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AP Government and Politics
Supreme Court Cases

You should be able to summarize from memory significant Supreme Court interpretations of the Constitution and the amendments especially as these interpretations have changed the meaning of the Constitution or the Bill of Rights.

Probably the most significant are the First Amendment freedoms (of religion, speech, press, petition, and assembly) and the due process and equal protection clauses of the Fifth and the Fourteenth Amendment. **Study these to prepare for the AP Exam and for an exciting game of *Court Case Bingo* and a chance to win extra points.**

Some important facts:
Initially, the Bill of Rights was intended to limit the powers of the national government to prevent infringement upon individual civil liberties. After the Civil War, the Fourteenth Amendment (ratified in 1868) included guarantees that "no state shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny ... equal protection of the law." This seems to me to explicitly apply these guarantees to the states. Nevertheless, this took some time.

Selective Incorporation is a judicial doctrine whereby, most, but not all, of the protections found in the Bill of Rights are made applicable to the states via the Fourteenth Amendment. At the present time, only the Second, Third, and Seventh Amendments and the grand jury requirement of the Fifth Amendment have not been applied specifically to the states.

Mention of the term "selective incorporation" was first set forth in Palko v. Connecticut (1937). Although upholding the Connecticut murder conviction of Frank Palko, the Supreme Court established that some protections found in the Bill of Rights are absorbed into the concept of due process as provided for in the Fourteenth Amendment because they are so fundamental to our notions of liberty and justice that they cannot be denied by the states. Important examples include: Freedom of speech, press, assembly and religion (from the 1st Amendment), Protection against unreasonable searches and seizures (from the 4th Amendment), and Protection against self-incrimination and the right to counsel and trial by an impartial jury in a public and speedy trial (from the 5th, 6th and 7th Amendments).

Before Palko in 1937 there were cases that seem to suggest the idea of selective incorporation (that is without using that specific term). These include Gitlow v. New York (1925) and Near v. Minnesota (1931). Both of these are described in the list below. Other dates relevant to "selective incorporation" and the application of the Bill of Rights to the States are found on page 365 of the text.

Landmark Supreme Court Cases Here are some of the cases that seem most likely to be on the AP exam. Obviously, you must know the general effects of the most significant decisions which include: **Marbury v. Madison, McCulloch v. Maryland, and The United States v. Nixon, Plessy v. Ferguson, Brown v.**

Board of Education, Miranda v. Arizona, Bakke v. Regents of the University of California, and United States v. Virginia (VMI).

Note: If a case is described well in the textbook I have been very brief here. Cases with dates after 2000 are not likely to be on the exam, but they can be referred in a Free Response. I will give you additional readings on some of these more recent cases.

Case	Year

Marbury v. Madison **1803**
In this case Justice Marshall avoided a confrontation with President Jefferson and, by ruling a provision of the Judiciary Act of 1789 to be unconstitutional, established the Court's power of Judicial Review.

McCulloch v. Maryland **1819**
This established the supremacy of national over state legislation. In 1816 the Congress created the Second National Bank and gave that bank the authority to handle the notes of state chartered banks and thus to monitor them. To preserve the independence of the state banks, the Maryland legislature passed a law imposing a tax on notes issued by the Second Bank's Baltimore branch. The Second Bank challenged this as infringing on the powers of the national government. Jefferson's administration argued that the state could impose such a tax. Marshall rejected this saying that the bank had been correctly established (because it was "necessary and proper"). And, Marshall continued, the states could not tax federal institutions because "the power to tax involves the power to destroy."

Gibbons v. Ogden **1824**
Usually cited as a precedent whenever the power of the state vs. the power of the federal government to regulate interstate commerce is questioned. (The Feds win.) The case dealt with a steamboat monopoly granted by the state of New York which was challenged by a competing ferry service operating between New York and New Jersey.

Dred Scott v. Sanford **1857**
Judicial review, which was established in Marbury (1803) was used only to overturn state laws that conflicted with constitutional principles. Not until Dred Scott in 1857 would the Supreme Court void another national law.
Scott was a slave who had lived for a time with his "master," an army surgeon, in the free state of Illinois and at Fort Snelling, then in Wisconsin Territory where slavery had been prohibited. Scott claimed that his residency in a free state and a free territory had made him free. Seven justices agreed on one point - that Scott remained a slave - but they each wrote separate opinions. Chief Justice Taney's is the most influential. In his opinion Taney declared that blacks, slave or free, could not be citizens and therefore had no right to sue. Also, Taney argued, the Fifth Amendment prohibited taking property without due process, therefore Congress could not prevent any slaveholder from taking slaves into any territory. Therefore, the Missouri Compromise - which prohibited slavery in the territories - had never been constitutional.

