McCulloch v. *Maryland* (1819)

McCulloch v. Maryland (1819) is one of our most iconic Supreme Court precedents. According to James Bradley Thayer – "The chief illustration [of Marshall's] "giving free scope to the power of the national government." Marshall's signature nation-building achievement, seemingly an "infinite increase in the powers of the federal government." "Marshall's capacious understandings of the Necessary and Proper Clause and the Commerce Clause were sufficient to accommodate the modern regulatory state." Where federal and state governing actions collide, the national prerogatives are supreme. In the case of a national bank, federal supremacy holds that federal operations are immune from state taxation. The federal government, "though limited in its powers, is supreme within its sphere of action." Supports broad constructions of Congress' Commerce Clause and Necessary and Proper Clause powers. Federalism reflects the dynamic distribution of power between national and state government. When distributing power between national, state and local governments McCulloch v. Maryland (1819) made one thing perfectly clear, the power given to the national government is supreme.

Unanimous opinion of the Court written by chief justice John Marshall [excerpted here]

"In the case now to be determined, the defendant, a sovereign State, denies the obligation of a law enacted by the legislature of the Union, and the plaintiff, on his part, contests the validity of an act which has been passed by the legislature of that State. The Constitution of our country, in its most interesting and vital parts, is to be considered, the conflicting powers of the Government of the Union and of its members, as marked in that Constitution, are to be discussed, and an opinion given which may essentially influence the great operations of the Government. No tribunal can approach such a question without a deep sense of its importance, and of the awful responsibility involved in its decision…

…But the Constitution of the United States has not left the right of Congress to employ the necessary means for the execution of the powers conferred on the Government to general reasoning. To its enumeration of powers is added that of making all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States or in any department thereof…

…The power of Congress to create and, of course, to continue the bank…is no longer to be considered as questionable…

…The Court has bestowed on this subject its most deliberate consideration. The result is a conviction that the States have no power, by taxation or otherwise, to retard, impede, burden, or in any manner control the operations of the constitutional laws enacted by Congress to carry into execution the powers vested in the General Government. This is, we think, the unavoidable consequence of that supremacy which the Constitution has declared…

…We are unanimously of opinion that the law passed by the Legislature of Maryland, imposing a tax on the Bank of the United States is unconstitutional and void…

…This opinion does not deprive the States of any resources which they originally possessed. It does not extend to a tax paid by the real property of the bank, in common with the other real property within the State, nor to a tax imposed on the interest which the citizens of Maryland may hold in this institution, in common with other property of the same description throughout the State. But this is a tax on the operations of the bank, and is, consequently, a tax on the operation of an instrument employed by the Government of the Union to carry its powers into execution. Such a tax must be unconstitutional."

1. Using what you already know and context clues from the *McCulloch* excerpt, what two (2) fundamental constitutional questions were answered in this landmark case?

2. In his opinion Marshall opens with the following: "*No tribunal can approach such a question without a deep sense of its importance, and of the awful responsibility involved in its decision*." Provide contextualization to this case. Why were the issues addressed in this case, at that time, considered to be so important? How might our government look different had the Court ruled in favor of Maryland?

3. Identify other examples where our national government has exercised its implied powers using "the necessary and proper clause."

4. Identify other examples where our national government has exercised its powers under "the supremacy clause."

5. Imagine TWITTER was around in 1819, as a court reporter Tweet out a 140 character or less summary.

United States v. *Lopez* (1995)

The story of American government is the story of federal aggrandizement. Seemingly our central government is getting bigger and bigger. Are there no limits left? Federalism was supposed to be the dynamic distribution of power between national and state government. In U.S. v. Lopez (1995) we see the United States Supreme Court standing up, surprisingly, for commerce clause limits. In the Supreme Court case U.S. v. Lopez (1995) the national government was somewhat surprisingly reprimanded. The Court's admonishment was clear; Congress' use of the commerce clause has its limits. Congress may not use the commerce clause to make possession of a gun in school zone a federal crime. We are a nation of law and not men. Law sets limits. There are certain policies that are outside of the purview of the national government. We call this federalism. Federalism reflects the dynamic distribution of power between national and state government. According to the Supreme Court, at least, the national government cannot do whatever it wants. State governments still retain a certain level of sovereignty. Do you disagree? See you in court.

Chief Justice Rehnquist delivered the opinion of the Court [excerpted here]

In the Gun-Free School Zones Act of 1990, Congress made it a federal offense "for any individual knowingly to possess a firearm at a place that the individual knows, or has reasonable cause to believe, is a school zone." The Act neither regulates a commercial activity nor contains a requirement that the possession be connected in any way to interstate commerce. We hold that the Act exceeds the authority of Congress "[t]o regulate Commerce ... among the several States .... "

…We start with first principles. The Constitution creates Federal Government of enumerated powers. As James Madison wrote: "The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite," (The Federalist No. 45). This constitutionally mandated division of authority "was adopted by the Framers to ensure protection of our fundamental liberties," (Gregory v. Ashcroft, 1991). "Just as the separation and independence of the coordinate branches of the Federal Government serve to prevent the accumulation of excessive power in anyone branch, a healthy balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front."

The Constitution delegates to Congress the power "[t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." The Court, through Chief Justice Marshall, first defined the nature of Congress' commerce power in Gibbons v. Ogden, (1824):

> "Commerce, undoubtedly, is traffic, but it is something more: it is intercourse. It describes the commercial intercourse between nations, and parts of nations, in all its branches, and is regulated by prescribing rules for carrying on that intercourse."

…To uphold the Government's contentions here, we would have to pile inference upon inference in a manner that would bid fair to convert congressional authority under the Commerce Clause to a general police power of the sort retained by the States. Admittedly, some of our prior cases have taken long steps down that road, giving great deference to congressional action. The broad language in these opinions has suggested the possibility of additional expansion, but we decline here to proceed any further. To do so would require us to conclude that the Constitution's enumeration of powers does not presuppose something not enumerated, …and that there never will be a distinction between what is truly national and what is truly local, …This we are unwilling to do.

