

PUBLIC SCHOOLS OF EDISON TOWNSHIP
OFFICE OF CURRICULUM AND INSTRUCTION

AP Government and Politics

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Modifications will be made to accommodate IEP mandates for classified students.

STATEMENT OF PURPOSE

The **AP Government and Politics** course is offered as a senior year elective and is designed to provide students with a thorough and comprehensive overview of United States government and its political processes. The program prepares students for beginning college courses by making demands upon them equivalent to those of full-year introductory college courses. The course includes both the study of general concepts used to interpret U.S. government and politics and the analysis of specific examples.

As the name suggests, the AP Government and Politics course is aligned with the College Board's Advanced Placement program. Each teacher of the course submits a variation of this guide, along with their specific assignments and assessments, for approval to the College Board, as part of that organization's newly adopted audit process. Where applicable, this guide has also been aligned to the latest state Social Studies and Common Core standards. The relevant Cumulative Progress Indicators are listed alongside the Mastery Objectives at the outset of each unit. Included throughout are references to "6.1 U.S. History: America in the World", "6.3 Active Citizenship in the 21st Century", and "8.1 Educational Technology."

Course Objectives

The student will be able to:

1. Understand the political ideas, institutions, policies, interactions, roles, and behaviors that characterize the political culture of the United States.
2. Learn to apply disciplinary reasoning to assess causes and consequences of political events, and interpret data to develop evidence-based arguments.
3. Develop the skills in reading, writing, speaking, and listening that are the foundation for any creative and purposeful expression in language.

UNIT 1: FOUNDATIONS OF AMERICAN DEMOCRACY (17 DAYS)

TOPIC 1: INTRODUCING GOVERNMENT IN AMERICA

I. GOVERNMENT, POLITICS AND PUBLIC POLICY

A. Government

1. What is government? Those institutions that make public policy for a society. In the US, Congress, the president, the courts, and the bureaucracy are the chief policy making institutions.
2. What do governments do?
 - a. maintain national defense
 - b. provide public goods
 - c. provide order
 - d. provide public services
 - e. socialize the young into the political culture
 - f. collect taxes

B. Politics

1. What is politics? The study of "Who gets what, when, and how."
2. A closer look
 - a. who
 - 1) individuals - candidates, individuals, supporters, voters
 - 2) groups - affluent, poor, elderly, Whites, Blacks, Hispanics, Women, Labor, Business, etc.
 - 3) organizations - AFL-CIO, National Association of Manufacturers, Republican party, Democratic party, NAACP, etc.
 - b. what
 - 1) power - the capacity to get people to do something they otherwise would not do.
 - 2) prestige
 - 3) influence
 - 4) jobs
 - 5) contracts

C. Policy Agenda - subjects or problem to which government officials pay attention at any given time.

1. What do you think are the most important national local issues?

2. What do polls tell us?
- D. Public Policy - a choice that government makes in response to some issue on its agenda.

II. **THE POLITICAL SYSTEM**

- A. Political System - a set of institutions and activities that link together government, politics, and public policy.
- B. Political Issue - arises when people disagree about a problem or about public policy choices made to combat a problem.
- C. Linkage Institutions - connect preferences of citizens and the government's policy agenda.
1. Media
 2. Political parties
 3. Interest groups
 4. Elections
- D. Policy Making Institutions
1. Congress
 2. President
 3. Courts
 4. Bureaucracy
- E. Policy Impacts - the effects policy has on people and society's problems.

III. DEMOCRATIC GOVERNMENT

- A. Introduction - a rising tide of democracy.
- B. Why?
- C. Definition - a means of selecting policymakers and of organizing government so that policy represents and responds to the people's preferences.
- D. Characteristics
 - 1. Majority rule - majoritarian democracy: principle that the greatest number of citizens should select officials and determine policy.
 - 2. Minority rights
 - 3. Free and open elections between competing parties
 - 4. Voting
 - a. universal suffrage
 - b. equality of voting
 - 5. Constitutional democracy
 - a. supreme law of the land
 - b. limited government
 - 6. Effective participation
- E. Advantages of Democracy
 - 1. Peaceful transfer of power
 - a. settles disputes by ballots instead of bullets
 - b. offers hope that today's minority can become tomorrow's majority
 - 2. Safeguards against the abuse of power
 - 3. Efficient communication of people's concerns
 - 4. Educational process
 - a. opportunity for debate
 - b. hear arguments and size up candidates
- F. Challenges to Democracy
 - 1. How can the people confront complex issues?
 - 2. Are the people doing their job?
 - 3. Is American democracy too dependent on money?
 - 4. Is the federal government too BIG?

- a. spends _____ dollars a year
- b. owns _____ of the land in the United States
- c. employs _____ million people

IV. WHO REALLY GOVERNS IN OUR NATION?

A. Introduction

1. Theory and practice
2. C. Wright Mills

B. The Power Elite

1. Unequal distribution of income

- a. What is income?
- b. What is the poverty line? _____
- c. How many Americans live below the line? _____
- d. Is that a lot? _____
- e. What is the median family income? _____
- f. The bottom fifth _____
- g. The top 20 percent _____
- h. The top 5 percent _____

2. Unequal distribution of wealth

- a. What is wealth?
- b. The bottom fifth own 0.2 percent of the nation's wealth.
- c. The top fifth own _____ percent of the nation's wealth.
- d. The top 12 percent of American families own _____ percent of the nation's assets.
- e. 46 percent of all corporate stock is owned by _____ percent of the population.

3. Concentration of power

- a. Despite some recent gains by women and minorities, the overwhelming majority of corporate CEO's, top military commanders, and high government officials are white, middle-aged, male, Protestants.
- b. For example, at the present time, one-third of all U.S. Senators are millionaires.
- c. C. Wright Mills concluded that a loose coalition of corporate executives, political officials, and military officials make all decisions of national significance in war, trade, and economic policy. According to Mills, members of this loose "power elite" share a common world view. They graduate from a small number of prestigious colleges, frequently marry each other, sit on the same board of directors, and interest at the same resorts and private clubs.
- d. Some would add to the triumvirate listed by Mills the leaders of the major communications media. Others would add major labor leaders. But the essential argument is the same: government is dominated by a few top leaders, most of whom are outside the government and enjoy great advantages in wealth, status, or organizational position. They act in concert, and the policies they make serve the interests of the elite.

C. The Pluralist Model

1. The pluralists agree with Mills and other power elitists the unorganized individuals are relatively powerless.
2. But, the pluralists do not see a single ruling power elite at the top of the power structure in America.
3. Robert Dahl and other pluralists argue that there are multiple centers of power, each with its own elite. For example, political power is distributed among state, local, and national governments. No single group can dominate our huge complex political system.
4. Dahl also points out that there are a large number of issues competing for public attention. No one group has the resources to dominate the political agenda and achieve its goals on every issue.

V.POLITICAL IDEOLOGY

- A. Introduction
- B. What are you? Which of the following terms best describes your political views?
1. Liberal
 2. Conservative
 3. Moderate
 4. Don't know
- C. How to tell a Liberal from a Conservative
1. _____ We spend too much on the military.
_____ We should maintain or slightly decrease our present level of military spending.
 2. _____ Government should regulate businesses.
Businesses often exploit workers, waste resources, make unsafe and shoddy products, and pollute the environment.
_____ Most business regulation is unnecessary, wasteful and harmful. It has lowered our productivity, tied up business in red tape, and cost taxpayers a fortune.
 3. _____ We need major new spending programs to deal with the causes and consequences of poverty - more money for housing, education, job training, health care, income supplements, and food programs.
_____ Welfare spending hurts the very people it is supposed to help because it mires them in dependency. The way to cure poverty is to stimulate business so that it can create jobs.
 4. _____ We should tax the rich more.
_____ We should keep taxes low.
 5. _____ Racial justice in America requires the use of affirmative action.
_____ Affirmative Action only prolongs racial inequality
 6. _____ We should solve the problems that cause crime.
_____ We should stop coddling criminals and hand out tough sentences.
 7. _____ Abortion - Support "freedom of choice"
_____ Abortion - Support "right to life"
 8. _____ School prayer - Oppose
_____ School prayer – Support

Your score:

D. Basic Definitions

1. Ideology - a closely linked set of beliefs about the goals of politics and the most desirable political order.
2. Liberalism - a set of beliefs that includes the advocacy of an active role for government support for social-welfare programs and civil rights. Opposition to "excessive military spending" and a tolerance for political and social change.
3. Conservatism - a set of beliefs that includes a limited role for the national government in helping individuals, supporting a strong defense establishment, support for traditional values, and life-styles, and a preference for the status-quo.

E. Political Spectrum

1. Introduction
2. An example - How much power should the Government have?
 - a. Marxist-Leninism - central control of the economy and political system.
 - b. Socialism - active government control of major economic sectors.
 - c. Liberalism - positive government action in economy to achieve social goals.
 - d. Moderate - pragmatic blend of Liberal and Conservative views.
 - e. Conservatism - positive government action to support capitalism. Government should interfere in the economy as little as possible.
 - f. Libertarianism - government action only for defense; no regulation of economy or individual behavior.

F. Importance of Ideology - Preliminary Points

1. Most Americans identify themselves as _____.
2. As you will see, this a major factor supporting our two-party system.
3. _____ are the most consistently liberal group in the Democratic party.
4. _____ are the most consistently conservative group in the Republican party.
5. College education and ideology: Research shows that most students, no matter what their political attitudes before college, become more liberal throughout their college years.
6. As a general rule, Jewish people are more liberal on political issues than other religious groups.

VI. POLITICAL CULTURE

A. Introduction

1. Culture - a way of life
2. Values - conceptions of desirable behavior
3. Socialization - how culture is transmitted from one generation to another
4. Political culture - pattern of ideas, values, and ways of behaving about government and politics.
5. Political socialization - process through which individuals learn a set of political attitudes and form opinions about social issues. The family and the educational system are the two most important forces in the political socialization process.

B. Americanism - Key American Political Values

1. Liberty/Freedom

- a. freedom of religion
- b. freedom of speech
- c. free press
- d. right to assemble

2. Equality - Political

- a. no titles i.e. Lord or Duke
- b. one person to vote
- c. minimal restrictions to run for office
- d. majority rule i.e. Majoritarian politics are based upon the popular will
- e. equality under the law - no one is above the law/all are entitled to due process of law

3. Equality - Economic

- a. equal opportunity - an equal chance
- b. but, Americans do not favor equality of results
- c. belief that hard work should be rewarded

4. Moderation

- a. avoid extreme positions
- b. value compromise - spirit of give and take
- c. form **consensus** - or agreement
- d. political tolerance - allow discussion of all views

5. Civic duty - a belief that citizens have an obligation to participate in civic and political affairs.

- a. citizens can affect government policies
- b. spirit of volunteerism

Resources/Supplemental Readings: American Government: Institutions and Policies, Wilson et al. Sixteenth AP* Edition. Chapter 1. Readings: The Power Elite by C. Wright Mills, Robert Dahl Who Governs? and A Preface to Democratic Theory, Alexis de Tocqueville Democracy in America

TOPIC 2: THE CONSTITUTION

Mastery Objectives - After completing this unit, the student will:

1. explain why the Constitution is one of the most important political documents in American history. [6.1.12.A.2.b, 6.1.12.A.2.c]
2. identify the major events leading to the U.S. Constitution. [6.1.12.A.1.a] [6.1.12.A.2.a]
3. identify the major equality, economic, and rights issues that shaped the debate at the Constitutional Convention. [6.1.12.A.2.c]
4. discuss the majority equality, economic, and rights issues that shaped the debate at the Constitutional Convention. [6.1.12.A.2.c]
5. identify and discuss the Beard Thesis.
6. identify and discuss the issues surrounding the ratification of the Constitution. [6.1.12.A.2.d]
7. identify and discuss the various ways of amending the Constitution. [6.1.12.A.3.d]

New Jersey Learning Standards:

RH.11-12.1
 RH.11-12.2
 RH.11-12.3
 RH.11-12.4
 RH.11-12.6
 RH.11-12.8

Resources/Supplemental Readings: American Government: Institutions and Policies, Wilson et al. Sixteenth AP* Edition. Chapter 2. Readings: Federalist Papers 10 and 51. US Constitution.

[#] Numbers in brackets refer to Core Curriculum Content Standards

REQUIRED FOUNDATIONAL DOCUMENTS:

DECLARATION OF INDEPENDENCE
ARTICLES OF CONFEDERATION
FEDERALIST #10, FEDERALIST #51
BRUTUS #1
CONSTITUTION OF THE UNITED STATES
BILL OF RIGHTS
27 AMENDMENTS

I. THE PRIMACY OF 1787

- A. What do you think was the most important event in American history?
- B. Why?

1. The people of the United States chose to be one nation rather than a league of independent states. ("Our fathers brought forth upon this continent a new nation...")
2. A case-study in the political process of constitutional democracy - i.e., issue- posing, information-gathering, interest-adjusting, and decision-making. What one historian has called an "intense session of give-and-take."
3. A classic case-study in the attempt of people to take control of their own destiny - "the greatest single effort of national deliberation that the world has ever seen."
 - a. distinguish the possible from the impossible
 - b. convert the boldest of possibilities into the most solid of realities.

II. SETTING - THE U.S. IN 1787

A. Introduction - On the Road to Philadelphia

B. Size

1. From the Atlantic to the _____, from the Great Lakes to the _____. Some _____ square miles.
2. The dominant feature was _____.

C. Population

1. Population of _____ million of whom _____ were slaves.
2. Perspective. At that time, Spain had a population of _____ million, the British Isles _____. The German states and France _____.
3. Cities - Only five had a population of over 10,000!
4. Perspective. At that time, the population of London was _____ and Paris _____.

D. Regions

1. New England (1 million)
2. Middle States (1.4 million)
3. South (1.5 million)
4. Old Northwest (5,000)
5. Old Southwest (100,000)

E. Social Classes

1. Gentlemen - "the rich and well-born"
2. Middle class - the "body of sober and steady people"

3. Meaner sort
 4. Slaves - "strangers in the land." An important component of the American economy, a presence if not a power in American politics, and a challenge to the American conscience.
- F. Economy
1. Farmers
 2. Extractive industry
 3. Commerce
- G. Education
1. A remarkably literate people
 2. Colleges
 3. Newspapers
- H. Unity - "Most of the ingredients of American nationalism were in the pot by 1787."
1. Common language
 2. Common Origin
 3. Common legal and political institutions
 4. Common culture
 5. Common enemies
 6. Common memories of a successful war for independence
- I. Diversity - "Everywhere one looked the lines of suspicion were drawn."
1. Between states
 2. Between regions
 3. Between coast and frontier
 4. Between classes
 5. Between the involved and the isolated
 6. How to prevent these lines of suspicion from hardening. How to convince all these private interests for the necessary existence of a public interest.

III. THE ARTICLES OF CONFEDERATION (REQUIRED FOUNDATIONAL DOCUMENT)

- A. What is a confederation? A voluntary association of independent states, in which the member states agree to only limited restraints on their freedom of action.

B. Structure of Government

1. Congress
 - a. Unicameral assembly of 2-7 ambassadors from each state.
 - b. Each state had one vote.
 - c. All measures required the support of at least 9 states,
2. No executive or judicial branches
3. States "Each state retains its sovereignty, freedom and independence."
4. No national government was intended. Article III simply establishes a "league of friendship" among the states.

C. Weaknesses

1. Congress lacked the power to tax. It had to ask for revenues from the states.
2. Bills required a two-thirds vote to pass.
3. No national system of courts.
4. Congress lacked the power to regulate commerce. This inhibited foreign trade and the development of a strong national economy.
5. Amendments required a unanimous vote.
6. Apathy/Inaction
7. No independent Chief Executive

IV. THE ROAD TO PHILADELPHIA**A. Changes in the States**

1. Who controlled the state legislatures before the Revolution?
2. Power shift

B. Economic Turmoil

1. Postwar depression leaves small farmers unable to pay their debts.
2. Sympathetic state legislatures such as the one in Rhode Island pass policies to help debtors.
3. Three policies angered creditors.

C. Shay's Rebellion

1. The Rebellion - a series of armed attacks on courthouses intended to prevent foreclosures.

2. Impact - symbolized the weaknesses of the Confederation and foreshadowed worse things to come.

D. The Annapolis Convention

1. The meeting
2. The call - Snatching victory from the jaws of defeat.
3. Congress approves: "For the sole and express purpose of revising the Articles of Confederation."
4. A formidable task ahead: "The necessity of gaining the concurrence of the Convention in some system that will answer the purpose, the subsequent approbation of Congress, and the final sanction of the states, presents a **series of chances** which would inspire despair in any case where the alternative was less formidable."
(James Madison)

V. **THE GRAND CONVENTION - GETTING STARTED**

A. "An Assembly of Demigods"

1. 74 selected but only 55 actually attended. Several delegates arrived late. For example, John F. Mercer of Maryland arrived on August 6th.
2. Who was there?
3. Who wasn't?
4. A composite resume
 - a. 33 were lawyers
 - b. 3 physicians
 - c. almost 50 percent were college graduates
 - d. 7 former or current governors
 - e. 6 large plantation owners
 - f. 8 important businessmen
 - g. almost three-quarters had been members of the Continental Congress and/or the Congress under the Confederation.
 - h. age: 26 to 81; Average age of 42.

B. Shared Ideas

1. Views of human nature
2. Views of political conflict
 - a. The unequal distribution of wealth is the source of political conflict.
 - b. This unequal distribution of wealth produces factions.
 - c. Unpropertied majority/wealthy minority.
 - d. Neither faction could be trusted and therefore both must be checked.
3. Views of the objects of government
4. View of Government

"If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls would be necessary. In framing a government which is administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and then in the next place oblige it to control itself."
(Madison)

C. The Working Environment

1. The East Room

2. The Washington Factor

- a. **Prestige** - "His presence kept the Federal Convention together, kept it going, just as his presence had kept a straggling, ill-conditioned army together throughout the terrible years of war."
- b. **Reserve** - "Never heard either of them speak ten minutes at a time, nor to any but the main point, which was to decide the question. They laid their shoulders to the great points, knowing that the little ones would follow of themselves."

3. Secrecy

"I am sorry they began their deliberations by so abominable a precedent as that of tying up the tongues of their members. Nothing can justify this example but the innocence of their intentions and ignorance of the value of public discussions." (TJ)

"No Constitution would ever have been adopted by the Convention if the debates had been made public." (Madison)

4. Madison's Journal

D. The Virginia Plan - A Leap into the Future

1. The plan

- a. Resolved, that therefore, a national government ought to be established, consisting of a supreme legislature, judiciary, and executive.
- b. Resolved that the National Legislature ought to consist of two branches.
- c. Resolved that the members of the first branch of the National Legislature ought to be elected by the people of the several states ...
- d. Resolved that the members of the second branch of the National Legislature ought to be elected by those of the first, out of a proper number of persons nominated by the individual legislatures.
- e. Resolved that the rights of suffrage in the National Legislature ought to be proportional to the Quotas of contribution, or to the number of free inhabitants...
- f. Resolved that a National Executive be instituted; to be chosen by the National Legislature...

- g. Resolved that a National Judiciary be established to consist of one or more supreme tribunals and of inferior tribunals to be chosen by the National Legislature...
 - h. Resolved that the Legislative, Executive, and Judiciary powers within the several states ought to be bound by oath to support the Union...
 - i. Resolved that the amendments which shall be offered to the Confederation, by the Convention ought at proper time, or times, after the approbation (approval) of Congress to be submitted to an assembly or assemblies of Representatives, recommended by the several Legislatures to be expressly chosen by the people, to consider and decide thereon.
2. What are your reactions?
 3. The delegates respond
 - a. "Do you mean to abolish the state governments altogether?" (C. Pinckney)
 - b. One government is better calculated to prevent wars or render them less expensive or bloody than many. We had better take a supreme government now than a despot twenty years hence, for come he must." (G. Morris)
 - c. "I am opposed to the election by the people. It ought to be by the state legislatures. The people should have as little to do as may be about government. They lack information and are constantly liable to be misled." (R. Sherman)
 - d. "The evils we experience flow from the excuses of democracy. The people do not lack virtue but are the dupes of pretended patriots. In Massachusetts, it has been fully confirmed by experience that they are daily misled into the most baleful measures and opinions by the false rumors circulated by resigning men and which no one on the spot can refute." (E. Gerry)
 - e. "I think, too, that the great fabric to be raised will be more stable and durable if it rests on the solid foundation of the people themselves than if it stands merely on the pillars of the legislatures." (J. Madison)
 4. Importance

A momentous decision. Less than a week after the Convention had formally opened the delegates voted to abandon the Articles of Confederation and create an entirely new government with vastly increased powers.
 5. A strategy to remember!

VI. THE AGENDA IN PHILADELPHIA

- A. Means of Electing Members of Congress
 1. House of representatives
 - a. people of each state
 - b. state legislatures
 - c. People nominate/state legislatures then choose

2. Senate

- a. **Choose men of merit** - "I wish the Senate to consist of the most distinguished characters, distinguished for their rank in life and the weight of their property, and bearing as strong a likeness to the British House of Lords as possible." (J. Dickinson)
- b. **States must have a voice** - "Whatever power may be necessary for the national government, a certain portion must necessarily be left in the states...the state legislatures also ought to have some means of defending themselves against encroachments of the national government...and what better means can we provide than to make them a constituent part of the national establishment?" (G. Mason)
- c. **Check popular passions** - "Why," asked Washington, "did you pour that coffee into your saucer?"
"To cool it," answered Jefferson.
"Even so," said Washington, "we pour legislation into the senatorial saucer to cool it."

B. Equality and Representation of the States

1. The problem: How to determine the number of representatives in Congress?
2. Back data
3. The small state position
 - a. "Delaware will have about one-ninetieth for its share in the general councils, whilst Pennsylvania and Virginia will possess one-third of the whole. Will not these large states crush the smaller ones whenever they stand in the way of their ambitions? It seems as if Pennsylvania and Virginia, by the conduct of their deputies, wish to provide a system in which they will have enormous and monstrous influence...I do not, gentlemen, trust you." (Gunner Bedford of Delaware)
 - b. "New Jersey will never confederate on the plan before the committee. She would be swallowed up. I would rather submit to a monarch, a despot, than to such a fate. I will not only oppose the plan here, but on my return home, do everything in my power to defeat it there."
(William Paterson of New Jersey)
 - c. "The large states dare not dissolve the Confederation. If they do, the small ones will find some foreign ally of more honor and good faith who will take them by the hand and do them justice." (Gunner Bedford)
4. The large state position
 - a. What would you say?
 - b. What did they say?
 - 1) Since all authority is derived from the people, equal numbers of people ought to have an equal number of representatives. Are not the citizens of Pennsylvania equal to those of New Jersey? Does it require 150 of the former to balance 50 of the latter?...The gentlemen from NJ is candid in declaring his opinion. I commend him for it. I am equally so. I will never confederate on his principles."

(James Wilson of Pennsylvania)

- 2) "The great danger to our general government is the great southern and northern interests of the continent being opposed to each other. Look at the votes in Congress, and most of them stand divided by the geography of the country, not according to the size of the states."
(James Madison)

5. Compromise - The Great Compromise

- a. "We were on the verge of dissolution, scarce held together by the strength of a hair."
(Luther Martin of Maryland)
- b. "You see the consequences of pushing things too far. Some of the members from the small states wish for two branches in the general legislature and are friends to a good national government; but we would sooner submit to a foreign power than submit to be deprived of an equality of suffrage in both branches of the legislature and thereby be thrown under the domination of the large states." (John Dickinson of Delaware)
- c. "I propose that the proportion of suffrage in the first branch should be according to the respective numbers of free inhabitants; and that in the second branch, or Senate, each state should have one vote and no more."
(Roger Sherman of Conn.)

6. Consequences

- a. For the convention
- b. For today - Did you know that in 1980, the 12 smallest states (Alaska, Wyoming, Vermont, Delaware, North Dakota, South Dakota, Montana, Nevada, New Hampshire, Idaho, Rhode Island, and Hawaii) had a total population of 8,684,467 or just 3 percent of the total U.S. population? Yet, these 12 states have 24 Senators. In contrast, the 10 largest states (California, NY, Texas, Pennsylvania, Illinois, Ohio, Florida, Michigan, New Jersey and North Carolina) had a combined population of 121, 795, 285, or 53 percent of the total population in the U.S. Yet, these 10 states only have 20 Senators.

C. Slavery - How should slaves be counted in determining representation in Congress?

1. Slaves should not be counted

- a. "Property is not the rule of representation. Why then should the blacks, who are property in the South, be in the rule of representation more than the cattle and horses of the North?" (E. Gerry of Massachusetts)
- b. "If Negroes are not represented in the states to which they belong, why should they be represented in the general government? **What is the true principle of representation?** It is an expedient by which an assembly of certain individuals chosen by the people is substituted in place of the inconvenient meeting of the people themselves. If such a meeting of the people were actually to take place, would the slaves vote? They would not. Why then should they be represented?"
(W. Patterson of New Jersey)

- c. "I will never concur in upholding domestic slavery. It is a nefarious institution. It is the curse of heaven on the states where it prevails... The admission of slaves into the representation when fairly explained comes to this: that the inhabitant of Georgia and South Carolina who goes to the coast of Africa and in defiance of the most sacred laws of humanity tears away his fellow creatures from their dearest connections and dams them to the most cruel bondage shall have more votes in a government instituted for protection of the rights of mankind than the citizens of Pennsylvania or New Jersey who views with a laudable horror so nefarious a practice." (G. Morris of Pennsylvania)
2. Slaves should be counted
 - a. "I desire that the rule of wealth be ascertained and not left to the pleasure of the legislature, and that property in slaves shall not be exposed to danger under a government instituted for the protection of property."
(General Pinckney of South Carolina)
 - b. "Express security ought to be provided for including slaves in the ratio of representation. I lament that such a species of property exists. But as it does exist, the holders of it will require this security."
(E. Randolph of Virginia)
 - c. "It is high time now to speak out. I see that it is meant by some gentlemen to deprive the Southern states of any share of representation for their blacks. I am sure that North Carolina will never confederate on any terms that do not rate them at least as three-fifths. If the Eastern states mean therefore to exclude them altogether, the business is at an end."
 3. The Three-Fifths Compromise - Representation and taxes would be based upon the "number of free persons," plus three-fifths of the number of "all other persons."
- D. Slavery - Should the slave trade be abolished?
1. Yes, it should
 - a. **It's immoral.** "It is inconsistent with the principles of the revolution and dishonorable to the American character to have such a feature in the Constitution." (Luther Martin of Maryland)
 - b. **It hurts the economy** - "Slavery discourages arts and manufacturing. The poor despise labor when it is performed by slaves. Slaves prevent the immigration of whites, who really enrich and strengthen a country. They produce the most pernicious effect on manners; every master of slaves is born a pretty tyrant." (G. Mason of Virginia)
 2. No, it should not
 - a. **Unfair to South Carolina and Georgia** - Oliver Ellsworth was not persuaded. Slaves, he said, multiply so rapidly in Virginia and Maryland, "that it is cheaper to raise than import them, whilst in the sickly rice swamps, foreign supplies are necessary." To give Congress power to end the slave trade, he said, would "be unjust towards South Carolina and Georgia." (Oliver Ellsworth of Connecticut)
 - b. **Slavery will disappear on its own** - "As population increases, poor laborers will be so plentiful as to render slaves useless. Slavery, in time, will not be a speck in our

country. Provision is already made in Connecticut for abolishing it, and the abolition has already taken place in Mass." (O. Ellsworth)

- c. **Everyone else does it** - "If slavery be wrong, it is justified by the example of all the world. In all ages, one-half of mankind have been slaves."
- d. **It helps the economy** - "The more slaves, the more produce to employ the carrying trade...and the more of this, the more of revenue for the common treasury." (General Pinckney)
- e. **We'll leave!** - "If the Convention thinks that NC, SC, and Georgia will ever agree to the plan unless their right to import slaves is untouched, that expectation is in vain. The people of those states will never be such fools as to give up so important an interest." (John Rutledge of SC)
- f. **Self-interest** - "Religion and humanity have nothing to do with this question. Interest alone is the governing principle with nations. The true question at present is whether the Southern states shall or shall not be parties to the Union. If the Northern states consult their interest, they will not oppose the increase of slaves which will increase the commodities of which they will become the carriers."

