Publisher's Note

The U.S. Supreme Court was first published in 2007 as a Magill's Choice title. Adapted from Salem Press's *Encyclopedia of the U.S. Supreme Court* (2001), it concentrated on the history and key issues that the Court itself has faced, and was designed to meet the growing need among students and members of the general public for clear, concise, authoritative, and up-to-date information about the Court.

The goal of this new edition of *The U.S. Supreme Court* is the same. Given the 12 years between editions, much has changed regarding the Court, from who serves on the Supreme Court to the kinds of cases heard by the Court. The U.S. Supreme Court has always stood out as a uniquely powerful institution within the vast framework of the federal system of American government. With nine unelected members, it alone can overturn the actions of every other branch of government, at all levels. Any decision by any elected executive officer—from a small-town mayor to the president of the United States—any legislation enacted by any elected body—from a city council to the Congress of the United States—can be invalidated by the Supreme Court. By contrast, only two methods exist to overturn unpopular Court decisions: The Court can reverse its own rulings, or the Congress or state conventions can initiate the long and difficult process of constitutional amendment. Since the Court was created in 1789, it has reversed itself many times. However, opponents to its decisions have managed to get the Constitution amended only a handful of times. There is no other institution quite like the Supreme Court—in the U.S. or anywhere in the world.

What are the limits to its power? What impact has it had on the nation's constitutional history? Who has sat on its bench and how did they get there? How does the Court function? These and many other questions are covered in this new edition of *The U.S. Supreme Court.*

Content and Format

This three-volume set contains 561 individual essays. More than 100 of them are brand new, original essays, including Elena Kagen, Sonia Sotomayor, Executive Orders, Pardon Authority of the President, *Obergefell v. Hodges*, and Transgender People; also, dozens of essays from the previous edition have been updated. They all have been selected, formatted, and written with the needs of non-specialist readers in mind. Emphasis throughout is on clear explanations of subjects, supported by illuminating graphics and illustrations. Essays range in length from 250 to 3,000 words and contain several distinct component parts. All essays open with specially formatted top-matter sections, designed to give readers important information at a glance, and whose content varies according to essay type. Top matter in essays on individual justices, for example, includes full name, title, dates of service, birth and death information, summary of the justice's significance in Court history, and the president who nominated them. Top matter of court cases includes case names, standard citations given in *United States Reports*, dates of the Supreme Court decisions, concise summaries of issues involved, and brief statements of the cases' significance.

The core of every essay, regardless of its type, is a clear discussion of its subject that stresses its relevance to the Supreme Court. All essays are signed by their authors, whose names and affiliations are listed at the front of volume one, and essay topics are linked throughout the three volumes by thorough lists of cross-references. A Categorized List of Entries following the appendix section at the back of volume three groups related essays under 39 broad subject headings, including Areas of Law, Defendant Rights, Freedom of Speech and the Press, Gender Issues, Religious Issues, Separation of Powers and Voting Rights.

In the more than two centuries since the Court first convened, it has passed down

thousands of decisions in individual cases. Many of its decisions contain broad rulings that have become part of the law of the land. Indeed, some decisions—such as *Brown v. Board of Education* (1954) on school desegregation, *Miranda v. Arizona* (1966) on protection against self-incrimination, *Roe v. Wade* (1973) on abortion rights, and *Obergefell v. Hodges* (2015) on same-sex marriage—have materially affected the lives of millions of Americans. Court cases are thus part of U.S. constitutional history, and it is impossible to understand the workings of the Supreme Court without a study of them.

This edition of *The U.S. Supreme Court* has essays on the most important decisions the Court has made. The cases appear within the text under the names by which they are most commonly known. In addition, an appendix of Notable Supreme Court Rulings in volume three summarizes data on more than six hundred court cases. Additional references to cases—including many not covered in either individual essays or the appendix table—can be found in the Court Case Index that precedes the general Subject Index.

The U.S. Supreme Court contains essays on broad types of law, such as administrative law, antitrust law, bankruptcy law, and civil law, as well as individual pieces of legislation and clauses and amendments to the U.S. Constitution. Top matter on these essays provides the dates when the laws were passed, brief descriptions of the laws, and summaries of their significance. Similar to essays on types of law are essays on broad issues, such as abortion, affirmative action, capital punishment, capitalism, and censorship. These essays examine how the Court has treated important issues throughout its history, with emphasis on the Court itself. For example, the essay on affirmative action is not so much a history of the concept as it is an examination of the role that the Supreme Court played in its development and application. *The U.S. Supreme Court* also contains essays on specific historical events and eras, such as the Civil Rights movement, the Civil War, the Cold War, Reconstruction, and World War II.

The mechanics and procedures of the Supreme Court specifically and the judicial system in general are covered in this set as well, in essays on Staff Positions, Judicial Powers, Rules of the Court, and Workload. Legal terminology, such as "Briefs," "Cert pool," and "Certiorari" comprises the Glossary at the end of the third volume.

Acknowledgments

Salem Press thanks the Editor of both editions of this work, Professor Thomas Tandy Lewis of St. Cloud State University, whose deep expertise in the subject, desire to update the set's content, and attention to detail have helped to make this publication a substantially improved and much expanded work. In addition, a work of this nature would not be possible without the nearly 150 contributors who are listed, with gratitude, in the front matter of volume one.

Editor's Introduction

Anyone who thinks that the law is dull should study the work of the Supreme Court. Each case that comes before the Court has its own unique story, with real human beings engaged in conflicts over competing interests and values, often involving both constitutional and moral principles. I will mention just one example: Clarence Gideon was a poor man who could not afford a lawyer and was sentenced to a prison term of five years on allegations that he had broken into a bar and stolen some alcoholic beverages and a small amount of money. The evidence was extremely weak. At trial, he complained that he could not afford a lawyer, and at that time the judge did not have the authority to assign one to his case. While in prison, he wrote a letter to the Supreme Court, and eventually this led to the landmark case, *Gideon v. Wainwright* (1963), in which the Supreme Court ruled that the government must provide all indigent person with counsel in felony cases (later extended to misdemeanors). It would be difficult for a skilled novelist to invent a fictional story more dramatic than this true story.

During the history of the Court, moreover, a surprising number of brilliant and interesting men and women have served as justices. Many of their legal opinions are recognized as significant works of political and legal philosophy, sometimes written in an attractive literary style. In a large percentage of Supreme Court cases, the justices disagree with one another. Debates are fascinating, especially when there are two or more intelligent and informed persons committed to differing points of view. The history of the Supreme Court, to some extent, resembles the Hegelian theory that concrete reality changes as a result of the dialectical clash of opposing ideas: the never-ending process of thesis, antithesis, and a resulting synthesis.