1. Using what you already know and context clues from the *Lopez* excerpt, what is the fundamental constitutional question answered in this landmark case?

2. Early in Rehnquist's opinion he provided a brief civics lesson. Summarize the "first principles" of American government.

3. Identify the Court precedent in the *Lopez* decision. How does this opinion fulfill the "first principles" as mentioned by Rehnquist?

4. Despite the opinion in *Lopez*, the interstate commerce clause continues to be used to expand the power and authority of the national government. Identify a Court decision that affirmed the Congress' power to pass a law using the interstate commerce clause.

5. What policies are best implemented at the national level? What policies are best implemented at the state and local level? How would you define the limits the "interstate commerce clause"?

Engel* v. *Vitale (1962)

Provisions of the Bill of Rights are continually being interpreted to balance the power of government and the civil liberties of individuals. No better example than the emotional issue of our religious freedom as found in the First Amendment. Religious freedom has been central to the American way of life. "Our Constitution was made for a religious people," said Founding Father John Adams. So it should not come as any surprise to learn that when the United States Supreme Court got involved with religious life in America it would ignite a passionate response. Though the First Amendment guaranteed, "Congress shall make no law respecting an establishment of religion," a Protestant hegemony assured certain customs and traditions would be commonplace here, even in the public square. Individual state practices, as well, were not burdened by the religion clauses of the First Amendment until 1947 with the incorporation of the establishment clause in the case Everson v. Board of Education. With the Supreme Court now empowered to police neutral religious practices in every local village and hamlet a bevy of plaintiffs emerged to challenge certain long held traditions. One such tradition was the offering of Christian prayers in public schools. Following the "wall of separation" precedent in Everson, the high Court ruled against any and all public school led prayers in the landmark case Engel v. Vitale (1962). Few cases have solicited such emotionally charged reactions. Hundreds of constitutional amendments were proposed to overturn the decision and calls for impeaching Supreme Court justices became commonplace. In the end, the customs and traditions dutifully found in our public square would have to change. Governments could no longer sanction religious activity. "No law respecting an establishment of religion" would be tolerated. And no prayer could change that.

Mr. Justice Black delivered the opinion of the court [excerpted here]

"The respondent Board of Education of Union Free School District No. 9, New Hyde Park, New York, acting in its official capacity under state law, directed the School District's principal to cause the following prayer to be said aloud by each class in the presence of a teacher at the beginning of each school day:

> Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessings upon us, our parents, our teachers and our Country.

…Parents challenged the constitutionality of both the state law authorizing the School District to direct the use of prayer in public schools and the School District's regulation ordering the recitation of this particular prayer on the ground that these actions of official governmental agencies violate that part of the First Amendment of the Federal Constitution which commands that 'Congress shall make no law respecting an establishment of religion' -- a command which was 'made applicable to the State of New York by the Fourteenth Amendment of the said Constitution.'

…We think that, by using its public school system to encourage recitation of the Regents' prayer, the State of New York has adopted a practice wholly inconsistent with the Establishment Clause. There can, of course, be no doubt that New York's program of daily classroom invocation of God's blessings as prescribed in the Regents' prayer is a religious activity…

…Neither the fact that the prayer may be denominationally neutral nor the fact that its observance on the part of the students is voluntary can serve to free it from the limitations of the Establishment Clause, as it might from the Free Exercise Clause, of the First Amendment, both of which are operative against the States by virtue of the Fourteenth Amendment. Although these two clauses may, in certain instances, overlap, they forbid two quite different kinds of governmental encroachment upon religious freedom. The Establishment Clause, unlike the Free Exercise Clause, does not depend upon any showing of direct governmental compulsion and is violated by the enactment of laws which establish an official religion whether those laws operate directly to coerce non-observing individuals or not…"

1. Using what you already know and context clues from the *Vitale* excerpt, what fundamental constitutional questions were answered in this landmark case?

2. The ruling in *Engel* v. *Vitale* (1962) was made possible due to the landmark ruling in *Everson* v. *Board of Education* (1947). Review the *Everson* ruling and explain its significance to *Engel* v. *Vitale*.

3. This case seemingly impacted both the establishment clause and the free exercise clause of the First Amendment. Did the court correctly focus on the establishment clause? Explain.

4. The uses of religion in the public square, even today, are hardly settled. We still have "In God We Trust" printed on our currency. Congress still opens every session with a prayer. In the light of the *Engel* precedent, how can these practices continue? Research and write a legal brief explaining what can and cannot be tolerated with respect to religion in the public square today.

Wisconsin v. *Yoder* (1972)

The United States motto is simple, E Pluribus Unum, out of many one. Our Founders envisioned "a plural society," one that welcomed diversity but encouraged harmony when solving compelling state interests. But what if certain groups want to be exempt from the state's compelling interests? What if the pluribus loses its Unum? This was the issue in Wisconsin v. Yoder (1972). A group of rural Amish, a traditional religious sect that eschews modern comforts, chose not to cooperate with Wisconsin's compulsory high school education laws. The Amish claimed it violated their First Amendment right to their "free exercise of religion." Provisions of the Bill of Rights are continually being interpreted to balance the power of government and the civil liberties of individuals. Compelling Amish students to attend school past the eighth grade violated the free exercise clause, the court argued. The court emphasized our tradition of religious tolerance and the accommodation of religious differences. Some have called the Yoder precedent the "high water mark of free exercise." The allowance of religious exemptions to other state laws, however, has not met a similar conclusion. For instance in the case Employment Division v. Smith (1990) the court rejected the argument of two drug counselors who wanted to be exempt from Oregon's prohibition to use peyote based upon their own religious practices. Congress attempted to ameliorate likeminded disputes with the passage of the Religious Freedom Restoration Act (1993). Disputes continue to vex our courts. Our pluribus continues to test our Unum.