Minor v. Happersett **1875**
The Court rejected the argument made by suffragists that either the privileges and immunities clause, or the equal protection clause, of the 14th Amendment extended the vote to women.

Reynolds v. United States **1879**
A federal law that prohibited polygamy was challenged based on the Free Exercise Clause. Did the law violate the right to the free exercise of religious beliefs by prohibiting this practice? The Court said no, holding that an individual's religious beliefs are no defense against the application of a general law to religious conduct.

Schenck v. US **1919**
This case concerns the First Amendment protection of Freedom of Speech. The decision was written my Oliver Wendell Holmes and is full of very famous phrases. The decision upheld the convictions of Schenck and another defendant for violation of the Espionage Act during WWI. The defendants had been convicted of conspiring to "obstruct the recruiting and enlistment services of the United States." The most famous phrases that come from this case state that protection of free speech does not include "falsely shouting fire in a theatre...". Holmes also wrote that the real question comes down to whether the words spoken present a "clear and present danger...".

Gitlow v. New York **1925**
The Supreme Court noted that the states were not completely free to limit political expression while upholding the New York convictions of socialist Benjamin Gitlow for advocating the violent overthrow of the government. In Gitlow, the Court announced that freedoms of speech and press "were fundamental personal rights and liberties protected by the due process clause of the Fourteenth Amendment from impairment by the states." Thus, Gitlow was the first step in the judicial development of selective incorporation which extends protection of civil liberties from infringement by States.

Near v. Minnesota **1931**
This was the first case in which the Supreme Court found that a state law violated freedom of the press as protected by the First Amendment. Struck down case law imposing prior restraint of articles dealing with public corruption.

Schechter Poultry v. US **1935**
This is called the "sick chicken case" because it involved the Schechter brothers willfully selling diseased chickens. This violated the New Deal NRA codes. The Court ruled that the chickens in question "had come to roost" in New York and thus were not involved in interstate commerce when they were sold. The Court held that the NRA attempted to regulate commerce within a state and the Federal Government could not regulate within a state only between states. Thus, the NRA was declared unconstitutional. This helped lead to FDR's threat to "pack the courts."

Palko v. Connecticut **1937**
Although upholding the Connecticut murder conviction of Frank Palko, the Supreme Court established that some protections found in the Bill of Rights are absorbed into the concept of due process as provided for in the Fourteenth Amendment because they are so fundamental to our notions of liberty and justice that they cannot be denied by the states. Important examples include: Freedom of speech, press, assembly and religion (from the 1st Amendment), Protection against unreasonable searches and seizures (from the 4th Amendment), and Protection against self-

incrimination and the right to counsel and trial by an impartial jury in a public and speedy trial (from the 5th, 6th and 7th Amendments).

Korematsu v. US 1944
This case upheld the constitutionality of internment as a legitimate exercise of power during wartime. In 1988 Congress decided to issue a public apology and to pay some money to the 60,000 surviving internees

Youngstown Sheet & Tube v. Sawyer 1952
President Truman attempted to forestall a steel strike during the Korean War by seizing the country's steel mills. The decision held that Truman had overstepped his executive powers and returned the mills to the owners.

Mapp v. Ohio 1961
Dollree Mapp had been sentenced to seven years for position of obscene material in 1957. the police had seized this material without a search warrant. In this case the Supreme Court applied 4th Amendment protections to the states and said that the states were required to get search warrants. The Court adopted a rule excluding from a criminal trial evidence that the police obtained unconstitutionally or illegally. This is called the exclusionary rule. Since 1961 the Court has has refused to abandon this ruling. But it has made some exceptions to it - such as cases in which it has ruled that the police relied "in good faith" on a defective search warrant.

Engle v. Vitale 1962
Banned organized prayer in public schools as a violation of the First Amendment's injunction that "Congress shall make no law respecting an establishment of religion."

Baker v. Carr 1962
Wesberry v. Sanders 1963
This is simply a clarification of the decision in Baker v. Carr.
Reynolds v Sims 1964
All of these cases have to do with reapportionment of state legislatures. The Court held to the doctrine of "one person, one vote." This meant that all citizens votes should have approximately equal weight, no matter where they lived.

