

Constitutional Law in Context

Constitutional Law in Context

FOURTH EDITION

Michael Kent Curtis

JUDGE DONALD L. SMITH PROFESSOR IN
CONSTITUTIONAL AND PUBLIC LAW,
WAKE FOREST UNIVERSITY SCHOOL OF LAW

J. Wilson Parker

PROFESSOR OF LAW,
WAKE FOREST UNIVERSITY SCHOOL OF LAW

William G. Ross

LUCILLE STEWART BEESON PROFESSOR OF LAW,
SAMFORD UNIVERSITY, CUMBERLAND SCHOOL OF LAW

Davison M. Douglas

DEAN AND AN ARTHUR B. HANSON PROFESSOR OF LAW,
WILLIAM & MARY LAW SCHOOL

Paul Finkelman

PRESIDENT,
GRATZ COLLEGE



CAROLINA ACADEMIC PRESS

Durham, North Carolina

Copyright © 2018
Michael Kent Curtis, J. Wilson Parker,
William G. Ross, Davison M. Douglas,
and Paul Finkelman
All Rights Reserved

LCCN 2017960379
ISBN 978-1-5310-0843-7
eISBN 978-1-53100-844-4
Looseleaf ISBN 978-1-5310-1124-6

Carolina Academic Press, LLC
700 Kent Street
Durham, North Carolina 27701
Telephone (919) 489-7486
Fax (919) 493-5668
www.cap-press.com

Printed in the United States of America

Summary of Contents

List of Charts and Diagrams	ix
Table of Cases	xi
Table of Authorities	xxv
Permissions	xxvii
A Timeline of American Constitutional History	xxix
Justices of the U.S. Supreme Court	lxxvii
Chapter 1 • An Introduction to American Constitutional Law	3
I. The Articles of Confederation	5
II. The Constitution of the United States of America	6
III. The Constitution: Institutions, Powers, and Limits	22
IV. What Is <i>Constitutional</i> Law?	23
V. On Reading the Constitution	32
Chapter 2 • National Power: Article I and the Powers and Limits of Congress	41
I. Implied Congressional Power: Its Nature and Extent	44
II. The Commerce Clause: A Delegated Power	64
III. Ducking the Issue: Statutory Construction as a Means of Avoiding Constitutional Interpretation	165
IV. Other Delegated Sources of National Power: The Power to Spend, the War Power, and the Treaty Power	171
Chapter 3 • Limits on Federal Power: The Federal Structure, the 10th Amendment, and State Sovereign Immunity	191
I. Goals for Chapter 3	193
II. National Power and State Power: The 10th Amendment	193
III. National Power and State Power: State Sovereign Immunity	221
IV. The Rehnquist Court	226
V. A Unifying Theme? Dual Sovereignty	229
Chapter 4 • Powers and Limits of the Federal Courts	235
I. Federal Judicial Review— <i>Marbury v. Madison</i> (1803): Background and Case	237
II. The Extension of Federal Judicial Review over State Courts	253
III. A Short History of the Marshall Court	264
IV. Judicial Review and the Political Process	267

V. The Scope of Federal Judicial Power over State Courts: The Adequate and Independent State Ground Doctrine	270
VI. Congressional Control over Federal Judicial Review	279
VII. Justiciability	286
Chapter 5 • The Role of the President	327
I. The Scope of Executive Power	329
II. The President as Commander-in-Chief	354
III. Appointments and the Separation of Powers	360
IV. Executive Privilege: Judicial Immunities	365
Chapter 6 • Procedural Due Process	375
I. Goals for Chapter 6	377
II. How Does One Establish the Right to Process: What Is “Property” and “Liberty”?	377
III. What Process Is Due?	405
IV. The Protections of Due Process as a Limit on Presidential Power	438
Chapter 7 • Limits on State Power: Preemption, the Dormant Commerce Clause, and the Privileges and Immunities Clause of Article IV	443
I. Preemption	445
II. The Dormant Commerce Clause	474
III. The Privileges and Immunities Clause of Article IV	523
IV. Note: The Contract Clause	534
Chapter 8 • The Incorporation of the Bill of Rights	537
I. Introduction and Overview	539
II. Application of the Bill of Rights to the States, 1791–1833	547
III. From <i>Barron</i> to the Adoption of the 14th Amendment: The Pre-Civil War Background	551
IV. The Drafting of the 14th Amendment	569
V. The Aftermath: Legislation and the Initial Judicial Response during Reconstruction	591
VI. The Bill of Rights and Incorporation after <i>Slaughter-House</i>	614
VII. Incorporation: Approaches, Effects, and Further Thoughts	632
VIII. Note: Political Transformation, 1932–2016 [on the web]	635
IX. The Roberts Court and Incorporation	635
Chapter 9 • Equal Protection	651
I. Introduction	653
II. Equal Protection Analysis: A Summary Chart	658
III. <i>A Theory of Justice</i>	660
IV. Equal Protection and Race	662
V. Equal Protection Analysis of Social and Economic Regulatory Legislation	705

VI. The Movement toward “Rational Basis with Bite”	713
VII. Equal Protection Analysis of Classifications Based on Factors Other Than Race	730
VIII. Gender and Equal Protection	731
IX. “De jure” versus “De facto” Discrimination: Obvious and Indirect Discrimination	750
X. Affirmative Action	771
XI. Equal Protection and Fundamental Rights	794
Chapter 10 • Substantive Due Process	857
I. Introduction	859
II. A Model of Substantive Due Process Analysis	866
III. Liberty and Economic Rights	869
IV. The Origins of Substantive Protection for Non-Economic Rights	902
V. Liberty and Privacy	913
VI. Liberty and the Family	961
VII. Liberty and Sexual Autonomy: Restrictions on Private Sexual Behavior	973
VIII. Constitutionality of Same-Sex Marriage	990
IX. Liberty and the “Right” to Die	1011
X. The Takings Clause	1020
Chapter 11 • Freedom of Speech and Press	1021
Part I: A Graphic Overview of the 1st Amendment	1025
Part II: The 1st Amendment and Government Control of the Content of Expression	1028
I. An Introduction to the 1st Amendment	1028
II. 1st Amendment History	1032
III. The Early Restrictive Understanding of the Freedom of Speech and Press	1046
IV. The Emergence of the Modern Approach to Advocacy of Illegal Conduct	1068
V. Pervasive Limits on Government Regulation of Speech	1114
VI. Defamation and Infliction of Emotional Distress	1152
VII. Access to the Press	1200
VIII. Obscenity	1208
IX. Child Pornography	1230
X. New Categories of Unprotected Sexual Expression?	1238
XI. Indecent Speech	1250
XII. Fighting Words	1259
XIII. The Hostile Audience	1261
XIV. Hate Speech	1270
XV. Symbols and Silence: Compelled Affirmation	1288
XVI. Symbolic Speech	1305
XVII. Commercial Speech	1325

Part III: The 1st Amendment: Restrictions on Time, Place, and Manner of Expression When Regulating Governmental Property	1328
I. The Public Forum: An Overview	1328
II. Regulating Streets, Parks, and Sidewalks	1332
III. The Non-Public Forum	1344
IV. “Company Towns” and Shopping Centers as Public Forums	1358
V. Speech in Limited Environments	1365
VI. Government as the Speaker, Not as a Regulator	1379
Part IV: The 1st Amendment and Limits on Political Campaigns	1381
Chapter 12 · Freedom of Religion	1383
I. Introduction	1385
II. Historical Background of the Establishment and Free Exercise Clauses	1385
III. The Establishment Clause	1392
IV. Free Exercise of Religion	1428
Chapter 13 · Governmental Actors, Private Actors, and the Scope of the 13th and 14th Amendments	1447
I. Congressional Power to Enforce the 13th and 14th Amendments	1449
II. The Scope of the 13th Amendment: The Modern View	1460
III. The Scope of Congressional Power to Enforce the 14th Amendment: The Modern View	1466
IV. The Scope of the 14th Amendment	1475
V. Congressional Power to Legislate against Private Violations	1495
Index	1507

List of Charts and Diagrams

Chapter 2

Commerce Clause Graphic Portrayals

Neither congress nor the states have legislated	65
Congress and the states legislate exercising concurrent powers	66
Preemption	67
Congress legislates and turns power over to the states by providing that each state's rule shall become the federal rule	68

Affirmative Limits and 10th Amendment Charts

Affirmative constitutional limitations on federal commerce power	69
Truism view of the 10th Amendment	69
Dual sovereignty view of the 10th Amendment	70
The Commerce Clause after <i>Morrison</i> and <i>Sebelius</i>	145

Chapter 4

The American Judicial System: A Graphic Portrayal	237
Independent and Adequate State Ground: Appeal or Petition for Certiorari from State Court to U.S. Supreme Court	278

Chapter 7

Dormant Commerce Clause: Two Types of Analysis	478
Analysis of Article IV, §2 Privileges and Immunities Claim	526
Dormant Commerce Clause and the Article IV Privileges and Immunities Clause Compared	527

Chapter 8

Approaches to Application of the Bill of Rights to the States: A Graphic Portrayal	632
--	-----

Chapter 9

Diagrams of Harm and Trait Analysis	656
A Model of Equal Protection Analysis	661

Chapter 10

A Model of Substantive Due Process Analysis	868
---	-----

Chapter 11

Free Speech and Free Press: An Overview	1027
Chart for <i>Brandenburg</i> Analysis	1099
Area of Overbreadth	1116
R.A.V. Analysis: A Facial Challenge	1276
Public Forum Analysis	1331

Table of Cases

When a case is cited on more than one page, the page with the primary discussion of the case is bolded.

- Ableman v. Booth, 62 U.S. 506 (1858), 270, **1453**
- Abrams v. United States, 250 U.S. 616 (1919), **1063**, 1069, 1078, 1097, 1112, 1204
- Adair v. United States, 208 U.S. 161 (1908), 102
- Adamson v. California, 332 U.S. 46 (1947), 538, 620, **621**, 628, 634, 638
- Adarand Constructors, Inc. v. Peña, 515 U.S. 200 (1995), 771
- Adderley v. Florida, 385 U.S. 39 (1986), 652, 771, 773, **1345**
- Adkins v. Children’s Hospital, 261 U.S. 525 (1923), **104**, 111, 892, 905
- Agostini v. Felton, 521 U.S. 203 (1997), 229, **1416**
- Aguiar v. Felton, 473 U.S. 402 (1985) 229, **1415**, 1416
- Alden v. Maine, 527 U.S. 706 (1999) 191, **221**, 225, 227, 231, 465
- Alexander v. Louisiana, 405 U.S. 625 (1972), 631
- Allegheny v. ACLU, 492 U.S. 573 (1989), 1395
- Allen v. Wright, 468 U.S. 737 (1984), 314
- Allgeyer v. Louisiana, 165 U.S. 578 (1897), **xxxix**, 880, 905
- Amalgamated Food Employees Union Local 590 v. Logan Valley Plaza, Inc. 391 U.S. 308 (1968), 1359
- American Booksellers Association, Inc. v. Hudnut, 771 F.2d 323 (7th Cir. 1985), 1023, **1239**, 1240, 1287
- Apodaca v. Oregon, 406 U.S. 404 (1972), 631
- Arizona Christian School Tuition Organization v. Winn, 563 U.S. 125 (2011), 308
- Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252 (1977), **316**, 757, 760
- Armour v. City of Indianapolis, 566 U.S. 673 (2012), 713
- Arnett v. Kennedy, 416 U.S. 134 (1974), 396, 398, 399, **401**, 404, 408
- Ashcroft v. ACLU, 542 U.S. 656 (2004), 1253
- Ashcroft v. Iqbal, 556 U.S. 662 (2009), 652, **761**
- Ashcroft v. The Free Speech Coalition, 535 U.S. 234 (2002), 1023, **1230**
- Ashwander v. Tennessee Valley Authority, 297 U.S. 288 (1936), 287
- Avery v. Midland County, 390 U.S. 474 (1968), 810
- Bailey v. Drexel Furniture Co., 259 U.S. 20 (1922), 172
- Baker v. Carr, 369 U.S. 186 (1962), **291**, 293, 294, 300–302, 305, 806, 808, 815
- Baldwin v. Fish and Game Commission of Montana, 436 U.S. 371 (1978), 527
- Barron v. Mayor and City Council of Baltimore, 32 U.S. (7 Pet.) 243 (1833), 537, **547–548**
- Bates v. State Bar of Arizona, 433 U.S. 350 (1976), 1325–1326
- Beauharnais v. Illinois, 343 U.S. 250 (1952), 1023, 1152, **1155**, 1243, 1273
- Benton v. Maryland, 395 U.S. 784 (1969), **631**, 639
- Bethel School Dist. No. 403 v. Fraser, 478 U.S. 675 (1986), **1367**, 1370, 1375

- Bigelow v. Virginia, 421 U.S. 809 (1975), 1325
- Bishop v. Wood, 426 U.S. 341 (1976), 375, **393**
- Blum v. Yaretsky, 457 U.S. 991 (1982), 1492
- Board of Education of Oklahoma City Schools v. Dowell, 498 U.S. 237 (1991), 652, **762–764**
- Board of Education v. Allen, 392 U.S. 236 (1968), 1415
- Board of Trustees of the University of Alabama v. Garrett, 532 U.S. 356 (2001), **225–226**, 1473
- Bob Jones University v. United States, 461 U.S. 574 (1983), **1431**, 1436
- Boddie v. Connecticut, 401 U.S. 371 (1971), 380, 402, **830**, 834, 854
- Bolling v. Sharpe, 347 U.S. 497 (1954), 381, 651, **688**, 754, 762, 773, 915
- Bond v. Floyd, 385 U.S. 116 (1966), 1022, **1089**
- Bond v. United States, 564 U.S. 334 (2011), 160, **315**
- Boumediene v. Bush, 553 U.S. 723 (2008), 360, **441**
- Bowen v. Roy, 476 U.S. 693 (1986), **1431**, 1435
- Bowers v. Hardwick, 478 U.S. 186 (1986), 37, 278, 692, 693, 728, 858, **973–977**, 979, 980, 982, 983, 997, 1012
- Bowsher v. Synar, 478 U.S. 714 (1986), 365
- Boy Scouts of America v. Dale, 530 U.S. 640 (2000), 1024, **1302**, 1305
- BMW of North America, Inc. v. Gore, 517 U.S. 559 (1996), 901
- Bradwell v. Illinois, 83 U.S. 130 (1873), 651, **732**, 735
- Bray v. Alexandria Women’s Health Clinic, 506 U.S. 263 (1993), 1498
- Brentwood Academy v. Tennessee Secondary School Athletic Association, 531 U.S. 288 (2001), 1494
- Bridges v. California, 314 U.S. 252 (1941), 1022, **1068**, 1087, 1097, 1138, 1160, 1170, 1171, 1480
- Broadrick v. Oklahoma, 413 U.S. 601 (1973), 1022, **1130**, 1232, 1237, 1238, 1246
- Brown v. Board of Education (Brown I), 347 U.S. 483 (1954), **682–684**, 767, 843
- Brown v. Board of Education (Brown II), 349 U.S. 294 (1955), 766
- Brown v. Entertainment Merchants Association, 564 U.S. 786 (2011), 1250
- Brown v. Louisiana, 383 U.S. 131 (1966), 1126, 1316, **1330**
- Brown v. Maryland, 25 U.S. (12 Wheat.) 419 (1827), 265
- Brown-Forman Distillers Corp. v. New York State Liquor Authority, 476 U.S. 573 (1986), 512
- Browning-Ferris Industries v. Kelco Disposal, Inc., 492 U.S. 257 (1989), 631
- Buchanan v. Warley, 245 U.S. 60 (1917), 666, 688, **1478–1479**
- Buck v. Bell, 274 U.S. 200 (1927), 854, 857, **907**, 911
- Buckley v. Valeo, 424 U.S. 1 (1976), **173**, 363
- Bunting v. Oregon, 243 U.S. 426 (1917), 892
- Burch v. Louisiana, 441 U.S. 130 (1979), 631
- Burton v. Wilmington Parking Authority, 365 U.S. 715 (1961), 1447, 1458, **1482**, 1486
- Burwell v. Hobby Lobby, 573 U.S. ____ (2014), 1384, **1442–1443**
- Bush v. Gore, 531 U.S. 98 (2000), 652, **825–826**
- C & A Carbone, Inc. v. Town of Clarkstown, 511 U.S. 383 (1994), 504–505
- Calder v. Bull, 3 U.S. 386 (1798), 253, **536**, 862
- Campbell v. State, 11 Ga. 353 (1852), 552
- Camps Newfound/Owatonna, Inc. v. Town of Harrison, 520 U.S. 564 (1997), 518
- Cantwell v. Connecticut, 310 U.S. 296 (1940), 620, 1069, **1132–1133**, 1157, 1158, 1220, 1251, 1263, 1265, 1270, 1346, 1397, 1429, 1434, 1480
- Caperton v. A.T. Massey Coal Co., Inc., 556 U.S. 668 (2009), 375, **411**
- Carter v. Carter Coal Co., 298 U.S. 238 (1936), 42, **105**, 116, 182, 206, 229
- Central Hudson Gas v. Public Service Commission, 447 U.S. 557 (1980), 1325
- Champion v. Ames (The Lottery Case), 188 U.S. 321 (1903), 41, **91**

- Chaplinsky v. New Hampshire, 315 U.S. 568 (1942), 1023, 1083, 1152, 1157, 1162, 1177, 1197, 1226, 1251, **1259**, 1268, 1271, 1281, 1313, 1318
- Charles River Bridge v. Warren Bridge, 36 U.S. 420 (1837), 535
- Cherokee Nation v. Georgia, 30 U.S. (5 Pet.) 1 (1831), 266
- Chicago, Burlington, Quincy Railroad Co. v. Chicago, 166 U.S. 226 (1897), **614**, 616, 625
- Chisholm v. Georgia, 2 U.S. (2 Dall.) 419 (1793), **xxxii**, 222, 264
- Christian Legal Society v. Martinez, 561 U.S. (2010), 1024, **1343**
- Church of the Lukumi Babalu Aye v. City of Hialeah, 508 U.S. 520 (1993), 1444
- Citizens United v. Federal Election Commission, 558 U.S. (2010), 1442
- City of Boerne v. Flores, 521 U.S. 507 (1997), 227, 1439–1440, 1447, **1471**, 1473, 1499, 1500, 1505
- City of Cleburne v. Cleburne Living Center, 473 U.S. 432 (1985), 651, **713–716**, 725, 726
- City of Los Angeles v. Alameda Books, 535 U.S. 425 (2002), 1023, **1254–1255**
- City of Los Angeles v. Lyons, 461 U.S. 95 (1983), **315**, 322
- City of Philadelphia v. New Jersey, 437 U.S. 617 (1978), 443, **499**
- Civil Rights Cases, 109 U.S. 3 (1883), 122, 124, 125, 131, 611, 665, 666, 668, 669, 1050, 1447, **1449–1453**, 1453, 1458, 1460, 1462–1466, 1479, 1482, 1486, 1499, 1501–1504
- Clapper v. Amnesty International USA, 568 U.S. ____ (2013), 315
- Clark v. Community for Creative Non-Violence, 468 U.S. 288 (1984), 1147, 1196, 1317, **1329**
- Clark Distilling Co. v. Western Maryland Railway Co., 242 U.S. 311 (1917), 96
- Cleveland Board of Education v. Loudermill, 470 U.S. 532 (1985), 375, **399**
- Clinton v. City of New York, 524 U.S. 417 (1998), 327, **350–351**
- Clinton v. Jones, 520 U.S. 681 (1997), 327, 366, **371**, 373
- Coates v. Cincinnati, 402 U.S. 611 (1971), 1022, **1119**, 1125, 1318
- Cohen v. California, 403 U.S. 15 (1971), 1023, 1105, 1246, **1250**, 1312, 1340, 1372
- Cohens v. Virginia, 19 U.S. (6 Wheat.) 264 (1821), 235, **259–260**, 265
- Cole v. Arkansas, 333 U.S. 196 (1948), 624
- Colegrove v. Green, 328 U.S. 549 (1946), **291**, 808
- College Savings Bank v. Florida Prepaid Postsecondary Education Expense Board, 527 U.S. 666 (1999), 227
- Committee for Public Ed. & Religious Liberty v. Nyquist, 413 U.S. 756 (1973), **1420**, 1426
- Commonwealth v. Davis, 39 N.E. 113 (Ma. 1895), *aff'd*, Davis v. Massachusetts, 167 U.S. 43 (1897), 1329
- Connick v. Myers, 461 U.S. 138 (1983), 1194, **1365**
- Connick v. Thompson, 563 U.S. 51 (2011), 375, **435**
- Cooley v. Board of Wardens, 53 U.S. (12 How.) 299 (1851), **xxxvi**, 485, 486, 506, 520
- Cooper v. Aaron, 358 U.S. 1 (1958), 235, **269**, 279, 695
- Cooper v. Harris 581 U.S. ____ (2017), 819
- Coppage v. Kansas, 236 U.S. 1 (1915), **872**, 892
- Corfield v. Coryell, 6 F. Cas. 546 (C.C.E.D. Pa. 1823), **524**, 551, 587, 590, 602, 607, 609, 646, 972
- Cornelius v. NAACP Legal Defense & Educational Fund, Inc., 473 U.S. 788, 1336, 1350, **1352**
- Corporation of Presiding Bishop v. Amos, 483 U.S. 327 (1987), 1444
- Corrigan v. Buckley, 271 U.S. 323 (1926), 667
- Cox v. Louisiana, 379 U.S. 559 (1965), **1122**, 1126, 1127, 1345–1347, 1353, 1376
- Cox v. New Hampshire, 312 U.S. 569 (1941), 1126
- Craig v. Boren, 429 U.S. 190 (1976), 236, **317–318**, 324, 652, 713, 715, 721, 739, 740, 744, 748–750, 796, 834, 1474, 1501