3. The Compromise

4. Were the framers guilty of a failure of nerve?

E. Economics and the Constitution

1. Goal - A strong national government was needed to bring about economic stability

2. Problems

- a. states put up tariffs against products from other states
- b. paper money was virtually worthless
- c. Continental Congress could not raise money

3. Economics in the Constitution (See the chart on page ?)

4. But wait - Self-interest in the Constitutional Convention

5. The Beard Thesis - An Economic Interpretation of the Constitution

- a. Beard concluded that the Constitution was essentially "an economic document drawn with superb skill by a consolidated economic group...whose property interests were immediately at stake." And that these interests "knew no state boundaries but were truly national in scope."
- b. The Constitution was imposed by undemocratic methods to prevent democratic majorities from exercising real power. For example, there was never any popular vote held on whether to have a constitutional convention in the first place.

6. Critics

- a. Beard's arguments are exaggerated - Only a minority of the delegates directly benefited from the Constitution. And a few of these ended up opposing it. Several of the most influential delegates were not wealthy.

- b. Protection of property was a national goal - Since most of the people were middle-class and had private property, practically everybody was interested in the protection of property. A constitution which did not protect property would have been rejected.
- c. Direct democracy was not the practice at that time.

TOPIC 3: FEDERALISM

Mastery Objectives - After completing this unit, the students will:

1. know the three systems of government.
2. recognize the advantages of a Federal System.
3. understand the powers of the national government and of the states. [6.1.12.A.3.d]
4. discuss the operation of horizontal federalism.
5. understand the process and events by which the concept of National Supremacy evolved. [6.1.12.A.2.c]
6. discuss intergovernmental relations today. [6.1.12.A.1]

New Jersey Learning Standards:

RH.11-12.1
 RH.11-12.2
 RH.11-12.6
 RH.11-12.8
 RH.11-12.9
 WHST.11-12.1a
 WHST.11-12.1b
 WHST.11-12.2c
 WHST.11-12.4
 WHST.11-12.8
 WHST.11-12.9
 WHST.11-12.10

Resources/Supplemental Readings: American Government: Institutions and Policies, Wilson, Dilulio Jr., Bose, Sixteenth AP* Edition. Chapter 3. **New Federalist Papers: Essays in Defense of the Constitution (Twentieth Century Fund Book)**, Alan Brinkley, Nelson Polsby. **Liberty's Blueprint: How Madison and Hamilton Wrote the Federalist Papers, Defined the Constitution, and Made Democracy Safe for the World.** by Michael Meyerson

[#] Numbers in brackets refer to Core Curriculum Content Standards

I. INTRODUCTION

II. THREE SYSTEMS OF GOVERNMENT

- A. **Unitary** - a centralized government system in which all sovereignty is vested in a national government.
- B. **Confederate** - a league of independent states, each having essentially sovereign powers.

- C. **Federal** - a system of government in which power is divided by a written constitution between a central and regional governments.
1. **complex** - requires separate and competing governments to sort out powers and responsibilities. There are 83,180 different governments in the United States.
 2. **creative** - encourages the different governments to interact in order to solve problems.
 3. **dynamic** - intergovernmental relations shift in response to politics, elections, and new policies.

III. ADVANTAGES OF A FEDERAL SYSTEM

- A. **Keeps government closer to the people** - encourage grass-roots democracy. For example, did you know that there are elected officeholders in the U.S.?
- B. **Encourages experimentation** - the states are testing grounds for new ideas.
1. unemployment compensation
 2. 18 year old vote
 3. state lotteries
 4. deposit on soda bottles
 5. abortion restrictions
 6. welfare reform
- C. **Allows unity without uniformity** - no need to enforce a single national standard. As a result, it is easier to develop consensus on truly national problems.
- D. Checks the growth of tyranny

IV. THE POWERS OF THE NATION AND STATES

- A. Powers Delegated to the National Government
1. Expressed or delegated powers - (Article I, Section 8) expressly granted to the national government by the Constitution
 2. Implied powers - "To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any Department of Officer thereof." Known as the elastic or necessary and proper clause, this provision enables the national government to meet problems the framers could not anticipate. It ensured the growth of national power.
 3. Inherent powers - powers that derive from the fact that the U.S. is a sovereign power among nations. Under international law all nation-states have the right to make treaties, wage war, and acquire territory.
- B. Reserved Powers to State Government
1. Tenth Amendment - "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people."
 2. Examples

- a. education
- b. marriage and divorce
- c. local business regulations
- d. traffic laws
- e. drinking laws

3. But wait - things are not as simple as they may seem!

- a. drinking age
- b. 55 mph speed limit
- c. other current examples of Coercive Federalism (*South Dakota v. Dole*)

C. Concurrent Powers - exercised by both levels of government

- 1. power to tax
- 2. power to borrow money
- 3. power to establish courts

V. **FEDERAL GUARANTEES TO THE STATES (ARTICLE IV)**

- A. A Republican or Representative Form of Government
- B. Protection Against Domestic Violence
- C. Protection Against Foreign Invasion
- D. Preserve Territorial Integrity

VI. **HORIZONTAL FEDERALISM**

- A. Definition - Constitutional regulations governing the relationship between states
- B. Privileges and Immunities - Article IV, Section 2 states that "the citizens of each state shall be entitled to all privileges and immunities of citizens in the several states." This clause prevents states from favoring their own citizens by discriminating against citizens of other states. For example, the citizens of one state may acquire property in another state. However, the "privileges and immunities" clause does not prevent a state from making reasonable distinctions between its own residents and those from out of state. Can you think of an example?
- C. Interstate Extradition - Article IV Section 2 states that a "person charged in any state with treason, felony, or another crime who shall flee from justice and be found in another state, shall on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime."
- D. Full Faith and Credit Clause - Article IV Section 2 states that "full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state." This clause ensures that rights established under deeds, wills, contracts, and other civil matters in one state will be honored by other states.

VII. **MILESTONES IN ESTABLISHING NATIONAL SUPREMACY**

- A. Introduction

"The question of the relation of the states to the federal government is the cardinal question of our constitutional system. At every turn of our national developments we have been brought face to face with it, and no definition either of statesmen or judges has ever quieted or decided it. It cannot indeed, be settled by one generation because it is a question of growth, and every successive stage of our political and economic development gives it a new aspect, makes it a new question."

B. McCulloch v. Maryland (1819) - MANDATORY SUPREME COURT CASE

1. First Bank - founding and early history
2. Second Bank - controversy and opposition
 - a. State bankers despised the Bank because it competed with their own banks.
 - b. Jeffersonian Republicans viewed it as a tool of the elite.
 - c. The Bank also alarmed states' rights supporters who felt that the authority of the federal government was invading the states.
3. Maryland challenges the Bank - All banks chartered outside of Maryland were required to pay an annual tax of 15,000.
4. The Baltimore Branch refused to pay.

C. The Court Hears the Case

1. Luther Martin
 - a. Martin contended that Article I, Section 8, Clause 18, which gives Congress the right to choose whatever means are necessary and proper to carry out its delegated powers, gives Congress only the power to choose those means to pass those laws absolutely essential to the execution of its expressly granted powers.
 - b. Because the bank is not absolutely necessary to the exercise of any of its delegated powers, Congress has no authority to establish it.
 - c. As for Maryland's right to tax the bank, Martin's position was clear: The power to tax it one of the powers reserved to the states; they may use it as they see fit.
2. Daniel Webster
 - a. Webster began by contending that the power to pass laws necessary and proper to carry out enumerated powers is expressly delegated to Congress.
 - b. Congress has the authority to enact any legislation **convenient and useful** in carrying out its delegated national powers. "It is not enough to say, that it does not appear that a bank was in the contemplation of the framers of the constitution. It was not their intention, in these cases to enumerate particulars. The true view of the subject is, that if it be a fit instrument to an authorized purpose, it may be used, not being specifically prohibited."
 - c. Therefore, Congress may incorporate a bank as an appropriate, convenient, and useful means of exercising the granted powers of collecting taxes, borrowing money, and caring for the property of the United States. Although the power to tax is

reserved to the states, states cannot use this power to interfere with the operations of the national government.

D. The Decision

1. Supremacy of the national government over the states - "The government proceeds directly from the people; is ordained and established in the name of the people...If any one proposition could command the universal assent of mankind, we might expect it to be this - that the government of the U.S., though limited in its power, is supreme within its sphere of action."
2. The national government has certain implied powers that go beyond its enumerated powers -
 - a. Marshall acknowledged that the word bank is not in the Constitution.
 - b. However, he said, it would have been impossible for the framers to spell out all the powers; had they done so, the Constitution would have been more like "a legal code." Marshall then asserted, "In considering this question...we must never forget that it is a constitution we are expounding."
 - c. The necessary and proper clause was made "in a constitution intended to endure for ages to come, and consequently, to be adapted to various crises of human affairs."
 - d. The Bank was a means to an end. Though the word bank is not in the Constitution, one finds there the power to manage money, to lay and collect taxes, issue a currency, and borrow funds. To carry out these powers, Congress may reasonably decide that chartering a national bank is "necessary and proper." "Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are not prohibited, but consistent with the letter and spirit of the Constitution, are constitutional."
 - e. Doctrine of intergovernmental tax immunity. Since "the power to tax involves the power to destroy," and since the power to destroy a federal agency would confer upon the states using its supremacy over the federal government, the states may not tax any federal instrument. Hence the Maryland law was unconstitutional.

E. Gibbons v. Ogden (1824)

1. Background - As we have seen the weak Congress created by the Articles of Confederation had no power to regulate interstate trade. Article I, Section 8, Clause 3 gives Congress the power to "regulate commerce with foreign nations, and among the several States, and with the Indian tribes." But what does "to regulate commerce" mean? And what does "Commerce" include? For example, does commerce include radio and television broadcasts? Air transportation?
2. The Case - In 1808, the New York Legislature granted Robert Fulton and Robert Livingston a 30-year monopoly on steam navigation on the waters in N.Y. state. Fulton and Livingston later licensed Aaron Ogden to operate steam-powered ferryboats between N.Y. and N.J. Thomas Gibbons decided to compete with Ogden. He secured a coasting license merely conferred national character on a vessel and did not license it to trade in waters restricted by state law. When the N.Y. state courts agreed with Ogden, Gibbons appealed to the Supreme Court.
3. Arguments

- a. Oakley argued that commence refers to "traffic" or to the "buying and selling" of commodities **but** not to navigation. The regulation of N.Y., he contended, was a matter of internal trade and navigation, the province of the states.
- b. Webster argued that N.Y. violated the U.S. Constitution. "The power of Congress to regulate commerce was complete and entire." Individual states had no concurrent powers in this area.

4. The Decision

- a. Marshall defined commerce as all commercial intercourse - that is, all business dealings. Commerce thus includes the productions, buying, selling, renting, and transporting of goods, services, and properties.
- b. Since Congress regulates all interstate commerce, the Court ruled against Ogden. "The acts of N.Y. must yield to the laws of Congress."

F. The Civil War

1. Nullification - to nullify or render void. John C. Calhoun asserted that a state had the right to declare a national law to be null and void and therefore not binding on its citizens. He based this on the assumption that sovereignty rested with the states.
2. Secession - The act of formally withdrawing from membership in an alliance.
3. The Civil War - Consequences
 - a. reunified the Union
 - b. increased the power and size of the federal government
 - c. accelerated the growth of industrialism
4. Reconstruction
 - a. the Southern States
 - b. 14th Amendment - no state may deny any person the equal protection of the laws.

G. Key Factors in the Continuing Growth of the National Government

1. National crises
 - a. war
 - b. Great Depression
 - c. New Deal Revolution ("The switch in time that saved nine.")
2. National growth
 - a. America has changed from a relatively weak populated agricultural society into a continental superpower.
 - b. As America has changed the governmental needs of the nation have changed. Many problems have become national in scope.

- c. National markets spurred the development of Big Business and Big Labor. Big Government was needed since states can't regulate national organizations.
 - 3. The power to tax - 16th Amendment, 1913
 - 4. The Civil Rights Movement
- H. Why Can't We Reduce Big Government?
 - 1. Conservatives have made returning power to the states a central theme throughout the later half of the 20th Century. Reagan summed up this goal when he said, "Government is not the solution to our problem; government is the problem."
 - 2. What's the problem? Why can't we reduce BIG GOVERNMENT?
- I. The Movement Towards Devolution in the 1990's
- J. ***United States v. Lopez (1995)- MANDATORY SUPREME COURT CASE***

Congress may not use the commerce clause to make possession of a gun in a school zone a federal crime.

VIII. INTERGOVERNMENTAL RELATIONS TODAY

- A. Dual Federalism - the theory that states and federal government have distinct and unique roles in solving problems.
- B. Cooperative Federalism
 - 1. Definition - theory that the states and federal government should cooperate in solving problems.
 - 2. Example - The Edison School Budget
 - a. local
 - b. state
 - c. federal
- C. Fiscal Federalism
 - 1. Introduction
 - a. Definition - the pattern of spending, taxing, and providing grants in the federal system.
 - b. Amounts - _____ a year!
 - c. The five largest programs are for low-income families, Medicaid, highway construction, services to the unemployed, and welfare.
 - 2. The Federal Grant System - distributing the Federal Pie

- a. Categorical Grants - Federal grants that can only be used for specific purposes.
 - 1) but the aid comes with strings attached
 - 2) Rider - a short bill. For example, a drinking age rider was attached to federal highway aid.
- b. Block grants - grants given more or less automatically to state and communities to support broad programs like criminal justice or mental health programs.
 - 1) popularized by Ronald Reagan
 - 2) majority of grants by mid 1990's
3. The Scramble of Federal Dollars
4. "Race to the Top"

IX. **FEDERALISM AND DEMOCRACY**

A. Advantages for Democracy

1. Keeps government close to the people - i.e., increases opportunities for participation
2. Encourages experimentation
3. Allows unity without uniformity
4. Checks the growth of tyranny

B. Disadvantages

1. Diversity can mean inequality - States differ in the resources they can devote to solving problems and providing services. (ex., welfare)
2. Local interests may be able to delay or even thwart national majority support of certain policies. (ex., ERA)
3. The number of governments can be a burden to democracy. It is sometimes difficult to know which governments are doing what.

QUICK REVIEW

1. Key terms - unitary, confederate, federal, expressed or delegated, implied powers, inherent powers, reserved powers, concurrent powers, horizontal federalism, full faith and credit privileges and immunities, nullification, dual federalism, cooperative federalism, fiscal federalism, categorical grants, rider, and block grants.
2. Key lists
 - a. Three characteristics of federalism - complex, creative and dynamic or fluid
 - b. Three advantages and three disadvantages of federalism
 - c. Three federal guarantees to the states
 - d. Three decisions in McCulloch v. Maryland
 - e. Three key factors in the growth of the federal government
 - f. Two reasons why it is difficult to reduce Big Government
 - g. Three key clauses that have formed the foundation for the expansion of federal power

UNIT 2: CIVIL LIBERTIES AND CIVIL RIGHTS (13 Days)

Mastery Objectives - After completing this unit, the student will:

1. define civil liberties. [6.1.12.A.2.b]
2. identify the Bill of Rights. [6.1.12.A.2.b]
3. list the freedoms guaranteed in the First Amendment. [6.1.12.A.14.b]
4. discuss the processes and implications of incorporation of the Bill of Rights. [6.1.12.A.14.b]
5. discuss the key issues and cases concerning freedom of religion. [6.1.12.A.14.b]
6. discuss the key issues and cases concerning freedom of expression. [6.1.12.A.14.b]
7. discuss the key issues and cases concerning rights of the accused. [6.1.12.A.3.h, 6.1.12.A.14.h]
8. discuss the key issues and cases concerning capital punishment. [6.1.12.A.14.b]
9. discuss the key issues and cases concerning the right of privacy and abortion. [6.1.12.A.14.b]
10. discuss the key issues and cases concerning the Second Amendment and the right to bear arms. [6.1.12.A.14.b]

New Jersey Standards:

RH.11-12.1
 RH.11-12.2
 RH.11-12.6
 RH.11-12.8
 RH.11-12.9
 WHST.11-12.1a
 WHST.11-12.1b
 WHST.11-12.2c
 WHST.11-12.4
 WHST.11-12.8
 WHST.11-12.9
 WHST.11-12.10

Resources/Supplemental Readings: American Government: Institutions and Policies, Wilson, Dilulio Jr., Bose, Sixteenth AP* Edition. Chapter 5. American Government: Readings and Cases (19th Edition), by Peter Woll. The Lanahan Readings in Civil Rights and Civil Liberties, by David M. O'Brien. The Courage of Their Convictions: Sixteen Americans Who Fought Their Way to the Supreme Court, by Peter Irons.

[#] Numbers in brackets refer to Core Curriculum Content Standards

Topic 4: CIVIL LIBERTIES AND PUBLIC POLICY

I. INTRODUCTION - A SAMPLE CASE

II. CIVIL LIBERTIES

- A. Definition - Legal and constitutional protections against the government.
- B. Bill of Rights
 - 1. Background
 - 2. Civil Liberties are relative, not absolute - "The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic." (Oliver Wendell Holmes)
 - 3. The Courts and Civil Liberties - the courts interpret and apply our constitutional guarantees.
- C. The Bill of Rights and the States
 - 1. The Scope of the Bill of Rights - the provision of the Bill of Rights apply against the National Government - not the states.
 - 2. Barron v. Baltimore - Barron complained that the city of Baltimore ruined his dry dock business by constructing a wharf. Barron argued that the Fifth Amendment forbade Baltimore from taking his property without just compensation. But the Supreme Court refused to consider Barron's claim saying that the Bill of Rights restrained only the National Government, not the states and cities.
 - 3. Fourteenth Amendment - "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 protections of the laws."
 - 4. The nationalization or incorporation of the Bill of Rights - The view that most the protections of the Bill of Rights are incorporated into the 14th Amendment's protection against state governments.

III. FREEDOM OF RELIGION

- A. First Amendment - "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof..."
- B. The Establishment Clause
 - 1. Background
 - 2. "A wall of separation between Church and State"
 - a. The State should never act like a Church, and a Church should never act like a state.
 - b. "Neither a state nor the federal government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another.

Neither can force nor influence a person to go to or remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or nonattendance. No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state nor the federal government, can openly or secretly, participate in the affairs of any religious organizations or groups and vice versa."
(Everson v. Board of Education)

3. School Prayer - Do the States have the right to promote religion in general without making any attempt to establish a particular religion?

a. **Engel v. Vitale (1962) - MANDATORY SUPREME COURT CASE**

- 1) "Almighty God, we acknowledge our dependence upon thee, and we beg Thy blessings upon us, our parents, our teachers, and our country."
- 2) What Do You Think?
- 3) The establishment clause forbids aid to religion even if it is aid to all religions. "The Constitutional prohibition against laws respecting an establishment of religion must at least mean that in this country it is no part of the business of government to compose official prayers for any group of the American people to recite as part of a religious program carried on by the government."
- 4) The prayer in the Engel case was officially compose. What if it had been a traditional prayer said by religious people for centuries?

b. **Abington School District v. Schempp (1963)**

- 1) **Background:** Pennsylvania law required that "at least ten verses from the Holy Bible shall be read, without comment, at the opening of each public school on each school day. Any child shall be excused from such Bible reading...upon written request of his parent or guardian." Two children of the Schempp family were enrolled in Abington public schools. The Schempps objected to having their children sent out into the hallway durings. They claimed that the practice violated the Establishment Clause of the First Amendment.
- 2) **Constitutional Issue:** Was the First Amendment's prohibition of governmental support of the establishment of religion violated by Bible recitation in Public schools?
- 3) What do you think?
- 4) **The Court's Decision:** The Supreme Court found that the use of the Bible in this case constituted a religious ceremony. The Bible might properly be used for historical or literary studies, "but the exercises here do not fall into those categories. They are religious exercises, required by the State in violation of the command of the First Amendment that the Government maintain strict neutrality, neither aiding nor opposing religion."

c. **Wallace v. Jaffree (1985)**

- 1) **Background:** In 1981 the State of Alabama passed a law authorizing a "one-minute period of silence in all public schools for meditation or voluntary prayer."

Ishmael Jaffree, a resident of the city of Mobile, an agnostic and a lawyer, objected to this law. He went to federal court to have the law declared unconstitutional under the First Amendment.

- 2) **Constitutional Issue:** Does the law of the State of Alabama providing for a one-minute period of silence for meditation or voluntary prayer in the public schools violate the Establishment Clause of the First Amendment?
- 3) What do you think?
- 4) **The Court's Decision:** The Court ruled that "the state did not show evidence of any secular legislative purpose." The author of the law had admitted under oath that his purpose was to bring voluntary prayer to the schools. The Court ruled that the problem with the law is that it contains the addition of the words "voluntary prayer." The addition of or voluntary prayer indicates that the State intended to characterize it as a favored practice."

d. Sante Fe Independent School District v. Doe (2000)

- 1) **Background:** Students at Texas high school football games, as well as graduation ceremonies, and assemblies, were allowed to lead prayers. The 5th Circuit had ruled that prayer at graduation ceremonies was constitutional, but not in the "far less solemn and extraordinary" setting of a football game.
- 2) **Constitutional Issue:** Does student led prayers at these type of events violate the establishment clause?
- 4) **The Court's Decision:** The Court ruled 6-3 that prayers at football games violate establishment clause. Did not rule on graduation.

4. Government aid to parochial schools

a. Lemon v. Kurtzman (1971)

- 1) Three Tests: The Court ruled that aid to Church related schools must have (1) a secular purpose, (2) not be used to advance or inhibit religion and (3) avoid excessive government entanglement with religion.
- 2) The fine line between permissible public aid and impermissible public aid. Can tax money be used for:
 - a) textbooks
 - b) lunches
 - c) busing
 - d) teachers' salaries
 - e) record players
 - f) field trips
 - g) computers
 - h) special education classes

C. The Free Exercise Clause - "Congress shall make no law...prohibiting the free exercise thereof."

1. Beliefs
2. Practices

- a. examples
 - b. conclusions
 - 1) a religion cannot make legal what would otherwise be illegal
 - 2) when religious practices work against public policy and public welfare, the government can act
 - c. Religious Freedom Restoration Act
3. Case studies

Burwell v. Hobby Lobby (2014)

Wisconsin v. Yoder (1972)- MANDATORY SUPREME COURT CASE

Compelling Amish students to attend school past the 8th grade violates the establishment clause.

West Virginia v. Barnette (1943)

Students may not be compelled to salute the flag.

Northwest Indian Cemetery Protective Association v. Peterson (1987)

- a. Background
- b. Yurok arguments
 - 1) The Yurok claimed that the construction of the G-O Road would destroy the solitude, privacy, and undistributed natural setting necessary to their religious practices, thereby violating their First Amendment right to freely exercise their religion.
 - 2) The spiritual well-being of the entire tribe depends on performance of the ancient rituals. If the medicine man could bring back spiritual power from the World Renewal Ceremony, the people's religious existence would be threatened. And because the land itself is considered holy they could not move their "church" to another location.
 - 3) When the medicine man goes to Chimney Rock to pray, he stands on the rocks and meditates. The forest is out there. He talks to the trees and rocks, whatever is out there. After he gets through praying, the answer comes from the mountain. Our people talk in their language to them and if it's all logged off an all bald there, they can't meditate at all. They have nothing to talk. The Yurok said it would be like building "a highway though the Vatican." They wanted the Court to understand that the salmon-filled creeks, singing pines, and mountain trails of the high country were their Vatican.
- c. Forest Service Arguments

- 1) The Yurok were trying to stop the government from managing its own resources.
 - 2) If the Court allowed the Yurok to block the G-O Road, it would open the door for other religious groups to interfere with government action on government lands everywhere.
 - 3) The Forest Service produced a map marked to indicate sacred religious sites in California. The red markers nearly covered the state.
 - 4) Giving the Yurok veto power over federal land management decisions was not, in the government's view what the free exercise clause was intended to protect. As justice William O. Douglas once wrote, "The Free Exercise Clause is written in terms of what the government cannot do to the individual not in terms of what the individual can exact from the government.
- d. Constitutional Questions
- 1) Would the G-O road prevent the Yurok from freely exercising their religion?
 - 2) Is the government's interest in building the road compelling enough to override the Indians' interest?
- e. You be the judge
- f. The Decision

D. Has the Separation of Church and State Gone too Far?

1. The Case for Separation

- a. Maintaining a church-state "wall" protects religious institutions and individuals from government interference.
- b. In a country with _____ different religious bodies, the government must respect diversity. Too many wars have been fought, too many freedoms crushed in God's name, for democracy to try to integrate theology into its public life.
- c. If only the Christian God is allowed to make public appearances, non-Christians fear they will be unprotected in many subtle ways. For example, religious exercises in the classroom may force some children to participate for fear of being outcasts if they refuse. "The danger," notes Harvard law professor Laurence Tribe, "is that those who are not part of the locally dominant culture will be reduced to some sort of second-class citizenship."

2. The Case for Accommodation

- a. The "wall of separation" between church and state has grown too thick and costs too much. By isolating God from public life, the courts have replaced freedom of religion with freedom from religion.
- b. A nation's identity is formed by morality, and morality by faith. How can people freely debate issues like nuclear arms or the death penalty without reference to spiritual heritage?
- c. Spiritual teaching will give children the moral strength to oppose evils such as drugs.
- d. Outlawing prayer in schools or at high school graduation is an infringement of both freedom of speech and religious expression.
- e. It is religious people who are being ostracized.

