

## Honors Civics (Summer Assignment)

### Introduction:

I would like to welcome you to Indian River High School and commend you for choosing to take 9<sup>th</sup> Grade Civics at the Honors Level. I hope you have a great summer vacation and I look forward to seeing you in the coming months.

One of the requirements for enrolling in Honors Civics is that you must complete a summer assignment. This assignment will give me an indication of your critical thinking, writing, and research abilities. It will also give me some insight on your knowledge of current and historical events.

### Assignment Details and Format:

The United States Supreme Court has shaped and will continue to shape many aspects of our country. With this in mind, I have selected some of the most important U.S. Supreme Court cases for you to analyze and interpret. You will be responsible for reading the attached documents and answering the accompanying questions. Your answers should be well thought out and include detail from the readings. All responses should be typed and printed for submission on the first day of school.

**You will also be taking an assessment on the content covered in the readings. This assessment will be given within the first few days of the school year.**

### Notes:

1. **Do Not Plagiarize** (This assignment is to be completed in your own words!)
2. This Project will be due on the FIRST DAY of school. Failure to complete this assignment will result in removal from the course.

### Contact Information:

If you have any questions or concerns about this assignment feel free to contact Mr. Windish at Indian River High School.

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# Supreme Court Case Study I



## The Supreme Court's Power of Judicial Review

### Marbury v. Madison, 1803

#### \*\*\*\*\* Background of the Case \*\*\*\*\*

The election of 1800 transferred power in the federal government from the Federalist Party to the Republican Party. In the closing days of President John Adams's administration, the Federalists created many new government offices, appointing Federalists to fill them. One of the last-minute or "midnight" appointments was that of William Marbury. Marbury was named a justice of the peace for the District of Columbia. President Adams had signed the papers, but his secretary of state, John Marshall, somehow neglected to deliver the papers necessary to finalize the appointment.

The new president, Thomas Jefferson, was angry at the defeated Federalists' attempt to "keep a dead clutch on the patronage" and ordered his new secretary of state, James Madison, not to deliver Marbury's commission papers. Marbury took his case to the Supreme Court, of which John Marshall was now the Chief Justice, for a *writ of mandamus*—an order from a court that some action be performed—commanding Madison to deliver the commission papers in accordance with the Judiciary Act of 1789.

#### Constitutional Issue \*\*\*\*\*

Article III of the Constitution sets up the Supreme Court as the head of the federal judicial system. Historians believe that the Founders meant the Court to have the power of judicial review, that is, the power to review the constitutionality of acts of Congress and to invalidate those that it determines to be unconstitutional. The Constitution, however, does not specifically give the Court this right.

Chief Justice John Marshall, as a Federalist, believed strongly that the Supreme Court should have the power of judicial review. When the *Marbury* case presented the perfect opportunity to clearly establish that power, Marshall laid out several points which the court believed supported the right of judicial review. At the time, the decision was viewed as a curtailment of the power of the president, but people today recognize that the case established, once and for all, the importance of the Supreme Court in American government.

#### \*\*\*\*\* The Supreme Court's Decision \*\*\*\*\*

Justice Marshall reviewed the case on the basis of three questions: Did Marbury have a right to the commission? If so, was he entitled to some remedy under United States law? Was that remedy a writ from the Supreme Court?

Marshall decided the first question by holding that an appointment is effective once a commission has been signed and the U.S. seal affixed, as Marbury's commission had been. Therefore, Marbury had been legally appointed, and Madison's refusal to deliver the

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(continued)



# Supreme Court Case Study 2



## Power of the Federal Government v. Power of the State Government

### McCulloch v. Maryland, 1819

#### \*\*\*\*\* Background of the Case \*\*\*\*\*

The Supreme Court first settled a dispute between a national and a state law in 1819. The Second Bank of the United States had been chartered by Congress in 1816. Large sections of the country, especially the West and South, bitterly opposed the Bank. The Bank's tight credit policies contributed to an economic depression, and many states reacted against what they saw as a "ruthless money trust" and "the monster monopoly." Two states even prohibited the bank from operating within their jurisdictions. Six other states taxed Bank operations. In 1818 the Maryland legislature placed a substantial tax on the operations of the Baltimore branch of the Bank of the United States. The cashier of the Baltimore branch, James McCulloch, issued bank notes without paying the tax. After Maryland state courts ruled against McCulloch for having broken the state law, he appealed to the United States Supreme Court.

