INTERACTIVE CHAPTER 13

Supreme Court Cases

Why should you care about the Supreme Court? One of the purposes of the Constitution and its amendments is to protect your rights against government interference. The Constitution, however, is a collection of words. Someone—the justices of the Supreme Court—must say what those words mean and what the law is. But Supreme Court justices are not elected officials—they are appointed to the Court for life. Their decisions can affect your freedom of speech, your right to privacy, your right to a fair trial, and other aspects of your personal life.

John Roberts was sworn in as the seventeenth chief justice of the United States in September 2005.

Essential Question How does the Supreme Court maintain the balance between federal and state powers?

What You Will Learn

In this chapter, you will learn about the First, Fourth, and Fourteenth Amendments and how the Supreme Court maintains balance between federal and state powers.

SECTION 1
The First Amendment: Your Freedom of Expression

SECTION 2
The Fourth Amendment: Your Right to Be Secure

SECTION 3
Due Process and the Fourteenth Amendment

SECTION 4
Federalism and the Supreme Court

Student Casebook Use your Student Casebook to take notes on the chapter and to complete the simulations.

SECTION 1

The First Amendment: Your Freedom of Expression

Reading Focus

Your freedom of expression—the right to practice your religious beliefs; to hold, express, and publish ideas and opinions; to gather with others; and to ask the government to correct its mistakes—is the cornerstone of our democracy. Through its power to interpret the Constitution, the Supreme Court can expand—or limit—your rights.

CASE STUDY **Students' Right of Expression** Do students who are not being disruptive lose their constitutional right to freedom of speech or expression when they enter the schoolhouse door?

WHAT YOU NEED TO KNOW Learn about the fundamental freedoms guaranteed by the First Amendment to the Constitution.

SIMULATION **The Play's the Thing** Use your knowledge to prepare and argue a case in federal district court alleging a violation of freedom of speech. Your arguments must be guided by both the First Amendment and Supreme Court decisions on this subject.

Student Casebook

Use your Student Casebook to take notes on the section and to complete the simulation.

Mary Beth and John Tinker display the black armbands they wore to school in 1965 to protest the war in Vietnam.

CASE STUDY

Students' Right of Expression

In the mid-1960s public opinion about the Vietnam War was divided. Many Americans strongly supported the war, but sentiment against the war had been growing. By 1963, protests and demonstrations against the war began to spread, especially on college campuses. Within a couple of years, some high school and middle school students also began to protest the Vietnam War.

The Black Armband Case

In 1965 John Tinker, his sister Mary Beth, their friend Christopher Eckhardt, and a few other friends decided to protest the Vietnam War by wearing black armbands in their Des Moines, Iowa, school. John Tinker was 15 and Christopher Eckhardt was 16 at the time. Mary Beth Tinker was 13. Little did the teenagers know that their decision would result in a landmark Supreme Court case that defined students' First Amendment rights. The decision established a test for determining whether a school's actions violate students' rights to freedom of expression.

School officials heard rumors of the planned protest, and they feared that school would be disrupted. As a result, the school board adopted a policy banning the wearing of armbands.

Several students violated the policy and wore their armbands in school. Five students, including Mary Beth, John, and Christopher, were suspended. Their parents sued the school district, claiming that the children's First Amendment right to free expression had been violated.

In 1966 a U.S. district court ruled in favor of the school system. In 1967 a tie vote in the Court of Appeals for the Eighth Circuit meant that the district court's decision stood. The Tinkers and Eckhardts appealed directly to the U.S. Supreme Court.

The Supreme Court Decision

Before the Supreme Court, the Tinkers and other plaintiffs argued that the school's ban on armbands violated their right to free speech under the First and Fourteenth amendments. The armbands, they argued, were a form of symbolic speech protected by the Constitution.

The school district argued that the ban was intended to prevent classroom disruption, not to suppress expression. The district saw the rule as a reasonable use of its power to preserve order.

In 1969 the Supreme Court handed down its decision in *Tinker* v. *Des Moines School District*. By a 7–2 vote, the Court reversed the lower courts' ruling. Writing the Court's majority opinion, Justice Abe Fortas first reinforced the principle that neither "students [n]or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."

The Court agreed that school authorities have a right to maintain order but observed that the protesters "neither interrupted school activities nor sought to intrude in the school affairs or the lives of others." Fortas wrote that "we do not confine the permissible exercise of First Amendment rights . . . to supervised and ordained discussion in a school classroom." The opinion concluded that, regarding the students in this case, "our Constitution does not permit officials of the State to deny their form of expression."

According to the Court, schools can regulate student speech when that speech would be disruptive or interfere with the rights of other students. The ruling created the Tinker test: if the expression does not substantially interfere with school operation, regulating that speech violates the Constitution's protection of free expression.

Justice Hugo Black wrote a blistering dissent. He argued that school officials had a right and a duty to control the learning environment so that students could focus on their studies without being distracted by other students' protests.

Schools "are operated to give students an opportunity to learn, not to talk politics," Black noted. "If the time has come when pupils of state-supported schools . . . can defy and flout [show contempt for] orders of school officials to keep their minds on their own schoolwork," he warned, "it is the beginning of a new revolutionary era in this country fostered by the judiciary."

After *Tinker*

The *Tinker* case, with its Tinker test, remains the leading case dealing with the free-expression rights of public school students. By the 1980s, however, the times and the Court's membership had changed. Only three of the nine justices who heard *Tinker* remained on the Court. With six new justices, the Court gradually modified and expanded the concept of school disruption. Over time, the Court has narrowed the limits of acceptable student expression.

For example, in 1986 in *Bethel School District* v. *Fraser,* the Court ruled 7–2 to uphold the suspension of a student for giving a speech at a school assembly that contained vulgar sexual references. The Court further limited students' freedom of expression in 1988. By a 6–3 vote in *Hazelwood School District* v. *Kuhlmeier,* the justices upheld the right of school officials to censor a journalism-class newspaper if school officials believe the paper's contents are inconsistent with a legitimate educational purpose.

In 2006 the Court took up a school's power to limit student expression off campus. In Juneau, Alaska, student Joseph Frederick was suspended for displaying a banner—bearing what Frederick claimed was a nonsense message—during a rally for the Winter Olympics across the street from his high school. The school principal, however, interpreted the banner as referring to and encouraging the use of illegal drugs.

Although students do have a protected right to free speech at school under certain conditions, that right is not absolute. The Supreme Court has limited student speech in a variety of ways.

Although Frederick and his friends were not being disruptive and despite the fact that the rally was neither on school property nor at a school-sponsored event, the principal suspended them for violating the school's antidrug policy.

In June 2007 the Supreme Court ruled 6–3 in *Morse* v. *Frederick* that because schools must take steps to protect students in their care, a principal may prohibit speech that a reasonable person might read as encouraging drug use. In this case, the Court said, it would not be unreasonable to read the banner that way. School officials did not, therefore, violate Frederick's First Amendment rights by confiscating his banner and suspending him for 10 days.

What Do You Think?

1. Are protests like the Tinkers' disruptive of school activities? Explain your point of view.
2. Should school authorities have the right to censor student speeches or newspapers? Why or why not?
3. Is the Tinker test an adequate way to handle issues related to students' freedom of expression? Why or why not?

WHAT YOU NEED TO KNOW

SECTION 1

Freedom of Religion

Key Terms
freedom of expression
redress of grievances
right of assembly

The First Amendment guarantees your right to **freedom of expression**, the right of citizens to hold, explore, exchange, express, and debate ideas. The First Amendment states that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." These two guarantees are known as the establishment clause and the free exercise clause. Disputes over the meaning of these few words have led to many court cases over the years. In addition, a possible conflict between the establishment clause and the free exercise clause has aroused a debate that continues today.

The Establishment Clause

Thomas Jefferson called for a "wall of separation between church and state." As the Quick Facts chart on the next page shows, the Supreme Court has tried to maintain such a wall between religion and government. But disagreement exists over how high that wall should be or if it should even exist at all. For example, take the matter of student prayer in public schools.

School Prayer Some of the greatest controversy surrounds the issue of prayer in public schools. In 1962, in *Engel* v. *Vitale,* the Supreme Court banned a prayer required in New York public schools. The Court ruled that it is not "the business of government to compose official prayers . . . to recite as part of a religious program carried on by government." The next year, in *Abington School District* v. *Schempp,* the Court struck down a Pennsylvania requirement that each school day start with Bible readings and the Lord's Prayer.

In 1985, in *Wallace* v. *Jaffree,* the Court went further and rejected Alabama's required minute set aside each morning for silent meditation or prayer. In *Santa Fe Independent School District* v. *Doe* (2000), it banned a student-led prayer over the public address system before high school football games. The Court applied the three-prong Lemon test (see Chapter 10) in these two cases and concluded that both enforced silent prayer and public prayer before school athletic events violate the establishment clause—each activity comes too close to providing official support for religion.

Note that the Court has not banned private, voluntary school prayer. In fact, the Court requires high schools to allow students to form private religious groups if the school allows other groups not related to the curriculum—such as a chess club—to meet on school property (*Westside Community Schools* v. *Mergens*, 1990, and *Good News Club* v. *Milford Central School*, 2001). However, no school employees may take part in student religious groups. What the Court has prohibited are school-sponsored religious practices.

QUICK FACTS

Your First Amendment Freedoms

Freedom of religion
- The right to practice your religion is a basic form of self-expression.

Freedom of speech
- The right to express your ideas freely and to hear the ideas of others is fundamental to democracy.

Freedom of the press
- Freedom of the press extends the freedom of speech to printed words and other published works.

Freedom of assembly
- The right to associate or join with whomever you wish and express your opinions is also a basic right.

Freedom of petition
- The right to petition the government—to ask the government to correct a wrong—is protected.

Religion in Public Places

QUICK FACTS

YEAR	CASE	SUPREME COURT RULING
1984	*Lynch* v. *Donnelly*	A Christmas nativity scene in a public park was permitted because the display also contained Santa Claus and other nonreligious symbols.
1989	*Allegheny County* v. *Greater Pittsburgh ACLU*	A display that contained a Christmas tree and a Hanukkah menorah outside a county courthouse was allowed, but a nativity scene that stood alone inside the courthouse was not.
1995	*Capitol Square Review Board* v. *Pinette*	A private group was allowed to display a cross outside the Ohio state capitol on land that was traditionally open to use by the public.
2005	*Van Orden* v. *Perry*	A monument of the Ten Commandments, set among other historical monuments at the Texas state capitol, was allowed because in that context it did not indicate state endorsement of the religious message.
2005	*McCreary County* v. *ACLU*	A copy of the Ten Commandments displayed alone inside a Kentucky courthouse was not in that context religiously "neutral" and therefore violated the establishment clause.

REAL-WORLD EXAMPLE

Voluntary Prayer In 2007, seniors at three high schools in Round Rock, Texas, voted to have a public prayer at their graduation. Seniors at a fourth school voted against having a prayer.

The school district follows a state policy prohibiting school officials from having prayers at graduation unless students request it. The goal of the policy is to avoid conflicts involving separation of church and state.

Applying Information If students vote to have any prayer at graduation, should they have to allow as many different prayers as students want to offer? Why or why not?

Religion and Instruction Teaching about religion or the Bible in school is also allowable, as long as the instruction is done in a nonreligious manner. However, the Court has drawn the line when it comes to including religious beliefs in instruction. For example, in *Epperson* v. *Arkansas* (1968), it overturned a law that prohibited the teaching of evolution, a scientific theory that is contrary to many people's religious beliefs. The Court also voided a Louisiana law that required a religious view called creation science to be taught alongside evolution (*Edwards* v. *Aguillard,* 1987).

The Free Exercise Clause

The First Amendment seems to make freedom of religious belief an absolute right: "Congress shall make no law . . ." However, the Court has drawn a distinction between your right to believe whatever you want and your right to express those beliefs through actions. This difference was noted in the first case the Supreme Court heard that involved the free exercise clause.

In 1879, in *Reynolds* v. *United States,* the Supreme Court upheld the conviction of George Reynolds for having more than one wife, a practice known as polygamy. Reynolds belonged to the Mormon Church, which allowed polygamy at that time, but federal law prohibited the practice. The Court ruled that the free exercise clause did not protect religious practices that were "subversive of good order," even if those practices reflected religious beliefs.

The Court developed this principle into what is known as the "compelling interest test," which requires government to have a compelling, or very strong, reason for banning a religious practice as necessary to protect society. The Court has used this test to allow expression of religious beliefs in some situations but not in others.

West Virginia State Board of Education* v. *Barnette In 1943 the Court upheld students' right to refuse to salute the flag and recite the Pledge of Allegiance if it violated their religious beliefs. The case involved students who were Jehovah's Witnesses. Their faith teaches that the salute and pledge are a type of idol worship, which is forbidden by the Ten Commandments. The justices noted that making patriotic ceremonies voluntary instead of required did no great harm to society. The decision also established people's right to *not* take part in a practice that violates their religious beliefs as a protected form of religious expression.

Sherbert* v. *Verner In 1963 the Court extended this right when it reversed South Carolina's denial of unemployment benefits to a woman who had been fired for refusing to work on Saturdays, the day of worship in her religion. It applied the same principles again in 1972 in *Wisconsin* v. *Yoder,* when it exempted Amish children from Wisconsin's law that requires school attendance until a certain age. In both cases the justices ruled that what society gained from these requirements did not outweigh a person's freedom to follow his or her religious beliefs.

Goldman* v. *Weinberger The Court reached the opposite conclusion in this 1986 case that involved a Jewish member of the air force who wore a yarmulke (a skullcap worn by religious Jews) while on duty. The justices upheld the air force's ban on wearing nonmilitary apparel, given the military's need to foster unity and group spirit.

Employment Division* v. *Smith The Court stretched the compelling interest test in 1990 when it upheld Oregon's right to deny unemployment benefits to two Native Americans who had been fired for ingesting peyote in a religious ceremony. Peyote use is illegal in Oregon. The Court ruled that states may enforce laws that incidentally interfere with people's religious practices.