Mr. Chief Justice Burger delivered the opinion of the court [excerpted here]

"…On complaint of the school district administrator for the public schools, respondents were charged, tried, and convicted of violating the compulsory attendance law in Green County Court, and were fined the sum of $5 each. Respondents defended on the ground that the application of the compulsory attendance law violated their rights under the First and Fourteenth Amendments. The trial testimony showed that respondents believed, in accordance with the tenets of Old Order Amish communities generally, that their children's attendance at high school, public or private, was contrary to the Amish religion and way of life. They believed that, by sending their children to high school, they would not only expose themselves to the danger of the censure of the church community, but, as found by the county court, also endanger their own salvation and that of their children. The State stipulated that respondents' religious beliefs were sincere…

…There is no doubt as to the power of a State, having a high responsibility for education of its citizens, to impose reasonable regulations for the control and duration of basic education…

…We must not forget that, in the Middle Ages, important values of the civilization of the Western World were preserved by members of religious orders who isolated themselves from all worldly influences against great obstacles. There can be no assumption that today's majority is 'right,' and the Amish and others like them are "wrong." A way of life that is odd or even erratic but interferes with no rights or interests of others is not to be condemned because it is different…

…For the reasons stated we hold, with the Supreme Court of Wisconsin, that the First and Fourteenth Amendments prevent the State from compelling respondents to cause their children to attend formal high school to age 16. Our disposition of this case, however, in no way alters our recognition of the obvious fact that courts are not school boards or legislatures, and are ill-equipped to determine the 'necessity' of discrete aspects of a State's program of compulsory education. This should suggest that courts must move with great circumspection in performing the sensitive and delicate task of weighing a State's legitimate social concern when faced with religious claims for exemption from generally applicable educational requirements. It cannot be overemphasized that we are not dealing with a way of life and mode of education by a group claiming to have recently discovered some "progressive" or more enlightened process for rearing children for modern life…"

1. Using what you already know and context clues from the *Yoder* excerpt, what fundamental constitutional questions were answered in this landmark case? Why does the opinion reference both the First and Fourteenth Amendments?

2. According to this opinion the State has "a high responsibility for education of its citizens." Explain.

3. Explain how the Court opinion utilized history in the argument? Do you think judges should limit themselves to the letter of the law or also use history to make their decisions?

4. The tone of this opinion suggests that the Court was reluctant to grant this or any exemption to state law. Explain.

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

Do students lose their rights when they walk through the schoolhouse gate? This was the question in the case Tinker v. Des Moines (1969). We know the First Amendment's free speech clause has been given a "preferred position." But does it apply equally to kids sitting in classrooms? The Des Moines public school system in 1965 said: "No." "Schools are no place for demonstrations," the school system's spokesperson said in response to five students who had been suspended for showing up to class wearing black arm bands in protest of the Vietnam War. The Supreme Court would be called upon again to interpret the reach of the First Amendment. Provisions of the Bill of Rights are continually being interpreted to balance the power of government and the civil liberties of individuals. Public school students, as decided in this case, could wear black armbands in school to protest the Vietnam War. Though the court recognized the school's right to maintain order within the classroom, "school officials do not possess absolute authority over their students." Furthermore the court argued, "Fear that something might happen, is not a basis for quelling all student speech." Finding the proper balance between order and liberty is never easy. Be encouraged, however, that as you learn about your civil liberties they do not exist in theory alone. You gain possession of your liberties today, right now, regardless of your age. For this we can thank the courage of John and Mary Beth Tinker who decided to speak out against war while sitting in just another high school math class.

Mr. Justice Fortas delivered the opinion of the court [excerpted here]

"…The principals of the Des Moines schools became aware of the plan to wear armbands. On December 14, 1965, they met and adopted a policy that any student wearing an armband to school would be asked to remove it, and, if he refused, he would be suspended until he returned without the armband. Petitioners were aware of the regulation that the school authorities adopted…

…The District Court recognized that the wearing of an armband for the purpose of expressing certain views is the type of symbolic act that is within the Free Speech Clause of the First Amendment… the wearing of armbands in the circumstances of this case was entirely divorced from actually or potentially disruptive conduct by those participating in it. It was closely akin to "pure speech" which, we have repeatedly held, is entitled to comprehensive protection under the First Amendment…

…First Amendment rights, applied in light of the special characteristics of the school environment, are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate…

…In our system, state-operated schools may not be enclaves of totalitarianism. School officials do not possess absolute authority over their students. Students in school, as well as out of school, are 'persons' under our Constitution. They are possessed of fundamental rights which the State must respect, just as they themselves must respect their obligations to the State. In our system, students may not be regarded as closed-circuit recipients of only that which the State chooses to communicate. They may not be confined to the expression of those sentiments that are officially approved. In the absence of a specific showing of constitutionally valid reasons to regulate their speech, students are entitled to freedom of expression of their views…"

1. Using what you already know and context clues from the *Tinker* excerpt, what fundamental constitutional questions were answered in this landmark case?

2. According to this opinion what was the school districts rationale for punishing the students? Explain. Check out the Court's dissenting opinion by Justice Hugo Black.

3. Justice Fortas writes in his opinion, "It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." This is one of the most quoted lines from Supreme Court history. Write it in your own words. Our liberties have limits. What reasonable limits should apply to students at school?

4. Investigate how the *Tinker* precedent plays out in your school. Provide examples.

New York Times Company v. U.S. (1971)

New York Times Company v. U.S. (1971) is often referred to as the Pentagon Papers Case. The Pentagon Papers were thousands of pages of "top secret" documents compiled by the Secretary of Defense that documented the murky narrative of the United States involvement in the Vietnam War. One of its authors, Daniel Ellsberg, was incensed at what the Papers' revealed and chose to "leak" the documents to the New York Times. The Times began printing excerpts of the Pentagon Papers on June 13, 1971. Almost immediately the Nixon Administration saw the exposure of the Pentagon Papers in the press as a threat to national security. Ongoing peace talks in Vietnam, Nixon thought, would be jeopardized by this security breach in the American press. The Nixon Justice Department requested an injunction against the Times to stop the presses. The U.S. government had never before asked the courts to stop a national newspaper in this way. Due to the immediacy of the injunction, the Supreme Court agreed to resolve this issue within a matter of days. Provisions of the Bill of Rights are continually being interpreted to balance the power of government and the civil liberties of individuals. The Court returned a 6-3 decision that upheld the power and authority of the First Amendment's freedom of the press. New York Times Company v. U.S. (1971) bolstered the freedom of press, establishing a "heavy presumption against prior restraint" even in cases involving national security. There can be little doubt that a strong nation requires a free press. Years later Daniel Ellsberg was asked if "leaks" to the press and subsequent attempts by the government to pursue prosecution in our day bear any resemblance to the Pentagon Papers Case? Ellsberg without hesitation responded by saying, "The parallels are very strong." Each generation will see its freedoms challenged and tested.