- Crawford v. Marion County Election Bd.*, 553 U.S. 181 (2008), 131, 132, 652, **824–825**, 1499, 1500
- Cruzan v. Director, Mo. Dept. of Health*, 497 U.S. 261 (1990), **1011–1015**, 1017, 1018
- Curtis Publishing Co. v. Butts*, 388 U.S. 130 (1967), **1183**, 1185, 1188
- Cutter v. Wilkinson*, 544 U.S. 709 (2005), 1383, **1440**
- Dartmouth College v. Woodward*, 17 U.S. 518 (1819), 534
- Davis v. Bandemer*, 478 U.S. 109 (1986), 827–828
- Dean Milk Co. v. City of Madison*, 340 U.S. 349 (1951), 443, **493–494**
- Debs v. United States*, 249 U.S. 211 (1919), 1022, 1051, **1057–1058**
- De Funis v. Odegaard*, 418 U.S. 903 (1974), 324
- Dennis v. United States*, 341 U.S. 494 (1951), 1022, **1074–1075**, 1096, 1097
- District Attorney’s Office for the Third Judicial District v. Osborne*, 555 U.S. (2009), 375, **420**
- District of Columbia v. Heller*, 554 U.S. 570 (2008), **635**, 649
- Douglas v. California*, 372 U.S. 353 (1963), 821, **830**, 834
- Dred Scott v. Sandford*, 60 U.S. 393 (1857), 27, 264, 537, **553–555**, 601, 644, 861, 1005
- Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc.*, 472 U.S. 749 (1985), **1190**, 1194
- Duncan v. Louisiana*, 391 U.S. 145 (1968), 538, **625**, 634, 638, 998
- Edmonson v. Leesville Concrete Co.*, 500 U.S. 614 (1991), 1494
- Edwards v. California*, 314 U.S. 160 (1941), 485, 821, **831**
- Edwards v. South Carolina*, 372 U.S. 229 (1963), 1023, **1265**, 1345, 1348
- Eisenstadt v. Baird*, 405 U.S. 438 (1972), 320, 839, 857, 924, **925**, 929, 970, 971, 977, 983, 998, 1132
- Employment Division v. Smith*, 494 U.S. 872 (1990), 1383, **1432**, 1439, 1441, 1466, 1471
- Energy Reserves Group v. Kansas Power and Light*, 459 U.S. 400 (1983), 536
- Engel v. Vitale*, 370 U.S. 421 (1962), **1398**, 1402, 1403, 1405
- Evenwel v. Abbott*, 578 U.S. ____ (2016), 810
- Everson v. Board of Education*, 330 U.S. 1 (1947), **620**, 1392, 1393, 1397, 1425
- Ex parte McCardle*, 74 U.S. (7 Wall.) 506 (1869), 235, 267, **281–282**, 284
- Ex parte Merryman*, 17 F. Cas. 144 (C.C.D. Md. 1861), 336
- Ex parte Milligan*, 71 U.S. (4 Wall.) 2 (1866), 336
- Ex parte Virginia*, 100 U.S. 339 (1880), **666**, 1504, 1505
- Ex parte Young*, 209 U.S. 123 (1908), 223
- Exxon Corp. v. Governor of Maryland*, 437 U.S. 117 (1978), 507, **511**
- Farrington v. Tokushige*, 273 U.S. 284 (1927), **904**, 1065
- FCC v. Beach Communications*, 508 U.S. 307 (1993), 709, 857, **899–900**
- FCC v. Fox Television Stations*, 567 U.S. 239 (2012), 1022, **1128**
- Feiner v. New York*, 340 U.S. 315 (1951), 1023, 1251, **1261**, 1268, 1270
- Felkner v. Jackson*, 562 U.S. 594 (2011), 762
- Fisher v. University of Texas at Austin (Fisher I)*, 570 U.S. ____ (2013), **785–786**, 793
- Fisher v. University of Texas at Austin (Fisher II)*, 579 U.S. ____ (2016), 652, **785–787**, 793, 794
- Fitzpatrick v. Bitzer*, 427 U.S. 445 (1976), 227
- Flagg Brothers v. Brooks*, 436 U.S. 149 (1978), 1492
- Flast v. Cohen*, 392 U.S. 83 (1968), 289, **307**
- Fletcher v. Peck*, 10 U.S. 87 (1809), 265, 266, **534**, 752
- Florida Prepaid Postsecondary Education Expense Board v. College Savings Bank*, 527 U.S. 627 (1999), 227
- Frisby v. Schultz*, 487 U.S. 474 (1988), 1024, 1196, 1197, 1330, **1335**
- Frontiero v. Richardson*, 411 U.S. 677 (1973), **737**, 743
- Frothingham v. Mellon*, 262 U.S. 447 (1923), 307

- Fry v. United States, 421 U.S. 542 (1975), 198, 211, **226**
- Fullilove v. Klutznick, 448 U.S. 448 (1980), 773
- Gade v. National Solid Wastes Management Ass'n., 505 U.S. 88 (1992), 445
- Garcetti v. Ceballos, 547 U.S. 410 (2006), 1366
- Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985), 191, 193, **209**, 221, 226, 471, 692
- Geier v. American Honda Motor Company, Inc., 529 U.S. 861 (2000), 443, **458–459**, 472
- Gertz v. Robert Welch, 418 U.S. 323 (1974), 1023, **1180–1181**, 1190, 1191
- Gibbons v. Ogden, 22 U.S. (9 Wheat.) 1 (1824), 41, 64, **70–71**, 81, 91, 93, 94, 96, 113, 114, 118, 125, 126, 140, 141, 195, 198, 203–205, 208, 265, 476, 485, 496, 888
- Gideon v. Wainwright, 372 U.S. 335 (1963), 433, **624**, 626, 639
- Gitlow v. New York, 268 U.S. 652 (1925), 618, 898, 904, 1022, 1041, **1062**, 1063, 1065, 1069, 1071, 1078, 1097, 1267
- Glucksberg v. Washington, 521 U.S. 702 (1997), 423, 442, 640, 858, 1000, 1005, 1012, **1014–1015**
- Goesaert v. Cleary, 335 U.S. 464 (1948), 735
- Goldberg v. Kelly, 397 U.S. 254 (1970), 380, **382**, 385, 403, 407, 410, 971
- Goldman v. Weinberger, 475 U.S. 503 (1986), **1431**, 1435
- Gonzales v. Carhart, 550 U.S. 124 (2007), **945**, 952, 959
- Gonzales v. O Centro Espirita Beneficente Uniao Do Vegetal, 546 U.S. 418 (2006), 1384, **1440**
- Gonzales v. Oregon, 546 U.S. 243 (2006), 42, **155**
- Gonzales v. Raich, 545 U.S. 1 (2005), 42, **145**, 155, 161, 163, 228
- Goodridge v. Dept. of Public Health, 798 N.E.2d 941 (2003), 991
- Graham v. Richardson, 403 U.S. 365 (1971), 384, **713**
- Granholtz v. Heald, 544 U.S. 460, (2005), 492
- Gratz v. Bollinger, 539 U.S. 244 (2003), **774**, 780
- Gray v. Sanders, 372 U.S. 368 (1963), **809**, 812, 821
- Grayned v. City of Rockford, 408 U.S. 104 (1972), 1022, **1123**, 1131, 1132, 1352
- Green v. New Kent County, 391 U.S. 430 (1968), **697**, 768
- Griffin v. Breckenridge, 403 U.S. 88 (1971), 387, **1497–1498**
- Griffin v. Illinois, 351 U.S. 12 (1956), 821, **830**, 833, 844
- Griggs v. Duke Power Co., 401 U.S. 424 (1971), 751
- Griswold v. Connecticut, 381 U.S. 479 (1965), 319, 321, 323, 324, 624, 629, 659, 839, 851, 857, **917–918**, 924, 925, 930, 963, 965, 966, 970, 971, 977, 983, 998, 999, 1217
- Grutter v. Bollinger, 539 U.S. 306 (2003), 652, **774–775**, 783, 787
- G. S. Johnson v. California, 545 U.S. 162 (2005), 651, **704**
- Guinn v. United States, 238 U.S. 347 (1915), **666**, 750, 803
- Gulf, Colorado & Santa Fe Railway Company v. Ellis, 165 U.S. 150 (1897), 706
- Hague v. C.I.O., 307 U.S. 496 (1939), 1126
- Hall v. DeCuir, 95 U.S. 485 (1878), 665
- Hamdan v. Rumsfeld, 548 U.S. 557 (2006), 42, **186**, 359, 441
- Hamdi v. Rumsfeld, 542 U.S. 507 (2004), **358–359**, 375, 431, 438, 1114
- Hammer v. Dagenhart, 247 U.S. 251 (1918), 41, 89, **95**, 99, 105, 114, 172, 195, 206, 229, 892, 897
- Harper v. Virginia Board of Elections, 383 U.S. 663 (1966), 806, **819–820**
- Healy v. The Beer Institute, 491 U.S. 324 (1989), 512
- Heart of Atlanta Motel, Inc. v. United States, 379 U.S. 241 (1964), **121–123**, 134, 139, 143, 149, 153, 210
- Hein v. Freedom from Religion Foundation, Inc., 551 U.S. 587 (2007), 308–309
- Heller v. Doe, 509 U.S. 312 (1993), 725

- Helvering v. Davis*, 301 U.S. 619 (1937), **172**, 174, 175
Hipolite Egg Co. v. United States, 220 U.S. 45 (1911), **93**, 96, 98
Hobbie v. Unemployment Appeals Commission, 480 U.S. 136 (1987), 1431
Hoke v. United States, 227 U.S. 308 (1913), **93**, 96, 98
Holden v. Hardy, 169 U.S. 366 (1898), **89**, 630, 873, 880, 884, 886
Holder v. Humanitarian Law Project, 561 U.S. (2010), 1022, 1099, **1102**
Hollingsworth v. Perry, 570 U.S. ____ (2013), **315**, 992
Home Building. & Loan Association v. Blaisdell, 290 U.S. 398 (1934), 535
Hopkirk v. Bell, 7 U.S. (3 Cranch) 454 (1806), 189
Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC, 565 U.S. 171 (2012), 1384, **1441**
Houston, East and West Texas Ry. Co. v. United States (The Shreveport Rate Case), 234 U.S. 342 (1914), **89**, 134, 153
Hudgens v. National Labor Relations Board, 424 U.S. 507 (1976), 1354, 1360, **1491**
Hughes v. Alexandria Scrap Corp., 426 U.S. 794 (1976), 482, **514**, 515
Humphrey's Executor v. United States, 295 U.S. 602 (1935), 364
Hunt v. Washington State Apple Advertising Comm'n, 432 U.S. 333 (1977), 510
Hunter v. Underwood, 471 U.S. 222 (1985), 652, **759**, 760
Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston, Inc., 515 U.S. 557 (1995), 1197, **1304**
Hurtado v. California, 110 U.S. 516 (1884), **614**, 616
Hustler Magazine, Inc. v. Falwell, 485 U.S. 46 (1988), **1190**, 1198, 1318
In re Debs, 158 U.S. 564 (1895), 100
In re Goodell, 39 Wisc. 232 (1875), 735
In re Marriage Cases, 43 Cal. 4th 757 (Cal. 2008), 729, **992**
In re Oliver, 333 U.S. 257 (1948), 624
In re Rahrer, 140 U.S. 545 (1891), 41, **84**, 204, 485, 486
INS v. Chadha, 62 U.S. 919 (1983), 218, **341**, 352
International Society For Krishna Consciousness, Inc. v. Lee, 505 U.S. 672 (1992), 1024, **1349**
Jackson v. Metropolitan Edison Company, 419 U.S. 345 (1974), 1490
Jacobellis v. Ohio, 378 U.S. 184 (1964), **233**, 1218
Jacobson v. Massachusetts, 197 U.S. 11 (1905), 884–886, **908**, 926, 1012
Johnson v. Eisentrager, 339 U.S. 763 (1950), 358
Johnson v. M'Intosh, 21 U.S. 543 (1823), 266
Jones v. Alfred H. Mayer, 392 U.S. 409 (1968), 1447, 1458, **1460–1461**
Jones v. United States, 529 U.S. 848 (2000), 42, **166**, 228, 439
Kassel v. Consolidated Freightways Corporation, 450 U.S. 662 (1981), 751
Katzenbach v. McClung, 379 U.S. 294 (1964), 42, 122, **128**, 130, 135, 139, 142, 143, 149, 153, 204, 1458
Katzenbach v. Morgan, 384 U.S. 641 (1966), 817, 1447, **1467**, 1470–1472, 1499, 1500, 1503–1505
Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church, 344 U.S. 94 (1952), 1427
Kentucky v. Wasson, 842 S.W.2d 487 (Ky. 1992), 235, 277, **278**, 858, 973, 974, 979, 982
Kerrigan v. Comm'r of Pub. Health, 289 Conn. 135 (Conn. 2008), **728**, 993
Kerry v. Din, 576 U.S. ____ (2015), 375, 442
Keyes v. School District No. 1, 413 U.S. 189 (1973), **698**, 763
Kimel v. Florida Board of Regents, 528 U.S. 62 (2000), 227
King v. Burwell, 576 U.S. ____ (2015), 42, **179**
Klopper v. North Carolina, 386 U.S. 213 (1967), 624
Knoxville Iron Co. v. Harbison, 183 U.S. 13 (1901), **877**, 880
Korematsu v. United States, 323 U.S. 214 (1944), 651, **675–676**, 703, 821
Lassiter v. Northampton County Bd. of Elections, 360 U.S. 45 (1959), 659, **1467**

- Lawrence v. Texas, 539 U.S. 558 (2003), 37, 540, 645, 658, 692, 728, 858, 867, 973, **982–983**, 990, 997
- Lee v. Weisman, 505 U.S. 577 (1992), 1383, **1399**, 1409, 1410
- Lemon v. Kurtzman, 403 U.S. 602 (1971), **1392–1393**, 1399, 1401, 1414
- Levitt v. Committee for Public Education, 413 U.S. 472 (1973), 1414
- License Cases (Thurlow v. Massachusetts), 46 U.S. (5 How.) 504 (1847), 520
- Linda R.S. v. Richard D., 410 U.S. 614 (1973), 313
- Livingston v. Moore, 32 U.S. (7 Pet.) 469 (1833), 552
- Lloyd v. Tanner, 407 U.S. 551 (1972), **1359**, 1361, 1364
- Lochner v. New York, 198 U.S. 45 (1905), 89, 101, 504, 508, 614, 615, 692, 724, 795, 821, 824, 857, 871, 877, **879**, 905, 912, 917, 918, 923, 933, 1003, 1005–1007
- Locke v. Davey, 542 U.S. 712 (2004), 1384, **1445**
- Loving v. Virginia, 388 U.S. 1 (1967), 651, **699**, 704, 850, 929, 966, 970, 977, 995, 998
- Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992), 307, **321**, 827
- Luther v. Borden, 48 U.S. (7 How.) 1 (1849), 290
- Lynch v. Donnelly, 465 U.S. 668 (1984), **1394**, 1396, 1409, 1411
- Lyng v. Northwest Indian Cemetery Protective Association, 485 U.S. 439 (1988), 1431
- Mabee v. White Plains Publishing Co., 327 U.S. 178 (1946), 204
- Maher v. Roe, 432 U.S. 464 (1977), 934
- Maine v. Taylor, 477 U.S. 131 (1986), **480**, 481, 483, 506, 507, 522
- Malloy v. Hogan, 378 U.S. 1 (1964), **624**, 640
- Mapp v. Ohio, 367 U.S. 643 (1961), **624**, 626, 640, 919
- Marbury v. Madison, 5 U.S. (1 Cranch) 137 (1803), 99, 133, 218, 235, **237–240**, 251, 254, 270, 301, 367, 368, 645, 860, 921, 1243, 1467
- Marcus Brown Holding Co., Inc. v. Feldman, 256 U.S. 170 (1921), 535
- Marsh v. Alabama, 326 U.S. 501 (1946), **1358**, 1361, 1476, 1490, 1491
- Marsh v. Chambers, 463 U.S. 783 (1983), 1405, **1412**
- Martin v. Hunter’s Lessee, 14 U.S. 304 (1816), 205, 214, 235, **253–254**, 259, 260, 265, 279
- Masses Publishing Co. v. Patten, 244 F. 535 (S.D.N.Y. 1917), 1022, 1051, **1052**, 1054, 1376
- Mathews v. Eldridge, 424 U.S. 319 (1976), 375, 402, 403, **405–406**, 429, 438
- Maxwell v. Dow, 176 U.S. 581 (1900), **614**, 615, 620, 626, 627
- McCleskey v. Kemp, 481 U.S. 279 (1987), 762
- McCreary County v. ACLU, 545 U.S. 844 (2005), 1410
- McCullen v. Coakley, 573 U.S. ____ (2014), 1342
- McCulloch v. Maryland, 17 U.S. 316 (1819), 35, 41, 48, **50**, 60, 91, 115, 154, 173, 193, 195, 204, 205, 215, 259, 264, 265, 885, 899, 1464, 1468
- McDonald v. Chicago, 561 U.S. 742 (2010), 631
- Meek v. Pittenger, 421 U.S. 349 (1975), **229**, 1415, 1416, 1423
- Memoirs v. Massachusetts, 383 U.S. 413 (1966), **1209**, 1212, 1213, 1218, 1229, 1234
- Metro Broadcasting, Inc. v. FCC, 497 U.S. 547 (1990), 773
- Meyer v. Nebraska, 262 U.S. 390 (1923), 381, 617, 701, 850, 857, 892, 898, 902, **904**, 917, 919, 922, 929, 963, 968, 998, 1065
- Miami Herald Publishing Co. v. Tornillo, 418 U.S. 241 (1974), 1023, **1206**, 1301
- Michael H. v. Gerald D., 504 U.S. 905 (1992), 858, **967**, 973
- Michael M. v. Superior Court, 450 U.S. 464 (1981), **744**, 761
- Michigan v. Long, 463 U.S. 1032 (1983), 235, **272**, 277, 278
- Milkovich v. Lorain Journal, 497 U.S. 1 (1990), 1190

- Miller v. California, 413 U.S. 15 (1973), 233, 1023, **1210–1211**, 1214, 1221, 1229, 1231, 1233, 1239, 1245, 1287
- Milliken v. Bradley (Milliken I), 418 U.S. 717 (1974), 698
- Mima Queen and Child v. Hepburn, 11 U.S. (7 Cranch) 290 (1813), 266
- Minersville School District v. Gobitis, 310 U.S. 586, (1940), 1024, **1288–1289**, 1293, 1297, 1300
- Minnesota v. Clover Leaf Creamery Co., 449 U.S. 456 (1981), 508–511
- Minor v. Happersett, 88 U.S. 182 (1874), 804
- Miranda v. Arizona, 384 U.S. 436 (1966), 433
- Mississippi Univ. for Women v. Hogan, 458 U.S. 718 (1982), **746**, 750, 1501
- Missouri ex rel. Gaines v. Canada, 305 U.S. 337 (1938), **667**, 683, 845
- Missouri v. Holland, 252 U.S. 416 (1920), 42, 167, 170, 171, **186**, 224
- Mitchell v. Helms, 530 U.S. 793 (2000), **229**, 1416, 1418, 1423, 1426
- M.L.B. v. S.L.J., 519 U.S. 102 (1996), **660**, 831, 998
- Monroe v. Pape, 365 U.S. 167 (1961), 386, 389, 390, **632**
- Moore v. East Cleveland, 431 U.S. 494 (1977), **961–962**, 969, 971, 977, 1015
- Moose Lodge No. 107 v. Irvis, 407 U.S. 163 (1972), 1447, **1484**
- Morehead v. New York, 298 U.S. 587 (1936), 104, **111**, 892
- Morrison v. Olson, 487 U.S. 654 (1988), **361**, 365
- Morse v. Frederick, 551 U.S. 393 (2007), 1024, **1369**
- Mueller v. Allen, 463 U.S. 388 (1983), **1415**, 1418
- Mugler v. Kansas, 123 U.S. 623 (1887), 880, 886, **1062**
- Muller v. Oregon, 208 U.S. 412 (1908), 101, 874, **889**
- Munn v. Illinois, 94 U.S. 113 (1876), 871
- Myers v. United States, 272 U.S. 52 (1926), 335, **364**
- NAACP v. Alabama, 357 U.S. 449 (1958), **316**, 919, 966, 1132
- NAACP v. Alabama, 377 U.S. 288 (1964), 1220
- National Federation of Independent Business v. Sebelius, 567 U.S. 519 (2012), 42, **155**, 157
- National League of Cities v. Usery, 426 U.S. 833 (1976), 191, 193, **197**, 202, 209, 217, 226, 230, 692
- Near v. Minnesota, 283 U.S. 697 (1931), 618, 619, 898, 1022, 1048, 1134, **1136**, 1140, 1144
- Nebbia v. New York, 291 U.S. 502 (1934), **892**, 902
- Nebraska Press Ass'n v. Stuart, 427 U.S. 539 (1976), 1099
- Nevada Department of Human Resources v. Hibbs, 538 U.S. 721 (2003), 1474
- New Energy Co. v. Limbach, 486 U.S. 269 (1988), 479–480
- New York v. Ferber, 458 U.S. 747 (1982), **1230**, 1231, 1234, 1244, 1246
- New York v. United States, 505 U.S. 144 (1992), 159, 177, 220, **226**, 227, 231, 1204
- New State Ice Co. v. Liebmann, 285 U.S. 262 (1932), 213, **516**
- New York City Transit Authority v. Beazer, 440 U.S. 568 (1979), 713
- New York Times Co. v. Sullivan, 376 U.S. 254 (1964), 1023, 1093, 1111, 1133, 1163, 1164, **1166**, 1182, 1184, 1189, 1191, 1194, 1204, 1207, 1208, 1336
- New York Times Co. v. United States, 403 U.S. 713 (1971), 1022, **1140**, 1204
- Nguyen v. Immigration and Naturalization Service, 533 U.S. 53 (2001), 749
- Nixon v. Fitzgerald, 457 U.S. 731 (1982), 366, **370**
- Nixon v. Herndon, 723 U.S. 536 (1927), **667**, 898
- Nixon v. United States, 506 U.S. 224 (1993), 235, **301**, 327, 366, 371
- NLRB v. Jones & Laughlin Steel Corp., 301 U.S. 1 (1937), 115, 127, 134, 142, 144, 148, 153, 206, **896**
- NLRB v. Noel Canning, 573 U.S. ____ (2014), 364
- Northern Securities Co. v. United States, 193 U.S. 197 (1904), 884

