and as such could reasonably be perceived to bear the "imprimatur" of the school. They justified this because the publication of Spectrum was a part of the curriculum, i.e., it was in the curriculum guide as a part of the Journalism course, it was taught during school hours by a faculty member, the students received grades and academic credit, the faculty advisor exercised control over the publication, and the principal had to review it. The school's policies did not reflect intent to expand the students' rights by converting a curricular newspaper into a public forum. The court further added that the principal's fears were reasonable: he was concerned that the students' identities could not be assured, that the privacy interests of boyfriends and parents were not adequately protected, and that parents mentioned in the divorce article were not given an opportunity to defend themselves.

Search and Seizure

Weeks v. United States (1914)

Fremont Weeks was suspected of using the mail system to distribute chances in a lottery, which was considered gambling and was illegal in Missouri. Federal agents entered his house, searched his room, and obtained papers belonging to him. Later, the federal agents returned to the house in order to collect more evidence and took letters and envelopes from Weeks' drawers. In both instances, the police did not have a search warrant. The materials were used against Weeks at his trial and he was convicted. At issue was whether the retention of Weeks' property and its admission in evidence against him

violated his Fourth Amendment right to be secure from unreasonable search and seizure and his Fifth Amendment right not to be a witness against himself.

The Supreme Court of the United States unanimously decided that as a defendant in a criminal case, Weeks had a right to be free from unreasonable search and seizure and that the police unlawfully searched for, seized, and retained Weeks' letters. The Court praised the police officials for trying to bring guilty people to punishment but said that the police could not be aided by sacrificing the fundamental rights secured and guaranteed by the Constitution. [This decision gave rise to the Exclusionary Rule." This meant that evidence seized in violation of the Constitution cannot be admitted during a trial.] (From P.A.T.C.H - see link below)

Mapp v Ohio (1961)

Dorlee Mapp was suspected of having information in her home that would implicate a suspected bomber. The police came to her home and asked if they might search the residence. Ms. Mapp called her lawyer and was advised to ask for a warrant. They police did not have a warrant and were asked to leave. Hours later the police returned and forcibly entered the residence. Mrs. Mapp demanded to see the warrant and a piece of paper was waved in her face. Mrs. Mapp grabbed the paper and tucked it in her blouse. A struggle ensued where Ms. Mapp was knocked to the ground as police retrieved the supposed warrant. Outside Ms. Mapp's attorney arrived on the scene but was prevented from entering the residence. The police found pornographic materials in the house and Ms. Mapp was arrested for possession of lewd materials. Ms. Mapp was convicted of this crime. Ms. Mapp appealed her conviction on the grounds that the search of her home was in violation of her rights.

The court ruled that the evidence obtained in the search was inadmissible because it was seized in an illegal search. In ruling this way the court created the "exclusionary rule" which makes illegally obtained evidence inadmissible in court. This ruling upheld the principles of the fourth amendment.

New Jersey v T.L.O. (1984)

Two students were found smoking in the girl's bathroom. One student confessed but the other, T.L.O. (her initials), denied smoking. In fact, T.L.O. claimed she did not smoke at all. The school Assistant Principal then proceeded to search T.L.O.'s purse. In the purse he found Marijuana in small bags, rolling paper, a large amount of cash and a list of names who owed T.L.O. money. The police were summoned and T.L.O. was arrested. T.L.O. was convicted and through the appeals process the case eventually went to the Supreme Court. T.L.O. claimed that the search of her purse violated her Constitutional rights.

The Court ruled against T.L.O. setting new standards for school officials. The Court ruled that school officials may search a student under "reasonable suspicion." The standard is less than that required of police therefore giving school officials much broader search powers under the fourth amendment.

Rights of the Accused

Betts v Brady - 1942 - Right to Counsel

Betts was indicted for robbery and detained in a Maryland jail. Prior to his trial, he asked for counsel to represent him. This request was denied and he was soon convicted. While incarcerated, Betts filed a habeas corpus petition in the lower courts. After they rejected his petitions, he filed a certiorari petition with the Supreme Court, which agreed to hear his case. Bett argued that his 6th Amendment right to a fair trial was violated because of his lack of counsel. The State of Maryland held that most states did not require the appointment of counsel in non-capital cases and the circumstances of this particular case did not require it.

Although the Court found in favor of Betts, it decided that the right to counsel must be decided on a case- by-case basis. This ruling was upheld for 20 years until it was overturned by *Gideon v. Wainwright* in 1963.

Gideon v Wainwright (1963)

Gideon was accused of breaking into a poolroom. Gideon, an ex con, was too poor to pay for a lawyer and asked the court to appoint one for him. The court refused to grant his request stating that lawyers were only provided for those accused of committing capital crimes like murder, rape, etc. Gideon was tried and was forced to defend himself. While in Prison Gideon hand wrote a plea to the Supreme Court and was granted a hearing. At this point he received representation from lawyers who were attracted to his case. Gideon argued that his right to a fair trial was violated.

