

the Gov

**“The Third Branch”
Social Studies Curriculum**

the Gov
is a feature of

the News

**A daily news broadcast for High School and Middle School students
now under development by MacNeil/Lehrer Productions**



the Gov



“The Third Branch: Supreme Court” Social Studies Curriculum

Table of Contents

Letter to the Educator.....	1
“The Third Branch: Supreme Court” Social Studies Curriculum	2



the Gov



Fall, 2009

Dear Educator,

the.News online video reports for *the.Gov* provide middle and high school students with a valuable exercise in democracy. This video report on the “The Third Branch: The Supreme Court” looks at the Court, the newest Justice, and the new term during the first year of the Obama administration.

Each video report is supported by a social studies and language arts curriculum. All videos and curricula have been informed by *the.News* instructional design that can be found on the website www.pbs.org/newshour/thenews. *the.Gov* is open-captioned. The curriculum includes content-based standards, discussion questions, student activities, vocabulary and primary reference sources. A complete transcript of each video report includes time codes to assist in isolating specific segments of the video. This material is presented as options to fit teachers’ instructional needs.

We welcome our new partners at the Omaha Public Schools who have joined *the.News* in a special pilot project during the 09-10 school year. We are also launching a new authoring tool for students called *YOU.edit*, to launch in early 2010. It will give students an online tool to remix the content of *the.Gov* reports (as well as all the other *the.News* videos), so they can create their own multimedia presentations. This editing tool will reside on our website so that it will be available to all students with an internet connection. It will be password protected so that it can serve as a viable educational asset that allows classroom teachers to assign multimedia projects within the security and content safety of *the.News* website.

For more information and questions about this material contact me at kjaffe@newshour.org

Sincerely,

Karen W. Jaffe
Manager, Education Projects, *the.News*
MacNeil/Lehrer Productions
2700 S. Quincy St., Suite 250
Arlington, VA 22206



“The Third Branch: Supreme Court” Social Studies Curriculum

This lesson was designed to support *the.News* video “TheThird Branch: Supreme Court.” The video can be found online at <http://www.pbs.org/newshour/thenews/thegov/> and clicking on the title on the left side of the page.

Grade Level: Grades 6-12

Content Areas Civics, U.S. History, Government

Key Concept(s) Students will understand the process for presenting a case before the Supreme Court and how justices deliberate a case and develop their decisions.

Key Vocabulary:

Precedence: Something that came before; in law a case is one that guides the decisions of future cases.

Bench: A place where a judge sits in court; a court or system of courts serving an area; the body of persons who hold positions as judges.

Confirmation hearings: The ratification of an executive act by a legislative body.

Judicial review: Constitutional doctrine that gives a court system the power to annul legislative or executive acts which judges declare unconstitutional.

Oral arguments: Statements given by attorneys representing both sides of a case that explain the issues, facts, and legal interpretation of the case.

Majority opinion: An opinion in a case that is written by one judge and in which a majority of the judges on the court join

Nebraska Department of Education

Social Studies/History Standards

<http://www.nde.state.ne.us/SS/DOCUMENTS/TheHistory-SocialStudiesStandardsPDF.pdf>

5th, 6th, 7th, and 8th Grade Social Studies

Civics and Economics

8.3.1 Students will explain and compare the structures, functions, and powers of the three branches of government at the national, state, and local levels.

- Outline the powers granted to Congress, the President, and the Supreme Court, and those reserved to the states.

8.3.3 Students will compare the policy-making process at the local, state, and national levels of government.

- Explain the interaction between the chief executives and the legislative bodies.

8.3.4 Students will distinguish between the judicial systems established by the Nebraska Constitution and United States Constitution.

- Describe the exercise of the power of judicial review.

8.4.4 Students will evaluate different assessments of the causes, costs, and benefits of major events in recent American history to develop discussion, debate, and persuasive writing skills.



Dissenting opinion: An opinion by a judge who disagrees with the result in a case.

Landmark case: A judicial decision that is notable and is often cited because it establishes a new precedent and/or changes the interpretation of the law.

Source: FindLaw legal dictionary online

<http://dictionary.lp.findlaw.com/sc-ripts/search.pl?s=landmark>

Materials:

- Access to the Internet and library sources
- Vocabulary Template
- Student Handout: “Juvenile Justice Cases before the Supreme Court”
- Student Handout: “Case Study—*Citizens United v. Federal Elections Commission*”
- Student Handout: “Deliberating the case of *Citizens United v. FEC*”

Nebraska Department of Education

Social Studies/History Standards

9th, 10th, 11th, and 12th Grade Social Studies

U.S. History

12.1.2 Students will analyze and explain the events and ideas of the Early National Period.

- Explain how the impact of Supreme Court cases, e.g., *Marbury v. Madison* and *McCulloch v. Maryland*, affected the interpretation of the Constitution.