Charging that the *Smith* decision limited religious freedom, Congress passed the Religious Freedom Restoration Act (RFRA) in 1993. This law created a tougher compelling interest test for the courts to apply. However, the Supreme Court, exercising its power of judicial review, ruled the RFRA itself unconstitutional in 1997, in *City of Boerne, Texas* v. *Flores*.

READING CHECK **Contrasting** How did the Court's position on religious expression in *Sherbert* v. *Verner* differ from its position in the *Smith* case?

REAL-WORLD EXAMPLE

Religious Studies The state of Washington gave Joshua Davey a college scholarship. Under the Washington state constitution and the terms of the scholarship, Davey was prohibited from using the money to obtain a theology degree if the program was for "devotional theology majors." Davey lost his scholarship when he decided to get a degree in pastoral ministries. In 2004 in *Locke* v. *Davey*, the Supreme Court rejected Davey's claim that cancelling his scholarship violated the free exercise clause of the First Amendment.

Applying Information What state interest might Washington have in prohibiting the use of public funds for religious education?

SECTION 1

Freedom of Speech

The First Amendment states, "Congress shall make no law . . . abridging freedom of speech, or of the press . . ." As with the freedom of religion, that seems pretty simple and straightforward. But what is "speech"? For example, is speech only spoken words, or does it include other forms of expression, such as dancing? Are there limits to this freedom? Is obscenity protected, for example? Or can you make statements about other people that are not true?

Protected and Unprotected Speech

The Supreme Court has observed in *Chaplinsky* v. *New Hampshire* (1942) that "the right to free speech is not absolute at all times and under all circumstances." Speech that has little or no social value is generally not protected by the First Amendment. In *Chaplinsky*, the Court named some classes of expression that are not protected:

- **Fighting words** Speech that insults or angers people so much that violence may result
- **Defamatory speech** False statements that damage a person's reputation and that are published in print or other media, called *libel*, or that are just spoken, called *slander*
- **Lewd and profane speech** Speech that is vulgar or obscene

Types of Protected and Unprotected Speech

QUICK FACTS

TYPE OF SPEECH	CASE	SUPREME COURT RULING
Fighting words, defamatory speech, and lewd and profane speech	*Chaplinsky* v. *New Hampshire* (1942)	Not protected by the First Amendment
Nondisruptive student political speech	*Tinker* v. *Des Moines* (1969)	Protected by the First Amendment
Student vulgar and obscene speech	*Bethel School District* v. *Fraser* (1986)	Not protected by the First Amendment
Content in student newspapers	*Hazelwood School Dist.* v. *Kuhlmeier* (1988)	Not protected by the First Amendment if not consistent with legitimate educational purpose
Off-campus student speech	*Morse* v. *Frederick* (2007)	Not protected by the First Amendment if a reasonable person might interpret speech as advocating use of illegal drugs

Student Speech

The Supreme Court has declared that students "do not shed their constitutional rights of . . . expression at the schoolhouse gate." Even so, students do not enjoy the same free speech rights as other Americans. For example, the Court has ruled that schools can regulate the time, place, and even the content of student expression.

Political Speech The Court has set the fewest limits on student speech that expresses political ideas or opinions. The standard for regulating student political speech is the *Tinker* case. In general, if student expression does not disrupt school activities, officials must allow it. And just *believing* that student speech might be disruptive does not pass the Tinker test. School officials must expect that the speech will cause a major disruption in order to censor it.

There are exceptions to this principle, however. School officials may ban speech that is vulgar, hateful, interferes with the rights of others, or, as of 2007, might be interpreted as promoting drug use.

ACADEMIC VOCABULARY

censor to suppress or delete something as objectionable

Vulgar and Obscene Speech The case of *Cohen* v. *California* (1971) permits vulgar and obscene speech in public, but the Court has not allowed such speech in school. In the *Bethel School District* case, a student made vulgar statements in a speech supporting a friend running for student government.The Court upheld the speaker's suspension, writing that "freedom to advocate . . . views in schools and classrooms must be balanced against the society's . . . interest in teaching students the boundaries of socially acceptable behavior."

REAL-WORLD EXAMPLE

CASE STUDY LINK

Mixed Messages In 2002 the Pennsylvania Supreme Court upheld the expulsion of a student who created a Web site that obscenely ridiculed his algebra teacher. But in 2005 a federal judge overturned the suspensions of two Arkansas students whose Web site contained comments made by other students ridiculing their school's athletes and band members. The judge ruled that because others had posted the comments on the Web site, the two students should not be punished for them.

Applying Information How is this case similar to *Tinker* v. *Des Moines*? How is it different?

Speech Codes Recently many schools have adopted speech codes, or policies against—and limits on—speech that violates the right of all students to a safe learning environment. For example, schools have banned wearing Confederate flag patches on clothing because the flag is offensive to some students. In other cases, students have been punished for artwork or writing assignments containing content that officials found troubling. The Court has not yet ruled on speech codes but may, eventually, decide these issues.

Cyberspeech Student speech on the Internet is also an area of uncertainty. The Court has said that cyberspeech generally has the same protections as printed material. If so, students may be free to express themselves online when they use their own computers, are off campus, and are on their own time. However, some schools have suspended students for using home-based Web pages to criticize school officials. Officials argued—and some courts have agreed—that the off-campus pages' content so disrupted the learning environment that the pages had to be restricted or prohibited. In other cases, courts have rejected this argument and reversed students' suspensions.

READING CHECK **Summarizing** What limits are placed on student speech?

SECTION 1

Freedom of Petition and Assembly

The First Amendment also recognizes and protects Americans' right to petition government for a **redress of grievances**—that is, to remove the cause of a complaint and make things right. Freedom of petition is the right to ask the government to act to correct an injustice without fear of punishment for making the request. The rights of assembly and petition often go hand in hand. For example, people may join an association or a demonstration to publicize their grievances and to call on the government for redress.

The **right of assembly** means that you have the right to join and form groups, such as such as clubs, interest groups, or labor unions, and to gather for any peaceful and lawful purpose. Like other First Amendment rights, the right of assembly has limits. For example, the assembly must be peaceful, and people have no right to gather on private property without the owner's consent. Government may, however, make reasonable regulations about the time, place, and behavior of assemblies on public property.

The Supreme Court has also set limits on the kinds of groups to which people may belong. In *Whitney* v. *California* (1927) the Court upheld the conviction of a woman for her membership in the Communist Labor Party, an organization that supported the overthrow of the government by acts of violence. Today, such limits allow authorities to arrest suspected terrorists or members of armed groups that may pose a threat to society.

READING CHECK **Drawing Conclusions** How do the freedoms of petition and assembly support a republican form of government?

Freedom of Assembly

Schools may not ban student organizations, such as this prayer group, because of their religious or philosophical beliefs.

Student Assembly

The limits that apply to the public's right of assembly also apply to students in school. Here, too, the Court has often been more restrictive of student rights. For example, school officials have the right to control the time, place, and manner of student gatherings. They also have the right to set restrictions on school clubs. Finally, within certain limits, they have the right to deny some types of clubs permission to form.

The Equal Access Act of 1984 prohibits schools and school districts from forbidding or discriminating against any club because of its religious or philosophical viewpoint. In 1990 the Court ruled this law was constitutional in *Westside Community Schools* v. *Mergens*, discussed earlier in this section. Students may also distribute religious and political literature in school, but school officials may regulate this activity.

School officials do not have to allow any student organization that preaches hate or violence or that engages in illegal activity. However, they cannot restrict students from forming other clubs just because the clubs might be controversial. For example, a school could refuse to allow a neo-Nazi club that advocated racial or religious violence. But a club formed to promote tolerance of gays and lesbians would be permissible, although such clubs have sometimes aroused controversy.

READING CHECK **Making Generalizations** What kinds of school clubs are not protected by the right of assembly?

Section 1 Assessment

hmhsocialstudies.com ONLINE QUIZ

Reviewing Ideas and Terms

1. **a. Identify** What is the difference between the free exercise clause and the establishment clause?
   b. Make Generalizations What limitation exists on religious practices?
2. **a. Describe** What are three types of speech not protected by the First Amendment?
   b. Elaborate Why do you think the Supreme Court limits student speech more than the speech of adults? Give examples to support your answer.
3. **a. Describe** What are the requirements for a lawful assembly on private property?
   b. Make Inferences For what reasons might the right to assemble be limited on public property?
4. **a. Identify** What kinds of clubs are not allowed in schools?
   b. Analyze Why do school officials have the right to limit students' **right of assembly**?

Critical Thinking

5. **Predict** How can the change of one Supreme Court justice affect the outcome of a decision? In your opinion, is a president's choice of a nominee for justice important? Why or why not?

CASE STUDY LINK You answered the following questions at the end of the Case Study. Now that you have completed Section 1, think about and answer the questions again. Then compare your answers with your earlier responses. Are your answers the same or are they different?

6. Are protests like the Tinkers' disruptive of school activities? Explain your point of view.
7. Should school authorities have the right to censor student speeches or newspapers? Why or why not?
8. Is the Tinker test an adequate way to handle issues related to students' freedom of expression? Why or why not?

SECTION 1

SIMULATION

The Play's the Thing

Will students from Home City High School be allowed to stage their play? 21ST CENTURY

Student Casebook

Use your Student Casebook to complete the simulation.

Issues of student free speech can take many forms, including plays performed by student drama groups. Using what you have learned in Section 1, complete the simulation about a fictional lawsuit seeking permission to perform a student play.

Roles

- Federal judge
- Jurors
- Plaintiffs' attorneys
- Defendants' attorneys
- Attorney for Civil Liberties Association (CLA)
- Attorney for Center for Free Student Press (CFSP)
- Attorney for Association of United Churches (AUC)
- Attorney for Association of School Administrators (ASA)
- Drama club members
- School principal
- School newspaper editor
- Other witnesses

1 The Situation

The drama club of Home City High School wants to stage a play on the life, teachings, and impact of the historical founder of an Eastern religion. Club members asked the principal for permission to present their play to an all-school assembly. When permission was denied, club members offered to present the play during the lunch period, so students could choose whether or not to attend. The principal also rejected this alternative.

A student who supported the play started a petition to demand that it be permitted. The petition was seized when the principal heard about it, and the student responsible for it was suspended. When the school newspaper prepared a story on the controversy, school officials refused to allow it to be published. Students filed a lawsuit in federal court, and trial of the case is ready to begin.

Background

- Three drama club members, their parents, and the suspended student have sued the school district. They are the plaintiffs in this case. They claim violations of First Amendment rights.
- The school district is the defendant in the case. School officials claim that the play would violate the establishment clause. They also claim that their actions were all within their power, and were taken, to maintain order.
- The Civil Liberties Association (CLA), the Center for Free Student Press (CFSP), the Association of United Churches (AUC), and the Association of School Administrators (ASA) have all filed legal briefs in this case.
- Home City has a population of 10,500 people. There are 26 Protestant churches, one synagogue, and one Roman Catholic church in Home City.
- The *Bugle*, Home City's weekly newspaper, carried a story about the play, its subject matter, and the subsequent dispute at the school.

2 The Trial

The attorneys for the plaintiffs and defendants will present their case. The plaintiffs' case is presented first, followed by the defense. Each side calls its witnesses, including expert testimony, at the trial. The organizations present their arguments at the conclusion of the appropriate side's case. After each side's case has been heard, the jury will render a decision for the plaintiffs or for the defendant.

The Judge The judge will be in charge of the trial. He or she will keep order, recognize the attorneys for each side when it is that side's turn to speak, call witnesses, and cross-examine the other side's witnesses. The judge will rule on any objections to the evidence made by attorneys. The judge may also question witnesses if he or she chooses to do so.

The Parties' Attorneys Each side will have at least two attorneys. These attorneys will do the research needed to prepare their side's case, plan the case, and plan what witnesses to call. They will also be responsible for writing their side's opening and closing statements to the jury. The attorneys for each side will question their side's witnesses and cross-examine the other side's witnesses at the proper time.

The Amicus Attorneys A group may work with either side in the case. The list below is a suggestion. An attorney for each organization will write its amicus curiae brief—on whichever issue it chooses—to assist the court. Each organization's attorney will present the organization's position at the conclusion of testimony from the side the organization supports. The organizations' attorneys may work with the attorneys for the side they support to prepare that side's case.

The Witnesses The drama club members, school principal, and school newspaper editor will be witnesses for plaintiffs or defense. They will testify about the controversy and events that led to the lawsuit. Other witnesses, such as students who were not directly involved in the dispute, townspeople, or historians may be called by each side. These witnesses must have information relevant to one or more of the issues.

The Jurors Jurors will listen to opening statements, testimony, and closing arguments. They may take notes and, with the judge's permission, ask questions of any witness. The jury members, based on the evidence and First Amendment principles, will decide the case in favor of one side, the other, or both. The judge will read the jury's decision in court.

Amici Curiae for the Plaintiff

- Civil Liberties Association (CLA)
- Center for a Free Student Press (CFSP)

Amici Curiae for the Defense

- Association of School Administrators (ASA)
- Association of United Churches (AUC)

3 Debriefing

After the jury has reached its verdict, discuss the jury's findings as a class. Assess whether the jury, the attorneys, and expert witnesses for each side correctly applied the First Amendment and case law to the facts in this trial. Then write a one-page summary explaining whether you agree with the verdict and why or why not.

Amicus Curiae Briefs *Amicus curiae* (plural, *amici curiae*) is Latin for "friend of the court." The term refers to a person or organization that files a legal brief, with the court's permission, to express views on one or more issues in a case involving other parties because it has a strong interest in the subject matter of the action.

SECTION 2

The Fourth Amendment: Your Right to Be Secure

Reading Focus

The Fourth Amendment guarantees your right to be secure against unreasonable searches and seizures—in other words, it guarantees that you have rights to some sorts of privacy. As with First Amendment rights, Fourth Amendment rights are not absolute and are subject to judicial interpretation. In this cyber age, protection of these rights is perhaps more important than ever.

CASE STUDY **The Right to Privacy**
Learn about a 2005 case in which the police used a "sniffer" dog to search for illegal drugs during a routine traffic stop.