#### Constitutional Issues \*\*\*\*\*

One of the issues that concerned the Founders at the Constitutional Convention was how to divide power between the federal government and state governments. Reconciling national and local interests proved difficult. In the *McCulloch* case, the Supreme Court ruled in favor of federal power.

The constitutional questions in the *McCulloch v. Maryland* case concern both the powers of Congress and the relationship between federal and state authorities.

#### \*\*\*\*\* The Supreme Court's Decision \*\*\*\*\*

Chief Justice John Marshall wrote the decision for a unanimous Court. He started with the question, "Has Congress the power to incorporate a bank?"

In first determining the extent of congressional power, Marshall held that the Constitution is a creation not of the states, but of the people, acting through statewide constitutional conventions. Therefore, the states are bound in obligation to the Constitution, which is "the supreme law of the land." Marshall summed up the decision based on the Supremacy Clause, saying, "If any one proposition could command the universal assent of mankind we might expect it to be this—that the government of the Union, though limited in its powers, is supreme within its sphere of action . . . The states have no power to retard, impede, burden, or in any manner control, the operation of the constitutional laws enacted by Congress."

Although the specific powers of Congress do not include the power to charter a corporation, the section enumerating these powers includes a statement giving Congress the authority to make the laws "necessary and proper" for executing its specific tasks. In Marshall's analysis, the terms "necessary and proper" grant Congress implied powers to carry out granted, or enumerated, powers. "Let the end be legitimate, let it be within the scope of the Constitution,

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# Supreme Court Case Study 4



## Regulation of Interstate Commerce

### Gibbons v. Ogden, 1824

#### \*\*\*\*\* Background of the Case \*\*\*\*\*

In 1798 the New York legislature gave Robert Fulton a monopoly for steamboat navigation in New York. In 1811 Fulton's partner, Robert Livingston, assigned to Aaron Ogden an exclusive license to run a ferry service on the Hudson River between New York and New Jersey—a very profitable business. Seeking to take advantage of this flourishing trade, a competitor, Thomas Gibbons, secured a license from the federal government to operate a ferry between Elizabethtown, New Jersey, and New York City.

Claiming that his monopoly rights were being infringed, Ogden obtained an injunction in a New York state court forbidding Gibbons's boat from docking in New York. (An injunction is an order by a court prohibiting a person or a group from carrying out a specific action.) Gibbons appealed the state court's decision to the United States Supreme Court.

#### Constitutional Issues \*\*\*\*\*

The Constitution did not make clear what was meant by interstate commerce or the extent to which it could be regulated. At the time of this case in 1824, New York had closed its ports to vessels not owned or licensed by a monopoly chartered by the state. In retaliation, other states passed similar laws that limited access to their ports. The United States attorney maintained that the country faced a commercial "civil war." In the absence of a clear statement of what is meant by interstate commerce, how did the federal government have the power to intervene?

The *Gibbons v. Ogden* case presented the Supreme Court with the first opportunity to consider the ramifications of the commerce clause contained in Article I, Section 8 of the Constitution. This clause gave Congress the power "to regulate commerce with foreign nations, and among the several States, and with the Indian tribes." Several constitutional questions were involved in the case, revolving around an interpretation of the commerce clause.

The first question was whether navigation should be considered to be a part of commerce. Then, if navigation should be so considered, to what extent might Congress regulate it? Another question was whether Congress had an exclusive right to regulate interstate commerce or if this was a "concurrent" power to be shared with the states.

