

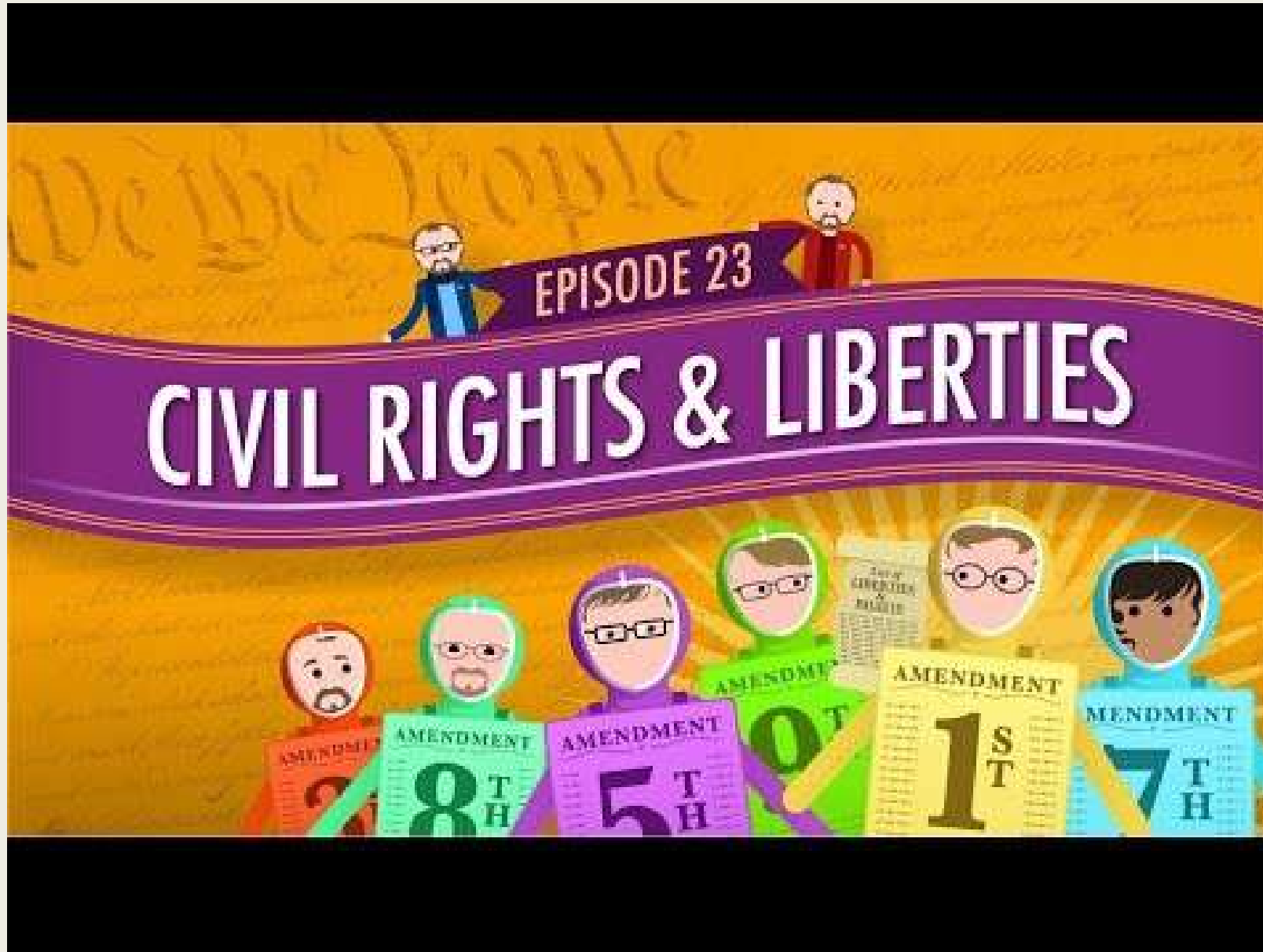


# CIVIL LIBERTIES

And how they relate the Judicial Branch



# Overview



# What are civil liberties

- Not the same as civil rights, although related
- They are the protections the Constitution provides against the abuse of government power
  - *i.e. censoring speech*
- Civil liberties can be viewed as a set of principles that protect the freedom of everyone all the time, but one person's civil liberties can conflict with someone else's
  - *i.e. censoring public information (without security clearances), which restricts freedom of Press – national security v. 1<sup>st</sup> amendment*
- War often restricts liberties – in the name of national security
  - *Sedition Act, Espionage and Sedition Act – government narrowed the freedom of speech and activity*