In addition to being fascinating, Supreme Court cases have a direct effect on Issues of public policy of practical Significance. Examples include the following: Should gays and lesbians be allowed to have legally recognized marriages? Should owners of small businesses be required to provide services for such marriages if this violates their religious convictions? Has the death penalty become a "cruel and unusual" punishment? Should universities be permitted to discriminate against white males in order to promote diversity? Should citizens have the individual right to own guns for self-defenses and/or hunting? What categories of weapons are not protected by the Second Amendment? Should a crime motivated by racial bias be punished more severely than the same crime with a different motivation? Should people who engage in hate speech be punished because of the psychological harm they do to others? These are just a few of the Issues that have and will continue to come before the Supreme Court. Little wonder that Justice Oliver Wendell Holmes once called the Supreme Court a "storm center" of political controversy.

This encyclopedic guide to the U.S. Supreme Court is designed to provide students and general readers with a user-friendly source for obtaining dependable information about all aspects of the Court, with an emphasis on two themes: the Court's role in the U.S. political system and its changing interpretations of the U.S. Constitution. Not primarily designed for lawyers and specialists in the law, this set has been written with a general audience in mind, especially the patrons of public, school, and university libraries. Academic courses in political science, history, and sociology frequently refer to the decisions of the Court, including their political and social impacts. Sometimes students or lay readers want simply to look up particular topics to acquire a basic overview. Students who need to write research papers will find in this guide an introductory summary of the Supreme Court as well as directions about where to go for additional information.

The entries in this encyclopedic work usually discuss a topic, a particular case, or a Supreme Court Justice. Many of these entries come from previous publications of Salem Press, particularly three works that I helped edit: *U.S. Supreme Court* (2007), *U.S. Court Cases* (2011), and *Encyclopedia of the U.S. Supreme Court* (2001). Since the time when these works were published, of course, the Court's membership has changed, and it has Issued some very important and controversial decisions. Most people will agree with some of them and

strongly disagree with others. In *District of Columbia v. Heller* (2008), the Court decided that the Second Amendment protects a personal right to keep guns and to use them for self-defense. In another Second Amendment case, *McDonald v. Chicago* (2010), the Court made the right to keep and bear arms applicable to the states through incorporation into the Fourteenth Amendment. In the blockbuster case, *Obergefell v. Hodges* (2015), the Court recognized that lesbians and gays have the constitutional right to enter into legally recognized same-sex marriages. In *Glossip v. Gross* (2014), the Court approved a controversial drug for lethal injections in applying the death sentence, and this ruling elicited a strong debate about the continuing validly of capital punishment. Many of these rulings were decided with 5-4 votes, which means that they are vulnerable for changes in the future.

The Court and the U. S. Political System

The U.S. system of constitutional government is a product of many influences and historical developments. The British tradition of limited government, or constitutionalism, gradually evolved since the medieval period. The Magna Carta of 1215, for example, required that even England's king had to follow the established "law of the land," and the English Bill of Rights of 1689 required the government to respect, at least in theory, a listing of rights and liberties. These developments merged with the English common law, often defined as incremental judge-made law, which included the practice of stare decisis (literally, "let the decision stand"), meaning that judicial precedents are legally binding unless they are overturned by legislative statutes or later court rulings. The common law provided English and American judges with much more power than the continental European system of civil law that was based almost exclusively on codified statutes.

During the late eighteenth century, American lawyers sometimes referred to the famous Dr. Bonham's Case of 1610, in which Sir Edward Coke had asserted that parliamentary acts were invalid if they contradicted "the common right and reason" of the common law. However, the supremacy clause of the U.S. Constitution's Article VI, which explicitly recognizes the written Constitution as the "supreme Law of the Land," was a significant departure from the English tradition of parliamentary supremacy.

From the time that the U.S. Constitution was written in 1789, informed observers have discussed the great powers of the American judiciary, particularly the powers of its highest court. Alexis de Tocqueville concluded that the real "American aristocracy" resided in the judiciary, and he wrote: "Scarcely any political question arises in the United States that is not resolved sooner or later, into a judicial question. Alexander Hamilton had a somewhat different perspective. In *The Federalist No. 78*, Alexander Hamilton praised the judiciary as the "least dangerous branch" and wrote that the "interpretation of the laws is the proper and peculiar province of the courts." In addition, he observed that because the Constitution would become the nation's highest law after it was ratified, whenever "an irreconcilable variance" between the Constitution and a legislative statute arose, judges would naturally give preference to the Constitution. In effect, Hamilton was making a theoretical argument in favor of the doctrine of judicial review, the ultimate source of the Court's political power, as later articulated in the famous case of *Marbury v. Madison* (1803), when the Court finally struck down part of congressional statute as unconstitutional.

Emphasizing the constitutional separation of political powers into three branches, proponents of judicial restraint frequently argue that the role of the Supreme Court should be limited to rendering decisions in judicial cases and that it should not make any laws, which is the proper role of Congress and the state legislatures. Although strong arguments have been made for judicial restraint, it is important to recognize the differences between the broad concept of law and the narrower concept of legislation (or statutes). Case law provides the building blocks of the common law, which has been particularly important in the constitutional law of the Anglo-American legal tradition. Both the U.S. Constitution and legislative statutes, moreover, frequently must be interpreted in order to be enforced.

Article III of the Constitution declares that the Supreme Court has final appellate jurisdiction

over a large variety of cases and controversies, especially those related to the Constitution and federal legislation. During the early nineteenth century, the Supreme Court utilized the practice of stare decisis to develop judicial doctrines. During the twentieth century, the number of significant doctrines increased. A good example was the doctrine of "selective incorporation," or the application of the fundamental rights of the first eight amendments to the states by way of the due process clause of the Fourteenth Amendment.

Many of the Court's most important opinions have dealt with the topic of federalism—the relationship between the national government and the individual states. Under the leadership of Chief Justice John Marshall (1801-1835), the Court's nationalistic interpretations of Article I, Section 8 endorsed expansive powers of Congress pursuant to its authority to regulate commerce and to pass legislation "necessary and proper" to its enumerated powers. Under Marshall's successor, Roger Brooke Taney, the Court moved to limit the powers of the national government, a perspective called "dual federalism," which is based on the notion that coequal state and national governments were autonomous within their respective spheres. Following the Civil War (1861-1865), the Court recognized the indissolubility of the Union, but it soon interpreted the Fourteenth Amendment narrowly while emphasizing the states' police powers under the Tenth Amendment, thereby continuing the paradigm of dual federalism. With the New Deal era, however, the nationalist view again became triumphant, with the Court in *United States v. Darby Lumber Co.* (1941) holding that the Tenth Amendment puts no limits on congressional power. However, the pendulum again turned during the Rehnquist Court (1986-2005), especially in *Printz v. United States* (1997), when the Court enunciated a doctrine of "dual sovereignty," which can be viewed as a middle position between the Darby ruling and the earlier doctrine of dual federalism. While it is impossible to predict the future of federalism, it is reasonable to expect that the Court will continue to define and redefine the proper roles and powers of the states.