Per Curiam opinion of the court along with Justice Black's concurring opinion [excerpted here]

"…We granted certiorari in these cases in which the United States seeks to enjoin the New York Times and the Washington Post from publishing the contents of a classified study entitled 'History of U.S. Decision-Making Process on Viet Nam Policy'…

… "Any system of prior restraints of expression comes to this Court bearing a heavy presumption against its constitutional validity"…

…The Government "thus carries a heavy burden of showing justification for the imposition of such a restraint."…

…The District Court for the Southern District of New York, in the New York Times case, and the District Court for the District of Columbia and the Court of Appeals for the District of Columbia Circuit, in the Washington Post case, held that the Government had not met that burden. We agree…"

"In seeking injunctions against these newspapers, and in its presentation to the Court, the Executive Branch seems to have forgotten the essential purpose and history of the First Amendment. When the Constitution was adopted, many people strongly opposed it because the document contained no Bill of Rights to safeguard certain basic freedoms. They especially feared that the new powers granted to a central government might be interpreted to permit the government to curtail freedom of religion, press, assembly, and speech. In response to an overwhelming public clamor, James Madison offered a series of amendments to satisfy citizens that these great liberties would remain safe and beyond the power of government to abridge. Madison proposed what later became the First Amendment in three parts, two of which are set out below, and one of which proclaimed:

> 'The people shall not be deprived or abridged of their right to speak, to write, or to publish their sentiments, and the freedom of the press, as one of the great bulwarks of liberty, shall be inviolable.'"

1. Using what you already know and context clues from the *NYTimes* excerpt, what fundamental constitutional questions were answered in this landmark case?

2. The court opinion begins with, "We granted certiorari…" What does this mean? How many cases appealed to the Supreme Court each year receive *certiorari*? Using the context clues from the opinion, what was the journey of this case before it reached the Supreme Court?

3. What does this court mean by "prior restraint"? The court does not deny that the government can use prior restraint, but just not in this case. Investigate. When and how can the government meet the heavy burden of prior restraint?

4. What is so special about our First Amendment freedoms? Why did Madison call them "the great bulwarks of liberty"?

Schenck v. U.S. (1919)

Few would dispute that freedom of speech is one of our most valued civil liberties. But does the First Amendment's free speech clause give us license to say anything we want anywhere? The Supreme Court was called upon to answer this question for the first time in the case Schenck v. U.S. (1919). At issue in this case was a law passed by Congress during World War I called the Espionage Act (1917). The law made it illegal for individuals to obstruct the military draft and/or to spur disloyalty during the war. Charles Schenck disapproved of this law. He sent 2,000 pamphlets to recent draftees urging them to resist the war effort. Charles Schenck was arrested and convicted in violation of the Espionage Act. Schenck claimed that the law violated his fundamental right to free speech. Provisions of the Bill of Rights are continually being interpreted to balance the power of government and the civil liberties of individuals. In this case the Court upheld Schenck's conviction. Oliver Wendell Holmes, writing for the Court, argued: "The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic." The First Amendment may not protect your free speech in instances where there is a "clear and present danger." By allowing for an argument based upon "circumstance" the Schenck precedent settled little. Deciding what is dangerous is anything but clear.

Mr. Justice Holmes delivered the court opinion [excerpted here]

"This is an indictment in three counts. The first charges a conspiracy to violate the Espionage Act of June 15, 1917, c. 30, § 3, 40 Stat. 217, 219, by causing and attempting to cause insubordination, &c., in the military and naval forces of the United States, and to obstruct the recruiting and enlistment service of the United States, when the United States was at war with the German Empire, to-wit, that the defendants willfully conspired to have printed and circulated to men who had been called and accepted for military service under the Act of May 18, 1917, a document set forth and alleged to be calculated to cause such insubordination and obstruction. The count alleges overt acts in pursuance of the conspiracy, ending in the distribution of the document set forth. The second count alleges a conspiracy to commit an offence against the United States, to-wit, to use the mails for the transmission of matter declared to be nonmailable by Title XII, § 2 of the Act of June 15, 1917, to-wit, the above mentioned document, with an averment of the same overt acts. The third count charges an unlawful use of the mails for the transmission of the same matter and otherwise as above. The defendants were found guilty on all the counts. They set up the First Amendment to the Constitution forbidding Congress to make any law abridging the freedom of speech, or of the press, and bringing the case here on that ground have argued some other points also of which we must dispose…

…We admit that, in many places and in ordinary times, the defendants, in saying all that was said in the circular, would have been within their constitutional rights. But the character of every act depends upon the circumstances in which it is done. The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic. It does not even protect a man from an injunction against uttering words that may have all the effect of force.

The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree. When a nation is at war, many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight, and that no Court could regard them as protected by any constitutional right…"

1. Using what you already know and context clues from the *Schenck* excerpt, what fundamental constitutional questions were answered in this landmark case?

2. Justice Holmes' opinion relies on "circumstances." Explain. What are the advantages and disadvantages of this kind of argument? Find other historical examples where circumstances affected legal outcomes.

3. *Schenck* established the "clear and present danger" test? Explain. Is it still used today?

4. In his opinion Holmes wrote one of the most noted lines in Court history, "The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic." Do you find it to be persuasive? What is the operative free speech precedent today?

