



“RIGHT”-ING WRONGS”: THE JUDICIAL BRANCH

How are your rights guaranteed and protected in a constitutional republic?

Learning Targets



- ***Assuming the role of a member of a legal team, students will:***
- Examine a current event involving a conflict of rights.
- Identify landmark cases and their impact on civil liberties.
- Analyze how civil rights and liberties have been changed through court decisions.
- Determine how judicial review makes the Constitution a living document.
- Investigate how laws are interpreted by courts through the adversarial process.
- Summarize key information from case briefings, Supreme Court precedents, and the Bill of Rights to build an argument.
- Write opening/closing statements and legal arguments and majority opinions in a simulation of a Supreme Court hearing on a First Amendment case that focuses on a conflict of rights.
- Develop an understanding of the role of civility in dealing with individual and group differences.



- Think about a time when you witnessed an injustice.
- If you were faced with the same situation today, how might your reaction change?
- Would you be brave enough to stand up for the victim(s)?
- Would joining with others have given you more courage to stand up to the injustice?

In the 1960s, many major retailers in the South had segregated lunch counters. In protest, people organized sit-ins to force the companies to change their policies.



Students stage sit-in to protest segregated lunch counters.

Can you predict results of their actions?



Students stage sit-in to protest segregated lunch counters.

In this photograph, young protestors hold a sit-in at a Woolworth's lunch counter. Sometimes protesters were taunted and even attacked by onlookers.



Woolworth, and other retailers, chose to close their lunch counters rather than to serve the students.



As a result of the sit-ins, cafes and lunch counters eventually ended their segregation policies.



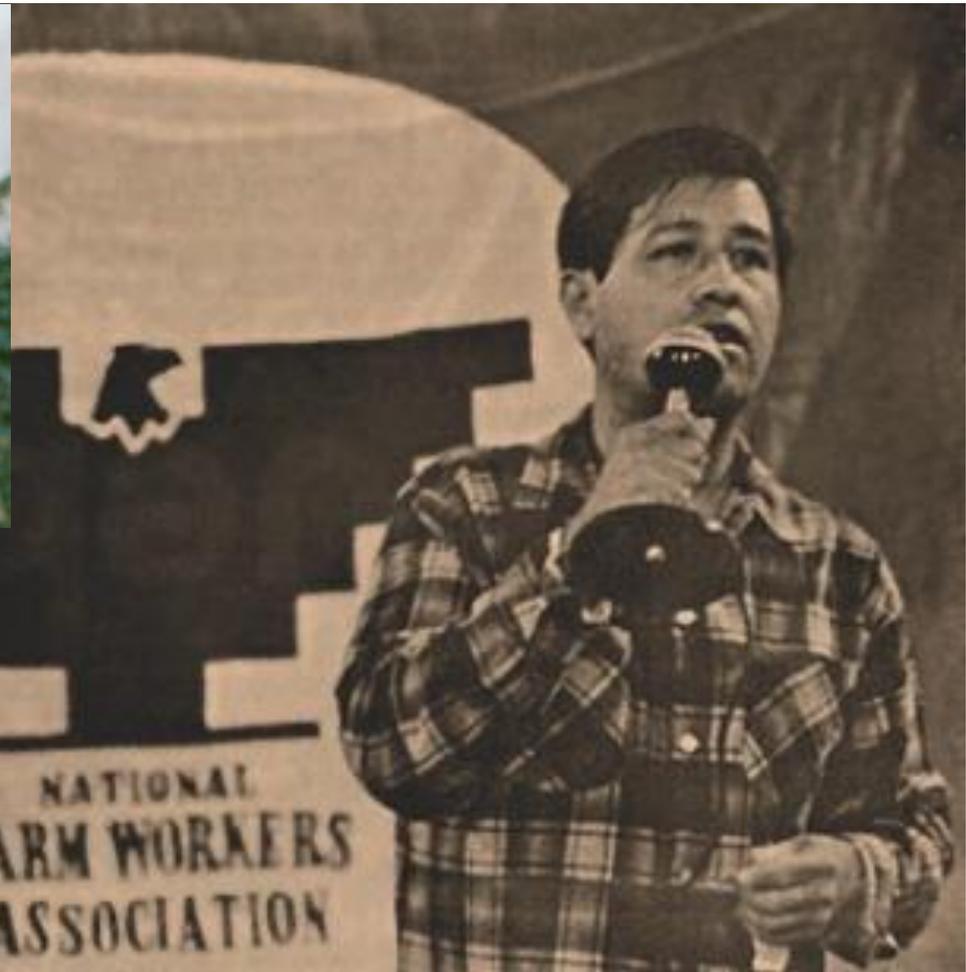
<https://www.youtube.com/watch?v=Xbbcjn4d1cE>



Cesar Chavez- United Farm Workers



- <https://www.youtube.com/watch?v=Ns5NMHTk-yY>



Highlight the following on your Civil Rights Viewing Guide



CIVIL RIGHTS are positive acts governments take to protect groups against discriminatory treatment based on categories such as race, sex, age, national origin, or other characteristics.

CIVIL RIGHTS attempt to ensure that all Americans have an equal opportunity to participate in all aspects of national life.

CIVIC RIGHTS HISTORY

***Dred Scott Decision* (1857)** Supreme Court rules that slaves were property, not citizens

14th Amendment (1868) guaranteed due process & equal protection to all US citizens

***Plessy v. Ferguson* (1895)** a black man entered a whites-only train to test Supreme Court ruling; Supreme Court ruled “separate but equal” was constitutional; became the legal basis for SEGREGATION, as long as local government provided equal facilities; in practice, blacks did not receive equal facilities; Jim Crow Laws enforced segregation and “separate but equal” facilities for all aspects of society

***Brown v. Board of Education* (1954)** Supreme Court ruled segregation unconstitutional

Civil Rights Act of 1964 outlawed segregation in public facilities and racial discrimination in employment, education, and voting

19th Amendment (1920)

- women finally gained the right to vote

Civil Rights Editorial Analysis

What is the difference between civil rights and civil liberties?