WHAT YOU NEED TO KNOW Learn about the privacy protections the Fourth Amendment provides and the circumstances under which the government can infringe upon your right of privacy.

SIMULATION **Have You Been Seized?** Use your knowledge to argue a case involving an alleged search and seizure violation.

Student Casebook

Use your Student Casebook to take notes on the section and to complete the simulation.

Specially trained dogs are often used by law enforcement agencies to search for illegal drugs or explosives. Here, police use dogs to search a van and a subway train.

The Right to Privacy

Should authorities be able to search a car or home with "sniffer" dogs? What about using an electronic sensor that detects chemical traces from illegal drugs or heat coming from a house? Neither method requires authorities to enter the car or building, so are these really searches? When, if ever, should such a search be legal?

A Canine Alert

On a rainy day in 1998, Roy Caballes was driving along the highway, headed for Chicago. Illinois state trooper Daniel Gillette clocked Caballes doing 71 miles per hour in a 65-mile-per-hour zone. Gillette pulled Caballes over to give him a ticket for speeding.

Gillette called police headquarters to check for any outstanding arrest warrants. Caballes was not wanted anywhere, but the check revealed that he twice had been arrested for selling drugs.

At the same time, another state trooper, Craig Graham, heard the call on his police radio. Because he was nearby, he decided to go to the location with his drug-sniffing dog. He arrived while Gillette was writing the ticket.

When Trooper Graham walked the dog around Caballes's car, it barked at the trunk. When the troopers opened the trunk, they found a large quantity of marijuana inside. The troopers arrested Caballes for drug trafficking.

Caballes's lawyer tried to prevent the drugs from being introduced as evidence at the trial, claiming that they were the product of an illegal search. The judge disagreed. Caballes was convicted and sentenced to 12 years in prison.

In 2003 the Illinois Supreme Court reversed Caballes's conviction. It ruled that using a drug-sniffing dog at a routine traffic stop violated Caballes's Fourth Amendment rights. The state appealed this ruling to the Supreme Court, creating the case *Illinois* v. *Caballes*.

The Court Hears *Illinois* v. *Caballes*

The Supreme Court heard oral arguments in *Illinois* v. *Caballes* in late 2004. Illinois attorney general Lisa Madigan claimed that Trooper Graham's actions were proper. She cited *United States* v. *Place* (1983), in which the Court ruled that dog sniff searches are not a search under the Fourth Amendment. Madigan pointed out that a dog sniff is not a search because a sniff does not violate anyone's privacy.

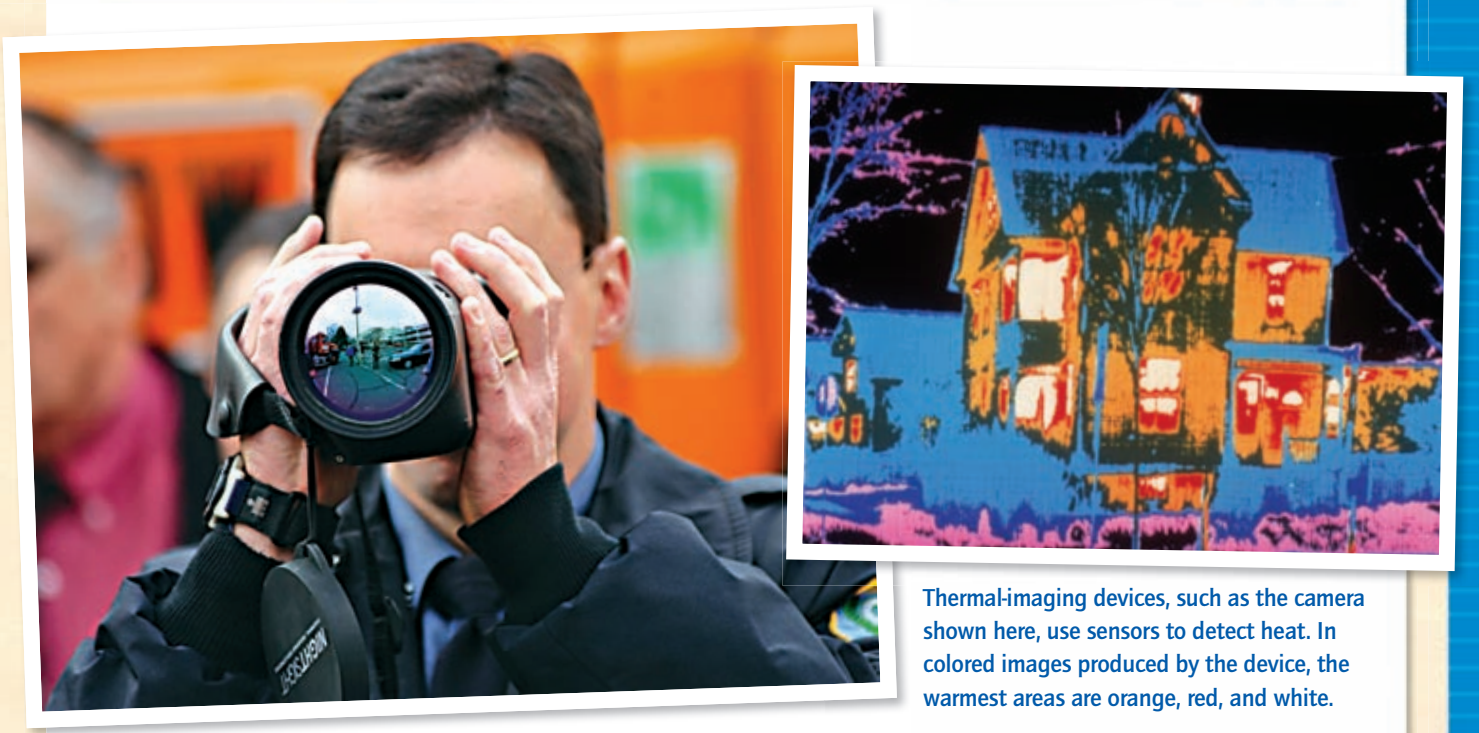
Justice David Souter replied that he agreed a sniff was not a full-blown search. But if it was constitutional, he asked, what would prevent police from walking dogs around the foundation of every private home, just to see if they get a "sniff of something"?

Madigan again said that dog sniffs were not searches. "Is that your answer?" responded Justice Ruth Bader Ginsburg. "That police can parade up and down the streets of the country with dogs?" Madigan replied that Illinois did not have the resources to be able to do that.

Justice Antonin Scalia noted that the law allows dogs to sniff at bus depots "and the republic seems to have survived." He also pointed to *Kyllo* v. *United States* (2001), in which the Court ruled that police violated Fourth Amendment rights when they used thermal-imaging devices to see if people were growing marijuana in their homes. Madigan replied that the scanners could detect all kinds of human activity—including perfectly legal behavior—inside a home, while a drug-sniffing dog would detect only drugs.

Caballes's attorney argued that the sniff was actually a search because, like the scanner, it revealed something that was hidden from view. He also noted that the Court's earlier decision in *Place* was based on a *suspicion* of illegal activity. He pointed out that in this case police had no reasonable suspicion of Caballes that would allow a search of his car.

CASE STUDY



Thermal-imaging devices, such as the camera shown here, use sensors to detect heat. In colored images produced by the device, the warmest areas are orange, red, and white.

The *Caballes* Decision

The Supreme Court ruled on *Illinois* v. *Caballes* in 2005. In a 6–2 decision (Chief Justice William Rehnquist took no part), the Court reversed the Illinois Supreme Court and upheld Caballes's conviction. Justice John Paul Stevens wrote the majority opinion and began by stating that a person has no legitimate privacy interest in possessing drugs or other contraband. Any government action that indicates possession of contraband—but nothing more—does not violate a protected Fourth Amendment privacy interest.

The Court agreed with the state's argument that a dog sniff is not a search. As long as the traffic stop itself was lawful, the Court said, the police had the right to use the dog. A sniffer dog only establishes the presence or absence of something. Once the dog alerted on the car, the police had the reasonable suspicion they needed to conduct their search.

Justices Ginsburg and Souter each wrote dissenting opinions. Souter pointed out that dogs can be wrong, as a result of poor training, errors by their handler, or a dog's limited ability. He argued that the dog's bark thus was not probable cause to search the car.

"Every traffic stop could become an occasion to call in the dogs," Ginsburg wrote, "to the distress and embarrassment of the law-abiding population." She worried that the decision "clears the way for . . . police with dogs, stationed at long traffic lights, circl[ing] cars waiting for the red signal to turn green."

What Do You Think?

1. Is a trained dog's sniff of someone or something a search of that person or thing? Explain why or why not.
2. Do you agree with the majority of the Court in the *Caballes* case or with the dissenting opinions? Explain why.
3. Would your opinion in the *Caballes* case be different if it had involved a bomb-sniffing dog instead? Explain why or why not.

WHAT YOU NEED TO KNOW

SECTION 2

Understanding Search and Seizure

Key Terms
search
seizure
plain view doctrine
Terry stop
special needs test
cyber-surveillance
National Security Letter

The Fourth Amendment to the Constitution states that "the right of the people to be secure in their persons, homes, papers and effects, against unreasonable search and seizure, shall not be violated." Perhaps the first thing to know about this guarantee is that it applies only to searches and seizures *made by the government*. In *United States* v. *Jacobsen* (1984), the Supreme Court ruled that the Fourth Amendment does not protect against unreasonable searches and seizures by private organizations or citizens. In addition, the Fourth Amendment did not apply to the actions of state governments until 1949 (*Wolf* v. *Colorado*). Finally, the Court did not apply the exclusionary rule (discussed in Chapter 10) to state courts until 1961 in the case of *Mapp* v. *Ohio*.

Searches and Seizures

Within the meaning of the Fourth Amendment, the definition of a **search**—any action by government to find evidence of criminal activity—is very broad. It includes everything from searching someone's property, to listening in on phone conversations, to stopping suspicious-looking persons and frisking them for weapons.

A **seizure** occurs when authorities keep something. That something can be an object or a person. For example, police officers might seize an item from a home that they think is evidence in a murder. They might take drugs or a weapon from a person they have stopped and frisked. Or they can seize a person.

A person, such as Roy Caballes in the case study, is seized when his or her movement is restricted by physical force or by someone's authority. Arrest is a seizure. But not all seizures involve arrests. For example, if a police officer tells you, "Stay here until I come back," have you been "seized"? It depends: If you believe you can leave, you have not been seized, but if you have the impression you will be arrested if you try to leave, your person has been "seized" under the Fourth Amendment (*United States* v. *Mendenhall*, 1980).

Probable Cause and Warrants

The Fourth Amendment also states that "no warrant shall issue, but upon probable cause." To obtain a warrant—a court order to search for something or seize someone—there must be probable cause, or good reason, to believe that the search will produce evidence of a crime or that the person to be seized committed the crime.

Note that nowhere in the Fourth Amendment is a warrant *required* for every instance of government search, seizure, or arrest.

REAL-WORLD EXAMPLE

Seizure without Arrest One example of a seizure under the Court's application of the Fourth Amendment in *Mendenhall* is traffic stops. When police stop a car, the driver is not under arrest. But if the driver tries to drive away while the officer is in the police car, the driver can reasonably expect that he or she would be arrested. Since the driver likely knows that he or she cannot leave, even though he or she is not under arrest, that makes the traffic stop a seizure.

Applying Information If you are a passenger in a car that has been stopped, have you been "seized" along with the driver? Why or why not?

In fact, many Supreme Court cases have held that warrants are not always necessary. However, whether a warrant is required or not, probable cause is usually needed to make a search. Probable cause is always needed to make an arrest.

Unreasonable Searches The Fourth Amendment bans "unreasonable search and seizure." But what is "unreasonable"? The Court answered this question in *Katz* v. *United States* (1967) when it ruled that searchers must respect a person's right to privacy. In general, this means that a search warrant is needed to look inside something. The warrant must state what is being searched and what authorities are looking for. They cannot just look through all of someone's property and see what turns up. That would be an unreasonable invasion of privacy and therefore an unreasonable search under the Fourth Amendment.

Warrantless Searches There are many instances in which a search warrant is not required, however. If an object is in plain view, the law assumes that the owner does not consider it private. If the owner wanted to keep it private, he or she would have put it somewhere out of sight. This is known as the **plain view doctrine**. For example, if police have a warrant to search a home for stolen computers and see illegal drugs in plain view on the table, they can seize the drugs as evidence even though such items are not listed on the search warrant.

READING CHECK **Summarizing** How are search and seizure related?

QUICK FACTS

Warrantless Searches

According to the Supreme Court, no search warrant is necessary in some emergency situations or when protecting the safety of the police or the public.

Voluntary consent
If a person consents to a search, police do not need a warrant, even if the person does not know that he has the right to refuse (*Schneckloth* v. *Bustamonte,* 1973).

Lawful arrests
Police may conduct a search limited to the person placed under arrest and the area immediately nearby for hidden weapons and evidence (*Chimel* v. *California,* 1969).

Hot pursuit
If police are chasing a suspect, they can follow him or her into a building and seize any evidence they find (*Ker* v. *State of California,* 1963).

Emergency circumstances
Police do not need a search warrant in life-threatening situations—for example, to search a building after a bomb threat or to enter a home after hearing a shot fired inside (*Payton* v. *New York,* 1980).

Automobile searches
In general, police do not need a warrant to search a car or anything inside it. However, they must still have probable cause to suspect that the car holds evidence of a crime (*California* v. *Acevedo,* 1991).

When police arrest a person lawfully, they may conduct a warrantless search of the person and of the area within "lunging distance" of the person. *Why do you think the Supreme Court allows a search of the area near a suspect?*

The Fourth Amendment and Privacy

In *Katz* v. *United States* the Court held that the Fourth Amendment protects people, not just places. Wherever a person is, his or her right to privacy is protected if he or she has exhibited a reasonable expectation of privacy. The level of privacy a person can expect depends, at least in part, on where the person is. You do not, for example, expect as much privacy in a coffee shop as you do inside your own home. No matter where a person is, however, he or she has *no* expectation of privacy in the possession of illegal drugs.