#### \*\*\*\*\* The Supreme Court's Decision \*\*\*\*\*

The Court held in favor of Gibbons. Chief Justice John Marshall wrote that commerce "describes the commercial intercourse between nations, and parts of nations, in all its branches, and is regulated by prescribing rules for carrying on that intercourse. The mind can scarcely conceive a system for regulating commerce between nations which shall exclude navigation . . ."

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## Supreme Court Case Study 4 (continued)

Marshall applied the same reasoning to commerce between states. In fact, he noted, the United States government had always regulated navigation. "All America understands," he wrote, "and has uniformly understood the word 'commerce' to comprehend navigation . . ." Thus the Court held that "a power to regulate navigation is expressly granted as if that term had been added to the word 'commerce.'"

Marshall now turned to the meaning of "among," as in "among the several states." He reasoned that since "among" means "intermingled with," "commerce among the states cannot stop at the external boundary line of each state but may be introduced into the interior." Congress had no power over commerce which was confined to one state alone, but that power was in full force as soon as a state's boundary line had been crossed. And the power to regulate must necessarily follow any commerce in question right across those boundaries."

Marshall concluded that, like other congressional powers, the power to regulate commerce is unlimited so long as it is applied to objects specified in the Constitution.

The case also raised the question as to whether Congress's power to regulate is exclusive. If it is, then a state would be prevented from making its own commerce regulations. Marshall chose not to resolve this question. Instead, he wrote that in the *Gibbons* case there was a conflict between the state's law and a federal statute. "In every such case, the act of Congress . . . is supreme; and the law of the state. . . must yield to it." Gibbons's right to operate ferry service in competition with Ogden was therefore upheld.

By broadening the meaning of interstate commerce, Marshall laid the groundwork for including not only such clearly interstate activities as railroads and pipelines, but also the minimum wage regulation and prohibition of child labor. Robert Jackson, a Supreme Court justice who served in the mid-1900s, was thus correct when he declared, "Chief Justice Marshall described the federal commerce power with a breadth never exceeded."



### Questions

**DIRECTIONS:** Answer the following questions on a separate sheet of paper.

1. If you operated a trucking service between San Francisco, California, and Portland, Oregon, could you be subject to regulation by either or both of the states and the federal government? Explain.
2. Why was it necessary for Marshall to take the trouble to explain why navigation should be considered as part of commerce?
3. Explain in what way Justice Jackson's characterization of Marshall's *Gibbons* opinion was correct.
4. In what way is Marshall's ruling in the *Gibbons* case consistent with his other decisions, such as *McCulloch v. Maryland*, that related to federal versus state powers?
5. Do you agree with Marshall's ruling that Gibbons had a right to compete with Ogden's ferry line? Give reasons for your answer.



# Supreme Court Case Study 32



## The Rights of People of Suspect Ethnic Backgrounds

### *Korematsu v. United States, 1944*

#### \*\*\*\*\* Background of the Case \*\*\*\*\*

After the bombing of Pearl Harbor in December 1941 by Japanese planes, anti-Japanese sentiment on the West Coast rose to almost hysterical proportions. All people of Japanese ancestry, even citizens of the United States, were suspected of being pro-Japan, or worse—saboteurs and spies for Japan. Yielding to such sentiments, President Franklin D. Roosevelt issued an executive order that authorized the military to evacuate and relocate “all or any persons” in order to provide “protection against espionage and against sabotage to national defense. . . .” The military first set curfews on the West Coast for persons of Japanese ancestry. Later the military removed all persons of Japanese ancestry to war relocation centers. The order affected approximately 112,000 persons of Japanese ancestry, of whom about 70,000 were native-born American citizens. An act of Congress later reinforced the president’s order by providing penalties for violations.

Korematsu, a Japanese American citizen, refused to leave his home in California for a relocation camp. He was convicted in a federal court. His appeal to a United States circuit court failed, and he then brought the case before the United States Supreme Court.

#### *Constitutional Issue* \*\*\*\*\*

Since the president is commander in chief of the armed forces and Congress is given the power to declare war, was the executive order and its Congressional counterpart a constitutional exercise of the war power?