Civil Rights Viewing Guide

Civil Liberties



- Mainly protect groups
- Rights granted to U.S. Citizens *by* government guaranteeing fair and equal treatment under the law.
- Examples: due process of law; equal protection; voting; marriage

- Mainly protect individuals
- For all humans by birthright of all that government can't take away. aka "natural rights" or "unalienable rights":
- Examples: Freedom of speech; religion; press assembly; petitioning the gov't; privacy

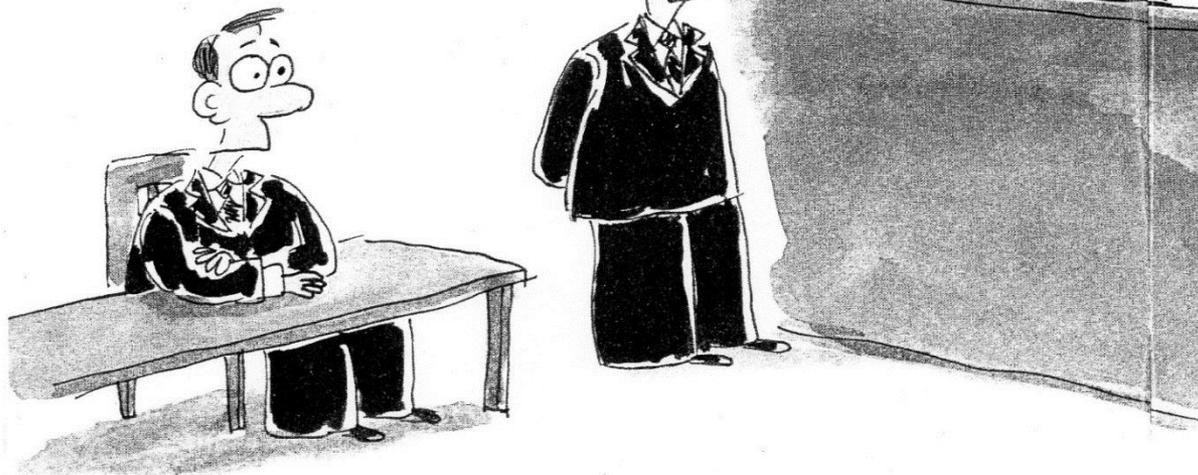
Can Your Phone Testify Against You?



- Read the New York Times Upfront Magazine Article on the following slides and answer these questions:
- What are the article's central ideas?
- The article quotes Chief Justice John G. Roberts, Jr. as writing that a visitor from Mars might think cellphones were "an important feature of human anatomy." Based on the article, what does he mean?
- What details does the author include to support privacy advocates' claim that digital information on a cellphone is different from information in books or papers?
- According to the article, what are some possible effects of the ruling in *riley v. California*?
- What is the main purpose of the section "The Right to be Forgotten"?
- Student the editorial cartoon on page 14-15 of the article. How does the cartoon support the article?
- Read the "Digital Docket" sidebar about technology issues that the courts are grappling with (p. 16). Choose one issue and write a paragraph describing how you would rule. Use details from the main article and/or the sidebar in your response.

Can Your Phone Testify Against You?

The Supreme Court is figuring out how to apply the 225-year-old Constitution to today's digital world BY PATRICIA SMITH



David Riley was pulled over by San Diego police in 2009 because his car registration had expired. During the traffic stop, police found two loaded guns and on examining his smartphone discovered text messages and videos they associated with a local gang. The police arrested Riley and seized his phone.

Later, police found information on Riley's phone linking him to a shooting. Riley was convicted of attempted murder and sentenced to 15 years to life in prison.

But in a landmark ruling about privacy rights this summer, the Supreme

Court overturned Riley's conviction. The justices ruled that police need to ask permission or get a warrant from a judge to search someone's phone—just as the police need permission to search inside someone's home.

The ruling, which was applauded by privacy advocates, is the latest example of how the courts are trying to apply the basic rights enshrined in the Constitution to life in the 21st century.

"It's the Supreme Court's job these days to try to balance the Constitution's

5

Number of hours Americans spend each day on digital devices, including cellphones.

SOURCE: E-MARKETER, 2013

somewhat antique values with today's technology," says Supreme Court expert Lyle Denniston.

When the Founding Fathers sat down to write the Constitution and the Bill of Rights in the late 1700s, they made sure that the First Amendment protected the right to free speech (among other things) and that the Fourth Amendment protected the right to privacy. But the Framers could never have imagined anything like smartphones, Facebook, and Google—or how

Download excerpts of the Supreme Court ruling at www.upfrontmagazine.com.

ILLUSTRATION BY GARY CLEMENT

TIM SLOAN/PICTETTY IMAGES (PHOTO)



much of the world's interactions today, from socializing to conducting business, would take place digitally.

In the past few years, the courts have begun wrestling with a host of questions raised by technology: Can students be punished for criticizing their teachers on Facebook? Can websites be required to reveal the identities of those who post anonymous negative reviews? Do laws against cyberbullying violate freedom of speech? (See box, p. 16.)

The cellphone privacy ruling, in *Riley v. California*, was probably the most important case about digital rights yet decided by the nation's highest court. The nine justices unanimously ruled that because police hadn't obtained a warrant (permission granted by a judge) or Riley's permission before searching his phone, they had violated his Fourth Amendment right to privacy.

What the Framers Thought

The Fourth Amendment prohibits "unreasonable searches and seizures" (see box, below), but figuring out how to apply that 18th-century phrase to 21st-century electronic devices is a challenge. When the Framers wrote the Fourth Amendment, they had in mind the British soldiers before the Revolution who could enter colonists' homes, search their property, and seize



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ILLUSTRATION BY GARY CLEMENT

TIM SLOAN/APPICTETTY IMAGES (PHOTO)

The Fourth Amendment

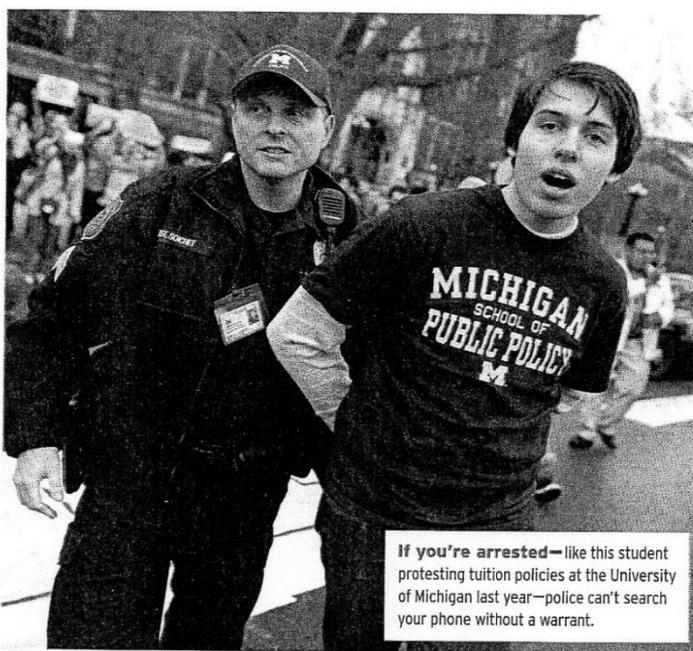
This section of the Bill of Rights prohibits "unreasonable searches and seizures." A quick guide to your rights.

