3.1 The Bill of Rights

ESSENTIALS

1. The U.S. Constitution includes a Bill of Rights specifically designed to protect individual liberties and rights.
2. Civil liberties are constitutionally established guarantees and freedoms that protect citizens, opinions, and property against arbitrary government interference.
3. The application of the Bill of Rights is continuously interpreted by the courts.
4. The Bill of Rights, the first ten amendments, are enumerated liberties and rights of individuals. These amendments protect us against arbitrary government.

1. What is the underlying idea of this cartoon?

2. Nearly four in 10 Americans can't name a single one of the five First Amendment freedoms, according to survey results. Speech enjoys the highest recall at a far-too-low 54 percent. Only 17 percent could name freedom of religion, 12 percent knew the amendment guarantees their right to assemble, 11 percent cited freedom of the press and 2 percent could name the right to petition government for a redress of grievances.

   Does this ignorance about our rights matter? How might we educate our citizens better about their fundamental rights?

The U.S. Constitution includes a Bill of Rights specifically designed to protect individual liberties and rights.

- Briefly tell the story why the Bill of Rights were added to the U.S. Constitution.

- Explain the significance of the S.C. case Barren v. Baltimore (1833)

- What is the difference between civil liberties and civil rights?

- Explain how the Declaration of Independence has been cited as our promissory note for both liberty and equality

Civil liberties are constitutionally established guarantees and freedoms that protect citizens, opinions, and property against arbitrary government interference.

- What is meant by *arbitrary government interference*? Find examples throughout the world today of *arbitrary government interference.*

- Who tells us what our constitutionally established guarantees mean? What checks them?

The courts continuously interpret the application of the Bill of Rights.

Find three (3) **recent** court cases that help us further define and interpret what our fundamental Bill of Rights freedoms mean.

PRACTICE: CONCEPT APPLICATION QUESTION

State and local governments have been levying greater and greater fines and relying heavily on forfeitures in recent years, often at the expense of people who can least afford to pay. Fines and forfeitures are punishments, but they can also make money for cities and states, which gives governments an incentive to increase these punishments to excessive levels.

But the right to be free from excessive fines and forfeitures is a basic right of all Americans, recognized by the Framers as no less important than its Eighth Amendment siblings, the right to be free from cruel and unusual punishments and from excessive bail (as well as other fundamental rights, such as those secured by the First and Second Amendments). The Excessive Fines Clause and the protection against excessive fines should be recognized as a right secured by the federal Constitution against state transgressions, and as a bulwark against the states' financial and political incentives to increase fines and forfeitures more and more…

…Anglo-American law has long recognized the wrongness of excessive fines and forfeitures, from 1215 to 1689 to 1791. That right is as important as the others that the Bill of Rights protects.

Indeed, for the poor, the right is especially important, because excessive fines and forfeitures can impose harsh burdens on poor defendants, burdens that have effects lasting for years. And revenue from fines and forfeitures tempts governments to constantly increase them, and state courts to neglect scrutinizing them. This Court should grant certiorari and decide whether the Excessive Fines Clause should be enforced against state and local governments—as are the other clauses of the Eighth Amendment, and the great majority of the other parts of the Bill of Rights.

Excerpted from Brief of Amici Curiae Professors in Support of Petition for Writ of Certiorari, *Timbs* v. *Indiana* (2019)

After reading the scenario, respond to A, B, and C below:

A. According to the scenario above, identify what section of the U.S. Constitution you can find the 8th Amendment.

B. In the context of the scenario, explain how federalism affects the 8th Amendment.

C. In the context of the scenario, explain how public opinion affects Court decisions.

3.2 First Amendment: Freedom of Religion

ESSENTIALS

5. The First Amendment contains two (2) religion clauses: the establishment clause and the free exercise clause. Establishment protects us from a government advocating for one religion over another; and Free Exercise protects our own worship from government interference.
6. The Court in Engel v. Vitale (1962) made clear that "the wall of separation" between church and state applied to school activities, including mandatory school prayer.
7. Wisconsin v. Yoder (1972) bolstered the application of the Free Exercise clause when citizens religious rights conflict with state educational mandates.

1. What is the underlying idea of this cartoon?

2. INVESTIGATE: If one of our basic legal principles is a separation of church and state, a "wall of separation," than how can we still have "God" in our pledge and on our money? What have the Courts said?

In the first significant Establishment clause case, the Court in Everson v. Board of Education (1947) argued:

The 'establishment of religion' clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions or prefer one religion over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance. No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa. In the words of Jefferson, the clause against establishment of religion by law was intended to erect a wall of separation between Church and State…

1. Summarize in your own words the court's message.

2. Yet in the Everson case, the court allowed for a tax-funded public-school district to provide reimbursement to parents of both public and private school for transportation costs. How did this not violate "the wall of separation"? Do you agree?

The Court has had a number of noteworthy cases dealing with the religion clauses of the First Amendment. As much as we have given a "preferred position" to free speech, the religion clause cases always grab a lot of our attention. **Summarize the context and holdings in these critical religion clause cases – identify them as either ESTABLISHMENT or FREE EXERCISE cases:**

Employment Division v. Smith (1990)

Church of Lukumi Babalu Aye v. City of Hialeah (1993)

Zelman v. Simmons-Harris (2002)

Pleasant Grove City v. Summum (2009)

Christian Legal Society v. Martinez (2010)

Town of Greece v. Galloway (2014)

Burwell v. Hobby Lobby (2014)

Do you notice any trends? Do you think justice is blind when it comes to religion?

CONCEPT APPLICATION

Thomas Jefferson once described America's new constitutional guarantees of disestablishment and free exercise of religion as a "fair" and "novel experiment" in religious freedom. These guarantees, set out in the new state and federal constitutions of 1776–1791, defied the millennium-old assumptions inherited from Western Europe—that one form of Christianity must be established in a community, and that the state must protect and support it against all other forms of faith. America would no longer suffer such governmental prescriptions and proscriptions of religion, Jefferson declared. All forms of Christianity had to stand on their own feet and on an equal footing with all other religions. Their survival and growth had to turn on the cogency of their word, not the coercion of the sword—on the faith of their members, not the force of the law.