The Court has also said that a search or seizure that is lawful when it begins can subsequently violate the Fourth Amendment if the way the search is carried out unreasonably infringes upon interests protected by the Constitution (*United States* v. *Jacobsen*, 1984). The Court has used all of these principles to decide when and how far protections under the Fourth Amendment apply.

Searches of Homes

The Supreme Court applies the highest expectation of privacy to people's homes, including their yards. In most cases, a search warrant is required to conduct searches of homes. Over the years, though, the Court has relaxed even this requirement. In one case, police officers looking into an apartment through the window blinds saw two men bagging illegal drugs. The men did not live in the apartment but were there to buy and sell drugs. Police entered the home, arrested the men, and seized the drugs. The Court ruled that no search warrant was required because the men had no reasonable expectation of privacy in an apartment they were visiting for commercial purposes only (*Minnesota* v. *Carter*, 1998).

In *California* v. *Greenwood* (1988) the Court ruled that a person's garbage cans could be searched without a warrant. The justices held that a person has no expectation of privacy for items that he or she has thrown away.

In another case, police flying in a plane spotted marijuana plants growing in a yard. The Court allowed an arrest even though the yard had a high fence around it for privacy (*California* v. *Ciraolo*, 1986). But in *Kyllo* v. *United States* (2001), the case mentioned in the Case Study, the justices drew the line at the use of devices that "look" through the walls of homes from the outside. Police arrested Kyllo after a thermal scan of his home revealed that he was growing marijuana inside. The Court threw out his arrest because a thermal scan reveals information that would normally be available only with an actual intrusion into the house and is therefore a search requiring a warrant. Because authorities did not have a warrant, the seizure of evidence and Kyllo's arrest were unconstitutional.

Public Safety Searches

The idea that society may need—to protect public safety—certain types of searches that might not be reasonable under the Fourth Amendment is shown by the Court's willingness to allow police to set up roadblocks to catch drunk drivers (*Michigan Dept. of State Police* v. *Sitz*, 1990) or to try to intercept illegal aliens near the border (*United States* v. *Martinez-Fuerte*, 1976). Laws also allow the screening of all airline passengers and their carry-on luggage, as well as random searches of automobiles at border crossings.

Applying Information

Should it be permissible for police to use a dog to sniff your carry-on luggage at an airport? Why or why not?

Terry Stop Search Prior to Arrest

Before *Terry* v. *Ohio*, police had to have probable cause to arrest a person before they could search the suspect. If police searched the person and found evidence before an arrest was made, the evidence could be excluded from the trial. Law enforcement agencies argued that there were circumstances, such as when they had reasonable suspicion that a person had committed a crime, in which a search prior to an arrest was necessary to protect their safety and the safety of the public. The Supreme Court agreed in *Terry* and said that a brief detention and search of a person, based on reasonable suspicion, does not violate the protections of the Fourth Amendment. This search is called the Terry stop.

Personal Privacy

The Fourth Amendment provides that people will be secure in their persons from unreasonable search and seizure. The Supreme Court has interpreted this guarantee in a variety of ways and has applied it differently in a number of circumstances.

Stop and Frisk In general, police do not have the right to stop people randomly on the street and search them. In *Terry* v. *Ohio* (1968) the Court ruled that police could stop people who seem to be acting suspiciously and pat them down for weapons. Neither a warrant nor even probable cause is needed for what is now called a **Terry stop**. Under *Terry*, a reasonable suspicion will support an officer's "serious intrusion upon the sanctity of the person." The need for public safety outweighs the individual's privacy right.

In 1993 the Court widened the Terry stop in *Minnesota* v. *Dickerson* to allow police to seize other contraband that they find during a pat down. However, in 2000 the Court took a big step back from *Terry* in *Florida* v. *J.L.* In that case, the justices ruled that an anonymous tip that a man was carrying a gun was not sufficient reason to stop and search him. The same Court also decided that anyone who flees upon seeing the police can be stopped and searched (*Illinois* v. *Wardlow*, 2000).

Intrusive Searches The degree to which authorities may go in searching a person's body depends on the situation. In general, the Court seems to consider three questions in deciding whether such a search is reasonable under the Fourth Amendment:

1. What is the legal status of the person being searched? Is he or she in custody, suspected of a crime, or a "free" person?
2. How invasive is the search? Does it involve intrusions beyond the body's surface?
3. Does the search serve some safety or security need for society? This standard has been called the **special needs test**.

For example, strip searches of prisoners are permissible because of the obvious need to keep weapons and contra band out of jails—and because prisoners have few constitutional rights. Fingerprinting persons who have been arrested is also allowable because the arrest provides probable cause. But taking the fingerprints of people who are not under arrest requires the police to have probable cause to believe, or at least a reasonable suspicion, that the person has committed a crime (*Hayes* v. *Florida,* 1985).

Testing a person's blood or DNA is considered more invasive than fingerprinting, so for free persons such tests generally require a search warrant. Taking blood from a person who is under arrest requires only probable cause (*Schmerber* v. *California,* 1966).

Drug Testing Drug tests are also considered to be intrusive searches because they require blood or urine samples. In most cases they also require a warrant or at least probable cause. The Court has removed this requirement for certain groups of people in society. For example, it has ruled that the government can require workers in some jobs where public safety is important, such as in aviation, trucking, railroads, and other transportation industries, to be tested without probable cause or even the suspicion that they are on drugs (*Skinner* v. *Railway Labor Executives' Association,* 1989).

The Court has expanded the special needs test to public schools. In *Vernonia School District* v. *Acton* (1995), it ruled that schools may require random drug testing of athletes, even if no one is suspected of drug use. "Deterring drug use by our nation's schoolchildren is at least as important as . . . deterring drug use by engineers and trainmen," the justices observed in their decision.

Students' Fourth Amendment Rights

As with First Amendment rights and freedoms, the Court has generally limited students' Fourth Amendment rights. The Court's reasoning is basically the same—students' rights may be restricted in order to preserve a proper learning environment in schools.

In *New Jersey* v. *T.L.O.* (1985) the Court ruled that probable cause is not needed for school officials to search students as long as the circumstances make the search reasonable. In the *T.L.O.* case a teacher found a girl smoking in a restroom. When brought before the vice principal, the girl denied that she smoked at all. Searching her purse, the vice principal found not only cigarettes but also a small amount of marijuana. The Court ruled that the vice principal's search of the purse was not unreasonable under the circumstances.

After the ruling in *T.L.O.*, most cases involving student searches, such as locker searches, were decided at the state level. Some cases have concluded that lockers are school property and students have no expectation of privacy. Other cases have held that students do have at least some privacy rights in their lockers. Any search conducted by police officers still requires a search warrant.

SECTION 2

RESPONSIBILITIES OF LEADERSHIP

Today's leaders must balance an individual's right of privacy—traditionally, the right to be anonymous—against national security. One idea for striking that balance is to redefine privacy as a system of laws and customs overseen by government officers and privacy boards.

Private Communication

The landmark Supreme Court decision on wiretapping and other forms of electronic surveillance is *Katz* v. *United States* (1967). Since the *Katz* decision, however, the use of computers, cell phones, personal digital assistants, and other wireless devices has created new kinds of searches to which the Fourth Amendment must be applied. Cases involving what is called **cyber-surveillance**—searches of wireless communications—have yet to reach the Supreme Court.

The Fourth Amendment since 9/11 After the September 11, 2001, attacks on the World Trade Center and the Pentagon, Congress worried that terrorists might be plotting more attacks. In October 2001 Congress passed the USA PATRIOT Act, a law that greatly relaxed privacy protections and controls on searches and seizures. Among the law's controversial sections is a provision that allows government agencies to search a variety of information about Americans. For example, the FBI can require almost anyone—including phone companies, Internet service providers, libraries, and bookstores—to turn over records on their customers.

What troubles civil liberties advocates is that some of these searches do not require a warrant. Instead, they are authorized by a document called a **National Security Letter** (NSL). Unlike warrants, NSLs are not issued by a judge, and probable cause is not needed to obtain them. They are pieces of paper signed, issued, and used by the Federal Bureau of Investigation and other government agencies. The PATRIOT Act also contains a gag order—the recipient of an NSL is prohibited from disclosing that the letter was ever issued.

Wireless "Searches" Many of today's computers, phones, and other communication devices use wireless communication. Anyone with a scanner tuned to the proper frequencies can intercept these signals.

Limiting the Right to Privacy

Following the terrorist attacks on September 11, 2001, Congress passed laws, such as the USA PATRIOT Act, that expanded the authority of government agencies to take actions to protect the lives and safety of American citizens. ***How would you resolve the conflict between the Fourth Amendment's search and seizure protections and the threat of terrorist attacks?***

Some personal items may be seized by airport security guards.

Government agencies may monitor some electronic communications.

The government may obtain a list of the books you borrow from a library.

Federal law makes this interception illegal, except for law enforcement agencies. In fact, federal law requires that all wireless equipment sold in the United States is able to be monitored. Authorities usually must obtain a warrant to monitor wireless or electronic communications. But under the PATRIOT Act and the government terrorist-surveillance programs, some standards for obtaining warrants have been relaxed or eliminated. The Supreme Court may one day be asked to rule on these programs.

National Security and the Courts Several Fourth Amendment challenges to government surveillance programs are before federal courts. In *United States* v. *Arnold* (2006) a federal court ruled that authorities violated Arnold's Fourth Amendment rights when they searched the contents of his laptop computer as he went through airport security. The authorities argued that the search was routine and did not require reasonable suspicion. The court ruled the search inadmissible, and the government has appealed the ruling.

In 2006 the Electronic Frontier Foundation, a communications watchdog group, filed a class-action suit in federal court against AT&T. The suit accuses AT&T of turning over the phone records of millions of Americans to the National Security Agency. A federal court also has ordered a halt to the government's 20-year practice of secretly obtaining stored e-mails from e-mail service providers without a warrant (*Warshak* v. *United States*, 2007).

The government has argued strongly that its actions are necessary to protect national security, and it has appealed these cases. It is likely that the Supreme Court will be asked to decide these Fourth Amendment issues as well as other similar cases.

READING CHECK **Summarizing** Why are National Security Letters controversial?

Section 2 Assessment

hmhsocialstudies.com ONLINE QUIZ

Reviewing Ideas and Terms

1. **a. Describe** What is the **plain view doctrine**?
   b. Summarize In what situations can police conduct a **search** without a warrant?
   c. Elaborate Should searches of motor vehicles require police to have a warrant? Why or why not?
2. **a. Explain** What is **cyber-surveillance**?
   b. Evaluate What do you think is the most important factor in deciding whether a search is reasonable? Explain your answer.

Critical Thinking

3. **Evaluate** Why is it possible for people to agree on a fundamental value such as the right to privacy but disagree over the meaning of that right in specific situations? Give examples that illustrate your answer.

CASE STUDY LINK You answered the following questions at the end of the Case Study. Now that you have completed Section 2, think about and answer the questions again. Then compare your answers with your earlier responses. Are your answers the same or are they different?

4. Is a trained dog's sniff of someone or something a search of that person or thing? Explain why or why not.
5. Do you agree with the majority of the Court in the *Caballes* case or with the dissenting opinions? Explain why.
6. Would your opinion in the *Caballes* case be different if it had involved a bomb-sniffing dog instead? Explain why or why not.

SECTION 2

SIMULATION

Have You Been Seized?

How will the Supreme Court rule in *State* v. *Martin*? 21st CENTURY

Student Casebook

Use your Student Casebook to complete the simulation.

Issues relating to Fourth Amendment searches and seizures have been brought before courts for many years, and still not every question has been resolved. In this simulation, you will argue one such Fourth Amendment issue before the Supreme Court.

Roles

- Chief justice of the United States
- Eight associate justices
- Plaintiff's attorneys
- Defendant's attorneys
- Attorneys from the National Association of Law Enforcement Members (NALEM)
- Attorneys from the Foundation for Fourth Amendment Freedoms (FFAF)

1 The Situation

In a pat-down search during a traffic stop, police discovered a small amount of illegal drugs on the person of 18-year-old Greg Martin. Martin was convicted in state district court for drug possession. He appealed his conviction to the state supreme court. Martin claimed that under the Fourth Amendment the search that discovered the drugs was illegal—because he was a passenger in the car and there was no probable cause to search him. The state supreme court agreed and overturned his conviction. The state has now appealed the ruling to the Supreme Court of the United States.

Background

- Eighteen-year-old Joel Anderson (the driver) was giving his friend Greg Martin (a passenger) a ride home after school.
- Joel Anderson was pulled over by the police because his taillight was burned out.
- Officer William Gibson told Anderson that he would get a written warning and asked to see Anderson's driver's license. At that point Anderson admitted that he did not have a license because it had been suspended.
- Officer Gibson ordered both men out of the car. He arrested Anderson and told him that the car was impounded and would be towed.
- At that point, Martin told Officer Gibson that he was going to a nearby grocery store to call someone to pick him up and walked away from the car.
- Officer Gibson ordered Martin to return to the car. Martin did so without comment or objection. Officer Gibson patted Martin down and found a small amount of illegal drugs.
- Officer Gibson placed Martin under arrest as well and transported both men to the police station.

2 The Hearing

Attorneys for both the plaintiff and defendant will present their oral arguments to the Court. The plaintiff's case is presented first, followed by the defendant's. Justices may interrupt each argument at any time to ask the attorneys questions. After each side has made its argument, the Court will rule, either upholding or reversing the state supreme court's ruling that overturned Martin's conviction at trial.

The Chief Justice The chief justice will be in charge of the trial. He or she will read each side's amicus curiae brief and recognize the attorneys when it is their turn to speak. He or she will preside over the Court's deliberations at the end of the hearing and will assign one of the associate justices to write the Court's opinion. The chief justice will then "publish" the Court's decision by reading it aloud to the class.