Gideon v. Wainwright 1963
Helps lead the way to Miranda v. Arizona in 1966. Gideon was denied a court appointed attorney in a non-capital case. He defended himself. Eventually he was granted an appeal to the Supreme Court. The Court held that the due process clause of the 5th and 14th amendments meant that a court appointed attorney was constitutionally guaranteed.

Escobedo v. Illinois 1964
Also helps lead the way to Miranda v. Arizona in 1966. Escobedo was given an attorney, but that attorney was not allowed to be present during questioning. The Court held that the due process clause of the 5th and 14th amendments meant that the defendant's attorney was to be present during questioning.

New York Times v. Sullivan 1964
William Brennan wrote this decision that shielded the press from vindictive libel suits. As part of a fund raising effort for the Civil Rights struggle against lunch counter segregation a group, including Jackie Robinson, took out an ad in the New York Times on March 29, 1960. There were minor errors in the ad. The police

commissioner of Montgomery, Alabama brought a suit against the Times claiming that readers would connect him to the police activities that were overstated in the ad. In his opinion Justice Brennan wrote that officials, like Sullivan, had the "high burden" of proving that statements about them were not simply overstated, but were published with "reckless disregard" for the truth.

Griswold v. Connecticut 1965
There is no mention of the right of privacy in the Constitution, in Griswold the Court pulled together elements of the 1st, 3rd, 4th, 5th, 9th, and 14th Amendments to recognize that personal privacy is one of the rights protected by the Constitution. Connecticut maintained a law, passed in 1879, that made it illegal to use anything to "prevent conception." The state had never prosecuted any doctors under the law, but in 1961, acting on a complaint filed against Planned Parenthood, the state arrested Estelle Griswold, the director of its New Haven clinic. She admitted guilt and was fined $100 for giving contraceptives to married couples. She appealed to the Supreme Court.

The opinion was written by William O. Douglas. In it Douglas suggested that "specific guarantees in the Bill of Rights have penumbras, formed by emanations from those guarantees that help give them life and substance." In his opinion Douglas pointed to the amendments above (except the 14th) and suggested that they had "penumbras" that created "zones of privacy." In other words, no state could make laws that violated this "zone of privacy" by making it illegal to sell or use contraceptives.

Miranda v. Arizona 1966
Required that arresting officers notify a suspect that "you have the right to remain silent..." and that the suspect has the right to the presence of an attorney during questioning.

Tinker v. Des Moines 1969
Mary Beth Tinker et. al. were suspended from Harding Junior High in 1965 when she and the others wore black armbands to school to protest the war in Vietnam. The Court held that students were entitled to the First Amendment protections of free speech and that an armband was protected because it was "symbolic speech."

Swann v. Charlotte-Mecklenberg 1971
The Court ordered busing to achieve racial balance in the schools.

Lemon v. Kurtzman 1971
This is in the text and is the source of the "Lemon Test." It is important and it is explained in the textbook.

Furman v. Georgia 1972
The Court found that Capital Punishment had been applied in a racist manner. The decision did not declare the death penalty unconstitutional, but issued strict guidelines for its implementation.

Roe v. Wade 1973
Based on precedents like Griswold, Justice Harry Blackman wrote the decision which struck down laws prohibiting abortion during the first trimester of pregnancy.

United States v. Nixon **1974**

Days after the House Judiciary committee voted to recommend to the full House that they support impeachment of Richard Nixon, the Supreme Court ruled unanimously that Nixon had no right to claim executive privilege as a justification for refusing to turn over additional tapes.

Buckley v. Valeo **1976**

Buckley has been a major roadblock to campaign finance reform because it protects a rich candidate's ability to spend his or her own money as an expression of "free speech."

Bakke v. Univ. of Calif. **1978**

This decision was a loss for proponents of "affirmative action." Alan Bakke, a white man, sued UC Davis for rejecting his application to the medical school while admitting some racial minority candidates with lesser scores on the admission test. An important, but inconclusive decision. Essentially, the case was decided by Justice Lewis Powell who agreed with four justices that strict racial quotas for admission to universities were illegal and with the other four justices that race could be used in making decisions on admission. It is worth noting that five white men were also admitted to the school with lesser test scores. They were not mentioned in the suit. All five were the sons of large contributors to the school.