# Civil Liberties and Federalism

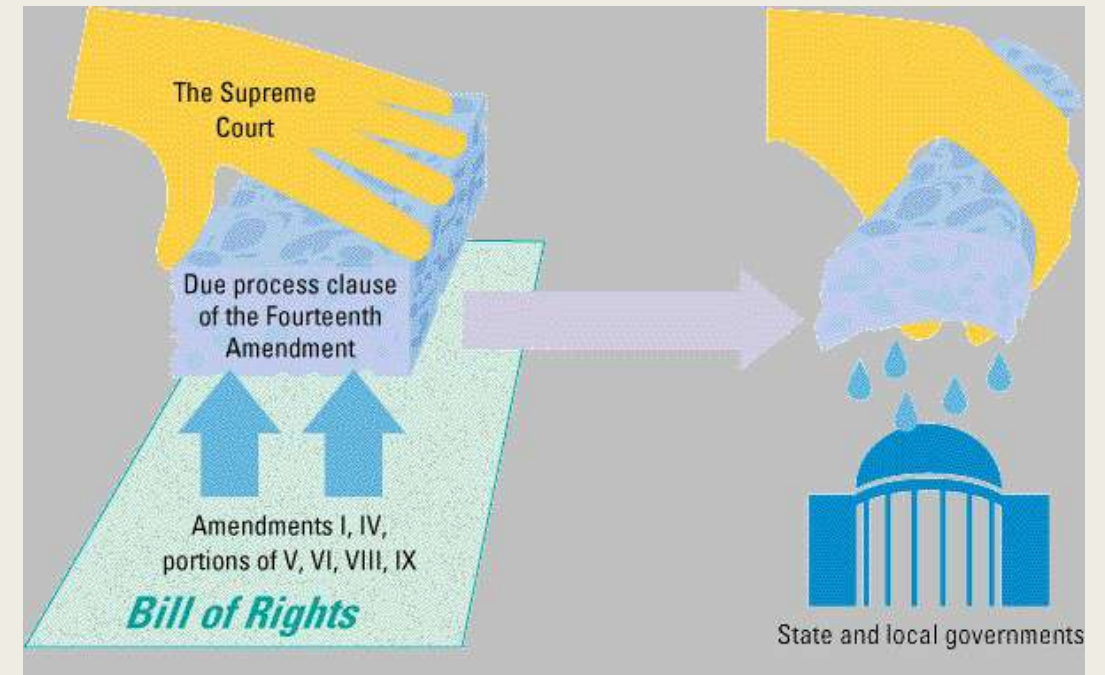
- Civil Liberties originally only applied to the federal government
- 14<sup>th</sup> Amendment discusses everyone's rights to due process under the law
  - *Meaning no state can deny any person equal protection under the law*
  - *This begins selective incorporation*
- Review – Selective Incorporation = federal rights being applied to the states

US Constitution

Forces Congress to protect citizens Constitutional Rights, specifically civil liberties

14th Amendment

Incorporates Constitutional Rights into the States – forces states to protect civil liberties



# The 1<sup>st</sup> Amendment

## Freedom of Expression

- Speech
- Press
- Assembly
- Petition

- The most common reason Freedom of Expression has been restricted is during times of war or for national security
  - *Sedition Act kept the Press free from prior-restraint (the limiting of what they could publish), but punished them after the fact if they deemed it a national security threat*
  - *The Espionage Act brings the case Schenck v. the US, which establishes the clear-and-present-danger-test – defendants have to have known they were going to cause harm*



# 1<sup>st</sup> Amendment Continued

- The courts generally defer to national security over the protection of civil liberties
- When discussing the safety of others within the country, the courts have rule that a person has to be inciting “imminent lawless action” in order for it to be deemed illegal
  - *This is what protects groups like the KKK and Westboro Baptist Church*
  - *It is not illegal to be offensive*