12.1.13 Students will develop skills for historical analysis

- Formulate historical questions and defend findings based on inquiry and interpretation.
- Communicate findings orally, in brief analytical essays, and in a comprehensive paper.

Nebraska Department of Education

Social Studies/History Standards

The Governments and Economies of the United States and Nebraska

12.3.4 Students will evaluate and summarize landmark Supreme Court interpretations of the United States Constitution and its amendments.

- Describe how *Marbury v. Madison* and *McCulloch v. Maryland* affected the Constitution.
- Explain the current patterns and evaluate the impact of Supreme Court decisions on domestic policy issues.

12.3.5 Students will analyze the fundamental concepts and challenges to democracy by using writing, discussion, and debate skills.

- Identify individual freedoms.
- Explain the necessity of compromise.
- Analyze individual rights v. public interests.



Time Frame:

- Opening Activity: 10 minutes
- Main Activity

- Part 1 Reviewing Juvenile Justice Cases: 1-2 class periods depending on how much research is completed in class or as homework.

McRel (www.mcrel.org)

Civics

Level III (Grades 6-8)

Standard 8: Understands the central ideas of American constitutional government and how this form of government has shaped the character of American society

Benchmark 5: Knows opposing positions on current issues involving constitutional protection of individual rights such as limits on speech (e.g., "hate speech," advertising), separation of church and state (e.g., school vouchers, prayer in public schools), cruel and unusual punishment (e.g., death penalty), search and seizure (e.g., warrantless searches), and privacy (e.g., national identification cards, wiretapping)

Level IV (Grades 9-12)

Standard 8: Understands the central ideas of American constitutional government and how this form of government has shaped the character of American society

Benchmark 5 Understands the necessity for a written Constitution to set forth the organization of government and to grant and distribute its powers (e.g., among different branches of the national government, between the national government and the states, between the people and the government)

- Part 2 Examining the case of *Citizens United v. Federal Elections Commission*: 2 class periods plus time for research.

Background: History and Importance

One of the more unique aspects of American democracy is that many of the more important cases that come before the Supreme Court come from common, ordinary people who have real and personal disputes with other people or with their government. In the case of *Miranda v. Arizona* (1966), the court ruled that the police are required to inform a suspect of his protection against self-incrimination and his right to counsel. This ruling led to the "Miranda Card," which every law enforcement officer must read to any suspect arrested for an alleged crime. In another case,

United States v. Nixon (1974), the Court forced a sitting president to end the Watergate break-in cover-up and turn over evidence of criminal wrongdoing. This evidence eventually led to a vote for impeachment against President Richard Nixon. Often, the Supreme Court hears cases that involve juvenile rights, as in the case *Vernonia School District v. Acton* (1995) where the Court ruled schools have a right to conduct random drug tests on students involved in extracurricular activities like sports. Through a series of juvenile cases, the Court has determined the differences between juvenile and adult rights. Today, many Americans, from the powerful to the powerless, have been affected by Supreme Court decisions.





When Congress first established the Judicial Branch in 1789, there was a firm belief that the federal courts would help place the country on a firm legal footing. But the Court did not have much activity in its early years. The Supreme Court first met in 1790, but didn't hear its first major case until 1793.

This case, *Chisholm v. Georgia*, granted a citizen of one state the right to sue in court another state without that state's permission. But this decision was short lived, for in 1795, the Eleventh Amendment was passed barring anyone from suing

a state of the United States. For the next several years, the Court heard very few cases of any

McRel www.mcrel.org **Civics**

Level III (Grades 6-8)

Standard 18: Understands the role and importance of law in the American constitutional system and issues regarding the judicial protection of individual rights

Benchmark 10: Knows the basic principles of the juvenile system and the major differences between the due process rights of juveniles and adults

Level IV (Grades 9-12)

Standard 18: Understands the role and importance of law in the American constitutional system and issues regarding the judicial protection of individual rights

Benchmark 6: Understands the effects of Americans relying on the legal system to solve social, economic, and political problems rather than using other means, such as private negotiations, mediation, and participation in the political process

