

# APGovPol

## Chapter 4: Civil Liberties and Public Policy

### Key Words and Terms

*Barron v. Baltimore*: the 1833 Supreme Court decision holding that the Bill of Rights restrained only the national government, not the states and cities; almost a century later, the Court ruled that state governments must respect some First Amendment rights

Bill of Rights: the first ten amendments to the U.S. Constitution; the basis for most of the civil liberties of citizens

censorship: governmental regulation of media content

civil liberties: the legal constitutional protections against government; although our civil liberties are formally set down in the Bill of Rights, the courts, police and legislatures define their meaning

commercial speech: communication in the form of advertising; it can be restricted more than many other types of speech but has been receiving increased protection from the Supreme Court

cruel and unusual punishment: court sentences prohibited by the Eighth Amendment; although the Supreme Court has ruled that mandatory death sentences for certain offenses are unconstitutional, it has not held that the death penalty itself constitutes cruel and unusual punishment

*Dennis v. United States*: a 1951 Supreme Court decision that permitted the government to jail several American Communist Party leaders under the Smith Act, a law forbidding advocacy of the violent overthrow of the U.S. government

Eighth Amendment: the constitutional amendment that forbids cruel and unusual punishment (although it does not define the phrase) and excessive bail or fines; through the Fourteenth Amendment, this Bill of Rights amendment applies to the states

*Engel v. Vitale*: the 1962 Supreme Court decision holding that state officials violated the First Amendment when they wrote a prayer to be recited by New York's school children (compare *School District of Abington Township, Pennsylvania v. Schempp*)

establishment clause: part of the First Amendment stating "Congress shall make no law respecting an establishment of religion"

exclusionary rule: the rule that evidence, no matter how incriminating, cannot be introduced into a trial if it was not constitutionally obtained; the rule prohibits use of evidence obtained through unreasonable search and seizure

Fifth Amendment: the constitutional amendment designed to protect the rights of persons accused of crimes, including protection against double jeopardy, self-incrimination, and punishment without due process of law

First Amendment: the constitutional amendment that establishes the great American liberties: freedom of the press, of speech, of religion, the right to peaceable assembly, and the right to petition government for a redress of grievances

Fourteenth Amendment: the constitutional amendment adopted after the Civil War that states, "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws" (see also due process clause)

free exercise clause: a First Amendment provision that prohibits government from interfering with the practice of religion

*Gideon v. Wainwright*: the 1963 Supreme Court decision holding that anyone accused of a felony where imprisonment might be imposed, however poor he or she might be, has a right to a lawyer (see also Sixth Amendment)

*Gitlow v. New York*: the 1925 Supreme Court decision holding that freedoms of press and speech are "fundamental personal rights and liberties protected by the due process clause of the Fourteenth Amendment from impairment by the states" as well as by the federal government (compare *Barron v. Baltimore*)

incorporation doctrine: the legal concept under which the Supreme Court has nationalized the Bill of Rights by making most of its provisions applicable to the states through the Fourteenth Amendment

*Gregg v. Georgia*: the 1976 Supreme Court decision that upheld the constitutionality of the death penalty, stating that "It is an extreme sanction, suitable to the most extreme of crimes." The Court did not, therefore, believe that the death sentence constitutes cruel or unusual punishment

*Lemon v. Kurtzman*: the 1971 Supreme Court decision that established that aid to church-related schools must (1) have a secular legislative purpose; (2) have a primary effect that neither advances nor inhibits religion; and (3) not foster excessive government entanglement with religion

libel: the publication of false or malicious statements that damage someone's reputation

*Mapp v. Ohio*: the 1961 Supreme Court ruling that the Fourth Amendment's protection against unreasonable searches and seizures must be extended to the states as well as the federal government (see also exclusionary rule)

*McCleskey v. Kemp*: the 1987 Supreme Court decision that upheld the constitutionality of the death penalty against charges that it violated the Fourteenth Amendment because minority defendants were more likely to receive the death penalty than were white defendants

*Miami Herald Publishing Company v. Tornillo*: a 1974 case in which the Supreme Court held that a state could not force a newspaper to print replies from candidates it had criticized, illustrating the limited power of government to restrict the print media

*Miller v. California*: a 1973 Supreme Court decision that avoided defining obscenity by holding that community standards be used to determine whether material is obscene in terms of appealing to a "prurient interest"