When the police ask you if they can search something—whether it's your house, your car, or your phone—you always have the right to say no.

If you say no, the police need a court-issued warrant to do a search. They also need a warrant to listen in on the phone calls of suspected criminals.

If you say yes to a search, you're giving up your Fourth Amendment rights.





If you're arrested—like this student protesting tuition policies at the University of Michigan last year—police can't search your phone without a warrant.

one 9-to-0 voice on cellphone searches.

Chief Justice Roberts acknowledged that the ruling will make things harder for police. Cellphones “can provide valuable incriminating information about dangerous criminals,” he wrote. But, he emphasized, “Privacy comes at a cost.”

Besides, Roberts noted, these days law enforcement can sometimes use e-mail to get a warrant within 15 minutes. In a true now-or-never situation—like finding a ticking bomb or a kidnapped child—a warrantless search could be permitted under the Fourth Amendment’s exception for emergency circumstances.

In the most basic terms, the ruling will mean that for the 12 million people who are arrested every year—many of them for minor offenses—police won’t be allowed to search their cellphones without getting a warrant first. But the ruling’s impact will likely be much broader, experts say:

It almost certainly means police will also need a warrant to search other electronic devices, like tablets and laptops, which can also hold the most intimate details of a person’s life.

‘The Court understands that digital information is different than paper and cabinets and lockboxes.’

“The big takeaway here is that the Court gets it,” says Alan Butler of the Electronic Privacy Information Center. “The Court understands that digital information is different than paper and cabinets and lockboxes.”

Butler says the ruling also has huge implications for future privacy cases. “Courts will now be more likely to rule in favor of greater privacy protection for digital records,” he says.

And the ruling has implications for various lawsuits challenging the government’s widespread collection of Americans’ phone call data by the National Security Agency; the NSA surveillance program was revealed to the public last year by Edward Snowden,

an NSA contractor who fled the U.S. and is now facing espionage charges.

The cellphone ruling was the second time in the past few years that the Supreme Court has rejected government claims that it needs freedom to use new technologies to fight crime: In 2012, the Court ruled unanimously in *United States v. Jones* that police violated a drug suspect’s privacy rights by placing a GPS tracking device on his car without a warrant.

‘The Right to Be Forgotten’

American courts aren’t alone in tackling digital issues. In the European Union, the highest court ruled in May on a question vital to anyone who posts updates or photos on Facebook, Twitter, or Instagram: Do people have the right to erase themselves from the Internet, which seems to remember things forever? The court decided that Google and other search engines must consider individuals’ requests to remove links that they say contain embarrassing or negative information or otherwise infringe on their privacy.

Google, which received more than 41,000 requests to remove search results in the first month after the ruling, has begun complying with a principle that’s already being called “the right to be forgotten.” (The ruling doesn’t apply to search engines outside Europe, and the links will still be available on Google in the U.S.)

Jeffrey Chester, director of the Center for Digital Democracy, in Washington, D.C., says there are still a lot of big digital issues for the courts to tackle: Who ultimately controls the digital pathways that make up the Internet? Is the vast information gathering of private companies like Google an invasion of privacy? Should every American have equal access to the Internet?

“Our society is going through dramatic changes, and at the heart of it is our relationship with the use of technology,” Chester says. “A lot of these issues will wind up before the Supreme Court sooner or later.” •

With reporting by Adam Liptak of The New York Times.



their belongings without permission. Today, people's most private information, from bank records to personal correspondence and intimate photos, is all accessible from a device that leaves home when they do.

"The fact that technology now allows an individual to carry such information in his hand," Chief Justice John G. Roberts Jr. wrote in his opinion for the Court, "does not make the information any less worthy of the protection for which the Founders fought."

According to the Pew Research Center, 90 percent of Americans have cellphones; almost 60 percent have smartphones. Most of us are rarely without our phones; as Roberts noted in his opinion, 12 percent of Americans even use their phones in the shower.

An average smartphone can hold 100 times more information than the

entire 72,000-page collection of James Madison's papers in the Library of Congress, according to privacy advocates. It also contains things simply not available in the physical world: A cellphone's GPS, for example, provides a precise record of a person's whereabouts over time.

These smartphones are, the chief justice said, "such a pervasive and insistent part of daily life that the proverbial visitor from Mars might conclude they were an important feature of human anatomy." And, he added, "they could just as easily be called cameras, video players, Rolodexes, calendars, tape recorders, libraries, diaries, albums, televisions, maps, or newspapers."

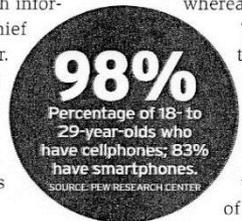
The courts have long allowed warrantless searches in connection with arrests, saying they are justified by the need to protect police officers—from

suspects who might be armed, for example—and to prevent the destruction of evidence such as drugs that could be flushed down the toilet.

But the Court said neither justification made sense in the case of cellphones. The possibility that evidence could be destroyed or hidden by "remote wiping" or encryption programs could be addressed by an officer turning off the phone or placing it in a special evidence bag that blocks the signal until a warrant can be obtained.

Tablets & Laptops

The stereotype of Supreme Court justices is that they're old-fashioned and out of touch with today's technology. But all nine justices—who range in age from 54 to 81—have cellphones, and they seemed to understand what was at stake in the case. In an era when 5-to-4 rulings—pitting the conservative block of justices against the liberal one—have become almost standard, the Court spoke with



Digital Docket

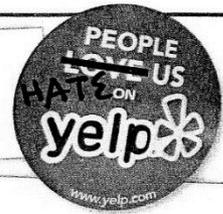
Other digital rights issues the courts are grappling with

Anonymous Online Reviews

A few years ago, Hadeed Carpet, a business outside Washington, D.C., was getting lots of bad reviews on Yelp that it believed were being posted by a competitor. Hadeed sued Yelp to force it to disclose the real names of the anonymous reviewers. A Virginia appeals court ruled earlier this year that Yelp must reveal those names. Dissatisfied customers "have a constitutional right to speak anonymously over the Internet," the court said. "However, that right must be balanced against Hadeed's right to protect its reputation." Yelp says the ruling fails to protect the free-speech rights of Internet users and is appealing.



Horrible. Cheezy, overcrowded, overrated. Typical of this type of establishment.



ABSOLUTELY AWFUL!! Pesto sauce was more water than sauce, horrible service, ridiculous price tag.

Yelp: Do businesses have a right to know who's panning them?

