1st Amendment:

***Schenck v. U.S.* (1918):**

* During World War I, Schenck mailed circulars to draftees. The circulars suggested that the draft was a monstrous wrong motivated by the capitalist system. The circulars urged "Do not submit to intimidation" but advised only peaceful action such as petitioning to repeal the Conscription Act. Schenck was charged with conspiracy to violate the Espionage Act by attempting to cause insubordination in the military and to obstruct recruitment (Oyez).
* **Constitutional Question:** Are Schenck's actions (words, expression) protected by the free speech clause of the First Amendment?
* **9-0 Decision for U.S.**
* Holmes (pictured below), speaking for a unanimous Court, concluded that Schenck is not protected in this situation. The character of every act depends on the circumstances.



“Justice Oliver Wendell Holmes”
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* **The Clear and Present Danger Test**: "The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent."
* During wartime, utterances tolerable in peacetime can be punished (Ibid).

***Gitlow v. New York* (1925):**

* Gitlow, a socialist, was arrested for distributing copies of a "left-wing manifesto" that called for the establishment of socialism through strikes and class action of any form. Gitlow was convicted under a state criminal anarchy law, which punished advocating the overthrow of the government by force (Oyez).
* **Constitutional Question:** Is the New York law punishing advocacy to overthrow the government by force an unconstitutional violation of the free speech clause of the First Amendment?
* Threshold issue: Does the First Amendment apply to the states? Yes, by virtue of the liberty protected by due process that no state shall deny (14th Amendment).
* **7-2 Decision** for New York.
* On the merits, a state may forbid both speech and publication if they have a tendency to result in action dangerous to public security, even though such utterances create no clear and present danger. Also in *Gitlow,* the **Bad Tendency Test** was established which granted the Court the authority to outlaw any speech having the tendency to incite crime or disturb public peace (Ibid).
* The **Bad Tendency Test** was a far more restrictive test (Harrison et al. 127).

***Hague v. C.I.O* (1939)**

* On November 29, 1937, several individuals gathered at the headquarters of the Committee for Industrial Organization (CIO) in Jersey City, New Jersey to initiate a recruitment drive and discuss the National Labor Relations Act. Acting on the orders of Mayor Frank Hague, police seized the group's recruitment materials and refused to allow the meeting to take place. Hague argued that he was enforcing a 1930 city ordinance that forbade gatherings of groups that advocated obstruction of the government by unlawful means. Hague referred to CIO members as "communists." Arguing that the ordinance violated the First Amendment protection of freedom of assembly, the group filed suit against several city officials, including Hague (Oyez).
* **Constitutional Question:** Did enforcement of the 1930 Jersey City ordinance violate the CIO's right to assembly under the First Amendment?
* **Plurality opinion for C.I.O**. Yes.
* This case incorporated the freedom of assembly.

***U.S. v. Dennis* (1951)**

* In 1948, the leaders of the Communist Part of America were arrested and charged with violating provisions of the Smith Act. The Act made it unlawful to knowingly conspire to teach and advocate the overthrow or destruction of the United States government. Party leaders were found guilty and lower courts upheld the conviction (Oyez).
* **Constitutional Question:** Did the Smith Act's restrictions on speech violate the First Amendment?
* In a **6-to-2 decision**, the Court upheld the convictions of the Communist Party leaders and found that the Smith Act did not "inherently" violate the First Amendment.
* In the plurality opinion, the Court held that there was a distinction between the mere teaching of communist philosophies and active advocacy of those ideas. Such advocacy created a "clear and present danger" that threatened the government.
* Given the gravity of the consequences of an attempted putsch, the Court held that success or probability of success was not necessary to justify restrictions on the freedom of speech.

***Brandenburg v. Ohio (1968)***

* Brandenburg, a leader in the Ku Klux Klan, made a speech at a Klan rally and was later convicted under an Ohio criminal syndicalism law.
* The law made illegal advocating "crime, sabotage, violence, or unlawful methods of terrorism as a means of accomplishing industrial or political reform," as well as assembling "with any society, group, or assemblage of persons formed to teach or advocate the doctrines of criminal syndicalism."
* **Constitutional Question:** Did Ohio's criminal syndicalism law, prohibiting public speech that advocates various illegal activities, violate Brandenburg's right to free speech as protected by the First and Fourteenth Amendments?
* **8-0 Decision** in favor of Brandenburg.
* The Court used a two-pronged test to evaluate speech acts: (1) speech can be prohibited if it is "directed at inciting or producing imminent lawless action" and (2) it is "likely to incite or produce such action." The criminal syndicalism act made illegal the advocacy and teaching of doctrines while ignoring whether or not that advocacy and teaching would actually incite imminent lawless action. The failure to make this distinction rendered the law overly broad and in violation of the Constitution (Oyez).