America's new experiment in granting religious freedom to all and religious establishments to none was designed to end what James Madison called the Western "career of intolerance." "In most of the governments of the old world," Madison declared, "the legal establishment of a particular religion and without or with very little toleration of others, makes a pact of the political & civil organization." "[I]t was taken for granted that an exclusive & intolerant establishment was essential," and "that Religion could not be preserved with-out the support of Government, nor Government be supported without an established Religion." 3 Th e main European powers that had colonized the Americas all had religious establishments—with Anglican establishments in England; Lutheran establishments in Germany and Scandinavia; Calvinist establishments in Scotland, the Netherlands, Switzerland, and Germany; and Catholic establishments in France, Spain, Portugal, and Italy.

Source: Witte, John, and T. Jeremy Gunn. No Establishment of Religion: America's Original Contribution to Religious Liberty. Oxford University Press, 2012.

A. Identify the central reason the Founding Fathers included the religion clauses in our First Amendment as discussed in this scenario.
B. In the context of the scenario, explain other constitutional language that might mitigate or abate the intention described in part A.
C. Despite the language of the First Amendment, explain how religious discrimination has continued throughout our history.

3.3 First Amendment: Freedom of Speech

ESSENTIALS

1. In Schenck (1919) the Supreme Court recognized that there are limits to our speech. In this case speech was limited because of a "clear and present danger."
2. The Supreme Court has held that symbolic speech is protected by the 1st Amendment - Tinker (1969).
3. The Court has consistently limited obscene speech. Obscenity is defined locally.

1. What is the underlying idea of this cartoon?

2. Do the wealthy unfairly have access to greater speech?

The Supreme Court has held that **symbolic speech** is protected by the First Amendment. In Tinker v. Des Moines Independent Community School District (1969) the Court ruled that public-school students could wear black armbands in school to protest the Vietnam War. The standard centered around whether or not the students were disruptive to the learning process. **Check out these other school speech cases. How would you have decided?**

Bethel School District v. Fraser (1986)

Hazelwood v. Kuhlmeier (1988)

Morse v. Frederick (2007)

"It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." Justice Fortas in Tinker (1969)

How best to balance the words of Fortas with "in loco parentis" rights?

Schenck v. U.S. (1919)

The United States entered World War I on the side of the Allies in 1917, after several years of maintaining its neutrality. President Woodrow Wilson had campaigned for reelection in 1916 on the slogan “He Kept Us Out of War.” This abrupt change in policy meant there were many Americans who disagreed with the decision to go to war.

As part of the war effort, the US government attempted to quell dissent. For example, Congress passed the Espionage Act of 1917, which outlawed interfering with military operations or recruitment, as well as supporting US enemies during wartime. Although it has been altered many times over the years, the Espionage Act is still in force today.

In this climate, socialist antiwar activists Charles Schenck and Elizabeth Baer mailed 15,000 fliers urging men to resist the military draft through peaceful means, such as petitioning for the repeal of the conscription law. They argued that the draft was a violation of the Thirteenth Amendment’s prohibition of involuntary servitude.

Schenck and Baer were convicted under the Espionage Act for interfering with military recruitment. They appealed to the Supreme Court on the grounds that the Espionage Act violated their First Amendment right to freedom of speech.

Source: Khan Academy

How did the Court rule? Agree?

SCOTUS COMPARISON

On June 28, 1964, Clarence Brandenburg held a Ku Klux Klan rally on a farm in rural Hamilton County, Ohio.' He invited a Cincinnati television reporter, whose film of the Klan meeting was televised both locally and nationally. The film showed twelve hooded figures, some carrying firearms, gathered around a burning cross, muttering words of racial hatred and veiled threats. Then Brandenburg, in Klan robes, spoke to the group of armed Klansmen…

The State of Ohio indicted Brandenburg under Ohio's Criminal Syndicalism Act and charged him with advocating the propriety of violence “as a means of accomplishing..., political reform.” The prosecution's case seemed airtight. The State introduced the film of the meeting, testimony identifying Brandenburg as the hooded speaker, several guns, and the red Klan hood worn by Brandenburg. Brandenburg was convicted by a jury, fined $1000, and sentenced to one to ten years in prison. Brandenburg appealed, arguing that Ohio's Criminal Syndicalism Act violated the First and Fourteenth Amendments, but the Ohio courts rejected his challenge. The United States Supreme Court reversed, and in a unanimous, per curiam opinion, held Ohio's statute unconstitutional: “[W]e are here confronted with a statute which, by its own words and as applied, purports to punish mere advocacy .... Such a statute falls within the condemnation of the First and Fourteenth Amendments.”

…In the Court's view, “the mere abstract teaching... of the moral propriety or even moral necessity for a resort to force and violence, is not the same as preparing a group for violent action and steeling it to such action.” The First Amendment barred states from punishing “advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.”

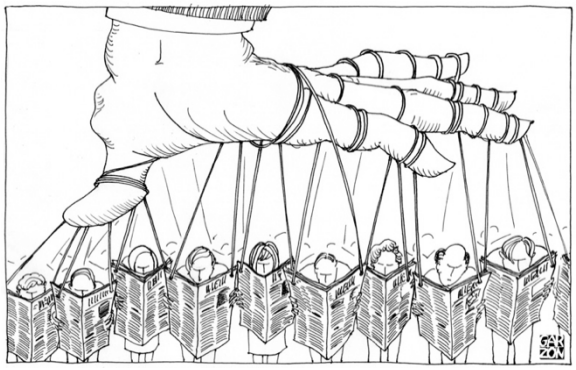
Source: Giles, Susan M., “Brandenburg v. Ohio: An ‘Accidental,’ ‘Too Easy,’ and ‘Incomplete’ Landmark Case, Capital University Law Review, Spring 2010

A. Identify the clause of the First Amendment that is common to both Schenck v. U.S. (1919) and Brandenburg v. Ohio (1969).