E. What Do You Think?

1. Which of these activities should be allowed on school grounds?

- a. voluntary Bible classes
- b. voluntary Christian fellowship groups
- c. prayer before athletic games
- d. church choir practice

2. Do you favor or oppose

- a. allowing children to say prayers in public schools?
- b. allowing children to spend a moment in silent meditation in public schools?

3. In American Life

- a. How much religious influence is there? Too much; Too little; Right amount
- b. Is religious influence increasing or decreasing?
- c. Would you vote for a presidential candidate who did not believe in God? Yes No

- F. Christmas Decorations: Lynch v. Donnelly (1984)
 - 1. The case
 - 2. Questions
 - a. Do you think the city of Pawtucket was promoting religion by including a crèche in the display?
 - b. How do you think the Supreme Court ruled in this case?
 - 3. The Decision
- G. A Test Case – Ten Commandments on Public Grounds (Kentucky & Texas)
- H. A Test Case - Westside Community Board of Education v. Mergens (1990)
 - 1. Constitutional question - Does the refusal by public high school to not allow a religious based club violate the Equal Access Act. Furthermore, was the Equal Access Act itself a violation of the Establishment Clause?
 - 2. Court Decision: 8-1 ruling upholding constitutionality of the Equal Access Act. Public schools may not deny religious groups from meeting on school premises.

IV. **FREEDOM OF SPEECH**

- A. Introduction
 - 1. First Amendment - "Congress shall make no law...abridging the freedom of speech."
 - 2. Is it true that "sticks and stones may break my bones but names will never hurt me?"
 - 3. If speech can produce consequences, should we ban harmful speech?
- B. The Defense of Free Speech
 - 1. Protect unpopular views. The guarantees of free speech are intended, most of all, to protect the expression of unpopular views. The "freedom to differ," Justice Jackson wrote (1943), "is not limited to things that do not matter much."
 - 2. Even if a doctrine is "wrong," it does not follow that it should be silenced. The English philosopher John Stuart Mill argued it may be good for us to be confronted by wrong and offensive ideas, for by hearing them, we are forced to work out answers to them. "Both teachers and learners go to sleep at their post as soon as there is no enemy in the field."
 - 3. **Marketplace of ideas.** To ensure a full and wide-ranging discussion of ideas and public affairs. If we believe in truth, we must believe in its power to overcome error in a fair debate.

C. Three Types of Speech

1. Pure Speech - Communication by word alone. For example, face-to-face discussions, speeches at public meetings, telephone conversations, classroom debates, most things said on TV or radio.
2. Speech plus action - For example the action may be in the form of marching or picketing. While the speech is usually protected the action may be subject to reasonable regulations.
3. Symbolic Speech - Use of objects and gestures as nonverbal expression to of belief.

D. Symbolic Speech - Two Cases

1. **Tinker v. Des Moines (1969)- MANDATORY SUPREME COURT CASE**

- a. The Case
- b. The Question - "Is it a violation of the First Amendment promise of freedom of speech for school officials to prohibit students from wearing armbands that symbolize political protest?"
- c. You be the judge?
- d. The Decision

2. **Texas v. Johnson (1989)**

- a. The Case
- b. Question - Do state laws that prohibit the burning of an American flag as part of a peaceful demonstration/protest violate freedom of expression?
- c. Two views
- d. The Decision

E. Are There Limits on Free Speech?

1. Introduction - Does "freedom of speech" mean that we can say anything to anyone, at any time, in any place, and in any way? Can government place reasonable regulations on when, where, and how speakers may express themselves?
2. The "Clear and Present Danger" Test
 - a. The Espionage Act of 1917 - Prohibited forms of dissent deemed to be harmful to the nation's war effort in WW I. For example, the law said that during wartime obstructing the draft and trying to make soldiers disloyal or disobedient were crimes.
 - b. **Schenck v. U.S. (1919) MANDATORY SUPREME COURT CASE**
 - Charles Schenck was the general secretary of the American Socialist Party. He mailed 15,000 leaflets to potential draftees comparing military conscription to slavery and urging readers to "assert your rights." The government responded by accusing

Schenck of violating the Espionage Act. Schenck answered the charge by saying that the Espionage Act was unconstitutional because it broke the First Amendment's promise that "Congress shall make no law...abridging the freedom of speech."

- c. You be the judge
 - d. Decision - Speaking for the majority, Justice Holmes admitted that "in many places and in ordinary times" Schenck would have had a right to say everything that he said in his pamphlets. But, "when a nation is at war many things that might be said in time of peace are such a hindrance to this effort that their utterance will not be endured so long as men fight and that no Court would regard them as protected by any constitutional right." Holmes words 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."
 - e. Problems
3. The "Imminent danger" test - In Brandenburg v. Ohio (1969) the Court held that government can restrict speech when it poses a danger that is both "clear" and "imminent."

F. Unprotected Speech - Obscenity

- 1. Can obscenity be restricted? In Roth v. United States (1957), the Court ruled that, "Obscenity is not within the area of constitutionally protected speech or press."
- 2. But what is obscenity? In Miller v. California (1973) the Court listed 4 tests of obscenity:
 - a. the average person finds that it violates contemporary community standards.
 - b. the work taken as a whole appeals to prurient (that is lustful and lewd) interest in sex.
 - c. the work shows patently offensive sexual conduct.
 - d. the work lacks serious redeeming literary, artistic, political, or scientific merit.
- 3. It is important to note that implementing this test is up to each community.
- 4. Cases
 - a. Bethel School District v. Fraser (1986)
 - b. 2 Live Crew
 - c. ACLU v. Reno (2000) - Communications Decency Act Unconstitutional
 - d. Bong Hits 4 Jesus case

G. Unprotected Speech - Fighting Words that are so insulting or offensive that their very utterance "has a direct tendency to cause acts of violence." The words are usually of a racial, religious, or ethnic type.

H. Unprotected Speech - Heckler's Veto Boisterous and generally disruptive behavior by listeners of public speakers that, in effect, vetoes the public speakers' right to speak.

I. Unprotected Speech - Defamation and Slander

- 1. Defamation - general term of false attacks on another person's good name and reputation.

2. Slander - defamation is spoken form. The public uttering of a statement that holds up a person for contempt, ridicule, or hatred.

V. FREEDOM OF THE PRESS

A. First Amendment - "Congress shall make no law...abridging the freedom of speech or of the press."

B. Prior Restraint

1. Definition - Government censorship of a work **before** it is published. It involves censorship as opposed to subsequent punishment.

2. The case against censorship

- a. John Milton wrote that censorship was the "greatest discouragement and affront that can be offered to learning and to learned men."

- b. The free flow of ideas cannot be stopped.

C. Cases

1. Near v. Minnesota (1931)

- a. Case - A 1925 Minnesota law sought to prevent newspapers from printing obscene, malicious, scandalous, and defamatory material. Either public prosecutors or private citizens could request a court to issue an injunction to shut down a publication as "a public nuisance." The Saturday Press, published by Near, had published articles charging that various criminal activities in Minnesota were controlled by a Jewish gangster, and that the local mayor, chief of police, and court attorney were also in league with gangsters. Using the 1925 statute, the county attorney obtained an injunction "perceptually" prohibiting Near from publishing any "malicious, scandalous or defamatory newspaper" articles.

- b. Decision - The Court struck down the Minnesota law as censorship. The Court stressed that the press is accountable after, not before, publication. However, the court warned that it might allow prior restraint in "exceptional cases" such as those relating to national security or domestic violence.

2. **The New York Times Company v. U.S. (1971) MANDATORY SUPREME COURT CASE**

- The key issue was whether Americans had the right to know (and the press the right to inform them) of information that the government claimed might endanger national security. The First Amendment did not grant absolute rights to the press in publishing such material, and thus under certain circumstances prior restraint might be justified. Was this such a case? By a 6-3 vote, the Court ruled that the government had failed to meet the "heavy burden" of justifying prior restraint by proving that the publication would cause direct and serious harm to the nation.

3. United States of America v. The Progressive

- a. "The H-Bomb Secret"

- b. Background
 - c. Government's Position - The government argued that the article would violate the Atomic Energy Act of 1954. Under this act, the government may sue to enjoin anyone who is about to disclose "restricted data" concerning "the design, manufacture, or utilization of atomic weapons or the production of special nuclear material...but shall not include data declassified or removed from the Restricted Data category." Government experts argued that the article did contain crucial information not publicly available, which if published "would irreparably damage the national security of the U.S. by aiding foreign nations in developing thermonuclear weapons and thus increase the risk of thermonuclear war." No publication had ever put all of the pieces together in one place, in easy-to-understand language. It would provide nations with a "map and a short cut" to designing thermonuclear weapons.
 - d. Progressive's position - The Progressive argued that the articles information was no longer a secret and its publication could cause no harm.
 - e. You be the judge
 - f. The Decision
 - g. What happened?
4. Hazelwood School District v. Kuhlmeier (1986)
- a. Background
 - b. Constitutional Question - Is it a violation of the First Amendment for high school authorities to exercise editorial control over the content of a school-sponsored newspaper produced in a journalism class? Recall that in the Tinker case, the Court ruled that students do not "shed their constitutional rights of freedom of speech or expression at the schoolhouse gate." Should this rule be applied to the Kuhlmeier case?
 - c. You be the judge
 - d. The Decision
 - 1) The Court decided that the issues in Tinker and in Kuhlmeier were different. Tinker, it said, was about whether or not a school could **punish** students for expressing their opinions. Kuhlmeier, by contrast, was about whether a school had to **help** students express their opinions. (Remember the students wanted to express their opinions in a school-sponsored newspaper produced in their journalism class.)
 - 2) The Court ruled that the speech rights of teenagers "are not automatically coextensive (do not extend as far as) the rights of adults in other settings." These rights must be "applied in light of the special characteristics of the school environment," and the school need not permit speech that clashes with its "basic educational mission." In short, the speech rights of the students who worked on Spectrum were not necessarily as far-reaching as the speech rights of adults working on a regular newspaper.
 - 3) The Court ruled that the Spectrum was not a Public Forum. Working on Spectrum was available only to students in the journalism class. Working on the newspaper was not available to the general public or even to all students.

Also, Spectrum was reserved for a special purpose. It's only reason for existence was to teach students journalism.

- 4) The Court listed a number of cases in which the school might exercise editorial control as a publisher of a school newspaper. A school does not have to publish articles in any of the following cases:
 - a) when they would "impinge upon the rights of other students"
 - b) when they are "ungrammatical" or "poorly written"
 - c) when they are "inadequately researched"
 - d) when they are "biased" or "profane"
 - e) when they are "unsuitable for immature audiences"
 - f) when they would "substantially interfere with its (meaning the school's) work"

C. Libel

1. Definition - the publication of statements known to be false that are malicious and that tend to damage a person's reputation.
2. The New York Times v. Sullivan (1964)
 - a. The Case - The events leading up to the case began with an advertisement in the NYT in 1960 paid for by the SCLC. Headed "Heed Their Rising Voices," the advertisement alleged that city officials in Montgomery had abused and maltreated civil rights demonstrators. Many of the "facts" in the advertisement turned out to be nonfacts, and Montgomery's commissioner of public affairs, L.B. Sullivan, sued the NYT for libel. The NYT appealed and the case ended up in the Supreme Court.
 - b. You be the judge
 - c. The Decision
 - 1) The Court pointed out that for a private person to win a libel suit, he or she needs to prove only two things about what was written. First, that it was false, and second, that it was defamatory or damaging to a person's reputation.
 - 2) But a public official who is trying to sue for libel must take on a third burden: He or she must prove that the statement was made with **actual malice** - that is, "with knowledge that it was false or with reckless disregard" of its truth or falsity.
 - 3) Sullivan could prove that that statements in the advertisement were false and defamatory, but he could not prove that there was actual malice.
 - d. Why this added burden?

The Court held that public officials are different from private individuals in at least three respects. First, they wield power. To make it too easy for them to sue their critics might inhibit criticism of government. In a memorable passage, Justice Brennan said that public debate must be "uninhibited, robust, and wide-open." Second, because their words can command the attention of media, public officials

are better prepared than the rest of us to set the record straight if they have been falsely accused of something. Third, public officials have chosen voluntarily to enter the limelight. "If you can't stand the heat, get out of the kitchen," former president Harry S. Truman used to say.

Since 1967, the Court has extended the Sullivan doctrine to cover not just public officials but all those "who by reason of the notoriety of their achievements or the vigor and success with which they seek the public's attention, are properly classified as public figures."

VI. FREEDOM OF ASSEMBLY

- A. The First Amendment - The last section of the First Amendment prohibits Congress from abridging "the right of the people peaceably to assemble, and to petition the government for a redress of grievances." Freedom of assembly includes the right to meet, protest, march, parade, or picket.
- B. Key Points
 - 1. Like other First Amendment freedoms, the right to freedom of assembly may sometimes be limited. For example, the right to demonstrate is subject to **time, place, and manner restrictions**. No group can simply hold a spontaneous demonstration anytime, anywhere, and anyhow it chooses.
 - 2. People cannot be stopped from assembling just because the views they hold are unpopular.
 - 3. The Supreme Court has held that peaceful assembly is guaranteed in public places. In general, these are areas supported by tax dollars, where people normally gather. They include parks, streets, sidewalks, city halls, state capitol buildings, and national monuments.
 - 4. Private property
- C. Case Example - The Skokie March

REVIEW

Key Terms - Civil Liberties, incorporation, pure speech, symbolic speech, fighting words, heckler's veto, slander, libel, and actual malice.

Key Lists

- 1. 4 Freedoms in First Amendment
- 2. Two freedom of religion clauses
- 3. 3 tests of Government aid to parochial schools (page 70)
- 4. 2 situations in which government can restrict the free exercise of religion (70)
- 5. The case for separation (2 arguments), the case for accommodation (2 arguments)
- 6. 3 arguments for free speech (74)
- 7. 3 tests of obscenity (77)
- 8. The case against censorship (78)
- 9. 2 situations when a prior restraint order can be issued

Key Supreme Court Cases

1. Engel v. Vitale (School Prayer)
2. Northwest Indian Cemetery Protective Association v. Peterson (free exercise)
3. Tinker v. Des Moines Independent School district (symbolic speech)
4. Schenck v. US (clear and present danger test)
5. Hazelwood School District v. Kuhlmeier (freedom of press)
6. New York Times v. Sullivan (libel)
7. Sante Fe Independent School District v. Doe (school prayers)
8. Board of Education v. Mergens (Establishment clause)

VII. THE FOURTH AMENDMENT

A. Introduction

B. The Amendment

1. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated...
2. And no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place searched, and the persons or things to be seized.

C. Searches and Seizures

1. Authorization for searches and seizures

- a. A **warrant** is a court order that authorizes law enforcement officials to make an arrest, search a person or place, or take property as evidence.
- b. To secure a valid warrant, police officers must follow three basic steps:
 - 1) Police must appear before a judge or magistrate. The magistrate must be a "neutral and detached" observer.
 - 2) The police must swear under oath that they have **probable cause**, a reasonable belief that a particular crime has been or is being committed.
 - 3) The judge or magistrate must issue a warrant that describes that exact place to be searched and the specific persons or items to be seized. A random search is unconstitutional.

2. Searches without warrants

The intent of the Fourth Amendment was to protect people's rights, but not to prevent the police from obtaining needed evidence. Therefore not all searches and seizures are outlawed, only **unreasonable** ones. Let's look at some examples.

3. Case Example 1 - New Jersey v. T.L.O. (1985)

a. Background

- 1) T.L.O. is caught smoking in the bathroom.
- 2) T.L.O. is sent to the V.P.'s office

- 3) The V.P. looks in T.L.O.'s purse - the more he looks the more he finds. First he finds a pack of cigarettes. But wait there's more. Much more.
 - 4) The V.P. finds rolling papers commonly used for smoking marijuana. Continuing his search he finds marijuana, a pipe, plastic bags, a large amount of money, index cards listing students who owe T.L.O. money, and 2 letters implicating T.L.O. in drug dealing.
 - 5) The V.P. turns T.L.O. over to the police.
- b. Constitutional Issues
- 1) T.L.O. claimed the evidence of drug dealing found in her purse could not be used in Court as evidence because it was obtained through an illegal search. Her attorney's claimed that the Fourth Amendment protects against unreasonable search and seizure. The Constitutional requirements for "probable cause" and issuing a search warrant applied to T.L.O. while in high school as a student.
 - 2) T.L.O.'s case raised the question of whether the Fourth Amendment required school officials to meet the same strict standards as police officers were conducting searches of students' property in school. In most instances police officers must have "probable cause" to believe that the subject of a search has violated or is violating the law, and they must obtain a proper search warrant. If these standards are not met by the police, evidence gathered from a search can be excluded from a criminal trial.
- c. You be the judge
- 1) Was the search of T.L.O. reasonable or unreasonable?
 - 2) Do school officials have to meet the same standards as police officers when conducting searches?
- d. The Court's Decision
- 1) The Court noted that students have a real need to bring personal property into school and have "legitimate expectations of privacy" while in school. At the same time, Justice White added, "Against the child's interest in privacy must be set the substantial interest of teachers and administrators in maintaining discipline in the classroom and on school grounds."
 - 2) "How, then," Justice White asked, "should we strike the balance between the school child's legitimate expectations of privacy and the school's legitimate need to maintain an environment in which learning can take place?"
 - 3) The Court decided the answer was to ease for school officials the Fourth Amendment requirements for a lawful search:
 - a) First, the Court ruled that school officials need not obtain a search warrant before searching a student who is under their supervision. "The warrant requirement," Justice White said, "is unsuited to the school environment...and would unduly interfere with the maintenance of the swift and informal disciplinary procedures needed in the schools."

- b) Second, the Court ruled that school officials do not have to be held to the same strict "probable cause" meant the police must have solid information that there is a real chance the person being searched was violated or is violating the law. Instead, the Court said school officials may search a student as long as "there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school."
- c) Thus the Court replaced the "probable cause" requirement with a "reasonableness" requirement.
- d) And what about T.L.O.? The Court ruled 6-3 that school officials do not need either a warrant or probable cause before searching a student they suspect.

4. Case Study- California v. Ciraolo (1986)

a. Background

- 1) A Hot Tip - "My neighbor, see, he's got pot growing in his backyard. Man, his plants are as big as trees."
- 2) The backyard of the house was surrounded by two fences, one of which was 10 feet high.
- 3) What to do? Aerial reconnaissance.
- 4) From a height of 1,000 feet the police photographed 73 marijuana plants glowing in the backyard.
- 4) After photographing the evidence, the police obtained a search warrant and seized the plants.

b. Issues

Ciraolo's lawyers argued that the police had violated the Fourth Amendment's ban against unreasonable searches and seizures. They said air surveillance would pave the way for the government to use modern technology to intrude into the privacy of homes. The police responded that they had done nothing exceptional. Any member of the public flying in the airspace over Ciraolo's backyard could have seen what the officers saw.

c. You be the judge

- 1) Does air surveillance, in your opinion, violate the "sanctity of the home"? Explain.
- 2) Do we have a "**reasonable expectation of privacy**" in the space over our home?
- 3) How do you think the Supreme Court ruled in this case?

d. The decision - The Court ruled that police looking for marijuana plants can fly over a fenced yard.

5. Case Study - Terry v. Ohio (1968)

a. Background

- 1) Detective McFadden on patrol in downtown Cleveland.
- 2) Suspicious eyes. McFadden spots three men "casing" a store.
- 3) McFadden approached the three men and then ordered them into the store. McFadden then conducted what is called a "**stop-and-frisk**". That is he stopped them and ran his hands quickly over their clothing.
- 4) Guess what? Two of the men, Terry and Chilton, had weapons. They were arrested and convicted of possessing concealed weapons.

b. Issues

- 1) The defendants argued that the police officer's stop-and-frisk was an unreasonable search. They claimed that their right to privacy under the Fourth Amendment had been violated. The weapons had been seized without a search warrant.
- 2) The state of Ohio argued that police officers have the duty to investigate suspicious situations in order to prevent a crime and they must act reasonable to protect themselves.

c. You be the judge

d. The decision

The Court held that police may "stop-and-frisk" a suspect without a warrant or probable cause. But they must have a "reasonable suspicion" that a crime is about take place.

6. Other Situations

- a. Police do not need a warrant to seize evidence in "plain view". For example, in 1976 police seized a bag of marijuana they spotted in a car they had impounded for parking violations.
- b. Searches and seizures without warrants are permissible if police are in "hot pursuit". For example in 1976 a woman sold heroin to an undercover agent and then fled to her home. Without a warrant, police followed the suspect to her home and searched her. Heroin found during the search was used to convict her.

D. The Use of Evidence

1. Illegal Evidence - What if officials do use illegal methods to find evidence?

2. Weeks v. United States (1914)
 - a. Background
 - 1) Federal Agents arrest Fremont Weeks and search his home without a warrant.
 - 2) The agents took "books, letters, money, papers,...deeds, bonds, candies, clothes, and other property."
 - 3) The letters and documents were used to convict him of a federal crime - sending lottery tickets through the mail.
 - b. Issue - Can illegally seized evidence be admitted as evidence at a trial?
 - c. Decision - The Exclusionary Rule: evidence obtained illegally cannot be used in federal court cases.
3. Extending the Rule - Mapp v. Ohio (1961)
 - a. Background
 - b. Issue - Can a state use illegally seized evidence as evidence at a trial?
 - c. Decision - The Court overturned Mapp's conviction. Justice Clark was aware that the Court's ruling would sometimes result in criminals going free because of an error on the part of police. To this possibility he replied, "The criminal goes free, if he must, but it is the law that sets him free. Nothing can destroy a government more quickly than its failure to observe its own laws, or worse, its disregard of the charter of its own existence...On any other course, the right to privacy would remain merely "an empty promise," Clark observed.

VIII. THE FIFTH AMENDMENT

A. Freedom from Self-Incrimination

1. Self-incrimination stating that no person "shall be compelled to be a witness against himself." In an effort to avoid overuse of the Fifth Amendment, authorities may compel witnesses to testify but grant them **immunity** - a promise that witnesses own testimony will not be used to prosecute them for crimes.
2. Why do we have this right?
 - a. Inquisitorial System - A person is guilty until proven innocent. Interrogating and torturing a suspect would clearly be the most efficient way to obtain information. As one 19th century English commentator put it, "It is far pleasanter to sit comfortably in the shade rubbing red paper into a poor devil's eyes than to go about in the sun hunting up evidence."
 - b. Accusatory System - a person is innocent until proven guilty beyond a reasonable doubt.
 - 1) Confessions obtained by torture or psychological pressure offend human dignity.
 - 2) Compelled confessions are untrustworthy.

3. Baltimore City Department of Social Services v. Bouknight (1990)

a. Background

- 1) Three-month-old Maurice is admitted to the hospital (January 1987) with a fracture of his right thighbone. X-rays also showed old fractures of his upper arm and shoulder.
- 2) Hospital officials suspected mother, 20 year old Jackie Bouknight, of child abuse.
- 3) After being released from the hospital (February 1987), Maurice was declared a child in Need of Assistance and placed under foster care.
- 4) Jackie was told that under the CINA program she could regain custody of Maurice if she agreed to cooperate with the department of Social Services. She signed a consent order, agreeing to attend parenting classes, meet weekly with a parent aide, and refrain from physically abusing Maurice. Jackie complied and her baby was returned to her on July 17, 1987.
- 5) Shortly after Maurice was returned to Jackie, he disappeared.
- 6) Jackie was arrested on April 27, 1988. When a judge demanded that Jackie either produce Maurice or tell where he was, she refused, claiming her Fifth Amendment right self-crimination.
- 7) A juvenile court judge ordered that Jackie be jailed for contempt - refusing to comply with a court order. The punishment is lifted as soon as the person performs the acts directed by the court.

b. The Defense - Jackie's lawyers argued that the contempt order was unconstitutional because it violated her Fifth Amendment right against self-incrimination.

c. The State

- 1) The state argued that its interest in Maurice's safety outweighed Jackie's constitutional right against self-incrimination. The state argued that in order to discharge its responsibility for Maurice's welfare, it must be able to compel his mother to produce him. The state contended that a "Public Safety" exception to the Fifth Amendment was justified because its interest was in protecting Maurice, not in prosecuting Jackie.
- 2) The state also argued that Jackie fit into another exception to the Fifth Amendment rule. The Supreme Court has ruled that the Fifth Amendment cannot be invoked to avoid complying with basic state regulations that are designed to protect the public welfare. For example, if the government requires a regulatory business to keep certain records, it may demand those records be produced without violating the Fifth Amendment. Jackie had assumed the obligations of the CINA program, including the obligation to produce her child for inspection. Like business persons who enter a regulated industry in which the state requires them to maintain certain records and keep them available for government review, Jackie could be required to produce Maurice.

d. You be the judge

- e. The Maryland Court of Appeals
 - f. The U.S. Supreme Court
- B. Double Jeopardy - The Fifth Amendment protects against double jeopardy - bringing a person to trial repeatedly for the same offense. The Amendment states that no one shall "be subject for the same offense to be twice put in jeopardy of life or limb."
1. Exceptions
 - a. A person can be tried for the same act on both state and federal courts. This is legal because many serious crimes - such as bank robbery - are against both state and federal laws. (Rodney King)
 - b. A person can also be tried in both civil and criminal courts for the same act. For example, if X deliberately hits Y over the head with a baseball bat, X may be taken to criminal court and charged with "battery." In addition, Y can sue X in civil court to recover damages and medical costs for injuries. (OJ Simpson)
 - c. If a jury cannot agree in a verdict and the judge dismisses them, the defendant is not considered to have been in jeopardy. (Hung Jury)
 2. Green v. United States

IX. THE SIXTH AMENDMENT

- A. "The right to a speedy and public trial"
1. Why?
 - a. Lessens the difficulties, financial losses, and public disgrace associated with facing criminal charges.
 - b. Reduces the chance that witnesses will move away, forget their testimony, or die.
 2. What is speedy? The Speedy Trial Act of 1974 limited the time between arrest and trial in federal cases to _____ days.
- B. News Coverage of Trials - In 1980, the Court ruled that "a trial courtroom also is a public place where the people generally - and the representatives of the media - have a right to be present." A year later, the Court upheld the right of states to permit televised trials, even when the defendants object. Today, over half of the states allow television coverage of trials.
- C. The Right to Legal Advice
1. Sixth Amendment - "The accused shall enjoy the right ...to have the assistance of counsel for his defense."
 2. Gideon v. Wainwright (1963)- MANDATORY SUPREME COURT CASE
 - a. The Case
 - 1) Clarence Earl Gideon was accused of breaking and entering a Florida pool room and stealing a small amount of money.