Cyberbullying Laws

After a wave of high-profile cyberbullying cases—some involving suicides of young people who were bullied online—13 states passed laws making cyberbullying a crime. New York's highest court is now considering a challenge to a local law against cyberbullying. The issue is whether these laws violate freedom of speech. The ruling could have big implications for similar laws around the country.

Student Free Speech

Can schools punish students for poking fun at teachers on Facebook? In 2012, two courts issued conflicting decisions. A Minnesota court said that student speech off school grounds is "protected under the First Amendment and not punishable by school authorities" unless it's threatening or disruptive. But North Carolina made it a crime for students to "intimidate or torment a school employee" online. The issue could be headed to the Supreme Court.

BLOOMBERG/GETTY IMAGES

COURTNEY SACCONI/PHOTO



Questions to Consider in Analyzing a Supreme Court Case



- What is the title of the case?
- What are the circumstances of the case?
- How did this case get to the Supreme Court?
- On what date was the case decided?
- What is the constitutional issue of this case? (stated in the form of a question that can be answered either yes or no)
- What are the major arguments of each side?
- What case was the main precedent cited, and what is the constitutional principle of this precedent?
- What was the ruling of the court?
- How did the justices vote on this case?
- What were the major reasons given in the majority opinion?
- Who concurred, and why didn't that justice join with the majority?
- What justices joined to dissent and what were the major reasons given in the dissenting opinion?
- What was the significance of the case?

Do you think marriages between same-sex couples should or should not be recognized by the law as valid, with the same rights as traditional marriages?

Trend in which gay marriage question preceded by questions on legality of gay/lesbian rights and relations

	Should be valid	Should not be valid	No opinion
	%	%	%
2015 May 6-10	60	37	3
2014 May 8-11	55	42	3
2013 Jul 10-14	54	43	3
2013 May 2-7	53	45	3
2012 Nov 26-29	53	46	2
2012 May 3-6	50	48	2
2011 Dec 15-18	48	48	4
2011 May 5-8	53	45	3
2010 May 3-6	44	53	3
2009 May 7-10	40	57	3
2008 May 8-11 †	40	56	4
2007 May 10-13	46	53	1
2006 May 8-11 †	42	56	2
2006 May 8-11 ^†	39	58	4
2005 Aug 22-25 ^	37	59	4
2004 May 2-4 ^	42	55	3
1999 Feb 8-9 ^	35	62	3
1996 Mar 15-17 ^	27	68	5

^WORDING: Do you think marriages between homosexuals should or should not be recognized by the law as valid, with the same rights as traditional marriages?

†Asked of a half sample



http://www.washingtonpost.com/page/2010-2019/WashingtonPost/2015/04/23/National-Politics/Polling/release_395.xml

Current Event Case—Kitchen v. Herbert

What is the background of the case?



- On November 2, 2004, Utah citizens approved “Amendment 3” to Utah’s Constitution to read:
 - Article I, Section 29. [Marriage.]
(1) Marriage consists only of the legal union between a man and a woman. (2) No other domestic union, however denominated, may be recognized as a marriage or given the same or substantially equivalent legal effect.
- Approved by 66% of Utah voters
- 78% of voters in Washington County
- 2013 Kitchen v. Herbert challenged the constitutionality of Amendment 3.



- On December 20, 2013, federal judge [Robert J. Shelby](#) of the [U.S. District Court for Utah](#) struck down Amendment 3 as unconstitutional under the [Due Process](#) (Fifth Amendment) and [Equal Protection](#) (Fourteenth Amendment) clauses of the [U.S. Constitution](#).



- Since the 14th Amendment was passed after the Civil War, these rights and liberties and precedents apply to the states, as well as the federal government:
- Fourteenth Amendment: 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.

How did this case get to the Supreme Court?



- Trace the path of the case on your Flowsmart:
- Judge Shelby of the Utah Federal District Court ruled in favor of the Plaintiffs
- Defendants (State of Utah) appealed the decision to the 10th Circuit Court of Appeals
 - The appellate court agreed with Judge Shelby in favor of the Plaintiffs and upheld the ruling.
- Defendants (State of Utah) appealed the decision to the Supreme Court
 - Not enough justices agreed to hear the case
 - It takes 4/9 justices to agree (called granting “cert”)
- So the 10th Circuit Court of Appeals decision became the law in the 10th Circuit.
- In June 2015, the Supreme Court ruled in Obergefell v Hodges that the Fourteenth Amendment to the Constitution requires a State to license a marriage between two people of the same sex and to recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out-of-State, legalizing same-sex marriage in throughout the United States.



- Let's watch Governor Herbert's statement at the press conference where he announced that the Supreme Court declined to hear the case. Go to www.mrsenoswebsite.weebly.com to the bottom of the "Current Unit: Righting Wrongs" drop-down page.
- Listen for examples of the Guiding Principles:
Popular Sovereignty, Rule of Law, Separation of Powers, Federalism, Individual Rights, Independent Judiciary
- Also look for examples of how Governor Herbert exemplifies a core standard for Utah's Government students:
- ***"Develop an understanding of the role of civility in dealing with individual and group differences."***

What was the significance of the case?



- Same-sex marriage is legal in Utah.
- Same-sex marriages performed in other states must be recognized in Utah.
- The ruling applies to all the states in the 10th Circuit Court's jurisdiction.
 - Utah
 - Colorado
 - Kansas
 - New Mexico
 - Oklahoma
 - Wyoming

What are the circumstances of the case?

Judge Shelby's words from his ruling are in quotes.



- “The Plaintiffs in this lawsuit are three gay and lesbian couples who wish to marry, but are currently unable to do so because the Utah Constitution prohibits same-sex marriage. The Plaintiffs argue that ***this prohibition infringes their rights to due process and equal protection under the Fourteenth Amendment of the United States Constitution.***
- The State of Utah defends its laws and maintains that ***a state has the right to define marriage according to the judgment of its citizens.***”

What is the constitutional issue of this case? (Stated in a Yes or No Question)



- “The court agrees with Utah that regulation of marriage has traditionally been the province of the states, and remains so today.”
- “But any regulation adopted by a state, whether related to marriage or any other interest, must comply with the Constitution of the United States.”
- “The issue the court must address in this case is therefore not who should define marriage, but the narrow question of whether Utah’s current definition of marriage is permissible under the Constitution. “

Legal Question, continued



- “The court’s role is not to define marriage, an exercise that would be improper given the states’ primary authority in this realm.”
- “Instead, the court’s analysis is restricted to a determination of what individual rights are protected by the Constitution.”
- “The court must then decide whether the State’s definition and regulation of marriage impermissibly infringes those rights.”

What are the major arguments of each side?