B. Explain how the difference in facts led to a different decision in both Schenck v. U.S. (1919) and Brandenburg v. Ohio (1969).

C. Explain how the outcome in Brandenburg v. Ohio (1969) demonstrates the balance of power between the national and state governments has changed over time.

3.4 First Amendment: Freedom of the Press



ESSENTIALS

1. In New York Times Company v. United States (1971) the Supreme Court bolstered the freedom of the press.
2. The Supreme Court has established a "heavy presumption against prior restraint" even in cases involving national security.

3. What is the main idea of this cartoon? Write it as a claim statement.

4. Who "controls the strings" in our news feed?

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.

Investigate Julian Assange and Edward Snowden.

What are the parallels between Daniel Ellsberg, Julian Assange and Edward Snowden? Should the "leaks" attributed to Assange and Snowden be protected under the First Amendment? Should the precedent in New York Times v. U.S. be applied to them?

INVESTIGATE:
Hazelwood School District v. Kuhlmeier (1988)

Describe the context of this case. Explain how the Court ruled.

Imagine you are a Supreme Court justice. Write a short opinion (decision) for this case.

SCOTUS COMPARISON

Respondent Erik Brunetti sought federal registration of the trademark FUCT. The Patent and Trademark Office (PTO) denied his application under a provision of the Lanham Act that prohibits registration of trademarks that "consist…of or comprise immoral...or scandalous matter...

The Lanham Act's prohibition on registration of "immoral…or scandalous" trademarks violates the First Amendment.

A divided Court agreed on two propositions. First, if a trademark registration bar is viewpoint based, it is unconstitutional. And second, the disparagement bar was viewpoint based.

The "immoral or scandalous" bar similarly discriminates on the basis of viewpoint and so collides with this Court's First Amendment doctrine. Expressive material is "immoral" when it is "inconsistent with rectitude, purity, or good morals"; "wicked"; or "vicious." So the Lanham Act permits registration of marks that champion society's sense of rectitude and morality, but not marks that denigrate those concepts. And material is "scandalous" when it "gives offense to the conscience or moral feelings"; "excite[s] reprobation"; or "call[s] out condemnation." So the Lanham Act allows registration of marks when their messages accord with, but not when their messages defy, society's sense of decency or propriety. The statute, on its face, distinguishes between two opposed sets of ideas: those aligned with conventional moral standards and those hostile to them; those inducing societal nods of approval and those provoking offense and condemnation. This facial viewpoint bias in the law results in view point discriminatory application.

To cut the statute off where the Government urges is not to interpret the statute Congress enacted, but to fashion a new one. And once the "immoral or scandalous" bar is interpreted fairly, it must be invalidated.

Excerpted from Court syllabus Iancu v. Brunetti (2019)

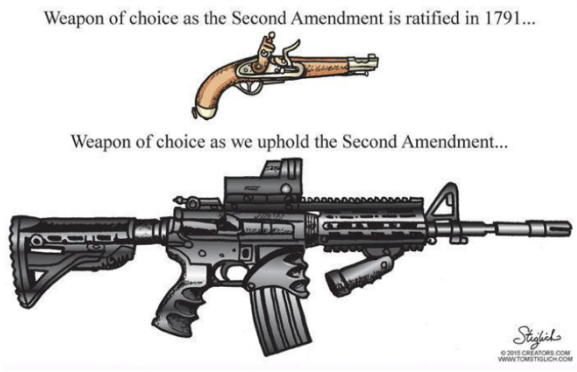
Based on the information above, respond to the following questions.

A. Identify the specific clause in the First Amendment that was used as the basis for the decision in both Schenck v. U.S. (1919) and Iancu v. Brunetti (2019).

B. Explain how the facts in both Schenck v. U.S. and Iancu v. Brunetti led to a different decision in both cases.

C. Explain how contemporary political culture can affect decisions like Iancu v. Brunetti (2019).

3.5 Second Amendment: Right to Bear Arms



ESSENTIALS

1. Constitutional interpretation of individual liberty changes over time.
2. The Supreme Court's decisions on the Second Amendment rest upon its constitutional interpretation of individual liberty.
3. In McDonald v. Chicago (2010) the Supreme Court applied the protection of the Second Amendment to the states.

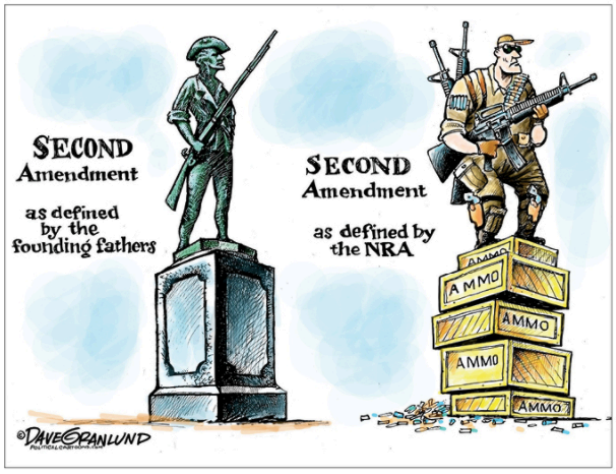
1. What is the underlying idea of this cartoon?

2. The NRA is a powerful interest group in American politics. How many members does the NRA claim? What makes them so powerful? Why has the Second Amendment taken on larger than life proportions?

The precedent in *McDonald* probably does not happen without the case *Heller* v. *District of Columbia* (2008). Explain the importance of the Heller decision. Did the Supreme Court get this right? Explain.