The Associate Justices The associate justices will also read each side's amicus brief and listen to oral arguments. Along with the chief justice, they may interrupt each argument to ask the attorney questions about it. At the end of the hearing, all the justices will discuss the case and vote on how the Court should rule. Justices who disagree with the majority decision may write a dissenting opinion. If there is a dissenting opinion, the author will read it after the majority opinion has been read.

The Parties' Attorneys Each side's attorneys will prepare their oral argument and present it to the Court.

The Amicus Attorneys Attorneys representing each organization will write their amicus brief for the Court. They will also help the attorneys for whichever side they support in researching and preparing that side's case.

State v. Martin

Parties to the case

- The plaintiff: The State
- The defendant: Greg Martin

Amici curiae

- For the plaintiff: National Association of Law Enforcement Members (NALEM)
- For the defendant: Foundation for Fourth Amendment Freedoms (FFAF)

3 Debriefing

While the Supreme Court is deliberating its decision, write a one-page decision of your own, revealing how you would decide the case if you were on the Court. After the Court's decision is read, discuss whether you agree or disagree with the Court's opinion or opinions.

Amicus Curiae Briefs *Amicus curiae* (plural, *amici curiae*) is Latin for "friend of the court." The term refers to a person or organization that files a legal brief, with the court's permission, to express views on one or more issues in a case involving other parties because it has a strong interest in the subject matter of the action.

SECTION 3

Due Process and the Fourteenth Amendment

Reading Focus

The Fourteenth Amendment requires that states provide due process and equal protection under the law. These requirements have made this amendment one of the most important parts of the Constitution.

CASE STUDY **Due Process and Public Schools** Learn about how the Fourteenth Amendment right to due process applies to public schools.

WHAT YOU NEED TO KNOW Learn about how the Supreme Court has used the due process clause of the Fourteenth Amendment to expand and protect people's rights.

SIMULATION **Terrorists and Due Process** Use your knowledge to argue a case involving due process issues before the Supreme Court.

Student Casebook

Use your Student Casebook to take notes on the section and to complete the simulation.

Menteith-Caithness Consolidated School District
Office of the Superintendent

Notice of Student Rights and Responsibilities

Student and Parent Complaints or Grievances

1. The student or parent may designate a representative through written notice to the District at any level of this process. "Representative" shall mean any person who or organization that is designated by the student or parent to represent the student or parent in the complaint process.

School boards may conduct student disciplinary proceedings that require that student due process rights—such as the right to notice and a hearing—be protected.

CASE STUDY

Due Process and Public Schools

What due process rights, if any, do students have if they are facing suspension from public school? The Supreme Court addressed the issue in *Goss* v. *Lopez* in 1975.

The School Suspension Case

In 1971 school officials in Columbus, Ohio, suspended a number of high school students for up to 10 days for student misconduct. One of the students, Dwight Lopez, asserted that he was an innocent bystander. Lopez filed a lawsuit claiming he had been denied his due process rights because school officials suspended him without a hearing. Joining Lopez as plaintiffs in the lawsuit were eight other students. They asked a federal district court to order that their suspensions be removed from their school records.

The district court ruled that the suspensions were unconstitutional because Lopez and the other plaintiffs had been denied due process. The court held that at a minimum the school system should have given the students notice of their suspension and held a hearing either before suspending them or shortly afterward. The school system appealed to the Supreme Court.

The Court Hears *Goss* v. *Lopez*

School system official Norval Goss argued that because there was no constitutional right in Ohio to a public education, there was no requirement that the school district provide students with due process—notice of their suspension and a hearing—before suspending them.

The attorneys for Lopez and the other plaintiffs pointed to Ohio law, which requires the state to provide a free education for all students. They argued that suspending students without due process unconstitutionally deprived students of this right.

The Supreme Court's Decision

The Court decided *Goss* v. *Lopez* in 1975. It said in a 5–4 decision that because Ohio offered public education to its citizens, students could not be deprived of the right to that education without due process of law.

Justice Byron White wrote the opinion for the majority. He agreed with Goss that the Ohio Constitution did not require the state to educate its citizens. But by creating a full K–12 (kindergarten through grade 12) education system and requiring students to attend school, Ohio had made an education a property right. Taking away that valuable right "unilaterally and without process," White wrote, "collides with the requirements of the Constitution."

The Court ruled that either before a suspension or soon thereafter, students must be given a hearing and allowed to explain their version of the events at issue. The Court stopped short, however, of allowing students to call or cross-examine witnesses.

The Aftermath

Student due process issues still arise. Lower courts continue to address questions left unanswered by *Goss*, such as how specific the notice must be. In general, courts defer to school officials when issues involving student procedural due process issues arise. However, courts have consistently interpreted *Goss* to mean that students who are suspended for longer than 10 days must be granted more due process rights.

What Do You Think?

1. Do you agree that a public education is a property right? Why or why not?
2. Should students suspended for fewer than 10 days for a rule violation have a right to a hearing? Why or why not?
3. Should students who are expelled receive more due process than those who are suspended? Explain why or why not.

SECTION 3

WHAT YOU NEED TO KNOW

Due Process and Equal Protection

Key Terms
unenumerated rights

The Fourteenth Amendment provides that no state shall "deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." As you read in Chapter 10, this language has been interpreted by the Supreme Court to apply many of the guarantees in the Bill of Rights to actions of state governments through the doctrine of incorporation.

Equally important, the Fourteenth Amendment has enabled the Court to incorporate and apply the idea of "equal protection" against actions of the federal government. Nowhere in the Constitution or the Bill of Rights is the right to equal treatment under the law by the federal government guaranteed.

The part of the Fourteenth Amendment that guarantees "due process of law" is called the due process clause. The language that guarantees the equal protection of the laws is known as the equal protection clause. These two clauses are related, but the Supreme Court has given each clause its own meaning. To have due process of law, both the laws themselves and the process and procedures of applying and enforcing the law must be fair. Equal protection means that, all other circumstances being equal, the law is applied the same way to each person. In other words, each person in the same or similar circumstances stands before the law equally.

Applying the idea that both the law and legal procedures must be fair, the Court has defined the two types of due process. The first type is called procedural due process. Procedural due process requires that certain *procedures* must be followed in carrying out and enforcing the law. For example, the city cannot use eminent domain to take your property for a new city hall without giving you notice and an opportunity to contest the taking.

The second form is known as substantive due process, which stems from the belief that if the way that laws are carried out must be fair, the laws themselves should be fair, too. That is, what laws say and require—their content or *substance*—must be fair. The doctrine of substantive due process arose following the addition of the Fourteenth Amendment in 1868. It is part of the larger idea that people have natural rights that are not listed in the Constitution, and that to be fair, a law cannot violate people's natural rights. The Quick Facts chart on the next page highlights the differences between procedural and substantive due process.

READING CHECK **Summarizing** Explain how procedural due process and substantive due process ensure that a person will have a fair trial.

REAL-WORLD EXAMPLE

Damages and Due Process In *Philip Morris* v. *Williams*, a jury found that Jesse Williams's death was caused by smoking and that the Philip Morris tobacco company should pay his widow $79.5 million in damages. Part of that award was for similar harm caused by Philip Morris to other people who were not parties to this lawsuit. Philip Morris appealed the damage award to the Supreme Court. In 2007, the Court ruled for Philip Morris, saying that due process forbids punishing a defendant for injury inflicted upon persons who are not even parties to the litigation.
Applying Information How would making Philip Morris pay damages to nonparties violate requirements of due process?

ACADEMIC VOCABULARY
doctrine a principle of law established through past decisions

Understanding Due Process

Under the Fifth and Fourteenth amendments to the Constitution, no government action may deprive a person of "life, liberty, or property, without due process of law." Due process requires the government to act fairly when carrying out government actions. Courts have separated due process into two parts: procedural due process and substantive due process. The difference between these two concepts is not always clear. To help you understand the difference, read the explanations below.

PROCEDURAL DUE PROCESS

QUICK FACTS

Procedural due process is based on the concept of "fundamental fairness." It ensures that government *application* of a law is fair and does not restrict a person's constitutional rights. Due process applies to both civil and criminal law. It generally requires:

- notice to the person of the action being taken
- an opportunity to be heard regarding the action
- an impartial decision maker
- the right to confront and cross-examine adverse evidence, parties, and witnesses
- a decision on the record
- assistance of counsel

SNYDER v. *MASSACHUSETTS* (1934): A PROCEDURAL DUE PROCESS CASE

Mr. Snyder and two other men were accused of murder. During Snyder's trial, the judge, the jury, a bailiff, the court reporter, and attorneys for both sides went to view the scene of the crime. Snyder requested that he be allowed to attend, but the judge denied his request. Snyder was convicted of murder. He appealed his conviction to the Supreme Court, asserting that under the Constitution, he had a due process right to view the crime scene as part of his defense.

The Court ruled against Snyder. It said that procedural due process is violated when an action "offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental." In this case, denying Snyder the right to attend the viewing did not violate his right to due process because the judge controlled the viewing and Snyder's counsel was present.

In a dissenting opinion, Justice Owen Roberts wrote that due process requires that "certain fundamental rules of fairness be observed; forbids the disregard of those rules; and is not satisfied though the result is just, if the hearing was unfair." In Roberts's opinion, everyone else was at the viewing, so Snyder should have been, too.

SUBSTANTIVE DUE PROCESS

QUICK FACTS

The principle of substantive due process is used to examine whether the *content* of a government action—a criminal or civil law—is fair and reasonable and does not unjustly restrict a person's constitutional rights. Substantive due process applies to both natural persons and corporations. It applies to:

- police power, as in regulations to promote the public health, safety, and morals
- laws regulating worker safety, wages, hours, and places of work
- government taxing, zoning, and eminent domain powers
- noneconomic rights such as privacy, family relationships, the right to die, the right to travel, the right to personal dignity, and other unenumerated rights

WASHINGTON v. *GLUCKSBERG* (1997): A SUBSTANTIVE DUE PROCESS CASE

The state of Washington bans physician-assisted suicide and makes it a crime. Dr. Harold Glucksberg, four other physicians, three terminally ill patients, and a nonprofit organization sued the state, arguing that the ban violated a terminally ill person's right of privacy and right to die under the Fourteenth Amendment's due process clause.

The federal district court ruled in favor of the plaintiffs. The Ninth Circuit Court of Appeals affirmed the district court's ruling. Washington appealed to the Supreme Court.

The Supreme Court focused on two due process clause issues: protecting our nation's fundamental, historically rooted rights and liberties; and defining what constitutes a due process liberty interest. The Court held that the right to assisted suicide is not a fundamental liberty interest protected by the due process clause since its practice has been, and continues to be, offensive to our national traditions and practices. Moreover, the Court held that Washington's ban was rationally related to the state's legitimate interest in protecting medical ethics, shielding disabled and terminally ill people from prejudice that might encourage them to end their lives, and preserving human life.

SECTION 3

Substantive Due Process

One way of interpreting the Constitution, including the Bill of Rights, is to understand that the Constitution does not create or grant rights. Instead, it protects and guarantees those "unalienable rights" referred to in the Declaration of Independence. Under this interpretation, the purpose of the Ninth Amendment, when it states that "the enumeration in the Constitution of certain rights shall not be construed [understood] to deny . . . others retained by the people," is to recognize and protect those rights that are not explicitly stated. These unstated rights are known as **unenumerated rights**. The Supreme Court has used the doctrine of substantive due process to decide what some of these rights are, including certain property rights, the right to travel, the right to privacy, the right to personal autonomy, and the right to personal dignity.

ACADEMIC VOCABULARY

autonomy personal sovereignty, independence, self-direction

Protecting Property Rights

At first, the Court used the doctrine of substantive due process mainly to define and protect property rights and other economic rights. Among the most famous examples of this use is *Lochner* v. *New York* (1905), also known as the Bakeshop Case.

The Bakeshop Case In 1895 the New York legislature passed the Bakeshop Act. This law prohibited bakery workers from being required to work more than 10 hours a day or 60 hours a week. Labor reformers believed that spending more time in such a dusty

The Bakeshop Case

***Lochner* v. *New York* (1905)**

Significance: This case limited the states' ability to regulate labor and industry, such as limiting the number of hours per week a person could work.

Background: Bakery owner Lochner claimed the law violated his Fourteenth Amendment due process rights by depriving him of his freedom to make contracts with his employees.

Decision: Lochner won. The Supreme Court ruled that the Fourteenth Amendment includes the implicit individual property right to buy and sell labor. The Court ruled that any state law restricting that right is unconstitutional.

A photo of a bakery from the *Lochner* period

environment could harm people's health. Bakery owner Joseph Lochner was arrested for requiring an employee to work more than 60 hours a week. He appealed his conviction to the Supreme Court.

Lochner claimed that New York's law violated the Fourteenth Amendment's equal protection clause because it applied only to bakery workers. Lochner also argued that since the law prevented him from running his business as he chose, it violated the amendment's due process clause by depriving him of his property rights—an individual's right to negotiate an employment contract—without due process of law. The state countered that its law was a proper exercise of its power to protect the well-being of its citizens.

The Decision and the Dissent In a 5–4 decision, the justices agreed with Lochner. They overturned his conviction and ruled the Bakeshop Act unconstitutional. Justice Rufus Peckham wrote the majority opinion. When considering whether an exercise of a state's police power to safeguard the public health is constitutional, Peckham wrote, the Court must ask if the regulation is reasonable and necessary, or unreasonable, unnecessary, and arbitrary. In this case, the Court did not believe that working long hours in a bakery was unhealthy. As a result, the Court ruled that the New York law was unconstitutional because it was "an illegal interference with the rights of individuals, both employers and employees, to make contracts regarding labor upon such terms as they may think best."

Justices John Marshall Harlan and Oliver Wendell Holmes wrote strong dissents. Both argued that the Court's majority should have respected the legislature's judgment instead of following their own point of view on this issue. "A constitution is not intended to embody a particular economic theory," Holmes wrote. "I think that the word liberty in the Fourteenth Amendment is perverted when it is held to prevent the natural outcome of a dominant opinion."

***Lochner's* Effect** After the *Lochner* decision the first criticisms of substantive due process began to be heard. Critics attacked the Court for using the doctrine to impose its views and values on the nation. As the Court continued to apply substantive due process to laws that affected property rights, criticism grew.