International wars and fears of domestic violence have frequently resulted in restrictions on the individual liberties guaranteed in the Constitution. This was particularly true during the two World Wars of the first half of the twentieth century. The dramatic terrorist attacks on the United States of September 11, 2001, also had such an effect. On October 25, 2001, Congress enacted an omnibus law of some 342 pages, entitled the USA Patriot Act, which expanded the authority of law enforcement officials to monitor telephone and Internet conversations and to detain aliens on mere suspicion. The American Civil Liberties Union and other libertarian groups alleged that the complex law undermined several constitutional guarantees, especially the Fourth Amendment's rules concerning probable cause and search warrants. Then, on November 13, President George W. Bush Issued a military order which authorized military tribunals for trials of noncitizens accused of terrorism without jury trials and other established requirements of due process. In four cases, the Supreme Court ruled that the aliens held in the U.S. base at Cuba's Guantanamo Bay had the right to petition for habeas corpus relief in federal courts. In *Boumediene v. Bush* (2008), the Supreme Court found that a Congressional statute was unconstitutional because it did not recognize the right of detainees to challenge their detentions in federal courts.

Almost all scholars who write about the Supreme Court classify Supreme Court Justices into three categories: "liberal," "conservative," or "moderate." The labels are oversimplifications, and sometimes it is difficult to know exactly why a particular idea is conserved liberal or conservative. Some scholars prefer the terms "left," "right," and "centrist." There have been many times in the nation's history when the Supreme Court was divided into different factions. But the division was especially prominent from 2006 to 2016: from the time that Samuel Alito joined the Court until the death of Antonin Scalia. During these years, time and time again the pattern was the following: Alito, Scalia, Thomas, and Roberts taking the conservative position; Ginsburg, Breyer, Stevens (then Sotomayor), and Souter (then Kagan) defending the liberal position. Sometimes Justice Anthony Kennedy voted with one faction, and at other times he voted with the other.

Clearly the justices express their ideological and moral attitudes concerning public policy. Anyone who doubts this can read the justices' debate concerning the death penalty in *Glossip v. Gross*. But the judges also have different attitudes about jurisprudence and political philosophy. For statistical consistency on ideology, one can consult electronically the *Supreme Court Database*, edited by Lee Epstein and others. Two caveats about these studies: they tend to minimize differences in attitudes about jurisprudence and hermeneutics, and by classifying justices left or right on particular Issues, they sometimes miss subtle distinctions that one can only get by reading the writings of the justices.

Interpretations

The Constitution is written in the standard English language, with only a few terms—such as "bill of attainder" and "Letters of Marque and Reprisal"—that are not easily recognizable by most English speaking citizens. Indeed, a large number of provisions in the Constitution are quite straightforward, not requiring any complex theory of interpretation. For example, when the document states that U.S. presidents must be at least thirty-five years old, no one questions what is meant by "years," and scholars do not debate the original intent of the Constitution's Framers by asking whether the "spirit" of the requirement would be satisfied by a mature person who is thirty-three years old. In contrast, other portions of the Constitution are rather ambiguous and susceptible to a variety of interpretations, which is why Chief Justice Charles Evans Hughes once stated, "We are under a Constitution, but the Constitution is what the judges say it is."

The reference to "cruel and unusual punishments" in the Eighth Amendment demands interpretation. Most justices seem to have accepted, at least to some extent, Earl Warren's definition of the expression in *Trop v. Dulles* (1958). He wrote that the amendment draws its meaning from "the evolving standards of decency that mark the progress of a maturing society." Justice Tom C. Clark and others have argued that the Eighth Amendment prohibits only those punishments that are both cruel and unusual, while many justices have thought that cruelty alone is the main criteria of a punishment's constitutionality. Moreover, the word "unusual" might be taken to refer to a punishment that is not utilized often, or it might mean that the punishment is not part of the legal code in most jurisdictions. Another complex question is whether one should understand the phrase to mean those kinds of punishments that were considered cruel and unusual when the amendment was written and ratified, or whether the phrase should be interpreted, according to contemporary meanings. A related Issue is whether Supreme Court justices may legitimately take into account the subjective notion of natural law, the content of which is largely a consequence of an individual's moral intuitions and cultural conditioning.

There is also the question of whether the Eighth Amendment should continue to apply only to the federal government, as it did from 1791 until 1962, or whether the Supreme Court was justified in applying the amendment to the states by incorporating it into the due process in the Fourteenth Amendment. The notion of a cruel punishment is logically a matter of "substance," not a question of "procedure," and the doctrine of substantive due process is still controversial. Justices have wrestled with all of these interpretative questions in their decisions.

When justices grapple with the meanings of words such as "cruel and unusual," the use of the term "strict constructionism" tends to be inappropriate. However, the focus on controversial questions, such as the constitutionality of the death penalty, obscures the fact that most people who have thought about the Eighth Amendment actually agree on numerous Issues. Almost every American, for example, would agree that the prohibition on cruel and unusual punishment prohibits the inflicting of unnecessary pain and suffering. Almost everyone would agree that a grossly disproportionate punishment, such as the use of capital punishment for a minor theft, would be cruel and unusual. Contrary to the assertions of extreme proponents of postmodernism, words and phrases are not completely indeterminate, for they necessarily express a restricted range of denotations and connotations.

Extreme forms of judicial activism, moreover, appear to be incompatible with the very notion of constitutional democracy. Even if one accepts the premise of a "living Constitution," the constitutional separation of government into three equal branches seems to imply that the judiciary does not have unlimited discretion or a total monopoly in defining the meanings of the document. After all, Article I of the Constitution begins with the statement, "All legislative powers herein granted shall be vested in a Congress." Also, Justice Hugo L. Black and others have observed that there would be no need for a process of constitution amendments if the judges possessed absolute authority to act as Platonic guardians in making judgments without reference to reasonable meanings of the constitutional text.