# 1<sup>st</sup> Amendment Continued



- What is Free Speech
  - *Libel = writing that falsely injures another person*
  - *Slander = saying something that falsely injures another person*
- Obscenity
  - *Obscene materials, like pornographic material, are not protected because they appeal to sexual rather than political or academic interests*
  - *States are allowed to regulate obscene materials, but there is no one definition of what is obscene*
- Symbolic Speech = political speech – the most protected
- Corporations, interest groups, and children still have the right to free speech with limits

# 1<sup>st</sup> Amendment Continued – landmark cases

Schenk v. US

- Speech can be punished only if it presents a clear and present danger

New York Times v.  
US

- Pentagon Papers Case – Nixon – the Executive cannot censor (use prior restraint) on the Press unless it causes the inevitable, direct, and immediate danger of US Armed Forces

Tinker v. Des  
Moines

- Public-school students are protected to wear armbands to protest war as long as it doesn't disrupt classes

Texas v. Johnson  
(not required)

- Cannot pass a law that bans the burning of the flag, it is protected under the freedom of expression

Citizens United v.  
FEC

- Campaign Finance Reform law cannot prevent corporations and labor unions from spending money on ads independent of candidates and parties



# 1<sup>st</sup> Amendment Continued – MC Practice

1. Legislation forbidding flag burning was deemed unconstitutional because it violated
  - a) *1<sup>st</sup> amendment's free exercise clause*
  - b) *Necessary and Proper Clause*
  - c) *1<sup>st</sup> amendment's protection of expression*
  - d) *14<sup>th</sup> amendment's definition of citizenship*
  - e) *1<sup>st</sup> amendment's establishment clause*
  
2. In response to the Bipartisan Campaign Finance Reform Act (McCain Feingold Act), SCOTUS, in Citizens United v. the FEC, ruled that
  - a) *Limits cannot be placed upon candidates' contributions to their own campaigns*
  - b) *Independent campaign expenditures by corporations and unions are protected by the 1<sup>st</sup> amendment*
  - c) *Limits on issue ads 90 days before an election are unconstitutional*
  - d) *Limits on campaign contributions by minors are unconstitutional under the 1<sup>st</sup> amendment*
  - e) *Requiring endorsement statements in campaign ads is unconstitutional*

# SCOTUS's test for restrictions on Expression

- Preferred Position – free expression is higher than other rights like property
- Prior Restraint – absolutely no prior restraint on expression like censorship
- Imminent Danger – immediate danger of inciting an unlawful act
- Neutrality – restrictions of speech cannot favor one group over another
- Clarity – if you do limit expression legally, the law must have clear standards
- Least-restrictive Means – if restricting a right to protect another person's rights, you must do so in the least restrictive way possible



# 1st Amendment Continued

Discuss with a partner whether or not you believe hate speech or offensive speech should be protected under the first amendment in all public places (including schools and universities)

Should there be any limitations? If so, what should they be?

If there should be limitations, where would you draw the line?



# 1st Amendment

## The Establishment Clause

- Freedom of Religion

- Free-exercise clause = law cannot prevent the free exercise of religion
  - *Government cannot place unfair restrictions on the actions of a particular religion*
  - *However, not exempt from the same laws that bind all other citizens*
    - i.e. polygamy
- Establishment clause = no law can establish an official religion
  - *Wall of separation principle = government cannot be involved in religion (separation of church and state)*
    - No sponsored prayer in public schools



# 1st Amendments Continued – Landmark religion cases

Everson v. Board of Education (not required)

- Sets wall of separation precedent (separation of church and state)

Engel v. Vitale

- No sponsored prayer in schools

Lemon v. Kurtzman (not required)

- 3 tests are described for deciding whether the government is improperly involved with religion

Reynolds v. US (not required)

- Religious duty does not stop criminal indictments

Oregon v. Smith (not required)

- Employers can deny unemployment to workers fired for using Peyote for religious reasons

Wisconsin v. Yoder

- Right to free-exercise of religion more important than state's right to compel education until 8<sup>th</sup> grade

# 1<sup>st</sup> Amendment Religion – MC Practice

1. Which of the following best describes the purpose of the establishment clause?
  - a) *It gives Congress the power to protect civil liberties and civil rights*
  - b) *It prohibits Congress from establishing a state religion*
  - c) *It empowers Congress to create a national bank*
  - d) *It prevents Congress from prohibiting the possession of guns on school grounds*
  - e) *It grants Congress the power establish post offices*
2. With respect to

# 2<sup>nd</sup> Amendment Cases – Guns and Gun Control

District of  
Columbia v. Heller  
(not required)

