

McCulloch v. Maryland (1819)

Facts of the Case	<p>One of the first acts of new government under the Constitution was creating the Bank of the United States. There was significant debate over the constitutionality of this action, as creating banks is not an enumerated power. The bank's charter was not renewed in 1811. But in 1816, Congress created the Second Bank of the United States, renewing the debate.</p> <p>Opponents of the bank in Maryland passed a state law severely taxing local branches of "all banks chartered outside Maryland." (The Second Bank of the United States was the only such bank.) The Bank refused to pay, arguing that the state was infringing on the powers of Congress, so Maryland arrested its clerk (chief officer) James McCulloch.</p>
<i>Legal history</i>	McCulloch was convicted of failing to pay. Maryland's highest court upheld the conviction, holding the bank unconstitutional.
Questions of Law	Does Congress have the power to create a bank? If so, can Maryland tax the national bank within its borders?
(Constitutional Clause)	Necessary and Proper Clause Supremacy Clause
Holding	YES, Congress has the power to establish a bank. NO, Maryland cannot tax the national bank.
Reasoning (Test)	<p>Constitution comes from the people, not the states. A national bank is "necessary and proper" to effectuate Congress's enumerated powers (of taxation, borrowing money, regulating currency and commerce, and raising armies).</p> <p>States cannot interfere with Congress's exercise of its powers. Permitting a state to tax the federal government would allow them to control it. Federal laws are supreme over state laws.</p>
Dissent	None
Significance	Recognizes implied powers despite 10th Amendment . Loose/Strict Construction. Marshall's national power

United States v. Lopez (1995)

Facts of the Case	<p>In 1990, Congress passed the Gun-Free School Zones Act, which outlawed knowingly carrying a gun within 1,000 feet of a school. Alfonso Lopez, Jr., carried a concealed handgun into his Texas high school. He was initially charged under state law making such possession a crime, but later those charges were dropped in favor of a federal charge under the GFSZA.</p>
<i>Legal history</i>	<p>The district court upheld the statute against a constitutional challenge and found Lopez guilty. The Fifth Circuit reversed, holding that the GFSZA exceeded the powers of Congress.</p>
Questions of Law (Constitutional Clause)	<p>Did Congress have the power to pass the GFSZA? Commerce Clause (NOT SECOND AMENDMENT)</p>
Holding	<p>NO, possession of a gun near a school does not affect commerce</p>
Reasoning (Test)	<p>Carrying a gun near a school zone is not an <i>economic</i> activity. There must be some limit to Congress's commerce power. <u>Under the Commerce clause, Congress may regulate:</u></p> <ol style="list-style-type: none"> 1. <u>Channels of interstate commerce (highways/waterways)</u> 2. <u>People and things <i>moving in or carrying out</i> commerce</u> 3. <u>Activities that have a substantial effect on commerce</u> <p>The substantial effect test is the most important. This law is beyond Congress's power because there is no evidence that possessing guns <i>near school</i> affects the national market for guns</p>
Dissent	<p>Education significantly affects interstate commerce, and concerns about guns can distract from education. Courts should decide only whether Congress had a rational basis for determining that gun possession affected commerce.</p>
Significance	<p>Symbolizes <i>new federalism</i>/Rehnquist-era limits on commerce</p>

Baker v. Carr (1962)

<p>Facts of the Case</p> <p><i>Legal history</i></p>	<p>Tennessee hadn't reapportioned its STATE legislative districts since 1900, even though its Constitution required it every 10 years. As a result, RURAL areas with 500 people had the same number of REPRESENTATIVES as URBAN areas with 5,000 people. Charles Baker sued to address inequity.</p> <p>District court dismissed the lawsuit as a “political” question not subject to court resolution.</p>
<p>Questions of Law</p> <p>(Constitutional Clause)</p>	<p>Do federal courts have the power (JURISDICTION) to decide constitutional questions about state legislative boundaries?</p> <p>Equal Protection Clause of 14th Amendment</p>
<p>Holding</p>	<p>YES, federal courts have jurisdiction</p> <p><i>NOTE: Did not decide (yet) whether TN's districts were unfair, sent back to the district court to decide that question.</i></p>
<p>Reasoning (<u>test</u>)</p>	<p>Constitution gives federal courts power to decide cases “arising under” the Constitution or federal laws. This case clearly arises under the Equal Protection clause.</p> <p>Court would not be deciding the political question of how to draw districts. Rather, would just be telling legislature to fix a constitutional violation.</p>
<p>Dissent</p>	<p>There is no good legal standard to judge the fairness or adequacy of political districting. Nothing in the Constitution requires equal representation. This question should be left to the legislature alone or to the political system to decide.</p> <p>Previous cases have held this was a political question (<i>stare decisis</i>)</p>
<p>Significance</p>	<p>Creates precedent for all future legislative redistricting challenges. After return to Supreme Court, announces one-person, one-vote rule of equal representation.</p>