How has gun policy become a *wedge* issue in American politics? Investigate how guns impact voting behavior.

A.



B.

1. State the main idea of each cartoon.

   A.
   B.

2. Explain the political ideology as demonstrated in each of the cartoons. Which of the cartoons would you most likely see on the wall of the justices who formed the majority in the McDonald case. Explain.

QUANTITATIVE ANALYSIS

"Do you favor or oppose stricter gun control laws?"

8/15 – 18/2019	Favor %	Oppose %	Unsure %
Men	52	45	3
Women	69	26	5
Democrats	85	12	2
Independents	58	38	4
Republicans	39	57	4

Source: CNN Poll conducted by SSRS. August 15-18, 2019.
N=1,001 adults nationwide. Margin of error +/- 3.7

A. Identify the issue that the greatest percentage of Democrats believe should be a top priority, according to the data.
B. Describe a difference between Democrats and Republicans in which issues they believe should be a top priority.
C. Draw a conclusion about why the parties differ on the issues shown in the data.
D. Explain how the data in the chart could be used by candidates running for office.

3.6 Amendments: Balancing Individual Freedom with Public Safety

ESSENTIALS

The debate about the Second, Fourth and Eighth Amendments involves concerns about public safety and whether or not the regulation of firearms or collection of digital metadata promotes or interferes with public safety and/or individual rights.

1. What is the underlying idea of this cartoon?

2. What should the balance be between social order and individual freedom? Are we out of balance today?

The debate about the Second and Fourth Amendments involves concerns about public safety and whether or not the regulation of firearms or collection of digital metadata promotes or interferes with public safety and/or individual rights.

- What limits do we/can we place on firearm production and sales? Do you agree? Explain.

- Compare U.S. gun laws with gun laws in at least two (2) other world countries.

- Find court decisions (at least two) that deal with the Fourth Amendment and the protection of digital content. Do you agree or disagree with these findings?

Court decisions defining cruel and unusual punishment involve interpretation of the Eighth Amendment and its application to state death penalty statutes.

- How many states still have death penalties? Does the Federal government have the death penalty? How many were executed last year? What states had the most? Did the Federal government execute anyone last year?

- Make an argument for/against the death penalty. List at least three (3) pieces of evidence. Must include authoritative voices.

QUANTITATIVE ANALYSIS

STATES WITH THE DEATH PENALTY	**28** Also U.S. and Military EX. OK/NC/SC/TX
STATES WITHOUT THE DEATH PENALTY	**22** Also D.C. EX. IL/MN/NY/WA
DEATH PENALTY STATES WITH GUBERNATORIAL MORATORIA	**3** EX. CA/OR/PA

Source: The Death Penalty Information Center, 2020

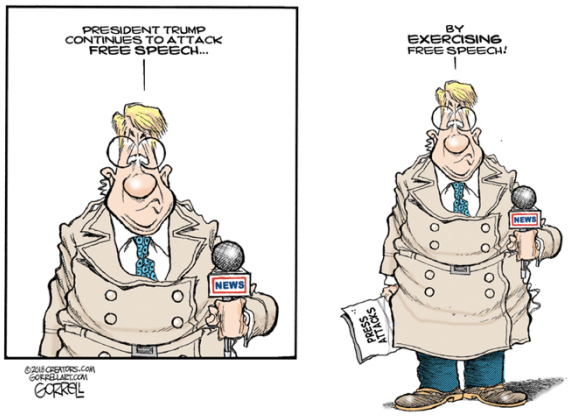
A. Identify the position held by most states regarding the death penalty.

B. Describe a difference between states with and without death penalties, according to the data.

C. Draw a conclusion about why states differ regarding the death penalty.

D. Explain how the information in the chart demonstrates federalism.

3.7 Selective Incorporation



ESSENTIALS

1. The doctrine of selective incorporation has imposed limitations on state regulation of civil rights and liberties as represented by: McDonald v. Chicago (2010).
2. Selective Incorporation began with Gitlow v. New York (1925).
3. The key to Selective Incorporation is the "due process" clause of the Fourteenth Amendment.

3. What is the underlying idea of this cartoon?

4. How has the concept of selective incorporation strengthened our free speech? How has it weakened federalism?

For the first 150 years of our history, the Bill of Rights protected our liberties from an intrusion by the national government. State governments were not held to the standards found in the Bill of Rights.

What was the long-lasting precedent in the court case Barron v. Baltimore (1833)?

Selective Incorporation DEFINITION:
Little by little the United States Supreme Court applied the Bill of Rights to the States using the due process clause of the Fourteenth Amendment.

Review the definition of *selective incorporation*. How did this case change the Barron precedent?

Gitlow v. New York (1925) was the first case to authoritatively apply to the States First Amendment protections. Investigate the context of the Gitlow case. Explain the court's rationale to apply the First Amendment's "free speech clause" to New York (use a direct quote from the opinion).

The Eighth Amendment guarantees the right to be free from excessively harsh punishment at the hands of the government. Yet in spite of the amendment's deep roots in U.S. history and jurisprudence, a critical part of it had been left behind in the incorporation project: The Excessive Fines Clause. Last Term, in Timbs v. Indiana, the Supreme Court finally held that the clause was incorporated against the states, and further, that it encompassed civil forfeitures in addition to criminal fines. Source: Harvard Law Review, November 2019

1. Review the Timbs precedent. What was the context, and what did the court decide?

2. INVESTIGATE: What provisions of the Bill of Rights have yet to be incorporated?

SCOTUS Comparison

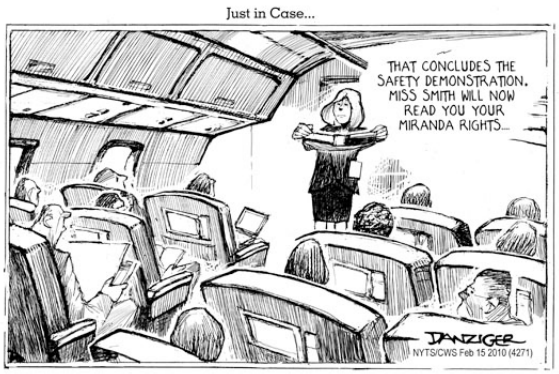
When the Bill of Rights was first ratified their protections applied exclusively to the national government. "Emphatically not to the states," it was argued. This understanding would change with the passage of the Fourteenth Amendment (1868) following the Civil War. The Fourteenth Amendment declared, "…No state could deprive anyone of life, liberty, or property without due process of law." The due process clause of the Fourteenth Amendment has been interpreted to prevent the states from infringing upon basic liberties. In political science this is called the Incorporation Doctrine. Navigating this profound change would have broad implications for federalism and the role of the United States Supreme Court.