- DCs handgun ban was unconstitutional

McDonald v.  
Chicago

- The 2<sup>nd</sup> amendment applies to the states

# The 4<sup>th</sup> and 5<sup>th</sup> Amendments

## ■ Self-incrimination

- *Miranda v. Arizona* – *Miranda Rights (not required)*

- A confession should be considered involuntary and unlawful unless the person had been fully and clearly informed of his or her right to be silent, have an attorney present, and an attorney free of charge

- The exclusionary rule – evidence gathered in violation of the Constitution can not be used in a trial
  - *Right to be free from unreasonable searches and seizures (4<sup>th</sup>)*
  - *Right not to incriminate oneself (5<sup>th</sup>)*
- So when can police search you?
  - *Search warrant*
  - *Probable cause – more than just a suspicion*
  - *When you are lawfully arrested*
    - Can search – you, things in plain sight, things or places in your immediate control (the room or car in which you were arrested, but not everywhere you own or live)
  - *Good Faith Exception*
    - A minor error in gathering evidence
  - *Public Safety Exception*
    - Police can question a suspect if there is urgent concern for public safety
  - *Inevitable Discovery*
    - If something would have been found anyway it can be used in court



# 4<sup>th</sup> and 5<sup>th</sup> Amendments Continued



# 4<sup>th</sup> and 5<sup>th</sup> Amendments continued - Terrorism



- The Patriot Act
  - *Things allowed with a court order*
    - Telephone taps
    - Internet taps
    - Seize Voicemail
  - *Other things allowed*
    - Get Secret Grand Jury Info
    - Hold noncitizen for 7 days to decide to charge with a crime or deport – can hold longer if they are a security risk
    - Track money movement
    - No statute of limitations on terrorist crimes – higher penalties

# 4<sup>th</sup> and 5<sup>th</sup> Amendments continued – Landmark cases

Mapp v. Ohio (not required)

- Evidence illegally obtained may not be used in criminal trials

Gideon v. Wainwright

- Right to an attorney if you cannot afford one

Miranda v. Arizona (not required)

- Miranda rights read to arrested individuals

US v. Leon (not required)

- Illegally obtained evidence may be used in trial if it was done in good faith and is minor

Rasul v. Bush and Hamdi v. Rumsfeld (not required)

- Terrorist detainees must have access to a neutral court to decide if they have been legally detained

# Search and Seizure



# 4<sup>th</sup> and 5<sup>th</sup> Amendments continued

Is the Patriot Act a violation of our civil liberties?

Why has the Patriot Act taken precedent over civil liberties?

Do you think we need the Patriot Act?

Has it made our country better or worse off?