Shaw v. Reno (1993)

Facts of the Case	<p>North Carolina gained a 12th seat in the House as a result of the 1990 Census. The state legislature then created a new district map including one majority-minority district, and submitted it to the Department of Justice for approval as required by the 1965 Voting Rights Act. The Attorney General required a second majority-minority district. To comply with this requirement, North Carolina drew a district that stretched 160 miles over several counties, towns, and in some places was only as wide as the highway. Five white voters challenged the map's use of race</p>
<i>Legal history</i>	<p>The district court dismissed the case, ruling that race-based districting to <i>benefit</i> minorities does not violate the Constitution</p>
Questions of Law (Constitutional Clause)	<p>Is race-conscious districting constitutionally permissible? Equal Protection Clause of the 14th Amendment</p>
Holding	<p>Race-conscious districting must satisfy <i>strict scrutiny</i></p>
Reasoning	<p>History of racial-gerrymandering is troubling. Classifying citizens on race conflicts with ideal of equality Geographic distance suggests only commonality is race <u>Districting should be assessed against compactness, contiguity, and traditional considerations (counties/geographical features)</u></p>
Dissent	<p>Only discrimination intended to <i>harm</i> racial minorities is prohibited by Fourteenth Amendment. Enhances minority control consistent with the portion of population</p>
Significance	<p>Leads to less majority-minority districts and fewer minority reps</p>

Marbury v. Madison (1803)

Facts of the Case	<p>The Federalist party lost the Election of 1800. But before leaving office, President John Adams nominated (and the Senate confirmed) a number of Federalists to be judges. So many, in fact, that the outgoing Secretary of State (John Marshall) did not have time to deliver all their commissions (the piece of paper saying you are a judge, which is necessary to take office).</p>
<i>Legal history</i>	<p>The new President (Thomas Jefferson) decided not to deliver them either, because he did not want judges of the other party. One of the confirmed judges sued, asking the Supreme Court to order (by writ of mandamus) Jefferson's Secretary of State (James Madison) to deliver the commissions. The 1789 Judiciary Act authorized the Supreme Court to issue such orders</p> <p>No history – case filed in the Supreme Court as original matter.</p>
Questions of Law (Constitutional Clause)	<p>Does the Supreme Court have the power to issue <i>mandamus</i></p> <p>Article III, section 2, clause 2: SCOTUS's original jurisdiction Supremacy Clause</p>
Holding	<p>NO: The enumeration of cases where the Supreme Court has original jurisdiction is exhaustive, does not include mandamus</p>
Reasoning (<u>Test</u>)	<p>Marshall (now Chief Justice) wrote that Marbury deserved the commission (embarrassing Jefferson), BUT the Supreme Court lacked the power to order delivery. (Had Marshall concluded otherwise, Jefferson likely would have ignored him.) The 1789 Judiciary Act unconstitutionally expands the original jurisdiction of the Supreme Court beyond Article III, Section 2. The Constitution is supreme over even federal laws.</p>
Dissent	<p>None</p>
Significance	<p>First example of Judicial Review/makes Supreme Court equal</p>

Engel v. Vitale (1962)