McRel (www.mcrel.org) **Language Arts Writing**

Level III (Grades 6-8)

Standard 1: Uses the general skills and strategies of the writing process

Benchmark 5: Uses content, style, and structure (e.g., formal or informal language, genre, organization) appropriate for specific audiences (e.g., public, private) and purposes (e.g., to entertain, to influence, to inform)

Level IV (Grades 9-12)

Benchmark 9: Writes persuasive compositions that address problems/solutions or causes/effects

Level III (Grades 6-8)

Standard 4: Gathers and uses information for research purposes

Benchmark 5: Organizes information and ideas from multiple sources in systematic ways (e.g., time lines, outlines, notes, graphic representations)

Level IV (Grades 9-12)

Benchmark 1: Uses appropriate research methodology



importance.

By 1801, the Supreme Court was undoubtedly the least influential branch of the federal government. But that was about to change. In the political rivalry that erupted during the bitter presidential election of 1800 between incumbent President John Adams and challenger Thomas Jefferson, a small, seemingly insignificant case came before the Court. Just a few hours before Jefferson was to take office, John Adams appointed a political supporter named William Marbury to the federal bench. In a clear case of partisan politics, Jefferson's Secretary of State, James Madison, refused to deliver Marbury's appointment. In citing the Judiciary Act of 1789, Marbury contended that the law allowed him to bring his complaint to the Supreme Court and that the Court should force President Jefferson to order Madison to deliver the appointment.

The Chief Justice at the time was John Marshall, an Adams' appointee and distant, estranged cousin of Thomas Jefferson. Marshall could see that Marbury had a perfectly legal right to the appointment, but if the Court ordered Jefferson to deliver the commission, he might refuse, leaving the Court weak. Beyond its written word, the Court has no real power of enforcement. If, however, the Court ruled in Jefferson's favor, it would seem like it had just rubberstamped Executive Branch's malfeasance.



Jefferson

Chief Justice Marshall took a third course of action that elevated the Court to be the sole interpreter of the Constitution. In his written opinion speaking for the unanimous Court, Marshall agreed that Marbury was entitled to his commission. But the Congressional law that Marbury cited to bring the case to the Supreme Court was unconstitutional because it went against the Constitution's intention of establishing the Supreme Court to be an *appellate* court, not a court of original jurisdiction. In other words, the Supreme Court is a court that hears cases only on appeal and not for the first time, as it had with *Marbury v. Madison*. Marshall reasoned that Marbury needed to take his case to a lower court first. While the Marshall decision stated the Court had no authority to hear Marbury's case, it established that the Judicial Branch was the exclusive interpreter of the Constitution. This doctrine, known as judicial review, gives the courts the power to determine whether any law or action by government was allowed.

Partnership for 21st Century Skills

<http://www.21stcenturyskills.org/>

Critical Thinking and Problem Solving

- Understanding the interconnections among systems
- Framing, analyzing and synthesizing information in order to solve problems and answer questions

Communication and Collaboration

- Articulating thoughts and ideas clearly and effectively through speaking and writing
- Demonstrating ability to work effectively with diverse teams
- Assuming shared responsibility for collaborative work

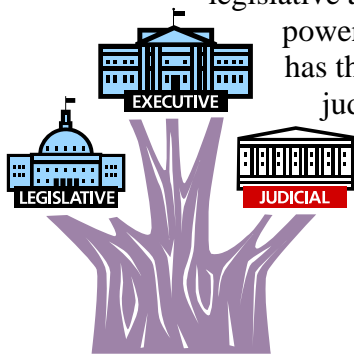
ICT Literacy

- Using digital technology, communication tools and/or networks appropriately to access, manage, integrate, evaluate, and create information in order to function in a knowledge economy



The Confirmation Process

One of the fundamental interplays between the three branches of government involves appointing judges to the federal bench, including justices to the Supreme Court. This process involves both the legislative and executive branches and is one of the primary examples of separation of powers and checks and balances. According to the Constitution, the president has the authority to appoint anyone he or she feels qualified to serve in the judicial branch. The Congress has the authority to approve or reject the appointment. The intent is to allow the president, as leader of the country, and Congress, as representatives of the people, the opportunity to have a say in who is serves in the federal judiciary.