- “The Plaintiffs argue that this prohibition infringes their rights to due process and equal protection under the Fourteenth Amendment of the United States Constitution.”
- “Given the importance of marriage as a fundamental right and its relation to a individual’s rights to liberty, privacy, and association, the Supreme Court has not hesitated to invalidate state laws pertaining to marriage whenever such a law intrudes on an individual’s protected realm of liberty.”
- “Amendment 3. . . places same-sex couples in an unstable position of being in a second-tier [relationship].”
- “Amendment 3 demeans the children of same-sex couples who are told that their families are less worthy of protection than other families.”
- “Utah believes that it is up to each individual state to decide whether two persons of the same sex may ‘occupy the same status and dignity as that of a man and woman in lawful marriage.’”
- “. . .Same-sex marriage will cause opposite-sex couples to forego marriage.”
- “The availability of same-sex marriage [impacts] the number of children raised [in an opposite –sex family].”

What precedents and constitutional principles were cited by Judge Shelby?



- In 1996, the Court recognized that the Constitution protects individuals from discrimination on the basis of sexual orientation. (See *Romer v. Evans* 1996)
- In 1996, Congress passed the Defense of Marriage Act (DOMA), which allowed states to refuse to recognize same-sex marriages granted in other states and barred federal recognition of same-sex unions for the purposes of federal law.
- In 2013, the Supreme Court held that Section 3 of DOMA was unconstitutional in *Windsor v. United States*.
- An individual's fundamental rights "may not be submitted to vote; they depend on the outcome of no elections." *W. Va. State Bd. of Educ. v. Barnette*, (1943).
- Fourteenth Amendment: "No State shall make or enforce any law which shall abridge the privileges and 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." U.S. Const. amend. XIV, § 1
- The Court struck down Virginia's law against interracial marriage in *Loving v. Virginia*, 388 U.S. 1, 12 (1967). The Court found that Virginia's statute violated both the Equal Protection Clause and the Due Process Clause of the Fourteenth Amendment.

What was the ruling of the court?



- “The court hereby declares that Amendment 3 is unconstitutional because it denies the Plaintiffs their rights to due process and equal protection under the Fourteenth Amendment of the United States Constitution.
- The court hereby enjoins [prohibits] the State from enforcing Sections 30-1-2 and 30-1-4.1 of the Utah Code and Article I, § 29 of the Utah Constitution to the extent these laws prohibit a person from marrying another person of the same sex.
- SO ORDERED this 20th day of December, 2013.

What were the major reasons Judge Shelby gave in the opinion?



- “Given the importance of marriage as a fundamental right and its relation to a individual’s rights to liberty, privacy, and association, the Supreme Court has not hesitated to invalidate state laws pertaining to marriage whenever such a law intrudes on an individual’s protected realm of liberty. “
- “The State was unable to articulate a specific connection between its prohibition of same-sex marriage and any of its stated legitimate interests. At most, the State asserted: “We just simply don’t know.”
- “The State’s position appears to be based on an assumption that the availability of same-sex marriage will somehow cause opposite-sex couples to forego marriage. But the State has not presented any evidence that heterosexual individuals will be any less inclined to enter into an opposite-sex marriage simply because their gay and lesbian fellow citizens are able to enter into a same-sex union.”
- “The State has not shown any effect of the availability of same-sex marriage on the number of children raised by either opposite-sex or same-sex partners.”
- “The harm experienced by same-sex couples in Utah as a result of their inability to marry is undisputed. To apply the Supreme Court’s reasoning in Windsor, Amendment 3 “tells those couples, and all the world, that their otherwise valid [relationships] are unworthy of [state] recognition. This places same-sex couples in an unstable position of being in a second-tier [relationship].”
- “Amendment 3 demeans the children of same-sex couples who are told that their families are less worthy of protection than other families.”

If you could question Judge Shelby, what would you ask?





- Link to USA Today Editorials
- <http://www.usatoday.com/story/opinion/2015/04/28/gay-marriage-supreme-court-oral-arguments-editorials-debates/26516669/>
- ***Please highlight and label 3 examples EACH of logos (logic, facts, evidence); pathos (connecting with reader through emotions and values); ethos (showing credibility by quoting experts, acknowledging counterclaims, sharing personal experiences); and underline the claim (thesis statement of the editorial).***

Judicial System Viewing Guide



ORIGINS:

- established by Article III of the Constitution
- Judiciary Act of 1789 established 3-tier (level) structure of the federal court system
- Supreme Court claimed judicial review in 1803 Judicial review is the power to decide the constitutionality of government actions
- Judicial review is the power to decide the constitutionality of government actions
- U.S. has a dual level judicial system: 3 courts on both federal AND state levels

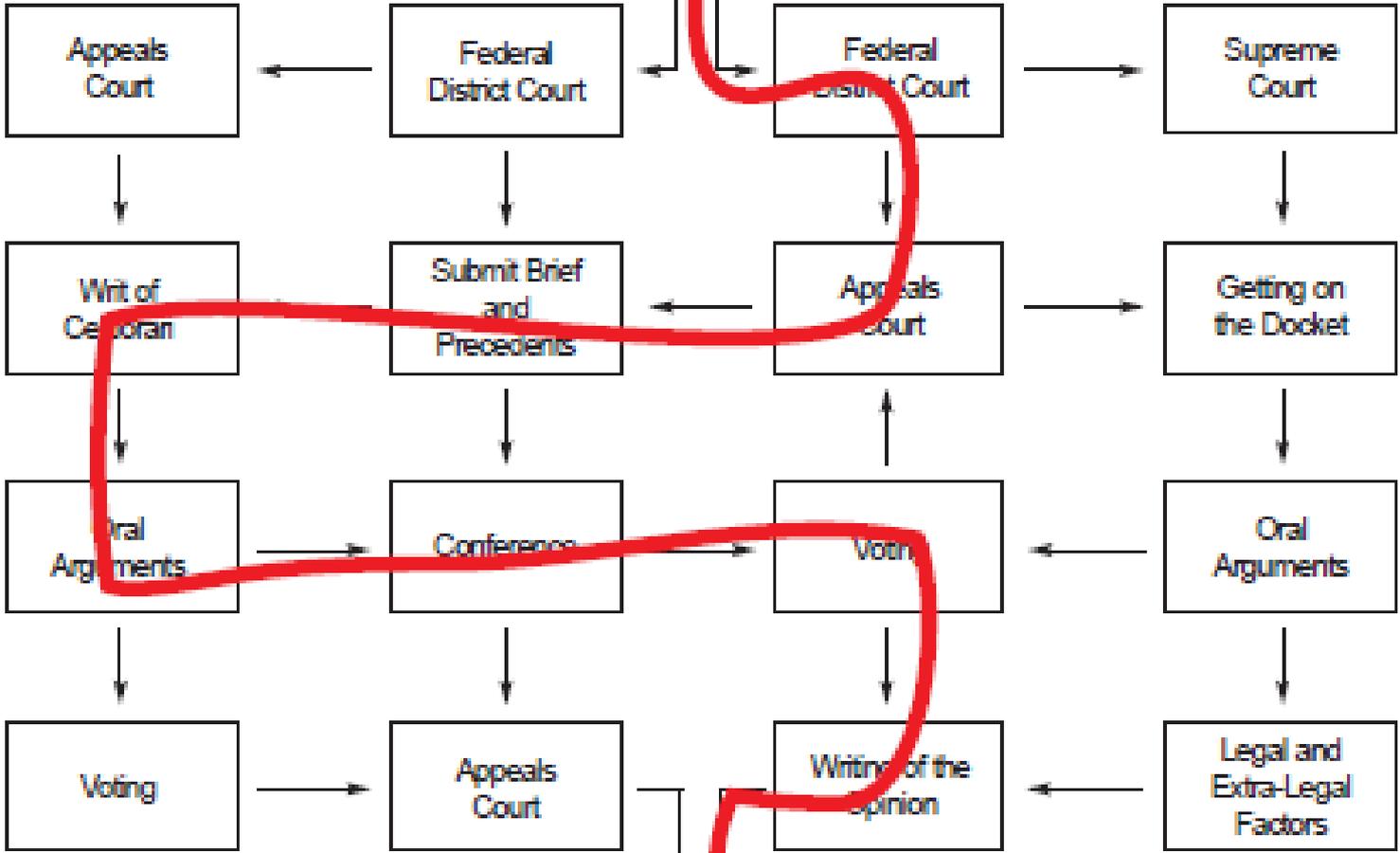
SUPREME COURT--Nine members: 1 Chief Justice and 8 associate justices