- 2) Gideon asked the Court to supply him with a free lawyer.
 - 3) The judge refused.
 - 4) While in prison, Gideon spent hours studying law books. He then wrote a writ or legal document asking the Supreme Court to review his case.
 - 5) Gideon claimed that by refusing to appoint a lawyer to help him, the Florida court had violated rights promised him by the Sixth and Fourteenth Amendments.
- b. Issue - Is it a violation of the Sixth or Fourteenth Amendments to deny a poor person accused of a major crime the free assistance of a lawyer?
- c. The Decision
- 1) In an unanimous opinion the Court ruled in Gideon's favor.
 - 2) Why?
 - a) The Incorporation View - Many justices believe that under the Fourteenth Amendment's due process clause all of the Bill of Right protections should apply to the States.
 - b) Fundamental Liberties View - Justices who take this view believe that "due process of law" means whatever is necessary for justice. In this case, the Sixth Amendment's promise of the assistance of counsel is necessary for a fair trial in any court.
 - c) "There can be no equal justice where the kind of trial a man gets depends on the amount of money has...In our adversary system of criminal justice any person brought into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him."

3. Escobedo v. Illinois (1964)

- a. Introduction - The Gideon ruling extended the Sixth Amendment right to counsel to those charged with state **felonies** - serious crimes for which the prison sentence is at least a year and a day. Later rulings extended this right to less serious crimes, or **misdemeanors**. The next question was whether the Sixth Amendment right to counsel should be broadened to apply to police interrogations **before** a person comes to trial.
- b. The Case
- 1) Danny Escobedo - age 22, height 5 feet, 5 inches, weight 106 pounds, occupation a Chicago day laborer. In and out of trouble all his life.
 - 2) Escobedo's sister, Grace, has a troubled marriage with Manuel Valtierra. On one occasion, Manuel had stabbed Grace a dozen times.

- 3) Knowing that 80 percent of all murders involve friends or relatives, the police brought Escobedo and Grace in for questioning. They also interrogated two of Escobedo's friends, Bobby and Benny. The interrogation lasted 14 hours. Bobby's lawyer was present but not allowed to see them.
- 4) Ten days later, police interrogated Benny. He then fingered Escobedo as the killer. Escobedo was then hustled into the interrogation room with his hands manacled behind his back. No one warned him of his rights. Once again the police refused to let Danny see Bobby's lawyer, Warren Wolfson, who was present.
- 5) With no lawyer present, Escobedo fell into a well-laid trap. "Confronted with Benny, Escobedo blurted out - "You did it". A detective then allegedly promised Danny that a full statement would free him. After several more hours, Danny stated that he paid Benny \$500.00 to kill Grace's husband.
- 6) Benny was found guilty and given a life sentence. Escobedo was also found guilty and sentenced to 20 years.
- 7) After 2 years in prison, Escobedo filed an appeal.

c. Issues

- 1) Does the Sixth Amendment's provision regarding the right to counsel apply to the interrogation process?
- 2) At that time, 80 percent of convictions in criminal cases were based upon confessions.
- 3) What should be the balance between the safety of society and the rights of individuals? Is it better to set a guilty person free than to put an innocent person in jail without due process?

d. You be the judge

- e. The Decision - The Court voted 5 to 4 to reverse Escobedo's conviction: "When the investigation shifts from investigatory to accusatory...our adversary system begins to operate, and the accused must be permitted to consult with his lawyer...Our Constitutional...strikes the balance in favor of the right to the accused to be advised by his lawyer of his privilege against self-incrimination."

4. Miranda v. Arizona (1966)

Introduction - The Escobedo ruling opened new questions: What if suspects do not know they have the right to legal counsel? Should suspects be told an attorney will be appointed for them if they cannot afford one? Should suspects be told they have the right to remain silent?

b. The case

- 1) Ernesto Miranda was a mentally disturbed drifter accused of kidnapping and raping an 18 year old woman near Phoenix.
- 2) Ten days after the crime, the victim picked Miranda out of a police line-up. After 2 hours of questioning, Miranda broke down and signed a written confession.

At no time during the confession was Miranda informed that he had the right to have an attorney and the right to remain silent. (The top of his confession contained a statement saying that the confession was made "with my full knowledge of my legal rights, understanding any statement I make may be used against me.")

- c. Issues - Do suspects in a criminal case have the right to be informed on the Fifth Amendment right against self-incrimination and their Sixth Amendment right to an attorney?
- d. Decision - The Supreme Court overturned Miranda's conviction in a 5-4 decision ruling that prior to any questioning, accused persons must clearly be told their rights.
 - 1) You have the right to remain silent.
 - 2) Anything you say can and will be used against you in a court of law.
 - 3) You have the right to talk to a lawyer and have him present with you while you are being questioned.
 - 4) If you cannot afford to hire a lawyer one will be appointed to represent you before any questioning, if you wish one.
- e. Reaffirmed by the Supreme Court in 2000 by 7-2 vote.

X. CRUEL AND UNUSUAL PUNISHMENT

Introduction - The Eighth Amendment forbids "cruel and unusual punishment." But what constitutes cruel and unusual punishment?

Overcrowded Jails and Prisons

- 1. Over 600,000 Americans are currently in prison. More than one out of every 600 Americans. Only the former Soviet Union and South Africa have a larger percentage of their population confined.
- 2. Does overcrowding violate the Constitution?
- 3. Bell v. Wolfish (1979) - "We disagree with both the district court and the court of appeals that there is some sort of one man one cell principle lurking in the due process clause of the Bill of Rights."

C. Capital Punishment

- 1. Background information
 - a. Capital punishment in Elizabethan England -
 - b. The U.S. homicide rate today -
- 2. Furman v. Georgia (1972)

- a. At that time, judges and juries had unlimited discretion in deciding when to impose a sentence of death. As a result, "people live or die, dependent on the whim of one man or twelve," complained Justice Black. For example, at that time half of the people awaiting execution were black.
- b. The Court argued that the death penalty was meted out unfairly. There was no meaningful distinction between those who were spared and those who were sentenced to die. As Justice Stewart wrote: Those death sentences are cruel and unusual in the same way that being struck by lightning is cruel and unusual...the Eighth Amendment cannot tolerate the infliction of a sentence of death under legal systems that permit this unique penalty to be so wantonly and freakishly imposed."
- c. The Furman decision invalidated all existing state and federal death penalty laws, but it did not outlaw the death penalty itself.
- d. States could enact death penalty laws providing such laws followed the Furman guidelines in setting up objective, non-discriminatory. Within four years, more than 30 states passed death penalty laws.

3. Gregg v. Georgia

- a. The case
 - 1) Troy Leon Gregg and Floyd Allen, two hitchhikers, were picked up in Florida by Fred Simmons and Bob Moore.
 - 2) Gregg shot the two men and then stole their car and money - \$400.00.
 - 3) Using a description provided by a third hitchhiker who had been in the car for part of the journey, police found and arrested Gregg and Allen.
 - 4) Allen testified against Gregg saying they had only planned to rob the men. But Gregg had murdered both men.
 - 5) The jury found Gregg guilty of murder. The DA then asked for the death penalty, saying "If anybody is ever deserving of the death penalty, Gregg would be."
 - 6) The first jury agreed finding Gregg guilty. Under Georgia law a second jury reviewed the case and agreed with the first jury.
 - 7) Finally, the Georgia Supreme Court compared the case with others to determine if the death sentence was appropriate. The state Supreme Court recommended the death penalty.

B. Issue: Did Georgia death penalty amount to "cruel and unusual punishment" under the Eighth Amendment?

1. Arguments

- a. Key questions to consider
 - 1) Is capital punishment a proper form of retribution?
 - 2) Does the death penalty deter crime?

- 3) What is the purpose of punishment?
 - 4) Is the death penalty immoral?
- b. Defense
 - c. Prosecution
 - d. Decision - The Court upheld Georgia's statute by a 7-2 vote. The Court ruled that the death penalty was not "cruel and unusual punishment." The Framers were primarily concerned with abolishing torture and other barbaric forms of punishment. The Court also wrote: "In part, capital punishment is an expression of society's moral outrage at particularly offensive conduct. This function may be unappealing to many, but it is essential in an ordered society that asks its citizens to rely on legal proceedings rather than self-help to vindicate their wrongs."
 - e. The Death Penalty, 1976-2015
 - 1) Number of executions – 35 in 2014; 60 in 2005; 98 in 1999; 23 in 1990
 - 2) 31 states have capital punishment laws, including the U.S. Govt.
 - 3) At the present time, there are over 3,000 inmates on death row.
 - 4) Public opinion polls show that 65 percent of the American people favor the Death Penalty.
 - 5) 18 is the minimum age of execution. (*Roper v. Simmons 2005*)
 - 6) Constitutional ban on the execution of the intellectually disabled. (*Atkins v. Virginia 2002*)

REVIEW

Key Terms - warrant, probable cause, exclusionary rule, immunity, inquisitorial system, accusatory system, double jeopardy, incorporation view, fundamental liberties view, felony.

Key Lists

1. Three steps in obtaining a warrant
2. Three Miranda warnings
3. Three arguments for death sentence
4. Three arguments against death sentence

Matching - 4th Amendment, 6th Amendment, 8th Amendment, NJ v. TLO, California v. Ciraolo, Weeks v. United States, Mapp v. Ohio, 5th Amendment, Gideon, Escobedo, Miranda, Gregg, Furman.

XI. ABORTION: THE CASE STUDY

- A. The great controversies in American history: "There's battle lines being drawn. Nobody's right when everybody is wrong."
- B. The three most divisive words in America today:

- C. Reasons for Opening with the Battle over Abortion

XII. ROE V. WADE- MANDATORY SUPREME COURT CASE

- A. Meet Norma McCorvey

1. A personal problem
2. A personal problem becomes a public issue

- B. The Constitutional Issues

1. The Fourteenth Amendment: "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."
2. The right to privacy

- C. Roe's arguments

1. Roe argued that the protection of life granted by the Fourteenth Amendment could not be applied to a fetus because a fetus was not a person in the eyes of the law.
2. She also argued that her decision to obtain an abortion should be protected by the right of privacy, a right which stemmed from the Bill of Rights generally (Griswold v. Connecticut).

- D. The Court's Decision

1. January 22, 1973
2. By a 7 to 2 vote, the Court struck down the Texas law and all such restrictions on a woman's right to abortion. In a majority opinion authored by Henry Blackmun the Court argued that:
 - a. The fetus has not reached "the capability of meaningful life," and is not yet a "person in the whole sense". Thus the protection of life granted by the Fourteenth Amendment could not be applied to a fetus because a fetus was not a person in the eyes of the law.
 - b. The Court held that the right to abortion was protected by the right of privacy, a right which stemmed from the Bill of Rights generally from the liberty guaranteed by the Fourteenth Amendment. Accordingly, "the right of privacy...is broad enough to encompass a woman's decision whether or not to terminate her pregnancy."
 - c. In his majority opinion, Justice Harry Blackmun outlined a trimester scheme that left the abortion decision entirely to the woman and her physician during the first three months. During the second three months, the state could intervene only to protect the health of the mother. In the final trimester, as the fetus **viability** (the point at which the fetus is capable of existing outside the mother's womb), the state could proscribe abortion unless the mother's life or health was endangered.

XIII. CONSEQUENCES - KEY STATISTICS

- A. **Frequency** - How many abortions are performed each year? _____
Or about _____ percent of all pregnancies.
- B. Why? The two most common reasons for seeking an abortion are:
1. "I'm not ready for the way a baby could change my life."
 2. "I can't afford a baby now."
- C. Who
1. Age
 2. Marital status
 3. Income
- D. **When** - Over 90 percent of all abortions occur within the first 13 weeks of pregnancy. Less than 4 percent occur after 16 weeks.
- E. Two Surprising Statistics
1. _____ percent of American women over the age of 15 have had an abortion.
 2. Five urban centers account for 25 percent of all abortions.

XIV. CONSEQUENCES - RESISTANCE

- A. Arguments Against Abortion
1. The sanctity of human life. The American legal tradition is clear about the value of honoring and protecting the right of each human to live regardless of condition or status.
 2. Challenged the constitutional right to privacy. Deny it can be so broad as to include the complete restriction of state controls on abortion during the first trimester.
- B. But the Supreme Court has ruled. Does that mean that the issue has been permanently settled?
- C. What could be done?
1. **Organize:** Form a special interest group
 - a. National Right to Life Committee
 - b. Operation Rescue
 2. Form a Political Action Committee or PAC
 3. Give money to Pro-Life candidates
 4. Vote for pro-life candidates
 5. Use civil disobedience to dramatize the issue
 6. Elect a Pro-Life President
 7. Support Pro-Life candidates to the Supreme Court

8. Support test cases

XV. WEBSTER V. REPRODUCTIVE HEALTH SERVICES

- A. The Case - The Missouri legislature enacted a law placing the following restrictions on abortions:
 1. The Court stopped short of overturning Roe v. Wade. But it did indicate a willingness to consider doing so.
 2. The right to an abortion is more difficult in some states than in others.
 3. The Court ushered in a new phase in America's abortion debate. The Court thrust abortion into the **political arena**, where elected officials must now decide how to respond to the strong and conflicted feelings of their constituents. The states thus became major battlegrounds over new restrictive laws.

XVI. PLANNED PARENTHOOD V. CASEY (JULY 1992)

- A. The Case - The Pennsylvania legislature enacted laws placing the following restrictions on abortions:
 1. Required women to notify their husband about an abortion.
 2. Required doctors to tell women about other options - "informed consent".
 3. Required parental consent for minors.
 4. Required a 24 hour wait before having an abortion.
- B. The Decision (July 1992) - In a 5-4 decision the Court ruled that:
 1. States are free to restrict abortion as long as they do not place an "undue burden" on a woman seeking an abortion.
 2. Based upon this "**undue burden**" standard the Court held that:
 - a. Pennsylvania (and by extension other states) could **not** force a woman to notify her husband about an abortion.
 - b. States can impose a 24-hour wait.
 - c. States can require doctors to tell women about other options i.e., "informed consent."
 - d. States can demand parental notification for minors.
- C. Consequences
 1. There is a great variation among the states
 2. The "Political Fallout - One Justice Away"

- a. Rehnquist Court to Robert's Court -

XVII. **STENBERG V. CARHART (2000)**

- A. The Case - The Nebraska legislature passed a law criminalizing a late-term abortion procedure which is known as "partial-birth abortion"
- B. The Decision - In a 5-4 decision the Court ruled that:
 - 1. the law lacked any exception for the "preservation of the health of the mothers"
 - 2. it "imposes an undue burden on a woman's ability to choose a D & E abortion, thereby unduly burdening the right to choose abortion itself."

XVIII. **Gonzales v. Carhart (2007)**

- A. The Case – In 2003 the Republican controlled Congress passed a Federal ban on late-term abortion which is also known as “partial-birth abortion.”
- B. The Decision – In a 5-4 decision the Court reverses itself in Stenberg upholding the Federal ban on late-term abortion.

XVIII. **POLICY IMPACTS - WHAT IF ROE V. WADE IS OVERTURNED?**

- A. Will there be fewer pregnancies?
- B. Will there be an increase in illegal abortions?
- C. Will there be an increase in illegitimate births?
- D. Welfare costs will go _____.
- E. RU 486
- F. Political Impact

XX. **Second Amendment**

- A. Issues over interpretation: Individual v. Collective Right?
- B. **“A well regulated militia, being necessary to the security to a free state, the right of the people to keep and bear arms, shall not be infringed.”**
- C. Supreme Court and the Second Amendment
 - 1. Early cases – *Robertson v. Baldwin* (1897), *United States v. Miller* (1939)
 - 2. *District of Columbia v. Heller* (2008) The *Heller* decision (5-4) states that the Second Amendment right to bear arms is in fact an individual right as opposed to a collective one.
 - 3. **McDonald v. Chicago (2010)- MANDATORY CASE**

McDonald case addressed the issue of incorporation and whether or not the individual right also restricts state and local action in this area. The Court incorporated the Second Amendment into the 14th Amendment's Due Process Clause, thus protecting the right to bear arms from state and local Infringements.

4. The *Heller* and *McDonald* decisions, however, did not address the issue of what type of state gun regulations would satisfy strict scrutiny , or whether the Court will use some intermediate standard for gun regulations.

TOPIC 5: CIVIL RIGHTS AND PUBLIC POLICY

Objectives - After completing this unit, the student will:

1. define civil rights, distinguishing it from civil liberties.
2. identify the major historical milestones in the struggle for civil rights in America. [6.1.12.A.3.h, 6.1.12.A.4.b, 6.1.12.A.3.h, 6.1.12.A.13.b]
3. identify the major milestones in the struggle for voting rights, and the devices historically used to deny such rights.[6.1.12.A.6.c]
4. identify the major milestones in the battle for women's suffrage and equal rights in law and in the workplace. [6.12.A.4.c, 6.1.12.A.5.c , 6.1.12.A.3.h]
5. discuss the major issues affecting the elderly, the handicapped and homosexuals [6.1.12.A.3.h]
6. define affirmative action.
7. identify and discuss the major cases dealing with Affirmative Action. [6.1.12.A.1]

New Jersey Standards:

RH.11-12.1
 RH.11-12.2
 RH.11-12.6
 RH.11-12.8
 RH.11-12.9
 WHST.11-12.1a
 WHST.11-12.1b
 WHST.11-12.2c
 WHST.11-12.4
 WHST.11-12.8
 WHST.11-12.9
 WHST.11-12.10

Resources/Supplemental Readings: American Government: Institutions and Policies, Wilson, Dilulio Jr., Bose, Sixteenth AP* Edition. Chapter 6. American Government: Readings and Cases (19th Edition), by Peter Woll. The Lanahan Readings in Civil Rights and Civil Liberties, by David O'Brien. Justice: What's the Right Thing to Do?, by Michael J. Sandel.

I. INTRODUCTION

- A. What are civil rights? Policies that extend basic rights to groups historically subject to discrimination.
- B. What is equality?

II. RACE, THE CONSTITUTION AND PUBLIC POLICY

- A. The Era of Slavery, 1619-1865
 1. Dred Scott v. Sandford (1857)

2. Thirteenth Amendment (1865)
- B. The Era of Reconstruction and Segregation
 1. Segregation
 2. Plessy v. Ferguson (1896)
 3. Segregation in the early 1950's
- C. The Fight Against Segregation in the Schools
 1. The extent of segregation
 2. Case example - Summerton, South Carolina
 3. **Brown v. Board of Education (1954) MANDATORY SUPREME COURT DECISION**
- D. Reactions
 1. Massive resistance
 - a. Little Rock
 - b. "Ole Miss"
 - c. University of Alabama
 2. "All deliberate speed"
- E. The Controversy Continues

1. A problem - Housing patterns
 - a. De Jure Segregation - racial segregation that occurs because of laws - legal segregation
 - b. Another pattern
 - c. De Facto Segregation - racial segregation that occurs because of social and economic conditions and residential patterns.
 - d. "White flight" - large-scale movement of whites to the suburbs.
2. A controversial solution - bussing
 - a. Definition - the transportation of public school students from areas where they live to schools in other areas to eliminate school segregation based on residential patterns.
 - b. Example - Charlotte, N.C. 1971.
 - c. Swann v. Charlotte - Mecklenburg Board of Education (1971). The Court unanimously held that bussing was permissible in school districts that had practiced deliberate segregation in the past.
 - d. A firestorm of controversy
 - e. Milliken v. Bradley (1974) - The Court rejected a plan to bus children between Detroit and its suburbs. The court ruled that bussing could not be ordered between the school districts unless there had been intentional action by the suburban districts to segregate the city schools.
 - f. Norfolk - In 1986, the court allowed Norfolk public schools to end 15 years of court-ordered bussing of elementary school children, even though 10 of the city's 35 elementary schools would become 97-100 percent non-white. The decision was prompted by a drop from 32,500 whites attending public schools in 1970 when bussing was ordered to fewer than 14,000 in 1985. Once a school district implemented a plan to establish a racially neutral school system, the district is not responsible for any re-segregation that results from changing demographics.
3. The situation today
 - a. In 1986, 64 percent of the nation's black students attended predominantly black schools. In 1988, the figure was 32 percent.

The _____ is the most integrated region in America. 37.9 percent of Hispanic and 24 percent of Black students attend all minority schools.
 - c. The _____ is the most segregated region in America. 44.2 percent of all Hispanic students and 48 percent of all black students attend all minority schools.
 - d. _____ has one of the highest rates of school segregation in the country for both black and Hispanic students.

F. The Civil Rights Movement

1. The Montgomery Bus Boycott
 - a. The setting - Montgomery, Alabama
 - b. The problem - Segregation on the city busses
 - c. The incident - Rosa Parks, December 1, 1955
 - d. An act of unusual courage
 - e. Unforeseen consequences
 - 1) Rise of Dr. Martin Luther King, Jr.
 - 2) Montgomery Bus Boycott
 - 3) Strategy of nonviolent demonstrations
 - 4) Building a coalition of conscience

MANDATORY READING: LETTER FROM A BIRMINGHAM JAIL (MLK, JR)

2. The Civil Rights Act of 1964
 - a. Background
 - b. Battle against the bill
 - 1) Filibuster - In the Senate, unlimited debate to kill action on a particular bill.
 - 2) Cloture - A two-thirds vote to limit debate.
 - c. Provisions of the bill
 - 1) Gave all citizens the right to use public facilities such as hotels, restaurants, and theatres.
 - 2) Authorized the Attorney General to bring suits to speed school desegregation.
 - 3) Created the Equal Employment Opportunity Commission (EEOC) to prevent job discrimination.
 - 4) The law also included a clause making sex discrimination illegal.
3. The Right to Vote
 - a. The Fifteenth Amendment - "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude."
 - b. Barriers
 - 1) White Primary - State primary elections that restricted voting to whites. Outlawed by the Supreme Court in 1944.
 - 2) Grandfather Clause - allowed the voting franchise only to those who could prove that their grandfathers had voted before 1867.

- 3) Poll tax - a special tax that must be paid as a qualification for voting. The Twenty-fourth Amendment (1964) outlawed the poll tax in national elections. In 1966, the Supreme Court declared the poll tax unconstitutional in all elections.
 - 4) Literacy tests
 - 5) Intimidation
- c. The situation in 1960 - By 1960, only 29 percent of blacks of voting age were registered in the South. In contrast, 61 percent of whites were registered.
- d. The Selma March
- 1) Background - In 1965, Selma had a total population of about 29,000 people, 15,000 of whom were black. Only 325 blacks were registered to vote. In contrast, 9,300 whites were registered to vote.
 - 2) Demonstrations
 - 3) "Bloody Sunday" - March 9, 1965
 - 4) The death of a minister - March 9, 1965
 - 5) President Johnson's speech
- At times history and fate meet at a single time in a single place to shape a turning point in man's unending search for freedom. So it was a century ago at Appomattox. So it was at Lexington and Concord. So it was last week in Selma, Alabama.
- There, long-suffering men and women peacefully protested the denial of their rights as Americans. Many were brutally assaulted. One good man - a man of God - was killed.
- Many of the issues of civil rights are complex and difficult. But about this there can be no argument. Every American citizen must have an equal right to vote. There is no reason which can excuse the denial of that right. There is no duty which weighs more heavily on us than the duty to ensure that right.
- What happened in Selma is part of a far larger movement which reaches into every section and state of America. It is the effort of American Negroes to secure for themselves the full blessings of American life.
- There cause must be our cause too. It is not just Negroes, but all of us, who must overcome the crippling legacy of bigotry and injustice. And we shall overcome.
- e. The Selma March (March 21-25, 1965) - "We are on move and no wave of racism can stop us." (Dr. King)
- f. The Voting Rights Act of 1965
- 1) Outlawed discriminatory voter registration tests.

- 2) Authorized federal registration of persons and federally administered voting procedures in any political subdivision or state that discriminated electorally against a particular group. The act specifically targeted counties where less than 50 percent of the eligible population was registered.
- 3) The Voting Right Act of 1965 has been extended several times. For example, the 1975 extension requires that ballots be printed in both Spanish and English in areas where more than 5 percent of the population is Spanish speaking.
- 4) Results.. By 1970, 62 percent of voting age blacks in the 11 Southern states were registered, compared to 29 percent in 1960. In Mississippi, 7 of 10 blacks were registered. As a result of these registration efforts, the number of black officeholders has also dramatically increased. For example, there were only 70 black officeholders in the South in 1965. By 1986, there were 3,510. They represented 54.9 percent of the total black officeholders (6,384) in the United States.

III. WOMEN, THE CONSTITUTION, AND PUBLIC POLICY

A. Background

1. Women were considered citizens in the early years of the nation, but they had no political rights.
2. In 1873, the Supreme Court denied the right of women to practice law saying, "The paramount destiny and mission of women are to fulfill the noble and benign offices of wife and mother. This is the law of the Creator." (*Bradwell v. Illinois*)

B. The Suffrage Issue

1. Seneca Falls Convention (1848) - "We hold these truths to be self-evident: that all men and women are created equal."
2. Nineteenth Amendment (1920) - "The rights of citizens of the U.S. to vote shall not be denied or abridged by the United States or by any State on account of sex."
3. Other Countries
 - a. _____ in 1893 was the first country to grant women the right to vote.
 - b. _____ in 1906 was the second.

C. Women in Political Arena

1. Voters - In the 1988 elections more females than males registered and voted.
2. House of Representatives - As of 1991, there were women in the House of Representatives.
3. Cabinet
4. State Legislatures - Woman make up 18 percent of state legislatures.

5. Mayors - 10 percent of U.S. citizens with populations of more than 30,000 have women as mayors.
 6. World Leaders
 7. A Woman President? "If your party nominated a woman for President would you vote for her if she qualified for the job."
- D. National Organization for Women
1. The Feminine Mystique (1963) by Betty Friedan - explored sexism in American life.
 - a. Women looked for jobs in the "Women's Work" section of the classified ads.
 - b. Becoming a lawyer (3 percent), doctor (7 percent), or police officer was for most women a dream. At that time 53 percent of all women were full-time homemakers. (The figure today is _____.)
 - c. Women had trouble getting credit.
 2. Formation of NOW (1966)
 - a. "To bring women into full participation in the mainstream of American society now, exercising all the privileges and responsibilities thereof in truly equal partnership with men."
 - b. Membership - From _____ to _____.
 3. The Battle for the Equal Rights Amendment (ERA)
 - a. The Amendment: "Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex."
 - b. Purpose - to end sex discrimination.
 - c. Opposition
- E. Women in the Workplace
1. Introduction - What combination of marriage, children, and career would offer you the most satisfying and interesting life?
 - a. Combining marriage, career, and children.
 - b. Marrying, having children, but not having career.
 - c. Having career and marrying, but not having children.
 - d. Having career, but not marrying or having children.
 - e. Marrying, but not having children or career.
 2. Modern Dilemmas
 - a. Would you feel comfortable if your wife received a promotion and now earned a higher salary than you do?
 - b. The husband has been offered an excellent job if he is willing to relocate to another state. But, this wife is happy her job. What will she do?