Edwards v. Aguillard **1987**

Louisiana could not require public schools that taught evolution to teach creationism as "Creation Science." The Court held that the law had no secular purpose and endorsed religion, violating the Establishment Clause. In 2005 in *Kitzmiller et. al. v. Dover*, a federal district court judge in Pennsylvania threw out a policy of teaching "Intelligent Design" in public schools, stating that it is clearly a religious idea.

Webster v. Reproductive Health Services **1989**

The Republican Party platforms of 1980 and 1984 demanded that nominees to the bench "affirm their opposition to abortion." It was commonly charged that the Reagan Administration imposed such a commitment as a "litmus test" on all judicial nominations. Nevertheless, despite the fact that all nominees to the Court refused to make any explicit promise to vote to overturn Roe, the Reagan Administration finally felt that they had the five votes necessary to overturn. In the meantime, in 1986, the legislature of Missouri passed a law which restricted assess to abortions. Several Doctors sued the state's attorney general, William Webster and the restrictive law was overturned in Federal court as a violation of Roe. That decision was then appealed to the Supreme Court. Thinking that the votes to overturn were on the Court, Reagan's Solicitor General Charles Fried asked, as a Friend of the Court, that the Roe decision be overturned. It was close, the Court did uphold most of Missouri's restrictions, but did not overturn Roe. In brief the result was to permit the states to impose some restrictions on abortion.

Employment Division (of Oregon) v. Smith **1990**

At issue was the use of peyote (a hallucinogenic drug) by Native Americans, as part of their traditional worship service. Eventually the Court ruled that the Free Exercise Clause does not apply to laws that are aimed at general behavior rather than at specific religions. Justice Scalia wrote that allowing exceptions to every state law affecting religion "would open the prospect of constitutionally required exemptions from civic obligations of almost every conceivable kind."

Planned Parenthood v. Casey **1992**
The Court upheld a Pennsylvania law mandating informed consent and a twenty-four hour waiting period before an abortion could be preformed. Significantly, the judges also reaffirmed (again) the "essential holding" of Roe v. Wade. Thus, women have a constitutional right to abortion, but states may make "reasonable regulations" on how a woman exercises her right so long as these regulations do not "unduly burden" the woman.

Texas v. Johnson **1993**
William Brennan wrote this decision that affirmed the Constitutional First Amendment protection of protesters to burn the American Flag.

Shaw v. Reno **1993**
An interesting decision which blocks "racial gerrymandering." Make sure you understand it.

Kelo v. City of New London **2005**
The Court held that a city's plan to condemn homes in a residential neighborhood and give the acreage to a private developer for commercial purposes ***did not*** violate the 5th Amendment's requirement that takings of property be for "a public purpose."

Stenberg v. Carhart **2000**
Gonzales v. Carhart & Gonzales v. Planned Parenthood **2007**
The 2000 case overturned a Nebraska law that prohibited the so-called "partial birth abortion" procedure. While the combined 2007 cases challenged the federal Partial-Birth Abortion Ban Act of 2003. The federal law was basically identical to the Nebraska law, but it was upheld by the new Roberts court, even though the federal law lacks an exception to protect the health of the mother. Both were 5-4 decisions. However, the 2007 cases ***did not*** overturn the *Roe* precedent.

United States v. Virginia Military Institute 1996
Ruth Bader Ginsburg wrote this decision which required VMI to accept women.

Boy Scouts v. Dale 2000
The question: Do the Boy Scouts have a constitutional right to exclude openly gay individuals from their leadership ranks? The Court held that the Boy Scouts are a private organization and, therefore, they can discriminate.

California Democratic Party v. Jones 2000
This concerned California's open primaries. Question: Can California open its primary elections so that all voters can select the nominees or does the US Constitution give political parties a right to choose their candidates in elections that are limited to registered party members? the court held that political parties have a right to choose candidates in elections that are limited to registered party members.

Bush v. Gore 2001
This decision is discussed in detail on pages 6 and 7 of the text. read it. In it the Court reversed the judgment of the Supreme Court of Florida ordering a recount of the state's votes. Essentially the Court majority held that since there was not one standard to evaluate ballots the court ordered recount "could not be conducted in compliance with the requirements of equal protection and due process without substantial additional work." The dissent suggested that an appropriate remedy would be to remand the case with instructions to permit the Florida Supreme Court to require recounting with a single standard.