# 6th Amendment

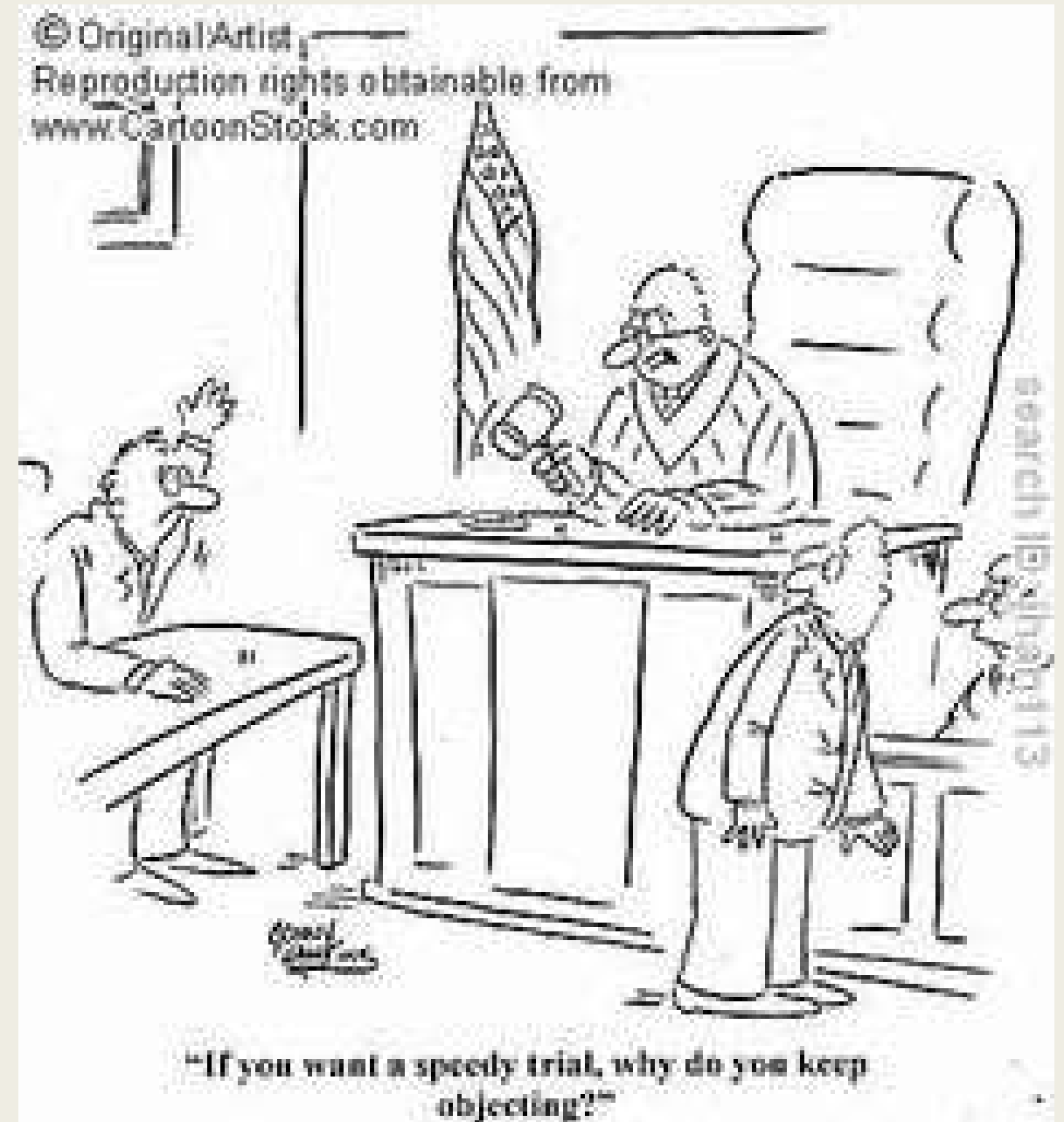
Right to Counsel

Speedy and Public Trial

Impartial Jury

Right to Call and Confront Witnesses

Right to be Informed of Charges



# 6<sup>th</sup> Amendment Cases

Gideon v.  
Wainwright

- You have to be provided an attorney if you can't afford one

# MC Practice Overview

1. The Free-Exercise Clause protects
  - a) *The President from forcibly revealing conversations with staff*
  - b) *Individuals who, for religious reasons, refuse to pay Social Security taxes*
  - c) *Voluntary prayer by student groups before school*
  - d) *A person's right to burn the American flag*
  - e) *A person's right to practice polygamy*
2. *Gitlow v. NY and New York Times v. Sullivan* are US Supreme Court Cases that dealt with which amendment?
  - a) *First*
  - b) *Second*
  - c) *Fourth*
  - d) *Fifth*
  - e) *Fifteenth*
3. The process of extending the protections of the Bill of Rights by means of the 14<sup>th</sup> amendment to apply to the actions of state governments is called
  - a) *Judicial review*
  - b) *Incorporation*
  - c) *Broad construction*
  - d) *Federalism*
  - e) *Stare decisis*



# FRQ Practice

1. The 1<sup>st</sup> amendment includes 2 clauses relating to the freedom of religion
  - a) *Select one of the following cases and identify the 1<sup>st</sup> amendment clause upon which the United States Supreme Court based its decision*
    - Engel v. Vitale (School Prayer)
    - Lemon v. Kurtzman (state funding for private religious schools)
  - b) *Describe the Supreme Court's decision in the case that you selected in (a)*
  - c) *Select one of the following cases and identify the 1<sup>st</sup> amendment clause upon which the Supreme Court based its decision*
    - Reynolds v. US (Polygamy)
    - Oregon v. Smith (Drug use in religious ceremonies)
  - d) *Describe the Supreme Court's decision in the case that you selected in (c)*
  - e) *Many of these decisions have caused controversy in the US. Describe 2 ways in which other political institutions might limit the impact of Supreme Court decisions.*