- c. The wife has been offered an excellent job if she is willing to relocate to another state. But, her husband is happy at his job. What will he do?
- d. The wife earns enough so that her husband can become a househusband. Would you respect a man less if he became a househusband.
- e. Which would you prefer: A career path with flexible full-time work hours and more family time but slower career advancement or a career path with inflexible hours and faster advancement?

3. Current Statistics

- a. Women now make up almost 50 percent of the workforce.
- b. Half of all working women are married.
- c. Just over half of all American mothers with children below school age are in the labor force.
- d. Today, 5 of every 100 top executive jobs, on average, at the largest U.S. companies are held by women.
- e. The wage gap
 - 1) Overall, women now earn just 78 cents for every dollar a man takes home. (The figure was 64 cents 25 years ago.) The actual figure is around 94 cents after taking into account different professions and time taken for child bearing etc.

4. Sex Discrimination in Jobs

- a. Definition - Any practice, policy, or procedure that denies equality of treatment to an individual or to a group because of gender.
- b. Title VII of the Civil Rights Act of 1964 - prohibits sex discrimination in employment.
- c. Sample cases
 - 1) The Court ruled against a corporation that would not hire women with preschool-age children, though it employed men with preschool-age children.
 - 2) The Court rejected arbitrary height and weight requirements that effectively barred women from jobs as prison guards.

5. Sexual Harassment

- a. Definition - The EEOC guidelines declare that unwelcome sexual favors and other conduct of a sexual nature - verbal or physical - are considered illegal harassment when:
 - 1) an employee's submission to such conduct is made either explicitly or implicitly a term or condition of employment;

- 2) an employee's submission to or rejection of such conduct by another is used as the basis for employment decisions affecting the worker's status; or
 - 3) Meritor Savings Bank v. Vincent (1986) - the aggressor's conduct unreasonably interferes with a worker's job performance or creates an intimidating, hostile, or offensive environment.
- b. How big a problem?
 - 1) Recent surveys have found that roughly 40 percent of women report having been sexually harassed at work.
 - 2) In a recent NYT/CBS News poll, half of the men admitted having done something that women might have viewed as harassment.
 - 3) The #METOO Movement
 - c. Supreme Court decisions
 - 1) *Reed v. Reed* 1971, *Craig v. Boren* 1976 (intermediate scrutiny), *United States v. Virginia* (VMI) 1996
6. Sex Discrimination in Schools
 - a. Background
 - b. Education Amendments of 1972 Title IX - Required all schools receiving federal funds to give male and female students equal opportunity in instructional and extracurricular activities. For example, schools must provide a female athletic team for every male team that exists and treat women athletes equally.
 - c. Toms River cases- NJ Supreme Court ruled the school district is liable for student on student sexual harassment, including based upon sexual orientation.

IV. THE ELDERLY

- A. Introduction - When is someone "old" or "elderly"?
- B. The Graying of America
 1. The nations median age is 32.9.
 2. Nearly 26 percent (63.6 million) of all Americans are under the age of 18. Over 12 percent of Americans (31.2 million) are 65 years and older.
 3. Modern medicine has increased the average life expectancy from _____ years in 1900 to _____ today.
 4. The Elderly are the fastest growing age group in America.
- C. The Elderly and Politics
 1. The Elderly as voters - The Elderly are America's most active voters. 76.9 percent are registered and 60.9 percent vote. In contrast, only 35.4 percent of 18-20 year olds are registered and 18.6 percent vote.

2. The Elderly as Legislators - In 1990, the Senate had 29 members over the age of 60 and the House had 101. In contrast, there were no Senators under 40 and only 38 Representatives under 40.
3. The Elderly as Activists - The Elderly have formed a number of effective political organizations. The largest of these groups is the American Association of Retired Persons. It currently has more than 30 million members. The Gray Panthers are also a well known group. They were organized in 1971 to fight ageism.

D. Issues

1. Medical costs and Health care
2. Social Security
3. Poverty
4. Age Discrimination in Employment
 - a. Mandatory retirement - forced retirement when a person reaches a certain age.
 - b. The Age Discrimination in Employment Act of 1967
 - 1) Prohibits discrimination by age in wages, benefits, hours worked, or availability of overtime.
 - 2) It is a violation of the act to publish notices or advertisement indicating a preference, limitation, or discrimination based on age.
 - 3) In 1978, Congress made extensive amendments to the 1967 act, prohibiting mandatory retirement of most employees under the age of 70.
 - 4) In 1986, mandatory retirement laws were outlawed.

V. CIVIL RIGHTS AND THE HANDICAPPED

- A. Introduction - 42 million Americans, about 17 percent of the population are handicapped. Handicaps include deafness, blindness, and mobility impairments.
- B. The problem - "Once blacks had to ride at the back of the bus. We can't even get on the bus."
- C. Key Laws
 1. The Rehabilitation Act of 1973 - Defend an inaccessible environment as a form of discrimination. Under this act, programs that receive federal funds must make public facilities accessible to people with physical disabilities. As a result of this act, public buildings have installed ramps and elevators for wheelchair users, the elderly, and those temporarily disabled.
 2. The Americans with Disabilities Act of 1990 - Known as the "Bill of Rights" for the handicapped. It -
 - a. Prohibits job discrimination against the 42 million Americans with physical and mental handicaps.

- b. Requires reasonable access to public buildings - for example ramps, handrails, and wheelchair accessible restrooms.
- c. Car-rental companies are required to provide cars with hand controls for disabled drivers.
- d. Telephone companies are required to have operators who pass on messages from the speech-impaired who use telephones with keyboards.
- e. Casey Martin case.

VI. GAY RIGHTS

A. Background

- 1. Size of the gay community
- 2. Homophobia

B. Gay Rights

- 1. Until recently, homosexuality was illegal in virtually every state in the nation. 29 states still have anti-homosexual laws on the books.
- 2. In 1986, the Supreme Court upheld an anti-gay law in the state of Georgia that made homosexual conduct between two consenting adults a crime. (*Bowers v. Hardwick*)
- 3. Almost 100 cities have laws prohibiting discrimination against homosexuals in the areas of housing, education, banking, and labor union employment.
- 4. New Jersey has an extensive anti-discrimination law which gives victims of discrimination based on "affectional or sexual orientation" legal grounds to sue or file a complaint with the state Division of Civil Rights.
- 5. In January 1943, on the recommendations of military psychiatrist who defined homosexuality as a medical disorder, the armed forces decreed that gays could be discharged simply for having homosexual tendencies. Since then 80,000-10,000 gays have been ousted from the military. Over 1,000 were ousted in 1991 alone. Military adopted "don't ask, don't tell" policy in 1994 to attempt to reduce discrimination.
- 6. Romer v. Evans (1996) - 6-3 ruling that Colorado's Amendment 2 was unconstitutional.
- 7. Boy Scouts of America v. Dale (2000) - 5-4 ruling that New Jersey's discrimination law is superceded by Constitution's Freedom of Association.
- 8. Lawrence v. Texas (2003) Supreme Court invalidates state law that prohibited sexual relations between consenting adults of the same sex; effectively overturning the Bowers decision.
- 9. United States v. Windsor (2013) Supreme Court invalidates the Defense of Marriage Act (DOMA), declaring it unconstitutional under the *due process clause* of the Fifth Amendment.

10. Obergefell v. Hodges (2015) Supreme Court rules that the fundamental right to marry is guaranteed to same-sex couples by both the due process clause and the equal protection clause of the Fourteenth Amendment to the U.S. Constitution.

VII. AFFIRMATIVE ACTION

- A. A Case Example
- B. What is Affirmative Action - the policy of encouraging or requiring employers to recruit minorities and women in an effort to compensate for past limitations on their opportunities.
- C. Origins and Growth
 1. Title VII of the Civil Rights Act of 1964 prohibits discrimination in employment based on race, color, sex, or national origin.
 2. In 1965, President Johnson issued an Executive Order requiring all contractors and unions doing business with the federal government to take "affirmative action" in hiring minorities. Two years later this order was amended to extend affirmative action to women.
 3. The federal government later mandated that all state and local governments, together with all institutions receiving aid from or contracting with the federal government, adopt an affirmative action program.
 4. Taken together, these rules now cover 48 million white women, 10 million Hispanics, 13 million blacks, and 3 million Asians. (Business Week July 8, 1991 page 62)
- D. Purposes - "Freedom is not enough. You do not take a person who for years has been hobbled by chains and liberate him, bring him to the starting line of a race and then say, 'you are free to compete with all the other' and still justly believe that you have been completely fair." (President Johnson)
 1. Make up for past injustices. We must do more than simply stop discriminating against minorities; we must take positive steps to repair damage.
 2. Overcome continuing discrimination.
 3. Increasing the number of women and minorities in desirable jobs is an important social goal.
- E. Problems
 1. Reverse Discrimination - The charge that affirmative action programs requiring preferential treatment or quotas discriminate against those who have no minority status. Compensating for past discrimination against some people can create fresh discrimination against other. Thus, when companies make extraordinary efforts to hire or promote minority workers, they may penalize white workers.
 2. Stigma
- F. Regents of the University of California v. Bakke (1978)
 1. Background
 - a. Dr. Tupper builds a new medical school at Davis.

- b. Only about 3 percent of the medical school's first two classes were minority students.
- c. Dr. Tupper makes a bold commitment: "I make all of you this promise - next fall we'll have 100 new students in the medical school and I guarantee you that we'll have 16 places for the disadvantaged."
- d. Two tracks - Regular admissions (98th percentile on the MCAT-Medical College Admissions Test) and the Special Admissions Program (46th percentile on the MCAT verbal and 35th percentile on the MCAT science)
- e. Allan Bakke - 32 years old, Vietnam vet, dreams of becoming a doctor. 96th percent verbal, 97th percentile science. Rejected in 1973 and 1974.
- f. Bakke sues UC-Davis claiming it denied him equal protection of the laws by discriminating against him because of his race.

2. Constitutional Issues

- a. Did the establishment of special admissions criteria for minority students violate the equal protection clause of the Fourteenth Amendment?
- b. Are racial-preference considerations always unconstitutional?

3. Decision

- a. The Court ordered Bakke admitted, holding that the UC-Davis Special Admissions Program did not discriminate against him because of his race. The Court thus rejected strict quotas.
- b. But, the Court also ruled that a university might well use racial criteria in an effort to ensure diversity in its student body. Racial (or sexual) identity could not be the sole criteria for admission, although it might be an important one.

F. Affirmative Action Today

- 1. The Rehnquist Court - As noted in your text, the Rehnquist Court has emerged as "an opponent of affirmative action." For example, the Court disallowed a Richmond, Virginia plan that reserved 30 percent of city contracts for minority firms. The court has also imposed tougher standards on employees trying to prove discrimination. More sympathetic to using for hiring us opposed to firing.
- 2. Public Opinion
- 3. Rollback of Affirmative Action in late 1990's
 - a. Proposition 209 - California voters did away with all use in public jobs and universities.
 - b. Hopwood decision - Circuit Court of Appeals in Texas ruled affirmative action to be unconstitutional.
 - c. Gratz v. Bollinger and Grutter v. Bollinger (2003)- race cannot be assigned a specific weight in admissions decisions but can be considered in a limited and sensible manner that meets a compelling interest.

REVIEW

1. **Key Terms** - civil rights, segregation, massive resistance, de jure segregation, de facto segregation, bussing, filibuster, cloture, wage gap, sex discrimination, sexual harassment, mandatory retirement, homophobia, affirmative action, and reverse discrimination.
2. **Identification** - Plessy v. Ferguson, Brown v. Board, coalition of conscience, Swann v. Charlotte-Mecklenburg, Selma March, Voting Rights Act of 1965, Fifteenth Amendment, Nineteenth Amendment, ERA, NOW, Americans with Disabilities Act of 1990.
3. **Key Lists**
 - a. Three foreseen consequences of Rosa Parks action
 - b. Three provisions of the Civil Rights Act of 1964
 - c. Three barriers to Black voting
 - d. Two arguments against ERA
 - e. Three purposes of Affirmative action
 - f. Two problems with Affirmative action - Court Decision in Bakke
 - g. National trend to end Affirmative Action- Asians - Harvard case

UNIT 3: INTERACTION AMONG THE BRANCHES (24 Days)

TOPIC 6: CONGRESS

Mastery Objectives - After completing this unit, the student will:

1. describe Congress's constitutional powers. [6.1.12.A.2.c]
2. discuss why incumbency is so great an advantage for re-election. [6.1.12.A.14.e]
3. discuss the sources and importance of money in Congressional elections. [6.1.12.A.14.e]
4. discuss the ethics of Congressional privileges.
5. describe the four major functions of Congress.
6. identify the general types of committees.
7. discuss the role of committees in the policy process.
8. describe the organizational structure of Congress.
9. describe the steps in the process of a bill becoming a law. [6.3.12.C.1]
10. explain the process of reapportionment and redistricting.

New Jersey Learning Standards:

RH.11-12.1
RH.11-12.2
RH.11-12.3
RH.11-12.4
RH.11-12.6
RH.11-12.7
WHST.11-12.2
WHST.11-12.6
WHST.11-12.9

Resources/Supplemental Readings: American Government: Institutions and Policies, Wilson, Dilulio Jr., Bose, Sixteenth AP* Edition. Chapter 13.
Mr. Smith Goes to Washington (1939)

[#] Numbers in brackets refer to Core Curriculum Content Standards

I. INTRODUCTION

- A. Do you approve or disapprove of the way Congress is handling its job?
- B. Do members of Congress understand the problems and concerns of people like you?

II. WHY WAS CONGRESS CREATED?

A. Background

1.

Fear of unchecked rulers

2.

Part of a system of checks and balances - Division of Power

3.

Tradition of popular government

B.

Bicameral (two house) format

1.

Connecticut Compromise - balance the big-state population advantage (House) and the small-state demand for equality (Senate).

2.

Reflected the social class biases of the founders - balance the interests and numerical superiority of the common people with the property interests of the less numerous business people, landowners, banks, and merchants.

3.

The House was meant to represent the People. The Senate was meant to represent the states.

III. THE POWERS OF CONGRESS

A. Express/Enumerated

1.

Impose taxes

2.

Regulate interstate commerce and international trade

3.

Borrow money

4.

Coin and print money

5.

Declare war

6.

Govern the District of Columbia

7.

Senate must advise and consent to the ratification of treaties and must accept or reject presidential nominations of ambassadors and Supreme Court justices.

8.

House has the power of impeachment - the power of formally charge. The Senate is empowered to act as a court to try impeachments.

B. Necessary and Proper Clause "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers.

IV. ELECTING THE CONGRESS

A. Introduction - Who do we elect?

B. Incumbents Usually Win

1.

Historic perspective

2.

The situation today

a.

House - Since 1946, 90 percent of all incumbents have been routinely re-elected. In 1988, 99 percent were re-elected and in 1990, 97 percent were re-elected. Furthermore, in 1988 more than 87 percent of the House incumbents won with more than 60 percent of the vote.

b.

Senate - 75 percent of U.S. Senators were re-elected in 1988.

c.

1994 election - 90 percent of House, 92 percent of Senate; 1996 election - 92 percent of House, 95 percent of Senate

C.

A Problem - Most Voters Have a Low Opinion of Congress

D.

Why Do Incumbents Win - First Answers

1.

Explanation 1 - Voters know how their elected representatives vote on important policy issues and agree with their stands. NOT! Only about 17 percent of the population

can make an accurate guess about how their representatives have voted on any issue on Congress.

2.

Explanation 2 - Incumbents ride in on the coattails of popular presidents. NOT! More than half the Democrats elected to the house in 1988 won their seats in districts carried by Bush.

E.

Why Do Incumbents Win - Key Factors

1.

Advertising/Visibility - positive media exposure

2.

Credit Claiming: "He works for us"

a.

Case work: Helping constituents as individuals

b.

Pork barrel: The list of federal projects, grants, and contracts available to cities, businesses, colleges, and institutions.

3.

Position Taking: Positions on matters that are important to their constituents.

4.

Privileges: The Franking Privilege

F.

Why Do Incumbents lose?

G. Money in Congressional Elections - over 2 billion dollars expected to be spent on the 2000 elections.

1.

Running for Congress is expensive

a.

The 1988 Senate races cost 190 million. The average Senate incumbent spent almost 4 million - 2 times as much as the average challenger.

b.

The 1988 House races cost 222 million. The average House incumbent spent almost \$400,000 - 4 times as much as the average challenger.

c.

The 1996 House races averaged \$500,000 each. In 1996 Senate races averaged \$3.6 million each.

2.

Where does the money come from?

a.

In 1988, 33 percent came from PAC's.

b.

In 1988 and 1990, incumbents received about 120 million from PAC's while challengers received only 15 million.

c.

Wealthy individuals (Trump)

H.

Should Congressional Terms Be Limited?

1.

Background

Over the past decade, only 88 incumbents have been defeated in more than 2,000 races. Currently almost one-third of all House members have served 14 years or more.

2.

Arguments in Favor

a.

Presidential terms are limited - why not Congress?

b.

Revitalize Congress. Replace entrenched professionals with responsive amateurs who have a fresh outlook.

c.

Weaken special interest. Promote statesmanship at the expense of special interests. "Their capacity to change a bill at 2 a.m. in a conference committee is based on 20 years or relationships, of golf games, and contributions."

d.

Restore a truly competitive electoral marketplace.

3.

Arguments against

a.

Limiting terms would deny to the people their right to have whatever representation they want.

b.

Today's complex government requires experienced legislators.

c.

The problem is exaggerated: two-thirds of all House and over half of all senators have been in Congress for less than 12 years.

d.

People already have the power to replace incumbents - they just don't use it.

e.

May be unconstitutional. Can states restrict the federal government without a Constitutional amendment?

4.

What do you think?

V. CONGRESSIONAL PRIVILEGES AND PENALTIES

A. Congressional Immunity - The Constitution grants members of Congress freedom from arrest while they are attending legislative sessions or traveling to and from them. However, Congress members can be arrested, tried, and convicted on criminal charges.

Congressional immunity also gives members of Congress the right to speak freely about political questions. They cannot be prosecuted for libel or slander for speeches made in committees or on the floor of Congress.

B. Salary and "Perks"

1.

Annual congressional is \$174,000 and \$193,400 for leadership positions. Speaker of the House is 223,500. In addition, legislators elected before 1980 could convert unused campaign funds to their personal use after retirement.

2.

Suite of offices in Washington.

3.

Expense accounts for staff and supplies. The average Senate office on Capitol Hill employs about 30 staff members.

4.

Franking privilege - free postage.

3. Long-distance telephone calls.

6.

Travel.

7.

Health care

VI. ETHICS

A. Introduction

1.

Sober view of human nature

2.

Hence a system of checks and balances

3.

But wait. Is it possible that this separation of powers actually makes corruption more, rather than less, likely. When bits and pieces of power are placed in many different hands there are many opportunities to exercise influence. Divided power means divided responsibility and divided responsibility creates the possibility of evaded responsibility. It also created the need to use power, influence, and an exchange of favors to assemble enough power to get anything done.

B.

Scandals

1.

Overview: From 1941 to 1989, nearly 50 members of Congress faced criminal charges. From 1981 to 1990, another 40 were the object of charges of misconduct.

C.

New Rules

1.

Disclosures - Members must file a financial disclosure statement every year.

2.

Honoraria - Starting in 1991 House members cannot accept fees for speaking. Senators can keep them, but only up to 27 percent of their salaries.

3.

Campaign Funds - After 1992, House members first elected before 1980 will no longer be able to keep surplus funds for their personal use after they retire.

4.

Lobbying - Former members may not lobby Congress for one year after they retire.

D.

Penalties

1.

Censure - Official declaration of disapproval

2.

Expulsion

VII. THE FUNCTIONS OF CONGRESS

A. Lawmaking Activities - Congress is the highest elected body in the country charged with making binding rules for all Americans.

B. Service to Constituents - Casework for Constituents

C. Representations

1.

Trustees - Legislator should act according to his or her conscience and the board interests of the entire society.

2.

Instructed Delegate - Legislator should be the agent of the voters who elected them and they should vote according to the views of their constituents regardless of their own personal views.

3.

Politico - Combination of delegate and trustee concept. Legislator varies role according to issue under consideration.

D.

Oversight Function - process by which Congress follows up on the laws it has enacted to ensure they are being enforced and administer in the way Congress intended. This is usually done by holding committee hearings and investigations.

VIII. HOUSE-SENATE DIFFERENCES**A. Size and Rules**

1.

There are 435 representatives, plus non-voting delegates from the District of Columbia, Puerto Rico, Guam, and the Virgin Islands compared with just 100 Senators.

2.

Unlimited Debate in Senate. Debate may ended by voting cloture or shutting off discussion on a bill. A three-fifths vote is needed for cloture. In contrast, there are time limitations on a bill established by the House Rules Committee.

3.

Prestige

IX. THE COMMITTEE STRUCTURE**A. Introduction**

1.

5,000 bills and 535 legislators

2.

"Little Legislatures"

B.

Types of Congressional Committees

1.

Standing Committee - a permanent committee that specializes in a particular area of legislation - for example, the House Judiciary Committee or the Senate Environment Committee.

a.

Most of the day-to-day work of drafting legislation takes place in the 16 standing Senate committees and the 22 standing House committees.

b.

There are typically 15 to 20 Senators on each Senate standing committee and 30 to 40 members on each standing committee in the House.

c.

The proportions of Democrats and Republicans on a standing committee reflect party proportions in the full Senate or House.

d.

Standing committees are broken down into subcommittees. For example, the House Agriculture Committee has 8 separate subcommittees including wheat, soybeans, and feed grains, and one on livestock, dairy, and poultry.

2.

Select Committees - a temporary committee created for a specific purpose.

3.

Conference Committee - to work out differences between the House and Senate versions of a piece of legislation. Its members are appointed from the standing committees that originally handled the legislation. Only about 15-20 percent of all bills that eventually pass Congress go to a conference committee - though virtually all important or controversial bills do. For example, a recent defense bill required House and Senate negotiators to resolve 2,003 separate issues on which the two houses differed.

4.

Committees on Committees - each party in the Senate and House has a committee that assigns members to the standing committees. For the Democrats, the Democratic Steering Committee makes committee appointments in the Senate, and the Democratic Policy and Steering Committee does so in the House. Republicans in both chambers call theirs the Republican Committee on Committees.

C.
Factors in Committee Assignments

1.
Specialized knowledge

2.
Constituency

3.
Party loyalty

4.
Seniority - Years of consecutive service on a committee

X. **CONGRESSIONAL LEADERSHIP**

A. House of Representatives

1.
Speaker of the House - most powerful member of the House. Member of the majority party. Presides over House debates thus determining which representative will speak and for how long. The Speaker can also influence committee assignments and assign bills to committee.

2.
House Majority Leader - chief strategist and spokesperson for the majority party. Central role is to shepherd legislation through the House.

3.
House Minority Leader - organize the opposition to the majority party.

4.
Party Whips - find out the opinions of party members on pending legislation, mobilize support, make sure party members vote.

B.
Senate

1.
President of the Senate

2.
President Pro Tempore

3.
Senate Majority Leader

4.
Senate Minority Leader

XI. HOW A BILL BECOMES A LAW

A. Introduction

During the 1980's an average of 20,000 bills were introduced in each Congress. Of this total only about 500-600 pass (2.5 percent) both houses.

B. Sources of Bills

1. A bill can be introduced only by members of Congress.
2. Nonetheless, most legislative proposals come from the executive branch and interest groups.

C. Introducing Bills

1. **Senate** - In the Senate bills are introduced in the morning. A motion is made for the sponsor to introduce a bill on the floor of the Senate. The bill is given a number, a title, and the sponsor's name. Senate bills are prefixed "S".
2. **House** - A member places a bill in the "hopper", a wooden box on the desk of the Clerk of the House. This can be done at any time, and motion is required. House bills are designated by number, sponsor, and title. All House bills begin "H.R.".

D. Committees and Subcommittees

1. Bill is assigned to a committee
2. Bills is assigned to a subcommittee
3. Most bills are pigeonholed. ("Pigeonholes" were small compartments in old-fashioned desks where members of Congress put important items.) Pigeonholing or bottling up is the practice of killing a bill by simply refusing to pass it out of the committee.
4. Discharge petition - When a bill has been in a House committee for more than 30 days, a representative can try to dislodge it with a discharge petition. Such petitions must be signed by an absolute majority (218) of the members to take effect. Since 1900, more than 800 discharge petitions have been initiated. Of these, only 26 gained the necessary signatures. Only 2 bills thus forced out of committee have ever been passed.

E. Hearings - A Case Example

F. Mark-Up

1. Once the hearings are concluded, the members go over the bill line by line, literally "marking it up" or amending it as they see fit.
2. Rarely does a controversial bill emerge from a subcommittee without changes.
3. The bill then returns to the parent committee. The committee may make more changes before "reporting it out."
4. The House clerk then puts the bill on a calendar - a list of bills to be debated.

G. House Rules Committee

1. Legislative traffic cop
2. Consent of the Rules Committee is necessary to take bill off the calendar. The Committee can take bills out of order, scheduling the most important bills first. It can also set the conditions or "rules" for debate and amendments.

H. The House Floor

1. The bill must now pass through one more "committee."
2. All revenue bills and most others are first debated by the Committee of the Whole.
3. The Speaker steps down is replaced by a new chairman and the entire House begins acting like a committee. The symbol of this transformation is the removal of the mace - a 3-foot club with an eagle on top. Once the mace is taken down, the House has become a committee.
4. The advantages of this is that it simplifies and expedites the legislative process. For example, a quorum for debate in the Committee on the Whole is only 100 members, whereas the Congress requires a majority (218) for passage in the House.

I. Final House Floor

1. Mace is put back and the House is now transformed back into a full legislative body.
2. Committee of the Whole now reports to the House.
3. Official vote is taken.

J. Senate Passage

1. Having passed the House, the bill must now pass the Senate.
2. Potential roadblocks

a. **Filibuster** - an attempt to "talk a bill to death." Remember, a filibuster can be broken by a **cloture** vote. If 16 Senators sign a petition moving to end debate and three-fifths of the entire Senate concurs, then each Senator has only one hour left to talk about the bill.

b. **Riders** - an amendment to a bill that has nothing directly to do with that bill. (See example)

K. Conference Committee to Iron Out Differences

L. The President

1. Sign the bill

2. Veto the bill - a two-thirds vote in both houses is required to override. Congress has overridden less than percent of Presidential vetoes.

3. No Action

a. A bill automatically becomes a law on the 10th day after it was presented. Ordinarily presidents choose to do nothing when they oppose a bill but now they do not have enough support to survive an override. Rather than be humiliated, a president may decide to just let the bill become law.

b. Pocket Veto - A rare opportunity for a president to kill a bill by doing nothing. If he pockets a bill (i.e., hold on to it without signing it) and if Congress adjourns within 10 days, the bill dies.