Gideon v. Wainwright (1963)

The Incorporation Doctrine was a game changer. Little by little the Bill of Rights were applied to the states using the due process clause of the Fourteenth Amendment. By incorporating or applying the protections found in the Bill of Rights to the states via the Fourteenth Amendment the Supreme Court solidified our civil liberties even more. The due process clause of the Fourteenth Amendment has been interpreted to prevent the states from infringing upon basic liberties. A prime example of the court using the incorporation doctrine can be seen in the case Gideon v. Wainwright (1963). Clarence Earl Gideon was serving time in a Florida prison for a crime he claimed he did not commit. At his trial he had no attorney. He could not afford one. The Florida constitution did not guarantee counsel and the Sixth Amendment guarantee to an attorney did not apply in Florida criminal cases. Using the Fourteenth Amendment's due process clause to apply the Sixth Amendment even in state cases meant Clarence Gideon would receive another trial, this time with an attorney. Clarence Gideon was set free. The case of Gideon v. Wainwright (1963) guaranteed the right to an attorney for the poor or indigent not only at the federal level but at the state level as well. Thanks to the Incorporation Doctrine the Sixth Amendment's right to counsel now applies to everyone, everywhere. The Incorporation Doctrine is a game changer.

Mr. Justice Black delivered the court opinion [excerpted here]

"Petitioner was charged in a Florida state court with having broken and entered a poolroom with intent to commit a misdemeanor. This offense is a felony under Florida law. Appearing in court without funds and without a lawyer, petitioner asked the court to appoint counsel for him, whereupon the following colloquy took place:

'The COURT: Mr. Gideon, I am sorry, but I cannot appoint Counsel to represent you in this case. Under the laws of the State of Florida, the only time the Court can appoint Counsel to represent a Defendant is when that person is charged with a capital offense'…

…The Sixth Amendment provides, 'In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense.' We have construed this to mean that, in federal courts, counsel must be provided for defendants unable to employ counsel unless the right is competently and intelligently waived…

…A defendant's need for a lawyer is nowhere better stated than in the moving words of Mr. Justice Sutherland in Powell v. Alabama:

'The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel, he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence'"…

1. Using what you already know and context clues from the *Gideon* excerpt, what fundamental constitutional questions were answered in this landmark case?

2. Explain how and why the Sixth Amendment was not applied to Clarence Gideon during his original trial. What legal provision was necessary in order for the Court to apply the Sixth Amendment to the states?

3. INVESTIGATE. How many men were incarcerated in Florida prisons in 1963 without counsel at their trials? What happened to them after the Gideon decision? How many states did not provide for counsel before 1963?

4. FOR DEBATE. Some would argue today that having counsel in a trial is no longer enough. Any defendant should be guaranteed competent counsel. What do you think?

Roe v. Wade (1973)

Few Supreme Court cases are as politically charged as Roe v. Wade (1973). Our two major political parties continue to make Roe a clear dividing point in their platforms. At issue in Roe v. Wade (1973) was a women's right to choose an abortion during the first trimester without state government interference. Bodily autonomy rights are not explicitly found in the U.S. Constitution. Yet the Court in Griswold v. Connecticut (1965) interpreted that the right to personal privacy was implicit throughout the Bill of Rights. And using the incorporation doctrine the Court held the due process clause of the Fourteenth Amendment prevented states from infringing upon basic liberties, including the right to privacy. The right to privacy was now made explicit via a court interpretation. The Roe v. Wade (1973) opinion relied heavily on the Griswold precedent. Roe extended the right of privacy to a woman's decision to have an abortion. "Pro-choice" and "Pro-life" groups continue to define our political landscape. The issue of abortion has become a litmus test question for those seeking public office and to prospective federal judges. Roe v. Wade (1973) reminds us that the incorporation doctrine has both legal and political consequences. By giving more and more authority to our national courts our local governments have less and less to say about the kind of world we choose to live in.

Mr. Justice Blackmun delivered the court opinion [excerpted here]

"…We forthwith acknowledge our awareness of the sensitive and emotional nature of the abortion controversy, of the vigorous opposing views, even among physicians, and of the deep and seemingly absolute convictions that the subject inspires. One's philosophy, one's experiences, one's exposure to the raw edges of human existence, one's religious training, one's attitudes toward life and family and their values, and the moral standards one establishes and seeks to observe, are all likely to influence and to color one's thinking and conclusions about abortion…

…Roe alleged that she was unmarried and pregnant; that she wished to terminate her pregnancy by an abortion "performed by a competent, licensed physician, under safe, clinical conditions"; that she was unable to get a "legal" abortion in Texas because her life did not appear to be threatened by the continuation of her pregnancy; and that she could not afford to travel to another jurisdiction in order to secure a legal abortion under safe conditions. She claimed that the Texas statutes were unconstitutionally vague and that they abridged her right of personal privacy, protected by the First, Fourth, Fifth, Ninth, and Fourteenth Amendments. By an amendment to her complaint, Roe purported to sue "on behalf of herself and all other women" similarly situated…

…The Constitution does not explicitly mention any right of privacy. In a line of decisions, however, going back perhaps as far as Union Pacific R. Co. v. Botsford, (1891), the Court has recognized that a right of personal privacy, or a guarantee of certain areas or zones of privacy, does exist under the Constitution…

…This right of privacy, whether it be founded in the Fourteenth Amendment's concept of personal liberty and restrictions upon state action, as we feel it is, or, as the District Court determined, in the Ninth Amendment's reservation of rights to the people, is broad enough to encompass a woman's decision whether or not to terminate her pregnancy…"

1. Using what you already know and context clues from the *Roe* excerpt, what fundamental constitutional questions were answered in this landmark case?

2. Justice Blackmun recognized the "sensitive and emotional nature" of this case. Explain.

3. Justice Blackmun acknowledged that privacy is not explicitly mentioned in the constitution. Roe asserted that her right to privacy was "protected by the First, Fourth, Fifth, Ninth, and Fourteenth Amendments." Explain.

4. FOR DEBATE. Research Pro-Choice and Pro-Life views. What are the best arguments on both sides? Make your argument. Should there be any limits?