13 CIRCUIT COURTS (Appellate/Appeals Courts): no trial, a hearing with a panel of 3 judges

94 FEDERAL DISTRICT COURTS: hold trials to determine facts for cases involving the Constitution and the actions of government.

ANATOMY OF A CASE: getting on the docket; submit a brief (the legal arguments); submit precedents (previous judges' decisions); 4 out of 9 justices must agree to accept case; case is granted a writ of certiorari; oral arguments--half hour for each side to make case; justices ask many pointed questions; conference--justices discuss case in order of seniority; voting; writing of the opinion

CASE



DECISION



Supreme Court Simulation



- Divide the class into four groups of roughly equal size.
- Members of each group will create legal teams in order to simulate the proceedings of four actual Supreme Court cases, each dealing with a conflict of rights.
- Each group will have one of the Supreme Court cases below. That group will prepare arguments for their assigned case:



- Hazelwood v. Kuhlmeier (1988)
- Wallace v. Jaffree (1985)
- Board of Education of Westside Community Schools v. Mergens (1990)
- Bethel School District No. 403 v. Fraser (1986)

Each person in your group will receive a copy of the Student Handout: Case Briefs that corresponds to the case assigned to your group.

Hazelwood v. Kuhlmeier (1988) Case Summary



- Several student writers of the Hazelwood East High School newspaper objected after their principal deleted two articles from the paper that he felt were inappropriate. The students, who felt that their paper was a “public forum” for student expression and believed that their First Amendment right to free speech had been violated, took the school to court.
- Question for the Court: Was the Spectrum a “public forum for student expression,” therefore making the deletions of student-written articles a violation of the students’ First Amendment rights?



Wallace v. Jaffree (1985) Case Summary

The father of three children attending public school in Alabama challenged an Alabama law that authorized a one-minute period of silence in all public schools for meditation or voluntary prayer. He felt that this law encouraged religious activity, in violation of the First Amendment's Establishment Clause.



- Question for the Court: Did Alabama's state law authorizing a period of silence for "meditation or voluntary prayer" violate the Establishment Clause of the First Amendment?

Board of Education of Westside Community Schools v. Mergens (1990) Case Summary



- Westside High School is a public school that receives federal financial assistance. It also permits students to voluntarily join a number of recognized groups and clubs, all of which meet after school hours on school premises. After one student's request to form a Christian club that would meet in a similar fashion as these other groups was denied, a group of students took the school district to court.
- Question for the Court: Did the Equal Access Act, which requires that schools permitting non-curriculum clubs also allow religious clubs, violate the Establishment Clause of the First Amendment?

Bethel School District No. 403 v. Frazer (1986) Case Summary

- Matthew Fraser, a senior at Bethel High School, gave a speech before the student body to nominate a fellow classmate for an elected school office. During this speech, Fraser made sexual innuendos and references. He was subsequently suspended for three days. Fraser sued, claiming that his rights were violated by this suspension.



Question for the Court: Did Bethel High School authorities violate the First Amendment by disciplining a high school student for giving a lewd speech at a school assembly?



- Within your group, divide into two legal teams of approximately 3-4 students each. One group will play the part of the Petitioners and the other will play the part of the Respondents.
- The Petitioner in each case is the party who is initiating the lawsuit, or bringing an action before the Court. The Petitioner is listed first in each court case.
- The Respondent is the party against which an action is brought. The Respondent is listed second.
- Review the steps on Student Handout E: Preparing Your Case to prepare a legal argument for your assigned case.

Step 1: Assign roles. Decide with your legal team which member is best suited for each role:



- Chief Counsel--Lead your team as it reviews the facts of the case. Review each part of the legal arguments to ensure that all requirements are met.
- Associate Counsel 1--Lead your team as it prepares an opening statement for the Court. Deliver the opening statement.
- Associate Counsel 2--Lead your team as it prepares your main legal argument. Deliver these arguments.
- Associate Counsel 3--Lead your team as it prepares a closing statement. Deliver closing statement.
- Assign team members to roles based on each person's strengths and interests. Everyone will take part in the Supreme Court presentation.

Step 2: Review your case brief. Your Chief Counsel will make sure everyone understands the important facts of your case.



Discuss these questions with your team:

- What main arguments will your team make?
- What main arguments will the opposing team make?
- How will you counter them?

Step 3: Prepare your opening statement (no longer than one minute)



Include

- a clear, concise statement of your team's opinion
- the constitutional rights pertaining to the issues
- a brief summary of what you intend to prove to the court including the key details of the case, presented to clearly favor your position

Opening Statement Example



- Schenck v. United States case, the petitioner’s counsel might begin:
- “Charles Schenck acted completely within the scope of his constitutional rights when he protested the draft by mailing leaflets to young men in Philadelphia, and he should not have been arrested. “
- The respondent’s counsel might begin:
- “During wartime, the need to maintain public safety sometimes prevails over individual rights. The Espionage Act was an attempt to make sure that the war effort was not undermined, and Charles Schenck clearly violated that act by distributing anti-draft leaflets.”