Facts of the Case	<p>New York Public Schools authorized (not required) recitation of a prayer at the start of school days. The prayer was not specific to any one religion; it read: ““Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessings upon us, our parents, our teachers and our country.” Teachers were present during the prayer, but students could remain silent. Ten parents sued a local school board, which did require the prayer to be recited daily.</p>
<i>Legal history</i>	New York state courts upheld the prayer, siding with the board.
Questions of Law (Constitutional Clause)	Does voluntary, school-organized recitation of a daily prayer violate the Establishment Clause ?
Holding	YES, government may not sponsor prayer
Reasoning (Test)	<p>Establishment clause creates “wall of separation” between church and state. Coercion/punishment is not required; the clause forbids government from endorsing or supporting religion. (<u>Endorsement becomes a factor used in conjunction with the Lemon test for establishment clause cases</u>).</p> <p><u>History</u>: many came to America to avoid governmental prayers.</p>
Dissent	This prayer is innocuous and similar to many other examples of religion in our public life, including Presidential oaths and the pledge of allegiance.
Significance	<p>One of many cases concerning the shifting border between church and state – it is important to understand the tests (endorsement/Lemon/history) to compare cases.</p> <p>Shows the Warren Court’s activism as compared to past eras.</p>

Wisconsin v. Yoder (1972)

<p>Facts of the Case</p> <p><i>Legal history</i></p>	<p>Wisconsin required children to attend school through age 16. This <i>compulsory education</i> conflicted with the Amish and Mennonite sincere belief in separation from worldly influence, which led them to stop education at age 14 (8th grade). After that age, the communities provided their own education.</p> <p>Wisconsin prosecuted three parents for removing their children from school. The state trial court convicted, but the state supreme court found the law violated the Free Exercise Clause.</p>
<p>Questions of Law (Constitutional Clause)</p>	<p>Does the State's interest in promoting education override parents' right to the Free Exercise of their religion?</p>
<p>Holding</p>	<p>No, <i>though the state does have a legitimate interest</i>, it is outweighed by the parents' religious beliefs.</p>
<p>Reasoning</p>	<p>Weighing effects of law. <i>Severe on the Amish, not on the state:</i></p> <p>The history and beliefs of the Amish and Mennonite communities supports for the claim that compulsory education "would gravely endanger, if not destroy" their beliefs</p> <p>In contrast, two more years of education would be of little educational benefit, considering their agrarian way-of-life.</p>
<p>Dissent</p>	<p>Focus should be not only on parents', but also students' beliefs.</p>
<p>Significance</p>	<p>This is no longer the dominant Free-Exercise test (we do not require strict scrutiny/compelling interests). Rather, the case is important for showing how competing claims of right must be weighed against each other. There must be a balance between majority religious practice and individual free exercise – a question of reasonable accommodations for major threats.</p>

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

Facts of the Case	Five students, ages 13-16, wore black armbands to school to protest the Vietnam War . School officials requested the students remove the bands. When the students refused, they were sent home and suspended until they would comply. Their parents then sued the school board.
<i>Legal history</i>	The district court dismissed, holding the school's actions reasonable to uphold discipline. The Eighth Circuit affirmed.
Questions of Law (Constitutional Clause)	Do students have a right to Free speech at school? If so, does the Free Speech Clause protect symbolic (non-verbal) expression ?
Holding	YES, both students and symbolic speech are protected
Reasoning (<u>Test</u>)	Students do not “shed their constitutional rights. . . at the schoolhouse gate. ” They have fundamental free speech rights. The conduct here was a “passive expression of opinion, unaccompanied by any disorder or disturbance. ” <u>To limit speech, schools must show “reason to anticipate [it] would substantially interfere with the work of the school”</u> not simply a desire to avoid controversy. Evidence suggests school interfered with this expression, not others, <i>discriminating based on viewpoint.</i>
Dissent	Free speech can be limited in <u>time, place, and manner</u> . Purpose of schools is to educate, and Court should defer to school as to what speech limits are needed. Vietnam inherently distracts.
Significance	Clear protection of symbolic speech. Only Supreme Court case upholding a challenge to school limitations; Court generally inclined to defer on what is likely to create a disturbance.