The Newest Justice

On August 6, 2009, the full U.S. Senate confirmed Federal Appeals Court judge Sonia Sotomayor to the United States Supreme Court. She became the first Hispanic and only the third woman to serve as a justice on the Court. The process followed the long practiced tradition of judicial confirmation where President Barack Obama appointed Sotomayor, who he felt qualified for the position. In the past, Supreme Court confirmations have been pretty routine affairs that didn't even require the candidate to appear before the Senate committee. Often nominees were approved the same day they were nominated. But since the mid 1980s, the process became very partisan and at times very contentious, especially during the Senate Judiciary Committee hearings.

The Senate confirmation of Judge Sotomayor was generally cordial and respectful, but she faced intense scrutiny over her past public comments and judicial record. Senate Democrats pointed to Judge Sotomayor's rise from poverty through education as an "American success story" and cited many of her previous decisions to demonstrate her neutrality. Republicans strongly questioned her impartiality and expressed concern that she would bring her personal views and prejudices into her decisions. Eventually, the Senate Judiciary Committee approved the nomination and passed it along to the full Senate where Sotomayor was confirmed along near-partisan lines 68 to 31.



The Term of the Court

The Supreme Court's case load has increased steadily over the past 200 years. The Court usually receives over 10,000 cases to review every year, but accepts only about 150. When a case is



accepted, the Court requests that records from the lower court be sent for further review. If a case is of high importance, the Court might agree to take it even before a lower court has heard it in maneuver the Constitution allows in a special category of so-called “Original” cases. In addition, the justices might receive some 1200 applications for various types of legal action, which are addressed to each justice based on the federal judicial circuit they are assigned. These cases can involve some type of emergency action such as a stay of execution.

After a case is accepted, it proceeds to the Court’s law clerks who begin the task of sorting through the petitions and determining which cases fall within the Court’s jurisdiction and raise important legal and constitutional questions to merit the justices’ review. After passing through the clerks, the justices meet in a closed door session to discuss which cases merit their consideration and vote aloud whether to hear the case or not.

The Supreme Court’s term officially begins, by law, the first Monday in October. This year, the Court opens session on October 5, 2009. But in an unprecedented action this year, the Court held a special session on September 9, 2009 to hear a case from last term, *Citizens United v. Federal Elections Commission*. This case was first heard March 2009, at which time the Court ordered the attorneys to look at the case in broader terms encompassing the constitutionality of



regulating campaign contributions and return in September for another hearing. This case is featured in this lesson plan. Beginning in October, when the regular term begins, the Court will hear oral arguments for several interesting cases featured in *the.News* video segment The Third Branch: Supreme Court, among them *South Carolina v. North Carolina*, an original jurisdiction case where the Court will decide whether lawsuits between states can be expanded to include individuals, local governments and companies as petitioners; *United States v. Stevens*, a case examining whether distributing videotapes of dog fighting is protected by the First Amendment’s free speech clause; and *Bilski v. Doll* where the justices will examine if a software program that manipulates an abstract idea and is not directly affect a machine or apparatus can be granted a patent.

Lesson Plan:

Opening Activity

To check for students understanding of vocabulary words used in the video segment and the lesson, conduct this quick activity.

1. Make enough copies of the vocabulary template handout for each pair of students in your class.

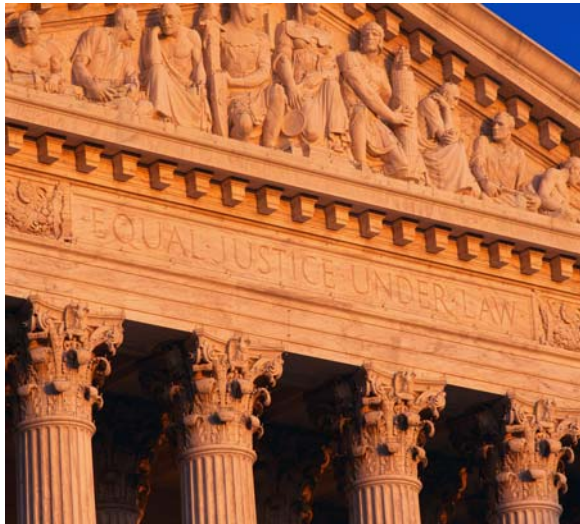


2. Cut apart the terms from the definitions and place 5-6 terms in one business size envelope and their corresponding definitions in another envelope.
3. Distribute one set of two corresponding envelopes to each pair of students in the class.
4. Have students dump the contents of both envelopes on their desks.
5. Give them a set time (1-3 minutes) to match the terms to the definitions.
6. Review the terms as needed for clarification.