McDonald v. Chicago (2010)

Little by little the Supreme Court has applied the protections of the Bill of Rights to the states using the due process clause of the Fourteenth Amendment. The due process clause of the Fourteenth Amendment, over time, has been interpreted to prevent the states from infringing upon basic liberties. Nationalizing the Bill of Rights, often called the Incorporation Doctrine, was first seen in the case Gitlow v. New York (1925). In Gitlow the court incorporated free speech. McDonald v. Chicago (2010) was the most recent instance of incorporation. The Second Amendment right to keep and bear arms for self-defense is now applicable to the states. Incorporation has broad implications for federalism. With the McDonald decision attempts by local governments to legislate against gun violence has become more problematic. For most of our history state and local governments, our "laboratories of democracy," were able to experiment with various gun control measures. More specifically state and local governments were able to tailor gun laws to address their own unique populations. Now under the McDonald precedent gun laws must take into account the opinion of the Supreme Court. The "right to bear arms" is one of our most familiar and defended individual liberties. Even so gun violence continues to vex public policy makers. In McDonald v. Chicago (2010) the court inserted the national government as the final arbitrator in this dispute.

Mr. Justice Alito delivered the court opinion [excerpted here]

"…Two years ago, in District of Columbia v. Heller (2008), we held that the Second Amendment protects the right to keep and bear arms for the purpose of self-defense, and we struck down a District of Columbia law that banned the possession of handguns in the home. The city of Chicago (City) and the village of Oak Park, a Chicago suburb, have laws that are similar to the District of Columbia's, but Chicago and Oak Park argue that their laws are constitutional because the Second Amendment has no application to the States. We have previously held that most of the provisions of the Bill of Rights apply with full force to both the Federal Government and the States. Applying the standard that is well established in our case law, we hold that the Second Amendment right is fully applicable to the States…

…After our decision in Heller, the Chicago petitioners and two groups filed suit against the City in the United States District Court for the Northern District of Illinois. They sought a declaration that the handgun ban and several related Chicago ordinances violate the Second and Fourteenth Amendments to the United States Constitution. Another action challenging the Oak Park law was filed in the same District Court by the National Rifle Association (NRA) and two Oak Park residents. In addition, the NRA and others filed a third action challenging the Chicago ordinances. All three cases were assigned to the same District Judge…

…In Heller, we held that the Second Amendment protects the right to possess a handgun in the home for the purpose of self-defense. Unless considerations of stare decisis counsel otherwise, a provision of the Bill of Rights that protects a right that is fundamental from an American perspective applies equally to the Federal Government and the States. We therefore hold that the Due Process Clause of the Fourteenth Amendment incorporates the Second Amendment right recognized in Heller. The judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings…"

1. Using what you already know and context clues from the *McDonald* excerpt, what fundamental constitutional questions were answered in this landmark case?

2. The *McDonald* case piggybacked on the *DC* v. *Heller* (2008) case. Explain the relationship. Do you agree with the decision in *Heller*?

3. Justice Alito mentions the National Rifle Association (NRA) in his opinion. What is this group and explain how groups like this help determine legal agendas in our court system.

4. FOR DEBATE. Certainly gun violence is an issue in the United States. Does the *McDonald* decision render governments powerless in the fight against gun violence? Explain by looking at how municipal governments have responded to the precedent in *McDonald* and the ongoing fight against gun violence.

Brown v. Board of Education, I (1954)

The decision in Brown v. Board of Education (1954) served as a pivotal catalyst in the formal dismantling of racial inequality throughout the United States. The United States Supreme Court, utilizing the authority given in the Fourteenth Amendment, became an important agent for social justice. Though it was not easy, even for the courts. The Court had heard oral arguments in the case the previous term and the justices fund themselves divided. A rehearing was ordered for the following year. In the Fall of 1953, before rehearing Brown, Chief Justice Fred Vinson died. With the appointment of Earl Warren as Chief Justice, those seeking an historic ruling in Brown found encouragement. Chief Justice Warren would ultimately be able to shepherd a landmark unanimous decision. In Brown the Fourteenth Amendment's "equal protection clause" was used to support the advancement of equality in our public school system. Race-based school segregation violates the equal protection clause. De jure segregation in public schools, practiced throughout the South into the 1950s, was ruled to be unconstitutional. The Plessy precedent of "separate but equal" was no longer operative. The Court ruled unanimously "the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal." As important and symbolic as these words were they would be met with resistance. Remember the Supreme Court has no official arm of enforcement. In many communities the Brown decision would fall on deaf ears. In many places the new law of the land was not enforced. Nevertheless the quest to live up to our creed of "equal protection" for all now found a friend in the United States Supreme Court. The Court would be called upon again in Brown II (1955) to clarify how best to realize the impact of their words. Undoing the shadow of systemic discrimination that had been in place since our founding would not be as simple as a landmark gesture by nine justices in 1954.

Mr. Chief Justice Warren delivered the court opinion [excerpted here]

"…In each of the cases, minors of the Negro race, through their legal representatives, seek the aid of the courts in obtaining admission to the public schools of their community on a non-segregated basis. In each instance, they had been denied admission to schools attended by white children under laws requiring or permitting segregation according to race. This segregation was alleged to deprive the plaintiffs of the equal protection of the laws under the Fourteenth Amendment…

…Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

We come then to the question presented: does segregation of children in public schools solely on the basis of race, even though the physical facilities and other 'tangible' factors may be equal, deprive the children of the minority group of equal educational opportunities? We believe that it does…

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

1. Using what you already know and context clues from the *Brown* excerpt, what fundamental constitutional questions were answered in this landmark case?

2. In what way did separate schools deprive the plaintiffs of their equal protection?

3. Summarize in your own words the Court's argument on the importance of education. Do you agree?

4. INVESTIGATE. Compare and contrast schools from the 1950s to today. What might Chief Justice Warren say today about public schools, the opportunities they provide, and the impact of this decision?