Schenck v. United States (1919)

Facts of the Case	Two months after the U.S. entered World War I, Congress passed the Espionage Act , which outlawed causing “refusal of duty in the military” and obstructing “the recruiting or enlistment service.” Charles Schenck, a Socialist Party leader, was convicted of violating these laws by distributing leaflets declaring the military draft violated the Thirteenth Amendment’s prohibition on involuntary servitude and encouraging draftees to resist peacefully .
<i>Legal history</i>	Direct appeal from the district court (not modern path)
Questions of Law (Constitutional Clause)	Does the Espionage Act, as applied, violate Schenck’s First Amendment right to free speech ?
Holding	NO , this speech poses a <u>clear and present danger</u> to the U.S.
Reasoning (Test)	Context matters. Ordinarily, this speech would be protected. But in wartime , greater limitations of rights are permitted. <u>“The question . . . is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger.”</u> For example, a man cannot “falsely shout[] fire in a theater” [NOTE: NOT CROWDED]
Dissent	None
Significance	The clear and present danger remains good law, but has been modified to require that the danger be imminent, in immediate danger of occurring . Though Schenck’s speech would likely be protected today, the case again shows the need to strike a contextual balance between public order and individual liberties.

New York Times Co. v. United States (1971)

Facts of the Case	<p>Daniel Ellsberg, a military analyst, secretly copied 7,000 pages of classified government documents about the Vietnam War. These documents revealed contradictions between the government’s public statements and internal analyses. Ellsberg gave copies to the New York Times and the Washington Post.</p> <p>The Espionage Act (the same one as in <i>Schenck</i>) made it a crime even to obtain classified information with the intent to use it to injure the United States. After the Times published two stories based on the “Pentagon Papers,” the Nixon Administration sought court orders prohibiting further stories.</p>
<i>Legal history</i>	<p>The cases went to different courts. Both district courts sided with the papers. But the Second Circuit sided with the government, enjoining the Times, while the D.C. Circuit sided with the Post. The Supreme Court heard an expedited appeal.</p>
Questions of Law (Constitutional Clause)	<p>Can the government stop a newspaper from printing classified information <i>prior to publication</i>?</p> <p>First Amendment Freedom of the Press</p>
Holding	NO , there is a heavy presumption against prior restraint
Reasoning (Test)	<p>Due to the rush of the case (it was decided only five days after granting the case), there is no majority opinion. Instead, a brief per curiam (“by the court”) opinion announces the holding, and each of the six Justices who reached that holding issued concurring opinions announcing their own reasoning.</p> <p>Justice Black wrote that prior restraints are NEVER permissible, and praised the role of the press in a democracy. Justice White noted that leakers (Ellsberg) may be punished, and the press if harm is shown, but no advance restraint.</p>
Dissent	Three justices, largely because of the rush and lack of facts, but also emphasizing deference to the executive on national security
Significance	Individual liberties tend to triumph, even over national security

McDonald v. City of Chicago (2010)

Facts of the Case	In 2008, the Supreme Court held for the first time that the Second Amendment's "right of the people to keep and bear Arms" protects an individual right to handgun ownership against federal interference. Three residents of Chicago sought to have that holding incorporated against state and local governments, striking down Chicago's similar ban.
<i>Legal history</i>	The district court dismissed the residents' claims. The Seventh Circuit affirmed.
Questions of Law (Constitutional Clause)	Does the Second Amendment apply to limit state governments? Due Process Clause of the Fourteenth Amendment
Holding	YES , the Second Amendment protects a <u>fundamental right</u>
Reasoning (<u>Test</u>)	Originally, as Chief Justice Marshall noted in <i>Barron v. Baltimore</i> , the Bill of Rights applied only against the federal government. The Civil War Amendments changed the federalism balance , forbidding states from depriving liberties. The Court has thus incorporated most against the states, but only does so when a case presents the question (selectively). <u>Rights are incorporated when "fundamental to our scheme of ordered liberty or . . . deeply rooted in this Nation's history and tradition."</u> The Second Amendment qualifies.
Dissent	Beyond historical significance, incorporation should consider policy impact (and judge's expertise), as well as effects on other constitutional values, like majoritarian control and federalism.
Significance	Note the question is NOT whether there is an individual right to bear arms. Rather, it is whether that extant right is incorporated. This case will be used to assess selective incorporation.