#### \*\*\*\*\* The Supreme Court’s Decision \*\*\*\*\*

The Court decided against Korematsu by a vote of 6 to 3. Justice Hugo Black wrote for the Court.

In 1943 the Court had upheld the government’s position in a similar case, *Hirabayashi v. United States*. That case concerned the legality of the West Coast curfew order. In *Hirabayashi*, as well as in *Korematsu*, the Court’s language pointed toward the necessity of giving the military the benefit of the doubt on the grounds of wartime necessity.

In the earlier case, the Court had held that “we cannot reject as unfounded the judgment of the military authorities and of Congress. . . .” Likewise, in the *Korematsu* case, the Court declared, “We are unable to conclude that it was beyond the war power of Congress and the Executive to exclude those of Japanese ancestry from the West Coast area at the time they did.”

Justice Black cited evidence that, following internment, “approximately five thousand citizens of Japanese ancestry refused to swear unqualified allegiance to the United States and to renounce allegiance to the Japanese Emperor, and several thousand evacuees requested repatriation to Japan.” Although the Court admitted awareness of the hardships internment imposed on American citizens, it stated “hardships are part of war. . . . Citizenship has its responsibilities as well as its privileges, and in time of war the burden is always heavier.”

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# Supreme Court Case Study 32 (continued)

The question of racial prejudice “merely confuses the issue,” said the Court. The true issues are related to determining “military dangers” and “military urgency.” These issues demanded that citizens of Japanese ancestry be relocated by the military authorities. Black observed, “Congress, reposing its confidence in this time of war in our military leaders. . . , determined that they should have the power to do just this. . . . The need for action was great, and the time was short. We cannot—by availing ourselves of the calm perspective of hindsight—now say that at that time these actions were unjustified.”

## \*\*\*\*\* Dissenting Opinions \*\*\*\*\*

Justices Frank Murphy and Robert H. Jackson wrote separate dissents. Murphy called the Court’s decision “legalization of racism.” He objected particularly on the grounds that the Japanese Americans affected had been deprived of equal protection of the law as guaranteed by the Fifth Amendment. Further, Murphy wrote, as no provision had been made for hearings “this order also deprives them of all their constitutional rights to procedural due process.” He saw no reason why the United States could not have done as Great Britain had done earlier in hearings during which about 74,000 German and Austrians residing in Britain were examined. Of these, only 2,000 had been interned.

In his dissent, Justice Jackson conceded that there might have been reasonable grounds for the internment orders. But, he wrote, “Even if they were permissible military procedures, I deny that it follows that they are constitutional. . . . A military commander may overstep the bounds of constitutionality, and it is an incident. But if we review and approve, that passing incident becomes the doctrine of the Constitution.”

After the war, many people realized the injustice of the Court’s decision. Finally, in 1988, Congress issued a formal apology to all internees and voted to give every survivor of the camps \$20,000 in reparation.



### Questions \*\*\*\*\*

**DIRECTIONS:** Answer the following questions on a separate sheet of paper.

1. On what constitutional basis did the Supreme Court deny Korematsu’s appeal?
2. If you had been a native-born Japanese American in 1942, what do you think would have been your reaction to the internment order?
3. Justice Black became known as one of the staunchest defenders of the rights provided in the first ten amendments. Is his decision in the *Korematsu* case in keeping with his reputation?
4. What was the constitutional basis of Justice Murphy’s dissent?
5. The Court’s decision in the *Korematsu* case has been described as involving “the most alarming use of military authority in our nation’s history.” Do you think this description of the case is justified?

# Supreme Court Case Study 19



## Wartime Freedom of Speech

### *Schenck v. United States, 1919*

#### \*\*\*\*\* Background of the Case \*\*\*\*\*

The freedom of speech guarantee of the First Amendment was not tested in the Supreme Court for more than 100 years after the adoption of the Constitution, despite the number of federal and state laws that placed limits on free speech during that period. When the United States entered World War I in 1917, the federal government felt that it had to protect itself against efforts to influence people to oppose the war. Therefore, it passed the Espionage Act, which made it a crime to cause or attempt to cause insubordination in the armed forces, obstruct recruitment or enlistment, and otherwise urge, incite, or advocate obstruction or resistance to the war effort.