Main Activity

This section is divided into two potentially stand-alone lessons or both can be completed, depending on time and the ability of your students. Both these classroom activities were inspired from



instructional techniques featured in Landmark Cases of the Supreme Court

(<http://www.landmarkcases.org>). The first activity has students review several Supreme Court cases involving juveniles and the impact of Supreme Court decisions on young people. The second activity takes an in-depth look at *Citizens United v. Federal Elections Commission*—a campaign finance/free speech case that was heard by the Supreme Court in the 2008 session and reheard in a special session in September 2009.

Part 1: Reviewing Juvenile Cases

This lesson is designed to help students acquire skills in articulating the central issues surrounding a case and provide experience in evaluating Supreme Court decisions. The lesson will also show students how decisions by the Supreme Court can affect their lives.

1. Divide the class into seven groups.
2. Distribute the Student Handout “Juvenile Justice Cases before the Supreme Court.”
3. Assign each group one of the cases listed on the handout. Details of each case are provided in the student handout.
4. Review the directions with students. Have students complete the activity by researching the cases themselves or you can download the information on the cases from any of the suggested websites and print as student handouts. The research portion of this lesson can be done as homework.
5. Debriefing Questions: (Any or all of these questions can also be used as written assessment questions.)
 - What cases involved First Amendment protections? Due process? Cruel and unusual punishment?



- What is your opinion of the Court’s ruling in *Roper v. Simmons*? Explain whether your view is based on your opinion of capital punishment or just the circumstances in this case.
- Why do you think the Court ruled students’ speech was protected in *Tinker v. Des Moines* and was not in *Morse v. Frederick*?
- What restrictions, if any, do you feel should be placed on students’ free speech or right to privacy while attending school or in after-school activities? Explain.
- Why do you think the Court felt students’ rights do not extend as far as adult rights?

Part 2: Examining the case of *Citizens United v. Federal Elections Commission*

In this activity, students will be grouped in “legal teams” for the first half and review the issues,



facts, and arguments of the case *Citizens United v. Federal Elections Commission*. This case was first heard by the Supreme Court in March 2009, but the Court ordered the case be reargued to examine larger issue of the constitutionality of the campaign finance law, “Bipartisan Campaign Reform Act” (also known as the McCain-Feingold Act.) In the second part of the activity, students will role-play Supreme Court justices, deliberate on the case, and provide written opinions.

1. Divide the class into heterogeneous teams of five.
2. Distribute Student Handout “Case Study—*Citizens United v. Federal Elections Commission* and explain to students that they

will be working in “legal teams” to study the facts, issues, and arguments of this case.

3. Review the directions on the handout and the background of the case with students. Have students divide the research within their teams or assign the research for them.
4. Provide time for students to gather additional information on the case and complete the graphic organizer.
5. After students have completed their graphic organizers, provide time for each legal team to review their findings.
6. Then, divide students into jigsaw groups of 7 or 9 making sure that each group contains at least one member from each of the five legal teams. Each group will role-play justices on the Supreme Court bench.
7. Have each group of justices meet in a circle. Distribute the Student Handout “Deliberating the Case of *Citizens United v. FEC.*” Review the directions with and provide time for each group to complete its deliberations.
8. Have each group of justices review their findings with the class.
9. As a follow up, you can have students write essays describing their opinion and include all the information from their graphic organizers.





Extension Assignment: As a follow up to the main activity above, you can have your students review the Court's decision on *Citizens United v. FEC* when it comes out a few months after the arguments were presented. The Court does not announce when they release their decisions, but it will probably be in the early part of the term. You can check with the Supreme Court docket online at [Scotusblog.com](http://www.scotusblog.com/wp/) <http://www.scotusblog.com/wp/> or on the U.S. Supreme Court calendar at http://www.supremecourtus.gov/oral_arguments/09TermCourtCalendar.pdf.

When the decision is released, share it with your students. In the event that the students' decisions and the Court's differ, explain to students that it is helpful they understand what issue or part of the issue the Court focused on. Also, have them review the dissenting opinions as well as the majority. Students might see that the justices were influenced by different compelling arguments than they



were. Ask the students to write a concurring or dissenting opinion to the Court's decision, depending on how they first decided the case. In their essays, have them review and evaluate the reasoning of the Court's majority and dissenting positions and compare these to their reasoning stating their reasons on why they concur or dissent. They should also cite in their essays what the decision means for both sides of the argument and for society.

Assessment:

For Part 1, have students write a paper on any or all of the debriefing questions.