The two clauses prohibiting the deprivation of "life, liberty, or property, without due process of law"—located in both the Fifth and Fourteenth Amendments—have also been susceptible to alternative readings. During the twentieth century, the Court gradually held that procedural due process includes a mandate that the states' criminal procedures must be consistent with the fundamental rights found in the Bill of Rights. The concept of procedural due process is must less controversial than the doctrine of substantive due process, which interprets the clause to mean that government cannot deprive persons of substantive rights (primarily liberty) in an arbitrary or capricious manner. From 1898 until 1937, a pro-business Court applied this doctrine primarily to economic liberties, requiring government to respect a broad "right of contract," thereby overturning many laws designed to protect employees. However, the Court also applied the doctrine to protect some noneconomic rights, including the requirement that states honor the substantive rights of the First Amendment. With *Griswold v. Connecticut* (1965), the Court began ruling that the due process clause protected a right to privacy (later called "liberty interests"), which pertains particularly to intimate family and sexual relationships. The reasoning of Griswold was subsequently extended to a host of related matters, including the rights to terminate unwanted pregnancies, to refuse unwanted medical treatment, and to engage in non-heterosexual practices in a private home. Reasonable people can disagree about whether such broad constructions of the due process clause are justifiable.

The Constitution says almost nothing about the standards and methods that judges should use in making interpretations. It does not say whether or not justices should look to the intent of the Constitution's original Framers, just as it does not indicate whether the justices should look to the literal text or to the broader spirit of the document. Many jurists have asserted that the enigmatic Ninth Amendment implies some recognition for the concept of natural law, while other think the amendment refers to unwritten rights under common law, and others take it to mean states' rights.

The Constitution never explicitly indicates whether the Court's constitutional and statutory interpretations should respect the practice of stare decisis, although it is perhaps relevant that the Seventh Amendment requires the courts to utilize the "rules of the common law" when examining judgments in suits at common law in federal courts. Even the most vociferous critics of the original understanding perspective of constitutional interpretation must acknowledge that much of the language in the constitution, such as references to jury trials and due process, does not make sense apart from the Framers' understanding of what such terms meant at the time they created the Constitution.

Thomas Tandy Lewis

Abington School District v. Schempp

Citation: 374 U.S. 203
Announced: June 17, 1963
Issue: School prayer
Significance: This decision reaffirmed the Supreme Court's 1962 ruling that made it unconstitutional for public schools to sponsor prayers or Bible readings.

After the Supreme Court banned school prayer, teachers found other ways to start to begin the school day. Here, an elementary school teacher in Pittsburgh reads from a book called The School Day Begins. *(Library of Congress)*

Writing for an 8-1 majority, Justice Tom C. Clark reiterated the Supreme Court's position in *Engel v. Vitale* (1962) that the government could not promote religion by sponsoring public school prayers or Bible readings. In *Abington*, the American Civil Liberties Union helped the Schempps challenge a Pennsylvania law requiring public schools to begin each day by reading Bible verses. In the companion case, *Murray v. Curlett* (1963), nationally known atheist Madalyn Murray (later O'Hair) attacked a Baltimore city statute providing for a daily reading in the city schools of the Lord's Prayer or a passage from the Bible. Unlike the situation in *Engel*, the government did not write the prayer and used the readings without comment, but the Court still found both laws an impermissible promotion of religion.

Although two new justices participated in *Abington*, the outcome remained the same as *Engel*. Justice Potter Stewart wrote the Court's lone dissent, arguing that the free exercise clause should be given preferred status to avoid inherent conflicts with the establishment clause. The Court sought to minimize criticism by having Clark, a politically moderate southern Presbyterian, write the Court's opinion and Justices Arthur J. Goldberg (Jewish) and William J. Brennan, Jr. (Roman Catholic) write strong concurrences, but widespread public criticism continued from religious groups against the Court for interfering with religion.

Richard L. Wilson

See also: Clark, Tom C.; *Engel v. Vitale*; *Epperson v. Arkansas*; Religion, establishment of; *Wallace v. Jaffree*

Ableman v. Booth

Citation: 21 How. (62 U.S.) 506
Announced: March 7, 1859
Issues: Federal supremacy; Habeas corpus
Significance: The U.S. Supreme Court held that the Fugitive Slave Law of 1850 was constitutional and ruled that a state court may not Issue a writ of habeas corpus to release a person from federal custody.

Joshua Glover, a fugitive slave from Missouri, found work in a Wisconsin mill. Under the Fugitive Slave Law of 1850, the U.S. commissioner in Milwaukee Issued an order for Glover's arrest. An angry group of about one hundred men broke into the Milwaukee jail and rescued Glover, who escaped to Canada. Sherman Booth, a dynamic speaker who edited an antislavery newspaper, was convicted in federal court for taking part in the

rescue. Not long after, the Wisconsin Supreme Court declared the 1850 law invalid, and one judge of the court Issued a writ of habeas corpus to have Booth released. The court's action was appealed to the U.S. Supreme Court.

Writing for a unanimous Court, Chief Justice Roger Brooke Taney reaffirmed the authority of the federal government to capture runaway slaves and ruled that a state court lacked jurisdiction over a person in federal custody. In response, Wisconsin's supreme court split evenly concerning whether to recognize federal supremacy in the matter. Taney's opinion on federal supremacy was upheld in *Tarble's Case* (1872), and that aspect of the decision remains good law.

Thomas Tandy Lewis

See also: *Jones v. Van Zandt; Kansas v. Hendricks; McCleskey v. Zant; Printz v. United States; Stone v. Powell; Ware v. Hylton*

Abortion

Description: Intentional expulsion or removal of the fetus from the womb except for the purpose of accomplishing a live birth or removing a dead fetus from the womb.
Significance: With its controversial decision in *Roe v. Wade* (1973), the Supreme Court declared that women had the right to have an abortion, which it later interpreted to prohibit laws that unduly burdened a woman's ability to choose an abortion until the third trimester of pregnancy.

Scarcely any constitutional Issue provoked more controversy in the last half of the twentieth century than the Issue of whether the U.S. Constitution protected a woman's right to obtain an abortion. On some Issues during this period, such as racial segregation, the Supreme Court was able to guide the country toward an ultimate consensus. However, on the Issue of abortion, the Court was unable to accomplish such closure. The two major political parties partially defined themselves by reference to their respective attitudes toward this question, often using the abortion Issue as a litmus test for their evaluation of potential Supreme Court justices. Protesters marked the anniversary of the Court's original abortion decision with vigils in front of the Court. Legislators, both federal and state, proposed an endless series of laws that would restrict or at least discourage abortions. In the last decade of the twentieth century, the Court stood by its original declaration that the right to abortion was protected by the Constitution. Nevertheless, the Court redefined the standard to be used in evaluating laws relating to abortion with the effect of increasing the ability of state and federal lawmakers to regulate in this controversial area.

Before the Right to Abortion

Prior to the nineteenth century, laws regulating abortions were virtually unknown because the procedure was extraordinarily dangerous and this danger operated as a deterrent, making abortion banning laws largely superfluous. However, improved medical techniques in the nineteenth century made abortions more common and prompted state lawmakers to prohibit them. By the middle of the twentieth century, abortion, except when necessary to protect the pregnant woman's life, was illegal everywhere in the United States.