Gitlow v. New York (1925) was the first time the court made the First Amendment's guarantee of free speech binding upon the states. Gitlow incorporated free speech. The merits of the case become secondary to this crucial landmark moment. Nevertheless, the Gitlow story feels familiar to certain contemporary issues that we face. Benjamin Gitlow was a part of the radical American Communist Party that appeared to many to be promoting a violent overthrow of the government. The state of New York in 1902 had criminalized the advocacy of anarchy, "a dangerous doctrine at any time." In addition to incorporating free speech, the Supreme Court found Benjamin Gitlow responsible for the probable outcome of his words. His conviction was upheld. States may prohibit speech tending to cause danger to public safety. Incorporation today receives little debate. The "bad tendency" principle, however, is tested each and every day on our streets as we attempt to balance both our liberties and the government's responsibility to keep its citizens safe.

Based on the information above, respond to the following questions.

A. Identify a common constitutional principle used to make a ruling in both Gideon v. Wainwright (1963) and Gitlow v. New York (1925).
B. Explain how the facts of Gideon v. Wainwright (1963) and the facts of Gitlow v. New York (1925) led to a similar holding in both cases.
C. Describe an action that state governments can take to respond to the Gitlow v. New York (1925) ruling if it disagreed with the decision.

3.8 Amendments: Due Process and the Rights of the Accused



ESSENTIALS

1. The Miranda rule involves the interpretation and application of accused persons' due process rights as protected by the Fifth and Sixth Amendments.
2. Pretrial rights of the accused and the prohibition of unreasonable searches and seizures are intended to ensure that citizen liberties are not eclipsed by the need for social order and security.
3. The due process clause has been applied to guarantee the right to an attorney and protection from unreasonable and searches and seizures.

5. What is the underlying idea of this cartoon?

6. Are the Miranda rights a mere formality or do they actually mean something?

Pretrial rights of the accused and the prohibition of unreasonable searches and seizures are intended to ensure that citizen liberties are not eclipsed by the need for social order and security, including:

- The right to legal counsel, speedy and public trial, and an impartial jury – **Is right to counsel enough? Should it be competent counsel? Look for examples. Explain the VOIR DIRE process. Do you think all courts should be televised? Explain.**

- Protection against warrantless searches of cell phone data – **What have the courts said? Find examples. What would you say if you were a judge?**

- Limitations placed on bulk collection of telecommunication metadata (Patriot and USA Freedom Acts) – **Investigate what the most current law and interpretation is on the collection of metadata.**

The due process clause has been applied to guarantee the right to an attorney and protection from unreasonable and searches and seizures, as represented by: Gideon v. Wainwright (1963), which guaranteed the right to an attorney for the poor or indigent

The exclusionary rule that stipulates evidence illegally seized by law enforcement officers in violation of the suspect's Fourth Amendment right to be free from unreasonable searches and seizures cannot be used against that suspect in criminal prosecution.

- **FIND EXAMPLES of the EXCLUSIONARY RULE in action. How has the court recently STRENGTHENED/WEAKENED the exclusionary rule?**

The Miranda rule involves the interpretation and application of accused persons' due process rights as protected by the Fifth and Sixth Amendments, yet the Court has sanctioned a "public safety" exception that allows unwarned interrogation to stand as direct evidence in court.

- Review the Miranda rule. What does it guarantee?

- Find "public safety" exceptions that allow unwarned interrogations. What has the court said?

QUANTITATIVE ANALYSIS

Partisan Groups' Ratings Over Time of Job the FBI is Doing

Republicans	Excellent%	Fair%	Poor%
2003	62	59	48
2014	26	29	23
2019	7	7	28

Democrats	Excellent%	Fair%	Poor%
2003	45	61	64
2014	34	26	24
2019	17	6	10

Use the chart to answer the following questions.

A. Identify the political party that has overtime held more favorable views of the FBI.

B. Describe a difference between Democrats and Republicans and their favorability of the FBI.

C. Draw a conclusion about why the party's favorability of the FBI differs.

D. Explain how the information in the chart could be used by the Senate when considering evidence in an impeachment trial.

3.9 Amendments: Due Process and the Right to Privacy

ESSENTIALS

1. While a right to privacy is not explicitly named in the Constitution, the Court has interpreted the due process clause to protect the right of privacy from state infringement.
2. The landmark U.S. Supreme Court case that incorporated privacy was Roe v. Wade (1973). In this case the Court applied a women's right to an abortion to all fifty states, using the due process clause of the 14th Amendment.

7. What is the underlying idea of this cartoon?

8. Might there be another way to better describe our "right to privacy"? Is it really privacy we want?

Roe v. Wade (1973) has underscored the deep culture war that has been waged in America for decades. Explain.

What is a culture war?

Who are the two sides?

Who is winning? Explain.