Finally, in *United States* v. *Carolene Products Company* (1938), the Court announced that it would apply only a rational basis test to economic regulations. The rational basis test meant that for a law to be upheld, the government would have to show only that it had a good reason—a rational basis—for passing the law. When the Court is called upon to review a law, the rational basis test is the least strict standard it can apply.

The practical result of the Court's announcement was that it nearly stopped applying substantive due process to property rights. However, the Court said in the *Carolene* decision that it would apply a stricter test to laws that affected personal rights.

Minimum Wages for Women In 1918 Congress enacted a law requiring that women in the District of Columbia be paid a minimum wage. The Children's Hospital of the District of Columbia challenged the constitutionality of the law. In *Adkins* v. *Children's Hospital* (1923), the Supreme Court, following the *Lochner* rule, declared the law unconstitutional as an infringement on an employer's right to negotiate employment contracts with the female employees.

Applying Information Should employers and employees have unlimited freedom to enter into employment contracts? Why or why not?

SECTION 3

Protecting Personal Rights

After *Carolene*, the Court did begin to use substantive due process to define basic personal rights, none of which are expressly listed in the Constitution. For example, the Court recognized the rights to privacy, of autonomy, and to travel and establish a residence. The Court also guaranteed freedom of association.

Right to Privacy The privacy right was first recognized by the Court in *Griswold* v. *Connecticut* (1965), a case in which the Court struck down an 1879 law that banned the use of contraceptive devices. Eight years later the Court expanded the privacy right in the case of *Roe* v. *Wade* (1973). In *Roe* the Court ruled that the right to privacy gave women the right to decide whether or not to have an abortion.

As justices have died or retired and the makeup of the Court has changed, it has pulled back somewhat on the connection between privacy rights and abortion in cases such as *Webster* v. *Reproductive Services* (1989) and *Planned Parenthood of Southern Pennsylvania* v. *Casey* (1993). At the same time, however, the Court applied the privacy right to a new area—the right to die.

Determining the Right to Die In 1983 Missouri resident Nancy Beth Cruzan was critically injured in an auto accident. Paramedics restored her breathing and heartbeat at the scene, but she remained in what doctors call a "persistent vegetative state"—unconscious, unresponsive, and fed through a tube placed into her stomach. Doctors told Cruzan's parents she would never recover. In 1987 Cruzan's parents asked that the feeding tube be removed and that Nancy be allowed to die. The hospital refused, relying on a state policy that required "clear and convincing evidence" of what choice Nancy would make. The parents sued, arguing that their daughter would never want to live in such a condition.

Protecting Unenumerated Rights

The Constitution does not list all the rights that individuals have. The Supreme Court has used the due process clause of the Fourteenth Amendment to recognize and protect unenumerated, or unlisted, rights, such as Lochner's right to contract and the ones shown here. *Why has the Supreme Court recognized unenumerated rights?*

Travel

Send Children to Private School

Autonomy and Dignity

The "Right to Die" Case

***Cruzan* v. *Director, Missouri State Department of Public Health* (1990)**

Significance: Under the due process clause a person has a constitutional right to refuse treatment and to die.

Background: Nancy Cruzan was left in a vegetative state by a car accident. Her parents requested that she be allowed to die. The hospital refused.

Decision: In its 5–4 decision, the Court upheld the principle that incompetent persons are able to exercise the right to refuse medical treatment—and to die—under the due process clause. However, the Court ruled in favor of the Missouri Department of Health because there was no "clear and convincing evidence" of what Nancy Cruzan wanted. The Court upheld the state's policy and withdrawing Cruzan's life support was not allowed.

Nancy Cruzan before her car accident

The *Cruzan* Decision The trial court ruled for the parents. Yet the Missouri Supreme Court overturned the lower court, holding that there was no clear and convincing evidence that Nancy Cruzan wished to die. Her parents appealed to the U.S. Supreme Court.

In *Cruzan* v. *Director, Missouri State Department of Public Health* (1990), the Court ruled that the right to refuse medical treatment was a privacy right protected by the Fourteenth Amendment. However, at the same time, it also upheld the ruling of the Missouri Supreme Court. In a 5–4 decision, the justices noted that there was no strong evidence of what Cruzan wanted. To end her life-sustaining medical treatment without such evidence would violate her right to due process, the Court said.

The Effect of *Cruzan* Although the Court ruled against Cruzan's parents, this case established a person's right to refuse medical treatment and to die. It also set the due-process standard by which someone else can make that decision if the patient is unable to.

Following the Supreme Court's ruling, Cruzan's parents went back into state court in Missouri in 1990. There, they produced evidence of conversations with her friends in which Cruzan had said that she would never want to "live like a vegetable." The court ordered her feeding tube removed, and Cruzan died 12 days later.

Since the *Cruzan* decision, the Court has ruled that the right to die does not include a Fourteenth Amendment right to commit suicide. In 1997 it upheld laws banning physician-assisted suicide (*Washington* v. *Glucksberg* and *Vacco* v. *Quill*). As the population of the United States ages and medical care becomes more expensive, the Court may be asked to consider new "right-to-die" issues.

READING CHECK **Identifying the Main Idea** How has the Court's theory and use of substantive due process changed?

WEBQUEST

Due Process and the Right to Die The *Cruzan* right-to-die case followed a 1976 case in the New Jersey Supreme Court involving Karen Ann Quinlan. More recently, the 2005 case of Terri Schiavo involved many of the same issues. Assisted suicide cases include not only the *Washington* and *Vacco* cases but also a 2006 case, *Gonzales v. Oregon*.

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Go online to begin a Webquest on due process and the right to die with dignity.

SECTION 3

Procedural Due Process

Procedural due process has a very different history from substantive due process. While substantive due process is a fairly new concept, the idea of procedural due process is an old one. It grew out of Magna Carta, the document signed in 1215 in which English nobles required the king to follow the law of the land.

Procedural Due Process and Property Rights

Most of the attention given procedural due process focuses on life and liberty issues—mainly as due process applies to the arrest and prosecution of persons accused of crimes. Property issues typically involve depriving people of their personal property or land.

In the 1970s, however, the Supreme Court expanded the concept of property to include other things to which people are entitled—including certain benefits, such as an education and statuses. In two landmark cases, it established minimum standards for procedural fairness before government can deprive people of these rights.

***Goldberg* v. *Kelly* (1970)** John Kelly and other New York residents receiving federal financial assistance challenged the constitutionality of procedures for termination of their aid. The state of New York originally offered no official notice or opportunity for hearings to those whose aid was about to be terminated. Recipients were allowed to file a written protest or to attend a hearing *after* their benefits had been cut off. Kelly argued that he should be entitled to a hearing *before* he was terminated. When his request was denied, he sued the city, which administered the programs. After Kelly filed his suit, New York state implemented procedures for hearings.

When local courts ruled in Kelly's favor, the city appealed to the Supreme Court. They argued that giving all aid recipients the right to a full evidentiary hearing would be too expensive.

In 1970 the Court ruled 5–3 that Kelly was entitled to a full hearing before his benefits were terminated. The justices ruled that he or his attorney had the right to appear at the hearing, to present evidence and arguments, and to cross-examine witnesses. The Court rejected the city's argument that a hearing after benefits were cut off satisfied Kelly's Fourteenth Amendment rights. "Termination of aid pending resolution of a controversy over eligibility may deprive an eligible recipient of the very means by which to live while he waits," wrote Justice William Brennan for the majority.

The *Goldberg* decision changed the way that all government payments, such as disability benefits or pensions, are administered. Before this case such payments were often viewed as charity or a privilege. In *Goldberg* the Court recognized aid payments as a form of property, and, the Court said, government cannot deprive people of this kind of property without due process of law.

How Much Process Is Due? George Eldridge began receiving Social Security disability benefits in 1968. In 1972 the government stopped Eldridge's benefits without a pre-termination hearing. Eldridge sued, claiming that his Fifth Amendment right to due process was violated. In *Mathews* v. *Eldridge* (1976), the Supreme Court ruled that even though Eldridge had a property right in his benefits, no pre-termination hearing was required. The Court ruled that the interests of, and possible harm to, the individual must be balanced against the additional costs and benefits to the government of the additional procedures.

Applying Information How can *Mathews* and *Goldberg* both be right? Give examples to explain your answer.

The Unwed Father Case

***Stanley* v. *Illinois* (1972)**

Significance: Established, in general, the minimum procedural steps required under the Constitution.

Background: Stanley was a father but not, under Illinois law, a parent. When his children were made wards of the state, Stanley sued, arguing that he had been denied the due process that married fathers had under state law.

Decision: The Supreme Court agreed with Stanley and ordered that unwed fathers are entitled to the same due process notice and hearing that married fathers get.

In cases involving family law issues, every parent is entitled to due process fairness.

***Stanley* v. *Illinois* (1972)** Illinois resident Peter Stanley was not married to Joan Stanley, the mother of their three children. Illinois law defined a "parent" as the father and mother of a child born to a married couple and the mother—but not the father—of a child born to an unmarried couple. When Joan Stanley died, the state removed the children from Stanley's home because, according to the state's definition, Peter Stanley was not their parent. Stanley thought that the Illinois law was unfair—he had never been shown to be an unfit parent—and sued to regain custody of his children. The state court ruled that Stanley's fitness or unfitness as a parent was not relevant. Once it was shown that he was not married to the children's mother, state law allowed the removal of his children.

Stanley appealed the ruling to the Supreme Court. He argued that he had been denied due process because the state had never held a hearing to determine his fitness as a father. He also claimed that treating unwed fathers differently from other fathers violated the Fourteenth Amendment's equal protection clause. In 1972 the justices, by a 5–2 vote (two justices did not participate in the decision), agreed with both of Stanley's arguments. The Court held that unwed fathers are entitled to due process hearings—just like married fathers and unwed mothers—to determine their fitness as a parent before their children can be declared wards of the state.

The *Stanley* case is also important beyond the area of family law. In its decision, the Supreme Court established what the Constitution requires in the way of due process for any person. In general, the Court said, before government at any level can deprive a person of rights or property, the person must at least be given formal notice and a hearing to meet the requirements of procedural fairness.

SECTION 3

Procedural Due Process and Juvenile Justice

By 1899 states recognized that juvenile offenders should be treated differently from adult criminals. Unfortunately, juvenile proceedings were often informal and did not include the due process protections of the Fifth and Fourteenth amendments. In the 1967 landmark case *In re Gault*, the Supreme Court extended many of the due process requirements of adult proceedings to the juvenile justice system.

Background to *Gault* The mother of 15-year-old Gerald Gault came home from work to find him missing from their Gila County, Arizona, home. She later discovered that Gerald had been taken into custody by the sheriff, following a complaint by a woman that someone had made an lewd phone call to her. The woman believed the caller to be Gerald.

Mrs. Gault went to the juvenile center where Gerald was being held. Only then did she learn that Gerald would have a juvenile court hearing the next afternoon—although she was never told clearly what Gerald was charged with. Neither Gerald nor his parents were advised he could have an attorney. During the hearing, the judge took no testimony from Gerald's family, no one testified under oath, and no record was made of the proceedings. The woman who complained was not required to appear, denying Gerald his Sixth Amendment right to confront and cross-examine his accuser. The judge found Gerald guilty and sentenced him to the state industrial school until he was 21—a period of six years.

The Juvenile Justice Case

***In re Gault* (1967)**

Significance: The Supreme Court extended many of the requirements of fundamental fairness to juvenile criminal proceedings.

Background: Gerald Gault, 15, was accused of making obscene telephone calls and was taken into custody by the police. At his hearing, neither Gerald nor his parents were told he could have an attorney, nor was the complaining party present for Gerald to cross-examine. After the hearing, the family had no right to appeal Gerald's punishment.

Decision: Juveniles accused of crimes are entitled to most of the procedural safeguards—such as the right to notice and hearing, the right to an attorney, and the right to cross-examine witnesses—that adult criminal defendants are guaranteed.

Juvenile defendants are entitled to due process.

The *Gault* Decision Under Arizona law, Gerald Gault had no right to appeal his conviction or his punishment, so his parents petitioned the Supreme Court for his release. Gault's attorneys claimed that Arizona's juvenile code violated the Fourteenth Amendment protection of due process and that minors should have the same rights as adults in judicial procedures. The state argued that its juvenile justice system was deliberately informal so that the courts could do what was in the best interests of delinquent children.

In an 8–1 decision the justices rejected the state's argument. "Neither the Fourteenth Amendment nor the Bill of Rights is for adults alone," wrote Justice Abe Fortas in the majority opinion. Fortas said, "Under our Constitution, the condition of being a boy does not justify a kangaroo court." Gerald Gault, the Court said, is entitled to his due process protections.

In re Gault

Gault's Impact The most important result of the *Gault* decision is that it gave juveniles most of the same due process rights—such as the rights to know what they are charged with, to counsel, and to confront witnesses—as adult defendants. States had to change their juvenile court systems and procedures to provide these rights.

As far as it went, though, *Gault* did not give juvenile defendants all the same rights as adult defendants. For example, in most states juvenile defendants still do not have a constitutional right to trial by jury. In addition, in *Schull* v. *Martin* (1984), the Court ruled that due process for juveniles does not include the right to be released from custody while they are awaiting trial.

READING CHECK **Summarizing** What is procedural due process?

Section 3 Assessment

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Reviewing Ideas and Terms

1. **a. Identify** What does the Fourteenth Amendment's due process clause state?
   b. Compare How are the due process clause and equal protection clause related?
2. **a. Define** What are **unenumerated rights**?
   b. Explain Why is the doctrine of substantive due process controversial?
   c. Elaborate Do you think there should be a right to privacy? Why or why not?
3. **a. Recall** From when and where did the doctrine of procedural due process originate?
   b. Analyze How does procedural due process differ from substantive due process? How is it the same?
   c. Evaluate Do you think juvenile offenders should receive the same treatment as adults who are accused of crimes? Explain.