Beginning in the middle of the twentieth century, however, the Supreme Court determined that not all state laws bearing on Issues of procreation were immune from constitutional scrutiny. In *Skinner v. Oklahoma* (1942), the Court determined that a state law providing for compulsory sterilization of certain habitual criminals amounted to an unconstitutional discrimination in violation of the Fourteenth Amendment's equal protection clause. The Court concluded that certain rights were sufficiently fundamental to require the government to demonstrate an overwhelmingly persuasive justification before depriving selected people of these rights. Though the Constitution nowhere specifically enumerates a right to procreation, the Court nevertheless concluded that this right was sufficiently fundamental to require strict scrutiny of the sterilization law. Finding no compelling purpose served by the law, the Court declared it unconstitutional.

Two decades later, the Court again turned to a consideration of whether the Constitution protected individuals from state laws that intruded into matters relating to procreation. *Griswold v.*

Connecticut (1965) called upon the Court to determine the constitutionality of a state law prohibiting use of contraceptives. By the early 1960's this kind of law was extraordinarily rare, prompting Justice Potter Stewart to characterize it as "exceedingly silly," but its constitutional infirmity was not immediately apparent. Justice William O. Douglas, though, writing for the Court, concluded that the right to use contraceptives lay within a zone of privacy protected by penumbras of various constitutional provisions. Other justices argued in concurring opinions that the right to use contraceptives was a species of the liberty protected from undue deprivations by the Fourteenth Amendment's due process clause. Justices Hugo L. Black and Stewart dissented. Black, in particular, challenged the majority's willingness to use the due process clause to scrutinize the reasonableness of laws affecting rights not specifically enumerated in the Constitution. He accused the majority of resurrecting the same form of substantive due process employed by the Court earlier in the century in cases such as *Lochner v. New York* (1905), which invalidated what the Court viewed as unreasonable restrictions on the freedom of contract.

The Abortion Ruling

The Court's holding in *Griswold* suggested that the Constitution protected a zone of privacy relating to matters of procreation, though the justices remained divided in their views of precisely where to root this right of privacy in the Constitution's text. Such controversy as the case engendered, however, was mostly abstract because an over whelming majority of states had long since abandoned laws against the use of contraceptives. When the Court turned to the subject of abortion in *Roe v. Wade* (1973), however, it confronted prohibitions against abortion that were still in force in a majority of the states. The decade before Roe had seen some change in state laws relating to abortion. The 1962 Model Penal Code, drafted by the American Law Institute and followed by some states, allowed for abortions in cases involving rape or serious birth defects. A few states—New York, Alaska, and Hawaii—had repealed their antiabortion laws. However, a majority of states retained significant restrictions on the ability of women to obtain abortions, and in Roe, the Court swept aside virtually all these laws.

Justice Harry A. Blackmun, writing for the majority, concluded that the right of privacy previously recognized in cases such as Griswold was broad enough to encompass a woman's right to an abortion. He located the constitutional right of privacy in the Fourteenth Amendment's due process clause, which protected against deprivations of life, liberty, or property without due process of law. Finding the right to abortion fundamental, he determined that the government could not abridge the right without satisfying a strict review, which entailed demonstrating that the abridgment was necessary to serve some compelling governmental interest and that it was the least restrictive means of achieving that interest.

Using this formulation, Blackmun turned to the interests purportedly served by state abortion regulations: protecting the health of the pregnant woman and protecting the potential life of the unborn fetus. Blackmun suggested that no consensus existed as to when human life began and that, in any event, the fetus was not a "person" entitled to constitutional protection. Dividing pregnancy into three trimesters, Blackmun concluded that in the first trimester of pregnancy, neither a state's interest in the health of the pregnant woman nor its interest in the potential life of a fetus justified restrictions on abortion. In the second trimester, though, he found abortions sufficiently dangerous to the health of the pregnant woman to justify such regulations as necessary to protect the woman's health. Finally, after viability, in the third trimester, Blackmun reasoned that the state's interest in the potential life of the fetus was sufficiently weighty to justify a prohibition against all abortions except those necessary to preserve the life or the health of the pregnant woman. The abortion right thus established by Roe was virtually absolute during the first three months of pregnancy, subject only to regulations designed to protect the woman's health during the second three months, and subject to prohibition to protect the fetus during the last three months.

Responses to the Ruling

Though the Court's decision in *Roe* was widely hailed in some quarters of American life, criticism

of the Court's decision was immediate and vociferous. Some legal scholars argued that the Court substituted its judgment on a controversial Issue for the judgment of political majorities without constitutional justification. They agreed with Justice Black's claim in *Griswold* that the Court's use of the due process clause to evaluate the reasonableness of laws affecting rights not specifically protected by the Constitution resurrected in liberal political garb the same spirit that had inspired conservative justices to invalidate laws restricting the unenumerated right to contract in the first part of the twentieth century. Scholars supportive of the result in Roe argued that the Court's reasoning was correct. The problem with cases such as *Lochner*, they argued, was not that they protected unnamed fundamental rights, but that they designated the right to contract as fundamental. In contrast, they agreed with the Court that the right of privacy, including the right of a woman to choose to have an abortion, was indeed fundamental and should be protected from unreasonable legislative interference.

The Court's decision in *Roe* prompted the emergence of a right-to-life movement dedicated to overturning it, whether by constitutional amendment, legislative action, or reconstitution of the Court itself. Politicians opposed to the Court's ruling responded by proposing legislation and a constitutional amendment that would declare the fetus a "person" and therefore subject to constitutional protection. Neither the legislation nor the amendment succeeded in gaining passage, however. Opponents of the decision eventually turned their attention to the composition of the Court that had rendered the decision in *Roe* and, especially during the 1980's, attempted to screen nominees to the Court as to whether they approved or disapproved of *Roe's* reasoning. This effort also produced only limited success. In the meantime, legislatures—especially at the state level—passed a variety of legislation that did not entirely prohibit abortions but placed a variety of obstacles in the paths of women seeking to exercise their right to seek an abortion. It remained to be seen after *Roe* whether such regulations would pass constitutional muster.

Post-Roe Abortion Regulations

In the fifteen years immediately after the Roe decision, abortion regulations generally found a cool welcome in the Court. Relying on the trimester scheme Announced in *Roe*, the Court generally invalidated all laws that restricted the ability of women to obtain an abortion before the last trimester of pregnancy. For example, the Court declared laws requiring a spouse's consent to an abortion unconstitutional in *Planned Parenthood of Central Missouri v. Danforth* (1976). Restrictions on various abortion techniques were also invalidated, as were requirements that abortions be performed in hospitals as opposed to clinics. Moreover, the Court was initially hostile to laws designed to discourage abortions, such as those requiring a waiting period before a woman obtained an abortion or those requiring physicians to provide specific counsel to patients about the dangers of the abortion procedure.