- Obergefell v. Hodges, 576 U.S. ____ (2015), 540, 730, 858, 990, 993, **995**, 1010
- Ogden v. Saunders, 25 U.S. 213 (1827), 535
- Oregon v. Henry, 732 P.2d 9 (Or. 1987), 235, 271, 277, 278, 1023, 1224, **1225**
- Oregon v. Mitchell, 400 U.S. 112 (1970), **1471–1473**, 1500
- Ortwein v. Schwab, 410 U.S. 656 (1973), 829–830
- Osborne v. Ohio, 495 U.S. 103 (1990), 1230
- Pace v. Alabama, 106 U.S. 583 (1883), 699, **702**
- Palko v. Connecticut, 302 U.S. 319 (1937), 538, **618**, 621, 623, 626, 627, 638, 922, 929, 942, 977
- Palmer v. Thompson, 403 U.S. 217 (1971), 704, **752**, 759, 761
- Palmore v. Sidoti, 466 U.S. 429 (1984), 651, 659, 699, **703**, 720, 724, 781
- Parents Involved in Community Schools v. Seattle School District No. 1, 551 U.S. 701 (2007), 652, **783**
- Paris Adult Theatre I v. Slaton, 413 U.S. 49 (1973), 1023, **1214–1215**, 1222, 1229
- Patterson v. Colorado, 205 U.S. 454 (1907), 1021, **1046–1048**, 1057
- Paul v. Davis, 424 U.S. 693 (1976), 375, **385**, 392, 396, 397, 400
- Paul v. Virginia, 75 U.S. (8 Wall.) 168 (1869), 524, 530, 538, **591–592**
- Perez v. United States, 402 U.S. 146 (1971), 42, **130**, 143, 152, 160, 169
- Permoli v. Municipality No. 1 of New Orleans, 44 U.S. (3 How.) 589 (1845), 552
- Perry Education Assn. v. Perry Local Educators' Assn., 460 U.S. 37 (1983), 1336, **1350**, 1352
- Personnel Administrator of Massachusetts v. Feeney, 442 U.S. 256 (1979), 652, **756**
- Philadelphia Newspapers, Inc. v. Hepps, 475 U.S. 767 (1986), **1190**, 1192
- Pickering v. Bd. of Education, 391 U.S. 563 (1968), **1365**, 1366
- Pierce v. Society of Sisters, 268 U.S. 510 (1925), 619, 892, 898, 902, **903–904**, 919, 922, 929, 963, 968, 977, 999, 1065, 1434
- Pierce v. United States, 252 U.S. 239 (1920), 1097
- Pike v. Bruce Church, Inc., 397 U.S. 137 (1970), **500**, 507, 510, 511, 515
- Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833 (1992), 233, 691, 693, 858, **934–935**
- Pleasant Grove City v. Summum, 555 U.S. (2009), 1379
- Plessy v. Ferguson, 163 U.S. 537 (1896), 100, 651, 666, **668**, 684–687, 690, 691, 735, 821, 822
- Plyler v. Doe, 457 U.S. 202 (1982), **715**, 718, 834
- Poe v. Ullman, 367 U.S. 497 (1961), 322, 324, 629, 857, **913–914**, 922, 963, 965, 970, 998, 1017
- Pointer v. Texas, 380 U.S. 400 (1965), **624**, 626
- Pollock v. Farmers' Loan Trust Co. (Pollock I), 157 U.S. 429 (1895), 100
- Pollock v. Farmers' Loan Trust Co. (Pollock II), 158 U.S. 601 (1895), 100
- Powell v. Alabama, 287 U.S. 45 (1932), 433, 540, **618**, 619
- Powell v. McCormack, 395 U.S. 486 (1969), 62, 235, **292**, 305, 324, 368
- Presbyterian Church in United States v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church, 393 U.S. 440 (1969), 1427
- Presser v. Illinois, 116 U.S. 252 (1886), **614**, 615, 637
- Prigg v. Pennsylvania, 41 U.S. (16 Pet.) 539 (1842), 443, **446–447**, 1451, 1452
- Prince v. Massachusetts, 321 U.S. 158 (1944), 929, 963, 966, **1434**, 1436
- Printz v. United States, 521 U.S. 898 (1997), 177, 191, 193, **220–222**, 226, 230, 231
- Prize Cases, 62 U.S. 635 (1863), 356
- Pruneyard Shopping Center v. Robins, 447 U.S. 74 (1980), 540, 1024, 1360, **1364**
- Railway Express Agency, Inc. v. New York, 336 U.S. 106 (1949), 660, 702, **707–708**, 713
- Rankin v. McPherson, 483 U.S. 378 (1987), 1195, **1366**
- Rasul v. Bush, 542 U.S. 466 (2004), 358

- R.A.V. v. St. Paul, 505 U.S. 377 (1992), 1023, 1105, 1111, 1241, 1243, **1273**, 1279, 1284, 1286
- Red Lion Broadcasting Co., Inc. v. FCC, 395 U.S. 367 (1969), 1023, **1200**
- Reed v. Reed, 404 U.S. 71 (1971), **736**, 737, 740, 741, 744, 1022, 1149
- Reed v. Town of Gilbert, Arizona, 576 U.S. ____ (2015), 1022, **1149**
- Reeves, Inc. v. Stake, 447 U.S. 429 (1980), 444, 482, **513**
- Regents of the University of California v. Bakke, 438 U.S. 265 (1978), 325, **772**
- Regina v. Keegstra, [1990] 3 S.C.R. 697 (Supreme Court of Canada), 1272
- Rendell-Baker v. Kohn, 457 U.S. 830 (1982), 1492, **1493**
- Reno v. American Civil Liberties Union, 521 U.S. 844 (1997), 1253
- Renton v. Playtime Theatres, Inc., 475 U.S. 41 (1986), **1255**, 1257, 1258, 1275
- Reynolds v. Sims, 377 U.S. 533 (1964), 652, 806, 809, **811**, 821, 822, 844, 909
- Reynolds v. United States, 98 U.S. 145 (1878), 1290, **1428**, 1433, 1436
- Richmond v. J.A. Croson Co., 488 U.S. 469 (1989), **772**, 777, 779
- Roberts v. City of Boston, 149 Mass. 346 (1849), **670**, 685
- Robins v. Pruneyard Shopping Center, 592 P.2d 341 (Ca. 1979), 540, 1024, **1360**, 1364
- Robinson v. California, 370 U.S. 660 (1962), 626, 857, **912**
- Rochin v. California, 342 U.S. 165 (1952), 857, **912**, 915, 1160
- Roe v. Wade, 410 U.S. 113 (1973), 44, 233, 525, 693, 839, 851, 855, 857, 866, **926–928**, 934, 935, 937, 939, 941, 942, 944, 952, 958, 961, 963, 966, 977, 979, 983
- Rogers v. Lodge, 458 U.S. 613 (1982), **750**, 753, 761
- Romer v. Evans, 517 U.S. 620 (1996), 727, 728, **982**, 986, 997, 1502
- Rosenberger v. Rectors and Visitors of the Univ. of Virginia, 515 U.S. 819 (1995), 1375, **1379**, 1416, 1418
- Ross v. Moffitt, 417 U.S. 600 (1974), 830
- Rostker v. Goldberg, 453 U.S. 57 (1981), 745
- Roth v. United States, 354 U.S. 476 (1957), 1111, 1149, 1170, 1177, **1209**, 1212, 1218, 1222, 1226, 1228, 1243, 1251, 1313
- Rumsfeld v. Forum for Academic and Institutional Rights, 546 U.S. 47 (2006), 1024, **1304**
- Rust v. Sullivan, 500 U.S. 173 (1991), **1367**, 1379
- Saenz v. Roe, 526 U.S. 489 (1999), 597, 637, 652, **832**
- San Antonio Independent School District v. Rodriguez, 411 U.S. 1 (1973), 652, 699, 713, 724, 829, **833–834**
- Santa Clara County v. Southern Pacific R.W. Co., 118 U.S. 394 (1886), 706
- Santa Fe Independent School District v. Doe, 530 U.S. 290 (2000), 1408
- Santosky v. Kramer, 455 U.S. 745 (1982), 831
- Scales v. United States, 367 U.S. 203 (1961), **1089**, 1098, 1112
- Schechter Poultry Corp. v. United States, 295 U.S. 723 (1935), **104**, 330, 893
- Schenck v. United States, 249 U.S. 47 (1919), 1022, 1054, **1056**, 1059, 1065, 1069, 1144
- Schilb v. Kuebel, 404 U.S. 357 (1971), 631
- Schlesinger v. Reservists Committee to Stop the War, 418 U.S. 208 (1974), **307**, 314
- Schneider v. New Jersey, 308 U.S. 147 (1939), 1024, 1070, 1291, 1292, 1330, **1332**, 1334, 1338, 1344, 1352, 1355, 1356
- School District of Abington Township v. Schempp, 374 U.S. 203 (1963), 1391, **1399**
- School District of Grand Rapids v. Ball, 473 U.S. 373 (1985), 1415
- Schuette v. Coalition to Defend Affirmative Action, 572 U.S. ____ (2014), 652, **794**
- Scott v. Negro Ben, 10 U.S. (6 Cranch) 3 (1810), 266
- Seminole Tribe of Florida v. Florida, 517 U.S. 44 (1996), 227
- Shapiro v. Thompson, 394 U.S. 618 (1969), 528, **831–832**, 834, 838
- Shelby County v. Holder, 570 U.S. ____ (2013), 818

- Sheldon v. Sill, 49 U.S. (8 How.) 441 (1850), **279–280**, 285
- Shelley v. Kraemer, 334 U.S. 1 (1948), 667, 1447, 1458, 1461, **1475–1477**, 1486, 1488, 1494, 1501
- Sherbert v. Verner, 374 U.S. 398 (1963), 385, **1430**, 1433, 1435, 1439
- Simon v. Eastern Kentucky Welfare Rights Organization, 426 U.S. 26 (1976), 313
- Skilling v. United States, 561 U.S. (2010), 375, **420**
- Skinner v. Oklahoma, 316 U.S. 535 (1942), 659, 701, 795, 821, 822, 839, 844, 851, 857, **909**, 915, 917, 919, 926, 929, 963, 977, 998
- Skinner v. Switzer, 562 U.S. 521 (2011), 375, **434**
- Slaughter-House Cases, 83 U.S. 36 (1873), 34, 538, 546, **596–597**, 610, 614, 621, 636, 637, 644, 651, 664, 665, 668, 669, 732, 733, 795, 833, 859, 860, 871, 905, 909, 1041, 1449, 1452
- Smith v. Allwright, 321 U.S. 649 (1944), 667, **805–806**, 1476
- Snyder v. Phelps, 562 U.S. 443 (2011), 1023, **1193**
- Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers, 531 U.S. 159 (2001), 42, **166**
- Sorrell v. IMS Health, Inc., 564 U.S. 1127 (2011), 1024, **1325**
- South Carolina v. Katzenbach, 383 U.S. 301 (1966), 806, **817**, 1467, 1503–1505
- South Dakota v. Dole, 483 U.S. 203 (1987), 42, 173, **174**, 177
- Southern Pacific Company v. Arizona, 325 U.S. 761 (1945), 443, **484**
- Southern R. Co. v. United States, 222 U.S. 20 (1911), **89**, 94
- Spence v. Washington, 418 U.S. 405 (1974), 1024, 1305, **1309**, 1316
- Stafford v. Wallace, 258 U.S. 495 (1922), **108**, 153
- Stanley v. Georgia, 394 U.S. 557 (1969), 926, 978, **1209–1210**, 1214, 1217, 1219, 1229, 1230, 1236
- Stanley v. Illinois, 405 U.S. 645 (1972), 381, **831**, 971
- Steffel v. Thompson, 415 U.S. 452 (1974), 323
- Stenberg v. Carhart, 530 U.S. 914 (2000), 945
- Steward Machine Co. v. Davis, 301 U.S. 548 (1937), **172**, 176
- Stone v. Graham, 449 U.S. 39 (1980), 1412
- Stromberg v. California, 283 U.S. 359 (1931), 618, 898, 1136, 1170, 1268, 1295, **1308**, 1311, 1316
- Sturges v. Crowninshield, 17 U.S. (4 Wheat.) 122 (1819), 456
- Supreme Court of Virginia v. Friedman, 487 U.S. 59 (1988), 444, **528**
- Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1 (1971), **697**, 770
- Sweatt v. Painter, 339 U.S. 629 (1950), **667**, 683, 685, 686, 779
- Swift & Co. v. United States, 196 U.S. 375 (1905), **88**, 115, 118, 765, 766
- Tennessee v. Lane, 542 U.S. 509 (2004), 226, **1474**
- Texas v. Johnson, 491 U.S. 397 (1989), 1024, 1105, 1113, 1197, **1314–1315**
- The Antelope, 23 U.S. (10 Wheat.) 66 (1825), 266
- The Emily and the Caroline, 22 U.S. (9 Wheat.) 381 (1824), 266
- The Merino, 22 U.S. (9 Wheat.) 391 (1824), 266
- The St. Jago de Cuba, 22 U.S. (9 Wheat.) 409 (1824), 266
- Thomas v. Review Board of Indiana Employment Security Div., 450 U.S. 707 (1981), 1431
- Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969), 1127, 1311, 1316, 1330, **1367**
- Town of Greece v. Galloway, 573 U.S. ____ (2014), 1004, 1383, **1412**
- Troxel v. Granville, 530 U.S. 57 (2000), 967
- Turner v. Rogers, 564 U.S. 431 (2011), 831
- Twining v. New Jersey, 211 U.S. 78 (1908), 538, **615**, 619–622, 638, 905
- U.S. R.R. Retirement Bd. v. Fritz, 449 U.S. 166 (1980), 709, **900**
- U.S. Term Limits, Inc. v. Thornton, 514 U.S. 779 (1995), 41, **62**, 353

- United Brotherhood of Carpenters v. Scott, 463 U.S. 825 (1983), 1497
- United Building Construction Trades Council v. Mayor and Council of Camden, 465 U.S. 208 (1984), 530
- United Haulers Association, Inc. v. Oneida-Herkimer Solid Waste Management Authority, 550 U.S. 330 (2007), 504
- United States v. Alvarez, 567 U.S. 709 (2012), 1250
- United States v. Butler, 297 U.S. 1 (1936), **171–173**, 174, 206, 233, 893
- United States v. Carolene Products Co., 304 U.S. 144 (1938), 857, **897**, 1082
- United States v. Comstock, 130 S. Ct. 1949 (2010), 61
- United States v. Cruikshank, 92 U.S. 542 (1876), 538, 610, **611**, 614, 637, 648, 1050, 1279, 1363, 1452, 1453
- United States v. Curtiss-Wright Export Corp., 299 U.S. 304 (1936), **181**, 330
- United States v. Darby, 312 U.S. 100 (1941), 42, **112**, 117, 119, 127, 134, 141, 153, 160, 197, 199, 204–206, 210, 230
- United States Department of Agriculture v. Moreno, 413 U.S. 528 (1973), 714
- United States v. E.C. Knight Co., 156 U.S. 1 (1895), **88**, 100, 118
- United States v. Eichman, 496 U.S. 310 (1990), 1325
- United States v. Guest, 383 U.S. 745 (1966), **1496**, 1502
- United States v. Kokinda, 497 U.S. 720 (1990), 1330, 1351, **1355**
- United States v. Kras, 409 U.S. 434, (1973), 830
- United States v. Lee, 455 U.S. 252 (1982), **1431**, 1434, 1436
- United States v. Lopez, 514 U.S. 549 (1995), 37, 130, 131, 133, 138, 143, 149, 153, 166, 167, 169, **228**, 1499
- United States v. Morrison, 529 U.S. 598 (2000), 37, 42, 130, **131**, 150, 153, 167, 170, 228, 1447, 1495, 1499
- United States v. Nixon, 418 U.S. 683 (1974), 235, 301, 327, **366**, 371
- United States v. O'Brien, 391 U.S. 367 (1968), 752, 761, 1024, 1105, 1301, **1305**, 1311, 1313, 1316, 1329
- United States v. Playboy Entertainment Group, Inc., 529 U.S. 803 (2000), 1022, **1146**, 1147, 1235, 1243
- United States v. Richardson, 418 U.S. 166 (1974), 308
- United States v. Stanley, 483 U.S. 669 (1987), 970
- United States v. Stevens, 559 U.S. (2010), 1023, 1112, **1242**
- United States v. Texas, 579 U.S. ____ (2016), 331
- United States v. Virginia, 518 U.S. 515 (1996), 660, **747**, 749, 750, 1501
- United States v. Windsor, 570 U.S. ____ (2013), 307, 729, 858, **993**, 997
- United States Trust Co. v. New Jersey, 431 U.S. 1 (1977), 536
- Vacco v. Quill, 521 U.S. 793 (1997), 1014
- Valley Forge Christian College v. Americans United for Separation of Church and State, Inc., 454 U.S. 464 (1982), **308**, 827
- Van Orden v. Perry, 125 U.S. 1240 (2005), 1410–1411
- Vieth v. Jubelirer, 541 U.S. 267 (2004), 652, **826**, 827
- Village of Belle Terre v. Boraas, 416 U.S. 1 (1974), 962, 963, **965–966**
- Village of Willowbrook v. Olech, 528 U.S. 562 (2000), 711
- Virginia v. Black, 538 U.S. 343 (2003), 1023, **1277**, 1371
- Virginia v. Rives, 100 U.S. 313 (1880), **666**, 1501
- Virginia Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc., 425 U.S. 748 (1976), 1243
- Walker, Chairman, Texas Department of Motor Vehicles Board v. Texas Division, Sons of Confederate Veterans, 576 U.S. ____ (2015), 1024, **1379**
- Walker v. Sauvinet, 92 U.S. 90 (1876), 614–615
- Wallace v. Jaffree, 472 US 38 (1985), 1391, **1395**, 1397, 1399
- Ward v. Rock Against Racism, 491 U.S. 781 (1989), 1147, **1334–1335**
- Ware v. Hylton, 3 U.S. (3 Dall.) 199 (1796), 189, **253**

- Warth v. Seldin, 422 U.S. 490 (1975), 235, **309**, 312, 313, 320
- Washington v. Davis, 426 U.S. 229 (1976), 652, 751, **753**, 756, 757, 762, 763, 825
- Washington v. Glucksberg, 521 U.S. 702 (1997), 423, 442, 640, 858, 1000, 1005, 1012, **1014–1015**
- Washington v. Texas, 388 U.S. 14 (1967), 624
- Watchtower Bible and Tract Society of New York v. Village of Stratton, 536 U.S. 150 (2002), 1024, **1355**
- W. B. Worthen Co. v. Thomas, 292 U.S. 426 (1934), 535
- Weaver v. Palmer Bros. Co., 270 U.S. 402 (1926), 889
- Wesberry v. Sanders, 376 U.S. 1 (1964), **809**, 812–814
- West Coast Hotel Co. v. Parrish, 300 U.S. 379 (1937), 107, **112**, 692, 693, 892, 918, 923, 943
- West Virginia Board of Education v. Barnette, 319 U.S. 624 (1943), 1024, **1293**, 1300, 1301, 1304, 1311, 1312, 1314, 1316
- Whitman v. American Trucking Associations, Inc., 531 U.S. 457 (2001), 330
- Whitney v. California, 274 U.S. 357 (1927), 898, 1022, 1062, **1063**, 1069, 1078, 1096, 1097, 1109, 1170, 1174
- Wickard v. Filburn, 317 U.S. 111 (1942), 42, **116**, 120, 127, 129, 135, 138, 141, 148, 159, 160, 169, 203, 207, 210, 476
- Williams v. Florida, 399 U.S. 78 (1970), 631
- Williamson v. Lee Optical of Oklahoma, Inc., 348 U.S. 483 (1955), 723, 743, 856, **899–900**
- Wilson v. Black-Bird Creek Marsh Co., 27 U.S. (2 Pet.) 245 (1829), 520
- Wisconsin v. Mitchell, 508 U.S. 476 (1993), 1277
- Wisconsin v. Yoder, 406 U.S. 205 (1972), **1430**, 1434, 1438, 1439
- Witters v. Washington Department of Services for the Blind, 474 U.S. 481 (1986), 1415
- Wolman v. Walter, 433 U.S. 229 (1977), 229, **1415**, 1416
- Woods v. Miller Co., 333 U.S. 138 (1948), 42, **183**
- Wooley v. Maynard, 430 U.S. 705 (1977), 1024, 1232, **1300**, 1304, 1434
- Worcester v. Georgia, 31 U.S. (6 Pet.) 515 (1832), 266
- Wygant v. Jackson Board of Ed., 476 U.S. 267 (1986), 772
- Yick Wo v. Hopkins, 118 U.S. 356 (1886), **666**, 671, 750, 754, 757, 813, 821, 911
- Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952), **331–332**, 368
- Zablocki v. Redhail, 434 U.S. 374 (1978), 652, **848**, 995, 998
- Zelman v. Simmons-Harris, 536 U.S. 639 (2002), 1383, 1397, **1417**, 1445
- Zobrest v. Catalina Foothills School District, 509 U.S. 1 (1993), 1415

Table of Authorities

The authorities cited in this text are listed on conlawincontext.com.

Permissions

Curtis, Michael Kent. *Albion Tourgee* in the *American National Biography*, edited by John Garraty. Copyright 1999 by the American Council of Learned Societies. Used by permission of Oxford University Press.

Curtis, Michael Kent. Book Review of *We the People: Transformations*, 42 *American Journal of Legal History*. 417 (1988), reprinted with the permission of the publisher and the author.

Curtis, Michael Kent. *Free Speech: The People's Darling Privilege: Struggles for Freedom of Expression in American History* (Duke University Press, 2000), reprinted by permission.

Emerson, Thomas. *The System of Freedom of Expression* (© 1970 by Thomas I. Emerson). Used by permission of Random House, Inc.

Gillman, Howard. *The Constitution Besieged: The Rise and Fall of Lochner Era Jurisprudence*, 76–77, 114–116 (Duke University Press, 1993), reprinted with the permission of the Duke University Press.

Huhn, Wilson. *The Five Types of Legal Argument*, 152–156 (Carolina Academic Press, 2002), reprinted with the permission of the publisher and author.

Irons, Peter. *The Courage of Their Convictions: Sixteen Americans Who Fought Their Way to the Supreme Court*, 393–396 (© 1988, Peter Irons) reprinted with the permission of The Free Press, A Division of Simon & Schuster Adult Publishing Group and the author.

Kalven, Harry, The New York Times Case: *A Note on "the Central Meaning of the First Amendment"* *Supreme Court Review* (© 1964, University of Chicago Press), reprinted with the permission of the University of Chicago Press.

Linde, Hans. *Clear and Present Danger Re-examined: Dissonance in the Brandenburg Concerto*, 22 *Stan. L. Rev.* 1163 at 1171 and 1174 (1970), reprinted with the permission of the *Stanford Law Review*.