For Part 2, evaluate students on the detail and persuasive arguments in their deliberation essays.

Resources:

- *American Bar Association* Preview of the United States Supreme Court Cases <http://www.abanet.org/publiced/preview/briefs/home.html>
- *CSPAN* Section on the Supreme Court <http://supremecourt.c-span.org/>; <http://www.c-span.org/Topics/Supreme-Court-Judiciary.aspx>
- *Landmark Cases of the Supreme Court* <http://www.landmarkcases.org>
- *National Constitution Center* http://constitutioncenter.org/ncc_home_Landing.aspx



the Gov



- *NewsHour Supreme Court Watch* http://www.pbs.org/newshour/indepth_coverage/law/supreme_court/
- *Our Courts—21st Century Civics* <http://www.ourcourts.org/>
- *Oyez—U.S. Supreme Court Media* <http://www.oyez.org/>
- *SCOTUS BLOG* <http://www.scotusblog.com/wp/>
- *SCOTUS Wiki* <http://www.scotuswiki.com>
- *Supreme Court of the United States* <http://www.supremecourtus.gov/>

Activity Designer:

Greg Timmons is a former social studies teacher now freelance writer and educational consultant.



VOCABULARY TEMPLATE

For the opening activity, make copies of this page for every pair of students in your class. Cut apart the term and the definitions. Place the definitions in one envelop and the terms in another. Make enough sets for each pair in your class.

Legal term	Definition
Precedent	Something that came before; in law a case that guides the decisions of future cases. These cases may be overruled by the same court that originally rendered the decision.
Bench	A place where a judge sits in court; a court or system of courts serving an area; the body of persons who hold positions as judges.
Confirmation hearings	The ratification of an executive act by a legislative body.
Judicial review	Constitutional doctrine that gives a court system the power to annul legislative or executive acts which judges declare unconstitutional.
Oral arguments	Statements given by attorneys representing both sides of a case that explain the issues, facts, and legal interpretation of the case.
Majority opinion	An judgment in a case written by one judge and in which a majority of the judges on the court join.



Dissenting opinion	A judgment by a judge who disagrees with the majority view in a case.
Landmark case	A judicial decision that is notable and is often cited because it established new precedent and/or changes the interpretation of the law.

Student Handout:

Juvenile Justice Cases before the Supreme Court



Background: Because Supreme Court decisions focus mainly on Constitutional questions and examine specific details within the law, it's difficult for most of us to know how its rulings can affect common citizens until the decisions have been announced, reviewed and analyzed by legal scholars and news commentators. And yet, there have been many court cases that have had a direct effect on students' First Amendment rights, their right to privacy, and protection from cruel and unusual punishment. It can

be challenging to understand all the details, issues, and arguments of a Supreme Court case as it is unfolding. However, acquiring some skills in analyzing the cases can help you appreciate their Constitutional importance and better understand the ramifications of their decisions.



Directions:

1. Review the basic information on the case you've been assigned from the material below.
2. Research the case using Justia.com (<http://supreme.justia.com/index.html>) (link to case preview), The Oyez Project (www.oyez.org), FindLaw (<http://www.findlaw.com/casecode/supreme.html>), or Legal Information Institute (<http://www.law.cornell.edu/supct/>).
3. Identify the facts of the case, the issues, the arguments for both sides, and the Court's decision and reasoning.
4. On a scale of 1-5 (from insignificant to critically important) rate the importance of this case to society and/or your own life. Be prepared to explain your rating
5. Do you agree or disagree with the Court's decision and why.

The Cases

- *In re Gault* (1966) Fifteen year-old student is arrested without parent notification for making lewd telephone calls. He was tried and sentenced to state reform school.



- *Tinker v. Des Moines Independent Community School District* (1969) Thirteen year-old and fifteen year-old brother and sister are suspended from school for openly protesting the war in Vietnam.

- *New Jersey v. T.L.O.* (1985) After student is caught smoke cigarettes outside of designated smoking area at school and is taken to principal's office where her purse is seized and searched.



- *Hazelwood School District v. Kuhlmeier* (1988) High School principal censors article prior to publication.

- *Vernonia School District v. Acton* (1995) School establishes anti-drug policy of random, unannounced drug testing of student athletes.



- *Roper v. Simmons* (2004) the Supreme Court hears the case involving the execution of a minor.
- *Morse v. Frederick* (2007) Student is suspended for displaying a banner with a reference to smoking marijuana at a school event.