Critical Thinking

4. **Evaluate** Should the Supreme Court create and protect rights that are not specifically set out in the Constitution? Explain why or why not.

CASE STUDY LINK You answered the following questions at the end of the Case Study. Now that you have completed Section 3, think about and answer the questions again. Then compare your answers with your earlier responses. Are your answers the same or are they different?

5. Do you agree that a public education is a property right? Why or why not?
6. Should students suspended for fewer than 10 days for a rule violation have a right to a hearing? Why or why not?
7. Should students who are expelled receive more due process than those who are suspended? Explain why or why not.

SECTION 3

SIMULATION

Terrorists and Due Process

Student Casebook

Use your Student Casebook to complete the simulation.

Should suspected terrorists receive due process of law? 21ST CENTURY

The Fifth and Fourteenth Amendments guarantee that Americans may not be denied life, liberty, or property without due process of law. However, the Supreme Court has applied this protection in some very different ways. Use what you have learned in Section 3 to complete this simulation about a fictional procedural due process case being argued in the Supreme Court.

Roles

- Chief justice of the United States
- Associate justices
- Attorneys for the defendant
- Attorneys for the plaintiff
- Attorneys for the American Center for Civil Justice (ACCJ)
- Attorneys for Terrorism Victims and Survivors for Justice (TVSJ)

1 The Situation

A number of people suspected of plotting or having committed terrorist acts against the United States are imprisoned at a U.S. military base in another country. These individuals have not been charged with a crime. They have never had a hearing or been brought to trial. They also have not been allowed to hire attorneys to represent them. Several of these individuals have been imprisoned for more than two years. Two individuals are U.S. citizens. The rest are citizens of other countries. A civil rights group has appealed on the detainees' behalf to the Supreme Court, asking that the prisoners receive due process of law.

Key Facts

- The civil rights group acting on the detainees' behalf is named Americans Protecting Civil Liberties (APCL).
- The group is seeking due process for the detainees, including the two U.S. citizens.
- All detainees were arrested outside the United States.
- Most of the detainees do not live in the United States.
- Americans Protecting Civil Liberties is the plaintiff in this case. The United States is the defendant.
- Another civil liberties group, the American Center for Civil Justice (ACCJ), has filed an amicus curiae brief with the Court in support of the plaintiff.
- A victims rights group, Terrorism Victims and Survivors for Justice (TVSJ), has filed an amicus curiae brief with the Court supporting the United States.

2 Oral Arguments

Attorneys for plaintiff and defendant will present their oral arguments to the Supreme Court. The plaintiff's argument is presented first, followed by the defendant's argument. Any justice may interrupt any presentation at any time to ask questions of the attorneys. After both sides have concluded their arguments, the Court will rule on the question of what, if any, due process rights under the Fifth and Fourteenth amendments the detainees may be entitled to. The Court may order due process for all, some, or none of the detainees.

The Chief Justice The chief justice will be in charge of the proceeding, including recognizing the attorneys when it is their turn to speak. He or she will read all the briefs submitted in the case and will preside over the Court's deliberations at the end of the hearing. The chief justice may assign one of the justices to write the Court's opinion. The justice who writes the opinion will then "publish" it by reading it to the class.

The Associate Justices The associate justices will read all the briefs submitted and listen to oral arguments. Justices may interrupt any argument to ask the attorney questions about it. At the end of the hearing, all of the justices will discuss the case and reach the Court's decision. Justices who disagree with the majority decision may write a dissenting opinion if they wish. If there is a dissenting opinion, the author will read it to the class after the majority opinion has been read.

The Parties' Attorneys Each side's attorneys will prepare their argument and present it orally to the Court.

The Amicus Attorneys The attorney for each organization will write its amicus curiae brief for the court. They also will help the attorneys for the side they support in researching the case and in preparing its oral argument.

APCL v. United States

The parties to this case are:

- Plaintiff: Americans Protecting Civil Liberties
- Defendant: United States

Amici Curiae

- For the plaintiff: American Center for Civil Justice
- For the defendant: Terrorism Victims and Survivors for Justice

3 Debriefing

"Those who would give up essential liberty to purchase a little temporary safety, deserve neither Liberty nor Safety," is a quote attributed to Benjamin Franklin. Use what you have learned about due process to discuss the trade-off between liberty and safety today.

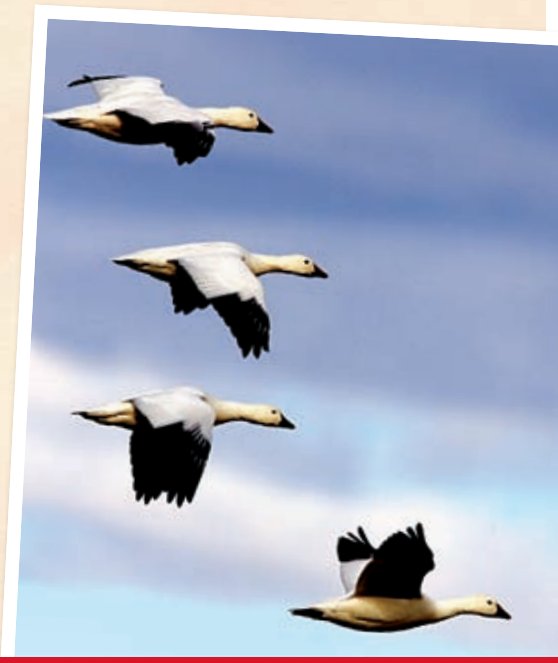
Amicus Curiae Briefs *Amicus curiae* (plural, *amici curiae*) is Latin for "friend of the court." The term refers to a person or organization that files a legal brief, with the court's permission, to express views on one or more issues in a case involving other parties because it has a strong interest in the subject matter of the action.

SECTION 4

Federalism and the Supreme Court

Reading Focus

In Chapter 4 you read that federalism is a system of government in which power is divided between a central government and regional governments. The Constitution gives the national government power over some issues and reserves to the state governments power over other issues. The balance of power between the national government and the states shifts from time to time as a result of legislation and Supreme Court decisions.



CASE STUDY **Treaties and States' Rights** Learn about the relationship between federal law, such as treaties with other countries, and state laws.

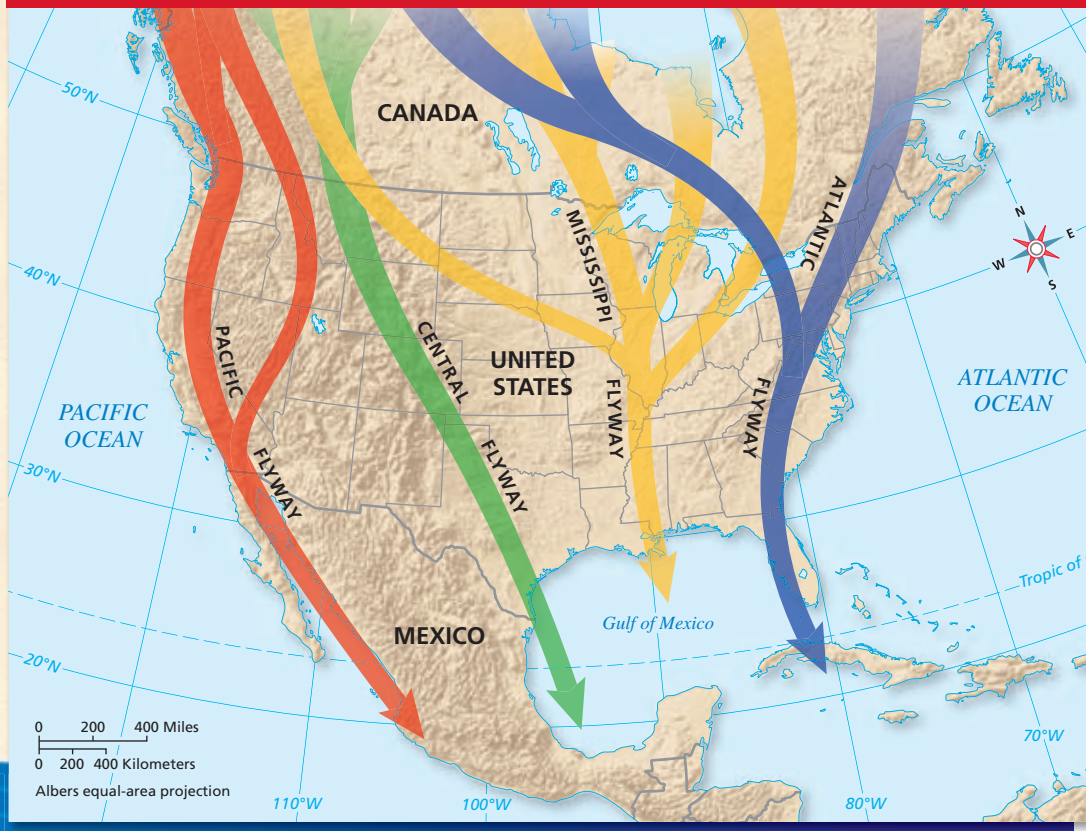
WHAT YOU NEED TO KNOW Learn about the distribution of power between the federal and state governments.

SIMULATION **Arguing a Federalism Case** Use your knowledge to argue a Supreme Court case involving the commerce clause, states' rights, and the Eleventh Amendment.

Student Casebook

Use your Student Casebook to take notes on the section and to complete the simulation.

North American Migratory Flyways



State boundaries have no meaning to migratory birds such as snow geese. Federal law, adopted as part of an international treaty, protects migratory bird species against state hunting laws.

CASE STUDY

Treaties and States' Rights

Hunting and fishing are typically regulated by state governments. Should the federal government have any power over state-regulated activities, such as restricting the hunting of certain animals within a state's borders?

Protecting Migratory Birds

For many years, wild animals were considered to be the property of the states in which they lived. However, wild animals, especially birds, move across state and international boundaries freely. The federal government used this fact in trying to protect migratory birds by regulating bird hunting. Until 1920, however, the courts struck down such federal laws as unconstitutional.

The United States and the United Kingdom signed a treaty in 1916 to protect birds that migrated between the United States and Canada. Two years later Congress passed the Migratory Bird Treaty Act to implement the treaty. The law prohibited the killing or capturing of bird species covered by the treaty.

In Missouri, state authorities tried to prevent Ray Holland, a federal game warden, from enforcing the act. They claimed that the act was an unconstitutional exercise of federal power. A federal district court ruled the act constitutional and dismissed Missouri's lawsuit. Missouri appealed the decision to the Supreme Court.

The Court Hears *Missouri* v. *Holland*

Attorneys for the U.S. government argued that Article II, Section 2, of the Constitution gives the president the express power to make treaties. They also noted the supremacy clause in Article VI, which makes the Constitution, federal laws, and treaties—including the Migratory Bird Treaty—the supreme law of the land.

Missouri's attorneys claimed that the Migratory Bird Treaty Act violated the Tenth Amendment and was an unconstitutional intrusion into Missouri's sovereign powers. They noted that regulating hunting was not a power expressly granted to Congress in the Constitution, which therefore made it a power reserved to the states by the Tenth Amendment. They argued that Congress should not be able to use the president's treaty power to pass a law that would be unconstitutional if it were passed directly.

In *Missouri* v. *Holland* (1920), the Court upheld the lower court's decision. The Court observed that some matters require national action and that the national government must have the power to deal with those matters. As a result, the federal government can, under an international treaty, regulate activities within states that it might otherwise have no power to control. The supremacy clause allows Congress to pass laws necessary to implement treaty agreements to deal with such matters. The Court also ruled that migratory birds, which do not recognize borders, are not the property of anyone.

Holland's Impact

Holland was important because it clarified, and expanded, the limits of federal power to conduct international relations. Cases after *Holland* have continued to recognize the federal government's expanded authority over state laws when the nation is dealing with international issues.

What Do You Think?

1. Should the hunting of migratory birds be controlled by the states, which license hunters, or by federal authorities? Explain your point of view.
2. Was the Migratory Bird Treaty Act a proper expansion of federal power over the states? Why or why not?
3. Could the federal government amend the Constitution by making a treaty with another country? Explain.

SECTION 4

WHAT YOU NEED TO KNOW

Expanding Federal Authority

Key Terms
selective exclusiveness

The commerce clause of the Constitution (Article I, Section 8, Clause 3) states that Congress has the power "to regulate commerce with foreign Nations, and among the several States, and with the Indian Tribes." Congress's use of this clause and the Supreme Court's interpretation of it have significantly defined the balance of power between the national government and the states. As a result, it has also helped to shape American life.

One way Congress has used its power to regulate commerce is in trying to end racial discrimination in the United States. The Supreme Court upheld this use of the power in the *Heart of Atlanta Motel* v. *United States* (1964). That case involved a federal law, Title II of the Civil Rights Act of 1964. The Court held that Congress could force private businesses—such as a large motel in downtown Atlanta, Georgia—not to discriminate against African Americans. The Court ruled that the motel was engaged in interstate commerce (75 percent of the motel's guests were from out of state) and that racial discrimination had a disruptive effect on interstate commerce.

READING CHECK **Identifying the Main Idea** What part of the Constitution has had the greatest impact on changing the Constitutional system of federalism?

REAL-WORLD EXAMPLE

***Daniel* v. *Paul* (1969)** In *Daniel* v. *Paul*, the Supreme Court applied Title II of the Civil Rights Act of 1964 to a family business in a rural area. The Pauls, husband and wife, owned and operated a small private recreational park in Arkansas. Most of their customers were white residents of Arkansas. African Americans were denied admission to the park. However, the park advertised in a way to attract travelers from other states and items sold at the park's snack bar had moved in interstate commerce. Therefore, the Court said, the park was subject to the Civil Rights Act. As a result, the Court ruled, the Pauls could not bar anyone from the park because of their race.

Applying Information
Should having snack food items that moved in interstate commerce be enough to make the Pauls subject to the Civil Rights Act? Why or why not?