Urofsky, Melvin I and Finkelman, Paul. "Justices of the U.S. Supreme Court", in *A March of Liberty: A Constitutional History of the United States*, 2 vols. pp. A 28–A 36, (New York: Oxford University Press, 2002) reprinted with permission of the publisher.

Wharton, Vernon. *The Negro in Mississippi (1865–1890)*, 187, 185, 191 (University of North Carolina Press, 1947), reprinted with the permission of the publisher.

The authors would also like to thank LEXIS-NEXIS Group and West Group for granting permission to access electronic forms of the case law material used in this book from LEXIS and Westlaw. The cases have been obtained with the permission of LEXIS-NEXIS Group and West Group. Copyrights to any original material held by LEXIS-NEXIS, a division of Reed Elsevier Inc. and West Group. No copyright is claimed as to any part of the original work prepared by a government officer or employee as part of that person's official duties.

A Timeline of American Constitutional History

Constitutional law can best be understood in light of American history. The following chronology will give you some historical context. It is designed to be a supplement to your reading of the cases. You should review the chronology now, and also refer to it as you read cases from different time periods throughout the course. If you review the chronology periodically during the semester, it will deepen your understanding of the cases.

- 1215:** The Magna Carta imposes restrictions on the English monarch, establishing the principle that no person is above the law.
- 1454–55:** Gutenberg prints a Bible using moveable type. The advent of type creates printed books.
- 1492–1600s:** Various European countries explore the New World, making claims on the land under various theories that they developed to legitimize European settlement of Indian lands.
- 1514–17:** Spanish begin to import Africans to the New World colonies to serve as slaves.
- 1517:** The Protestant Reformation begins. Within a few decades, most churches of northern Europe, including the Church of England, have withdrawn from papal jurisdiction and have been placed under civil authority.
- 1607:** English colonists land at Jamestown, Virginia, marking the first permanent English settlement in North America.
- 1619:** The first blacks come to Virginia as indentured servants, but by 1640 slavery has taken root in Virginia.
- 1620:** The Pilgrims land at Plymouth Rock, adopting a compact for self-government.
- 1640:** The English Revolution begins; Charles I is tried and beheaded in 1649.
- 1649:** The English Levellers propose an Agreement of the People with expanded parliamentary franchise and limitations on the power of government (including Parliament) in the interest of individual liberty.
- 1680:** John Locke's *The Second Treatise of Government* challenges absolute monarchy.

- 1688–89:** The English “Glorious Revolution” establishes the primacy of Parliament over the Crown. Parliament replaces the Crown as England’s sovereign.
- 1689:** Parliament passes the English Bill of Rights. The Bill of Rights declares that levying money for the use of the Crown without the consent of Parliament is illegal; that it is the right of subjects to petition the King, and all prosecutions for such petitioning are illegal; that the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament; that excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted; and that parliaments ought to be held frequently. The Bill of Rights was an act of Parliament, so it could be repealed by subsequent Parliaments. It limited the power of the King, not Parliament.
- First printed newspapers; printed news sheets existed earlier during the English revolution of the 1640s.
- 1735:** The jury acquits journalist John Peter Zenger in New York on the charge of seditious libel. The case is an early landmark in “freedom of the press.” Zenger’s counsel had argued that writing the truth about political affairs is one of the privileges of freeborn Englishmen and is not a crime.
- 1754:** In anticipation of a war with France, Benjamin Franklin proposes the Albany Plan of Union which would have established a “Grand Council” of representatives of all the Colonies.
- 1761:** *Writs of Assistance Case.* James Otis, in the Massachusetts colony, challenges writs of assistance (general search warrants that allowed searches without specifying in advance the person or place to be searched). Otis argues, even if authorized by Parliament, the writs are illegal because “An Act Against the Constitution is void.”
- 1763:** The French and Indian War ends; Britain issues Proclamation of 1763 to stop colonists from settling west of the Appalachian Mountains. This is the first of a number of new laws and regulations that create conflict between Britain and the colonies, ultimately leading to the American Revolution.
- 1765:** Parliament passes the Stamp Act. Widespread protests against “taxation without representation” unify the colonies in their conflict with Britain. The Stamp Act Congress meets in New York. Delegates from nine colonies protest the Stamp Act and plan concerted action against the policies of Parliament. Congress asserts that it is “the undoubted right of Englishmen, that no taxes be imposed on them but with their own consent, given personally or by their representatives.”
- Parliament passes the “Quartering Act” which allows the British Army to use privately owned buildings to house troops.

- 1772: In *Somerset v. Stewart*, the Court of King's Bench in London frees a slave brought into England by his master, establishing the principle that slavery could not exist on English soil.
- 1773: The Boston Tea Party. In response to a tax on tea, the Sons of Liberty dump hundreds of pounds of tea into the Boston Harbor.
- 1774: In response to the Boston Tea Party, Parliament passes the Intolerable Acts, which deprive Massachusetts of self-government.
- 1775: American Minutemen meet British Redcoats at Lexington and Concord. The American Revolution begins with "the shot heard round the world."
- 1776: The *Declaration of Independence* of the colonies from Great Britain: "We hold these truths to be self-evident: that all men are created equal; that they are endowed, by their Creator, with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends it is the right of the people to alter or abolish it..."
- 1776–90: The first state constitutions are adopted. They vary greatly: all but two have a religious test for office holding, some have broad adult male suffrage, many allow free blacks to vote, and some have property requirements for voting. New Jersey allows women to vote (but the state abrogates this right in the early 1800s).
- 1781: Surrender of British forces at Yorktown, Virginia ends most military hostilities in the Revolution. The states ratify the *Articles of Confederation*, the first American federal constitution for the thirteen new states.
- 1783: The Treaty of Paris ends the American Revolution.
- 1787: The Constitutional Convention in Philadelphia proposes the United States Constitution. It is ratified in 1788 after heated Federalist-Anti-Federalist debate. James Madison, Alexander Hamilton, and John Jay write pro-union editorials, now known as *The Federalist Papers*.
Meeting under the Articles of Confederation, the Congress passes the Northwest Ordinance, which sets up a system of government for territories as a prelude to statehood. The Ordinance also bans slavery in the area north of the Ohio River.
- 1789: George Washington is inaugurated as the first President of the United States. The First Congress convenes; the Bill of Rights is proposed; and Congress enacts the Judiciary Act of 1789, which creates the federal courts.
- 1791: The Bill of Rights is ratified by the requisite number of states.
Congress establishes the First Bank of the United States; Washington signs the bank bill into law over the protest of James Madison and Thomas Jefferson, who claim that Congress has no power to create a bank.

- 1793:** Congress enacts the first Fugitive Slave Law. The Supreme Court decides *Chisholm v. Georgia*, which allows citizens of one state to sue the government of another state.
- Eli Whitney invents a gin to remove seeds from cotton, which revives the moribund institution of slavery by making the production of cotton in the South much more profitable.
- 1795:** The 11th Amendment is ratified, effectively overruling *Chisholm v. Georgia*, which had allowed a citizen of one state to sue another state.
- The Sedition Act criminalizes “false and malicious” criticisms of the President or Congress (but not of the Vice President). As construed, it reaches false opinions as well as false facts.
- 1800:** Jeffersonian Republicans defeat the Federalists to win majorities in both houses of Congress for the first time. The Federalist Party never again wins control of either house of Congress and disappears by 1815.
- 1801:** Thomas Jefferson is elected President by the House of Representatives after tying Aaron Burr in Electoral College votes. This leads to the adoption of the 12th Amendment in 1804. The Sedition Act expires and President Jefferson pardons violators.
- 1801–24:** Marshall Court’s expansive nationalist phase.
- 1803:** *Marbury v. Madison*: The Court, in an opinion by Chief Justice John Marshall, articulates the principle of judicial review, allowing the Supreme Court to decide on the constitutionality of acts of Congress. The Court declares a section of the Judiciary Act of 1789 unconstitutional.
- The Louisiana Purchase doubles the territory of the United States.
- 1807:** Robert Fulton’s *Clermont* proves steam to be a practical source of power for river craft, heralding the beginning of the steam age.
- New Jersey abolishes property and tax-paying qualifications for voting but only for *white males*. (Maryland follows in 1810.)
- 1808:** Congress bans the importation of new African slaves.
- 1811:** The charter of the Bank of United States expires and is not renewed because Jeffersonian Republicans control Congress and the presidency.
- 1812–15:** A second war with Britain. After the peace treaty is signed, but before word reaches Louisiana, American troops under the command of Andrew Jackson win the Battle of New Orleans.
- 1813:** Organization of the Boston Manufacturing Company to produce cotton cloth in Waltham, Massachusetts. The United States begins to evolve from a commercial and agricultural nation into an industrial one.
- 1816:** *Martin v. Hunter’s Lessee*: The Court reviews and reverses a decision of a state supreme court interpreting a matter of federal law.

President Madison successfully urges Congress to establish the Second Bank of the United States with a twenty year charter. In supporting the new bank, Madison waives all constitutional objections to the bank.

1817–25: New York builds the Erie Canal. It connects the Great Lakes to the Hudson River, which in turn flows into the Atlantic Ocean, furthering economic integration between the Midwest and East Coast.

1819: *McCulloch v. Maryland*: The Court upholds the power of Congress to establish a Bank of the United States and offers an expansive interpretation of the powers of the national government.

The Panic of 1819, the nation's first depression since the Constitution was adopted, leads to hostility towards the Bank of the United States, which calls in loans in the wake of the panic.

1819: *Dartmouth College v. Woodward*: The Court uses the Contract Clause to provide a constitutional foundation for the protection of corporations from arbitrary interference by states.

1820: The Missouri Compromise prohibits slavery in all federal territory above 36 degrees 30 minutes (north and west of Missouri); territory south of that latitude remains open to slavery.

1821: New York abolishes its property qualification for voting for white males over the opposition of conservatives. New York retains its property qualification for black male voters. During the next two decades, most states will drop property qualifications for white voters, while Pennsylvania, Tennessee, and North Carolina take the vote away from black men.

1824: *Gibbons v. Ogden*: In a very popular opinion, Chief Justice Marshall strikes down a steamboat monopoly in New York with a broad definition of commerce.

After no candidate receives a majority of the Electoral College votes, John Quincy Adams is elected President by the House of Representatives. Andrew Jackson, who won the most popular and electoral votes, complains that he lost the election because of a corrupt bargain between Adams and the man who ran fourth, Henry Clay.

1824–33: Marshall Court's defensive, or more cautious, phase.

1828: Congress passes the "Tariff of Abominations," raising import duties on most goods far beyond what is needed to raise revenue for the nation. Andrew Jackson is elected President.

1830: The first 13 miles of the Baltimore and Ohio Railroad opens, initiating railroad passenger travel in the United States. President Jackson vetoes the "Maysville Road Bill," asserting that Congress has no power to finance a road built entirely within one state (Kentucky), even though the road is part of the larger National Road, which crosses many state lines.

- 1831:** William Lloyd Garrison publishes the first issue of the radical abolitionist periodical, the *Liberator*. In Virginia, Nat Turner leads the bloodiest slave revolt since the colonial period.
- Chief Justice Marshall decides that the Cherokee Nation has no standing to sue in a federal court in *Cherokee Nation v. Georgia*. The decision sets the stage for the Indian Removal Act.
- 1832:** *Worcester v. Georgia*: The Court rejects Georgia's claim to sovereignty over Indian lands, but the United States Government refuses to enforce the ruling.
- South Carolina issues an "Ordinance of Nullification," declaring it will not allow the new tariff of 1832 to be enforced in the state. President Jackson responds with his "Proclamation to the People of South Carolina," warning them not to challenge the national government in this manner. In 1833, Congress passes the "Force Bill," authorizing the President to use the military to enforce the laws. South Carolina rescinds its nullification of the tariff, but in a last moment of defiance, nullifies the "Force Bill."
- President Jackson vetoes the bill to re-charter the Bank of the United States, declaring that despite the Court's decision in *McCulloch v. Maryland*, he finds the law to be unconstitutional.
- 1833:** *Barron v. Baltimore*: The Court holds that the guarantees of the Bill of Rights limit only the federal government, not the states; President Jackson orders the Secretary of the Treasury to remove federal deposits from the Bank of the United States. After two Secretaries refuse to comply, Roger B. Taney, as acting Secretary, follows President Jackson's instructions.
- 1835:** Roger Taney is appointed Chief Justice by Andrew Jackson, replacing John Marshall (1801–35). The Taney Court lasts from 1835 until 1864.
- The American Anti-slavery Society calls for the immediate abolition of slavery and it sends anti-slavery publications to the Southern elite. Men break into the Charleston post office and burn the abolitionist publications. The New York postmaster embargoes abolitionist publications. Mobs attack abolitionists in various Northern cities.
- In his 7th Annual Message to Congress, Andrew Jackson urges removal of the Indians living east of the Mississippi.
- 1836:** Gag rule: The House of Representatives bans reading or discussion of petitions for abolition of slavery.
- American women attending the World's Anti-Slavery Convention in London are refused permission to speak and are allowed to attend only if they sit behind a screen. They vow to have a women's rights convention when they return to America, leading to the Seneca Falls Convention in 1848.

- 1837:** Elijah P. Lovejoy, anti-slavery editor, is killed defending his newspaper press from an anti-abolitionist mob in Alton, Illinois.
Charles River Bridge v. Warren Bridge Co.: Chief Justice Taney offers an interpretation of the Contract Clause of the Constitution, allowing a state to charter a new bridge that harms the interest of an existing company.
The nation suffers the Panic of 1837, a major depression, in part caused by Jackson removing federal deposits from the Bank of United States.
- 1841:** Dorr's Rebellion in Rhode Island results in the final elimination of property restrictions on the right to vote.
- 1842:** *Prigg v. Pennsylvania:* The Court upholds the Fugitive Slave Law of 1793 despite its lack of procedural protections for free blacks who might be wrongly seized as fugitive slaves. At the same time, the Court strikes down Pennsylvania's "personal liberty law," which had required that a state judge hold a hearing before anyone could remove a black from the state as a fugitive slave.
- 1844:** The electric telegraph is inaugurated for commercial use.
Frederick Douglass, an escaped slave, publishes *Narrative of the Life of Frederick Douglass*. He goes on to work with the Underground Railroad, to co-found and edit an abolitionist newspaper, the *North Star* (1847–1860), and to serve as United States ambassador to Haiti after the Civil War.
- 1845:** United States annexes Texas.
- 1846:** The United States wins vast new territory in the Mexican War. But the new territory reopens conflicts over the extension of slavery to new territories.
- 1848:** Seneca Falls Women's Rights Convention begins movement for women's suffrage and other women's rights.
- 1850:** The Compromise of 1850 brings California into the Union as a free state, bans the public sale of slaves in the District of Columbia, allows slavery in the remaining territory acquired in the war with Mexico (the Mexican Cession), and settles a boundary dispute between Texas and New Mexico. The most important provision is the Fugitive Slave Law of 1850, which creates a new system for returning fugitive slaves that involves using federal marshals, the army, the navy, and newly appointed federal commissioners in every county. The law has harsh penalties for people who help fugitive slaves and does not allow alleged slaves to testify at hearings on their status.
- 1851–61:** Numerous protests, riots, and rescues involving fugitive slaves. Two major cases, *Ableman v. Booth* (1859) and *Kentucky v. Dennison* (1861), go to the Supreme Court. In *Ableman*, the Court upholds the consti-

- tutionality of the new fugitive slave law and rejects the idea that a state can interfere with the implementation of the law. In *Dennison*, decided after seven states had seceded, the Court held that the federal government cannot force a state governor to remand a fugitive from justice to another state.
- 1852:** *Cooley v. Board of Wardens*: The Court recognizes the states' ability to regulate commercial areas of local concern in the absence of federal legislation.
- Harriet Beecher Stowe publishes *Uncle Tom's Cabin*. The book is a national best seller, but is banned in most of the slave states.
- 1854:** With the Kansas-Nebraska Act, Congress repeals part of the Missouri Compromise by allowing slavery in federal territories north and west of Missouri. The Act allows settlers in these territories to decide the issue of slavery under a theory known as "popular sovereignty."
- The Anti-Nebraska Movement, in response to the new law, soon leads to the creation of the Republican Party, founded to oppose the expansion of slavery into the territories.
- 1857:** *Dred Scott v. Sandford*: The Court rules that Congress lacks the power to outlaw slavery in federal territories and that even free blacks cannot be citizens of the United States.
- Hinton Helper publishes the *Impending Crisis*, an indictment of slavery. Members of the Republican Party use the book as a campaign document. Southern states treat circulation of the book as a crime.
- 1859:** John Brown raids the federal arsenal at Harpers Ferry in order to begin a slave-manned guerilla war in the South. Daniel Worth, a minister, is prosecuted in North Carolina for circulating the *Impending Crisis* among whites. Worth is charged under a North Carolina statute that bans circulation of books tending to make free Negroes or slaves discontent with their condition.
- Charles Darwin publishes *Origin of Species*.
- 1860:** North Carolina Supreme Court affirms Worth's conviction; Abraham Lincoln's election as a Republican President, on a platform opposing further expansion of slavery, leads South Carolina to secede. It is quickly followed by six other Southern states.
- 1861:** The Confederate attack on Fort Sumter begins the Civil War. Four more states leave the Union.
- 1862:** Homestead Act provides 160 acres of free land to settlers who cultivate it. Morrill Act permits Congress to provide land to states for the establishment of colleges.
- 1863:** The Emancipation Proclamation frees only the slaves residing in states "in rebellion against the United States."

- 1864:** National Banking Act provides the framework for a national banking system.
- 1865:** Confederate General Robert E. Lee surrenders to Union General Ulysses S. Grant at Appomattox. Five days later President Lincoln is assassinated.
Andrew Johnson becomes President after Lincoln's assassination.
The 13th Amendment is ratified. With slavery abolished, Congress faced the prospect of returning southern states, unbounded by the 3/5ths clause, gaining greater representation in the House of Representatives and Electoral College because of disenfranchised newly freed slaves.
Former slave states begin to pass harsh "Black Codes" that limit the legal, social, and political rights of blacks.
The first African American is licensed to practice before the U.S. Supreme Court.
- 1865–77:** Reconstruction era. A White and Black Republican coalition rules the South. Ultimately, Republicans and blacks are driven from power by political terrorism. The "Jim Crow" era is later entrenched by racist laws requiring segregation in various aspects of public and private life.
- 1866:** Congress passes the Civil Rights Act of 1866, basing its authority on the new 13th Amendment. Questions about the constitutionality of the law under the 13th Amendment, together with concerns about the repression of civil liberty in the South before the Civil War, lead Congress to propose the 14th Amendment.
- 1867:** Alaska (admitted as the 49th state in 1959) is purchased from Russia.
The Patrons of Husbandry is organized and starts the farmer's protest movement known as the Granger Movement.
Kansas holds a state referendum on whether to enfranchise blacks, women, or both. Lucy Stone, Susan B. Anthony, and Elizabeth Cady Stanton traverse the state speaking in favor of women's suffrage. Both black suffrage and women's suffrage are voted down.
- 1868:** President Johnson is impeached, but the Senate fails, by one vote, to convict and remove him from office.
The 14th Amendment is ratified by the requisite number of states. Susan B. Anthony and Elizabeth Cady Stanton bitterly oppose the Amendment because § 2 reduces a state's congressional representation *only* if it restricts the voting rights of *males*.
- 1869:** The first transcontinental railroad is completed.
Ex Parte McCordle: The Court seemingly recognizes the power of Congress to control the appellate jurisdiction of the federal courts, at least in the facts of that case.

The Wyoming Territory grants women's suffrage, the first jurisdiction to do so since New Jersey abolished women's suffrage early in the century.

1870: The 15th Amendment is ratified by the requisite number of states, giving the right to vote to black men, but not to women.

Victoria Woodhull addresses the Judiciary Committee of the House of Representatives arguing that women have the right to vote under the 14th Amendment and asking for congressional enforcement. A divided Judiciary Committee issues a negative report.

1870–1900: The last three decades of the 19th century are known as the Gilded Age because of the rise of great and ostentatious concentrations of wealth. During this time period, great corporations are organized and businesses are merged and consolidated into larger units. Laissez faire economics and limited government are strong ideologies, but this is also an era of some reform legislation such as the Sherman Anti-trust Act and the Interstate Commerce Act. All Presidents during this time period are Republican except for Grover Cleveland, a conservative Democrat.

1872: The Amnesty Act restores political privileges to most citizens of the late Confederacy who had sworn allegiance to the United States and then fought against it.

In Rochester, New York, Susan B. Anthony registers and votes, contending that the 14th Amendment gives her that right. Several days later she is arrested for voting illegally. At Anthony's trial, the judge does not allow her to testify that she believed that she had the right to vote, directs the jury to enter a verdict of guilty, and fines her \$100. She refuses to pay, yet the judge releases her.

1872–76: Widespread violence begins restoration of "white supremacy" in the South. This ends with the overthrow of Reconstruction in the South.

1873: *Slaughter-House Cases*: The Court, in a 5–4 decision, narrowly construes the Privileges or Immunities Clause of the 14th Amendment. Following the decision, the Court holds one after another of the guarantees of the Bill of Rights do not limit the states.

Bradwell v. State: Following the *Slaughter-House* interpretation of the Privileges or Immunities Clause of the 14th Amendment, the Court upholds Illinois' ban on women practicing law, ruling law practice is not a privilege of national citizenship. No equal protection claim is made.

Minor v. Happersett: The Court unanimously rules that citizenship does not give women the right to vote under the Privileges or Immunities Clause of the 14th Amendment; therefore, women's political rights are determined by each individual state. Mrs. Minor's husband had to sue on her behalf since married women, like children, could not file suit on their own.