Citizens United v. Federal Election Commission (2010)

The impact of federal policies on campaigning and electoral rules continues to be contested by both sides of the political spectrum. Few cases have provoked more partisan bickering than Citizens United v. Federal Election Commission (2010). In contradistinction to the Tillman Act (1907), which prohibited corporate contributions to national political campaigns, Citizens United reconsidered this long-standing ban. Political spending by corporations, associations, and labor unions, the court argued, is a form of protected speech under the First Amendment. Though direct contributions are still prohibited, corporations and other associations are free to donate unlimited sums to Super PACs. More and more money has poured into our campaigns and elections. Fat cats are back in the limelight swaying our political process like no time before. Irrespective of the amount corporations now donate, the perception that big money quiets the voice of the typical voter has grown in intensity. Trust in our electoral process now lags. As long as both parties are able to raise and spend billions during each election cycle the call for reform falls on deaf ears.

Mr. Justice Kennedy delivered the court opinion [excerpted here]

"…Federal law prohibits corporations and unions from using their general treasury funds to make independent expenditures for speech defined as an "electioneering communication" or for speech expressly advocating the election or defeat of a candidate…

…Limits on electioneering communications were upheld in McConnell v. Federal Election Commission (2003)… In this case we are asked to reconsider…

…The First Amendment provides that "Congress shall make no law … abridging the freedom of speech." Laws enacted to control or suppress speech may operate at different points in the speech process…

…The law before us is an outright ban, backed by criminal sanctions. Section 441b makes it a felony for all corporations—including nonprofit advocacy corporations—either to expressly advocate the election or defeat of candidates or to broadcast electioneering communications within 30 days of a primary election and 60 days of a general election…

…For these reasons, political speech must prevail against laws that would suppress it, whether by design or inadvertence. Laws that burden political speech are "subject to strict scrutiny," which requires the Government to prove that the restriction "furthers a compelling interest and is narrowly tailored to achieve that interest"…

…There is simply no support for the view that the First Amendment, as originally understood, would permit the suppression of political speech by media corporations…

…When Government seeks to use its full power, including the criminal law, to command where a person may get his or her information or what distrusted source he or she may not hear, it uses censorship to control thought. This is unlawful. The First Amendment confirms the freedom to think for ourselves…

1. Using what you already know and context clues from the *Citizens* excerpt, what fundamental constitutional questions were answered in this landmark case?

2. Describe the types of campaign finance addressed in this case. What is the current status of these categories today?

3. The essence of this decision is that the First Amendment's free speech clause can be applied to corporate involvement with campaign finance. Do you agree? Investigate the arguments made with the passage of the Tillman Act (1907).

4. INVESTIGATE. This decision provoked a loud response both positive and negative. Assess both sides. Find actual data that supports your view.

Baker v. Carr (1961)

The noted Chief Justice, Earl Warren, superintended a number of critical landmark Supreme Court cases. Warren led in the outcomes of Brown, Heart of Atlanta Motel, Gideon, and Miranda. Yet at the end of his life he claimed the decision in Baker was his most important case. In Baker the U.S. Supreme Court entered into the "political thicket." Baker v. Carr (1961) ushered in a redistribution of political power - as dictated by the Courts. Previously held as "non - justiciable," the Court opted to hear this Tennessee malapportionment case. Malapportionment was a common practice that allowed for Congressional districts to vary in population. The Court, contrary to previous like-minded cases, implored state legislatures to refrain from reapportionment anomalies that violated Constitutionally guaranteed "equal protections." The republican ideal in the U.S. is manifested in the structure and operation of the legislative branch. In Baker the Court enforced redistricting based on the principle of "one-person-one-vote." Amongst other things this case ensured that urban constituencies were represented proportionally equal to rural area constituents. By entering into the "political thicket" the Supreme Court hoped to assure that our political process was truly "of the people, by the people and for the people."

Mr. Justice Brennan delivered the court opinion [excerpted here]

"…Of course, the mere fact that the suit seeks protection of a political right does not mean it presents a political question. Such an objection 'is little more than a play upon words'…

…Rather, it is argued that apportionment cases, whatever the actual wording of the complaint, can involve no federal constitutional right except one resting on the guaranty of a republican form of government, and that complaints based on that clause have been held to present political questions which are non-justiciable…

…We come, finally, to the ultimate inquiry whether our precedents as to what constitutes a non-justiciable 'political question' bring the case before us under the umbrella of that doctrine. A natural beginning is to note whether any of the common characteristics which we have been able to identify and label descriptively are present. We find none: the question here is the consistency of state action with the Federal Constitution. We have no question decided, or to be decided, by a political branch of government coequal with this Court. Nor do we risk embarrassment of our government abroad, or grave disturbance at home if we take issue with Tennessee as to the constitutionality of her action here challenged. Nor need the appellants, in order to succeed in this action, ask the Court to enter upon policy determinations for which judicially manageable standards are lacking. Judicial standards under the Equal Protection Clause are well developed and familiar, and it has been open to courts since the enactment of the Fourteenth Amendment to determine, if, on the particular facts, they must, that a discrimination reflects no policy, but simply arbitrary and capricious action…

…We conclude that the complaint's allegations of a denial of equal protection present a justiciable constitutional cause of action upon which appellants are entitled to a trial and a decision. The right asserted is within the reach of judicial protection under the Fourteenth Amendment…"

1. Using what you already know and context clues from the *Baker* excerpt, what fundamental constitutional questions were answered in this landmark case?

2. This case pivoted on the idea of a "justiciable" constitutional question. What does this mean? Why would the court be reluctant to take on a "political question"?

3. The merits of this case relate to state reapportionment and redistricting. Define these terms. Why might these issues require interpretation of the Fourteenth Amendment?

4. DEBATE. Chief Justice Earl Warren considered the *Baker* decision the Court's most important decision during his tenure. Consider the implications of this decision. How important has it been to our current political culture?