The Court upheld a few forms of abortion regulation. It sustained the constitutionality of laws requiring parental consent when the woman seeking an abortion was a minor as long as the law also provided a means for the minor to obtain the consent of a judge rather than her parents. More significantly, the Court held that the right to an abortion did not include the right to have an abortion financed at public expense. In *Harris v. McRae* (1980), the Court upheld the constitutionality of the Hyde Amendment (1976), a federal law that prevents the use of Medicaid funds to pay for abortions except where necessary to save the pregnant woman's life. A majority of the Court, in an opinion by Justice Stewart, distinguished between laws that impeded a woman's right to seek an abortion and laws that simply declined to facilitate that right. According to the Court, although the federal or state governments could not take away a woman's right to an abortion, they nevertheless need not subsidize it.

A Conservative Turn

During President Reagan's two terms of office in the 1980's, he made it a priority to nominate justices to the Court who would favor overruling *Roe v. Wade*. He partially achieved this purpose by appointing Justice William H. Rehnquist—one of the original dissenters in Roe—as chief justice

upon the retirement of Chief Justice Warren E. Burger. Late in his second term, President Reagan attempted to appoint Robert H. Bork, an outspoken critic of Roe, to fill the seat on the Court vacated by Justice Lewis F. Powell, Jr., only to have the Senate reject the nomination. Nevertheless, Reagan's other nominees— Sandra Day O'Connor, Antonin Scalia, and Anthony M. Kennedy— were all viewed as representing some measure of dissatisfaction with the decision in *Roe*.

By the close of the 1980's, some reconsideration of Roe seemed imminent. In *Webster v. Reproductive Health Services* (1989), a majority of the Court appeared to reject a rigid view of the trimester analysis of *Roe* by upholding a requirement that fetuses be tested for viability after twenty weeks of pregnancy. Under *Roe*, twenty weeks, being within the second trimester, fell within a period when the state's interest in the potential life of the fetus was insufficient to justify any impediment to a woman's abortion right. Four justices were prepared to overrule Roe explicitly on this point. Justice O'Connor concurred in the result but was unwilling to repudiate *Roe's* trimester approach completely.

In the wake of the decision in *Webster*, observers of the Court speculated that a majority of the justices were poised to revisit Roe. Four justices remained solidly behind the precedent—William J. Brennan, Jr., Thurgood Marshall, John Paul Stevens, and Blackmun— and dissented vigorously from the holding in Webster. Standing on the opposite side were Chief Justice Rehnquist and Justices Scalia, Kennedy, and Byron R. White. Justice O'Connor stood in the middle— apparently willing to reconsider at least some aspects of *Roe v. Wade*. In the years immediately following *Webster*, President George H. W. Bush added two more justices to the Court to replace staunch defenders of Roe. Justice David H. Souter took the seat formerly held by Brennan, and Justice Clarence Thomas filled the seat vacated by Marshall. These appointments seemed likely to tip the balance against continued adherence to the principles of *Roe v. Wade*.

The Revolution That Was and Was Not

In 1992 a Court largely reconstituted from its composition at the time of Roe considered a cluster of abortion regulations in *Planned Parenthood of Southeastern Pennsylvania v. Casey*, including a requirement that women seeking an abortion wait at least twenty-four hours after being given information by a physician about the nature of the abortion procedure, the fetus's developmental stage, and alternatives to abortion. The Court also considered a requirement that married women notify their husbands of their intent to have an abortion. The widely anticipated decision of the Court proved to frustrate many predictions about its likely result, while satisfying neither those who wished to abolish the constitutional right to abortion nor those who wished to defend abortion against all government restrictions on the procedure.

Three justices joined to write the opinion: O'Connor, Kennedy, and Souter. The first major element of their opinion was to reaffirm the basic holding of *Roe v. Wade* that the Constitution guaranteed the right to abortion. With an eye to the profound political controversy still surrounding abortion nearly two decades after *Roe*, the justices argued that adherence to the core of the Court's previous holding was necessary to sustain the Court's legitimacy and to prevent it from appearing to bow to political pressure. They were joined in this reaffirmation of *Roe* by Justices Blackmun and Stevens. However, the Court's opinion, while not overruling Roe, nevertheless substantially revised the formulation originally adopted by the Court in *Roe*. Instead of the trimester scheme, which prevented laws from interfering with a woman's choice to have an abortion except to protect her health after the first trimester and to protect the fetus after the second trimester, the Court focused on whether a particular law amounted to an undue burden on the right to abortion. Under this formulation, some regulations of abortion might be undertaken throughout a pregnancy. Applying this new test, a majority of the Court found that the twenty-four-hour waiting period was not an undue burden, but that the spousal notification was an unconstitutional burden on a woman's right to an abortion.

The State of Nebraska enacted a statute making it a felony to perform "a partial birth abortion" except when necessary to save the mother's life. The law did not make a clear distinction between dilation and extraction (D&E) and intact dilation and extraction (IDX), even though the popular term partial birth abortion really refers only to the

latter. The D&E procedure is used in abortions when the fetus is from 13 to 20 weeks gestation, while the more rare IDX is used in cases of 19-26 weeks gestation. In the later method, the fetus is removed largely intact, and the method is more likely to involve a viable fetus. The statute defined a partial birth abortion as the partial vaginal delivery of a "living unborn child before killing the child."

A physician who did the procedures, Dr. Leroy Carhart, brought suit seeking a declaration that the law was unconstitutionally vague and that it placed an undue burden on him and his female patients. In the resulting case of *Stenberg v. Carhart* (2000), the Supreme Court agreed, by a 5-4 margin, with Carhart's complaint. Delivering the opinion for the court, Justice Stephen G. Breyer wrote that the Nebraska law "violates the U.S. Constitution, as interpreted by *Casey* and *Roe*." The Court found two major defects in the Nebraska statute. First, there was ambiguity about whether or not the law outlawed the D&E approach, which had medical benefits in eliminating a non-viable fetus, whereas the medical profession disagreed about the IDX method. A second major defect in the law was that it did not make any exceptions for the health of women who might need abortions for medical reasons. Because anyone performing an abortion procedure in Nebraska would have to fear criminal prosecution, Breyer concluded that the law resulted in "an undue burden upon a woman's right to make an abortion decision."