Step 4: Prepare your main legal arguments (3 minutes)



Your argument should

- Include all the relevant facts from your brief.
- Reference any precedents that might help your argument and relate any precedents you use to your case. (You cannot simply cite a precedent. You must also clearly explain its connection to your case.)
- Assert why you believe your opponent is wrong.
- Strongly state your purpose and a belief that you are constitutionally right

Step 5: Prepare your closing statement (one minute)



Include

- a general restatement of your position
- a quick summary of your strongest argument
- a final rebuttal of the opposing team's argument
- a specific recommendation to the Court as to how you believe it should decide.

Step 6: Rehearse your arguments.



The Chief Counsel should also make sure that each presenter

- speaks loudly and clearly, with a professional tone and without using slang
 - makes eye contact with the audience
- stays within the given time limits

Supreme Court Justices



- A group of nine students will receive copies of Student Handouts A to D. To prepare for the hearings, follow these steps:
- Read the background and appropriate precedents for the case.
- Note the important facts in the case.
- Prepare one thoughtful question for the Petitioners and one for the Respondents for each case.
- Keep track of each case's main facts by drawing a T-chart labeled "Petitioners" and "Respondents."
- As you listen to the case being argued, note key facts and strong arguments that you hear.
- After both sides have presented their closing statements, the Supreme Court Justices should leave the room to deliberate.
- Chief Justice should read the majority opinion and announce the number of Justices who voted for this opinion. For example, the Chief Justice might say:
- "In a 5-4 decision, the Supreme Court holds in favor of the respondent and concludes that the statute in question does indeed violate the First Amendment."
- The Justices in the majority should explain the reasoning behind their holding.
- The Justices in the minority should then do the same.

The Supreme Court is now in session.

TCI Clip

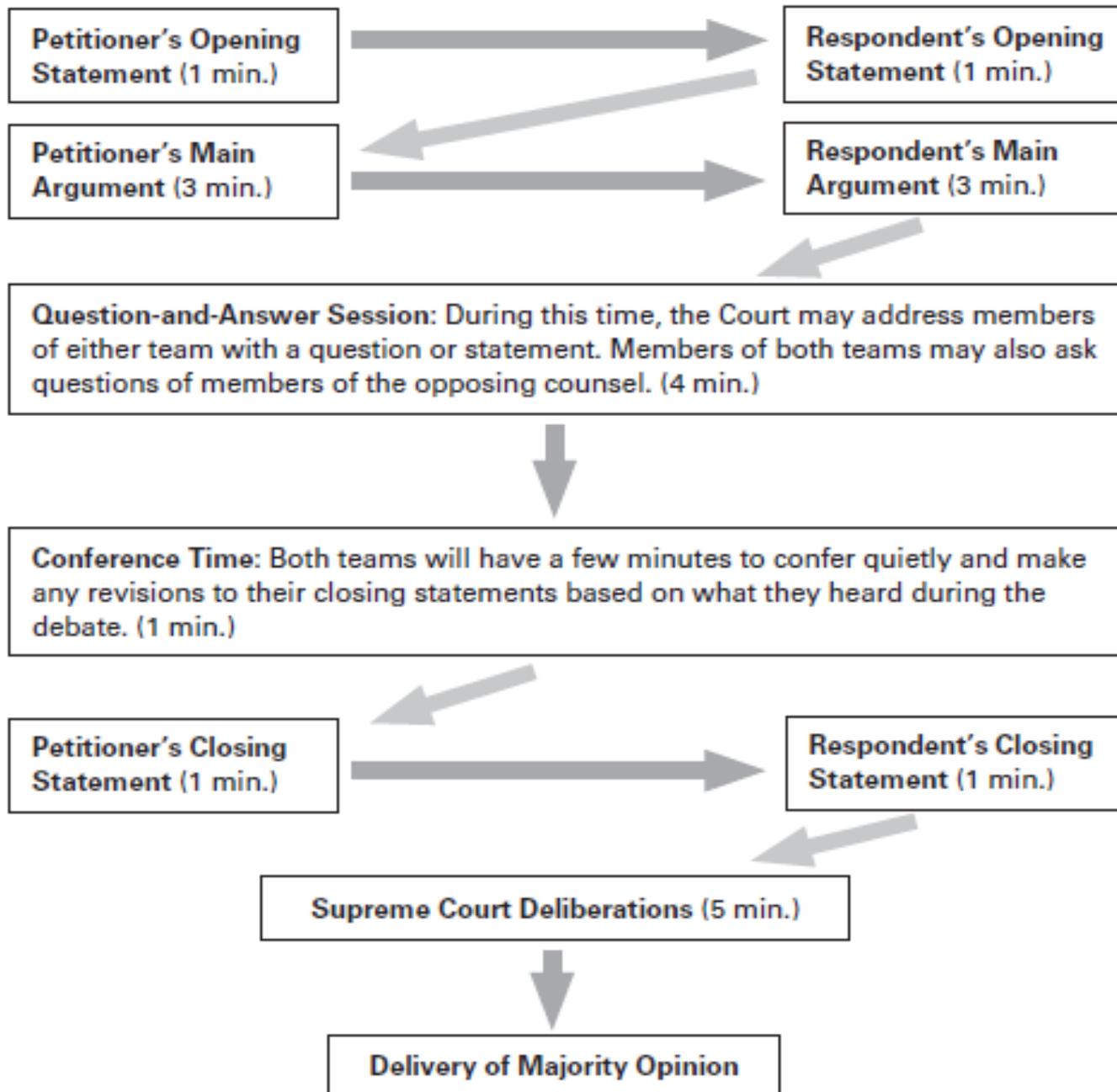


Follow these steps to conduct the hearing.



- Petitioner Opening Statement
- Respondent Opening Statement
- Petitioner Arguments
- Respondent Arguments
- Questions from the Supreme Court Justices
- Petitioner Closing Statement
- Respondent Closing Statement
- After both sides have presented their closing statements, the Supreme Court Justices should leave the room to deliberate.
- Chief Justice should read the majority opinion and announce the number of Justices who voted for this opinion. For example, the Chief Justice might say, In a 5-4 decision, the Supreme Court holds in favor of the respondent and concludes that the statute in question does indeed violate the First Amendment.
- The Justices in the majority should explain the reasoning behind their holding.
- The Justices in the minority should then do the same.