Grutter v. Bollinger 2003
Gratz v. Bollinger 2003
Two "affirmative action" cases involving the University of Michigan's law school and undergrad admissions. The law school program that used an individualized approach considering race as a factor was upheld. The undergraduate policy of granting points for race was ruled unconstitutional. Somewhat like the Bakke case, these two cases, when taken together, narrow the scope of affirmative action programs, while not striking down the concept entirely.

Lawrence and Garner v. Texas 2003
Responding to a reported weapons disturbance in a private residence, Houston police entered John Lawrence's apartment and saw him and another adult man, Tyron Garner, engaging in a private, consensual sexual act. Lawrence and Garner were arrested and convicted of deviate sexual intercourse in violation of a Texas statute forbidding two persons of the same sex to engage in certain intimate sexual conduct.
Question Presented to the Court
Do the criminal convictions of John Lawrence and Tyron Garner under the Texas "Homosexual Conduct" law, which criminalizes sexual intimacy by same-sex couples, but not identical behavior by different-sex couples, violate the Fourteenth Amendment guarantee of equal protection of laws? Do their criminal convictions for adult consensual sexual intimacy in the home violate their vital interests in liberty and privacy protected by the Due Process Clause of the Fourteenth Amendment? Should Bowers v. Hardwick, 478 U.S. 186 (1986), be overruled?
Conclusion
No, yes, and yes. In a 6-3 opinion delivered by Justice Anthony M. Kennedy, the Court held that the Texas statute making it a crime for two persons of the same sex to engage in certain intimate sexual conduct violates the Due Process Clause. After explaining what it deemed the doubtful and overstated premises of Bowers, the

Court reasoned that the case turned on whether Lawrence and Garner were free as adults to engage in the private conduct in the exercise of their liberty under the Due Process Clause. "Their right to liberty under the Due Process Clause gives them the full right to engage in their conduct without intervention of the government," wrote Justice Kennedy. "The Texas statute furthers no legitimate state interest which can justify its intrusion into the personal and private life of the individual," continued Justice Kennedy. Accordingly, the Court overruled Bowers. Justice Sandra Day O'Connor filed an opinion concurring in the judgment. Justices Clarence Thomas and Antonin Scalia, with whom Chief Justice William H. Rehnquist and Justices Thomas joined, filed dissents. (This entire summary was taken from the Oyez site.)

Hamdi v. Rumsfeld **2004**

In the fall of 2001, Yaser Hamdi, an American citizen, was arrested by the United States military in Afghanistan. He was accused of fighting for the Taliban against the U.S., declared an "enemy combatant," and transferred to a military prison in Virginia. Frank Dunham, Jr., a defense attorney in Virginia, filed a petition for a writ of certiorari in federal district court there, first on his own and then for Hamdi's father, in an attempt to have Hamdi's detention declared unconstitutional. He argued that the government had violated Hamdi's Fifth Amendment right to Due Process by holding him indefinitely and not giving him access to an attorney or a trial. The government countered that the Executive Branch had the right, during wartime, to declare people who fight against the United States "enemy combatants" and thus restrict their access to the court system. The district court ruled for Hamdi, telling the government to release him. On appeal, a Fourth Circuit Court of Appeals panel reversed, finding that the separation of powers required federal courts to practice restraint during wartime because "the executive and legislative branches are organized to supervise the conduct of overseas conflict in a way that the judiciary simply is not." The panel therefore found that it should defer to the Executive Branch's "enemy combatant" determination.

Question Presented

Did the government violate Hamdi's Fifth Amendment right to Due Process by holding him indefinitely, without access to an attorney, based solely on an Executive Branch declaration that he was an "enemy combatant" who fought against the United States? Does the separation of powers doctrine require federal courts to defer to Executive Branch determinations that an American citizen is an "enemy combatant"?

Conclusion

Yes and no. In an opinion backed by a four-justice plurality and partly joined by two additional justices, Justice Sandra Day O'Connor wrote that although Congress authorized Hamdi's detention, Fifth Amendment due process guarantees give a citizen held in the United States as an enemy combatant the right to contest that detention before a neutral decision maker. The plurality rejected the government's argument that the separation-of-powers prevents the judiciary from hearing Hamdi's challenge. Justice David H. Souter, joined by Justice Ruth Bader Ginsburg, concurred with the plurality that Hamdi had the right to challenge in court his status as an enemy combatant. Souter and Ginsburg, however, disagreed with the plurality's view that Congress authorized Hamdi's detention. Justice Antonin Scalia issued a dissent joined by Justice John Paul Stevens. Justice Clarence Thomas dissented separately.

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