In a strong dissent, Justice Antonin Scalia wrote that it was "quite simply absurd" to assert that the Constitution prohibits the states from banning "this visibly brutal means of eliminating our half-born posterity." In 2003, Congress enacted a federal Partial Abortion law similar to the Nebraska statute struck down in *Carhart*. Since the decision was based on a 5-4 vote, the replacement of Justice Sandra Day O'Connor on the Court by Samuel Alito in 2006 raised the possibility of a different outcome in a future case.

In 2003, President George W. Bush signed into law the Partial-birth Abortion Ban, outlawing any abortion in which the death of the fetus occurs when "the entire fetal head…or any part of the fetal trunk past the navel is outside the body of the mother." The law explicitly applied only to the IDX procedure, not to D&E or any other abortion procedures. Like the Nebraska law, nevertheless, the federal statute did not make an exception for the woman's health.

In *Gonzales v. Carhart* (2007), the Supreme Court ruled 5-4 that the federal ban on the IDX procedure did not violate the Constitution. Justice Anthony Kennedy wrote that the federal statute differed from the Nebraska in that it unambiguously prohibited only partial-birth abortions. He conceded that there is uncertainty in the medical community about whether the procedure would be ever be "necessary to preserve a woman's health," but noted that in the past the Court "has given state and federal legislatures wide discretion to pass legislation in areas where there is medical and scientific uncertainty." He left open the possibility that an "as-applied" challenge might be entered against the Act if it were ever applied in a situation in which an IDX was actually necessary to preserve a woman's health.

Despite the *Gonzales* ruling, the Supreme Court had firmly established that laws restricting access to were unconstitutional if they placed an "undue burden" on the access of women to safe abortions at reasonable costs. In *Whole Woman's Health v. Hellerstedt* (2016), the Court struck down two provisions in a Texas statute: First, physicians performing abortions would have been required to have active admitting privileges at a hospital located not more than 30 miles away. Second, the minimum standards for abortion clinics would have been the same as these required for ambulatory surgical centers. In a 6-3 decision, the Supreme Court ruled that these two provisions would not make a positive contribution toward the health or safety of women seeking to terminate unwanted pregnancies. Rather the statute simply made the procedures so expensive that a large percentage of clinics would be forced to close, which would have had a disproportionate impact on poor and disadvantaged women. The two provisions in the law were therefore ruled to violate a substantive due process reading of the Fourteenth Amendment. *The Whole Woman's Health* decision raised constitutional questions about similar laws in at least eleven states.

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Further Reading

The Ethics of Abortion: Pro-Life v. Pro-Choice, edited by Robert M. Baird and Stuart E. Rosenbaum (Amherst, N.Y.: Prometheus, 2001), provides a reasoned appraisal of the conflicting views of the pro-life and pro-choice sides in the abortion debate. Kathlyn Gay's *Abortion: Understanding the Debate* (Berkeley Heights, N.J.: Enlow Publishers, 2004) is a contemporary analysis of the competing positions relating to the moral and legal status of abortion. N. E. H. Hull and Peter Charles Huffer's *Roe v. Wade: The Abortion Rights Controversy in American History* (Lawrence: University Press of Kansas, 2001) tries to locate the *Roe v. Wade* decision in the context of broader social changes in American society. *Abortion: The Supreme Court Decisions*, edited by Ian Shapiro (Indianapolis, Ind.: Hackett, 1995), collects the major legal decisions defining the current constitutional law concerning abortion.

For further background, readers may consult *The Abortion Controversy: A Documentary History*, edited by Eva R. Rubin (Westport, Conn.: Greenwood, 1994), which includes both Supreme Court materials and other important political documents relating to abortion, and *Abortion: A Reference Handbook*, by Marie Costa (2d ed., Santa Barbara, Calif.: ABC-Clio, 1996), which offers a variety of background information concerning the abortion controversy, including a chronology of abortion laws from ancient times to the present, biographies of those involved in the abortion debate, and a variety of statistics concerning abortion.

A variety of sources treat the historical context of the Court's abortion decisions. *Liberty and Sexuality: The Right to Privacy and the Making of "Roe v. Wade,"* by David J. Garrow (New York: Macmillan, 1994), is a sweeping history of the cases and controversies leading up to the Court's decision. *"Roe v. Wade": The Untold Story of the Landmark Supreme Court Decision That Made Abortion Legal*, by Marian Faux (New York: Macmillan, 1988), focuses more specifically on the trial and appeal of *Roe* itself. *Rehnquist Justice: Understanding the Court Dynamic*, edited by Earl M. Maltz (Lawrence: University Press of Kansas, 2003), *The Most Activist Supreme Court in History: The Road to Modern Judicial Conservatism*, by Thomas M. Keck (Chicago: University of Chicago Press, 2004), and *A Court Divided: The Rehnquist Court and the Future of Constitutional Law*, by Mark Tushnet (New York: W. W. Norton, 2005), touch on more recent Court decisions regarding abortion.

The interplay between the Court and other social actors may be explored in Lee Epstein and Joseph F. Kobylka's *The Supreme Court and Legal Change: Abortion and the Death Penalty* (Chapel Hill: University of North Carolina Press, 1992), which emphasizes the role that legal arguments played in constitutional cases involving abortion and the death penalty, and in Neal Devins's *Shaping Constitutional Values: Elected Government, the Supreme Court, and the Abortion Debate* (Baltimore, Md.: Johns Hopkins University Press, 1996), which explores the relationship between the Court and politics with respect to the abortion controversy. *Abortion: The Clash of Absolutes*, by Harvard Law School professor Laurence H. Tribe (New York: Norton, 1992), presents a summary of the constitutional Issue from the standpoint of a position protective of abortion rights.

Mary Ann Glendon's *Abortion and Divorce in Western Law* (Cambridge, Mass.: Harvard University Press, 1987) provides an international perspective on the Issue of divorce by comparing the Court's treatment of the Issue with the results of decisions in the courts of other nations. Finally, *Wrath of Angels: The American Abortion War,* by James Risen and Judy L. Thomas (New York: Basic Books, 1998), is an illuminating account of the abortion protest movement inaugurated by the Court's decision in *Roe v. Wade*.

See also: Birth control and contraception; Due process, substantive; Fourteenth Amendment; *Gonzales v. Carhart; Griswold v. Connecticut; Planned Parenthood of Southeastern Pennsylvania v. Casey; Roe v. Wade; Whole Woman's Health v. Hellerstedt*

Categories of Cases and Topics

Timeline of the U.S. Supreme Court

Semicolons separate events occurring on the same dates.

1789 (Sept. 24) First Judiciary Act creates federal court system; President George Washington appoints John Jay chief justice and John Rutledge, William Cushing, Robert Harrison (who declines), James Wilson, and John Blair, Jr., associate justices. (Oct. 5) Wilson is sworn in. (Oct. 19) John Jay is sworn in.