Gideon v. Wainwright (1963)

Facts of the Case	<p>In 1938, the Supreme Court held that the federal government had to provide lawyers to all people accused of crime if they could not afford one. But in 1942, the Court said that states did not have the same duty (other than in death-penalty cases).</p>
<i>Legal history</i>	<p>Clarence Gideon was charged with robbing a Florida pool hall. He asked for a lawyer. The state court refused, found him guilty, and entered a five year sentence. Gideon then filed a habeas corpus petition, challenging the constitutionality of his conviction without a lawyer. The Florida Supreme Court denied his petition, but the U.S. Supreme Court granted review</p>
Questions of Law (Constitutional Clause)	<p>Does the right to counsel apply generally against states?</p> <p>Due Process Clause of the 14th Amendment</p>
Holding	<p>YES, the right to counsel is essential to a fair trial.</p>
Reasoning (<u>Test</u>)	<p>The Court agreed with its test for incorporation from the 1942 case: whether the right to counsel is “<u>fundamental and essential to a fair trial.</u>” It just reached a different result under that test, and so overruled the 1942 case.</p> <p>NOTE: Gideon was not freed. He was retried for the crime, with counsel, and found innocent.</p>
Dissent	<p>None</p>
Significance	<p>An example of the conflict between liberty and order (bringing charges is now harder and more expensive), as well as when and whether to follow <i>stare decisis</i> or overrule precedent.</p>

Roe v. Wade (1973)

Facts of the Case	An unwed woman in Texas wanted to end her pregnancy , but the state made that a felony absent a threat to the mother's life . She sued, seeking a ruling that Texas's criminal law violated her constitutional rights.
<i>Legal history</i>	The district court found the law unconstitutional, but did not enjoin Texas officials from enforcing it. The parties appealed directly to the Supreme Court.
Questions of Law (Constitutional Clause)	Does the right to privacy protect a woman having an abortion? None – (Third/Fourth/Fifth/Ninth/Fourteenth Amendment)
Holding	YES , balance interest of state (unborn fetus) and woman (body)
Reasoning (<u>Test</u>)	States have a legitimate interest in ensuring safety of women as well as prenatal/potential life. The right to privacy – wherever found (Fourteenth or Ninth Amendments are proposed) – exists and is fundamental, but not absolute. It can be limited by important/compelling interests. Weighing the two interests, the state can do little to regulate abortion before the end of the first trimester. After that, it can do whatever is reasonably relates to the protection of the woman. And when the fetus becomes viable, it may outlaw abortions except as necessary for the health of the mother.
Dissent	This decision (involving a doctor) is not private. Courts should avoid creating policy unmoored from text restraint v. activism
Significance	Creates major modern political issue and potential <i>litmus test</i> <u>for judicial appointments</u> . Legal test for abotionhas changed.

FRQ 3C CHEAT SHEET

Typically 3C asks you to explain something a branch of government, group, or individual can do to minimize or get around a decision of the courts. If the Supreme Court were to find a law unconstitutional, there are methods that can be pursued that might still be able to enact the policy goal of the original legislation. When you answer this question, make sure you address that directly. State the action you believe could make a difference and identify who or what it is directed at.

Legislative	Executive	Interest Group
Pass or amend a law tailored to address Court's decision	Issue a narrowly tailored executive order to address Court's decision	Protest (with a specific goal in mind)
Cut or increase funding to impact policy	Direct bureaucratic agency not to carry out a policy	Lobby or petition legislators to pass or change a law
Propose and pass (but not ratify) a constitutional amendment	Refuse to enforce the decision (but risk impeachment)	Donate to candidates whose goal is to do something on the Legislative list
Conduct oversight hearings to investigate and publicize		Write an amicus brief on future related cases.
Use fiscal federalism to encourage states to carry out action.		
Individual	Media	States
Protest to pressure public officials to take some specified action	Agenda setting (to spur public uproar and legislative or executive action)	Pass a law at the state level if national law struck down for violating federalism.
Lobby, petition, or contact legislators to pass or change a law	Issue framing (same)	Drag feet on enforcement of policy.
Donate to candidates whose goal is to do something on the Legislative list (or even run for office)	Investigative journalism (same)	