Shaw v. Reno (1993)

The Supreme Court serves as the guardian of our republic. The republican ideal in the U.S. is manifested in the structure and operation of the legislative branch. For this reason the court, somewhat reluctantly, got involved with political questions in the landmark case Baker v. Carr (1961). This has led to endless stream of cases involving congressional reapportionment and redistricting. Each continues to stir wide debate. One such notable case is Shaw v. Reno (1993). At issue in Shaw was the creation of majority-minority Congressional districts in North Carolina. In 1991 the North Carolina state legislature created two such minority-majority districts out of their twelve total. Even in the court opinion there was concern that "racial gerrymandering…for remedial purposes may balkanize us into competing racial factions." Nevertheless in a 5-4 decision the court upheld the two majority-minority districts. Legislative redistricting must, O'Connor argued in the court opinion, be conscious of race and ensure compliance with the Voting Rights Act of 1965. At best the opinion appears muddled. Nothing short of the rule of law, equal protection, and equal representation was at stake in this case. Essential values in our republic were on display in the Shaw decision. Though Shaw encouraged more questions than it answered it served, as some have said, to be a fitting "monument to Baker's impact" – one man, one vote needed to be protected. A true republic demands no less.

Ms.. Justice O'Connor delivered the court opinion [excerpted here]

"This case involves two of the most complex and sensitive issues this Court has faced in recent years: the meaning of the constitutional "right" to vote, and the propriety of race-based state legislation designed to benefit members of historically disadvantaged racial minority groups…

…Appellants contended that the General Assembly's revised reapportionment plan violated several provisions of the United States Constitution, including the Fourteenth Amendment. They alleged that the General Assembly deliberately 'create[d] two Congressional Districts in which a majority of black voters was concentrated arbitrarily-without regard to any other considerations, such as compactness, contiguousness, geographical boundaries, or political subdivisions' with the purpose 'to create Congressional Districts along racial lines' and to assure the election of two black representatives to Congress…Classifications of citizens solely on the basis of race 'are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality'…

…Put differently, we believe that reapportionment is one area in which appearances do matter. A reapportionment plan that includes in one district individuals who belong to the same race, but who are otherwise widely separated by geographical and political boundaries, and who may have little in common with one another but the color of their skin, bears an uncomfortable resemblance to political apartheid. It reinforces the perception that members of the same racial group-regardless of their age, education, economic status, or the community in which they live-think alike, share the same political interests, and will prefer the same candidates at the polls. We have rejected such perceptions elsewhere as impermissible racial stereotypes…

…Racial classifications of any sort pose the risk of lasting harm to our society. They reinforce the belief, held by too many for too much of our history, that individuals should be judged by the color of their skin. Racial classifications with respect to voting carry particular dangers. Racial gerrymandering, even for remedial purposes, may balkanize us into competing racial factions; it threatens to carry us further from the goal of a political system in which race no longer matters-a goal that the Fourteenth and Fifteenth Amendments embody, and to which the Nation continues to aspire. It is for these reasons that race-based districting by our state legislatures demands close judicial scrutiny…

1. Using what you already know and context clues from the *Shaw* excerpt, what fundamental constitutional questions were answered in this landmark case?

2. Few topics are more complicated as reapportionment and gerrymandering. Summarize what is at stake in this case. Explain gerrymandering in the simplest of terms.

3. The essence of this case comes down to "strict scrutiny." Explain this judicial concept.

4. DEBATE. The court in this case appears to acknowledge the dangers of racial classifications and then allows for these racially gerrymandered districts to remain. Investigate the dissenting opinions in this case. Which side are you on?

Marbury v. Madison (1803)

The United States Supreme Court was designed to be "the least dangerous branch." This did not last long. Chief Justice John Marshall changed the Court's trajectory in the case Marbury v. Madison (1803). Marshall wrote in his opinion that the Court had the authority to "say what the law is." Marbury established the principle of judicial review empowering the Court to nullify an act of the legislative or executive branch that violates the Constitution. Judicial review allows the Court to do more than apply the law, its ultimate duty is to say what the law means. Judicial review empowers the U.S. Supreme Court to rule on the constitutionality of all law. This newfound power bolstered the Court's influence and prestige. Whereas it once was used sparingly, the U.S. Supreme Court now uses judicial review frequently. The Court's power in settling our most important political disputes is in no small way related to the decision in Marbury. The design of the judicial branch protects the Court's independence as a branch of government, and the emergence and use of judicial review remains a powerful practice.

Mr. Chief Justice Marshall delivered the court opinion [excerpted here]

"…It is therefore decidedly the opinion of the Court that, when a commission has been signed by the President, the appointment is made, and that the commission is complete when the seal of the United States has been affixed to it by the Secretary of State…

…Where an officer is removable at the will of the Executive, the circumstance which completes his appointment is of no concern, because the act is at any time revocable, and the commission may be arrested if still in the office. But when the officer is not removable at the will of the Executive, the appointment is not revocable, and cannot be annulled. It has conferred legal rights which cannot be resumed…

…The Constitution is either a superior, paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and, like other acts, is alterable when the legislature shall please to alter it…

...Certainly all those who have framed written Constitutions contemplate them as forming the fundamental and paramount law of the nation, and consequently the theory of every such government must be that an act of the Legislature repugnant to the Constitution is void…

…This theory is essentially attached to a written Constitution, and is consequently to be considered by this Court as one of the fundamental principles of our society…

…It is emphatically the province and duty of the Judicial Department to say what the law is. Those who apply the rule to particular cases must, of necessity, expound and interpret that rule. If two laws conflict with each other, the Courts must decide on the operation of each…

…If, then, the Courts are to regard the Constitution, and the Constitution is superior to any ordinary act of the Legislature, the Constitution, and not such ordinary act, must govern the case to which they both apply…

1. Using what you already know and context clues from the *Marbury* excerpt, what fundamental constitutional questions were answered in this landmark case?

2. Define judicial review. What are the implications of judicial review for the balance of power in our government? How often is judicial review used?

3. By its own admission, the Court was addressing one of the "fundamental principles of our society" in this case. Explain. Is this principle still true today?

4. DEBATE. The court argued, "It is emphatically the province and duty of the Judicial Department to say what the law is." This authority empowers the court in unprecedented terms. How is the court checked from abusing this authority? Are the checks sufficient?