1790 *United States Reports* begins publication. (Feb. 2) Supreme Court opens its first session; Cushing and Blair are sworn in as associate justices. (Feb. 8) Washington appoints James Iredell to the Court. (Feb. 15) Rutledge is sworn in as associate justice. (May 12) Iredell is sworn in as associate justice.

1791 (Mar. 5) Rutledge resigns from the Court to head South Carolina's top court. (Aug. 5) Washington gives Thomas Johnson a recess appointment to the Court. (Oct. 31) Washington formally nominates Johnson. (Nov. 7) Senate confirms Johnson's nomination.

1792 (Aug. 6) Johnson is sworn in as associate justice.

1793 (Jan. 16) Justice Johnson resigns. (Feb. 27) Washington appoints William Paterson to the Court; nomination is withdrawn the next day. (Mar. 4) Washington again nominates Paterson; Senate confirms nomination the same day. (Mar. 11) Paterson is sworn in.

1795 (June 29) Chief Justice Jay resigns to enter politics. (July 1) Washington appoints John Rutledge to replace Jay. (Aug. 12) Rutledge is sworn in without Senate confirmation. (Oct. 25) Justice Blair resigns. (Dec. 15) Senate rejects Rutledge's nomination.

1796 (Jan. 27) Cushing declines Washington's promotion to chief justice after ser ving one week in that position. (Jan. 26) Washington nominates Samuel Chase to the Court; Senate confirms nomination the next day. (Feb. 4) Chase is sworn in. (Mar. 3) Washington nominates Oliver Ellsworth as chief justice; Senate confirms nomination the next day. (Mar. 8) Ellsworth is sworn in.

1798 (Aug. 21) Justice Wilson dies. (Aug. 28) Adams gives Bushrod Washington a recess appointment to the Court. (Nov. 9) Washington is sworn in. (Dec. 19) Adams formally nominates Washington to the Court; Senate confirms nomination the next day.

1799 (Feb. 4) Bushrod Washington is sworn in as associate justice. (Oct.20) Justice Iredell dies. (Dec. 4) Adams nominates Alfred Moore to the Court. (Dec. 10) Senate confirms Moore's nomination.

1800 (Apr. 21) Moore is sworn in as associate justice. (June 6) John Marshall becomes secretary of state. (July 18) Former justice Rutledge dies. (Aug. 31) Former justice Blair dies. (Dec. 15) Chief Justice Oliver Ellsworth resigns. (Dec. 19) John Jay declines President John Adams's offer of reappointment to the Court.

1801 Adams appoints John Marshall chief justice. (Jan. 27) Senate confirms Marshall's nomination. (Feb. 4) Marshall is sworn in; he remains secretary of state until replaced by James Madison on May 2. (Feb. 13) Second Judiciary Act creates six new circuit courts.

1804 Chief Justice Marshall publishes the first volume of his five-volume biography of George Washington. (Jan. 26) Justice Alfred Moore resigns. (Mar. 12) House of Representatives votes to impeach Justice Chase. (Mar. 22) Jefferson nominates William Johnson to the Court; Senate confirms nomination two days later. (May 8) Johnson is sworn in.

1806 (Sept. 9) Justice Paterson dies. (Nov. 10) President Thomas Jefferson gives Brockholst Livingston a recess appointment to the Court. (Dec. 13) Jefferson formally nominates Livingston to the Court. (Dec. 17) Senate confirms Livingston's nomination.

1807 (Jan. 20) Livingston is sworn in as associate justice. (Feb. 28) President Jefferson nominates Thomas Todd to the court and he is confirmed by the Senate the following month. (May 4) Todd is sworn in.

1810 (Sept. 13) Justice Cushing dies. (Oct. 15) Former justice Moore dies.

Notable Supreme Court Rulings

Cases covered in articles in the main text are marked with asterisks (*).

*Abington School District v. Schempp**
374 U.S. 203 (June 17, 1963)
Reaffirming that the First Amendment mandates a high wall between church and state, an 8-1 majority prohibited public schools from devotional Bible readings and reCitation of the Lord's Prayer.

Ableman v. Booth
62 U.S. 506 (Mar. 7, 1859)
Upheld the constitutionality of the 1850 Fugitive Slave Law and strongly affirmed that federal statutes override state laws.

Abrams v. United States
250 U.S. 616 (Nov. 10, 1919)
Upheld the prosecution of anarchists under the Sedition Act, although Justice Holmes dissented with a libertarian version of the clear and present danger standard of free speech. Superseded by *Brandenburg v. Ohio* (1969).

Adair v. United States
208 U.S. 161 (Jan. 27, 1908)
Basing its decision on the freedom of contract doctrine, the Court overturned a federal law that had prohibited yellow dog contracts. Reversed in 1937.

*Adamson v. California**
332 U.S. 46 (June 23, 1947)
Reaffirmed that the Fifth Amendment did not apply to state laws, which would be reversed in 1964, but the case remains significant because it brought forth a debate on the Issue of incorporation.

*Adarand Constructors v. Peña**
515 U.S. 200 (June 12, 1995)
Required lower courts to use the "strict scrutiny" standard when examining the constitutionality of federal programs mandating preferences based on race.

Adderley v. Florida
385 U.S. 39 (Nov. 14, 1966)
Upheld a criminal trespass conviction of civil rights demonstrators for refusing to leave a nonpublic driveway on jail premises, finding that the police conduct was not motivated by speech content.

Adkins v. Children's Hospital
261 U.S. 525 (Apr. 9, 1923)
Ruling that a federal minimum-wage law was unconstitutional, the Court vigorously reaffirmed laissez-faire principles and the freedom of contract doctrine. Overturned in *West Coast Hotel Co. v. Parrish* (1937).

Agostini v. Felton
521 U.S. 203 (June 23, 1997)
Overturning a 1985 precedent, a 5-4 majority upheld the constitutionality of the use of tax money to send public school teachers into parochial school for specialized services.

Akron v. Akron Center for Reproductive Health
462 U.S. 416 (June 15, 1983)
Overturned several abortion restrictions in a city ordinance and strongly reaffirmed that women have a fundamental right to have abortions, with Justice Sandra Day O'Connor articulating the "undue burden" standard.

Albemarle Paper Co. v. Moody
422 U.S. 405 (June 25, 1975)
Held that a company's pre-employment tests having discriminatory effects violated the 1964 Civil Rights Act because they were not sufficiently "job related."

Albertson v. Subversive Activities Control Board
382 U.S. 70 (Nov. 15, 1965)
In this final case involving the registration requirements for communists in the 1950 McCarran Act, the Court held that the requirements vio-