- 1876:** The Centennial Exposition in Philadelphia exhibits the economic progress of the nation since 1776.
Alexander Graham Bell invents the telephone.
- 1877:** The “Compromise of 1877” effectively ends Reconstruction. In exchange for Southern support for the Republican presidential candidate, federal troops are withdrawn from the South.
Munn v. Illinois: The Court upholds a state regulation of grain elevators against claims that the regulation violates due process and rights to private property.
Railroad strikes occur across the nation. Industrial warfare marks the late 19th and early 20th centuries. Speculative panics, business failures, and substantial unemployment occurred from 1873 to 1878, 1882 to 1885, and 1893 to 1897.
The phonograph is invented.
Thomas A. Edison builds the first central electric power station, located in New York City.
- 1879:** *Reynolds v. United States:* The Court upholds prosecutions of Mormons for practicing polygamy in accordance with their religious beliefs. In 1890 the Mormon Church renounces polygamy. Congress returns most of the property taken from the Church by the end of the 1880s.
- 1881:** Congress passes the Chinese Exclusion Act, which forbids Chinese immigration for a decade.
- 1883:** The Pendleton Act establishes the federal civil service, largely eliminating the patronage system of rewarding partisan supporters with political appointments.
Civil Rights Cases: The Court, over Justice Harlan’s dissent, strikes down the Civil Rights Act of 1875, which prohibited racial discrimination in public accommodations. The Court holds that Congress lacks power under the 13th Amendment to pass such a statute and that Congress’s power under the 14th Amendment is limited to “state action.”
- 1886:** *Wabash, St. Louis & Pacific Rw. Co. v. Illinois:* The Court limits state power to regulate the intra-state rates charged by railroads.
Santa Clara County v. Southern Pacific Rw. Co.: The Court holds 14th Amendment’s protection of “persons” includes corporations.
The American Federation of Labor (AFL) is organized under the leadership of Samuel Gompers.
- 1887:** Interstate Commerce Commission is created, an early effort in federal regulation.

- 1890:** The Sherman Antitrust Act forbids monopolies and combinations in restraint of trade.
- 1891:** The Judiciary Act of 1891 transfers most federal appellate jurisdiction from the Circuit Courts to the newly established Courts of Appeals. The legislation also abolishes “circuit riding” by Supreme Court justices.
- 1892:** The People’s Party (also known as the Populist Party) is organized. Protesting farmers and others nominate General James B. Weaver for President. The party’s 1896 platform favors direct election of Senators, a progressive income tax, initiative and referendum, government ownership of railroads, employment of labor on public works in times of depression, and other “radical” measures.
- 1893:** Chicago’s “World’s Fair” illustrates the use of electricity for illumination and power.
The Panic of 1893 strikes the nation and is the worst depression to date in United States history.
- 1894:** Workers at Pullman Railroad Car plant strike, leading to a sympathy strike by railroad workers. President Cleveland sends federal troops to Chicago to break the strike on the grounds that it is interfering with the United States mail. During the strike, federal courts issue injunctions against the railroad union, its leaders, and locals, and forbid communication between locals. The Court upholds this exercise of federal authority in *In re Debs* (1895).
- 1895:** Booker T. Washington, President of the Tuskegee Institute, makes his “Atlanta Compromise” speech. He urges blacks to accept their inferior social position for the present and to strive to raise themselves through vocational training and economic self-reliance.
U.S. v. E.C. Knight Co.: The Court embraces a narrow reading of the Commerce Clause, and holds the Sherman Act does not reach a sugar manufacturing monopoly because manufacturing is not commerce.
Pollock v. Farmer’s Loan and Trust Co.: The Court holds that the federal income tax is unconstitutional in two decisions.
- 1896:** A motion picture is commercially exhibited for the first time.
Plessy v. Ferguson: The Court, over Justice Harlan’s dissent, upholds a Louisiana statute requiring racially segregated railway cars.
William Jennings Bryan runs for President on both the Democratic and Populist party tickets. He attacks the tight fiscal policies of Congress in his famous “Cross of Gold Speech.” He is defeated in a watershed election by the Republican, William McKinley.
- 1897:** *Allgeyer v. Louisiana:* The Court unanimously holds that the right to make contracts is protected by the Due Process Clause of the 14th Amend-

ment. “Freedom of Contract” and “substantive due process” will mark the “*Lochner* Era” in the Court’s jurisprudence; it lasts from 1897–1937.

1898: The United States becomes a colonial empire after seizing Puerto Rico and the Philippines from Spain in the Spanish-American War. Hawaii also becomes a territory (admitted as the 50th state in 1959).

1899–1900: William McKinley decisively defeats Williams Jennings Bryan in a rematch of the 1896 presidential election. McKinley’s new running mate is Theodore Roosevelt, a hero of the Spanish-American War and a leading progressive reformer.

Maxwell v. Dow: The Court rules that the criminal jury trial guarantee of the 6th Amendment does not limit the states. The Court warns that the application of the Bill of Rights to the states would threaten state sovereignty.

1901: President McKinley is assassinated. Theodore Roosevelt becomes president. Roosevelt’s presidency is often seen as the beginning of the Progressive Era.

1902: Oregon becomes the first state to establish primary elections for the nomination of candidates in general elections.

1903: *Champion v. Ames:* The Court holds that Congress may use its commerce power to ban interstate movement of lottery tickets.

“Muckraking” articles by Ida Tarbell and Lincoln Steffens in national magazines expose business and governmental corruption.

Orville and Wilbur Wright fly an airplane at Kitty Hawk, North Carolina.

W.E.B. Du Bois publishes *The Souls of Black Folk*, criticizing Booker T. Washington’s willingness to forfeit social justice for economic progress.

1904: *Northern Securities Company v. United States:* The Court upholds the use of the Sherman Anti-Trust Act to break up the James J. Hill-J.P. Morgan railroad monopoly. Justice Holmes dissents, arguing that every consolidation is not a restraint of trade.

Dorr v. United States: The Court holds that the Constitution does not “follow the flag” and that it is therefore permissible to try someone in the Philippines without a jury and that, in general, Bill of Rights guarantees do not necessarily apply to overseas territories.

Oregon becomes the first state to adopt the initiative and referendum for the enactment of legislation.

1905: *Lochner v. New York:* The Court, in a 5–4 decision, strikes down a state law limiting hours of work for bakers. It asserts that the law violates liberty of contract said to be secured by the Due Process Clause of the 14th Amendment. Critics of the *Lochner* decision and other decisions

striking down Progressive Era reform legislation urge restraints on judicial review.

- 1906:** Congress passes the Pure Food and Drug Act.
- 1907:** William James publishes *Pragmatism, A New Name for Some Old Ways of Thinking*. James' philosophy affects legal thinkers, including Oliver Wendell Holmes, Jr.
- 1908:** *Muller v. Oregon*: The Court upholds an Oregon statute limiting the number of hours that women can work. The case is seen as a great victory for Progressives. It was argued by Louis D. Brandeis, "the People's Lawyer," who presented the Court with massive statistical evidence on the harm to women from overwork. This type of "sociological" evidence is known as a "Brandeis Brief."
- Japan and U.S. reach a "Gentlemen's Agreement" pursuant to which Japan agrees to voluntarily limit the number of its citizens emigrating to the United States.
- 1909:** Henry Ford introduces the "Model T," a car mass-produced by assembly-line methods.
- The National Association for the Advancement of Colored People (NAACP) is formed.
- 1912:** In 1908, after serving out McKinley's term and winning election on his own, Theodore Roosevelt retires from the Presidency, but in 1912 he opposes the re-election bid of his hand-picked successor, William Howard Taft. When Roosevelt loses the Republican nomination, he runs on the Progressive Party (also called the "Bull Moose" Party). Roosevelt divides the Republican vote, setting the stage for the Democrat, Woodrow Wilson, to win the election. Socialist Party candidate Eugene V. Debs receives nearly a million votes.
- 1913–21:** Woodrow Wilson serves as President; Progressive Era ends with the end of Wilson's second term.
- 1913:** The Income Tax Amendment (the 16th) is adopted.
- The Federal Reserve Act revamps the American banking structure.
- Alice Paul organizes a woman's suffrage parade in Washington, D.C., on the day of Woodrow Wilson's inauguration.
- 1914:** The Panama Canal is opened.
- Congress enacts the Clayton Antitrust Act, which forbids a tendency to monopolize commerce.
- Congress establishes the Federal Trade Commission.
- 1916:** Jeannette Rankin, a Republican from Montana, is elected to the House of Representatives and becomes the first woman to serve in Congress.

- 1917–18:** U.S. involvement in World War I.
- 1917:** Socialist Party presidential candidate Eugene Debs is convicted and imprisoned for an anti-war speech. His conviction is upheld by the Supreme Court in 1919.
- Members of the National Woman’s Party picket the White House. Alice Paul and 96 other suffragists are arrested and jailed for “obstructing traffic.” When they go on a hunger strike to protest their arrest and treatment, they are force-fed.
- 1918:** The House of Representatives passes a resolution in favor of a woman’s suffrage amendment. The resolution is defeated by the Senate.
- Hammer v. Dagenhart:* The Court, in a 5–4 decision, holds that Congress may not prohibit movement in commerce of articles made by child labor.
- 1919:** Adoption of the 18th Amendment inaugurates nationwide “Prohibition,” which lasts until 1933. In 1933, the 21st Amendment repeals the 18th.
- The 19th Amendment to the Constitution granting women the vote is adopted by a joint resolution of Congress and sent to the states for ratification.
- Schenck v. United States:* The Court articulates a constricted view of free speech under Justice Holmes’ “clear and present danger test.” In his dissent in *Abrams v. United States* (1919), Holmes, joined by Brandeis, reshapes the test as a much more speech-protective one.
- The U.S. Senate refuses to ratify peace treaty that would have made the United States a member of the newly formed League of Nations.
- 1920:** The Senate again rejects United States membership in the League of Nations.
- The Woman’s Suffrage Amendment (the 19th) is ratified.
- A radio station in Pittsburgh inaugurates commercial radio broadcasting in the United States.
- The decade of the 1920s, known as the “Roaring Twenties,” marks the end of the Progressive Era and its various reforms. Anti-trust enforcement declines, as does the strength of labor unions. There is a wave of mergers and the rise of public utility holding companies. Farmers suffer throughout the decade as farm prices decline. The decade ends with the onset of the Great Depression in October 1929. Republicans control the White House from 1921 until 1933 with the presidencies of Harding, Coolidge, and Hoover.
- 1921:** The Budget and Accounting Act provides for a centralized federal budget system.
- 1923:** *Meyer v. Nebraska:* The Court invalidates, as a violation of the “liberty” of the Due Process Clause of the 14th Amendment, a state statute pro-

hibiting the teaching of foreign languages in schools. The case shows the *Lochner* Court's recognition of personal as well as economic rights as "liberty."

At the behest of Chief Justice Taft, Congress establishes what later becomes known as the Judicial Conference of the United States, which provides a system for administration and oversight of the federal judicial system by senior federal judges.

1924: Congress passes a law extending United States citizenship to all Native Americans.

The National Origins Act, the most important immigration statute of the 20th century, limits annual immigration to 2 percent of each nationality as of the 1890 census, an effort to limit certain "undesirable" ethnic groups in the United States.

1925: *Gitlow v. New York*: The Court assumes that the federal guarantees of free speech and press limit the states. Beginning of incorporation of the 1st Amendment into the 14th as a limit on the states.

Scopes "Monkey Trial" is held in Tennessee; a teacher is fined for teaching evolution.

The Judiciary Act of 1925 eliminates most automatic appeals to the U.S. Supreme Court and makes most of the Court's appellate jurisdiction discretionary through the *certiorari* process.

1927: Charles A. Lindbergh, alone in the *Spirit of St. Louis*, makes the first New York-Paris nonstop flight.

The Jazz Singer, with Al Jolson, demonstrates partially talking movies.

Whitney v. California: Justice Brandeis, in a concurring opinion, crafts a modern rationale for free speech: that evil words should be answered with counter-speech, unless immediate circumstances prevent an opportunity for discussion.

1929: Wall Street's crash ends prosperity. The Great Depression begins. Widespread unemployment, bank failures, business and personal bankruptcy, and foreclosure of mortgages on homes and farms sweep the nation.

John Maynard Keynes, an English economist and monetary expert, departs from classical laissez-faire economic concepts to endorse a government public-works program to promote employment during recessions. His theories, known as Keynesian economics, are among the most influential economic formulations of the 20th century. He advocates spending programs, such as those of the New Deal—but on a more extensive scale, to maintain high national income. His chief work, *The General Theory of Employment, Interest and Money* (1936), advocates active government intervention in the market and, during recessionary times, deficit spending and easier monetary policies to

stimulate business activity. In times of prosperity Keynes advocates paying down the national debt.

- 1930:** President Hoover appoints Charles Evans Hughes to be Chief Justice, replacing William Howard Taft (1921–30); he also appoints Owen J. Roberts to the Court, replacing Edward Sanford (1923–30).
- 1931:** *Near v. Minnesota*: The Court holds an injunction involving future issues of libelous or scandalous newspapers to be an invalid prior restraint.
72nd Congress: House of Representatives is controlled by Republicans, 218–216 (with 1 Farmer-Labor Representative). Senate is controlled by Republicans, 48–47 (and 1 Farmer-Labor Senator).
- 1932:** President Hoover appoints Benjamin N. Cardozo to the Court, replacing Oliver Wendell Holmes, Jr. (1902–32).
Franklin Roosevelt is elected President and will ultimately serve until 1945. Roosevelt’s New Deal is characterized by a far more activist federal government, including public works projects instituted to give work to the unemployed, regulation of banks and federal deposit insurance, regulation of the stock market, and regulation of agricultural production. The National Labor Relations Act guarantees workers the right to form labor unions and to engage in collective bargaining. The New Deal also pioneers reforms such as unemployment insurance, social security, and national legislation setting minimum wages and maximum hours. During this time, Congress enacts a progressive income tax with high rates for upper brackets.
Norris-LaGuardia Anti-Injunction Act curtails the extent to which courts can issue injunctions to bar strikes and interfere with other labor union activities.
- 1933:** 73rd Congress: Democrats control the House of Representatives, 313–117 (with 5 Farmer-Labor representatives). Democrats also control the Senate, 59–36 (with 1 Farmer-Labor senator).
- 1934:** Congress enacts the Federal Declaratory Judgment Act.
- 1935–36:** The Supreme Court imperils the New Deal by invalidating eight federal economic regulatory statutes, including the National Industrial Recovery Act (*Panama Refining Co. v. Ryan* and *Schechter Poultry Corp. v. United States*); the Agricultural Adjustment Act (*United States v. Butler*); and the Bituminous Coal Conservation Act (*Carter v. Carter Coal*). Several of the cases rely upon a highly restrictive interpretation of the commerce power.
- 1935:** 74th Congress: Democrats control the House of Representatives, 322–103 (with 7 Progressive representatives and 3 Farmer-Labor representatives). Democrats also control the Senate, 69–25 (with 1 Farmer-Labor senator and 1 Progressive senator).

- 1936:** President Roosevelt is re-elected in a landslide, carrying 46 of 48 states. Democrats win enormous majorities in both houses of Congress.
- 1937:** *Palko v. Connecticut*: The Court explains selective incorporation of guarantees of the Bill of Rights into the 14th Amendment as a limit on the states.
- President Roosevelt proposes legislation to permit him to appoint up to six additional justices to the Supreme Court. The Senate Judiciary Committee tables this so-called “court packing” measure after it encounters widespread opposition.
- President Roosevelt appoints Hugo L. Black to the Court, replacing Willis Van Devanter (1910–37).
- In several landmark decisions, the Court upholds the constitutionality of important New Deal legislation. The cases include *National Labor Relations Board v. Jones & Laughlin Steel Corp.* (using an expansive definition of interstate commerce to uphold far-reaching regulation of labor-management relations); *Steward Machine Co. v. Davis* (using an expansive definition of the taxing power to uphold the unemployment compensation features of the Social Security Act); and *Helvering v. Davis* (using an expansive definition of the General Welfare Clause to uphold the old-age benefits provisions of the Social Security Act). Meanwhile, the Court interred the doctrine of economic due process in *West Coast Hotel v. Parrish*. These decisions signaled the so-called “Judicial Revolution” of 1937.
- 75th Congress: Democrats control the House of Representatives, 334–88 (with 8 Progressive representatives and 5 Farmer-Labor representatives). Democrats also control the Senate, 76–16 (with 2 Farmer-Labor senators, 1 Progressive senator, and 1 Independent senator).
- 1938:** Congress enacts a national minimum wage.
- The Congress of Industrial Organizations (CIO) secedes from the AFL. It becomes a vigorous independent labor organization that seeks to unionize previously unorganized industrial workers.
- President Roosevelt appoints Felix Frankfurter to the Court, replacing Benjamin Cardozo (1932–38), and Stanley F. Reed, replacing George Sutherland (1922–38).
- United States v. Carolene Products*: The Court holds that economic regulation typically will be judged by a rational basis standard. Footnote 4 suggests a higher level of scrutiny in at least some cases involving civil rights, civil liberties, and discrete and insular minorities.
- Promulgation of the Federal Rules of Civil Procedure.
- 1939:** President Roosevelt appoints William O. Douglas to the Court, replacing Louis Brandeis (1916–39), and Frank Murphy, replacing Pierce Butler (1922–39).

76th Congress: Democrats control the House of Representatives, 262–169 (with 2 Progressive representatives, 2 Farmer-Labor representatives, and 1 American Labor representative). Democrats also control the Senate, 69–23 (with 2 Farmer-Labor senators, 1 Progressive senator, and 1 Independent senator).

1940: *Minersville School District v. Gobitis*: The Court upholds the expulsion of Jehovah’s Witness schoolchildren from school for refusing to salute the American flag.

1941: The Federal Communications Commission authorizes the first commercial television stations.

On December 7, Japan attacks Pearl Harbor. The United States officially enters World War II.

President Roosevelt promotes Justice Harlan Fiske Stone to Chief Justice, replacing Charles Evans Hughes (1910–16, 1930–1941 as Chief Justice), and appoints James F. Byrnes to the Court, replacing James McReynolds (1914–41), and Robert H. Jackson, who takes Stone’s Associate seat.

United States v. Darby: The Court unanimously overrules *Hammer v. Dagenhart* and allows Congress to ban the interstate transportation of items made in violation of the Fair Labor Standards Act.

77th Congress: Democrats control the House of Representatives, 267–162 (with 3 Progressive representatives, 1 Farmer-Labor representative, 1 American Labor representative, and 1 Independent Democrat representative). Democrats also control the Senate, 66–28 (with 1 Independent senator and 1 Progressive senator).

1942: The federal government forcibly removes 120,000 Japanese-Americans living on the West Coast (approximately two-thirds are American citizens) from their homes and relocates them in internment camps.

Wickard v. Filburn: The Court unanimously adopts a very deferential aggregate impact test for determining scope of federal commerce power.

Skinner v. Oklahoma: The Court invalidates a state criminal eugenics law (mandatory sterilization for larceny but not for embezzlement) as violating the Equal Protection Clause. The Court subjects a statute that involves the “fundamental” right of procreation to heightened scrutiny.

1943: Race riots in Detroit and Harlem leave many dead or injured.

President Roosevelt appoints Wiley B. Rutledge to the Court, replacing James Byrnes (1941–42).

West Virginia Board of Education v. Barnette: The Court holds that the refusal of Jehovah’s Witness schoolchildren to salute the American flag is protected by the guarantee of freedom of speech.

78th Congress: Democrats control the House of Representatives, 222–209 (with 2 Progressive representatives, 1 Farmer-Labor representative,

and 1 American Labor representatives). Democrats also control the Senate, 57–38 (with 1 Progressive senator).

1944: President Roosevelt, though quite ill, is elected to an unprecedented fourth term.

Korematsu v. United States: The Court upholds forced “re-location” and detention of Japanese Americans into internment camps, although the Court at the same time announces that racial classifications are inherently suspect.

NBC broadcasts the first network newscast.

1945: President Roosevelt dies, replaced by Harry Truman, who is re-elected in 1948.

Germany surrenders on May 8. Japan surrenders on August 14 after the United States drops the first atomic bombs used in wartime on Hiroshima and Nagasaki.

The United Nations Charter is adopted at San Francisco.

President Truman appoints Harold H. Burton to the Court, replacing Owen Roberts (1930–45).

Southern Pacific v. Arizona: The Court holds that an Arizona statute that prohibits long trains from operating within the state violates the dormant commerce clause as an undue burden on interstate commerce.

79th Congress: Democrats control the House of Representatives, 244–189 (with 1 Progressive representative and 1 American Labor representative). Democrats also control the Senate, 57–38 (with 1 Progressive senator).

1946: The Cold War begins. After World War II, Soviet troops remain in Eastern Europe and establish pro-Soviet regimes.

President Truman appoints Frederick M. Vinson to be Chief Justice, replacing Harlan Stone (1925–46, 1941–1946 as Chief Justice).

Administrative Procedure Act establishes rule-making procedures for executive departments and independent governmental agencies.

1947: The Marshall Plan for the economic reconstruction of Europe is introduced. The plan marks the first major United States offensive in the “Cold War.”

Jackie Robinson integrates Major League Baseball by playing for the Brooklyn Dodgers.

Adamson v. California: The Court, in a 5–4 decision, refuses to apply the privilege against self-incrimination to the states. In dissent, Justice Black advocates total incorporation of the Bill of Rights, relying on his reading of the historical record.

The Taft-Hartley Act, passed over President Truman's veto, curtails the powers of labor unions. Its provisions include prohibition of secondary boycotts and the closed shop, and it increases the legal liability of labor unions for their actions.

80th Congress: Republicans control the House of Representatives, 246–188 (with 1 American Labor representative). Republicans also control the Senate, 51–45.

1948: Whitaker Chambers accuses Alger Hiss of giving State Department documents to the Soviet Union. Hiss is convicted of perjury in 1949.

President Truman issues an Executive Order integrating the military and advocates federal civil rights legislation. Angered by the pro-civil rights stand of the national Democratic party, Southern Democrats bolt the party and nominate Governor Strom Thurmond of South Carolina as the States' Rights Party candidate for President. The Dixiecrat revolt marks the beginning of the end of the solidly Democratic South.

The Universal Declaration of Human Rights, drafted by a commission chaired by Eleanor Roosevelt, is promulgated by the General Assembly of the United Nations.

1949: Mao Zedong and his Communist followers prevail in a civil war and establish the People's Republic of China.

Federal prosecutors bring criminal charges against 11 top leaders of the United States Communist Party; they are convicted under the Smith Act and sentenced to prison.

President Truman appoints Thomas C. Clark to the Court, replacing Frank Murphy (1940–49), and Sherman Minton, replacing Wiley Rutledge (1943–49).

81st Congress: Democrats control the House of Representatives, 263–171 (with 1 American Labor representative). Democrats also control the Senate, 54–42.

1950: The United Nations (with most troops supplied by the United States) enters the Korean War.

Senator Joseph McCarthy (R.-Wis.) charges that Communists have infiltrated the State Department. McCarthy will eventually accuse many prominent Americans of assisting the Soviet Union, including General George Marshall.