The Commerce Clause and the Court

The Supreme Court's first interpretation of the commerce clause in *Gibbons* v. *Ogden* (1824) is discussed in Chapter 5. After *Gibbons*, Congress rarely used the commerce clause to expand federal government power until the late 1800s. But the Supreme Court laid the groundwork for this use in 1852 in *Cooley* v. *Board of Wardens*. That case was the first time the Court used the doctrine of selective exclusiveness. **Selective exclusiveness** means that when the commerce at issue requires national, uniform regulation, only Congress may regulate it. But if the commerce does not need exclusive national regulation and can be regulated locally, the states may regulate it.

The *Cooley* decision has never been overruled. But as the following two cases illustrate, the doctrine of selective exclusiveness has not been applied automatically or uniformly. Other factors, such as the political leanings of the justices or the Court's desire to expand or contract federal power, have often had more influence than has the idea of selective exclusiveness.

The Guns in School Case

In 1992 Alfonso Lopez arrived at his high school in San Antonio, Texas, carrying a concealed handgun. Acting on a tip, school authorities confronted Lopez. He admitted he had a .38-caliber revolver and five bullets. Lopez was arrested and charged under Texas law with firearm possession on school premises.

A day later, the state charges were dropped when federal officials charged Lopez with violating Section 922(q) of the Gun-Free School Zones Act of 1990. This federal law makes it illegal for anyone to have a firearm in a school zone. Lopez was convicted in federal district court and sentenced to six months in jail. When the Fifth Circuit Court of Appeals reversed the conviction, federal authorities appealed to the Supreme Court.

The Arguments Lopez's attorneys argued that Section 922(q) was an unconstitutional exercise of Congress's power to regulate interstate commerce. Having a gun at school, they argued, may be a criminal offense, but it has nothing to do with interstate commerce.

Government attorneys argued that guns in school zones could lead to violent crime, making people afraid to travel in the area. They also argued that fear of violent crime might interfere with students' learning, leading to less productive citizens. Both results could affect the economy. As a result, Congress could reasonably regulate firearms at schools under the commerce clause.

The Court's Ruling In the case of *United States* v. *Lopez* (1995), the Court ruled 5–4 that the Gun-Free School Zones Act of 1990 was unconstitutional. "The possession of a gun in a local school zone is in no sense an economic activity that might . . . substantially affect any sort of interstate commerce," wrote Chief Justice William Rehnquist for the majority. Rehnquist noted that "Section 922(q) is a criminal statute that by its terms has nothing to do with 'commerce' or any sort of economic enterprise."

The Guns in School Case

***United States* v. *Lopez* (1995)**

Significance: *Lopez* is the first Supreme Court case since the 1930s to limit Congress's power under the commerce clause.

Background: Twelfth-grade student Alfonso Lopez was charged with a violation of the Gun-Free School Zones Act of 1990.

Decision: The 1990 act was unconstitutional as an exercise of Congress's commerce clause power.

Schools have posted signs like the ones shown here to notify everyone that carrying a gun is prohibited in a school zone.

SECTION 4

The Medical Marijuana Case

***Gonzales* v. *Raich* (2005)**

Significance: The federal Controlled Substances Act is constitutional under the commerce clause.

Background: Federal law makes marijuana illegal. California enacted a program for the sale and use of medical marijuana. Two California residents sued the federal government when authorities acting under federal law destroyed their marijuana plants.

Decision: The Supreme Court ruled that the Controlled Substances Act is a constitutional use of Congress's power under the commerce clause. Federal authorities may enforce the law against a state-approved program for the sale and use of medical marijuana.

Angel Raich, left, and Diane Monson, right, are shown standing outside the U.S. Supreme Court building.

Lopez was important because the case is the first to limit Congress's use of the commerce clause since the 1930s. Chief Justice Rehnquist stated that the Court had a duty to prevent the federal government from further expanding its powers to regulate the conduct of a state's citizens. "Admittedly, some of our prior cases have taken long steps down that road . . . ," he wrote. "The broad language in these opinions has suggested the possibility of further expansion, but we decline here to proceed any further."

The Medical Marijuana Case

Using marijuana has been illegal under federal law since 1937. In 1996, however, California voters approved marijuana use for medical purposes. Two California residents, Diane Monson and Angel Raich, began using home-grown marijuana to treat chronic pain. Raich's pain was so severe that her doctor said that without marijuana to relieve it she could die.

In 2002 federal authorities seized and destroyed six marijuana plants Monson was growing. Monson and Raich sued the federal government to stop it from interfering with their right to grow and use medical marijuana under California law. The court of appeals ruled in Monson and Raich's favor, and the government appealed the decision to the Supreme Court (*Gonzales* v. *Raich*, 2005).

The Arguments Raich and Monson claimed that, as applied to them, the federal law allowing the seizure was a violation of the commerce clause because they were not engaged in interstate commerce. Raich and Monson argued that their marijuana was home grown and that the seeds, soil, and equipment used to grow it were from the state in which they lived. Therefore, they argued, the marijuana they grew and used was a product entirely of intrastate commerce. The federal government's enforcement action—the destruction of Monson's plants—was therefore unconstitutional.

The government based its argument on the supremacy clause. It argued that federal law does not recognize the medical use of marijuana and that the Constitution makes federal law supreme over state law. They also argued that the use of home grown marijuana for medical purposes affected the illegal trade in marijuana coming into California from other states and countries. They claimed that this gave the government the right, under the commerce clause, to regulate home grown marijuana.

The *Raich* Decision In 2005 the Supreme Court ruled 6–3 to uphold the government's use of the commerce clause to seize home grown marijuana plants. The Court accepted the government's argument that home grown medicinal marijuana affects interstate commerce. Writing for the majority, Justice John Paul Stevens noted that marijuana is a popular part of commerce and that the commerce clause applies whether the commerce is legal or not. If Monson and Raich were not growing their own marijuana, they would have to purchase their supply somewhere else, which would ultimately have an impact on the interstate commerce that Congress can regulate.

In a strong dissent joined by Chief Justice Rehnquist, Justice Sandra Day O'Connor first cited the *Lopez* case and then wrote, "Federalism promotes innovation by allowing . . . a single courageous state, if its citizens choose . . . [to] try novel social and economic experiments without risk to the rest of the country." She then noted that this case makes growing and using small amounts of marijuana at home for medical purposes a federal crime. That, O'Connor said, is an unconstitutional use of Congress's power under the commerce clause. The principles of federalism, she said, should protect California's experiment from federal regulation.

READING CHECK **Summarizing** How did Justice O'Connor think the decision in *Gonzales* v. *Raich* affected federalism?

Section 4 Assessment

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Reviewing Ideas and Terms

1. **a. Identify** What is the commerce clause?
   b. Analyze Why has the federal government been able to use the commerce clause to regulate many private businesses?
2. **a. Describe** What is the supremacy clause?
   b. Evaluate In your opinion, how well did the Court apply the doctrine of **selective exclusiveness** in *United States* v. *Lopez* and *Gonzales* v. *Raich*? Explain.

Critical Thinking

3. **Analyze** Do you support the majority view or the dissent in the Court's ruling on the commerce clause and federalism in *Gonzales* v. *Raich*? Explain why.

CASE STUDY LINK You answered the following questions at the end of the Case Study. Now that you have completed Section 4, think about and answer the questions again. Then compare your answers with your earlier responses. Are your answers the same or are they different?

4. Should the hunting of migratory birds be controlled by the states, which license hunters, or by federal authorities? Explain your point of view.
5. Was the Migratory Bird Treaty Act a proper expansion of federal over state power? Why or why not?
6. Could the federal government amend the U.S. Constitution by making a treaty with another country? Explain.

SECTION 4

SIMULATION

Arguing a Federalism Case

Student Casebook

Use your Student Casebook to complete the simulation.

Should Native Americans be able to operate casinos on reservations in states where such gambling violates state law? 21st CENTURY

Native American groups are considered "domestic dependent nations" within the United States. Each group has the right to have its own government on a reservation that operates mostly independently of the laws of the state within which the reservation is located. Using what you have learned, complete this simulation involving issues of federalism and having a casino on a reservation.

Roles

- Chief justice
- Associate justices
- Attorneys for plaintiff, Native American Nation
- Attorneys for defendant, the State
- Attorneys for the National Native American Council, a Native American civil rights group
- Attorneys for the American Association for Family Values, a group that opposes casinos and gambling

1 The Situation

Native American Nation asked the state to allow it to open a casino on its reservation in order to make money from tourists who would visit the reservation to gamble. When the state refused, the Native Americans sued the state in federal court under the provisions of the Indian Gaming Regulatory Act of 1988. The state filed a motion to dismiss the case.

The federal district court denied the state's motion, and the state appealed the ruling to the circuit court of appeals. The court of appeals granted the state's motion and dismissed the case, citing requirements of the Eleventh Amendment. Native American Nation appealed this decision to the Supreme Court. The appeals court considered, but did not address, any issue under the commerce clause of Article I of the Constitution.

Key Facts

- The Indian Gaming Regulatory Act (IGRA) requires that states negotiate agreements with tribal governments allowing Native Americans to offer various types of gambling on their reservations.
- If a state will not negotiate with a Native American nation, the IGRA allows the nation to sue the state in federal court, to ask the court to force the state to negotiate an agreement.
- Congress passed the IGRA using its power under the Constitution's commerce clause.
- The Eleventh Amendment to the Constitution states that citizens of a foreign country who sue a state must do so in the courts of that state.

2 The Hearing

The attorneys for the plaintiff and the defendant will present their oral arguments to the Supreme Court. The plaintiff's position will be presented first, followed by the defense position. The justices will be able to interrupt each presentation to ask questions of the attorney. After each side's argument has been heard, the Court will rule on the plaintiff's request that it reverse the court of appeals and allow its suit in district court to proceed.

The Chief Justice The chief justice will be in charge of the proceeding. He or she will read each side's amicus curiae brief and recognize the attorneys when it is their turn to speak. He or she will preside over the Court's deliberations at the end of the hearing and assign one of the justices to write the Court's opinion. The chief justice will then "publish" the Court's decision by reading it aloud to the class.

The Associate Justices The associate justices will read each side's amicus curiae brief and listen to its oral argument. Along with the chief justice, the associate justices may interrupt each argument to ask the attorney questions about it. At the end of the hearing, all the justices will discuss the case and vote on how to decide it. Justices who disagree with the majority decision may write a dissenting opinion if they wish. If there is a dissenting opinion, the author will read it after the majority opinion has been read.

The Parties' Attorneys Each side's attorneys will prepare an argument and present it orally to the Court.

The Amicus Attorneys The amici curiae in this case are the National Native American Council and American Association for Family Values. Representatives from each organization will write the organization's amicus curiae brief for the court. They also will help the attorneys for the side they support in researching the case and in preparing its oral argument.

Native American Nation v. State

Parties to the case

- The plaintiff: Native American Nation
- The defendant: State

Central Issue

Should the commerce clause or the Eleventh Amendment be the determining factor in deciding this case?

3 Debriefing

While the Supreme Court is deliberating its decision, write a one-page opinion of your own, revealing how you would decide the case if you were on the Court. After the Court's decision is read, discuss with the class and the justices any differences you see between the decision and any separate opinions the justices may have written and which opinion, if either, you think is better reasoned.

Amicus Curiae Briefs *Amicus curiae* (plural, *amici curiae*) is Latin for "friend of the court." The term refers to a person or organization that files a legal brief, with the court's permission, to express views on one or more issues in a case involving other parties because it has a strong interest in the subject matter of the action.

INTERACTIVE CHAPTER 13

Chapter Review

Connecting Online

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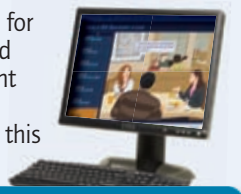
Go online for review and enrichment activities related to this chapter.



Quiz and Review

GOV 101
Examine key concepts in this chapter.

ONLINE QUIZZES
Take a practice quiz for each section in this chapter.

Activities

eActivities
Complete Webquests and Internet research activities.

INTERACTIVE FEATURES
Explore interactive versions of maps and charts.

KEEP IT CURRENT
Link to current events in U.S. government.

Partners

American Bar Association Division for Public Education
Learn more about the law, your rights and responsibilities.

Center for Civic Education
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Comprehension and Critical Thinking

SECTION 1 *(pp. 390–399)*

1. **a. Review Key Terms** For each term, write a sentence that explains its significance or meaning: freedom of expression, redress of grievances.

   b. Draw Conclusions Does the free exercise clause protect people's free exercise of religion? Explain why or why not.

   c. Elaborate Do you think that any of the First Amendment freedoms should be absolute? Explain.

SECTION 2 *(pp. 402–411)*

2. **a. Review Key Terms** For each term, write a sentence that explains its significance or meaning: search, seizure, plain view doctrine.

   b. Analyze What relationship exists between the need for probable cause and a person's right to privacy?

   c. Predict What will be the likely outcome of a search that does not recognize a person's reasonable expectation of privacy?

SECTION 3 *(pp. 414–425)*

3. **a. Review Key Terms** For each term, write a sentence that explains its significance or meaning: unenumerated rights.

   b. Evaluate Should schools be required to give students the same due process rights that adults have in legal proceedings? Explain your answer.

   c. Elaborate Due process is an important part of the rule of law. How do the rule of law and due process protect citizens from threats to personal liberties such as perjury (lying under oath), police corruption, and organized crime?

SECTION 4 *(pp. 428–433)*

4. **a. Review Key Terms** For each term, write a sentence that explains its significance or meaning: selective exclusiveness.

   b. Contrast How did the Supreme Court's view of federalism in *United States* v. *Lopez* differ from its view in *Gonzales* v. *Raich*?

   c. Evaluate What is your opinion about the Court's decision in *United States* v. *Lopez*?

FOCUS ON WRITING

21ST CENTURY

Persuasive Writing *Persuasive writing takes a position for or against an issue, using facts and examples as supporting evidence. To practice persuasive writing, complete the assignment below.*

Writing Topic: States as Federalism Laboratories

5. **Assignment** In her dissent in *Gonzales* v. *Raich*, Justice Sandra Day O'Connor argued that federalism should allow states to try social experiments. Write an editorial arguing whether states should be free—or not free—to adopt different approaches to solving social problems under our federal system of government.