Charles Schenck, who was general secretary of the Socialist Party in the United States, carried on a campaign encouraging young men to resist the wartime draft. He mailed thousands of circulars to men who had passed exemption boards and to men who had been drafted. In the circulars he declared that the draft was unconstitutional despotism and urged the men to assert their rights to resist the draft. Further, he claimed that the Thirteenth Amendment, which banned involuntary servitude except as punishment for committing a crime, was violated by the conscription act and that a conscript was little better than a convict. The circular declared, "If you do not assert and support your rights, you are helping to deny or disparage rights which it is the solemn duty of all citizens and residents of the United States to retain." He described arguments in favor of the draft as coming from cunning politicians and a mercenary capitalist press. For these actions Schenck was convicted of conspiracy to violate the Espionage Act by attempting to obstruct the recruitment of men into the United States's armed forces. Schenck challenged his conviction on the grounds that his First Amendment rights had been violated.

#### *Constitutional Issue* \*\*\*\*\*

The Court had to decide whether Schenck had been properly convicted and whether the Espionage Act was constitutional in the light of the free speech guarantees of the First Amendment. Was such a broad limitation on the right of free speech as the Espionage Act allowed a violation of the First Amendment? Or was the fact that the Espionage Act was designed to protect the nation's war effort a sufficient enough reason for the Supreme Court to reject Schenck's First Amendment defense?

#### \*\*\*\*\* The Supreme Court's Decision \*\*\*\*\*

The Court ruled unanimously that the Espionage Act was constitutional and affirmed that Schenck was guilty of having violated the act. Justice Oliver Wendell Holmes, Jr., wrote the Court's opinion. The opinion was based on the idea that the First Amendment guarantees are not absolute and must be considered in the light of the setting in which supposed violations occur. Holmes wrote, "We admit that in many places and in ordinary times the defendants in

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## Supreme Court Case Study 19 (continued)



saying all that was said in the circular would have been within their constitutional rights. But the character of every act depends upon the circumstances in which it is done. . . . The most stringent protection of free speech would not protect a man in falsely shouting fire in a theater and causing a panic." Holmes then enunciated a principle that he felt defined the true scope of the First Amendment as it applied to political expression. "The question in every case," Holmes wrote, "is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree. . . . When a nation is at war many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight and that no Court could regard them as protected by any constitutional right."

The *Schenck* case clarified some limitations on free speech and supported the notion that the rights of the people are not absolute but must be balanced with national interests that are judged to be essential.



### Questions

**DIRECTIONS:** Answer the following questions on a separate sheet of paper.

1. Why was the Espionage Act passed?
2. Explain the clear and present danger principle that Justice Holmes enunciated in the *Schenck* decision.
3. According to Holmes, what factor made Schenck's actions, which at other times would have been protected by the First Amendment, illegal at the time he performed them?
4. How far do you think the government should go in trying to protect itself against threats to its policies in times of war?
5. Eight months after the *Schenck* decision, the Court again applied the clear and present danger principle. Holmes dissented in that case, stating that unlike the *Schenck* case, actions of the convicted man in the second case had little or no effect on the nation's war effort. What do you think this reveals about Holmes's attitude toward free speech guarantees?

# Supreme Court Case Study 6



## The Right to Freedom of Enslaved Persons

### Dred Scott v. Sandford, 1857

#### \*\*\*\*\* Background of the Case \*\*\*\*\*

John Emerson, a United States Army surgeon, took enslaved African Dred Scott to live at military posts in Illinois, a free state in 1834, and then to posts in the territory of Upper Louisiana (now Minnesota), where slavery had been forbidden by the Missouri Compromise of 1820. In 1838 Emerson and Scott returned to Missouri.