1951: *Dennis v. United States*: The Court upholds several Smith Act convictions. The plurality opinion uses the “gravity of the evil discounted by its improbability” test.

Ethel and Julius Rosenberg are convicted for transferring atomic secrets to the Soviet Union. They were executed in 1953.

82nd Congress: Democrats control the House of Representatives, 235–199 (with 1 Independent representative). Democrats also control the Senate, 49–47.

1952: *Youngstown Sheet & Tube Co. v. Sawyer* (The Steel Seizure Case): The Court prevents the President from seizing control of the steel industry during the Korean War.

Beauharnais v. Illinois: The Court, in a 5–4 decision, upholds Illinois’ group libel law.

Dwight Eisenhower, Republican and World War II hero, is elected President. He captures several Southern states.

1953: Francis Crick and James Watson publish an article explaining the structure of DNA.

President Eisenhower appoints Earl Warren to be Chief Justice, replacing Frederick Vinson (1946–53). The Warren Court, which lasts until 1969, will expand protection for free speech and the rights of those accused of crimes and will strike down government-imposed racial discrimination. The Court will also apply most of the still unincorporated Bill of Rights guarantees to the states.

The Korean War ends with a truce that retains the division of Korea between a Communist North and a pro-western South.

83rd Congress: Republicans control the House of Representatives, 221–213 (with 1 Independent representative). Republicans also control the Senate, 48–47 (with 1 Independent senator).

1954: The United States Senate censures Joseph McCarthy.

President Eisenhower appoints John M. Harlan to the Court, replacing Robert Jackson (1941–54).

Brown v. Board of Education: The Court unanimously holds that racial segregation of public schools violates the Equal Protection Clause of the 14th Amendment. The Court repudiates *Plessy*’s “separate but equal” standard for education.

After the *Brown* decision is announced, White Citizens’ Councils are organized in much of the South to oppose school desegregation. President Eisenhower takes no public position on *Brown*.

1955: Fourteen year old Emmet Till is brutally murdered in Mississippi. His open coffin funeral draws international attention to the plight of African-Americans in the Jim Crow South. His killers are acquitted by an all-white jury and in 1956 publicly admit their guilt. In 2008, a defense witness admitted fabricating her testimony. No federal charges were ever filed.

The Montgomery bus boycott begins when Rosa Parks refuses to comply with a local segregation ordinance. Martin Luther King leads the

boycott which eventually succeeds and helps trigger a broader civil rights movement.

Williamson v. Lee Optical: The Court unanimously rejects heightened Equal Protection scrutiny for most purely economic regulation.

84th Congress: Democrats control the House of Representatives, 232–203. Democrats also control the Senate, 48–47 (with 1 Independent senator).

1956: President Eisenhower appoints William J. Brennan to the Court, replacing Sherman Minton (1949–56).

A drug company patents the oral contraceptive (birth control) pill.

92 of the 106 southern members of Congress sign a “Southern Manifesto” which labels the *Brown* decision “a clear abuse of judicial power” and commends those “States which have declared the intention to resist forced integration.”

Congress enacts legislation that inaugurates the interstate highway system.

1957: President Eisenhower sends federal troops to help desegregate the public schools in Little Rock, Arkansas.

Roth v. United States: The Court holds that obscenity is not protected by the 1st Amendment because it is “utterly without redeeming social value.” However, all sexual content is not deemed to be obscene.

85th Congress: Democrats control the House of Representatives, 232–203. Democrats also control the Senate, 49–47.

1958: The Soviet Union launches Sputnik 1, the first earth satellite. The United States launches its first satellite, Explorer 1, three months later.

President Eisenhower appoints Potter Stewart to the Court, replacing Harold Burton (1945–58).

1959: The microchip is invented. Xerox introduces the plain paper copier.

86th Congress: Democrats control the House of Representatives, 282–153 (with 1 Independent Democrat representative). Democrats also control the Senate, 65–35.

1960: John Kennedy, age 43, is elected President, defeating the incumbent Vice President, Richard Nixon.

The “Sit-in” Movement begins when four black college students in Greensboro, North Carolina, refuse to move from a Woolworth lunch counter when denied service. By September 1961, more than 70,000 students, whites and blacks, have participated in sit-ins to protest racial discrimination at lunch counters.

1960s: The Court rules that most of the remaining provisions of the Bill of Rights (those not yet incorporated) limit the states.

- 1961:** *Mapp v. Ohio*: The Court holds in a 5–4 decision that the federal exclusionary rule, by which evidence seized in violation of the 4th Amendment is typically deemed inadmissible, limits the states. For all practical purposes, this begins a process through which the Court federalizes much state criminal procedure by nationalizing nearly every criminal procedural provision of the Bill of Rights by 1969. The right to indictment by a grand jury is a notable exception.
- United States sends advisors to South Vietnam, becoming involved in a war between North and South Vietnam that will claim 58,000 American lives by 1973.
- The first humans travel in outer space.
- 87th Congress: Democrats control the House of Representatives, 264–173. Democrats also control the Senate, 64–36.
- 1962:** The publication of Rachel Carson’s *Silent Spring* helps to launch the environmental movement.
- President Kennedy appoints Byron R. White to the Court, replacing Charles Whittaker (1957–62) and Arthur J. Goldberg, replacing Felix Frankfurter (1939–62).
- The first microcomputer appears.
- Baker v. Carr*: The Court recognizes that an Equal Protection challenge to mal-apportioned state legislative districts is justiciable, holding that the issue is not a “political question.” In 1964, the Court announces its “one man, one vote” standard in *Reynolds v. Sims*.
- Engel v. Vitale*: The Court invalidates a state sponsored school prayer as a violation of the Establishment Clause. Constitutional amendments to reverse the *Engel* decision are proposed in Congress, but fail.
- 1963–73:** The United States assumes an ever larger role in the Vietnam War.
- 1963:** Photographs of the use of fire hoses and police dogs on black citizens in Birmingham, Alabama, many of whom are children, outrage much of the nation and lead to growing support for federal civil rights legislation. Martin Luther King, Jr., leads a March on Washington in support of such legislation and delivers his “I Have a Dream” speech from the steps of the Lincoln Memorial.
- Lyndon Johnson assumes the presidency following the assassination of President Kennedy.
- The publication of Betty Friedan’s *The Feminine Mystique* contributes to the rise of the modern women’s movement.
- 88th Congress: Democrats control the House of Representatives, 258–176 (with 1 Independent Democrat representative). Democrats also control the Senate, 66–34.

1964: Congress, with the urging of President Johnson, enacts the Civil Rights Act of 1964, the most sweeping civil rights legislation in American history. The Act prohibits both race and sex discrimination in public accommodations and employment. Democratic support for civil rights transforms the South from an overwhelmingly Democratic region to a predominately Republican one. On signing the bill Johnson tells his aide, Bill Moyers, that he has “delivered the South to the Republican Party for my generation and your generation.”

The FBI continues aggressive wiretapping of Martin Luther King, Jr., based on allegations that he associates with certain people alleged to be Communists. The FBI uses material gathered on King to attempt to discredit him.

In Mississippi and elsewhere, civil rights demonstrators are threatened, beaten, and murdered for their efforts on behalf of racial integration and the right of black people to vote.

George Wallace, who had run strong races in the Democratic primaries in Indiana, Michigan, and Maryland, demands that the Democratic party repeal the Civil Rights law and warns of an “uprising” comparable to the attack on Reconstruction. Wallace promises that a conservative movement will “take charge of one the parties in the next four years.” Wallace keeps electors pledged to Johnson off the Alabama ballot and eventually throws Alabama’s electors to Republican Barry Goldwater, who opposed the 1964 Civil Rights Bill.

President Johnson wins a term of his own in a landslide, receiving a record 61 percent of the vote in his defeat of the Republican candidate, Barry Goldwater. Democrats win huge majorities in both houses of Congress. Johnson’s strong support for civil rights contributes to the growing rejection of the Democratic Party by many southern whites.

President Johnson launches a “War on Poverty,” emphasizing jobs for the poor and a variety of new social programs, including federal aid to education, Medicare, Medicaid, and Food Stamps. Johnson’s War on Poverty will soon become a casualty of the massive escalation of America’s war in Vietnam. Widespread protests against the Vietnam War eventually cause Johnson not to seek re-election in 1968.

After an alleged attack on an American ship by the North Vietnamese, Congress approves the Tonkin Gulf Resolution, which authorizes the President to take whatever action is necessary to protect American forces serving in South Vietnam. The House vote is 418 to 0 and the Senate vote is 98–2.

Heart of Atlanta Motel v. United States: The Court upholds the public accommodation section of the Civil Rights Act of 1964 based on the commerce power.

New York Times v. Sullivan: The Court holds that the 1st Amendment requires that a public official suing for defamation must prove actual malice (intentional falsity or reckless disregard of the truth).

1965: *Griswold v. Connecticut*: The Court upholds the right of married couples to use birth control devices under a 14th Amendment right to privacy.

Martin Luther King leads a Selma-to-Montgomery march for voting rights. The national media broadcasts images of “Bloody Sunday,” a violent attack by local law enforcement on the marchers. These images, as well as news of the brutal murder of a white minister who had joined the marchers, contribute to the enactment of the Voting Rights Act of 1965.

Race riots in the Watts section of Los Angeles last for six days and leave 34 dead and \$200 million in property damage.

Malcolm X is assassinated. One year later, Stokely Carmichael will coin the phrase, “Black Power,” during a civil rights march in Mississippi, signaling a new phase in the Civil Rights Movement.

Immigration and Nationality Act removes tight restrictions on immigration from Asia, Africa, and South America.

The United States sharply escalates its military presence in Vietnam.

President Johnson appoints Abe Fortas to the Court, replacing Arthur Goldberg (1962–65).

89th Congress: Democrats control the House of Representatives, 295–140. Democrats also control the Senate, 68–32.

1966: *Miranda v. Arizona*: The Court holds that police may not conduct interrogations of criminal suspects after arrest unless they are aware of their constitutional rights. Starting with Richard Nixon’s appointments to the Court and in subsequent years, including 2010, the Court repeatedly limits the *Miranda* rule, but so far has not overruled it.

1967: *Loving v. Virginia*. The Court finds the Virginia state ban on interracial marriage violates Equal Protection and Due Process Clauses of the 14th Amendment.

Race riots in Newark, New Jersey, leave 26 dead and 1,500 injured; race riots in Detroit leave more than 40 dead, 2,000 injured, and 5,000 homeless.

President Johnson appoints Thurgood Marshall to the Court replacing Tom Clark (1949–67). Marshall is the first black justice in the nation’s history.

Democrats Carl B. Stokes of Cleveland and Richard G. Hatcher of Gary, Indiana, become the first black mayors of major American cities.

90th Congress: Democrats control the House of Representatives, 248–187. Democrats also control the Senate, 64–36.

1968: Assassins kill Martin Luther King and Robert Kennedy.

Earl Warren announces his intention to resign as Chief Justice. President Johnson nominates sitting justice Abe Fortas for Chief Justice, but withdraws the nomination following a Senate filibuster led by Republicans and Southern Democrats. Fortas resigns from the Court in 1969 following allegations of financial impropriety arising from investigations made during his nomination.

Richard Nixon is elected President, defeating the Democrat, Vice President Hubert H. Humphrey, in a very close contest. Democrats retain control of both houses of Congress. George Wallace runs as the candidate of the American Independent Party and receives 46 electoral votes. President Nixon calls for the appointment of strict constructionists to the Supreme Court and a greater comparative role for states in the federal system. President Nixon will appoint two new justices during his first two years and four new justices during his first term.

Rep. Shirley Chisholm (D-NY) becomes the first black woman elected to Congress.

Green v. New Kent County School Board: The Court unanimously rejects a “freedom of choice” school desegregation plan and calls for a desegregation plan that promises to engage in actual racial mixing in the public schools.

United States v. O’Brien: The Court holds that burning a draft card as a political protest is not protected “speech.”

Duncan v. Louisiana: The Court holds that the right to a jury trial is fundamental to the American scheme of justice and incorporates that right in the 14th Amendment’s Due Process Clause as a limit on the States.

Jones v. Alfred H. Mayer Co.: The Court reverses the *Civil Rights Cases*’ narrow construction of Congressional power under the 13th Amendment and holds that the 13th Amendment can justify a statutory prohibition on racial discrimination in private housing.

1969: The Stonewall Riots in New York City mark the beginning of an activist gay rights movement.

Four months into his term, with more than half a million U.S. troops in Vietnam, President Nixon announces that the United States will gradually withdraw military forces from Vietnam. The process takes three and a half years.

Neil Armstrong, of the United States, becomes the first man to walk on the moon.

President Nixon appoints Warren E. Burger as Chief Justice, replacing Earl Warren (1953–69).

Brandenburg v. Ohio: The Court articulates a modern form of the clear and present danger test.

91st Congress: Democrats control the House of Representatives, 243–192. Democrats also control the Senate, 57–43.

1970: President Nixon appoints Harry A. Blackmun to the Court after two failed nominations, replacing Abe Fortas (1965–69).

Lorna Lockwood of Arizona becomes the first woman chief justice of a state supreme court.

President Nixon sends U.S. troops into Cambodia in order to destroy bases that are being used to support Communists in Vietnam. Congress does not authorize the action, but provides funding. The incursion exacerbates anti-war protests, striking critics as an expansion of the war. The computer floppy disk is invented.

The first Earth Day reflects growing environmental activism.

1971: The 26th Amendment lowers the voting age to eighteen.

Congress rescinds the Tonkin Gulf Resolution, but continues to provide funding for the war in Vietnam.

President Nixon appoints Lewis F. Powell, Jr., to the Court, replacing Hugo Black (1937–71), and William Rehnquist, replacing John Harlan (1955–71).

New York Times v. United States: The Court holds that an injunction preventing the publication of the Pentagon Papers is an invalid prior restraint.

Reed v. Reed: Using rational basis language, the Court begins the era of heightened scrutiny for gender discrimination and voids an Idaho statutory preference for men in the administration of estates (“rational basis with bite”).

Swann v. Charlotte-Mecklenburg County Bd. of Education: The Court unanimously approves busing as a permissible remedy for school segregation. Anti-busing amendments to the Constitution are proposed in Congress, but fail.

Lemon v. Kurtzman: The Court holds that a statute must satisfy three criteria in order to withstand a constitutional challenge under the Establishment Clause: (1) the statute must have a secular legislative purpose; (2) its principal or primary effect must be one that neither advances nor inhibits religion; and (3) it must not foster an excessive government entanglement with religion.

President Nixon ends the convertibility of the dollar into gold.

92nd Congress: Democrats control the House of Representatives, 255–180. Democrats also control the Senate, 54–44 (with 1 Conservative caucusing with Republicans, and 1 Independent caucusing with Democrats).

- 1972: President Nixon opens diplomatic relations with communist China.
- Burglars break into the Democratic National Headquarters in the Watergate complex in Washington, D.C. The burglars, it turns out, were hired by the Committee to Re-elect the President (Nixon). A subsequent cover-up will eventually topple the Nixon presidency.
- President Nixon wins re-election in a 49-state landslide over the Democrat, George McGovern. Democrats retain control of both houses of Congress.
- Congress approves the Equal Rights Amendment and sends it to the states for ratification.
- Ms. Magazine* begins publication.
- Sony introduces the video recorder and the VCR.
- Furman v. Georgia*: The Court, in a 5–4 decision, voids existing death sentences, concluding that they are the product of procedures that violate Due Process. In 1976, the Court approves newly adopted procedures in *Gregg v. Georgia*, thereby permitting the resumption of the death penalty.
- Moose Lodge No. 107 v. Irvis*: The Court begins a restrictive view of state action with the adoption of a “nexus” requirement between a private actor’s wrongful act and the government.
- 1973: On January 27, the United States and North Vietnam sign a peace treaty that ends U.S. military participation in the Vietnam war.
- President Nixon fires special prosecutor Archibald Cox, who is investigating the Watergate break-in and cover-up.
- Conflict between President Nixon and Congress over presidential impoundment of funds authorized by Congress for expenditure.
- The War Powers Resolution, passed over President Nixon’s veto, requires President to inform Congress of use of military forces abroad and to obtain authorization for continuation of their use.
- The federal government establishes the Internet to link American University and government computers.
- Frontiero v. Richardson*: Four justices of the Court conclude that gender discrimination should receive strict scrutiny; three justices say the Court should wait for the ratification of the Equal Rights Amendment to resolve the issue.
- Roe v. Wade*: The Court holds that a limited right to abortion is protected under the 14th Amendment Due Process Clause.

Miller v. California: The Court agrees on a test for pornography that is easier for prosecutors to meet. The plurality test requiring that material be utterly without redeeming social value in order to be labeled obscene is replaced with a test that the allegedly obscene material must lack “serious literary, artistic, political, or scientific value.” The Court also rejects the requirement that prurience and patent offensiveness must be judged by a national standard. Local standards are sufficient.

San Antonio Independent School District v. Rodriguez: The Court, in a 5–4 decision, rejects an equal protection challenge to a state school funding statute, ending the Warren Court’s heightened scrutiny of many statutes adversely affecting the poor.

93rd Congress: Democrats control the House of Representatives, 243–192. Democrats control the Senate, 56–42 (with 1 Conservative caucusing with Republicans, and 1 Independent caucusing with Democrats).

1974: The House Judiciary Committee votes articles of impeachment against President Nixon.

United States v. Nixon: The Court unanimously orders President Nixon to surrender White House tapes bearing on the Watergate scandal, rejecting the President’s claim of executive privilege. Facing eroding support, even within his own party, President Nixon resigns. Gerald Ford assumes the presidency.

1975: President Ford appoints John P. Stevens to the Court, replacing William O. Douglas (1939–75).

Warth v. Seldin: The Court narrows standing, imposing stricter limits. On April 30, the South Vietnamese government collapses. North Vietnam conquers South Vietnam and unites North and South under a Communist government. All remaining U.S. diplomats and advisors leave Vietnam. The United States provides political asylum for more than one hundred thousand Vietnamese.

94th Congress: Democrats control the House of Representatives, 291–144. Democrats also control the Senate, 61–37 (with 1 Conservative caucusing with Republicans and 1 Independent caucusing with Democrats).

1976: Jimmy Carter is elected President.

National League of Cities v. Usery: The Court, in a 5–4 decision, overrules precedent and holds that the 10th Amendment prohibits the application of the Fair Labor Standards Act to state employees. The Court suggests that the 10th Amendment is an affirmative limitation on federal legislative power.

Craig v. Boren: The Court holds that gender discrimination against males violates the Equal Protection Clause. The Court resolves the de-

bate over the appropriate level of scrutiny in gender cases with the introduction of intermediate scrutiny.

Washington v. Davis: The Court holds that racially disproportionate impact alone is insufficient to prove a violation of the Equal Protection Clause.

Bishop v. Wood: The Court accepts a restrictive state law definition of property as a trigger for the protections of procedural due process.

Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc.: The Court recognizes commercial speech as coming within the protection of the 1st Amendment.

1977: *Maher v. Roe*: The Court begins a retreat from *Roe v. Wade* by recasting *Roe* as protecting the right not to be “unduly burdened” in making a decision to terminate a pregnancy.

95th Congress: Democrats control the House of Representatives, 291–144. Democrats also control the Senate, 61–38 (with 1 Independent caucusing with Democrats).

1978: *Regents of University of California v. Bakke*: The Court invalidates a racial quota-based affirmative action plan while splitting on the appropriate level of scrutiny to be applied in affirmative action cases.

1979: Jerry Falwell founds the Moral Majority, a political action group composed of politically conservative Christians.

Iran overthrows the Shah and institutes an Islamic government. On November 4, Iran seizes the U.S. embassy and holds 52 Americans hostage, demanding that the United States return the former Shah to Iran for prosecution. The hostage crisis undermines support for the Carter presidency. The hostages are released on January 20, 1981, after the inauguration of Ronald Reagan.

96th Congress: Democrats control the House of Representatives, 278–157. Republicans control the Senate, 53–46 (with 1 Independent caucusing with Democrats).

1980: Ronald Reagan is elected President, defeating incumbent Jimmy Carter. Reagan wins the election by promising smaller government, lower taxes, and a tough stand with the Soviet Union.

Reeves, Inc. v. Stake: The market participant exception is recognized as a limit to the scope of the dormant commerce clause.

State Politics: Republicans controlled 19 governorships and 15 legislatures. Democrats controlled 31 governorships and 28 legislatures. 6 legislatures had split control.

1981: AIDS is recognized as a disease; by 1994, AIDS would be the leading cause of death for Americans aged 25–44.

President Reagan appoints Sandra Day O'Connor to the Court, the Court's first female justice, replacing Potter Stewart (1958–81).

Michael M. v. Superior Court: The Court holds that a statute imposing criminal liability when a man has intercourse with a woman under age 18 (but not imposing liability on a woman who has intercourse with a man under age 18) does not violate the Equal Protection Clause. The Court finds the statute is sufficiently related to a legitimate state objective.

Kassell v. Consolidated Freightways Corp.: The Court strikes down an Iowa statute banning double-long tractor-trailers in an opinion noted for differing approaches to the dormant commerce clause.

97th Congress: Democrats control the House of Representatives, 243–192. Republicans control the Senate, 53–46 (with 1 Independent caucusing with Democrats).

1981–86: Tax reform acts sharply reduce rates on earned income, leaving little difference between the highest and lowest rates, and reduce taxes on dividends and capital gains.

1982: The extended deadline for ratification of the Equal Rights Amendment expires as opponents, particularly in the South, mobilize and lobby legislatures to vote no.

Plyler v. Doe: The Court uses “rational basis with bite” to void a statute denying public education to the children of illegal aliens.

State Politics: Republicans controlled 23 governorships and 10 legislatures. Democrats controlled 27 governorships and 34 legislatures. 5 legislatures had split control.

1983: *Michigan v. Long*: The Court makes it easier to review (and reverse) state court decisions dealing with federal constitutional questions when state constitutional grounds are also mentioned in the opinion.

City of Los Angeles v. Lyons: The Court announces a restrictive interpretation of “ripeness” that means lower federal courts are less likely to be able to issue injunctions against future unconstitutional police behavior. The Court finds no case or controversy present in a suit for injunctive relief brought by a motorist who alleged that he had suffered unconstitutional excessive force in the past and that there was a pattern of such conduct.