While a right to privacy is not explicitly named in the Constitution, the Court has interpreted the due process clause to protect the right of privacy from state infringement. This interpretation of the due process clause has been the subject of controversy:

The Roe precedent has evolved since 1973. Track how the Supreme Court has changed its meaning over time in these cases:

Harris v. McRae (1980)

Webster v. Reproductive Health Services (1989)

Planned Parenthood v. Casey (1992)

Stenberg v. Carhart (2000)

Whole Woman's Health v. Hellerstedt (2016)

SCOTUS Comparison.

Although hearkening back to a Supreme Court decision in 1973, a "pro-choice" public policy is anything but "settled law." The Court has tinkered with the proper interpretation and implementation of relevant constitutional principles. One such example would be the Court's highly controversial opinion Planned Parenthood v. Casey (1992). In this case, a majority argued:

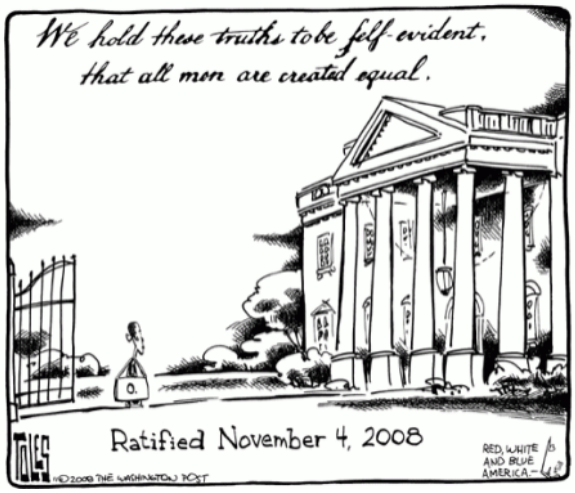
"…Section 3205's informed consent provision is not an undue burden on a woman's constitutional right to decide to terminate a pregnancy. To the extent *Akron I*, 462 U. S., at 444, and *Thornburgh*, 476 U. S., at 762, find a constitutional violation when the government requires, as it does here, the giving of truthful, non-misleading information about the nature of the abortion procedure, the attendant health risks and those of childbirth, and the "probable gestational age" of the fetus, those cases are inconsistent with *[this Court's]* acknowledgment of an important interest in potential life, and are overruled. Requiring that the woman be informed of the availability of information relating to the consequences to the fetus does not interfere with a constitutional right of privacy between a pregnant woman and her physician, since the doctor-patient relation is derivative of the woman's position, and does not underlie or override the abortion right. Moreover, the physician's First Amendment rights not to speak are implicated only as part of the practice of medicine, which is licensed and regulated by the State. There is no evidence here that requiring a doctor to give the required information would amount to a substantial obstacle to a woman seeking an abortion. The premise behind *Akron I*'s invalidation of a waiting period between the provision of the information deemed necessary to informed consent and the performance of an abortion, 462 U. S., at 450, is also wrong. Although § 3205's 24-hour waiting period may make some abortions more expensive and less convenient, it cannot be said that it is invalid on the present record and in the context of this facial challenge…"

From Justice O'Connor, Justice Kennedy and Justice Sutter
Majority opinion in ***Planned Parenthood of SE Pa****. v.* ***Casey*** (1992)

Based on the information above, respond to the following questions.

A. Identify a common constitutional principle used to make a ruling in both Roe v. Wade (1973) and Planned Parenthood v. Casey (1992).
B. Explain how the rulings of Roe v. Wade and the rulings of Planned Parenthood v. Casey appear to be in conflict with each other.
C. Describe how the Congress, other than passing legislation, could respond to similar cases to Planned Parenthood v. Casey if it disagrees with the decision.

3.10 Amendments: Social Movements and Equal Protection



ESSENTIALS

1. Civil rights protect individuals from discrimination based on characteristics such as race, national origin, religion, and sex; these rights are guaranteed to all citizens under the due process and equal protection clauses of the U.S. Constitution, as well as acts of Congress
2. The leadership and events associated with civil, women's, and LGBT rights are evidence of how the equal protection clause can motivate social movements, as represented by: Dr. Martin Luther King's "Letter from a Birmingham jail" and the civil rights movement of the 1960s/National Organization for Women and the women's rights movement/Pro-life (Anti-abortion) movement

1. What is the underlying idea of this cartoon (HINT: check date and "O" on bag)?

2. Are we now living in a "post-racial" America? Explain.

Civil rights protect individuals from discrimination based on characteristics such as race, national origin, religion, and sex; these rights are guaranteed to all citizens under the due process and equal protection clauses of the U.S. Constitution, as well as acts of Congress

- *Investigate "the equal protection clause" language of the Fourteenth Amendment. What did the authors of the amendment have in mind? How would you define "equality" today? How should the government protect your brand of equality?*

- *Define "discrimination." What is meant by "discrimination based on characteristics such as race, national origin, religion, and sex"? What do each of these characteristics mean? Should we add more? How do other countries protect their citizens from discrimination? Find examples.*

- *Unpack the context and ruling in the Supreme Court case, Heart of Atlanta Motel, Inc. v. U.S. (1964). What constitutional clause was used to justify the elimination of de jure segregation?*

The Reverend Martin Luther King, Jr. at a critical turning point in time wrote ***"Letter from a Birmingham Jail."*** *The American civil rights movement was facing a serious challenge. King and other civil rights leaders were arrested and incarcerated for being agitators of disorder. Eight liberal Alabama ministers, open to bringing about racial justice, had written "An Appeal for Law and Order and Common Sense." King's strategy for bringing about change was untimely and impatient. King's letter was his response. If the civil rights movement was going to win broad support King would need to address their criticism. "Letter from a Birmingham Jail" was his response. It became King's Manifesto. The letter "soon became the most widely-read, widely-reprinted and oft quoted document of the civil rights movement." King's message was clear and forthright. The letter legitimized the civil rights movement. The time for action was now. King wrote, "For years now I have heard the word 'wait!'…This 'wait' has almost always meant 'never.'" Patience cannot endure forever. King's manifesto, his "Letter from a Birmingham Jail," proclaimed that this was the "precious time," the decisive hour. The civil rights movement could no longer wait. King's letter is as important today as it was back in 1963.*

Find three (3) quotes/passages from King's *Letter from a Birmingham Jail* and discuss their meaning. List adjectives that describe the character of a leader like King.