Gideon's position was upheld. The Court ruled that all citizens must be provided a lawyer if they cannot afford one. This is regardless of the type of crime.

Miranda v Arizona (1966)

Ernesto Miranda was arrested for the kidnapping and rape of a young woman. Upon arrest Miranda was questioned for two hours. He never asked for a lawyer and eventually confessed to the crime. Later, however, a lawyer representing Miranda appealed the case to the Supreme Court claiming that Miranda's rights had been violated.

Miranda was acquitted. The Court ruled that citizens must be informed of their rights prior to questioning. Any evidence or statement obtained prior to a suspect being read his/her rights is inadmissible. This has led to what is commonly referred to as one's "Miranda Rights" having to be read upon questioning or arrest. They are: "You have the right to remain silent, anything you say can, and will be used against you in a court of law. You have the right to an attorney. If you cannot afford one, one will be appointed for you." Note, Miranda was later killed in a barroom brawl, stabbed to death.

Civil Rights

Plessey v Ferguson (1896)

Homer Plessey, a member of a citizens group protesting the Jim Crow laws that created segregation in the south, was arrested for violating the law that forced Blacks to ride in separate train cars. Plessey claimed that the laws violated the 14th amendment to the

Constitution that said that all citizens were to receive "equal protection under the law." The state argued that Plessey and other Blacks did receive equal treatment, just separate. Plessey's conviction of a violation of Jim Crow laws has upheld by the Court. The Court ruled that the 14th amendment did say that Blacks had the right to the same facilities, just equal facilities. By ruling this way the court created the doctrine of "separate but equal."

Brown v Board of Ed. Topeka Kansas (1954)

Linda Brown, a student in the segregated Topeka Kansas school district had to walk 5 miles to school each day. Across the train tracks from her house there was a white school she was unable to attend. Oliver Brown enlisted the help of the NAACP to ensure that his daughter was able to go to the best school possible. Thurgood Marshall, then head of the NAACP, challenged the segregation of the school claiming that the laws violated the 14th amendment to the Constitution that said that all citizens were to receive "equal protection under the law." The state argued that Plessey v Ferguson had set the precedent and that the laws were clear on this point.

The court affirmed the position of Marshall and the Brown family and overturned the precedent set by the Plessey decision. Justice Earl Warren claimed that "in the eyes of the law, justice was color-blind." In ruling in favor of Brown the court ordered the integration of America "with all deliberate speed." The civil rights movement had begun!

Korematsu v United States (1944)

In 1941 Congress passed a law called the Japanese Exclusion Act. According to this law all those of Japanese decent had to be removed from the west coast of the United States because we were at war with Japan and the Japanese Americans living on the coast constituted a threat to national security. Fred Korematsu, a Japanese American citizen, challenged this law in court. He claimed that the law violated the 14th amendment that guaranteed all citizens equal protection under the law.

The court ruled that Japanese American citizens did in fact represent a threat to national security. Note, the United States government later apologized to the families of Japanese Americans affected by this decision. A token financial settlement was made.

University of California Regents v Bakke (1976)

Alan Bakke, an engineer with high grades, applied to several medical schools in the hopes of one day becoming a doctor. Bakke was rejected by all of the schools he applied to but the University of California at Davis encouraged him to apply again. The next year Bakke again applied and was again rejected. Bakke then found out that the University's affirmative action program reserved 17 places for minority candidates regardless of qualifications. Bakke sued the University claiming that he was the victim of "reverse discrimination." The university argued that the creation of quotas was needed to ensure minority admission to college under their affirmative action program.

In a two part ruling the court ordered Bakke to be admitted to medical school. The court ruled that Bakke had, in fact, been discriminated against. The court did, however, uphold

the legality of affirmative action programs. The court cited Harvard Universities affirmative action program that created guidelines for admission rather than strict quotas.

Freedom of Religion

Engle v Vitale (1962)

In the late 1950's the New York State Board of Regents wrote and adopted a prayer which was supposed to be nondenominational. The board recommended that the prayer be said by students in public schools on a voluntary basis every morning. In New Hyde Park Long Island a parent sued the school claiming that the prayer violated the first amendment of the constitution. The school argued that the prayer was nondenominational and did not attempt to "establish or endorse" a religion and thus that it did not violate the establishment clause.

The court ruled against the school district and upheld the establishment clause of the first amendment. Prayer in schools was to be considered unconstitutional.