INS v. Chadha: The Court holds that a legislative veto of executive action on questions “legislative in character” violates constitutional requirements.

98th Congress: Democrats control the House of Representatives, 269–166. Republicans control the Senate, 55–45.

- 1984:** Geraldine Ferraro, (D-N.Y.), becomes the first woman to be nominated for Vice President by a major political party. President Reagan is re-elected in a 49-state landslide over Democrat Walter Mondale.
- Lynch v. Donnelly:* In a Pawtucket, Rhode Island, creche case, the Court signals a retreat from the *Lemon* Establishment Clause test to a more deferential one that examines governmental coercion or endorsement of religion.
- State Politics: Republicans controlled 15 governorships and 10 legislatures. Democrats controlled 35 governorships and 28 legislatures. 11 legislatures had split control.
- 1985:** A CD-ROM is developed that can put 270,000 pages of text on a single disk.
- Garcia v. SAMTA:* The Court, in a 5–4 decision, overrules *National League of Cities* and rejects the 10th Amendment as an affirmative limitation on federal legislative power.
- American Booksellers v. Hudnut:* The 7th Circuit holds that an ordinance seeking to ban pornography that is not obscene under the *Miller v. California* test (on the ground that it produces subordination of women) violates the 1st Amendment.
- 99th Congress: Democrats control the House of Representatives, 254–181. Republicans control the Senate, 53–47.
- 1986:** *Bowers v. Hardwick:* The Court, in a 5–4 decision, rejects a substantive Due Process challenge to a state sodomy law. The Court upholds the law as applied to consensual homosexual activity that took place in a private home.
- President Reagan elevates William H. Rehnquist to Chief Justice, replacing Warren Burger (1969–86), and appoints Antonin Scalia to Rehnquist’s associate seat.
- State Politics: Republicans controlled 16 governorships and 9 legislatures. Democrats controlled 34 governorships and 27 legislatures. 13 legislatures had split control.
- 1986–87:** Iran-Contra scandal, involving the Reagan Administration’s failure to secure congressional authorization for sale of weapons to Iran in return for Iran’s help in connection with the freeing of hostages in Lebanon.
- 1987:** 100th Congress: Democrats control the House of Representatives, 258–177. Democrats also control the Senate, 55–45.
- 1988:** George Bush is elected President, defeating Democrat Michael Dukakis. The market share of the “Big 3” television networks drops below 50% for the first time due to the growth of cable television, a trend that has continued.

Nearly 1.4 million illegal aliens meet a deadline for applying for amnesty under a new United States Immigration and Naturalization Service policy.

New Energy Co. of Indiana v. Limbach: The Court reaffirms its Dormant Commerce Clause jurisprudence by holding that state acts that discriminate against interstate commerce are unconstitutional.

After the unsuccessful nominations of Robert Bork and Douglas Ginsburg, President Reagan appoints Anthony Kennedy to the Court, replacing Lewis Powell (1971–87).

State Politics: Republicans controlled 23 governorships and 8 legislatures. Democrats controlled 27 governorships and 29 legislatures. 12 legislatures had split control.

Non-Communist governments are formed in Poland and Hungary.

1989: The Tiananmen Square crackdown on pro-democracy demonstrators in China is broadcast throughout the world.

Non-Communist government is formed in East Germany after Berlin Wall is torn down; Germany re-unites in 1990. Non-Communist governments are formed in Czechoslovakia and Romania.

Texas v. Johnson: The Court holds a Texas statute unconstitutional as applied to punish flag burning as a political protest.

City of Richmond v. Croson: In a fragmented opinion, the Court invalidates the City of Richmond’s minority contractor set-aside program, distinguishes between specific and societal discrimination, and announces strict scrutiny as the appropriate level of review for challenges to state affirmative action plans.

101st Congress: Democrats control the House of Representatives, 260–175. Democrats also control the Senate, 55–45.

1990: President Bush signs the Americans With Disabilities Act, barring discrimination against the disabled.

President Bush vetoes a civil rights bill that sought, in effect, to reverse several recent Supreme Court decisions that had interpreted various civil rights statutes narrowly. Two years later, Congress enacted the Civil Rights Restoration Act of 1991 which accomplished similar goals as the prior legislation. This time, President Bush signs the legislation. President Bush appoints David H. Souter to the Court, replacing William Brennan (1956–90).

Cruzan v. Director, Missouri Dept. of Health: The Court articulates a “clear and convincing” standard as the requirement for the termination of life support for a woman in a permanent vegetative state. The Court speaks in terms of “liberty interests” rather than “fundamental

rights,” and appears to use “rational basis with bite” rather than strict scrutiny.

Employment Div., Dept. of Human Resources of Oregon v. Smith: The Court holds that infringements on religious practices by statutes of general application are not prohibited by the Free Exercise Clause.

State Politics: Republicans controlled 21 governorships and 6 legislatures. Democrats controlled 29 governorships and 29 legislatures. 14 legislatures had split control.

1991: President Bush appoints Clarence Thomas to the Court, replacing Thurgood Marshall (1967–91).

The United States and its allies wage the Persian Gulf War, liberating Kuwait from Iraqi control in only two months. President Bush’s commitment of troops had been authorized by congressional resolution in 1990.

The Soviet Union dissolves, its constituent parts emerging as independent countries. Yugoslavia dissolves as well, with great violence in Serbia, Croatia, and Bosnia.

The VCR becomes the fastest selling domestic appliance in history.

Dowell v. Oklahoma: The Court ends the school desegregation era with a ruling that school boards that have achieved unitary status have no further duty to overcome school segregation that results from segregated housing patterns.

102nd Congress: Democrats control the House of Representatives, 267–167 (with 1 Independent). Democrats also control the Senate, 56–44.

1992: Bill Clinton is elected President with 43% of the popular vote. Incumbent George Bush receives 38% of the popular vote while Reform Party candidate Ross Perot captures 19%.

Five days of rioting in Los Angeles, following the acquittal of police officers for the videotaped beating of Rodney King, leaves more than 50 dead and 2,300 injured, and an estimated \$1 billion in property damage.

Carol E. Moseley Braun (D-Ill.) is the first African-American woman elected to the United States Senate.

R.A.V. v. St. Paul: The Court holds that even speech that is not protected by the 1st Amendment cannot be regulated in a manner that reflects content or viewpoint discrimination.

Planned Parenthood v. Casey: The Court rejects calls for a reversal of *Roe v. Wade* in a fragmented series of plurality opinions, but allows much regulation under an “undue burden” standard.

Lee v. Weisman: The Court sidesteps calls to overrule the *Lemon* test and voids school-sanctioned prayer at graduation ceremony as coercive.

International Society for Krishna Consciousness, Inc. v. Lee: A closely divided Court continues a trend begun during the early 1980s of limiting the scope of “traditional public forums” and upholding “reasonable” regulation in non-public fora. The Court upholds a ban on solicitation at an airport, but rejects a ban on literature distribution.

New York v. United States: The Court continues its *National League of Cities-Garcia* dispute over the nature of the 10th Amendment as it invalidates part of a federal environmental statute that requires the states to engage in a certain type of regulation pertaining to the disposal of hazardous wastes.

State Politics: Republicans controlled 20 governorships and 7 legislatures. Democrats controlled 28 governorships and 26 legislatures. 16 legislatures had split control. 2 governors were independent.

1993:

Islamic fundamentalist terrorists bomb the World Trade Center in New York. In Waco, Texas, a 51-day siege conducted by the FBI and the Bureau of Alcohol, Tobacco, and Firearms of an armed compound controlled by a religious cult called the Branch Davidians ends with 82 deaths.

Congress enacts the Religious Freedom Restoration Act in response to the Court’s decision in *Employment Div., Dept. of Human Resources of Oregon v. Smith* (1991). The Act requires strict scrutiny of governmental statutes of general application that infringe the free exercise of religion. In 1997, in *City of Boerne v. Flores*, the Court will hold that Congress lacks power under Section 5 of the 14th Amendment to enact the Religious Freedom Restoration Act.

World Wide Web Usage explodes. By 1999, 150 million people will log on every week.

While homosexuality remains a grounds for discharge, President Clinton announces a “don’t ask, don’t tell” policy for homosexuals in the United States military. Significant numbers of servicemen and women who disclose their sexual orientation will be discharged pursuant to this policy.

Shaw v. Reno: The Court uses strict scrutiny to invalidate North Carolina congressional districts that had been drawn to facilitate the election of minority candidates for Congress, and coincidentally helped to elect more Republicans.

President Clinton appoints Ruth Bader Ginsburg to the Supreme Court, replacing Byron R. White.

103rd Congress: Democrats control the House of Representatives, 258–176 (with 1 Independent). Democrats also control the Senate, 57–43.

1994: President Clinton appoints Stephen Breyer to the Court, replacing Harry Blackmun (1970–94).

Republicans win majorities in both houses of Congress for the first time since 1952, ending the longest period of single-party rule in U.S. history. Republicans run on a platform called the “Contract with America,” which promises to reduce the size of the federal government and return power to the states.

White supremacist Byron De La Beckwith is convicted of the 1963 murder of Medgar Evers in Jackson, Mississippi, by a racially integrated jury. He had been tried twice in 1964, but all-white juries had deadlocked both times.

The United States government privatizes the Internet.

J.E.B. v. Alabama: The Court extends the ban on the use of peremptory challenges to include jurors struck because of their gender as well as because of their race.

State Politics: Republicans controlled 19 governorships and 15 legislatures. Democrats controlled 29 governorships and 22 legislatures. 12 legislatures had split control. 2 governors were independent.

1995: Timothy McVeigh bombs the federal building in Oklahoma City to protest against the federal government. The bombing leaves 168 dead. O.J. Simpson is acquitted of the 1994 murders of Nicole Simpson and Ron Goldman after spending \$6 million on his defense.

United States v. Lopez: The Court, in a 5–4 decision, declares that an Act of Congress banning possession of guns near a school exceeds congressional power under the Commerce Clause.

Adarand Constructors, Inc. v. Peña: The Court, in a 5–4 decision, establishes strict scrutiny as the standard for all affirmative action programs.

U.S. Term Limits v. Thornton: The Court invalidates an amendment to the Arkansas Constitution which precludes persons who have served a certain number of terms in the United States Congress from having their names placed on the ballot for election to Congress.

104th Congress: Republicans control the House of Representatives, 230–204 (with 1 Independent). Republicans also control the Senate, 52–48.

1996: Congress passes and President Clinton signs welfare reform legislation that tightens eligibility requirements for the receipt of welfare benefits. Congress enacts, but President Clinton vetoes, legislation imposing a federal ban on “partial birth” abortions.

Romer v. Evans: The Court invalidates a Colorado constitutional amendment that would have prohibited localities from protecting homosexuals under laws that prohibit discrimination based on sexual orientation.

The Court uses what appears to be “rational basis with bite” Equal Protection analysis to invalidate the amendment.

United States v. Virginia: The Court invalidates a ban on female admissions to VMI. The decision raises the possibility of a new level of scrutiny for gender.

Hopwood v. Texas: The United States Court of Appeals for the 5th Circuit holds that the use of race as a factor in university admissions is unconstitutional. The Supreme Court declines to consider the case.

State Politics: Republicans controlled 31 governorships and 17 legislatures. Democrats controlled 18 governorships and 20 legislatures. 12 legislatures had split control. 1 governor was independent.

1997: *Washington v. Glucksberg*: The Court holds that a Washington state statute’s ban on physician-assisted suicide for terminally ill patients does not violate the Due Process Clause of the 14th Amendment. The Court emphasizes the nation’s history, legal traditions, and practices which it says demonstrate that the Anglo-American common law has disapproved of assisting suicide for 700 years.

Clinton v. Jones: The Court rules that a sitting president may be sued civilly during his term for acts which occurred before he assumed office.

Printz v. United States: The Court, in a 5–4 decision, strikes down provisions of the Brady Handgun Violence Prevention Act as violating the concept of “dual sovereignty” implicit in the structure of the Constitution and reinforced by the 10th Amendment. Significantly, the Act’s provisions, which required state officials to conduct record checks of gun buyers, were within the scope of the Commerce Clause, but nonetheless were held to violate state sovereignty.

Reno v. ACLU: In the Communications Decency Act, Congress banned sending patently offensive, indecent, or obscene materials by computer to persons under 18 years of age. The Court held these were content-based restrictions on speech and that the ban on offensive or indecent materials was unconstitutionally overbroad.

105th Congress: Republicans control the House of Representatives, 226–207 (with 2 Independents). Republicans also control the Senate, 55–45.

1998: Revelations of President Clinton’s sexual affair with White House intern Monica Lewinsky dominate the news and lead to events that culminate in Clinton’s December impeachment by the House of Representatives.

American embassies in Kenya and Tanzania are bombed by terrorists.

Searchers unsuccessfully comb western North Carolina mountains for alleged abortion clinic bomber John Rudolf.

State Politics: Republicans controlled 32 governorships and 17 legislatures. Democrats controlled 17 governorships and 20 legislatures. 12 legislatures had split control. 1 governor was independent.

Clinton v. City of New York: The Court strikes down legislation giving the president a line item veto.

1999: President Clinton is acquitted on impeachment charges after a Senate trial.

Two students kill 13 of their classmates at Columbine High School in Colorado, fueling a national debate over guns and violence in American society.

Florida begins a voucher program, providing public funds for use by students to attend private schools if their “home” school fails to meet certain criteria.

NATO bombs Serbian positions in effort to end ethnic violence in Kosovo, leading to Serbian retreat and NATO occupation.

Alden v. Maine: The Court, in another 5–4 decision, continues its expansive view of federalism, exemplified by *United States v. Printz*. The Court had previously ruled that the 11th Amendment prohibits states from being sued in *federal* court without their permission. In *Alden*, it holds that the doctrine of sovereign immunity means that Congress (when acting pursuant to its Article I powers) cannot provide a cause of action against states in *state* court either.

Saenz v. Roe: The Court invokes the Privileges or Immunities Clause of the 14th Amendment to strike down California’s refusal to pay new residents the same welfare given to longer term California residents, if the California welfare was a higher rate of welfare than they had received in their previous state. The lower rate prevailed until they had resided in California for one year.

106th Congress: Republicans control the House of Representatives, 223–211 (with 1 Independent). Republicans also control the Senate, 55–45.

2000: Vermont becomes the first state to allow same-sex couples to enter into civil unions. The Vermont legislature passed “An Act Relating to Civil Unions” after the Vermont Supreme Court ruled in December 1999 that denying the benefits of marriage to same-sex couples violated the Vermont constitution. The Act conferred the legal benefits and responsibilities of marriage, but not the name.

Scientists announce a complete mapping of the human genome, raising the possibility of dramatic advances in genetic engineering.

Bush v. Gore: The Supreme Court, split largely on political party lines, renders a decision that stops the recount of votes in Florida, insuring

the presidential election of George W. Bush over incumbent Vice President Al Gore.

United States v. Morrison: The Court holds in a 5–4 decision that the federal Violence Against Women Act exceeds congressional power under the Commerce Clause, rejecting extensive findings showing the aggregate effect of such violence on commerce.

Kimel v. Florida Board of Regents: The Court holds in another 5–4 decision that the federal Age Discrimination in Employment Act cannot be applied to prohibit age discrimination by the states. Neither the Commerce Clause nor the 14th Amendment can justify the statute. Sovereign immunity prevents enforcement under the Commerce Clause and enforcement under the 14th Amendment is barred because the elderly are not a protected class under the 14th Amendment’s Equal Protection Clause.

Boy Scouts of America v. Dale: The Court overturns a New Jersey statute requiring Boy Scouts to admit gay leaders, basing its decision on the 1st Amendment right of association.

State Politics: Republicans controlled 30 governorships and 18 legislatures. Democrats controlled 18 governorships and 16 legislatures. 15 legislatures had split control. 2 governors were independent.

2001: George W. Bush announces that the White House will no longer ask the American Bar Association to evaluate nominees for the federal judiciary, a practice dating to the Eisenhower administration.

United States Senator James Jeffords (R-Vt.) leaves the Republican Party, giving control of the Senate to the Democrats. Republicans retain control of the House of Representatives.

The economy enters a recession, ending the longest period of economic expansion in U.S. history (since 1991).

Al-Qaeda terrorists hijack and crash 2 airliners into the World Trade Center in New York and an airliner into the Pentagon. Approximately three thousand persons die. A 4th hijacked airliner crashes into the Pennsylvania countryside following a passenger revolt against the hijackers.

Allied forces invade Afghanistan in an effort to eradicate the bases of Osama bin Laden and the Al-Qaeda terrorist network. The war displaces the Taliban regime that had given shelter to the terrorists.

Five people die after unwitting exposure to envelopes containing anthrax, raising fears of bio-terrorism.

Enron Corporation, a Texas energy-trading company, files the largest bankruptcy in American history amid charges of corrupt accounting practices and manipulation of electric rates causing huge increases in

certain states. Discovery of accounting irregularities subsequently causes other large corporations to collapse and contributes to the continued downward spiral of the U.S. economy.

Board of Trustees of the University of Alabama v. Garrett: The Court continues its 5–4 split over federalism. The majority rules that states are immune from employment claims for damages under the Americans With Disabilities Act. Sovereign immunity prevents liability under the Commerce Clause and liability under the Equal Protection Clause is barred because the disabled are not a protected class under the Equal Protection Clause.

Nguyen v. Immigration and Naturalization Service: The Court rejects an Equal Protection challenge to an immigration law that makes it easier for an illegitimate child born overseas to become an American citizen if the mother is an American than if the father is an American.

107th Congress: Republicans control the House of Representatives, 220–213 (with 2 Independents). Republicans control the Senate, 51–50 because of Vice President Cheney, but party switches give control to the Democrats from June 6, 2001 until November 5, 2002.

2002: *Zelman v. Simmons-Harris*: The Court upholds the city of Cleveland’s school voucher program that allows parents to use government-provided vouchers at religious schools.

Atkins v. Virginia: The Court bans the execution of the mentally retarded as a violation of 8th Amendment.

Federal Maritime Commission v. South Carolina Ports Authority: The Court extends state sovereign immunity for lawsuits brought by individuals under statutes based on the Commerce Clause. Immunity now extends beyond actions in federal and state courts to include actions in federal executive agencies.

Republican Party of Minnesota v. White (5–4): The Court holds that the 1st Amendment prevents states from restricting judicial candidates from announcing their views on specific issues during their election campaigns.

State Politics: Republicans controlled 27 governorships and 21 legislatures. Democrats controlled 21 governorships and 16 legislatures. 12 legislatures had split control. 2 governors were independent.

2003: The United States and its allies invade and occupy Iraq and depose the dictator Saddam Hussein after Congress authorizes military action in 2002 in response to President Bush’s warnings that Iraq has “weapons of mass destruction.” No weapons of mass destruction are found. Insurgents, opposed to the United States’ occupation and the new Iraqi government, wreak havoc throughout the country.

Grutter v. Bollinger (5–4): The Court upholds the use of an affirmative action program at the University of Michigan Law School, while striking one down at the university’s undergraduate campus. *Gratz v. Bollinger* (5–4).

Lawrence v. Texas: Five members of the Court overrule *Bowers v. Hardwick* and strike down a criminal sodomy law that applies only to single sex couples, finding it a violation of the right to privacy found in the due process clause of the Fourteenth Amendment. Justice O’Connor also strikes the statute down, but on equal protection grounds only.

The Supreme Judicial Court of Massachusetts decides *Goodridge v. Dept. of Public Health* and declares that prohibiting gay marriage violates the state constitution’s “common benefits” clause. The court rejects a legislative compromise that would have created civil unions for same-sex couples and orders that marriage licenses be issued on May 17, 2004. The first same-sex marriage in the United States takes place May 17, 2004, in Cambridge, Massachusetts. As of July, 2005, eighteen states have amended their constitutions to expressly ban same-sex marriage in *Goodridge’s* wake.

108th Congress: Republicans control the House of Representatives, 229–205 (with 1 Independent). Republicans control the Senate, 51–48 (with 1 Independent caucusing with Democrats).

2004: George W. Bush defeats John Kerry in the presidential election. Republicans firmly retain control of both houses of Congress as Democrats lose seats in each.

State Politics: Republicans controlled 22 governorships and 20 legislatures. Democrats controlled 28 governorships and 19 legislatures. 10 legislatures had split control.

2005: *Gonzales v. Raich* (6–3): The Court upholds the power of the federal government to use the Interstate Commerce Clause to prevent California from legalizing the personal use of medicinal marijuana pursuant to the state’s Compassionate Use Act of 1996.

Justice Sandra Day O’Connor resigns from the Supreme Court after twenty-four years. Chief Justice William Rehnquist dies in office after thirty-three years. George W. Bush nominates and the Senate confirms Judge John G. Roberts, Jr., (R-Md.), of the United States Court of Appeals for the D.C. Circuit to replace Chief Justice Rehnquist. Bush nominates Judge Samuel Alito, (R-N.J.), of the United States Court of Appeals for the Third Circuit to replace Justice O’Connor.

The Canadian Parliament passes a statute approving gay marriage throughout Canada. The statute follows judicial victories in challenges brought under the Canadian constitution that had legalized gay mar-

riage in certain provinces and that had ruled that the Parliament had authority to pass such a statute. Canada joins the Netherlands (2000), Belgium (2003), and Spain (2005) as major countries recognizing gay marriage. Several European countries and New Zealand have civil union statutes.

Connecticut becomes the first state to allow civil unions for same-sex couples by action of the legislature without prior litigation and a judicial decree.

Islamic terrorists bomb London transportation system.

109th Congress: Republicans control the House of Representatives, 233–201 (with 1 Independent). Republicans also control the Senate, 55–44 (with 1 Independent caucusing with Democrats).

2006: State Politics: Republicans controlled 22 governorships and 16 legislatures. Democrats controlled 28 governorships and 23 legislatures. 10 legislatures had split control.

2007: *Parents Involved in Community Schools v. Seattle School District No. 1*: Court prohibits assignment of students to public schools solely for the purpose of achieving racial integration.

Gonzales v. Carhart (5–4): the Court upholds a congressional statute without a health exception, banning “partial birth abortion.” The decision effectively overrules prior precedent and reflects a shift in the Court after Justice O’Connor’s resignation and her replacement by Justice Alito.

Great Recession begins. Unemployment reaches nearly ten percent by 2010.

110th Congress: Democrats control the House of Representatives, 233–202. Democrats control the Senate, 49–49 (with 2 Independents caucusing with Democrats, thus giving them 51 votes and a majority).