SCOTUS COMPARISON

"Lake Nixon Club is an amusement place owned by respondent and his wife, located 12 miles from Little Rock, Ark. It has recreation facilities, including swimming, boating, and dancing, and a snack bar serving four food items, at least three of which contain ingredients coming from outside the State. The Club leases 15 paddle boats on a royalty basis from an Oklahoma company (from which it purchased one boat) and operates a juke box which, along with records it plays, is manufactured outside Arkansas. The Club is advertised in a monthly magazine distributed at Little Rock hotels, motels, and restaurants, in a monthly newspaper published at a nearby Air Force base, and over two area radio stations. Approximately 100,000 whites patronize the establishment each season and are routinely furnished "membership" cards in the "club," on payment of a 25-cent fee. [African-Americans] are denied admission.

Mr. Justice Brennan delivered the opinion of the Court:

Petitioners, [African-American] residents of Little Rock, Arkansas, brought this class action in the District Court for the Eastern District of Arkansas to enjoin respondent from denying them admission to a recreational facility called Lake Nixon Club, owned and operated by respondent, Euell Paul, and his wife. The complaint alleged that Lake Nixon Club was a 'public accommodation' subject to the provisions of Title II of the Civil Rights Act of 1964, and that respondent violated the Act in refusing petitioners admission solely on racial grounds. After trial, the District Court, although finding that respondent had refused petitioners admission solely because they were [African-Americans], dismissed the complaint on the ground that Lake Nixon Club was not within any of the categories of 'public accommodations' covered by the 1964 Act. The Court of Appeals for the Eighth Circuit affirmed, one judge dissenting. We granted certiorari. We reverse."

Source: Daniel v. Paul, 395 U.S. 298 (1969) JUSTIA

Based on the information above, respond to the following questions.

A. Identify a common constitutional principle used to make a ruling in both U.S. v. Lopez (1995) and Daniel v. Paul (1969).
B. Based on the constitutional principle identified in part A, explain why the facts of U.S. v. Lopez (1995) led to a different holding than the holding in Daniel v. Paul (1969).
C. Describe an action that the people of Arkansas could take to respond to the Daniel v. Paul decision if it disagreed with the decision.

3.11 Government Responses to Social Movements

ESSENTIALS

The government can respond to social movements through court rulings and/or policies:

- The Civil Rights Act of 1964
- Title IX of the Civil Rights Act Amendments (1972)
- The Voting Rights Act of 1965
- Brown v. Board of Education I (1954)—which declared that race-based school segregation violates the Fourteenth Amendment's equal protection clause
- Brown v. Board of Education II (1955)—which held that school districts and federal district courts must implement the Court's decision in Brown v. Board of Education I (1954) "with all deliberate speed"

3. What is the main idea of this cartoon? [Write your response like a claim statement]

4. Are civil rights progressing or regressing? Are we getting closer to our ideal of equality for all?

5. If we count on our government to protect our ideals, both liberty and equality, how could it do a better job promoting equality today?

[**For each of the following provide essential details – context; critical outcomes**]

The Civil Rights Act of 1964

The Voting Rights Act of 1965

Brown v. Board of Education I (1954)

Brown v. Board of Education II (1955)

Title IX of the Civil Rights Act Amendments (1972)

QUANTITATIVE ANALYSIS

Do you think the federal government today has too much power, has about the right amount of power or has too little power?

Year	Too much%	About the right amount%	Too little%	No opinion%
2018	53	38	8	1
2017	55	36	7	1
2016	59	32	8	2
2015	60	32	7	1
2014	59	30	9	1
2013	60	32	7	1

SOURCE: Gallup Polls

Use the information graphic to answer the questions.

A. Identify a popular trend with respect to the publics' view of the federal government between 2013-2018.

B. Describe a similarity or difference between the publics' attitude toward government, as illustrated in the information graphic, and draw a conclusion about that similarity or difference.

C. Explain how attitudes toward the federal government, as shown in the information graphic, has impacted the federal budget process.

ARGUMENTATION ESSAY

Despite the importance of leaders and advocates, the advancement of civil rights ultimately requires government action. Assess the United States government's response to extending civil rights and present an argument that evaluates its efforts.

In your essay, you must:

- Articulate a defensible claim or thesis that responds to the prompt and establishes a line of reasoning.
- Support your claim with at least TWO pieces of accurate and relevant information. At least ONE piece of evidence must be from one of the following foundational documents – U.S. Constitution, Declaration of Independence, Letter from a Birmingham Jail.
- Use a second piece of evidence from another foundational document from the list or from your study of the electoral process
- Use reasoning to explain why your evidence supports your claim/thesis
- Respond to an opposing or alternative perspective using refutation, concession, or rebuttal

3.12 Balancing Minority and Majority Rights

ESSENTIALS

Decisions affecting the rights of minority groups demonstrates that minority rights have been restricted at times and protected at other times, as represented by: *Plessy v. Ferguson (1896)/Brown v. Board of Education I and II* (1954-55)

The Supreme Court has upheld the rights of the majority in cases that limit and prohibit majority–minority districting.