Conducting the Hearing



Hazelwood v. Kuhlmeier (1988)



- Case Summary: Several student writers of the Hazelwood East High School newspaper objected after their principal deleted two articles from the paper that he felt were inappropriate. The students, who felt that their paper was a “public forum” for student expression and believed that their First Amendment right to free speech had been violated, took the school to court.
- Question for the Court: Was the Spectrum a “public forum for student expression,” therefore making the deletions of student-written articles a violation of the students’ First Amendment rights?

Actual Decision in Hazelwood v. Kuhlmeier



- Case Outcome: The Supreme Court held in favor of school officials at Hazelwood School District and found that the students' First Amendment rights had not been violated.
- School officials can censor speech if it conflicts with the school's basic educational mission.
- A teacher exercised control over the publication and the principal had to review it so it wasn't a "public forum."



- The principal’s concerns—the protection of students’ identities, the privacy interests of the people involved, and the fact that parents mentioned in the divorce article were not given an opportunity to defend themselves—were entirely reasonable.
- So school officials to demonstrated a reasonable educational justification for censoring something.
- Since the time of this decision, six states (Arkansas, California, Colorado, Iowa, Kansas, and Massachusetts) have enacted laws that give students more press freedoms than were indicated under the Hazelwood decision.

Wallace v. Jaffree (1985) Case Summary

The father of three children attending public school in Alabama challenged an Alabama law that authorized a one-minute period of silence in all public schools for meditation or voluntary prayer. He felt that this law encouraged religious activity, in violation of the First Amendment's Establishment Clause.



- Question for the Court: Did Alabama's state law authorizing a period of silence for "meditation or voluntary prayer" violate the Establishment Clause of the First Amendment?

Actual Decision in Wallace v. Jaffree



- Case Outcome: The Supreme Court held in favor of Jaffree, the father and his children, and found that the Alabama law violated the Establishment Clause of the First Amendment.
- Because the acknowledged intent of the Alabama law was “to return voluntary prayer to our public schools,” the Court determined that its purpose was to endorse religion, which is inconsistent with the Constitution.

Board of Education of Westside Community Schools v. Mergens (1990)



- Case Summary: Westside High School is a public school that receives federal financial assistance. It also permits students to voluntarily join a number of recognized groups and clubs, all of which meet after school hours on school premises. After one student's request to form a Christian club that would meet in a similar fashion as these other groups was denied, a group of students, led by Bridget Mergens, took the school district to court.
- Question for the Court: Did the Equal Access Act, which requires that schools permitting non-curriculum clubs also allow religious clubs, violate the Establishment Clause of the First Amendment?

Actual Decision in Board of Education of Westside Community Schools v. Mergens.



Case Outcome: The Supreme Court held in favor of Bridget Mergens and the other students.

- The proposed Christian club would be a non-curricular group because its subject matter would not actually be taught in classes and its members would not receive academic credit for participation.
- Because other non-curricular clubs were permitted, the Court held that the Christian club should be allowed under the Equal Access Act.
- The Equal Access Act is constitutional because prohibits discrimination on the basis of philosophical, political, or other types of speech.

Bethel School District No. 403 v. Frazer (1986)

Case Summary:

- Matthew Frazer, a senior at Bethel High School, gave a speech before the student body to nominate a fellow classmate for an elected school office. During this speech, Frazer made sexual innuendos and references. He was subsequently suspended for three days and his name was removed from the list of candidates who would speak at the graduation ceremonies. Frazer sued, claiming that his rights were violated by this suspension.



Question for the Court: Did Bethel High School authorities violate the First Amendment by disciplining a high school student for giving a lewd speech at a school assembly?

Actual Decision in Bethel School District No.403 v. Fraser



The Supreme Court held in favor of the school board.

- The Court stated that the school had every right to punish Fraser for his offensive speech. Unlike in *Tinker v. Des Moines Independent Community School District*, Fraser was not punished for expressing a political viewpoint. The sexual innuendos had no relationship to the merits of the candidate who was being nominated.
- The Court noted that schools are completely within their rights to “prohibit the use of vulgar and offensive terms in public discourse” as an effort to protect minors.
- One justice noted, “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 Fraser was given plenty of warnings that his speech might result in suspension—two teachers reacted negatively to his speech, and school policy clearly prohibited such offensive language.

Debrief



- What you have learned in this simulation about how rights are defined and protected by the Constitution?
- How does the Supreme Court determine whose rights prevail in certain situations?
- To what degree is the Constitution is still an adequate reference for resolving these conflicts?

Results of 2012 State of the First Amendment Survey



#?	Question	Religion	Speech	Press	Assembly	Petition	Don't Know
1	As you may know, the First Amendment is a part of the U.S. Constitution. Can you name any of the specific rights that are guaranteed by the First Amendment?	28%	65%	13%	13%	4%	27%
		Agree	Disagree				
2	The First Amendment became part of the U.S. Constitution more than 200 years ago. This is what it says: 'Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press, or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.' Based on your own feelings about the First Amendment, please tell me whether you agree or disagree with the following statement: The First Amendment goes too far in the rights it guarantees.	13%	81%				
3	Musicians should be allowed to sing songs with lyrics that others might find offensive.	69%	81%				
4	Overall, the news media try to report the news without bias.	33%	62%				
5	It is important for our democracy that the news media act as a watchdog on government.	75%	20%				
6	Public schools should be allowed to discipline students who use their own personal computers at home to post material that school officials say is offensive.	34%	57%				

Survey Results, continued

		Strongly Agree	Mildly Agree	Mildly Disagree	Strongly Disagree	Don't Know
7	In the event of a national emergency, the government should be allowed to take control of the Internet and limit access to social media and to Web outlets.	17%	16%	15%	44%	9%
8	The government should be allowed to prosecute Internet users who illegally distribute copyrighted music and movies online.	32%	27%	15%	18%	9%
9	People should be allowed to record or photograph the activities of the police in public as long as they do not interfere with what the police are doing.	66%	19%	7%	5%	3%
10	As long as no money is being made, someone should be able to post copyrighted material online or on social media without paying rights fees.	24%	22%	19%	23%	12%
11	Even if the money is being made, someone should be able to post copyrighted material online or on social media without paying rights fees.	10%	13%	23%	41%	13%



- As you examine the “State of the First Amendment” Survey Results, 2012, shown on this and the following slides, consider these questions:
- Do any of these survey results surprise you? Which ones?
- How do our school results compare with the national results?
- What does this survey tell us about the concerns of the American people?



- When an individual's speech is offensive to others, what do Americans generally believe takes precedence: the individual's rights to free speech or the good of society as a whole?
- When freedom of the press conflicts with government's attempts to keep our society safe, what takes precedence?