4. Controversy surrounding the Line-Item Veto debate

M. The Tyranny of the Minority

1. Pigeonholing

2. Filibuster

3. Veto

4. Lobbying

XII. REAPPORTIONMENT AND REDISTRICTING

A. Introduction

1. Seats in the House of Representatives are distributed according to population.

2. A census is conducted (by the Bureau of the Census) every 10 years.

3. Based on these figures, Congress **reapportions** or redistributes the House seats among the states.

B. Redistricting

It is up to the state legislatures to divide the state into election districts. When a state gains or loses a representative, it must **redistrict**, or redraw boundaries so that legislative districts are all approximately equal in population.

C. Supreme Court Decisions in Reapportionment Cases

1. By 1960, there were flagrant examples of malapportionment in the majority of states, both in state legislatures and in delegations to Congress. Incumbent state legislatures, dominated by rural elements, had refused to reapportion representatives to accurately reflect population shifts to urban areas. For example, Delaware had not reapportioned its legislature since 1897. Tennessee and Alabama had not done so since 1901. In 44 states less than 40 percent of the population could elect a majority of the legislature.

2. **Baker v. Carr (1962)- MANDATORY SUPREME COURT CASE**

a. This situation imperiled the very basis of democratic government. Yet the Supreme Court has refused to intervene on the grounds that appointment was a "political question" and thus outside the jurisdiction of the Court.

b. But, in 1962 the Court finally abandoned its unwillingness to act in the matter of apportionment. Baker was a resident of Tennessee. He pointed out that Moore County with a population of 3,454 elected one legislator, while Shelby County with population of 627,019 elected only three. He sued Tennessee's Secretary of State, Carr, for relief from denial of equal protection of the laws under the Fourteenth Amendment.

c. In a landmark decision, the Court ruled that people's right to fair representation was part of the Fourteenth Amendment's promise of equal protection. Voters claiming to be under-represented could therefore take their complaint to court.

3. **Wesberry v. Sanders (1964)** - The issue was settled 2 years later when the Court decided that Georgia's unequal congressional districts were unconstitutional. The Court ruled that "while it may not be possible to draw congressional districts with mathematical precision, there is not excuse for ignoring our Constitution's plain objective of making equal representation for equal numbers of people the fundamental goal for the House of Representatives. That is the high standard of justice and common sense which the Founders set for us."

D. Gerrymandering

1. Although state legislatures must provide for districts of approximately equal population they can still gerrymander the district. Gerrymandering is the practice of drawing odd-shaped boundary lines to favor a particular candidate or political party.

2. **Shaw v. Reno (1993) - MANDATORY SUPREME COURT CASE**

Race may not be the predominant factor in redistricting. The Court will use strict scrutiny to uphold the standard.

REVIEW

Definitions - lobbyist, interest group, PAC, free-rider, bicameral, casework, pork barrel, trustee, instructed delegate, standing committee, select committee, conference committee, seniority, reapportionment, redistricting, Baker v. Carr, Wesberry v. Sanders, open rule, closed rule, filibuster, pocket veto.

Lists

1.

Why are there so many interest groups - 3 reasons

2.

Four strategies interest groups use to influence policy - lobbying, electioneering, public pressure, litigation

3.

Three factors that make interest groups successful (page 142)

4.

Three reasons why incumbents usually win

5.

Three reasons why there should be term limitation/three reasons why there shouldn't be term limitations

6.

Three functions of Congress (148-149)

7.

Two reasons why power in Congress is decentralized (party leaders cannot command/ emergence of subcommittees)

8.

Remedies for - pigeonholing filibuster, veto

9.

Pluralist, power elite, and hyperpluralist views of interest groups

TOPIC 7: THE PRESIDENCY

Mastery Objectives - After completing this unit, the student will:

1. describe the requirements for becoming president.
2. describe the provisions of the 25th Amendment for succession.
3. describe how the president is removed from office.
4. discuss the president's role as chief legislator.
5. describe the powers of the president as chief executive. [6.1.12.A.14.1]
6. describe the structure of the executive branch.
7. describe the president's role as chief diplomat. [6.1.12.A.15.c]
8. describe the president's role as commander-in-chief.
9. describe different presidential styles.

New Jersey Learning Standards:

RH.11-12.2
RH.11-12.3
RH.11-12.6
RH.11-12.7
WHST.11-12.2
WHST.11-12.6
WHST.11-12.9

Resources/Supplemental Readings: American Government: Institutions and Policies, Wilson, Dilulio Jr., Bose, Sixteenth AP* Edition. Chapter 14.

[#] Numbers in brackets refer to Core Curriculum Content Standards

MANDATORY READING: FEDERALIST #70

I. INTRODUCTION

- A. Anyone Can Become President - Constitutional Requirements
 1. "Natural-born citizen"
 2. At least 35 years old
 3. Lived in the U.S. for at least 14 years
- B. Traditional Requirements

1. All presidents have been white men.
2. All but one president has been a Protestant
3. All but 9 presidents have had a college education. _____ is the only president since 1900 who never attended college.
4. All but three presidents were born and raised in small towns or rural areas.
5. _____ was the first president to have been divorced.
6. Ten presidents have been generals.

C. Salary, Benefits, and Perks

1. Salary is \$400,000 a year. Plus a 50,000 a year entertainment allowance.
2. White House
 - a. A _____ room mansion set on an 18.3 acre estate.
 - b. The White House also has a private swimming pool, movie theater, gym, bowling alley, and tennis courts. Bush had a 2,000 dollar putting green and a horseshoe pit installed near the pool.
 - c. Personal staff - over 90 people including 5 chefs, 6 butlers, 4 floral designers, and a tailor.
3. Camp David - a 143 acre vacation estate in Maryland complete with tennis courts, skeet range, heated pool, and 150 Navy personnel.
4. Free health care
5. Travel
 - a. 8 helicopters
 - b. Air Force One
6. Secret Service
7. Special Perks
8. Retirement: Lifetime pension is now 99,500 a year. The presidential widow is entitled to a pension of _____ a year.

D. Becoming President

1. Elections
 - a. Popular vote (see chart)
 - b. Electoral College (see chart)
2. The Vice-Presidency

- a. 10 percent of American history
- b. One in five chance overall
- c. Almost one-third in 20th century - 5 of last 16

E. Term of Office

- 1. Two-term tradition
- 2. 22nd Amendment - Two terms/10 years
- 3. What about a one six year term?

F. Presidential Succession (_____ Presidents have died in office)

1. Line of Succession

- a. Vice President
- b. Speaker of the House
- c. President pro tempore of the Senate
- d. Cabinet according to seniority of department (State, Treasury, Defense, Attorney General, etc.)

2. 25th Amendment

a. If the President resigns, is impeached, or dies in office the VP becomes the "actual" President.

b. If the President or the VP and a majority of the Cabinet declare the President unable to serve, then the VP becomes "acting" President.

c. If the President declares himself fit, he may resume the duties of President, unless the VP and a majority of the Cabinet disagree, in which case Congress must decide. A 2/3 vote of both houses of Congress is required for the Vice President to remain acting President.

d. If a vacancy occurs in the vice presidency, the President nominates a new vice president, who takes office after being approved by a majority of both houses of Congress.

G. Removing a President from Office

1. Under the Constitution any federal official can be impeached and removed from office for treason, bribery, or serious misconduct.

2. Impeachment is the process of bringing formal charges against a public official. Impeachment does not mean removal from office. Only the House of Representatives can impeach a federal official.

3. Only the Senate can remove a federal official from office. A 2/3 vote if needed.

II. PRESIDENTS AND PRIME MINISTERS

A. Introduction

1. The popularly elected president is an American invention.
2. Of the roughly 60 countries with some measure of free choice for voters only 16 have a directly elected president.
3. The democratic alternative is for the chief executive to be a prime minister.

B. Comparison

1. The U.S. President is elected by voters. In Britain the voters choose who is to be a member of Parliament. The Prime Minister is the leader of the majority party in Parliament. He/she remains in power as long as his/her party has a majority of the seats in the legislature.
2. U.S. presidents are frequently "outsiders." Prime Ministers are selected from among people already in parliament and so are always insiders.
3. Presidents choose cabinet members from outside Congress. The British prime minister picks all his/her cabinet ministers from among members of Parliament.
4. Presidents have guaranteed majority in the legislature. A Prime Minister's party always has a majority.

II. CHIEF OF STATE

- A. Definition - the role of the president as ceremonial head of the government.
- B. Examples
- C. Consequences
 1. A waste of time?
 2. Good politics
 3. Symbol of the Nation

IV. CHIEF LEGISLATOR - ROLE OF THE PRESIDENT IN INFLUENCING THE MAKING OF LAWS

- A. Recommending Legislation
 1. State of the Union Address -
 2. Economic Report
 3. Budget Message
 4. Press Conferences
 5. Private Meetings

B. Veto - Saying No

1. Veto
2. Pocket Veto
3. Line item veto - the power to veto sections or items of an appropriations bill while signing the remainder of the bill into law. Ruled unconstitutional by the Supreme Court as a violation of the Separation of Powers.

V. CHIEF LEGISLATOR

A. Legislative Leadership

1. State of Union Address - "He shall from time to time give to the Congress information on the State of the Union and recommend to their consideration such measures as he shall judge necessary and expedient." This power has become the springboard for the president's legislative leadership.

2. Economic Report - The Employment Act of 1946 requires each President to submit an Economic Report to Congress each January. In it, the President informs Congress about the nation's unemployment, inflation, and economic trends and makes economic policy recommendations for Congress to consider.

3. Budget Message - The Budget and Accounting Act of 1921 requires the President to send Congress a written Budget Message no later than 15 days into each regular session. The Budget Message spells out actual and expected income and expenditures for the federal government.

4. Direct appeal to the public

- a. Press conferences
- b. Presidential address

5. Presidential lobbying

- a. White House lunch
- b. Camp David
- c. Visit to district/state
- d. Support for a bill

B. The Veto Power

1. Using the veto (see chart)

a.	Regular vetoes -	1437
b.	Pocket vetoes -	1054
c.	Total vetoes -	2491
d.	Vetoes overridden	102

2. Threatening a veto - "Go ahead, make my day."

3. Line-item veto

- a. The veto is a powerful weapon but a clumsy one, more like a shotgun than a rifle.
- b. The president could avoid this problem with a line-item veto the power to veto a single item in a bill.
- c. 43 of our 50 governors have a line-item veto. Should the President.
- d. The Line Item Veto Act of 1996 was ruled unconstitutional by the Supreme Court in 1997.

C. Other Ways to Say No

- 1. Executive privilege
 - a. Example: the right/privilege of confidentiality
 - b. Definition: the claimed right of executive officials to refuse to appear before, or to withhold information from, the legislature or courts.
 - c. Justification
 - 1) The doctrine of separation of powers means that one branch of government does not have the right to inquire into the internal workings of another branch.
 - 2) Prudent administration requires that the president have the right to obtain confidential and valid advice from subordinates. Such advice would not be obtained if it would quickly be exposed to public scrutiny. "No president could function," Nixon contended, "if the private papers of his office, prepared by his personal staff, were open to public scrutiny."
 - d. Test case: United States v. Nixon
 - 1) Background - A federal special prosecutor sought tape recordings of White House conversations between RN and his advisors as part of his investigations of the Watergate scandal.
 - 2) Decision - Supreme Court held that while there may be a sound basis for the claim of executive privilege, especially where sensitive military or diplomatic matters are involved, there is not "absolute unqualified Presidential privilege of immunity from judicial processes under all circumstances." The court unanimously ruled that executive privilege could not be used to withhold evidence needed in criminal proceedings.
 - e. Test case: Jones v. Clinton (1999) 8-1 court ruled that a sitting president may be sued in a civil court.
- 2. Impoundment of funds
 - a. A Question: Does the president have to spend the money Congress appropriates?

b. Impoundment - A refusal by the president to spend money appropriated by Congress, usually because he opposes the program being financed.

c. Test case - RN impounded 40 billion, cutting back programs in agriculture, education, and the environment. RN contended his action was necessary to control inflation.

d. Budget Reform Act of 1974 - requires the president to spend all appropriated funds. Federal courts have upheld the rule that the president must spend money Congress has appropriated.

VI. CHIEF EXECUTIVE - THE ROLE OF THE PRESIDENT AS HEAD OF THE EXECUTIVE BRANCH OF THE GOVERNMENT

A. The Power of Appointment

1. What can the President do?

a. Presidential appointments to most major government positions must be approved by a majority vote of the Senate. This includes ambassadors, Supreme Court justices, heads of Cabinets, the Budget Director, etc.

b. Congress may permit the President to appoint "inferior officers" without Senate approval. Examples are bureau chiefs, military officers, and most White House staff members.

2. Limits on presidential appointment power

a. Civil service - system by which public employees are hired by merit rather than political party affiliation.

b. Of the 1.8 million civilian employees in the executive branch _____ are hired by civil service.

c. The president can appoint "only" 3,689 positions.

3. The power of removal

a. Question: Can the President fire an official or does he have to have Senate consent?

b. Answer: In the 1926 Myers v. U.S. the Supreme Court ruled that the President does have the authority to remove anyone he has appointed. Chief Justice Taft argued that the power of removal was implied by both the power to appoint and the authority to see that the laws are faithfully executed.

B. Executive Orders

1. Introduction: Article II, Section 3 of the Constitution says that the president "shall take care that the laws be faithfully executed."

2. Executive Orders - A president sets his bureaucratic machinery in motion by means of executive orders - directives signed by the president that require executive agencies or individuals to take specific actions. Hundreds of these orders are

issued every year and published in a giant volume called the Federal Register. For example in 1949 Truman desegregated the armed forces by issuing an executive order. In 1965, LBJ used an executive order to begin affirmative action. Executive orders do not require congressional approval but have the force of law. (In short, they are rules issued by the President to enforce a treaty, a law, a court ruling or the Constitution.)

C. The Cabinet - "The principal offices of the executive department"

1. Background

- a. From 4 to 14
- b. Although the President may make recommendations, only Congress can create or abolish a Cabinet department.
- c. The growth of the Cabinet often parallels changes in national concerns and priorities. For example, some of the newer departments reveal the president's concern with issues such as energy, urban development, and education.
- d. Each department is headed by a Secretary, except for the Justice Department, which is headed by the Attorney General.
- e. The size, budgets, influence, and activities of the Cabinet departments differ widely. The Defense Department is the largest with over 1 million civilian employees. The smallest is the Department of Education with just over 5,000 workers.

The Cabinet includes the departments, VP, and any other officials the President names. For example, the UN Ambassador can have cabinet rank.

2. The Role of the Cabinet

- a. **In theory** - the members of the Cabinet constitute an advisory body that meets with the president to debate major policy decisions.
- b. **In practice** - Cabinet meetings have been described as "vapid non-events." Why?
 - 1) Too large for true give and take.
 - 2) Cabinet heads are likely to understand issues only in their respective policy areas.
 - 3) Cabinet members are not necessarily close to the President. They are political appointments. Represent a wide variety of interests and constituents.
 - 4) Cabinet members typically become the representatives of their department to the President rather than the President's representative to the department.

D. The Executive Office of the President (EOP)

1. Background

- a. Created by Congress in 1939
- b. Employees around 1,600 individuals and has an annual budget of around 100 million.

2. National Security Council (1947) - gives President advice on matters relating to domestic, military, and foreign security. Includes director of the CIA, Chairman of the Joint Chiefs of Staff, Secretary of State and Defense, and President's National Security Advisor.

3. Council of Economic Advisors - 3 noted economists assisted by a staff of about 60. Analyzes the nation's economic situation and prepares President's annual economic report to Congress.

4. Office of Management and Budget - led by Budget Director. Prepares the budget and evaluates the organization and operations of the entire executive branch.

5. Other: Council on Environmental Quality/Office of Science and Technology.

E. The White House Staff

1. Includes the President's closest aides. Advises President on congressional relations, foreign affairs, and public relations.

2. Chief of Staff is the most important member. Also includes Press Secretary.

F. Organizing the Presidency

1. Rule of propinquity - power is wielded by those who are closest to the President. That is - who has the most frequent access.

2. Patterns of Organization: Pyramid

- a. Orderly flow of information
- b. Better control over subordinates
- c. Frees President to deal with Bid Issues
- d. But, it can isolate the President. Gives too much power

to Chief of Staff

3. Patterns of Organization: Circular

- a. Allows more information to reach President
- b. Thus president is exposed to a greater range of opinions
- c. But, it can encourage personal rivalries
- d. Can also overload President and create confusion

and options

VII. **CHIEF DIPLOMAT**

A. Recognition Power

1. The power to recognize or refuse to recognize foreign governments.

2. Examples -

- a. Soviet Union
- b. China
- c. Baltic States
- d. Iran

B. Treaties

- 1. President has the sole power to negotiate treaties with other nations.
- 2. Treaties must be approved by 2/3 Senate vote.

C. Executive Agreements

- 1. Definition - International agreements made by President with heads of foreign states. Done without Senate ratification. Executive agreements have the legal status of treaties. In 1936 Supreme Court ruled that Executive Agreements are within the inherent powers of the President.
- 2. Treaties are binding on all succeeding administrations. Executive agreements are not.
- 3. Advantages are speed and secrecy. There have been far more executive agreements (9,000) than treaties (1,300).

VIII. **COMMANDER IN CHIEF**

A. Introduction

- 1. Constitution - "shall be Commander in Chief of the Army and Navy of the United States, and of the militia of the several States, when called into service of the United States."
- 2. In his role as commander in chief, the president has probably exercised more authority than any other role.
 - a. Truman's decision to use atomic bomb
 - b. Ike orders the National Guard to Little Rock Central High School in 1957
 - c. Truman commits the U.S. to the Korean War
 - d. Ike and JFK send military advisers to Vietnam
 - e. Reagan sends troops to Lebanon and Grenada
 - f. Bush sends troops to Panama and Middle East

B. The Problem of Undeclared Wars

- 1. Only Congress has the right to declare war, but ...
- 2. War Powers Act of 1973
 - a. Notification - A president who introduces American troops into a situation where a shooting war is about to break out must notify Congress within 48 hours. The notification must set forth the reasons for the use of troops and an estimate of how long they will be needed.

b. Sixty to Ninety Day Limit - Unless Congress declares war or extends the time period, the president must bring the troops home within 60 days.

However, if more time is needed to protect the troops as they are being withdrawn, another 30 days can be added.

c. Consultation - The president must answer any questions about the war that Congress raises and must submit periodic progress reports.

3. Although the War Powers Act does check the President it does not forbid him from taking bold action.

- a. 1975 Mayaguez
- b. 1980 Hostage rescue attempt
- c. 1986 Air Strike on Libya
- d. 1990 Operation Desert Shield

C. Other Limits on the President's Power as Commander in Chief

1. Steel strike in 1952. Crippled the nation's steel production.
2. HST believed that a halt in steel production would hurt the war effort in Korea.
3. HST ordered his Secretary of Commerce, Charles Sawyer, to seize and operate the steel plants.
4. Truman justified his action on the basis of what he called the "inherent powers" of the President - powers exercised by the President during a period of national crisis.
5. The owners of the plants claimed the President's action was illegal interference with their business.
6. The Supreme Court (Youngstown Sheet and Tube v. Sawyer) ruled that the president's power as Commander in Chief did not include the power to end labor disputes or to seize private property. This marked the first time a limit was placed on the President's emergency powers.

IX. PRESIDENTIAL STYLE

- A. Introduction - Style is the Approach that Characterized each President
- B. Barber's Typology - See handout
- C. Powers of Persuasion

1. "The principal power that the President has is to bring people in and try to persuade them to do what they ought to do without persuasion. That's what I spend my time doing. That's what the powers of the Presidency amount to." HST

2. Examples
 - a. small groups
 - b. press conference

- c. radio/television

D. Popularity and Public Opinion

1. People are fickle

a. Americans want the President to be strong and tough-minded, but also concerned and caring.

b. Americans expect the President to stand "above politics" yet any presidential candidate must be a skillful leader.

2. Measuring Presidential popularity

a. Approval ratings - "Do you approve or disapprove of the way _____ is handling his job as President?"

b. Patterns

- 1) Honeymoon
- 2) Impact of recession
- 3) Impact of crisis - rally events
- 4) Impact of scandal
- 5) Approval tends to decline over time

X. FINAL POINTS

A. The three Presidential Audiences - the President's persuasive powers are aimed at three audiences.

1. Washington, D.C. - audience of fellow politicians and leaders

2. Party activists and officeholders outside Washington

- a. confirm ideology
- b. raise money

3. The public

B. The Constitution and Presidential Powers

1. Powers of the President alone

- a. Serve as commander in chief of the armed forces
- b. Commission officers of the armed forces
- c. Grant reprieves and pardons for federal offenses (except _____)
- d. Convene Congress in special sessions
- e. Receive ambassadors
- f. Take care that the laws be faithfully executed
- g. Wield the "executive power"
- h. Appoint officials to lesser offices

2. Powers of the President that are shared with the Senate
 - a. Make treaties
 - b. Appoint ambassadors, judges, and high officials
3. Powers of the President that are shared with Congress as a whole.
 - Approve legislation
- C. Constraints on Presidential Power - High Hopes and Harsh Realities
 1. Constitutional checks and balances
 2. Sheer limit of time - For example, Congress during an average year passes between 400 and 600 bills, each of which the president must sign or veto.
 3. Unexpected crisis - For example, Bush has already had to deal with unexpected crises in the Persian Gulf and in China.
 4. Federal budget - the vast bulk of federal expenditures are beyond the President's control in a given year.
 5. Bureaucracy - most federal employees are safe, secure, and beyond the President's control.

TOPIC 8: THE BUREAUCRACY

Mastery Objectives - After completing this unit, the student will:

1. describe the size of the federal bureaucracy.
2. describe the organization of the federal bureaucracy.
3. explain the role of independent regulatory agencies.
4. describe the characteristics of the civil service system.
5. describe the different proposals to reform the bureaucracy.
6. explain the concept of the iron triangle. [6.1.12.A.14.f]

New Jersey Learning Standards:

RH.11-12.2
 RH.11-12.3
 RH.11-12.6
 RH.11-12.7
 WHST.11-12.2
 WHST.11-12.6
 WHST.11-12.9

Resources/Supplemental Readings: American Government: Institutions and Policies, Wilson, Dilulio Jr., Bose, Sixteenth AP* Edition. Chapter 15.

[#] Numbers in brackets refer to Core Curriculum Content Standards

I. INTRODUCTION

- A. There is a mouse in the White House
- B. Definition
 1. Large organization
 2. Structured hierarchically - authority is divided among several managers
 3. To carry out specific functions
- C. Size
 1. Excluding the military, there are 3.2 million government employees in the federal bureaucracy
 2. Since 1950, most bureaucratic growth has been on the state and local levels

3. The share of the GNP taken up by government spending was only 8.5 percent in 1929. Today it exceeds 40 percent.

II. THE ORGANIZATION OF THE FEDERAL BUREAUCRACY

A. Cabinet Departments

1. The major service organizations
2. Directly accountable to the president
3. Responsible for performing functions of government
4. Presidents can appoint or fire all top officials
5. Three largest are defense (one million civilian employees), veterans affairs (231,486), and Health and Human Services (133,842). Smallest is education (4,554).
6. Inner Cabinet (State, Defense, Justice, and Treasury) - heads are often the closest to the president.

B. Independent Executive Agencies

1. Bureaucratic organizations that have a single function.
2. Chief officials are appointed by the president.
3. Examples
 - a. Government Services Administration (GSA) - centralizes purchasing for federal government. It procures, supplies, and transports property of all executive agencies.

NASA

C. Independent Regulatory Agencies

1. An agency outside the major executive departments charged with making and implementing rules and regulations to protect the public interest.
2. Each of these independent regulatory agencies is governed by a small commission, usually with 5 to 10 members appointed by the president and confirmed by the Senate for fixed terms.
3. Unlike cabinet officers or members of the president's staff, regulatory commission members cannot be fired by the president. (*Humphrey Executor v. United States*, 1935).
4. Examples
 - a. Interstate Commerce Commission - first regulatory agency

b. Federal Reserve Board - charged with governing banks and regulating the supply of money.

D. Government Corporations

1. An agency of government that administers a business enterprise
2. Examples
 - a. TVA
 - b. U.S. Postal Service
 - c. Comsat - sells timesharing on NASA satellites
 - d. AMTRAK

III. STAFFING THE BUREAUCRACY

- A. In the beginnings --- Natural Aristocracy
- B. Jackson - to the victors belongs the spoils - also called patronage
- C. Civil Service Reform
 1. Pendleton Act (1883) merit system based upon competitive exams
 2. Today 90 percent of federal service is covered by the merit system
- D. Hatch Act of 1939 - prohibits civil service employees from taking an active part in political campaigns

IV. REFORMING THE BUREAUCRACY

- A. Office of Personnel Management - in charge of hiring for most of the federal agencies. Uses competitive examinations.
- B. Senior Executive Service
 1. Corps of 8,500 high-level administrators and managers
 2. Award top-ranking civil servants for superior performance
 3. But there is less job security and can be easily transferred
 4. Still, very few have been fired
- C. Sunshine Laws - meeting held in public

V. IRON TRIANGLE

- A. Definition - three-way alliance among legislators, bureaucrats, and interest groups to make or preserve policies that benefit their respective individual interests.
- B. Example

TOPIC 9: THE JUDICIAL SYSTEM

Mastery Objectives - After completing this unit, the student will:

1. describe the basic characteristics of America's judicial system. [6.1.12.A.2.e]
2. distinguish between original and appellate jurisdiction. [6.1.12.A.2.e]
3. describe the structure of the federal court system. [6.1.12.A.2.e]
4. explain how Supreme Court justices are selected and approved. [6.1.12.A.2.e]
5. compare and contrast the philosophies of judicial activism and judicial restraint. [6.1.12.A.2.e]
6. explain how the Supreme Court selects cases. [6.1.12.A.2.e]
7. describe how the Supreme Court reaches decisions.
8. describe the factors that influence Supreme Court decisions.
9. explain how checks and balances limit the Supreme Court's power.

New Jersey Learning Standards:

RH.11-12.2
 RH.11-12.3
 RH.11-12.6
 RH.11-12.7
 WHST.11-12.2
 WHST.11-12.6
 WHST.11-12.9

Resources/Supplemental Readings: American Government: Institutions and Policies, Wilson, Dilulio Jr., Bose, Sixteenth AP* Edition. Chapter 16.

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MANDATORY READING: FEDERALIST #78

I. INTRODUCTION

A. Adversarial - court provides an arena for two parties to bring their conflict before an impartial arbiter or judge.

1. Plaintiff - brings a charge
2. Defendant - one being charged

B. Passive - Federal judges are restricted by the Constitution to deciding "cases or controversies" - that is actual disputes or **cases** rather than hypothetical ones. Thus, the judiciary is passive - depends on others to take the initiative.