In 1846 Scott won a suit for his freedom against Emerson's widow in a Missouri court. Scott claimed that by having lived in free territory, he had earned his freedom. This ruling was overturned, however, by Missouri's Supreme Court. Aided by various antislavery interests, Scott then started a new suit in a federal district court against Mrs. Emerson's brother, John Sandford of New York, who had been acting as his sister's agent. Since the case was a dispute between people who live in two different states, it could be heard in a federal court. When the federal court ruled that Scott was still a slave, he appealed to the United States Supreme Court.

#### *Constitutional Issues* \*\*\*\*\*

The Constitution left questions such as the legal rights of slaves for later lawmakers to solve. In 1850 Congress passed the Fugitive Slave Law, which stated that a slave was property and which required escaped slaves to be returned to their holders. Opponents of the law unsuccessfully challenged its legality before the Supreme Court.

The first major issue was whether Dred Scott—an African American—qualified as a citizen of the United States and was, therefore, entitled to sue in a federal court. The second issue concerned whether Scott had gained his freedom by moving to a free territory or state. The third issue focused on the Missouri Compromise of 1820, which banned slavery north of the southern boundary of Missouri (except for Missouri itself). Scott had lived in the non-slavery region. Did Congress have the power to prohibit slavery in the territories and to make the prohibition a condition of admission to the Union?

#### \*\*\*\*\* The Supreme Court's Decision \*\*\*\*\*

The Court's decision was written by Chief Justice Roger B. Taney, although each justice wrote his own opinion, with only one justice concurring with Taney in every respect. Two justices dissented.

Taney's first ruling was that former Africans, "whether emancipated or not," did not qualify as United States citizens. Taney held that only those who were state citizens when the Union was formed became federal citizens. Even though a state may emancipate a slave, give him the right to vote, and admit him to state citizenship, Taney said, none of these actions gave a slave automatic federal citizenship. The right to grant federal citizenship belonged exclusively to Congress. Taney concluded that Scott was not, and never had become, a citizen of the United States, and was not, therefore, entitled to sue in a federal court.

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# Supreme Court Case Study 6 (continued)

Taney next examined the question of whether Scott had gained his freedom when he entered the Upper Louisiana Territory. The Chief Justice attacked the Missouri Compromise as an unconstitutional exercise of congressional authority. Congress cannot forbid a state or a territory from making slavery legal. Taney explained that as long as slavery is authorized by the Constitution, Congress cannot alter the right of a person to own slaves or any other kind of property. In viewing the Missouri Compromise as unconstitutional, the Court determined that Scott's status did not change when he entered free territory. The Court held that Scott had been a slave in Illinois and had returned to Missouri as a slave. On his return to Missouri, he became subject to Missouri law alone. Taney ordered the suit dismissed for lack of jurisdiction.

## \*\*\*\*\* Dissenting Opinion \*\*\*\*\*

Justice Benjamin R. Curtis dissented. Curtis noted that free African Americans were among those who had voted to ratify the Constitution in a number of states. Nothing in the Constitution stripped these free African Americans of their citizenship. Curtis maintained that "under the Constitution of the United States, every free person born on the soil of a State, who is a citizen of that State, who is a citizen of that State by force of its Constitution or laws, is also a citizen of the United States . . . ."

The Court's decision is one example of judicial power being exercised in favor of racial segregation. It is also the first time that a major federal law was ruled unconstitutional.



### Questions

**DIRECTIONS:** Answer the following questions on a separate sheet of paper.

1. What was the relationship between the Missouri Compromise and the Court's decision in the *Dred Scott* case?
2. What effect do you think the Court's decision in the *Dred Scott* case had on the efforts of many Americans to end slavery?
3. If you were a plantation owner in the South who held many slaves, how would you have reacted to the *Dred Scott* decision?
4. What did the Court say about enslaved African Americans' position in the United States?
5. Why is the *Dred Scott* decision regarded as one of the most important cases in the history of the Supreme Court?

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