***Lemon v. Kurtzman* (1971)**

* The cases involved controversies over laws in Pennsylvania and Rhode Island. In Pennsylvania, a statute provided financial support for teacher salaries, textbooks, and instructional materials for secular subjects to non-public schools. The Rhode Island statute provided direct supplemental salary payments to teachers in non-public elementary schools. Each statute made aid available to "church-related educational institutions" (Oyez).
* **Constitutional Question:** Did the Rhode Island and Pennsylvania statutes violate the First Amendment's Establishment Clause by making state financial aid available to "church- related educational institutions"?
* **8-0** Decision: Yes. Writing for the majority, Chief Justice Burger articulated a three-part test for laws dealing with religious establishment.
	1. To be constitutional, a statute must have "a secular legislative purpose,"
	2. it must have principal effects which neither advance nor inhibit religion,
	3. and it must not foster "an excessive government entanglement with religion."

2nd Amendment:

***D.C. v. Heller* (2008)**

* D.C. passed legislation barring the registration of handguns, requiring licenses for all pistols, and mandating that all legal firearms must be kept unloaded and disassembled or trigger locked (Oyez).
* **Constitutional Question:** Whether provisions of the D.C. Code generally barring the registration of handguns, prohibiting carrying a pistol without a license, and requiring all lawful firearms to be kept unloaded and either disassembled or trigger locked violate the Second Amendment rights of individuals who are not affiliated with any state-regulated militia, but who wish to keep handguns and other firearms for private use in their homes?
* **5-4 decision:** The Court held that the Second Amendment protects an individual right to possess a firearm unconnected with service in a militia, and to use that firearm for traditionally lawful purposes, such as self- defense within the home (Ibid.).

***McDonald v. Chicago* (2010)**

* Several suits were filed against Chicago and Oak Park in Illinois challenging their gun bans after the Supreme Court issued its opinion in *District of Columbia v. Heller*.
* Argued the decision reached in *Heller* should also apply to the states.
* **Constitutional Question:** Does the Second Amendment apply to the states because it is incorporated by the Fourteenth Amendment's Privileges and Immunities or Due Process clauses and thereby made applicable to the states?
* **5-4 decision:** the Court reasoned that rights that are "fundamental to the Nation's scheme of ordered liberty" or that are "deeply rooted in this Nation's history and tradition" are appropriately applied to the states through the Fourteenth Amendment. The Court recognized in Heller that the right to self-defense was one such "fundamental" and "deeply rooted" right (Oyez).

4th Amendment

***Mapp v. Ohio* (1961)**

* Dollree Mapp was convicted of possessing obscene materials after an admittedly illegal police search of her home for a fugitive. She appealed her conviction on the basis of freedom of expression (Oyez).
* **Constitutional Question:** Were the confiscated materials protected by the First Amendment? (May evidence obtained through a search in violation of the Fourth Amendment be admitted in a state criminal proceeding?)
* **6-3 decision**: The Court brushed aside the First Amendment issue and declared that "all evidence obtained by searches and seizures in violation of the Constitution is, by [the Fourth Amendment], inadmissible in a state court."
* Mapp had been convicted on the basis of illegally obtained evidence.
* This was an historic–and controversial—decision.
* It placed the requirement of excluding illegally obtained evidence from court at all levels of the government.
* The decision launched the Court on a troubled course of determining how and when to apply the **exclusionary rule (**Harrison et al. 141**).**

6th Amendment:

***Gideon v. Wainwright***(1963)

* Clarence Earl Gideon was charged in Florida state court with a felony: having broken into and entered a poolroom with the intent to commit a misdemeanor offense. When he appeared in court without a lawyer, Gideon requested that the court appoint one for him. According to Florida state law, however, an attorney may only be appointed to an indigent defendant in capital cases, so the trial court did not appoint one. Gideon represented himself in trial. He was found guilty and sentenced to five years in prison (Oyez).
* **Constitutional question:** Does the Sixth Amendment's right to counsel in criminal cases extend to felony defendants in state courts?
* **9-0 Decision.** Yes. 

“Clarence Earl Gideon”
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**Other notable cases:**

***Miranda v. Arizona* (1966)**

* Consolidation of three cases: *California v. Stewart, Vignera v. New York, Westover v. United States*
* **Constitutional question:** Does the police practice of interrogating individuals without notifying them of their right to counsel and their protection against self-incrimination violate the Fifth Amendment?
* **5-4 Decision**: The Court held that prosecutors could not use statements stemming from custodial interrogation of defendants unless they demonstrated the use of procedural safeguards "effective to secure the privilege against self- incrimination" (Oyez).
* The Court specifically outlined the necessary aspects of police warnings to suspects, including warnings of the right to remain silent and the right to have counsel present during interrogations (Ibid).

***Griswald v. Connecticut (1964)***:

* Estelle Griswold was the Executive Director of the Planned Parenthood League of Connecticut. Both she and the Medical Director for the League, John Buxton, gave information, instruction, and other medical advice to married couples concerning birth control. Griswold and her colleague were convicted under a Connecticut law which criminalized the provision of counselling, and other medical treatment, to married persons for purposes of preventing conception
* **Constitutional question:** Does the Constitution protect the right of marital privacy against state restrictions on a couple's ability to be counseled in the use of contraceptives?
* 7-2 Decision: Though the Constitution does not explicitly protect a general right to privacy, the various guarantees within the Bill of Rights create **penumbras, or zones, that establish a right to privacy.** Together, the First, Third, Fourth, and Ninth Amendments, create a new constitutional right, the right to privacy in marital relations (Oyez).

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