*Miranda v. Arizona*: the 1966 Supreme Court decision that sets guidelines for police questioning of accused persons to protect them against self-incrimination and to protect their right to legal counsel

*NAACP v. Alabama*: the Supreme Court protected the right to assemble peaceably in this 1958 case when it decided the NAACP did not have to reveal its membership list and thus subject its members to harassment

*Near v. Minnesota*: the 1931 Supreme Court decision holding that the First Amendment protects newspapers from prior restraint

*New York Times v. Sullivan*: decided in 1964, this case established the guidelines for determining whether public officials and public figures could win damage suits for libel; to do so, said the Court, such individuals must prove that the defamatory statements made about them were made with "actual malice" and reckless disregard for the truth

plea bargaining: an actual bargain struck between the defendant's lawyer and the prosecutor to the effect that the defendant will plead guilty to a lesser crime in exchange for the state's promise not to prosecute the defendant for the more serious one

*Planned Parenthood v. Casey*: a 1992 case in which the Supreme Court loosened its standard for evaluating restrictions on abortion from one of "strict scrutiny" of any restraints on a "fundamental right" to one of "undue burden" that permits considerably more regulation

prior restraint: the government's preventing material from being published; this is a common method of limiting the press in some nations, but it is unconstitutional in the United States, according to the First Amendment and as confirmed in the 1931 Supreme Court case *Near v. Minnesota*

Privacy Act: the Privacy Act of 1974 can generally be characterized as an omnibus "code of fair information practices" that attempts to regulate the collection, maintenance, use, and dissemination of personal information by federal executive branch agencies; however, the Act's imprecise language, limited legislative history, and somewhat outdated regulatory

guidelines have rendered it a difficult statute to decipher and apply; moreover, even after almost thirty years of administrative and judicial analysis, numerous Privacy Act issues remain unresolved or unexplored; adding to these interpretational difficulties is the fact that many Privacy Act cases are unpublished district court decisions

probable cause: the situation occurring when the police have reason to believe that a person should be arrested; in making the arrest, the police are allowed legally to search for and seize incriminating evidence (compare unreasonable searches and seizures)

right to privacy: according to Paul Bender, "the right to keep the details of one's life confidential; the free and untrammelled use and enjoyment of one's intellect, body, and private property... the right, in sum, to a private personal life, free from the intrusion of government or the dictates of society." The right to privacy is implicitly protected by the Bill of Rights (see also Privacy Act)

*Roe v. Wade*: the 1973 Supreme Court decision holding that a state ban on all abortions was unconstitutional; the decision forbade state control over abortions during the first trimester of pregnancy, permitting states to limit abortions to protect the mother's health in the second trimester, and permitted states to protect the fetus during the third trimester

*Roth v. United States*: a 1957 Supreme Court ruling that "obscenity is not within the area of constitutionally protected speech or press"

*Schenck v. United States*: a 1919 decision upholding the conviction of a socialist who had urged young men to resist the military draft during World War I; Justice Holmes declared that government can limit speech if the speech provokes a "clear and present danger" of substantive evils

*School District of Abington Township, Pennsylvania v. Schempp*: a 1963 Supreme Court decision holding that a Pennsylvania law requiring Bible reading in schools violated the establishment clause of the First Amendment

search warrant: a written authorization from a court specifying the area to be searched and what the police are searching for; the Fourth Amendment requires a search warrant to prevent unreasonable searches and seizures

self-incrimination: the situation occurring when an individual accused of a crime is compelled to be a witness against himself or herself in court; the Fifth Amendment prohibits self-incrimination

Sixth Amendment: the constitutional amendment designed to protect individuals accused of crimes; it includes the right to legal counsel, the right to confront witnesses, and the right to a speedy and public trial

symbolic speech: nonverbal communication, such as burning a flag or wearing an armband; the Supreme Court has accorded some symbolic speech protection under the First Amendment

*Texas v. Johnson*: a 1989 case in which the Supreme Court struck down a law banning the burning of the American flag on the grounds that such an action was symbolic speech protected by the First Amendment

unreasonable searches and seizures: obtaining evidence in a haphazard or random manner, a practice prohibited by the Fourth Amendment; both probable cause and a search warrant are required for a legal and proper search for and seizure of incriminating evidence

*Zurcher v. Stanford Daily*: a 1978 Supreme Court decision holding that a proper search warrant could be applied to a newspaper as well as to anyone else without necessarily violating the First Amendment rights to freedom of the press