- C. Jurisdiction - a court's authority to hear a case
1. **Original jurisdiction** - those in which a case is heard first usually in a trial.
 2. **Appellate jurisdiction** - courts that hear cases brought to them on appeal from a lower court.
 3. **Exclusive jurisdiction** - cases can be heard in only certain courts. For example, federal courts have exclusive jurisdiction over bankruptcy and patent cases.
 4. **Concurrent jurisdiction** - two court systems have jurisdiction over a case.
- D. Very Complex Dual Court System
1. State Court System - Each of the 50 states has a court system
 2. Federal Court System

II. THE FEDERAL COURT STRUCTURE

- A. Introduction
1. Constitution - "The judicial power of the US shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish."
 2. Judiciary Act of 1789
- B. The Federal Court System
1. Federal district courts
 - a. 94 federal district courts
 - b. at least one in every state, plus District of Columbia and Puerto Rico
 - c. over 550 district court judges
 - d. handle 90 percent of all federal cases
 - e. have original jurisdiction over most questions of federal law
 - f. cases range from kidnapping to employment discrimination and school desegregation suits
 2. Court of Appeals/Circuit Courts
 - a. first established in 1891 to help lessen workload of the Supreme Court
 - b. serves as an intermediate stage of appeal
 - c. today the courts of appeal are divided into 12 "circuits" or regions
 - d. courts of appeals have appellate jurisdiction. They review about 18,000 cases each year

e. the Court of Appeals also rule on decisions of the independent regulatory commissions such as the Federal Trade Commission

3. Special Courts

a. US Tax Courts - disputes between taxpayers and the IRS
 b. Court of International Trade - (Customs Court) - cases involving foreign business dealings

4. Supreme Court

a. "Court of last resort"
 b. Final arbiter of Constitution
 c. hears appeals from any federal court and the highest state courts if a federal question is raised

III. THE JUDGES

A. Constitutional Provisions

1. Appointment

a. The Constitution provides that the President "shall nominate, and, by and with the advice and consent of the Senate, shall appoint judges of the Supreme Court."

b. Congress has extended the same procedure to all judges in the federal court system. Thus all federal judges are appointed by the President and must be confirmed by a majority of the Senate.

2. Impeachment

a. Federal judges are appointed to serve "during good behavior". Thus they remain in office for life, unless they resign or commit a crime.

b. Like other federal officials, federal judges can be removed from office through the impeachment process. Congress may charge them with "treason, bribery, or other high crimes and misdemeanors."

c. No Supreme Court justice has ever been both impeached and convicted.

d. 10 federal judges have been impeached and 5 were convicted.

3. Compensation

a. Judges compensation "shall not be diminished during their continuance in office."

b. Chief Justices received \$255,500 while Associate Justices receive \$244,400.

c. Judges who retire at the age of 65 after at least 15 years on the bench receive their full salary for the rest of their lives.

B. Selecting Federal Judges

1. Screening candidates

a. Attorney General and the Justice Department - prepare a list of the top candidates - usually judges in state courts, law professors, or outstanding lawyers. The FBI conducts intensive background checks on each prospective candidate.

b. Philosophy

1) **Judicial Activism** - advocates an active role for the Supreme Court in enforcing the Constitution and in using judicial review. An activist judge takes a broad view of the Constitution. Activist decisions include:

a) Brown v. Board of Education

b) **Baker v. Carr (1963)**

MANDATORY SUPREME COURT CASE

- Court invalidated a Tennessee legislative appointment that had remained unaltered for over 60 years despite losses of population in many counties and large increases in others. Decision based on the principal of "one person, one vote."

c) Roe v. Wade

2) **Judicial Restraint** - Court should rarely use its power of judicial review or otherwise intervene in the political process.

3) It is important to remember that the difference between active judges and those who exercise restraint is **NOT** the same as the difference between political liberals and conservatives.

2. American Bar Association ratings

3. Interest Groups

4. Senate

a. Senate Judiciary Committee

b. Senatorial Courtesy - an unwritten tradition whereby nomination for state-level federal judicial posts are not confirmed if they are opposed by a Senator (of the President's party) from the state in which the nominee will serve. The tradition also applied to courts of appeal when there is opposition from the nominee's state Senator, if the Senator belongs to the President's party.

c. Full Senate

d. Full Senate rarely rejects nomination of federal district judge. However, almost 20 percent of presidential nominations for the Supreme Court

have been rejected - 144 nominations/28 rejections - 6 this century 2 during the Nixon and 2 during the Reagan presidencies.

C. Who Becomes a Federal Judge?

1. Lower Court Judges - 45 years old - successful lawyers and/or state judges. Most have been white, male, and Protestant. However in recent years more have been black, women, and Hispanic.

2. Supreme Court Justices

- a. Four women -
- b. Two African-Americans -
- c. One Hispanic-

IV. **SELECTING SUPREME COURT CASES**

A. Introduction

1. "The Court is and always will be a storm of controversial issues. For to it come the most troublesome, contentious problems of each age, problems that mirror the tensions, fears, and aggressiveness of the people."

2. "I'll take my case to the Supreme Court."

- a. 10 million cases tried in the U.S. each year
- b. 5,000 are appealed to the Supreme Court
- c. Court will decide about 400-450
- d. Court usually renders signed opinions on fewer than 125.
- e. Odds are 1 in about 40,000

B. Original Jurisdiction: Cases Involving -

- 1. Two or more states
- 2. U.S. and a state government
- 3. U.S. and foreign ambassadors and diplomats

C. Appellate Jurisdiction

1. "On Appeal" - About 10 percent of the Court's cases come "on appeal." Usually, they are questions of a law's constitutionality. For example, if a state supreme court of a lower federal court rules a federal law unconstitutional, the case might reach the Supreme Court on appeal. For a case to be heard "on appeal" 4 of the 9 justices must agree - "rule of four."

2. Writ of certiorari - (sir-shee-uh-RARE-ee) a Latin word meaning "to be made more certain."

a. What is it? - an order issued by a higher court to a lower court to send up the record of a case for review. It is the principal vehicle of U.S. Supreme Court Review.

b. How do you get a "cert" petition citing some error in the lower court or raise a serious constitutional issue. Rule of four applies.

D. Why grant a cert? The Supreme Court tries to reserve its time for cases in which a significant federal or constitutional question has been raised. For example, the Court will often grant a cert when:

1. Two or more federal circuit courts of appeal have decided the same issue in different ways.
2. A state Supreme Court has held a federal or state law to be in violation of the Constitution or has upheld a state law against the claim that it is in violation of the Constitution.

E. A Dilemma

1. If the Supreme Court grants a cert it encourages more.
2. But if it refuses a cert it gives the Court of appeals the last word.
3. Some have proposed to deal with the problem by creating a national court of appeals that would ensure that the 12 circuit courts of appeal are producing uniform decisions. Meanwhile, Supreme Court decisions would deal with major constitutional questions.

F. Getting to Court

1. Expensive, but costs can be lowered
 - a. In forma pauperis - "in the manner of a pauper." If you are indigent you can file and be heard as a pauper for nothing.
 - b. Interest groups
 - c. Fee shifting - the plaintiff collects his/her costs from the defendant if the defendant loses. For example, section 1983 of the U.S. Code allows a citizen to sue state and local government officials (such as a police officer) who deprive the citizen of some Constitutional right or withhold a benefit to which the citizen is entitled. If the citizen wins, he/she can collect money damages and lawyers fees from the government.
2. Standing the legal term **standing** refers to an individual's entitlement to bring a case to court. The rules governing standing include the necessity of proving the existence of a real controversy among adversaries (no hypothetical or imaginary cases) and showing actual harm being caused by the law or practice to which an individual objects. In recent years, Congress and the Courts have eased restrictions on standing so that entering the federal courts is not as difficult as it once was.
3. Class action suits - a lawsuit brought by a person or group on behalf of all people who would benefit directly from the court's decision. Class action suits have been especially important to environmental, consumer, and civil rights groups. *Brown v. Board of Education* was a class action suit brought by the NAACP to end school segregation.

V. THE SUPREME COURT IN ACTION**A. Filing Briefs -**

1. A written document arguing one side of a case. Briefs normally cite relevant facts, legal principles and previous cases that support the argument.

2. Amicus Curiae - friend of the court. Briefs filed by interested parties. For example, in the Bakke case (strict quotas are not acceptable but a school can use race or ethnic background as one element in the selection process) over 50 amicus briefs were filed. They are really a polite way of lobbying the Court.

B. Oral Arguments

1. Open to the public

2. Thirty minutes

C. Solicitor General - Government's top trial lawyer. The Solicitor General decides what cases the government will appeal from lower courts and personally approves every case the government presents to the Supreme Court. Usually included in about 50% of Supreme Court cases.

D. Conference

1. Friday meetings - absolutely secret

2. Vote - About one-third of Supreme Court decisions are unanimous. What happens in a tie?

E. Opinions - present the issues and the reasoning of the Court. Opinions instruct lower courts by setting guidelines. They also establish precedents.

1. Majority Opinion - law of the land

2. Concurring Opinion - support majority but for different opinions/reasons.

3. Dissenting Opinion - have no legal standing but express an important point of view.

VI. WHAT FACTORS INFLUENCE SUPREME COURT DECISIONS?**A. Precedents**

1. Stare decisis (STAT-ray dih.SIGH.sis) "Let the decision stand" Once the Supreme Court makes a ruling in one case, it normally takes that ruling as a precedent or model to decide similar cases.

a. makes for uniform decisions - similar cases should be decided in a similar manner

b. makes court more predictable

c. makes the court more efficient

2. Examples

a. Judicial Review

1) **Marbury v. Madison (1803)**
MANDATORY SUPREME COURT CASE

establishes the principle of judicial review as applied to Congress and the President.

2) Martin v. Hunter's Lessee extended the power of judicial review to overrule state courts.

b. One person, one vote

1) **Baker v. Carr (1961)- MANDATORY SUPREME COURT CASE**

establishes the principle of one person, one vote

2) Wesberry v. Sanders applies it to Congressional districts

3) Reynolds v. Sims applies it to districts in state legislatures

4) **Shaw v. Reno (1993)- MANDATORY SUPREME COURT CASE**

legislative redistricting must be conscious of race and ensure compliance with the Voting Rights Act of 1965

c. Abortion

- Planned Parenthood v. Casey

d. Miranda Rights

3. Exceptions - But times change and the Court can make mistakes. There have been about 140 Court reversals. For example:

a. Segregation in schools

1) Plessy v. Ferguson

2) Brown v. Board of Education

b. Incorporation

1) Barron v. Baltimore

2) Gitlow v. New York

4. Conclusions - Precedence is an important and basic guideline for Supreme Court decisions. But the Court is flexible enough to overturn previous decisions.

B. Judicial Philosophies

1. Judicial Restraint

2. Judicial Activism - "The Constitution is what the judges say it is"

a. Those who support judicial activism argue that the federal courts must correct injustices when other branches or the states refuse to do so.

b. But critics argue that judges have become unelected legislators.

3. Original Intent

C. Public Opinion

1. Are Supreme Court justices isolated from the stresses of politics?

- a. life tenure
- b. sage salary

2. But justices are aware of public opinion and sensitive to public opinion. For example:

a. Bussing

1) In Swann v. Charlotte-Mecklenburg County Schools (1971) the Court affirmed or upheld the right of lower courts to order bussing of children to ensure school desegregation.

2) But bussing came under heavy attack. Public opinion strongly opposed it. In Milliken v. Bradley (1974) the Supreme Court ruled that lower courts could not order bussing across school district boundaries to achieve racial balance. This ruling meant an end to extensive school desegregation in metropolitan areas.

b. Abortion

1) Roe v. Wade

2) Webster v. Reproductive Health Services (1989) - First time that the Court upheld significant government restrictions on abortion. It denied the use of publicly funded facilities in the performance of an abortion unless the mother's life was at stake.

3. The Court has reflected public opinion about two-thirds of the time. But here are times when the Court departs from majority public opinion. For example, the Court has defied the wishes of the majority on the issue of school prayer.

VII. CHECKS AND BALANCES

A. The President

1. Appointments

2. FDR's Court Packing Scheme

- B. Congress

1. Senate confirms nominees

2. Congress can alter the size of the Supreme Court and can also restructure the judicial system.

3. Congress can propose constitutional amendments to overturn Supreme Court decisions. This has happened four times:

- a. The 11th Amendment in 1798 reversed 1793 decision in *Chisholm v. Georgia* which permitted an individual to sue a state in federal court.

- b. The 14th Amendment reversed the 1857 *Dred Scott* decision which held that blacks are not American citizens.

- c. The 16th Amendment in 1913 reversed the 1895 decision in *Pollock v. Farmers Loan and trust* which prohibited a federal income tax.

- d. The 26th Amendment in 1971 reversed part of a 1901 decision which denied Congress's power to enfranchise 18-20 year olds in state elections.

UNIT 4: AMERICAN POLITICAL IDEOLOGIES AND BELIEFS

TOPIC 10: PUBLIC OPINION

Mastery Objectives - After completing this unit, the student will:

1. define public opinion and explain the impact on public policy-making.
2. explain five qualities of public opinion. [8.1.12.A.1]
3. describe the basic techniques of public opinion polling.
4. explain how the family, education status and opinion leaders influence public opinion.

New Jersey Standards:

RH.11-12.2
RH.11-12.3
RH.11-12.6
RH.11-12.7
WHST.11-12.2
WHST.11-12.6
WHST.11-12.9

Resources/Supplemental Readings: *American Government: Institutions and Policies*, Wilson, Dilulio Jr., Bose, Sixteenth AP* Edition. Chapters 7 and 12. *American Government: Readings and Cases (19th Edition)*, by Peter Woll.

[#] Numbers in brackets refer to Core Curriculum Content Standard

I. INTRODUCTION

- A. Polls, Polls and more Polls
- B. Questions
 1. What is public opinion?
 2. Why does it change?
 3. How is it measured?
 4. What role should it play in a constitutional democracy?

II. OPINIONS, ATTITUDE, AND VALUES IN AMERICA

- A. Public Opinion
 1. Definitions
 - a. The aggregate of individual attitudes or beliefs shared by some portion of adults.
 - b. "Those opinions held by private persons which governments find it prudent to heed."
 2. Qualities

- a. Intensity - strength of a pro or con position concerning public policy or an issue
 - the intense minority
 - b. Fluidity - Changeableness - the extent to which public opinion changes over time.
 - c. Direction - location on the political spectrum
 - d. Relevance - the extent to which an issue is of concern at a particular time.
 - e. Latent public opinion - unexpressed political opinions that have the potential to become manifest attitudes or beliefs.
- B. Attitudes
1. Definition - a general outlook or perspective on social policies
 2. Examples
 - a. "If your party nominated a well-qualified black man for president, would you vote for him?"
 - b. "If your party nominated a well-qualified woman for president, would you vote for her?"
- C. Core Values
1. Definition - basic long-standing commitments/consensus
 2. Examples
 - a. Belief in God - see chart
 - b. Belief in individualism
 - c. Belief in equal opportunity
 - d. Pride in America
 - e. Belief in moderation

III. OPINION POLLS

- A. A Brief History
1. The person on the street
 2. The Literary Digest, George Gallup, and the 1936 Election
 3. Importance Today
- B. Sampling Techniques
1. Population - entire group you want to sample
 2. Sample - portion of the group you study
 3. Randomness - every member of the population being studied must have an equal chance of being sampled. If this happens, a small sample should represent the whole population.

4. Random Samples are based upon the laws of probability. A properly drawn random sample of 1,500 people will accurately reflect the opinions within a margin of plus or minus 3 percent, 95 percent of the time.
 5. Quota sampling - a sample deliberately constructed to reflect several major characteristics of the population.
 6. Valid Questions
 - a. Should imports be limited to save jobs?
 - b. Should imports be limited if the intention in doing so is save jobs?
 - c. Some people say that import quotas will save American jobs, while others say that they will end up costing us jobs. How do you stand on import quotas?
 7. Conducting the poll
 - a. person to person
 - b. telephone
 8. Analyzing and reporting the data
- C. Problems
1. Stopping too soon - The 1949 and 1980 elections
 2. Do polls register public opinion or do they influence it. For example, do low poll ratings discourage supporters? Do good poll ratings produce a bandwagon effect?
 3. Exit Polls - Should they be regulated?
 4. Bias - Wilder versus Coleman
 5. Cell phones/ non-response bias
 6. Point - Counterpoint: Do Public Opinion Polls aid Democracy?

IV. HOW IS PUBLIC OPINION FORMED?

- A. Political Socialization - the process by which individuals acquire political beliefs and attitudes.
- B. Importance of the Family
 1. Ethnic Identity
 2. Notion of Social Class
 3. Educational Opportunities
 4. Early Religious Beliefs
 5. Political Identification
- C. Educational Environment- More education a person receives the more liberal they become.

- D. Religious Influences - Surveys show that -
1. Roman Catholic respondents tend to be more liberal on economic issues than Protestants.
 2. Jewish respondents are more liberal than either Catholics or Protestants.
 3. White Protestants are more likely to vote Republican.
 4. Northern white Roman Catholics have historically voted Democratic.
 5. Jewish voters have historically voted Democratic.
- E. Social Class
1. Poorer people are more inclined to favor government social welfare programs but are likely to be conservative on social issues such as abortions.
 2. Upper middle class is more likely to hold conservative economic views but to be tolerant of social change.
 3. People in lower economic strata tend to be more isolationist on foreign policy issues.
- F. The Influence of Political Events
1. Specific events
 2. Generational Effects - Events of a particular time period have a long-lasting effect on the political opinions or preferences of those individuals who came of political age at that time.
 - a. Great Depression
 - b. Turmoil of the sixties
 - c. Economic prosperity of the Reagan Years
- G. Opinion Leaders
1. Whose opinion do you hold in great respect?
 2. Individuals able to influence the opinions of others.
- H. Media Influence
1. What do you read?
 2. What do you watch?
 3. Decides what is important

TOPIC 11: POLITICAL PARTIES

Mastery Objectives - After completing this unit, the student will:

1. identify and discuss the tasks of political parties. [6.1.12.A.14.e]
2. explain the reasons why America has a two-party system. [6.1.12.A.2.f]
3. discuss the role third parties have historically played in American politics.
4. identify major milestones in the history of the American party system.
5. identify the groups that formed the New Deal Coalition. [6.1.12.A.14.b]
6. describe the reforms instituted by the McGovern-Fraser Commission.
7. discuss the key characteristics that distinguish the Democratic and Republican parties today. [6.1.12.A.14.d]
8. describe the state of party identification among the electorate. [6.1.12.A.2.f]

New Jersey Standards:

RH.11-12.1
 RH.11-12.2
 RH.11-12.6
 RH.11-12.8
 RH.11-12.9
 WHST.11-12.1a
 WHST.11-12.1b
 WHST.11-12.2c
 WHST.11-12.4
 WHST.11-12.8
 WHST.11-12.9
 WHST.11-12.10

Resources/Supplemental Readings: American Government: Institutions and Policies, Wilson, Dilulio Jr., Bose, Sixteenth AP* Edition. Chapter 9. American Government: Readings and Cases (19th Edition), by Peter Woll.

[#] Numbers in brackets refer to Core Curriculum Content Standard

I. INTRODUCTION

- A. Which party do you identify with?
- B. What three words come to mind when you think of this party?

II. POLITICAL PARTIES

A. Definitions

1. A group of individuals who organize to win elections, to oppose the government, and to determine public policy.
2. "Political parties created democracy...and democracy is unthinkable save in terms of the parties."

B. Why Do People Join Parties?

1. Social
2. Material
3. Ideological

C. Functions - What do parties do?

1. Recruit and pick or nominate candidates
2. Run campaigns
3. Articulate policies - platform
4. Coordinate policy making
5. Opposition Party

III. PARTY SYSTEMS

A. One-Party Systems

1. Examples
2. It is impossible to have free elections and a one-party system?

B. Multi-Party Systems

1. Examples - France and Germany each have 4 major parties and several minor ones. Italy has ten parties.
2. Characteristics - Multi-party systems typically are divided along sharp ideological lines, representing the range of opinions from "right" to "left." Parties are often linked with different religious regions, and social class groupings.
3. Stability - Some nations with multi-party systems, such as Sweden, Belgium, and Germany, have very stable governments. But, most are very unstable.

C. Two-Party Systems

1. Relatively rare - Only about a dozen nations have two-party systems.
2. The U.S. and Great Britain have the strongest two-party systems.

IV. AMERICA'S TWO-PARTY SYSTEM - CAUSES

A. Historical and Cultural Tradition

B. Agreement on Basic Ideas - Strong Consensus on Core Values

- C. Legal Barriers to Minor Parties - For example, it is very difficult for third parties to get on the ballot. The names of Democratic and Republican candidates are automatically placed on state ballots but those of third-party candidates are not. For example, Pennsylvania requires all third-party candidates to secure 36,000 signatures from registered voters within 21 days in order to have their names placed on the ballot.
- D. Patterns of Voting
 1. Single-member district - The one candidate who receives the most votes in his or her district is elected to office.
 2. Proportional representation - Each party gets legislative seats in proportion to the votes it receives.

V. **THIRD PARTIES**

- A. Role
 1. Serve as safety valves, giving people a legitimate outlet for their anger at "the system."
 2. Source of new political ideas.
- B. Examples

VI. **REALIGNMENT** - Plurality of voters are registered as Independents

VII. **PARTY ERAS IN AMERICAN HISTORY**

- A. Key Definitions
 1. Party eras - Historical periods dominated by one party
 2. Critical elections - An electoral earthquake whereby new issues emerge, new coalitions replace old, and the majority party is often displaced by the minority party.
 3. **Party Realignment** - The displacement of the majority party by the minority party. Occurs after a critical election.
- B. The First Party System, 1796-1824
 1. Origins - Hamilton versus Jefferson
 2. The Federalists
 3. Democratic - Republicans
- C. Jackson and the Democrats versus the Whigs - 1828-1860
 1. Jackson and the Democrats - Forged a coalition of Southerners, Westerners, and new immigrants.
 2. Whigs - Led by Henry Clay, Daniel Webster and others who hated Jackson. The Whigs included northern industrialists and southern planters - an unstable coalition.

- D. The Republican Era, 1860-1932
 - 1. Slavery and the rise of the Republican Party
 - 2. The Election of 1860
 - 3. Civil War - launched a period for Republican ascendancy. However the Democrats controlled the "Solid South".
 - 4. The Election of 1896
 - a. Bryan and the populists and "free silver"
 - b. McKinley - gold standard industrialists banks
- E. The New Deal Coalition, 1932-1968
 - 1. The Great Depression
 - 2. Herbert Hoover
 - 3. The 1932 Election: Hoover versus Roosevelt
 - 4. The New Deal Coalition
 - a. Urban dwellers
 - b. Labor Unions
 - c. Catholics and Jews
 - d. The poor
 - e. The Solid South
 - f. African Americans
 - g. Intellectuals
 - 5. The Democratic Era continued under Truman, Kennedy, and Johnson
- F. The 1968 Election
 - 1. LBJ in Trouble
 - 2. The Tet Offensive
 - 3. Eugene McCarthy
 - 4. Up, Up, and Away with RFK
 - 5. LBJ withdraws
 - 6. Dr. King is assassinated
 - 7. Robert Kennedy is assassinated
 - 8. The tumultuous Democratic Convention
 - 9. And then there was Nixon

VII. CONSEQUENCES OF THE 1968 ELECTION - RESTRUCTURING THE DEMOCRATIC PARTY

- A. The Old Party - The Democratic Party had been controlled by urban machines, labor unions, blue-collar Northerners, rural white Southerners
- B. How the Party Selected Delegates
 - 1. Primaries

2. Caucus Meetings
 3. Appointments
- C. New Rules - The McGovern-Fraser Commission
1. Fair-play rules - Party caucuses must be open to all members, announced in advance, held in public places, and governed by written rules.
 2. Affirmative action - Women, minorities, and young people 18 or more years old must be represented at all future conventions "in reasonable relationship to their presence in the population."
 3. No unit rule - Ended the practice of casting all of the states' votes for the candidate who received a majority of votes among the states' delegates.
- D. New Results - 1972
1. Women - increased from 13 percent in 1968 to 38 percent in 1972.
 2. Blacks - increased from 5.5 percent in 1968 to 15 percent in 1972.
 3. Young - 27 percent of the 1972 delegates were under 30.
 4. The 1972 Convention wrote a platform supporting gay rights, abortion, tax increases, and racial quotas. It also nominated George McGovern, a liberal Senator from South Dakota.
 5. Nixon roundly defeated McGovern 60.7 to 37.5 percent. Large numbers of Catholics, white ethnics, and white Southerners, once the backbone of the Democratic Party voted for Nixon. These white working class voters become known as "Reagan democrats" in the 1980's.
- E. New Changes – Superdelegates - Party members who are guaranteed seats at the convention.
- F. Has Party Reform Succeeded? Two Views
1. Yes
 2. No
- VIII. **CONSEQUENCES - THE REPUBLICAN ASCENDANCY: THE REPUBLICANS WON 5 OF THE 6 PRESIDENTIAL ELECTIONS BETWEEN 1968-1988 . THEIR VICTORIES IN 1972, 1980, 1984 AND 1988 WERE BY VERY WIDE MARGINS.**
- IX. **CONSEQUENCES - DIVIDED GOVERNMENT**
- A. Republican White House/Democratic Congress
 - B. The States - In 1989, 32 of the states had divided governments.
- X. **DEMOCRATS AND REPUBLICANS - SIMILARITIES AND DIFFERENCES**
- A. Similarities
 1. Broad based support

- a. open parties - any person can join just by declaring his or her choice.
- b. variety of people
- 2. Political Center - Historically American parties have been more concerned with gaining votes than with maintaining ideologies. The goal is to build a winning coalition.
- 3. Decentralized Party Organization - The most decentralized in the world. Although both parties choose national committees and maintain national headquarters, state and local officials have a great deal of independence and freedom of action.
 - a. National Party Organization
 - 1) National Committee - A standing committee of a national party established to direct and coordinate party activities during the four-year period between national party conventions.
 - 2) National Chairperson - Party spokesperson who runs the national headquarters and raises and distributes funds.
 - 3) Party Platform - Document outlining the policies, principles, and positions of each party.
 - b. State Party Committees
 - e. Local Party Committees
- B. Differences
 - 1. Party Coalitions
 - 2. Policy Differences - 2008
- C. AP Question: Evaluate the claim that there is "not a dime's worth of difference" between contemporary Republican and Democratic parties. In your answer discuss the relationship between the domestic policy preferences of each party and the social bases of party support in the electorate. Has this sentiment increased significantly in the 1990's?

XI. PARTY IDENTIFICATION

- A. Definition - Linking oneself to a particular political party. "Do you usually think of yourself as a Republican, a Democrat, or an independent or what?"
- B. What percentage of the electorate defines themselves as Republicans? Democrats? Independents?