2008: *District of Columbia v. Heller*: The Court holds that the Second Amendment protects an individual’s right to possess firearms for private use in federal enclaves.

Boumediene v. Bush: The Court holds that the Military Commissions Act of 2006 unconstitutionally suspended *habeas corpus*.

Financial crisis generates legislation to provide massive federal funds to “bail out” financial institutions.

Barack Obama, a Democrat, becomes the first African-American elected to the presidency. Democrats increase their majority in the Senate and take control of the House for the first time in fourteen years. State Politics: Republicans controlled 28 governorships and 14 legislatures. Democrats controlled 22 governorships and 27 legislatures. 8 legislatures had split control.

- 2009:** President Obama appoints Sonia Sotomayor to the Supreme Court, replacing David H. Souter.
- 111th Congress: Democrats control the House of Representatives, 257–178. Democrats also control the Senate, 57–41 (with 2 Independents caucusing with the Democrats).
- 2010:** Congress enacts a comprehensive program of federal health care.
- President Obama appoints Elena Kagan to the Supreme Court, replacing John Paul Stevens.
- Citizens United v. Federal Elections Commission:* The Court invalidates federal law prohibiting for profit non-media corporations and labor unions from paying with corporate or union treasury funds for broadcasting ads about candidates in federal election campaigns when the ads are run within sixty days of a general election or within thirty days of a primary. The 5–4 decision substantially overrules *McConnell v. Federal Election Commission* (2003) which had upheld the McCain-Feingold campaign reform act against a facial challenge. The decision is another indication of a shift in the Court after the resignation of Justice O’Connor.
- McDonald v. Chicago:* In a 5–4 decision, the Court holds that an individual right to bear arms is incorporated as a limit on the states. Justice Thomas concurs basing incorporation on the Privileges or Immunities Clause.
- State Politics: Republicans controlled 24 governorships and 14 legislatures. Democrats controlled 26 governorships and 27 legislatures. 8 legislatures had split control.
- 2011:** *Snyder v. Phelps:* The Westboro Baptist Church’s First Amendment right to protest at military funerals is upheld.
- Osama Bin Laden, leader of Al-Qaeda and mastermind of the 9/11 attacks, is killed by US Navy Seals in Pakistan.
- King v. Kentucky:* Warrantless searches do not violate the Fourth Amendment when it is believed there is a possibility of the imminent destruction of evidence.
- J.D.B. v. North Carolina:* minors must receive Miranda statements before interrogations.
- Brown v. Entertainment Merchants Association:* A 7–2 decision provides video games the same First Amendment protections afforded to books and movies.
- Occupy Wall Street protests begin, registering the anger some feel toward growing national inequality.

112th Congress: Republicans control the House of Representatives, 242–193. Democrats control the Senate, 51–47 (with 2 Independents caucusing with Democrats).

2012: George Zimmerman shoots Trayvon Martin, setting off widespread protests and sparking the Black Lives Matter movement. Zimmerman would be acquitted.

NFIB v. Sebelius: The PPACA (Obamacare) individual mandate is declared constitutional. The majority disagrees on the rationale for upholding the individual mandate. Five find it constitutional under the Taxing power of Congress, while only four say it was constitutional under the Commerce Clause.

Barack Obama is re-elected President, defeating Republican candidate Mitt Romney.

Democrats maintain control of the Senate, Republicans maintain control of the House.

State Politics: Republicans controlled 29 governorships and 27 legislatures. Democrats controlled 20 governorships and 15 legislatures. 7 legislatures had split control. 1 governor was independent.

2013–16: Many states end their bans on gay marriage, largely through judicial decisions declaring bans on gay marriage unconstitutional. The Boy Scouts of America also lifts their ban on gay scouts and leaders. This process culminates in 2016 with the decision of *Obergefell v. Hodges*, which legalizes gay marriage throughout the country.

2013: Two explosions near the finish line of the Boston Marathon leave 3 dead and 260 injured. One of the perpetrators is killed in the confrontation with police, while the other is captured after a standoff.

113th Congress: Republicans control the House of Representatives, 234–201. Democrats control the Senate, 53–45 (with 2 Independents caucusing with Democrats).

Shelby County v. Holder (5–4): Section 4 of the Voting Rights Act of 1965 is struck down. In the wake of this decision, many Republican controlled states pass stricter voter ID laws. Opponents contend they are suppressing votes.

United States v. Windsor (5–4): The Supreme Court strikes parts of the Defense of Marriage Act, allowing gay couples to receive federal benefits and privileges.

2014–17: Mississippi becomes the first state to pass a law which allows individuals and business to deny service to people if it conflicts with their religious beliefs. Other states follow suit in the coming years. Civil rights organizations worry this will cause discrimination against members of religious and sexual minorities.

- 2014:** Janet Yellen becomes the first woman to chair the Federal Reserve.
- Town of Greece v. Galloway* (5–4): Supreme Court rules that opening prayers can precede town hall meetings without violating the First Amendment.
- Burwell v. Hobby Lobby, Inc.* (5–4): The Supreme Court rules that the contraception mandate in Obamacare cannot be enforced on closely held corporations because of religious beliefs.
- One World Trade Center opens in New York City.
- Police shooting of Michael Brown sets off riots in Ferguson, Missouri, and across the country. Tensions between minorities and police receive renewed attention. Racial tensions grow across the country as police shootings of minorities frequently lead to protests.
- Republicans win a majority in both the House and Senate after midterm elections. Republicans win the majority of state elections too, holding the largest number of state houses and governorships since 1928. The Democrats, in contrast, control the smallest number of state governments since 1860.
- Colorado becomes the first state to legalize marijuana. Other states follow in the coming years. The Obama Administration chooses not to intervene to enforce federal drug laws, though questions swirl over whether that will change under future administrations.
- State Politics: Republicans controlled 29 governorships and 27 legislatures. Democrats controlled 21 governorships and 19 legislatures. 3 legislatures had split control.
- 2015:** *Obergefell v. Hodges*: In a 5–4 opinion written by Justice Anthony Kennedy, the Supreme Court declares there is a constitutional right to gay marriage.
- 114th Congress: Republicans control the House of Representatives, 247–188. Republicans also control the Senate, 54–44 (with 2 Independents caucusing with Democrats).
- 2016:** Supreme Court Justice Antonin Scalia dies at 79. President Obama nominates DC Circuit Court Judge Merrick Garland to fill the vacancy. The Republican-controlled Senate refuses to hold hearings, claiming the vacancy should be filled by the next president.
- Whole Women’s Health v. Hellerstadt*: 5–3 decision strikes down a 2013 Texas law which imposed restrictions on abortion clinics.
- After investigations into Democratic candidate Hillary Clinton by the FBI over her handling of emails during her tenure as Secretary of State, Donald Trump is elected President. It is widely considered one of the most shocking upsets in US political history. Republicans retain control

of both the Senate and House of Representatives, and gain in some state elections.

Protests break out across several cities against the election of Donald Trump.

State Politics: Republicans controlled 31 governorships and 30 legislatures. Democrats controlled 18 governorships and 11 legislatures. 8 legislatures had split control. 1 governor was independent.

2017: Allegations emerge from the United States Intelligence Community that Russia played a significant role in interfering with the 2016 election for the purpose of electing Donald Trump. These allegations are followed by calls for an investigation into collusion between the Trump campaign and Russia. These grow into calls for Trump to be impeached. President Trump nominates federal Circuit Court Judge Neil Gorsuch to fill the vacancy left by the death of Justice Scalia. In order to confirm Gorsuch, Republicans in the Senate use a procedural motion to change the rules for Supreme Court nominations, removing the ability of the minority party to filibuster. Critics of the move say it will cause nominees to the Supreme Court to become increasingly polarized.

115th Congress: Republicans control the House of Representatives, 241–194. Republicans also control the Senate, 52–46 (with 2 Independents caucusing with the Democrats).

Justices of the U.S. Supreme Court

Reprinted with permission from Melvin I. Urofsky and Paul Finkelman, *A March of Liberty: A Constitutional History of the United States*, 2 vols. (New York: Oxford University Press, 2002), pp. A 28–A 36.

THE NUMBER (1) indicates the Chief Justice; the other numbers show the order in which the original members of the Court were appointed, and then the order of succession. For example, if we follow the number (4) we see that James Wilson was succeeded first by Bushrod Washington, then by Henry Baldwin, and so on.

Many of those who have served on the nation's highest court have either not been well served by biographers or have been outright ignored. There are good sources for biographical and analytical essays on these, and in fact on all the justices. The most recent scholarship is contained in the essays in Melvin I. Urofsky, ed., *The Supreme Court Justices: A Biographical Dictionary* (1994). Leon Friedman and Fred L. Israel, eds., *The Justices of the United States Supreme Court, 1789–1978: Their Lives and Major Opinions* 5 vols. (1969–1980) is still useful, and also has some of the more important opinions.

Appointed by George Washington

- (1) *John Jay* (1745–1829); Federalist from New York; served 1789–1795; resigned.
- (2) *John Rutledge* (1739–1800); Federalist from South Carolina; appointed 1789; resigned 1791, without ever sitting.
- (3) *William Cushing* (1732–1810); Federalist from Massachusetts; served 1789–1810; died.
- (4) *James Wilson* (1742–1798); Federalist from Pennsylvania; served 1789–1798; died.
- (5) *John Blair* (1731–1800); Federalist from Virginia; served 1789–1796; resigned.
- (6) *James Iredell* (1751–1799); Federalist from North Carolina; served 1790–1799; died.
- (2) *Thomas Johnson* (1732–1819); Federalist from Maryland; served 1791–1793; resigned.
- (2) *William Paterson* (1745–1806); Federalist from New Jersey; served 1793–1806; died.

(1) *John Rutledge* (1739–1800); Federalist from South Carolina; unconfirmed recess appointment in 1795.

(5) *Samuel Chase* (1741–1811); Federalist from Maryland; served 1796–1811; died.

(1) *Oliver Ellsworth* (1745–1807); Federalist from Connecticut; served 1796–1800; resigned.

Appointed by John Adams

(4) *Bushrod Washington* (1762–1829); Federalist from Pennsylvania and Virginia; served 1798–1829; died.

(6) *Alfred Moore* (1755–1810); Federalist from North Carolina; served 1799–1804; resigned.

(1) *John Marshall* (1755–1835); Federalist from Virginia; served 1801–1835; died.

Appointed by Thomas Jefferson

(6) *William Johnson* (1771–1834); Republican from South Carolina; served 1804–1834; died.

(2) *Henry Brockholst Livingston* (1757–1823); Republican from New York; served 1806–1823; died.

(7) *Thomas Todd* (1765–1826); Republican from Kentucky; served 1807–1826; died.

Appointed by James Madison

(5) *Gabriel Duvall* (1752–1844); Republican from Maryland; served 1811–1835; resigned.

(3) *Joseph Story* (1799–1845); Republican from Massachusetts; served 1811–1845; died.

Appointed by James Monroe

(2) *Smith Thompson* (1768–1843); Republican from New York; served 1823–1843; died.

Appointed by John Quincy Adams

(7) *Robert Trimble* (1776–1828); Republican from Kentucky; served 1826–1828; died.

Appointed by Andrew Jackson

(7) *John McLean* (1785–1861); Democrat (later Republican) from Ohio; served 1829–1861; died.

(4) *Henry Baldwin* (1780–1844); Democrat from Pennsylvania; served 1830–1844; died.

(6) *James Moore Wayne* (1790–1867); Democrat from Georgia; served 1835–1867; died.

(1) *Roger Brooke Taney* (1777–1864); Democrat from Maryland; served 1836–1864; died.

(5) *Philip Pendleton Barbour* (1783–1841); Democrat from Virginia; served 1836–1841; died.

Appointed by Martin Van Buren

(8) *John Catron* (1786–1865); Democrat from Tennessee; served 1837–1865; died.

(9) *John McKinley* (1780–1852); Democrat from Kentucky; served 1837–1852; died.

(5) *Peter Vivian Daniel* (1784–1860); Democrat from Virginia; served 1841–1860; died.

Appointed by John Tyler

(2) *Samuel Nelson* (1792–1873); Democrat from New York; served 1845–1872; resigned.

Appointed by James K. Polk

(3) *Levi Woodbury* (1789–1851); Democrat from New Hampshire; served 1845–1851; died.

(4) *Robert Cooper Grier* (1794–1870); Democrat from Pennsylvania; served 1846–1870; resigned.

Appointed by Millard Fillmore

(3) *Benjamin Robbins Curtis* (1809–1874); Whig from Massachusetts; served 1851–1857; resigned.

Appointed by Franklin Pierce

(9) *John Archibald Campbell* (1811–1889); Democrat from Alabama; served 1853–1861; resigned.

Appointed by James Buchanan

(3) *Nathaniel Clifford* (1803–1881); Democrat from Maine; served 1858–1881; died.

Appointed by Abraham Lincoln

(7) *Noah Haynes Swayne* (1804–1884); Republican from Ohio; served 1862–1881; resigned.

(5) *Samuel Freeman Miller* (1816–1890); Republican from Iowa; served 1862–1890; died.

(9) *David Davis* (1815–1886); Republican (later Democrat) from Illinois; served 1862–1877; resigned.

(10) *Stephen Johnson Field* (1816–1899); Democrat from California; served 1863–1897; resigned.

(1) *Salmon P. Chase* (1808–1873); Republican from Ohio; served 1864–1873; died.

Appointed by Ulysses S. Grant

(4) *William Strong* (1808–1895); Republican from Pennsylvania; served 1870–1880; resigned.

(6) *Joseph Philo Bradley* (1803–1892); Republican from New Jersey; served 1870–1892; died.

(2) *Ward Hunt* (1810–1886); Republican from New York; served 1873–1882; resigned.

(1) *Morrison Remick Waite* (1816–1888); Republican from Ohio; served 1874–1888; died.

Appointed by Rutherford B. Hayes

(9) *John Marshall Harlan* (1833–1911); Republican from Kentucky; served 1877–1911; died.

(4) *William Burnham Woods* (1824–1887); Republican from Georgia; served 1880–1887; died.

Appointed by James A. Garfield

(7) *Stanley Matthews* (1824–1889); Republican from Ohio; served 1881–1889; died.

Appointed by Chester Arthur

(3) *Horace Gray* (1828–1902); Republican from Massachusetts; served 1881–1902; died.

(2) *Samuel M. Blatchford* (1820–1893); Republican from New York; served 1882–1893; died.

Appointed by Grover Cleveland (First Term)

(4) *Lucius Quintus Cincinnatus Lamar* (1825–1893); Democrat from Mississippi; served 1888–1893; died.

(1) *Melville Weston Fuller* (1833–1910); Democrat from Illinois; served 1888–1910; died.

Appointed by Benjamin Harrison

(7) *David Josiah Brewer* (1837–1910); Republican from Kansas; served 1889–1910; died.

(5) *Henry Billings Brown* (1836–1913); Republican from Michigan; served 1891–1906; resigned.

(6) *George Shiras, Jr.* (1832–1924); Republican from Pennsylvania; served 1892–1903; resigned.

(4) *Howell Edmunds Jackson* (1832–1895); Democrat from Tennessee; served 1893–1895; died.

Appointed by Grover Cleveland (Second Term)

(2) *Edward Douglass White* (1845–1921); Democrat from Louisiana; served 1894–1910; promoted to chief justice.

(4) *Rufus Wheeler Peckham* (1838–1909); Democrat from New York; served 1895–1909; died.

Appointed by William McKinley

(10, now 8) *Joseph McKenna* (1843–1926); Republican from California; served 1898–1925; resigned.

Appointed by Theodore Roosevelt

(3) *Oliver Wendell Holmes, Jr.* (1841–1935); Republican from Massachusetts; served 1902–1932; resigned.

(6) *William Rufus Day* (1849–1923); Republican from Ohio; served 1903–1922; resigned.

(5) *William Henry Moody* (1853–1917); Republican from Massachusetts; served 1906–1910; resigned.

Appointed by William Howard Taft

(4) *Horace Hannon Lurton* (1844–1914); Democrat from Tennessee; served 1909–1914; died.

(7) *Charles Evans Hughes* (1862–1948); Republican from New York; served 1910–1916; resigned.

(1) *Edward Douglass White* (1845–1921); promoted from associate justice; served 1910–1921; died.

(2) *Willis Van Devanter* (1859–1941); Republican from Wyoming; served 1910–1937; resigned.

(5) *Joseph Rucker Lamar* (1857–1916); Democrat from Georgia; served 1911–1916; died.

(9) *Mahlon Pitney* (1858–1924); Republican from New Jersey; served 1912–1922; retired.

Appointed by Woodrow Wilson

(4) *James Clark McReynolds* (1862–1946); Democrat from Tennessee; served 1914–1941; retired.

(5) *Louis Dembitz Brandeis* (1856–1941); Democrat from Massachusetts; served 1916–1939; retired.

(7) *John Hessin Clarke* (1857–1945); Democrat from Ohio; served 1916–1922; resigned.

Appointed by Warren G. Harding

(1) *William Howard Taft* (1857–1930); Republican from Ohio; served 1921–1930; resigned.

(7) *George Sutherland* (1862–1942); Republican from Utah; served 1922–1938; retired.

(6) *Pierce Butler* (1866–1939); Democrat from Minnesota; served 1922–1939; retired.

(9) *Edward Terry Sanford* (1865–1930); Republican from Tennessee; served 1923–1930; died.

Appointed by Calvin Coolidge

(8) *Harlan Fiske Stone* (1872–1946); Republican from New York; served 1925–1941; promoted to chief justice.

Appointed by Herbert Hoover

(1) *Charles Evans Hughes* (1862–1948); Republican from New York; served 1930–1941; retired.

(9) *Owen Josephus Roberts* (1875–1955); Republican from Pennsylvania; served 1930–1945; resigned.

(3) *Benjamin Nathan Cardozo* (1870–1938); Democrat from New York; served 1932–1938; died.

Appointed by Franklin D. Roosevelt

(2) *Hugo Lafayette Black* (1886–1971); Democrat from Alabama; served 1937–1971; retired.

(7) *Stanley Forman Reed* (1884–1980); Democrat from Kentucky; served 1938–1957; retired.

(3) *Felix Frankfurter* (1882–1965); Independent from Massachusetts; served 1939–1962; retired.

(5) *William Orville Douglas* (1898–1980); Democrat from Connecticut; served 1939–1975; retired.

(6) *Frank Murphy* (1890–1949); Democrat from Michigan; served 1940–1949; died.

(4) *James Francis Byrnes* (1879–1972); Democrat from South Carolina; served 1941–1942; resigned.

(1) *Harlan Fiske Stone* (1872–1946); promoted from associate justice; served 1941–1946; died.

(8) *Robert Houghwout Jackson* (1892–1954); Democrat from New York; served 1941–1954; died.

(4) *Wiley Blount Rutledge* (1894–1949); Democrat from Iowa; served 1943–1949; died.

Appointed by Harry S. Truman

(9) *Harold Hitz Burton* (1888–1964); Republican from Ohio; served 1945–1958; retired.

(1) *Frederick Moore Vinson* (1890–1953); Democrat from Kentucky; served 1946–1953; died.

(6) *Tom C. Clark* (1899–1977); Democrat from Texas; served 1949–1967; retired.

(4) *Sherman Minton* (1890–1965); Democrat from Indiana; served 1949–1956; retired.

Appointed by Dwight D. Eisenhower

(1) *Earl Warren* (1891–1974); Republican from California; served 1953–1969; retired.

(8) *John Marshall Harlan II* (1899–1971); Republican from New York; served 1955–1971; retired.

(4) *William Joseph Brennan, Jr.* (1906–1997); Democrat from New Jersey; served 1956–1990; retired.

(7) *Charles Evans Whittaker* (1901–1973); Republican from Missouri; served 1957–1962; retired.

(9) *Potter Stewart* (1915–1985); Republican from Ohio; served 1958–1981; retired.

Appointed by John F. Kennedy

(7) *Byron Raymond White* (1917–2000); Democrat from Colorado; served 1962–1993; retired.

(3) *Arthur Joseph Goldberg* (1908–1990); Democrat from Illinois; served 1962–1965; resigned.

Appointed by Lyndon B. Johnson

(3) *Abe Fortas* (1910–1982); Democrat from Tennessee; served 1965–1969; resigned.

(6) *Thurgood Marshall* (1908–1993); Democrat from New York, served 1967–1991; retired.

Appointed by Richard M. Nixon

(1) *Warren Earl Burger* (1907–1995); Republican from Minnesota; served 1969–1986; retired.

(3) *Harry Andrew Blackmun* (1908–1999); Republican from Minnesota; served 1970–1994; retired.

(2) *Lewis Franklin Powell, Jr.* (1907–1998); Democrat from Virginia; served 1972–1987; retired.

(8) *William Hubbs Rehnquist* (1924–2005); Republican from Arizona; served 1972–1986; promoted to chief justice.

Appointed by Gerald Ford

(5) *John Paul Stevens* (1920–); Republican from Illinois; served 1975–2010; retired.

Appointed by Ronald Reagan

(9) *Sandra Day O'Connor* (1930–); Republican from Arizona; served 1981–2006; retired.

(1) *William Hubbs Rehnquist* (1924–2005); promoted from associate justice; served 1986–2005; died.

(8) *Antonin Scalia* (1936–2016); Republican from Ohio and Virginia; served 1986–2016; died.

(2) *Anthony M. Kennedy* (1936–); Republican from California; served 1988–.

Appointed by George H. W. Bush

(4) *David Hackett Souter* (1939–); Republican from New Hampshire; served 1990–2009; retired.

(6) *Clarence Thomas* (1948–); Republican from Georgia; served 1991–.

Appointed by William Clinton

(7) *Ruth Bader Ginsburg* (1933–); Democrat from New York; served 1993–.

(3) *Stephen G. Breyer* (1938–); Democrat from Massachusetts; served 1994–.

Appointed by George W. Bush

(1) *John G. Roberts, Jr.* (1955–); Republican from Maryland; served 2005–.

(9) *Samuel A. Alito, Jr.* (1950–); Republican from New Jersey; served 2006–.

Appointed by Barack Obama

(4) *Sonia Sotomayor*, (1954–); Democrat from New York; served 2009–.

(5) *Elena Kagan*, (1960–); Democrat from Massachusetts; served 2010–.

Appointed by Donald Trump

(8) *Neil Gorsuch*, (1967–); Republican from Colorado; served 2017–.