6. What is the main idea of this cartoon? [Write your response like a claim statement]

7. Democratic theory warns against a "tyranny of the majority." Explain in your own words.

Throwing some shade on the Supreme Court: Plessy v. Ferguson (1896)

"The object of the [Fourteenth] Amendment was undoubtedly to enforce the absolute equality of the two races before the law, but in the nature of things, it could not have been intended to abolish distinctions based upon color, or to enforce social, as distinguished from political equality, or a commingling of the two races upon terms unsatisfactory to either…

…We consider the underlying fallacy of the plaintiff's argument to consist in the assumption that the enforced separation of the two races stamps the colored race with a badge of inferiority. If this be so, it is not by reason of anything found in the act, but solely because the colored race chooses to put that construction on it…"

Source: Court Opinion in Plessy v. Ferguson (1896)

1. **Investigate the context of the Plessy case.**

2. **React to the Court decision.**

3. **We know Brown overturned the Plessy precedent. The Court in Brown said "separate is inherently unequal." Assess your world – Plessy or Brown more prevalent?**

Wearing the scholar's hat. Read the passage below and answer the questions that follow.

Majority and Minority Rights

The essence of democracy is majority rule, the making of binding decisions by a vote of more than one-half of all persons who participate in an election. However, constitutional democracy in our time requires majority rule with minority rights. Thomas Jefferson, third President of the United States, expressed this concept of democracy in 1801 in his First Inaugural Address. He said,

All . . . will bear in mind this sacred principle, that though the will of the majority is in all cases to prevail, that will to be rightful must be reasonable; that the minority possess their equal rights, which equal law must protect and to violate would be oppression.

In every genuine democracy today, majority rule is both endorsed and limited by the supreme law of the constitution, which protects the rights of individuals. Tyranny by minority over the majority is barred, but so is tyranny of the majority against minorities.

This fundamental principle of constitutional democracy, majority rule coupled with the protection of minority rights, is embedded in the constitutions of all genuine democracies today. The 1992 constitution of the Czech Republic, for example, recognizes the concepts of majority rule and minority rights. Article VI says, "Political decisions shall stem from the will of the majority, expressed by means of a free vote. The majority's decisions must heed the protection of the minorities." The Czech constitution is filled with statements of guaranteed civil liberties, which the constitutional government must not violate and which it is empowered to protect.

Majority rule is limited in order to protect minority rights, because if it were unchecked it probably would be used to oppress persons holding unpopular views. Unlimited majority rule in a democracy is potentially just as despotic as the unchecked rule of an autocrat or an elitist minority political party.

In every constitutional democracy, there is ongoing tension between the contradictory factors of majority rule and minority rights. Therefore, public officials in the institutions of representative government must make authoritative decisions about two questions. When, and under what conditions, should the rule of the majority be curtailed in order to protect the rights of the minority? And, conversely, when, and under what conditions, must the rights of the minority be restrained in order to prevent the subversion of majority rule?

These questions are answered on a case-by-case basis in every constitutional democracy in such a way that neither majority rule nor minority rights suffer permanent or irreparable damage. Both majority rule and minority rights must be safeguarded to sustain justice in a constitutional democracy.

By John Patrick, Understanding Democracy, A Hip Pocket Guide (Oxford University Press)

1. What is the main idea of this passage?

2. What is the danger of relying only on the decisions made by majorities?

3. Explain how the Bill of Rights demonstrated our Founders' commitment to minority rights.

4. Define a referendum. More and more states are relying on referendums to make important governing decisions. Are referendums just another name for a tyranny of the majority?

3.13 Affirmative Action

ESSENTIALS

The debate on affirmative action includes justices who insist that the Constitution is colorblind and those who maintain that it forbids only racial classifications designed to harm minorities, not help them.

8. What is the main idea of this cartoon? [Write your response like a claim statement]

9. Find a legal definition of Affirmative Action. Think again about this cartoon. Do you think this cartoonist is for or against Affirmative Action? Explain.

The debate on affirmative action includes justices who insist that the Constitution is colorblind and those who maintain that it forbids only racial classifications designed to harm minorities, not help them.

Find Supreme Court evidence for the following affirmative action positions [quote the case and justice]

"Constitution is colorblind"

"Forbids only racial classifications"

If you were a member of Congress . . . what would your position be on affirmative action? Write a brief press release:

CONCEPT APPLICATION

Affirmative action policies—those designed to increase diversity among employees, students, politicians, or businesses by advantaging candidates from underrepresented social groups—are practiced throughout the world. They are universally controversial. Even among their advocates, they are often introduced or supported as only temporary remedies for existing social inequities. The hope is that a temporary affirmative action program that enhances diversity and reduces inequality between groups can persistently alter those outcomes.

Whether a temporary policy will indeed have persistent effects remains an open question. The theoretical literature primarily focuses on the potential for affirmative action to reduce inequality by incentivizing human capital accumulation for disadvantaged groups. If employers perceive that some group of workers is less productive or have more difficulty screening workers from that group, then the return to human capital investment for members may be inefficiently dampened. A temporary affirmative action regulation can correct those incentives and permanently reduce inequality by eliminating negative stereotypes, though it can also have the opposite effect. While less emphasized in the literature, a transitory intervention can also have persistent effects through employer-level mechanisms that affect the racial composition of employee flows. For example, temporary affirmative action may induce persistent changes in an employer's recruitment and screening practices or the composition of its referral applicants.
Source: Conrad Miller, "The Persistent Effect of Temporary Affirmative Action

A. Referencing the scenario, describe the intent and duration intended for affirmative action programs.

B. Explain how unintended consequences can affect the duration described in part A.

C. Affirmative Action was established with Executive Order 11246 (1965). Explain how the Supreme Court impacts the enforcement of Affirmative Action Plans.

QUANTITATIVE ANALYSIS

Support Grows for Affirmative Action Programs
% Who say they favor affirmative action for women, minorities

	2001	2003	2005	2016	2018
Favor for Women	53	59	59	60	65
Favor for Minorities	47	49	50	54	61

Source: GALLUP

Use the chart to answer the following questions.

A. Identify a trend regarding support for affirmative action in the United States.
B. Describe a difference between the % favoring affirmative action programs for women and the % favoring affirmative action programs for minorities.
C. Draw a conclusion about why support for affirmative is changing as shown in the chart.
D. Explain how the information in the chart could be used by the Supreme Court to influence their decisions.