XII. FINAL POINTS

- A. Critical Elections
 - 1. 1860 - Divides the country between a Republican North and a Democratic South.
 - 2. 1896 - Solidifies the Republican majority in industrial America and forged a link between the Republican party and business.

3. 1932 - Formation of the New Deal coalition.
4. 1968 - Inaugurates an era of Republican ascendancy. Collapse of New Deal Coalition.
5. 1992 - Democrats capture White House after Republicans won in 20/24 previous years.
6. 1994 – Republicans capture Congress after 40 years of Democratic dominance.
7. 2008 – The election of the first African-American, Barack Obama, to the Presidency.
8. 2010 – Midterm Elections and the rise of the Tea Party. Republicans recapture the House of Representatives.

UNIT 5: POLITICAL PARTICIPATION (19 Days)

Topic 12: NOMINATIONS, CAMPAIGNS AND VOTING

Mastery Objectives - After completing this unit, the student will:

1. describe the role technology is playing in contemporary campaigns. [6.1.12.A.14.e]
2. distinguish the caucus and primary delegate selection processes. [6.1.12.A.14.e]
3. evaluate the advantages and disadvantages of the present nominating system. [6.1.12.A.14.e]
4. describe the modern purposes and processes of the national convention.
5. assess the role of money in campaigns. [6.1.12.A.14.e]
6. assess the impact of campaigns upon public opinion. [6.1.12.A.14.e]
7. describe the electoral college and discuss proposals for reforming it. [6.1.12.A.14.e]
8. identify the factors associated with voting and non-voting. [6.1.12.A.14.e]
9. identify the major factors determining how voters vote. [6.1.12.A.14.e]

New Jersey Learning Standards:

RH.11-12.1

RH.11-12.2

RH.11-12.3

RH.11-12.6

RH.11-12.7

WHST.11-12.2

WHST.11-12.6

WHST.11-12.9

Resources/Supplemental Readings: American Government: Institutions and Policies, Wilson, Dilulio Jr., Bose, Sixteenth AP* Edition. Chapter 8. Readings: Robert Putnam: Bowling Alone Excerpt

[#] Numbers in brackets refer to Core Curriculum Content Standards

I. INTRODUCTION - THE BIG PICTURE**II. THE FIRST STEP - CANDIDATES**

- A. A Long Grueling Campaign/Ordeal
- B. Why Would Anyone Want to Run?
 1. Service to country
 2. Response to issues or events
 3. Ambition ("fire in the belly") status, prestige and power

III. A HIGH TECH CAMPAIGN

- A. Mass Media
- B. Social Media
 1. Twitter
 2. Facebook
 3. Other tools/ sites
- C. Computer
 1. Dial voters and give a recorded message
 2. Sort voters for specialized mailings
 3. Data bank on delegates
 4. Track TV markets
 5. Analyze news stories
 6. Polls
 7. Internet
- D. Tracking Polls
 1. Pulse of voters
 2. Analyze your strengths and weaknesses
 3. Analyze your opponents strengths and weaknesses
- E. Professional Campaign Manager

1. Political Consultant - a paid professional hired to devise a campaign strategy and manage a campaign
2. Image Building - using opinion polls, the candidate's image is molded to meet the particular needs of the campaign. "Too many good people have been defeated because they tried to substitute substance for style." (Patrick Caddell)

IV. **WINNING DELEGATES**

A. Caucus

1. Originated in New England
2. Congressional caucuses nominated candidates for president through 1824
3. Now a meeting of state party activists

B. Primary

1. Comes "first"
2. Open to mass public
3. Closed Primary - voters declare party affiliation when they register to vote. On election day they can vote only for candidates running in that party's primary.
4. Open Primaries - voters do not have to declare a party preference in advance, but simply ask for the party ballot of their choice on election day.

V. **Comparing the last Presidential Campaign**

A. The Scorecard -

B. The Long Trail Ahead

1. States with Primaries v. Caucuses
2. Democratic National Convention
 - a. Delegate number
 - b. Superdelegate and influence
3. The importance of New Hampshire
4. Super Tuesday
5. Frontloading

VI. THE CURRENT SYSTEM

- A. Advantages
- B. Disadvantages
 - 1. Too long
 - 2. Disproportionate attention goes to the early states
 - 3. Money plays too big a role in the caucuses and primaries
 - 4. Participation is low and unrepresentative
 - 5. Gives too much power to the media

VII. A NATIONAL PRIMARY

- A. Advantages
- Disadvantages

VIII. THE NATIONAL CONVENTIONS

- A. Day One - The Keynote Address
- B. Day Two - The Platform
- C. Day Three - Nomination of Presidential Candidate
 - 1. Multi-ballot conventions
 - a. 1912 - 46 ballots
 - b. 1920 - 44 ballots
 - c. 1924 - 103 ballots
 - 2. Why are there no more multi-ballot conventions?
- D. Day Four - Choose vice-president and acceptance speeches

REVIEW

1. **Multiple Choice Questions** - Carefully review all your notes
2. **Key Terms** - political parties, critical elections, party realignment, Superdelegates, party dealignment, caucus
3. **Key Lists**
 - a. Three functions served by parties
 - b. Three reasons why America has a two-party system
 - c. Two roles of Third Parties
 - d. Four groups in the New Deal coalition
 - e. Three new rules by the McGovern-Fraser Commission
 - f. Three disadvantages of current primary system

IX. THE CAMPAIGN GAME - ORGANIZING THE CAMPAIGN

- A. Introduction
- B. Key People in a Campaign
 1. Campaign Manager
 2. Fundraiser
 3. Campaign Counsel
 4. Media Consultants
 5. Research Staff/Policy Advisors
 6. Pollster
 7. Press Secretary

X. THE CAMPAIGN GAME - MONEY AND CAMPAIGNING

- A. The Problem
 1. "Money Talks"
 - a. 1896 Boies Penrose spends .5 million in bribes for his U.S. Senate from Pennsylvania
 - b. 1972 Campaign finance abuses - Nixon
 - 1) W. Clement Stone - "Clem, you and I know that I wouldn't be here if it weren't for you."
 - 2) ITT - \$400,000
 - 3) Dairy Interests - \$500,000

2. Federal Campaign Act of 1974
 - a. Spending limits - All candidates for federal elections (Senate, House, and President) were limited in the amount of money they could spend).
 - b. Contribution limits - Individuals could contribute no more than \$1,000 to each candidate in each election. The total limit of all contributions from an individual is \$25,000 per year. Groups can contribute up to a maximum of \$5,000 to a candidate in any election.
 - c. Disclosure - Candidates were required to file periodic reports disclosing the names and addresses of everyone who donated more than \$100 and listing all expenditures of more than \$1,000.
 - d. Public Financing of Presidential Campaigns - Presidential candidates have the option of accepting federal money to help pay for both primaries and the general election. The money was provided from a special fund fed by federal income tax checkoffs.
 - e. Federal Election Commission (FEC) - six member committee enforces compliance with these provisions.

- B. Buckley v. Valeo (1976)
 1. The case
 2. The Court
 3. What about the law's limit on contributions?

- C. The Proliferation of PACs
 1. Prior to the 1974 reforms corporations were technically forbidden from donating money to political campaigns.
 2. The 1974 reform created a new more open way for interest groups to contribute to campaigns. Any interest group can form its own PAC to directly channel contributions of up to \$5,000 per candidate. In addition, a PAC can spend unlimited amounts indirectly if such activities are not coordinated with the campaign.
 3. The FEC counted 9,100 PAC's in 1988.
 6. The Biggest PAC's.

- D. **Citizens United v. FEC (2010)- MANDATORY SUPREME COURT CASE**
 1. The case
 2. The Court
 3. 5-4 ruling: Political spending by corporations, associations, and labor unions is a form of protected speech under the First Amendment.

XI. **THE MEDIA AND THE CAMPAIGN**

- A. A Question: "If you have two guys on stage and one guy says, 'I have a solution to the Middle East problem,' and the other guy falls into the orchestra pit, who do you think is going to be on the evening news?"

- B. Types of Media Coverage

1. Regular stories
2. Advertising

XII. **THE IMPACT OF CAMPAIGNS**

- A. Are They Important?
- B. Effect on Voters
 1. Reinforce voters preferences for candidates
 2. Activate voters
 3. Convert or change minds
- C. Why Campaigns have Little Impact
 1. Most people pay relatively little attention
 2. Party identification
 3. Advantages of incumbents
 4. Historic forces - the 13 keys to the Presidency

XIII. **CONCLUSIONS**

- A. Costly
- B. Lengthy
- C. Unpredictable
- D. Legitimacy - outcome reflects the people's choice
- E. Does our System Produce Great Leaders?

XIV. **THE ELECTORAL COLLEGE**

- A. Introduction - What is the Electoral College?
- B. Rationale
- C. Electoral Math - see map
- D. Problems
 1. Faithless electors
 2. Gives small states greater proportional voice

3. No winner - Then what?
 4. Winner - takes - all system can create a situation in which there is no match between popular vote and electoral vote
 5. Legitimacy
- E. Reform - Abolish the Electoral College
- F. Unforeseen Consequences
- G. Why hasn't the Electoral College been reformed?

XV. VOTING

- A. Low Voter Turnout
1. Presidential elections - In 1988, there were 183 million eligible voters. Of that number, 129 million, or 70 percent, actually registered to vote in the general election. Of those who registered, 91.6 million actually went to the polls. The participation rate during the 1988 presidential election was only 71 percent of registered voters and 50.2 percent of eligible voters. 1992 participation rate was 55.9 percent. 1996 was 49.0 percent.
 2. Trend
 3. Compared with other countries
 4. Historical perspective - 1936 participation rate 52.4 percent. 1960 (highest of 20th century) was 62.8 percent.
- B. Reactions - Two Schools of Thought
1. This is terrible
 - a. a clear threat to our representative democracy - fewer and fewer people decide who yields power
 - b. sign of apathy
 - c. make it easier for authoritarian figure to take over our government
 2. Wait - There is no reason for alarm
 - a. decline in voting means there is more satisfaction with the status quo
 - b. better to have informed voters than non-informed voters
- C. Factors Influencing Who Votes
1. Age
 2. Education
 3. Race

4. Income/class
 5. Gender
 6. Government employees
- D. Why Do Citizens Vote?
1. Civic duty - to support the democratic system
 2. Political efficacy - belief that ordinary people can influence the government
 3. Policy differences
- E. Why Citizens Don't Vote
1. Little interest in politics - Less than 50 percent of the American electorate can correctly identify the name of their members of Congress. Even fewer are able to name their state representatives, and still fewer can tell their representatives stand of the issues.
 2. My vote won't count
 - a. huge members and therefore insignificant
 - b. winner take all system
 3. Limited choice - The stimulus to vote is not as high in the U.S. because the choice offered American voters is not as great as in other countries. That is because the U.S. is virtually the only western democracy lacking a major left-wing socialist party.
 4. Voter registration - Was originally designed to prevent fraud. For example in 1988 West Virginia's 147,000 eligible voters cast 159,000 votes. Fraud has been reduced by requiring citizens to register in advance of election day. But this does place a barrier in the way of voters. The entire burden of registering to vote falls on the individual voter. That is they must learn how and when and where to register.
 5. Satisfied with the way things are.
- F. How Do Voters Decide?
1. Party identification
 2. Personality factors (image)
 - a. integrity - honesty
 - b. reliability - dependable, strong, and decisive
 - c. competence - experience
 3. Policy or issue voting
 - a. economic issues - strongest influence
 - 1) personal well-being
 - 2) nation's overall economic health

- b. foreign policy - important in time of crisis
- c. social issues - abortion, crime, health care, prayer in the schools

REVIEW

1. **Definitions** - political consultant, caucus, closed primary, open primary, Buckley v. Valeo, PAC, legitimacy
2. **Key Lists**
 - a. Three of the 13 keys to the presidency
 - b. Three disadvantages of the present primary system
 - c. Two advantages of the present primary system
 - d. Three provisions of the Federal Campaign Act of 1974
 - e. Three states that gained electoral votes, three states that lost electoral votes
 - f. List three problems with the Electoral College
 - g. What two groups have opposed reforming the Electoral College
 - h. Write brief generalizations explaining how various factors affect voting
 - i. List and explain three reasons why citizens don't vote
3. **Discussion.** Be prepared to discuss the advantages and disadvantages of national primary, abolishing the Electoral College and eliminating voter registration.

TOPIC 13: INTEREST GROUPS

Mastery Objectives - After completing this unit, the student will:

1. define interest group and distinguish it from political party. [6.1.12.A.14.f]
2. identify America's major economic, professional, civil rights, and single-issue interest groups. [6.1.12.A.14.f]
3. describe the strategies interest groups use to influence policy. [6.1.12.A.14.f]
4. discuss the role of PACs in electioneering. [6.1.12.A.14.f]
5. discuss the factors that help to make an interest group successful. [6.1.12.A.14.f]

New Jersey Learning Standards:

RH.11-12.1
RH.11-12.2
RH.11-12.3
RH.11-12.6
RH.11-12.7
WHST.11-12.2
WHST.11-12.6
WHST.11-12.9

Resources/Supplemental Readings: American Government: Institutions and Policies, Wilson, Dilulio Jr., Bose, Sixteenth AP* Edition. Chapter 9.
Mario Cuomo: Reason to Believe Excerpt
<http://www.gettysburg.k12.pa.us/webpages/psontheimer/files/cuomoexcerpt.pdf>

[#] Numbers in brackets refer to Core Curriculum Content Standards

MANDATORY READING: FEDERALIST 10

I. INTRODUCTION:

A. This Chapter Will Examine

1. Lobbyists - someone whose task is to influence legislation
2. Interest groups - organized groups whose members share certain views and seek to translate those views into policy
3. The role of the media in setting the policy making agenda

II. INTEREST GROUPS IN AMERICA - THE CAST OF CHARACTERS

- A. Introduction
- B. Economic Interest Groups
 - 1. Business
 - a. National Association of Manufacturers - represents 14,000 corporations. Focuses on legislation affecting labor laws minimum wages, corporate taxes, trade regulations, etc.
 - b. U.S. Chamber of Commerce - represents over 100,000 businesses. Four of its lobbyists watch the progress of each bill that concerns the business community.
 - 2. Labor: AFL-CIO
 - a. A union of unions
 - b. Committee on Political Education (COPE)
 - 3. Agriculture
 - a. Small but powerful
 - b. American Farm Bureau Federation (1919)
 - 4. Public Employee Interest Groups
 - a. American Federation of State, County, and Municipal Employees (1 million members)
 - b. National Education Association (1.8 million members)
 - 5. Professional
 - a. American Medical Association (237,000 members) has a staff of 1,000 people. Spent 3.2 million in the 1990 Congressional Campaign.
 - b. American Bar Association
 - c. Screen Actors Guild

C. Civil Rights Groups

1. NAACP - Founded in 1909. Current membership approximately 400,000. Works to obtain full civil rights for Black Americans.
2. National Organization for Women (NOW) Founded in 1966. Current membership in approximately 260,000. Works to end sex discrimination in American life.
3. American Civil Liberties Union - Founded in 1920. Current membership is approximately 250,000. Works to protect freedoms of speech, press, religion, assembly, due process, and equal protection of the laws.
4. National Congress of American Indians - Founded in 1944. Comprised of 155 tribes. Works to promote the legislative interests of Indian tribes.

D. Religion

1. National Conference of Catholic Bishops - Founded in 1966. Promotes government policies that are consistent with the doctrines and policies of the Roman Catholic Church.
2. American Jewish Committee - Founded in 1906. Current membership is approximately 50,000. Works to protect religious and civil rights and to combat bigotry.

E. Public Interest

1. Common Cause - Founded in 1970. Current membership is approximately 250,000. Works to promote good government, to expand voting rights, and to get citizens more involved in government.
2. League of Women Voters - Founded in 1920. Current membership is approximately 110,000. Works to educate the public on political matters and to promote citizen participation in voting.

F. Single-Interest Groups

1. Introduction
2. Environment
 - a. Sierra Club - Founded in 1892. Current membership is approximately 350,000. To preserve and protect wilderness areas.
 - b. National Audubon Society - Founded in 1905. Current membership is 550,000. Works to promote conservation and protect endangered wildlife.
3. Abortion
 - a. National Right to Life - Founded in 1973. Current membership is 12 million. Works to make abortion illegal.
 - b. National Abortion Rights Action League - Founded in 1969. Current membership is 125,000. Works to maintain the right of all women to have legal abortions.

4. Gun Control
 - a. National Rifle Association - Founded in 1871. Current membership is approximately 3 million. Works to uphold the right of people to bear arms for recreation and self-defense.
 - b. Handgun Control Inc.
5. Ideological Interest Groups
 - a. Americans for Democratic Action (Liberal)
 - b. American Conservative Union

III. WHY ARE THERE SO MANY INTEREST GROUPS?

- A. A Diverse Society
- B. Federalism - Our federal system provides multiple points of access.
- C. Weakness of Political Parties
- D. Focused on Specific Issues - Parties are purposefully blurred.

IV. STRATEGIES INTEREST GROUPS USE TO INFLUENCE POLICY

- A. Lobbying - The attempt by organizations or by individuals to influence the passage or content of legislation and of the decisions of government. Lobbyists are thus "political persuaders."
 1. Private meetings to present a point of view. Supply credible information and present it in an organized, persuasive, and factual manner.
 2. Testifying before congressional committees.
 3. Testifying before executive rulemaking agencies such as the Federal Communications Committee or the Federal Aviations Committee.
 4. Informal contacts/Social occasions
 5. Providing research results or technical information.
 6. Helping to draft legislation.
- B. Electioneering
 1. Volunteers
 2. PACS and Political Campaigns
 - a. How much and to who? (see chart)
 - b. Case example - the Realtors
 - c. PAC Money - two views

- d. Does PAC money influence votes
 - 1) On first glance yes - "Talking to politicians is fine, but with a little money they hear you better."
 - 2) But studies show

C. Public Pressure

- 1. Climate Control - creating a favorable public opinion toward an interest group, industry, or corporation.
- 2. Agenda Building - bringing new issues into the political limelight.
- 3. Ratings - "The Dirty Dozen"
- 4. Mass Mailings (see example)
- 5. Influential Constituent
- 6. Demonstrations
- 7. Astroturf Lobbying

D. Litigation

V. **WHAT MAKES AN INTEREST GROUP SUCCESSFUL?**

A. Size

- 1. Size can be an asset
- 2. But not always. E.E. Schattschneider wrote that "pressure politics is essentially the politics of small groups." Thus, consumer groups are usually less effective than producer groups, patients are less effective than doctors, and energy conservationists are less effective than oil companies. Here's why:
 - a. Potential group - people who might be group members.
 - b. Actual group - portion of the potential group that chooses to join.
 - c. Collective good - something of value than cannot be withheld from a potential group member.
 - d. The free-rider problem - Why join, pay dues, work hard when a person can benefit without doing anything. The bigger the group the more serious the free-rider problem.

B. Intensity

- 1. Depth of feeling.
- 2. Single-issue group: has a narrow interest, dislikes compromise, and single-mindedly pursues it goal.

C. Financial Resources

VI. **INTEREST GROUPS AND AMERICAN DEMOCRACY**

A. Pluralism

1. Definition - there are many centers of influence vying for power.
2. View of interest groups.
 - a. Interest groups are a key link between people and government
 - b. Interest groups compete in a marketplace of ideas
 - c. No one group is likely to become too dominant
 - d. Groups weak in one resource can use another

B. Power Elite Theory

1. Definition - real power is held by a relatively few people, key interest groups, and institutions
2. View of interest groups
 - a. Interest groups are extremely unequal in power
 - b. The corporate elite usually prevails
 - c. PAC's create a close link between money and politics. Business PAC's have become the dominant force in campaign fundraising.

C. Hyperpluralism

1. Definition - interest groups have become so strong that government is weakened.
2. View of interest groups
 - a. Groups have become too powerful in the political process as government tries to aid every conceivable interest.
 - b. This creates policy paralysis. For example: If cancer researchers convince the government to launch an anti-smoking campaign, tobacco sales may drop. If they do, government will subsidize tobacco farmers to ease their loss. Or if environmentalists want clean air, government imposes clean-air rules. When businesses complain that cleaning up pollution is expensive, government then gives them a tax write-off for pollution-control equipment.

Political Issues Project (to include Argumentative Essay)

To afford AP United States Government and Politics students the opportunity to examine in-depth a particular political issue, that is both timely and relevant, and to lead fellow students in in-depth lesson on that issue. A formal position paper should be written to explain both sides of the political issue. In addition, a class lesson should be planned for fellow students to discuss and debate the political issue presented.

New Jersey Learning Standards

RH.11-12.1
RH.11-12.2
RH.11-12.6
RH.11-12.7
RH.11-12.9
WHST.11-12.1.A
WHST.11-12.1.B
WHST.11-12.1.E
WHST.11-12.2.A
WHST.11-12.2.B
WHST.11-12.2.E
WHST.11-12.7
WHST.11-12.8
WHST.11-12.9

PUBLIC SCHOOLS EDISON TOWNSHIP
OFFICE OF CURRICULUM AND INSTRUCTION**AMERICAN GOVERNMENT - AP**

GRADE: 12

LENGTH OF COURSE: TERM

I. COURSE CONTENT - This course will consist of the following units of study:

- A. Introducing government in America
- B. The Constitution
- C. Federalism
- D. Civil liberties and public policy
- E. Civil rights and public policy
- F. Public opinion
- G. Political parties
- H. Nominations and campaigns
- I. Interest groups
- J. Congress
- K. The Presidency
- L. The Supreme Court
- M. Contemporary political issues
- N. American foreign policy

(Additionally, career-related topics and information will be presented/reviewed.)

II. COURSE REQUIREMENTS - To complete this course successfully, students will be required to demonstrate a satisfactory (or higher) level of proficiency in:

- A. Explaining and interpreting the constitutional underpinnings of American government.
 - B. Analyzing American political beliefs and behaviors.
 - C. Describing the origins, growth and role of political parties and interest groups.
 - D. Describing, comparing and contrasting the key institutions and policy processes of national government.
 - E. Analyzing the workings of the Supreme Court and understanding its most significant decision.
-

III. EVALUATION PROCESS - Throughout the length of this course, students will be evaluated on the basis of:

- A. Major tests each marking period
 - B. Quizzes
 - C. Homework assignments
 - D. Essays
 - E. Participation in class activities
-

Curriculum and Instruction

Draft 14

Essential Instructional Behaviors

Edison's Essential Instructional Behaviors are a collaboratively developed statement of effective teaching from preschool through Grade 12. This statement of instructional expectations is intended as a framework and overall guide for teachers, supervisors, and administrators; its use as an observation checklist is inappropriate.

1. Planning which Sets the Stage for Learning and Assessment***Does the planning show evidence of:***

- a. units and lessons directly related to learner needs, the written curriculum, the New Jersey Core Content Curriculum Standards (NJCCCS), and the Cumulative Progress Indicators (CPI)?
- b. measurable objectives that are based on diagnosis of learner needs and readiness levels and reflective of the written curriculum, the NJCCCS, and the CPI?
- c. lesson design sequenced to make meaningful connections to overarching concepts and essential questions?
- d. provision for effective use of available materials, technology and outside resources?
- e. accurate knowledge of subject matter?
- f. multiple means of formative and summative assessment, including performance assessment, that are authentic in nature and realistically measure learner understanding?
- g. differentiation of instructional content, processes and/or products reflecting differences in learner interests, readiness levels, and learning styles?
- h. provision for classroom furniture and physical resources to be arranged in a way that supports student interaction, lesson objectives, and learning activities?

2. Observed Learner Behavior that Leads to Student Achievement***Does the lesson show evidence of:***

- a. learners actively engaged throughout the lesson in on-task learning activities?
- b. learners engaged in authentic learning activities that support reading such as read alouds, guided reading, and independent reading utilizing active reading strategies to deepen comprehension (for example inferencing, predicting, analyzing, and critiquing)?
- c. learners engaged in authentic learning activities that promote writing such as journals, learning logs, creative pieces, letters, charts, notes, graphic organizers and research reports that connect to and extend learning in the content area?
- d. learners engaged in authentic learning activities that promote listening, speaking, viewing skills and strategies to understand and interpret audio and visual media?
- e. learners engaged in a variety of grouping strategies including individual conferences with the teacher, learning partners, cooperative learning structures, and whole-class discussion?
- f. learners actively processing the lesson content through closure activities throughout the lesson?
- g. learners connecting lesson content to their prior knowledge, interests, and personal lives?
- h. learners demonstrating increasingly complex levels of understanding as evidenced through their growing perspective, empathy, and self-knowledge as they relate to the academic content?
- i. learners developing their own voice and increasing independence and responsibility for their learning?
- j. learners receiving appropriate modifications and accommodations to support their learning?

3. Reflective Teaching which Informs Instruction and Lesson Design

Does the instruction show evidence of:

- a. differentiation to meet the needs of all learners, including those with Individualized Education Plans?
- b. modification of content, strategies, materials and assessment based on the interest and immediate needs of students during the lesson?
- c. formative assessment of the learning before, during, and after the lesson, to provide timely feedback to learners and adjust instruction accordingly?
- d. the use of formative assessment by both teacher and student to make decisions about what actions to take to promote further learning?
- e. use of strategies for concept building including inductive learning, discovery-learning and inquiry activities?
- f. use of prior knowledge to build background information through such strategies as anticipatory set, K-W-L, and prediction brainstorms?
- g. deliberate teacher modeling of effective thinking and learning strategies during the lesson?
- h. understanding of current research on how the brain takes in and processes information and how that information can be used to enhance instruction?
- i. awareness of the preferred informational processing strategies of learners who are technologically sophisticated and the use of appropriate strategies to engage them and assist their learning?
- j. activities that address the visual, auditory, and kinesthetic learning modalities of learners?
- k. use of questioning strategies that promote discussion, problem solving, and higher levels of thinking?
- l. use of graphic organizers and hands-on manipulatives?
- m. creation of an environment which is learner-centered, content rich, and reflective of learner efforts in which children feel free to take risks and learn by trial and error?
- n. development of a climate of mutual respect in the classroom, one that is considerate of and addresses differences in culture, race, gender, and readiness levels?
- o. transmission of proactive rules and routines which students have internalized and effective use of relationship-preserving desists when students break rules or fail to follow procedures?

4. Responsibilities and Characteristics which Help Define the Profession

Does the teacher show evidence of:

- a. continuing the pursuit of knowledge of subject matter and current research on effective practices in teaching and learning, particularly as they tie into changes in culture and technology?
- b. maintaining accurate records and completing forms/reports in a timely manner?
- c. communicating with parents about their child's progress and the instructional process?
- d. treating learners with care, fairness, and respect?
- e. working collaboratively and cooperatively with colleagues and other school personnel?
- f. presenting a professional demeanor?