Abington v Schempp (1963)

This case involved a Pennsylvania law requiring that at least ten Bible verses be read in public schools at the beginning of each day. The Schempps, a family in Abington, sued the school district for violating the first amendment of the constitution.

Just as in *Engle v Vitale*, religious instruction in school was deemed to violate the 1st amendment of the constitution.

Epperson v. Arkansas (1968) Teaching of Evolution/Establishment Clause v. State Rights

An Arkansas statute forbade teachers in public schools from teaching the "theory or doctrine that mankind ascended or descended from a lower order of animals." A teacher determined that the law was invalid and lost her job for violating it. The Supreme Court of the United States was called in to review this statute which made it unlawful for teachers in state schools to teach human evolution.

At issue was whether the Arkansas statute that prohibited the teaching of evolution violated the establishment clause of the First Amendment and the equal protection clause of the Fourteenth Amendment of the Constitution because of its religious purpose.

The Court held that the Arkansas statute forbidding the teaching of evolution in public learning institutions was contrary to the freedom of religion mandate of the First Amendment, and was also in violation of the Fourteenth Amendment. The Court ruled that a state may not eliminate ideas from a school's curricula solely because the ideas come in conflict with the beliefs of certain religious groups. In this case, the law that compelled the evolution doctrine to be removed from the course of study was passed to agree with the religious point of view of certain fundamentalists. Thus, the reason for removing the doctrine was to aid a religious point of view and, therefore, was violation of the First Amendment. The Court said that the law must require religious neutrality. (From P.A.T.C.H - see link below)

Wallace v. Jaffree (1985)

The parents of three children attending public school in Alabama challenged the constitutionality of an Alabama law which authorized a one minute period of silence in all public schools for meditation or voluntary prayer. At issue was whether the Alabama law requiring a one minute silence period encouraged a religious activity in violation of the First Amendment establishment clause.

The Supreme Court of the United States held that the Alabama law was a law respecting the establishment of religion and thus violated the First Amendment. The Court said that the First Amendment was adopted to limit the power of Congress to interfere with a person's freedom to believe, worship, and express himself as his conscience tells him. The Amendment gives an individual the right to choose a religion without having to accept a religion established by the majority or by government.

The Court said that government must be completely neutral toward religion and not endorse any religion. Therefore, statutes like the Alabama law requiring one minute for silence in the schools must have a secular or nonreligious purpose to be within the Constitution. Since Senator Holmes, who was the primary sponsor of the bill, testified "that the bill was an effort to return voluntary prayer to our public schools," the Court decided that the purpose of the Alabama law was to endorse religion and was solely an effort to return voluntary prayer to the public schools. It was, therefore, struck down as being inconsistent with the Constitution. (From P.A.T.C.H - see link below)

Right to Privacy

Roe v Wade (1973)

Norma McCorvey, a citizen of Texas, was pregnant and wanted to have an abortion. Texas state laws (and most other states) made abortion illegal in that state. Suing under the name Jane Roe she claimed that the state of Texas violated her right to privacy by prohibiting the abortion and telling her what to do with her own body. The state argued that abortion was murder and that there was a compelling state interest in protecting the life of the unborn child.

In this landmark decision the Court declared that laws prohibiting abortion represented a violation of a women's right to privacy. While the right to privacy does to exist as such in the Constitution it has long been interpreted to exist as an umbrella created by the first 5 amendments in the Bill of Rights. By creating this precedent abortion became legal in all 50 states.

Olmstead v United States (Also a search and seizure case)

Roy Olmstead, a bootlegger, had a good business going during the prohibition years. He sold liquor illegally in violation of the 18th amendment and the Volstead Act. The government in searching for evidence used a new technology and tapped into Olmstead's phone lines. They recorded evidence against Olmstead, arrested him and he was convicted using that evidence. Olmstead's lawyer appealed arguing that the police had violated his right to privacy by listening in on his phone conversations. He further argued

that the evidence used to convict him should be thrown out because it was obtained without a warrant.

Olmstead's conviction was upheld as the court ruled that right to privacy and the need for a search warrant did not apply to telephone conversations. Attorney Louis D. Brandeis, later to become Supreme Court Justice argued in defense of Olmstead to no avail. Later, when Brandeis sat on the bench he helped to overrule that precedent in the case of *Near v Minnesota*.

Katz v. United States (1961) (Also a search and seizure case)

Katz was arrested for illegal gambling after using a public phone to transmit "gambling information." The FBI had attached an electronic listening/recording device onto the outside of the public phone booth that Katz habitually used. They argued that this constituted a legal action since they never actually entered the phone booth.

The Courts decision written by now justice Louis D. Brandeis, ruled in favor of Katz, stating the Fourth Amendment allowed for the protection of a person and not just a person's property against illegal searches. Whatever a citizen "seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected."