

GOV 2310 Constitutional Law Notes

Christopher Myers

June 13, 2020

Contents

I	Government Basics	1
1	Court Organization	1
2	Types of Opinions	1
3	Supreme Court Process	1
4	Limits on Judicial Review	2
4.1	Advisory Opinions	2
4.2	Standing	2
4.3	Mootness	2
4.4	Ripeness	2
4.5	Political Questions	3
4.6	Philosophy	3
5	Types of Bureaucracy	3
II	Notable Cases	4
6	Judicial Review & Basic Federalism	4
6.1	<i>Marbury v. Madison</i> (1803)	4
6.2	<i>Martin v. Hunter's Lessee</i> (1816)	4
6.3	<i>Cohens v. Virginia</i> (1821)	5
6.4	<i>Ex Parte McCordle</i> (1869)	5
6.5	<i>US vs. Klein</i> (1871)	5
7	Appointments	5
7.1	<i>Myers v. US</i> (1926)	5
7.2	<i>Humphrey's Executor v. US</i> (1935)	5
7.3	<i>Buckley v. Valeo</i> (1976)	6
7.4	<i>Bowsher v. Synav</i> (1986)	6
7.5	<i>Morrison v Olson</i> (1988)	6
7.6	<i>Free Enterprise Fund v. Public Company Accounting Oversight Board</i> (2010)	7
7.7	<i>NLRB v. Noel Canning Co.</i> (2014)	7

8	Powers of Congress	8
8.1	<i>McCorain v Daugherty</i> (1927)	8
8.2	<i>Hampton Co. v. US</i> (1928)	8
8.3	<i>Schechter Corp. v. US</i> (1935)	8
8.4	<i>Watkins v. US</i> (1957)	9
8.5	<i>Barenblatt v. US</i> (1959)	9
8.6	<i>South Carolina v. Katzenbach</i> (1966)	9
8.7	<i>Powell v. McCormack</i> (1969)	10
8.8	<i>Gravel v. US</i> (1972)	10
8.9	<i>Immigration and Naturalization Service v. Chadha</i> (1983)	10
8.10	<i>Mistretta v. US</i> (1989)	11
8.11	<i>US v. Booker</i> (2005)	11
8.12	<i>Nixon v. US</i> (1993)	12
8.13	<i>US Term Limits v. Thornton</i> (1995)	12
8.14	<i>Clinton v. New York City</i> (1998)	12
9	Powers of the President	13
9.1	<i>Mississippi v. Johnson</i> (1867)	13
9.2	<i>In re Neagle</i> (1890)	13
9.3	<i>Ex Parte Grossman</i> (1925)	13
9.4	<i>US v. Nixon</i> (1972)	14
9.5	<i>Nixon v. Admin of GSA</i> (1977)	14
9.6	<i>Nixon v. Fitzgerald</i> (1982)	14
9.7	<i>Clinton v. Jones</i> (1997)	15
9.8	Prize Cases (1863)	15
9.9	<i>Ex Parte Milligan</i> (1866)	15
9.10	<i>US v. Curtiss-Wright</i> (1936)	16
9.11	<i>Korematsu v. US</i> (1944)	16
9.12	<i>Youngstown Co v. Sawyer</i> (1952)	16
9.13	<i>New York Times v. US</i> (1971)	16
9.14	<i>US v. US District Court</i> (1972)	17
9.15	<i>Goldwater v. Carter</i> (1979)	17
9.16	<i>Haig v. Agee</i> (1981)	17
9.17	<i>Dames & Moore v. Reagan</i> (1981)	17
9.18	<i>Hamdi v. Rumsfeld</i> (2004)	18
9.19	<i>Hamdon v. Rumsfeld</i> (2006)	18
9.20	<i>Zivotofsky v. Kerry</i> (2015)	18
10	Commerce & Federalism	19
10.1	<i>McColloch v. Maryland</i> (1819)	19
10.2	<i>Gibbons v. Ogden</i> (1824)	19
10.3	<i>Cooley v. Board of Wardens</i> (1852)	19
10.4	<i>Dred Scott v. Sanford</i> (1857)	19
10.5	<i>US v. EC Knight Co.</i> (1895)	20
10.6	<i>Champion v. Ames</i> (1903)	20
10.7	<i>Hammer v. Dohenhart</i> (1918)	20
10.8	<i>Missouri v. Holland</i> (1920)	20
10.9	<i>Stafford v. Wallace</i> (1922)	20
10.10	<i>Bailey v. Drexel Furniture</i> (1922)	21
10.11	<i>Carter v. Carter Coal</i> (1936)	21
10.12	<i>NLRB v. Jones & Laughln</i> (1937)	21
10.13	<i>US v. Darby</i> (1941)	21
10.14	<i>Heart of Atlanta Hotel v. US</i> (1964)	22
10.15	<i>National League of Cities v. Garcia</i> (1976)	22

10.16	<i>Garcia v. San Antonio Metro</i> (1985)	22
10.17	<i>US v. Lopez</i> (1995)	22
10.18	<i>Alden v. Maine</i> (1999)	22
10.19	<i>US v. Morrison</i> (2000)	23
10.20	<i>Gonzales v. Reich</i> (2005)	23
10.21	<i>Gonzales v. Oregon</i> (2006)	23
11	Substantive Due Process	23
11.1	<i>Munn v. Illinois</i> (1877)	23
11.2	<i>Algyer v. Louisiana</i> (1897)	24
11.3	<i>Lochner v. New York</i> (1905)	24
11.4	<i>Muller v. Oregon</i> (1908)	24
11.5	<i>Adkins v. Children's Hospital</i> (1923)	24
11.6	<i>West Cose Hotel v. Parish</i> (1937)	24
11.7	<i>Williamson v. Lee Optical</i> (1955)	25
12	Takings	25
12.1	<i>US v. Causby</i> (1946)	25
12.2	<i>Berman v. Parker</i> (1954)	25
12.3	<i>Penn Central v. New York City</i> (1978)	25
12.4	<i>Hawaii Housing Authority v. Midkoff</i> (1984)	26
12.5	<i>Nolan v. California Coastal Commission</i> (1987)	26
12.6	<i>Lucas v. South Carolina Coastal Commission</i> (1992)	26
12.7	<i>Dolan v. City of Tigard</i> (1994)	27
12.8	<i>Kelous v. City of New London</i> (2005)	27
12.9	<i>Koontz v. St. John's River Waste Management</i> (2013)	27
12.10	<i>Horne v. Department of Agriculture</i> (2015)	27
13	Contracts	28
13.1	<i>Fletcher v. Peck</i> (1810)	28
13.2	<i>Dartmouth College v. Woodward</i> (1819)	28
13.3	<i>Charles River Bridge v. Warren Bridge</i> (1837)	28
13.4	<i>Stone v. Mississippi</i> (1880)	28
13.5	<i>Home Building & Loan v. Blaisdell</i> (1934)	29
13.6	<i>US Trust v. New Jersey</i> (1977)	29
13.7	<i>Allied Structural Steel v. Spannos</i> (1978)	29

Part I

Government Basics

1 Court Organization

The court system starts at state trial courts. The next level up is the state appeals court, although not all states have these. The loser in a state trial has the right to appeal to these courts. Afterwards, the highest level of state courts is the state supreme court. In a few cases the names differ, e.g. the top court in Maryland is called an appeals court, and in New York trial courts are called supreme courts.

On the federal side, the federal court system starts at US district courts, then move up to the US Circuit Courts of Appeals, of which there are 9 (?). Above both state supreme courts and the federal circuit courts is the US supreme court.

Federal court judges are appointed by the president and confirmed by the senate. State court judges are usually elected by some means, but this can vary from state to state. All federal judges hold their position for life unless they resign/retire or are impeached.

Higher court rulings set binding precedent over courts below them; a circuit court must respect the rulings of the supreme court, for instance. The binding nature of this only extends to courts that are below the higher court *and* within the same system - a California supreme court ruling has no impact on a Wyoming state court, for instance.

2 Types of Opinions

There are different kinds of opinions issued in Supreme Court cases:

- Majority – the opinion that sets precedent, decided by the majority vote of the justices.
- Concurrence – an opinion that agrees with the outcome, but for different reasons. This does *not* become precedent.
- Dissent – the opinion of the minority, also not part of precedent.
- Plurality – complex and rare. Becomes precedent but does not achieve majority. A plurality opinion technically gets votes from both sides, but also technically gets only one vote (itself).

Obviously, the majority opinion is the most important.

3 Supreme Court Process

Most cases make their way to the Supreme Court by certiorari, or a request for review. There are, however, a select few cases that have original jurisdiction, which means that they start directly at the Supreme Court. *Marbury v. Madison* started at the Supreme Court, as do all cases involve a state suing another state.

In certiorari cases, the loser of a lower court case appeals to the supreme court and writes a brief that explains why the Court should take the case. The winner writes a brief explaining why the lower court ruling should remain, and the loser can respond; these three together form a writ of certiorari.

Other groups can file briefs under certain circumstances. Individuals and interest groups can file amicus curiae briefs that try to convince the court to take the case. For these to be filed, the parties must consent or the Court must grant permission (which is almost always given). The Solicitor General may also weigh in on the writs, making the Solicitor General one of the most important lawyers that nobody has ever heard of.

When cases arrive at the Court, law clerks first review them. The clerks present memos to the justices that (even more briefly) explain the basics of the case and its history. All 9 judges have a conference and vote on writs. It takes four votes on a writ for it to be heard; 98% of the time, this does not happen. All of this happens behind closed doors, although certain facts can be a good indicator of how likely it is that the

writ will be accepted. There's a positive correlation between the number of amicus briefs and acceptance, and it's more likely for the case to be accepted if there is disagreement in the lower courts. Cases that the Solicitor General has weighed in on are also more likely to be accepted. Denying a writ does not set precedent, no matter what the media might say about it. If the case is accepted, still more briefs are filed that attempt to sway the court one way or another. Amicus briefs may also be filed here, but this time they aim to present the merits of one side or the other.

Oral arguments are made in court, and they highly regulated. There is one podium with three different lights - green means go, white means 5 minutes left, and red means stop (Renquist used to enforce that you stop mid sentence when the red light came on). Justices may interrupt to ask questions at any time. The Solicitor General may steal 15 minutes from the side they support at any time to speak.

After the arguments, the justices meet and take a preliminary vote exclusively on the outcome. If the chief justice is on the majority, they assign the opinion drafting. The final vote is given by signing the written opinions; justices may change their vote at any point prior to the signing (so a majority may become a minority!), and they may even negotiate amongst each other¹.

Once the justices all agree on the opinions and the final decision is made, the opinions are released to the public. Usually the chief justice is the one to decide this. "Blockbuster" cases are usually released in June, although emergency cases can happen at any time (such as in the Bush/Gore election, or the watergate scandal case).

4 Limits on Judicial Review

4.1 Advisory Opinions

One of the duties of the Supreme Court is to keep watch over the lower federal courts and to limit their own power where necessary. For example, the Court does not allow advisory opinions, i.e. the Court will not say whether a law/action is constitutional or not before it is enacted. Federal courts are essentially limited to hearing cases and controversies; in effect, this bars judicial review in advance.

4.2 Standing

The Court also requires that plaintiffs have standing in order for judicial review to happen. For example, in *Frothingham v. Mellon*, the Court rules that there is no such thing as taxpayer standing, so they refused to strike down Congress's action. The exception to this is *Flast v. Cohen*, where a establishment-clause violation was brought up concerning the government providing resources to religious schools. In this case, the Court ruled that taxpayer standing is valid, because if it were not, there would be nobody with standing. This is how religion cases and laws can be reviewed by the Court.

4.3 Mootness

If there is no controversy, the case is moot and is no longer an issue. Some exceptions to this can be made, most notably in *Roe v. Wade*, where the woman who was suing gave birth before the case was ruled on, but the Court ruled on it anyways because it would be a recurring issue.

4.4 Ripeness

The court will not take cases that are not "ripe", i.e. the case has come too early. In such cases, the Court generally wants further proceedings before they will take on the issue, even though the case is not strictly hypothetical. For instance, if you sign an agreement with an arbitration clause but sue before you arbitrate, the case will be rejected as unripe, and the court will require that it go to arbitration first.

¹For example, in *Brown v. Board of Education*, the vote was originally 6 to 3, but the chief justice wanted a unanimous vote. He went to the dissenting justices and asked them what they wanted, and they responded with a single phrase to add to the majority opinion, that integration would occur "with all due deliberate speed" rather than immediately. This had to effect of delaying desegregation by many years

4.5 Political Questions

The Court will not take cases that are deemed “political”, e.g. cases that would be better handled by other branches. For instance, the Supreme Court never ruled on the constitutionality of the Vietnam War because it was political and better settled by Congress or the President. In other cases, the Court *does* take the case in exception circumstances. For instance, in one case the state legislature was supposed to redraw district borders with the census, but they did not for 70 years. The Supreme Court did not view it as a political question because the other branches just didn’t deal with the problem.

4.6 Philosophy

There are two primary ways to view judicial review: judicial activism and judicial restraint. The former is the idea that the constitution is a living document whose interpretation should change as society changes, while the latter says that the constitution says that the constitution should be interpreted as the framers originally intended. This can go both ways: there can be conservative judicial activists just as much as there can be liberal judicial restraint.

This tends to get involved in the debate over whether the courts should set public policy. The results of judicial activism tend to lead towards the setting of public policy, while judicial restraint leads to less set public policy.

5 Types of Bureaucracy

There are cabinet-level organizations such as the department of justice and the department of transportation. The top 2% members of these organizations are appointed by the President (and confirmed by the senate), and serve at the will of the President. Everyone else is hired on merit.

The next type of bureaucracy is a public corporation, such as the post office or the Tennessee Valley Authority, both of which are publicly, although they could be private. Their heads are similarly politically appointed.

The executive office of the white house is formed of such entities as advisors and various organizations (e.g. the NSA). Their top members are also political appointees.

Finally, there are independent regulatory boards and commissions that can create regulations. For example, the FCC, FTC, and federal reserve board are all independent regulatory boards or commissions. These entities are multi-member, but the President can appoint their leads only when there are openings. Their members cannot be fired by the president before their term is up.

Note that an individual may only hold one job at a given time; this is part of the incompatibility clause. This means that a senator may not be attorney general, they must resign from one position or the other. An individual may not accept a higher salary for a position they just took if they voted for that pay raise.

Part II

Notable Cases

6 Judicial Review & Basic Federalism

6.1 *Marbury v. Madison* (1803)

Marbury v. Madison (1803) is the case that established judicial review as a power of the Court, or the ability for the Court to strike down unconstitutional actions of other political actors. This case was an original jurisdiction case, so it started in the Supreme Court.

Facts President Adams (a federalist) lost in a bitter presidential race. Adams made a large number of appointments prior to the end of his term (midnight appointments) but the secretary failed to deliver the commissions of several new judges (including Marbury) to the appropriate people. The new secretary of state was ordered not to deliver those commissions, despite that the commissions were already signed. Marbury asked the Court to issue a writ of mandamus (an order forcing an executive branch person to perform a job) so that the commissions would be delivered, under the authority of section 19 (?) of the Judiciary Act of 1789.

Legal Questions When does a judge become a judge? Is it when the papers are delivered, or is it when the papers are signed? Does Marbury have a right to a writ of mandamus?

Outcome The court ruled against Marbury in that the writ could not be granted. However, it was still ruled that Marbury deserves the commission because the commission was valid upon its signing, not upon its delivery. Furthermore, the court determined that it has the power of judicial review. This was a 4-0 decision.

Reasoning For political reasons, the Court needed to reframe the question to avoid conflict and to avoid setting bad precedent. It was determined that the section granting the power to writ of mandamus was unconstitutional (the constitution does not grant Congress the power to give the Court that power). The argument behind why the court can strike down such unconstitutional actions is that a constitution that cannot be enforced by the courts is no constitution at all; the power of judicial review is implicit.

Implications As of this case, all courts have the power of judicial review. They can strike down laws and actions deemed unconstitutional, despite that nowhere in the constitution is the power of judicial review granted to the judicial branch. This power was not abused; after this law was struck down, judicial review was not used on a federal law again until *Dred Scott* in 1856.

6.2 *Martin v. Hunter's Lessee* (1816)

Facts There was a land dispute in Virginia that involved the treaty between the US and Britain, the Treaty of Paris. The case went to the Virginia Supreme Court and the loser appeals to the US Supreme Court, which took the case. The Virginia Supreme Court objected to this and claimed that the US Supreme Court had no jurisdiction, so it could not take the case.

Legal Questions Does federal law have supremacy over state law? Do federal court decisions have supremacy over state court decisions? This is a question of jurisdiction.

Outcome Yes and yes. The federal government has supremacy over state governments; at 6-0, this was a decisive defeat for states' rights.

6.3 *Cohens v. Virginia* (1821)

[to be expanded]

6.4 *Ex Parte McCordle* (1869)

Often cited by those who wish to limit the Supreme Court's jurisdiction over certain cases.

Facts A man during the Reconstruction era was being tried in a military court for crimes. The man requested that his case be moved into a regular court. Congress passed a law removing the Supreme Court's jurisdiction over the matter

Outcome The Supreme Court backed off and ruled that Congress did indeed remove its jurisdiction.

6.5 *US vs. Klein* (1871)

Often cited by those who wish to allow the Court to hear cases that Congress has tried to silence.

7 Appointments

7.1 *Myers v. US* (1926)

Facts This case involves a postmaster who at the time was a political appointee. Congress passed a law in 1876 that prohibits the President from firing a political appointee without the senate's consent. Around 1926, President Wilson objected to this and fired the postmaster anyways, without the senate's approval

Legal Questions Was the 1876 statute unconstitutionally limiting the power of the president? Who ultimately has that power to fire political appointees.

Outcome In a 6-3 decision, the Court decided that the statute is unconstitutional.

Reasoning The Court reasoned that the 1876 Congress assumed that the President had the power to fire political appointees. If the President has no power over appointees, it greatly weakens the power of the President. In dissent, two justices said that what Congress creates, Congress can take away, so Congress must similarly have the power to fire (or prevent the firing) of appointees.

Implications The appointing process is now that the President appoints, the Senate confirms, and the President has the sole power to fire.

7.2 *Humphrey's Executor v. US* (1935)

Facts At the time, FDR was fighting with the court over just about everything, but here, FDR wanted to fire Humphrey, a member of the FTC. FDR ended up sending him a letter telling him that he was fired, so Humphrey sued, claiming that it was unconstitutional. Also, Humphrey died, but his estate was suing for the pay, hence the name "Humphrey's Executor" in the case name.

Legal Questions Who has the right to fire? Is the scheme of having independent regulatory boards constitutional?

Outcome In a 9-0 decision, the Court ruled that the new category of bureaucracy is constitutional, but that Congress can structure the agencies in it such that their heads are protected from political reprisals.

Reasoning The independent regulatory boards and commissions are “hybrid” organizations that are quasi-executive, quasi-legislative. Since they are part legislative in nature, the President cannot have complete control over firing their heads.

Implications Combined with *Myers v. US*, this means that the President can fire the heads of the cabinet-level departments, public corporations, and executive offices of the white house, but *cannot* fire the heads of the independent regulatory boards and commissions.

7.3 *Buckley v. Valeo* (1976)

Facts In the post-watergate world, Congress created limits on campaign contributions from PACs (political action committees), which allow interest groups to contribute money directly. All spending had to be reported to the government – the federal elections commission – as an anti-corruption measure. Congress, however, was the one that was supposed to appoint the heads of this organization.

Legal Questions Is this a proper congressional power, or should this be a power of the president?

Outcome Congress can’t do that; all members must be nominated by the President and confirmed by the senate.

Reasoning The president has the power to nominate and the senate can only confirm. To completely remove the president’s say in the matter is to remove a check/balance from the nomination system.

7.4 *Bowsher v. Synov* (1986)

Facts Congress passed a law requiring a balanced budget. They also allowed the Comptroller General (the head of the general accounting office, in the legislative branch) to make automatic spending cuts in the name of balancing the budget.

Legal Questions Who should appoint the Comptroller General? Should Congress have the power to nominate an individual that can make automatic spending cuts (an executive action)?

Outcome The court said no in a 7-2 decision. Spending cuts must originate from the executive branch. The general rule of presidential appointing & firing but senate confirmation still holds.

7.5 *Morrison v Olson* (1988)

Facts An act created a special prosecutor to investigate the President for corruption in the executive branch. The normal prosecutor for such crimes is the attorney general, who is nominated and fired by the President. In the past, President Nixon kept firing people (including the attorney general) who were investigating him. This special prosecutor position (hired by the attorney general, with the consultation of federal judges, and fired by Congress) was created to address this problem.

Legal Questions Is the special prosecutor, which spans two branches, constitutional? Can the president fire the special prosecutor?

Outcome The president must appoint principle officers, but inferior officers can be appointed in other ways. As the special prosecutor is an inferior officer, the special prosecutor may be appointed by other means. This was a 7-1 decision.

Reasoning This was not an attempt the expand the powers of any branches, and there was really no other way to create an office that can investigate the President without fear of reprisal. The inferior/principle language was used to keep *Myers v. US* in place.

Implications Although this ruling allowed for a special prosecutor, the Ethics in Government Act (which created the position) was temporary and not renewed – it expired sometime during George W. Bush’s time in office. The principle, however, remains in place. In current times, either the FBI director or the deputy to the attorney general can conduct the investigations (???)...or something along those lines. Politically, Republicans are fighting against a special investigator while Democrats are asking for one.

7.6 *Free Enterprise Fund v. Public Company Accounting Oversight Board* (2010)

Facts In reaction to the Enron (?) scandal (a scandal involving a petroleum company being irresponsible and collapsing), Congress passed a law that creates a new entity called the Public Company Accounting Oversight Board. It had 5 members, all appointed by the commissioners of the Securities and Exchange commission. Those commissioners are in turn appointed by the President, and as an independent regulatory board/commission, they cannot be fired. Businesses were not happy with the new layer of bureaucracy that they had to report to, so the Free Enterprise Fund sued.

Legal Questions Is this other type of hybrid, the Public Company Accounting Oversight Board, constitutional?

Outcome In a 5-4 decision, it was ruled unconstitutional; the President must be able to appoint to the Oversight Board.

Reasoning The law was an unconstitutional extension into the President’s power. The 4 dissenters argued that the “hybrid” board should be constitutional because separation of powers should be flexible, and we really need a board that does that specific job anyways. Politically, the 4 liberal justices dissented and the 5 conservative justices were in the majority.

Implications The majority opinion did not use the same inferior/principle officer language as *Morrison*, so this doesn’t build on top of *Morrison* (among other reasons).

7.7 *NLRB v. Noel Canning Co.* (2014)

Facts The Constitution gives the President the power to make temporary appointments when Congress is not in session. The Senate was in pro-forma (?) session (where they opened and closed the president very quickly) in a move to block President Obama from making appointments. In response, the President made a recess appointment to the National Labor Relations Board (NLRB) anyways, arguing that Congress was actually in recess.

Legal Questions For presidential appointment power purposes, who determines when Congress is in session? Are there limitations on this?

Outcome 9-0 the Court ruled that there are limits, and that the President did overstep them.

Reasoning When Congress is out of session before and sometime after the elections, the recess appointment power is clearly available. During regular sessions, however, Congress must be out for 10 days, but the House and the Senate determine whether they are in session, *not* the President. The three very conservative justices wrote concurrences that stated that the President should not make recess appointments when Congress is in session at all; that power should be reserved for the period of time at the end of Congress’s session.

Implications Despite the media’s reporting, the ruling is not strictly against the President, it’s just a limitation and a firm boundary set. If the Senate is determined enough to prevent the President from making recess appointments, however, they can easily accomplish this.

8 Powers of Congress

8.1 *McCorain v Daugherty* (1927)

Facts This case took place as part of the Teapot Dome Scandal, involving the sale of certain valuable land (?). Now, Congress can hold three types of hearings (where the members of a committee bring in witnesses and ask them questions): legislative hearings (discussion of a bill), general oversight hearings, and investigatory hearings. In this context, there was an investigatory committee investigating the Teapot Dome Scandal. Congress subpoenaed a person to testify.

Legal Questions Can Congress compel someone to testify before them?

Outcome In an 8-0 decision, the Court ruled that compelling people to testify is a power of Congress. However, witnesses can refuse to answer questions that go beyond the power of Congress, nor can Congress inquire into private, non-legislative matters. Stranger still, Congress can punish witnesses for not complying (e.g. for not showing up)!

Reasoning The power to compel someone to testify is an implied power, as part of the implied power to hold hearings and investigate.

Implications Congressional powers are not unlimited; witnesses that go before them must answer legitimate questions, but they still have rights. The guidance that the Court gave was fairly vague.

8.2 *Hampton Co. v. US* (1928)

Facts The Tarif Act of 1922 placed tariffs on import taxes, but it gave the President (or more accurately, the bureaucracy) the power to increase or decrease tariffs in order to equalize the production of the US with abroad.

Legal Questions Can Congress delegate these powers to the executive branch, or is it a legislative power beyond that of the executive branch.

Outcome 9-0, the court ruled that the delegation is constitutional.

Reasoning The Court reasoned that the act was specific enough to be constitutional; Congress created the framework and the limitations of the power behind it, but left the specifics and details to the executive branch to manage. The role of the executive branch is then to fill in the details of the legislation.

Implications The administrative style set by this case is still in use today, where Congress need not set every single detail in legislation; this lets Congress focus on the big picture while the executive branch can manage things smaller.

8.3 *Schechter Corp. v. US* (1935)

Facts Known in law school as the “sick chicken” case. As part of the New Deal, the National and Industrial Recovery Act of 1935, the President and Congress decided that there were significant problems with deflation, especially in the agricultural sector; Farmers couldn’t afford to stay in business. To stabilize & raise prices and to restrict production, the Act allowed each industry to write its own codes that have the effect of law. There was a live poultry code that essentially said that consumers should not get sick chickens, and that there should not be too many chickens in the market. This code was all written by the private sector, but it had the effect of law. The Schechter corporation was found to be selling sick chickens, which was a crime under the industry codes (yes, this was a criminal case!).

Legal Questions Can Congress delegate its power to the private sector?

Outcome In another 9-0 decision, the Court ruled that only Congress can make laws and regulations. Congress can leave the details to the executive branch, but the private sector can have no part in it. In an era of a fractured court, this 9-0 decision was quite impressive.

Implications Combined with *Hampton*, this means that Congress can give power to other government entities and they can *ask* the private sector about what they want (say, by hearings!), but they cannot delegate legislative power.

8.4 *Watkins v. US* (1957)

Facts During the 1950's, the second "red scare" was in full force in the US. A certain Senator – Senator McCarthy – and the House on Un-American Activities Commission – were persecuting suspected members of the communist party and anybody that might have knowledge of communist activities. Membership of the communist party was declared illegal (although later the Court ruled that ban unconstitutional) If the witness refused to answer, they were held in contempt of Congress. Mr. Watkins refused to answer the commission's questions on the grounds that the questions were private in nature and that the questions were too vague.

Legal Questions Are the questions and conviction constitutional?

Outcome In a 6-1 decision, the Court ruled that Congress was indeed overstepping its bounds.

Implications Senator McCarthy and Congress in general were not pleased at all with the ruling (especially in the context of the fight between Congress and the Court), and considered passing a bill to limit the Court's power...or just impeach the justices.

8.5 *Barenblatt v. US* (1959)

Facts This case has nearly the exact same fact pattern. A man refused to answer the House on Un-American Activities Commission's questions, and cited *Watkins*.

Legal Questions Again, are the questions and convictions valid?

Outcome Surprisingly, the Court said that all is well! The majority opinion was very short, simply stating that Congress did not overstep its bounds. It also did not overturn *Watkins*. The vote was a 5-4 decision. This ruling was likely made as a "defensive" act by the court, as Congress was beyond upset with the Court, both for the previous case's ruling and other rulings (such as *Brown v. Board of Education*).

8.6 *South Carolina v. Katzenbach* (1966)

Facts (Name spelling unknown) This case involves the Voting Rights Act, part of President's Johnson's "great society" idea. At the time, if blacks tried to register to vote, they could face physical threats...and if they actually tried to vote, they would be faced with the "grandfather" clause (in order to vote, your grandfather must have voted), or literacy tests, poll taxes, etc, all in an attempt to stop blacks from voting. The Voting Rights Act outlawed such measures, and sent federal marshals into the south in order to help with voting and voting registration. It also said that some states and regions needed approval from the Department of Justice before they changed their voting laws (in effect, this covered most of the old Confederation states). South Carolina decided to change their laws anyways, claiming that the law was unconstitutional and a breach of states' rights (of *course* South Carolina made this argument), and Congress in turn argued that it's well within its power to enforce the 15th amendment.

Legal Questions Is it constitutional to place restrictions and pre-clearance requirements on states?

Outcome In an 8-1 decision, the Court ruled that it's perfectly valid.

Implications This effectively allowed the provisions of the Voting Rights act. At a much later date, some of the ruling was overturned in part of an effort to strip away pre-clearance. However, for all other purposes, Congress won.

8.7 *Powell v. McCormack* (1969)

Facts A Representative named Powell was elected in 1968 despite so many financing problems. This put him at odds with ethics laws and House rules, so the House refused to seat him.

Legal Questions Can Congress refuse to seat members? Can Congress add restrictions to the list of membership requirements in the constitution?

Outcome The Supreme Court ruled that the House cannot deny Powell a seat, in a 7-1 decision. Congress cannot add to the list of membership restrictions in the constitution; to change them, it would take a constitutional amendment. Congress does, however, have the power to expel members with a 2/3rds vote, so the Court recommended that the House simply vote to expel him. The lone dissent argued that the case was moot because Powell was seated after he was re-elected (again, the case spanned more than two years). to expel members,

Implications The voters decide membership of the House, *not* the House itself.

8.8 *Gravel v. US* (1972)

Facts This case concerns the release of the Pentagon Papers, a series of classified documents on the Vietnam War that were released to the Washington Post and the New York Times for publication after Senator Gravel read and leaked them in a public hearing. In a separate case, the Court quickly ruled that the papers can be published as part of freedom of the press. Senator Gravel read the information into a committee hearing, but his staff was subpoenaed. There's a speech and debate clause in the constitution protecting the speech of members of Congress, so Gravel's statements were protected, but his staff might not have been.

Legal Questions Can a grand jury subpoena a Congress member's staff to find the source of information read into the record? In other words, is a Congress member's staff covered by the speech and debate clause? Keep in mind, the staff is an enterprise; they are an extension of the Congress member, in a sense.

Outcome In a 5-4 decision, the Court ruled that the speech and debate clause does not cover a Congress member's staff. In dissent, one of the justices said it was a political question better answered by Congress, and a second justice's dissent said that the Court was being too literal.

Implications If a grand jury subpoenas the staff, it would be a crime for them to not reveal the information that they know.

8.9 *Immigration and Naturalization Service v. Chadha* (1983)

Facts A man, Chadha, overstayed his visa and was required to attend hearings to give good reason for why he should not be deported. The Attorney General recommended that Chadha be allowed to stay, but a House committee decided to overturn that decision as part of legislative veto power (the power for only one house of Congress to override agency decisions as part of the act delegating power to that agency).

Legal Questions Is the one-house legislative veto power constitutional? Is legislative veto constitutional at all?

Outcome The one-house legislative veto is unconstitutional by a vote of 7-2.

Reasoning Separation of powers requires normal process. A statute is not passed by one house, it is passed by both houses and signed by the president. Congress cannot circumvent that by using a one-house veto.

Implications Congress decided to do it anyways – they passed another 100+ laws with one-house-veto provisions, disregarding the decision of the Court – the Court cannot enforce its own policies. The executive branch and its agencies still obey those one-house-veto provisions anyways, likely due to political power and the fact that Congress can cut their funding if they don't obey. This case is still good precedent, but Congress continues to pass laws with these provisions.

8.10 *Mistretta v. US* (1989)

Facts This is part of a pair of cases, the second being *US v. Booker*. Anyways, Congress created a scheme called the sentencing guidelines. For every criminal sentence, there is a graph with the crime/severity on the X axis, the defendant's past on the Y axis, and the sentence itself as a point on the graph. Congress plotted all of this out and created the Sentencing Commission to advise Congress, but it guts federal judge's discretion to determine sentences. Federal judges objected to this, arguing that Congress overstepped its bounds; the rules should be at best guidelines that are advisory in nature.

Legal Questions Are these sentencing guidelines mandatory? How much discretion should judges have in sentencing? Can Congress limit that discretion?

Outcome The Court ruled in an 8-1 decision that the guidelines are valid and the sentence requirements are indeed mandatory. In dissent, Justice Scalia wrote that the decision is an unconstitutional extension of legislative power into the judicial branch.

Implications The guidelines are constitutional and mandatory. Federal judges continued to despise the sentencing guidelines. For a while there was talk of taking measures to punish judges who did not obey (by creating an agency to monitor them and recommend impeachment of those who disobey), none of it came to pass.

8.11 *US v. Booker* (2005)

Facts The previous issue from *Mistretta* came back.

Legal Questions Can the guidelines be mandatory?

Outcome No, no they cannot.

Reasoning Judges have access to much more information about the defendant than Congress ever could; to deny them discretion in sentencing would be to violate the 6th amendment.

Implications Judges once again have discretion over sentencing (sans exceptions like capital punishment, where special procedures apply) ².

²The death penalty procedure is a two-step process. First is the regular trial where the jury decides if the defendant is guilty or not guilty. The second is where the jury receives comprehensive background information on the defendant (past, mitigating factors, etc.) to decide if the death penalty is appropriate or not.

8.12 *Nixon v. US* (1993)

Facts (Judge Nixon, not the former president!) There were proceedings surrounding a judge and whether he should be removed from the bench or not. Nixon objected to the fact that the Senate had a committee do the bulk of the trial work, instead of having the whole senate conduct the trial. This was likely part of his attempt to delay, both in hopes of getting his continued salary and in order to be such a pain to Congress that they end up dropping the matter altogether.

Legal Questions Does the impeachment procedure have to be read literally (requiring the full senate to participate in all steps), or can the senate use committees?

Outcome The Court unanimously ruled that the Senate has jurisdiction over its own procedures.

Reasoning The question is a political question that the courts have no role in. The senate must still vote as a whole, but how it gets to that vote is up to them.

Implications The Court probably took the case to tell judges that they should not even hear cases like this in the future. Judge Nixon still ended up losing.

8.13 *US Term Limits v. Thornton* (1995)

Facts Arkansas amended their constitution to add term limits to their federal congressional representatives - 3 terms in the house, 2 in the senate (6 years and 12 years, respectively).

Legal Questions Is the term limit constitutional? Even though states control their own voting laws, can they put additional requirements on their federal representatives?

Outcome The Court ruled 5-4 that such state laws are unconstitutional; states cannot add further membership requirements to their federal representatives.

Reasoning Federal term limits can be done, but only through constitutional amendment. The majority cited section 1, the dissent cited the 10th amendment, which leaves powers not delegated to Congress to the states.

Implications The only way to change the membership requirements for members of Congress is through the constitutional amendment process; the constitution's membership requirements are to be read very literally.

8.14 *Clinton v. New York City* (1998)

Facts Before Clinton's re-election in 1996, the republicans passed the line-item veto, anticipating the election of a Republican president next. The line-item veto allows the president to delete what they don't like, then sign the bill; in effect, it's a *partial* veto. Of course, since Clinton was re-elected, he tested his new power by line-item vetoing part of a law, specifically the part that gave money to a New York hospital. The whole line-item veto bill ended up being a hilarious backfire on Republicans.

Legal Questions Can Congress delegate legislative power to the President using the line-item veto? Can they increase the power of the president at the expense of their own power?

Outcome The Court ruled 6-3 that the line-item veto is unconstitutional; the only way to get a line item veto is by amending the constitution.

Reasoning The line item veto delegates legislative power to the president, which violates the separation of powers. In a dissent, Scalia, O'Connor, and Bryer argued that cancelling spending is a presidential power, so the line item veto ought to be allowed.

9 Powers of the President

9.1 *Mississippi v. Johnson* (1867)

Facts This was the state of Mississippi vs. President Andrew Johnson in a civil case (older naming conventions may confuse this with a criminal case, which it isn't). During reconstruction, there was a struggle between Congress and the president. Mississippi sued the president and asked for an injunction to prevent the president from enforcing the reconstruction act (effectively arguing that the act was unconstitutional).

Legal Questions Can the courts issue an injunction against the president, or force the president to act?

Outcome The courts can enforce ministerial acts, but cannot interfere with executive acts. Furthermore, the president is immune to civil suits for executive actions. This was a 9-0 decision.

Reasoning The court divided the acts of the president into two parts: executive acts and ministerial acts. Executive actions are ones that require the discretion of the president, while ministerial acts are minor and/or automatic. Another way to put it is that executive acts are inherent executive powers that require the president's judgement. Because executive acts are purely within the president's power, the courts cannot enforce them and cannot block them. Note that the courts *can* still block executive orders that are unconstitutional (e.g. if the order exceeds the president's power).

9.2 *In re Neagle* (1890)

Facts (*In re* means that the case was argued on behalf of someone, and that this is not a direct case. Something similar applies to *ex parte* cases). There was a Supreme Court justice with threats against his life from another judge. This was a very messy case with hundreds of pages of facts... Anyways, the president appointed a US Marshal as Justice Field's bodyguard, a man named Neagle. The bodyguard shot and killed a man whom he thought was attacking the judge he was assigned to protect.

Legal Questions Can the president appoint someone to protect a Supreme Court justice? Does that action violate separation of powers? Is the president responsible for the death of the attacker (as he appointed the bodyguard), or does the bodyguard get criminal immunity for his actions?

Outcome 6-2, the Court ruled that this action is part of the president's executive authority, and that Neagle gets civil and criminal immunity for his actions.

Reasoning Members of the executive branch who are following the orders of the president get civil & criminal immunity for their official actions. If those actions exceed executive authority, then there can be consequences (e.g. the employees do something they weren't authorized to, or the president goes beyond their authority).

9.3 *Ex Parte Grossman* (1925)

Facts This case deals with habeas corpus, a principle concerning the moving of a case to a regular court (usually a federal court) as opposed to some other court like a military one. A man Grossman was under an injunction to prevent him from selling liquor, but he sold liquor anyways. In response, he was held in contempt of court and convicted of criminal contempt in violation of the prohibition act. President Coolidge technically just commuted his sentence (reducing his sentence but not eliminating it from his record), but this case concerns the presidential power to pardon.

Legal Questions Is the president's power to pardon or commute sentences absolute, or can the courts limit it?

Outcome 8-0, the president's pardoning power is unlimited. This opinion was issued by Justice Taft - the same Taft that was president once, now appointed to the supreme court after his presidency.

Reasoning The power to pardon is an inherent executive power that includes the power to commute sentences. The only exception is when the president does something illegal like accept a bribe in exchange for the pardon. State governors have a similar power over state crimes, while the president has pardoning power over federal crimes. Taft's justification was in part based on legal tradition, perhaps an effort to prevent comments on his expansion of presidential powers.

9.4 *US v. Nixon* (1972)

Facts (The president this time!) A number of Nixon's staffers and aids had been indicted for crimes related to their part in the Watergate scandal. These staffers broke into the Watergate hotel and stole documents from the DNC. Congress appointed people to investigate, whom Nixon fired; the same goes for the Attorney General. Nixon also illegally taped every conversation in the oval office. As Congress planned on impeaching him and the special prosecutors were prosecuting him, they all wanted those tapes. Nixon argued that keeping those tapes was executive privilege, or the supposed idea that the conversations the president has with their staff must remain secret.

Legal Questions Is executive privilege a real privilege?

Outcome The Court quickly dismissed the other arguments like personal property, property of the American people, etc. However, they ruled that executive privilege is a real privilege, but that the Court decides the limits to that. Because the president was overstepping his bounds, the privilege does not attach in this case. This was an 8-0 decision, including two Nixon appointees (the third recused himself).

Implications The president is not above the law. If prosecutors or Congress wants those tapes, they have a legal right to have them.

9.5 *Nixon v. Admin of GSA* (1977)

Facts An organization associated with holding government property returned to Nixon any tapes that they judged to be personal or private in nature. Normally, the president controls their own papers, but Congress passed a statute saying that the federal government controls Nixon's papers, and not Nixon himself. Nixon sued the General Service Administration (GSA) to get his tapes back.

Legal Questions Is the statute constitutional? Does Congress have that power?

Outcome The Court ruled 7-2 that with a statute, Congress has the power to decide what happens to the papers. Without one, the president (?) can decide. The Court also ruled against Nixon's executive privilege claim.

Implications As a result, the tapes are available in the national archive, and Nixon's papers are still the property of the federal government.

9.6 *Nixon v. Fitzgerald* (1982)

Facts Fitzgerald was a whistleblower who claimed that he was fired due to being a whistleblower. Nixon admitted that he ordered the firing, but claimed that the firing was part of a reorganization. Fitzgerald sued Nixon personally in a civil case for firing him. Nixon claimed absolute immunity from civil suits, going by *In Re Neagle* for justification.

Legal Questions Does the president really get immunity in this case?

Outcome The court ruled that the president, judges, etc. get civil immunity for their official actions; reorganization is a valid executive action, so 5-4 Fitzgerald lost. The Court declared that the remedy for such problems is not a civil suit, but impeachment.

9.7 *Clinton v. Jones* (1997)

Facts Paula Jones, governor of Arkansas, alleged sexual harassment, but only after Clinton was elected President. Clinton didn't claim that he was immune from such suits, he claimed that as such suits are politically motivated, he should deal with those civil suits after he is no longer president.

Legal Questions Can the president face civil suits for actions outside of his official duties during their presidency?

Outcome Yes, 9-0 (including two Clinton appointees).

Reasoning It would be effectively a form of temporary immunity were the president able to push off those civil suits, immunity that cannot be granted.

Implications The Court limited the power of the president's power outside the range of their authority, and that range of authority is defined by the Court. If suits are beyond the President's official authority, they can continue.

9.8 *Prize Cases* (1863)

Facts President Lincoln put blockades on ships heading into ports in the south, and seized ships trying to enter them. These ships were often from (allegedly) neutral countries.

Legal Questions Can the president act alone in these actions? Is the president's power different in wartime vs. peacetime?

Outcome 5-4, the president acted within the implied power of carrying out wartime necessities. Furthermore, the seizures were indeed legal under international laws (?). This case treated the Confederacy and the US as two separate entities, even though in all other cases the US regarded the Confederacy as simply states in rebellion.

9.9 *Ex Parte Milligan* (1866)

Facts This was another habeas corpus case. A journalist was being held as a southern sympathizer, demanding that Indiana secede. Lincoln suspended the right to habeas corpus, but the journalist (?) still asked his case to be moved to a different court.

Legal Questions Did President Lincoln exceed his authority? Can the president suspend the right to habeas corpus?

Outcome Nope, the president cannot suspend that right in that way.

Implications There are limits on presidential powers in emergencies and wartime.

9.10 *US v. Curtiss-Wright* (1936)

Facts A company Curtiss-Wright was accused of selling machine guns to Bolivia, in violation of a US federal statute that prevented the US from interfering in some latin-american wars. Curtiss-Wright sued because the President tried to stop these sales.

Legal Questions Does the President have the power to stop sales from one private entity to a foreign one under these circumstances? Can the president decide what private entities can and cannot do with regards to foreign affairs?

Outcome The court ruled 7-1 that the president can indeed do that. The president has inherent unlimited authority over foreign affairs.

9.11 *Korematsu v. US* (1944)

Facts During World War II, an executive order forced all citizens of Japanese descent into internment camps. This involved loss of property, businesses, etc. One affected person sued.

Legal Questions Does the president's authority extend to this kind of order during wartime?

Outcome The president's power was upheld; racial discrimination and 14th amendment questions were not addressed in the majority (6 votes), although they were in the dissent (3 votes). The majority ruled on the basis of presidential power, while the dissent pointed out that German-Americans and Italian-Americans were not similarly ordered into internment camps.

9.12 *Youngstown Co v. Sawyer* (1952)

Facts President Truman seized a steel factory and claimed it to be a necessity of wartime powers. The factory was considered a federal entity occupied by the military. The company that previously owned the factory sued, and at some point there was a workers' strike involved (somehow?).

Legal Questions Did the president exceed his wartime authority? Can the president seize civilian assets during wartime at will?

Outcome 6-3, the president exceeded his authority.

Reasoning Jackson wrote a concurrence that outlined the three major ways that the president and Congress interact during wartime:

1. When Congress and the president are in concurrence, presidential power is at its highest.
2. When Congress and the president disagree, presidential power is at its lowest.
3. When the president acts but Congress stays silent... twilight zone.

This last scenario is what happened here: President Truman acted, Congress stayed silent, so the Court has to decide.

Implications Congress has a role in wartime powers. Presidential wartime powers do indeed have limits.

9.13 *New York Times v. US* (1971)

Facts The New York Times were going to release the Pentagon Papers, a series of classified documents leaked to them. President Nixon tried to use prior restraint to prevent the *Times* from publishing the documents on the grounds of national security.

Legal Questions Can the president interfere with the press? Who decides on national security matters in freedom-of-the-press cases?

Outcome The Court ruled that the president cannot stop the publication of the Pentagon Papers. The president alone cannot forbid publication based on national security.

9.14 *US v. US District Court* (1972)

Facts This case involves wiretapping, where government officials tapped a phone line to listen in on phone conversations (at the time this was meant literally). President Nixon (of *course* it's Nixon) tried to order a wiretap on his own.

Legal Questions Does the president have the power to order wiretaps on his own, or must the police and others get a warrant from a court first?

Outcome 8-0 the Court ruled that this is not part of presidential power. A warrant *must* be obtained before any wiretapping can occur. Even during emergencies, presidential power is not unlimited, there are still normal procedures to be followed.

9.15 *Goldwater v. Carter* (1979)

Facts The government of Taiwan dates back to the losers of a Chinese civil war invading Taiwan and taking its government for themselves. As a result, there are two entities claiming control over Taiwan. Carter ended the treaty with Taiwan in order to recognize the government of the People's Republic of China. Senator Goldwater sued over the ending of the treaty.

Legal Questions Does the president have the power to end treaties?

Outcomes 8-1, as the sole person in control of foreign policy and the sole recognizer of foreign governments, the president does have the power to end treaties.

9.16 *Haig v. Agee* (1981)

Facts A former CIA agent Agee announced his intentions to reveal the names of then-current CIA agents. Agee was also out of the state at the time, so upon the order of the president, the Secretary of State revoked Agee's passport. The Passport Act of 1926 is silent on the ability to revoke passports. This was an emergency ruling by the Supreme Court.

Legal Questions Does the president have the ability to revoke passports? This case is in the "twilight zone" that *Youngstown Co v. Sawyer* established.

Outcome The president acted constitutionally. This was a 7-2 decision.

Reasoning This involved a foreign policy question, which the Court reasoned it should stay out of. The two dissenting justices argued that the president cannot act without Congressional authorization.

9.17 *Dames & Moore v. Reagan* (1981)

This case's name may be mangled!

Facts There was a democratically elected government in Iran that the CIA overthrew, putting the equivalent of a king in place instead. There was an Islamic revolution against the new government, and as part of that revolution the American embassy was stormed, kicking off the Iran hostage crisis. The US froze all Iranian assets held in American banks. After the release of the hostages, part of the release was an agreement to unfreeze the assets. American companies who thought they had claims against the Iranian government sued.

Legal Questions Does the president have the power to freeze and unfreeze such assets, regardless of potential harm to US companies?

Outcome The Court unanimously ruled that the president does indeed have that power. The Court also cut off all claims that Americans had against the Iranian government and allowed the return of the assets to the (new, Islamic revolutionary) Iranian government.

9.18 *Hamdi v. Rumsfeld* (2004)

Facts After 9/11, President Bush argued that there was a new category of prisoners that are not prisoners of war, but enemy combatants. The difference is that a prisoner of war operates in the name of a foreign government in military uniform, but enemy combatants are neither in uniform nor in service of a recognized government. By his logic, the Geneva convention does not apply, so enemy combatants have no rights. The ones relevant to this case were taken to Guantanamo bay, a base/prison on Cuban soil. Rumsfeld was the Secretary of State and a prisoner Hamdi sued (and wanted a lawyer). Hamdi was also a US citizen in Afghanistan at the time, and was taken to a military base on the mainland.

Facts Can the president – even with Congress’s approval – remove the rights of a citizen? Does Hamdi have rights?

Outcome The Court ruled 6-3 that US citizens *always* always have rights.

9.19 *Hamdon v. Rumsfeld* (2006)

Facts Same facts as above, just with a non-citizen instead.

Outcome The Court ruled against the enemy combatant idea again. Because they are on American soil – and Guantanamo *is* American soil – the prisoners have rights. Neither the president nor Congress have the power to overturn the constitution.

9.20 *Zivotofsky v. Kerry* (2015)

Facts Congress had passed a statute allowing children born in Jerusalem to put Israel down on their passport. The US has not formally recognized Jerusalem as the capital of Israel. Jerusalem is essentially disputed territory between Palestine and Israel. Traditionally, the US has not taken a position, with the exception of the aforementioned 2002 statute. The statute sets a US position on the matter of who owns Jerusalem. The Bush administration *and* the Obama administration decline to allow people born in Jerusalem to list Israel on their passport as they viewed it as a violation of presidential powers (likely powers over foreign policy).

Legal Questions Is it within the president’s power to recognize foreign countries and capitals?

Outcome 5-4, it’s a power of the president and Congress cannot put qualifications on it. However, the Court also ruled that Congress *does* have a legitimate role in foreign policy, but not in the recognition of foreign countries. This rejects reading *US v. Curtiss-Wright* broadly, and results in a very narrow victory for the president.

10 Commerce & Federalism

10.1 *McCulloch v. Maryland* (1819)

Facts Maryland sued over the creation of a national bank; they wanted to tax the federal bank created by Congress.

Legal Questions Is the bank constitutional? Can states tax federal entities?

Outcome The Court ruled against Maryland; the bank is constitutional and the power to tax is the power to destroy, and the states do not have the power to destroy what the federal government has created.

10.2 *Gibbons v. Ogden* (1824)

Facts Steamboats were licensed by the state. New York heavily regulated out-of-state boats – their licensing requirements were far greater than those on in-state boats.

Legal Questions Can a state regulate another state's commerce? Does this violate the interstate commerce clause? Is the power granted to Congress exclusive? If not, is Congress's power pre-emptive?

Outcome In a 6-0 decision, the Court ruled that the Constitution should be flexible and not read literally. Furthermore, it grants Congress the power to regulate interstate commerce. Navigation is included under the definition of commerce. New York state laws that interfere with that power of Congress are unconstitutional.

10.3 *Cooley v. Board of Wardens* (1852)

Facts Pennsylvania had a law requiring that all boats above a certain size have a Pennsylvania-trained pilot. This could be read as a safety measure or as a way of discriminating against out-of-state boats. Cooley argued that the federal government pre-empted state regulations, claiming the regulation to be part of Congress's power.

Legal Questions Who actually has this power of regulation?

Outcome Because there is no evidence that the federal government wished to stop the regulation and because regulation can be considered a concurrent power, the Court ruled that the law is constitutional. This was a 7-2 decision.

Implications Congress has the power to pre-empt commerce laws, but it also has the power to share that power by staying silent. This case was not seen as a discrimination against out-of-state commerce, it was seen as a safety act.

10.4 *Dred Scott v. Sanford* (1857)

Facts Dred Scott was a slave whose owner took him to a free (non-slave) state, then returned with him to Missouri, a slave state. Scott sued, claiming that he was no longer a slave (even though his owner was dead and the owner's widow was fighting the case).

Legal Questions Can Dred Scott sue? Who defines citizenship?

Outcome The Court ruled that citizenship is defined by the states, and is not defined nationally (this was an attempt to defend slavery). The Court also ruled that people of African descent have no constitutional rights and are not to be considered citizens. The Court *also* ruled that the Missouri Compromise (which attempted to maintain a balance between free and slave states) is unconstitutional because that power is up to the states, and the federal government has no power over it.

Implications The Dred Scott decision was one of the major topics of debate during the Lincoln-Douglas debates, and helped spark the foundation of the Republican party, which found they could not abide by the ruling. In the long run, this case may have helped get Lincoln elected in 1860 and contributed to the start of the Civil War. The 13th-15th amendments together overturned all of *Dred Scott*.

10.5 *US v. EC Knight Co.* (1895)

Facts Congress passed anti-trust laws to prevent monopolies in an era where the Court leaned right much more than Congress. At the time, six sugar companies controlled almost all sugar refining in the US. The biggest sugar company bought the next four, leading to one company controlling 98% of the market.

Legal Questions Is manufacturing part of commerce (and thus commerce that Congress can regulate), or is it outside commerce?

Outcome The Court ruled 8-1 that manufacturing is not part of commerce, it does not have a direct effect on commerce, and thus the relevant sections of the Sherman antitrust law are unconstitutional.

10.6 *Champion v. Ames* (1903)

Facts In 1895, Congress passed a law prohibiting sale of lottery tickets across state lines.

Legal Questions Are lottery tickets commerce? Does the commerce clause grant the power to prohibit commerce?

Outcome 5-4, yes on both!

10.7 *Hammer v. Dohenhart* (1918)

Facts Congress banned child labor by banning all goods made with child labor. The parents of one affected child sued.

Legal Questions Can Congress ban goods made with child labor? Is this considered commerce?

Outcome The Court ruled against the child labor laws in a 5-4 decision. Congress has no power to regulate child labor as it is outside the definition of commerce, on 10th amendment grounds.

10.8 *Missouri v. Holland* (1920)

Facts In 1916, Congress ratified a treaty between the US and Canada (which at the time was still owned by the UK) that protects migratory birds. These birds don't care about political borders, so they go where they please, including across state and national lines. The state of Missouri wanted to allow hunting of these migratory birds, arguing that the treaty violates the 10th amendment and states' rights.

Legal Questions Is the treaty and regulation constitutional?

Outcome The court ruled in a 7-2 decision that the power to make treaties is clearly a federal power, that the treaty overrules the 10th amendment, and that Congress's decision pre-empts any claims made by the states. This ended up being a pure federalism case that did not touch upon the commerce clause.

10.9 *Stafford v. Wallace* (1922)

Facts Previously, the Court ruled that stockyards are part of interstate commerce and that they can be regulated. In 1921, Congress passed the Stockyards & Packing Act, which banned such things as price fixing. The stockyards sued, claiming that this act violates Congress's commerce regulation powers.

Legal Questions Is this regulation constitutional?

Outcome The Court ruled that usage of the commerce clause must change as methods of commerce change, allowing Congress to regulate the *stream* of commerce. This effectively gives Congress the right to regulate all the steps in the creation of a product, including the raising of animals, sale to the stockyards, sale to the butchers, and sale to the consumers, assuming that crossing of state borders occurs. This doesn't overturn EC Knight, however, because somehow the stream of manufacturing doesn't include manufacturing.

10.10 *Bailey v. Drexel Furniture* (1922)

Facts This is another child labor law. This time, Congress didn't ban goods made with child labor, the put a very high tax on such goods instead.

Legal Questions Can Congress impose such a tax?

Outcome 8-1 the Court ruled that the power to tax is the power to regulate, and the Court previously ruled that Congress can't regulate child labor, so the law was struck down. The Court once again considered regulation of child labor a state matter.

10.11 *Carter v. Carter Coal* (1936)

Facts As part of the New Deal, Congress passed the National Industrial Recovery Act, which of course the Court struck down. Congress then passed a law regulating mining and coal, on the grounds that it is part of the stream of commerce.

Legal Questions Can Congress regulate in this way?

Outcome Nope.

10.12 *NLRB v. Jones & Laughlin* (1937)

Facts Congress started to regulate labor management disputes through its commerce regulation powers, arguing that commerce includes labor management problems.

Legal Questions Is this constitutional?

Outcome 5-4 the Court adopted a much more expansive understanding of commerce, ruling the act constitutional.

Implications This overturned many commerce clause rulings before it, allowing much New Deal legislature to continue. It paved the way for a *lot* of new commerce regulations and bureaucracy. This case is sometimes known as the "switch in time that saved nine", which refers to the earlier plan to pack the supreme court with extra justices and the fact that one justice switched his vote from 4-5 to 5-4.

10.13 *US v. Darby* (1941)

Facts This concerns minimum wage & maximum hour laws, which the Court had been hostile to in both state and federal laws. Congress passed a new law with both elements in it.

Legal Questions Are the minimum wage + maximum hour laws constitutional?

Outcome The Court ruled yes; the 10th amendment is basically just a truism.

10.14 *Heart of Atlanta Hotel v. US* (1964)

Facts Congress passed the Civil Rights Act of 1964 using its commerce regulation powers. The Act bans many forms of discrimination in federal programs, private accommodations, and employment.

Legal Questions Is this kind of regulation constitutional?

Outcome 9-0 the Court ruled that this regulation is fine, especially considering that commerce over state lines can happen between any entities at any time, so technically any commerce could be considered interstate commerce.

10.15 *National League of Cities v. Garcia* (1976)

Facts Congress extended federal minimum wage and maximum hour laws to state and local employees. The National League of Cities objected on the grounds that it violated principles of federalism.

Legal Questions Can Congress make such a law?

Outcome In a 4-1-4 decision, four justices said that Congress overstepped its bounds, the other four upheld *Darby*, and the remaining justice (Blackman) joined with the four conservatives to strike down the law, but only under these specific facts.

10.16 *Garcia v. San Antonio Metro* (1985)

Facts This is the same question as last time, but with the San Antonio Metro.

Outcome Blackman switched his vote, turning it into a 5-4 vote that overturned *National League of Cities*.

10.17 *US v. Lopez* (1995)

Facts Congress passed a law banning guns from schools, using the commerce clause as justification. It's likely that Congress felt confident in this action because of the long string of victories based on *Darby*.

Legal Questions Can Congress pass such regulations?

Outcome The Court struck down the law in a 5-4 decision.

Reasoning The federal government can regulate channels, substantial effects, etc... but this isn't one of those things that can be regulated. This decision had nothing to do with guns or the second amendment, but with the 10th amendment and the powers of Congress.

10.18 *Alden v. Maine* (1999)

Facts The federal government applied the Fair Labor Standards Act to state employees, regulating all sorts of working conditions. Congress also allowed state employees to sue the state (their employer) if they feel the act has been violated.

Legal Questions Can Congress grant that power?

Outcome The Court ruled 5-4 that states cannot be sued without their consent, citing the 11th amendment. Congress cannot allow state employees to sue. The dissent still upheld *Darby* and accused the majority of conservative activism.

10.19 *US v. Morrison* (2000)

Facts Congress passed the Violence Against Women Act, which said that women who feel they are victimized but are ignored by local authorities can sue in federal court. A football player at Virginia Tech. allegedly raped a female student. That student went to the police, who ignored the case. In accordance with the act, she sued.

Legal Questions Is the Act constitutional? Can Congress justify it on the basis of commerce?

Outcome 5-4 the Court said no. The majority argued that the act violates states' rights, and that this is not commerce (despite that Congress had evidence otherwise). The Court also claimed that they define commerce, *not* Congress.

Implications The Court has fundamentally shifted away from giving power to Congress, instead granting more power to the states. This shift started most strongly with *US v. Lopez*.

10.20 *Gonzales v. Reich* (2005)

Facts This case concerns medical marijuana. States are starting to allow it, but the federal government still considers it a schedule 1 illegal substance. The attorney general decided to enforce the federal regulation.

Legal Questions Can states pass laws that are in direct contradiction to federal laws? Can states legalize medical marijuana?

Outcome 6-3 the Court ruled that federal power is supreme; the states must yield to the federal government. The three justices that dissented are three of the conservatives. Strangely, Scalia and Kennedy sided with the majority.

10.21 *Gonzales v. Oregon* (2006)

Facts Oregon had a "death with dignity" law that allowed for assisted suicide under very tight regulations. Federal drug laws still prevented doctors from prescribing medication for such purposes.

Legal Questions Can Oregon allow assisted suicide despite its prohibition by the federal government?

Outcome The Court ruled 6-3 that federal law is supreme, but that Congress intended to let state legislatures have some experimental room to toy with their own statutes, effectively turning this into a preemption case. Here, there was no federal preemption, so Oregon wins (they got to keep their assisted suicide laws). The three most conservative justices (Scalia, Roberts, and Thomas) dissented.

11 Substantive Due Process

11.1 *Munn v. Illinois* (1877)

Facts The state wanted to regulate grain elevators, storage facilities that store and sell grain (they actually have an elevator for grain in them today!). The grain elevator owners argued that such regulation violated their liberty.

Legal Questions Can the states regulate commerce?

Outcome The Court ruled 7-2 that the states can pass such laws. The two dissenters argued that the regulation violates the right of contract, and that the private industry should be free of all government regulation (even health and safety laws such as the one Illinois passed).

11.2 *Algyer v. Louisiana* (1897)

Facts The state barred out-of-state insurance companies and policies.

Legal Questions Can the state bar out-of-state entities from doing business within them?

Outcome The Court said 9-0 that contracts can cross state lines, and that there is a liberty to contracts as guaranteed by the constitution. Therefore, the state cannot bar out-of-state contracts. This is another substantive due process case (i.e. reading the “liberty” part of the 14th amendment as a prohibition against government regulation).

11.3 *Lochner v. New York* (1905)

Facts New York (state) passed a maximum hour law – workers cannot work more than maximum hours.

Legal Questions Can states pass laws forming their own regulations?

Outcome 5-4, no. The “police power of the state” means that a state can regulate everything within its borders, but it’s limited by the liberty granted by the 14th amendment. This assumes that the employer and employee were equal and that both had total freedom of contract (as opposed to progressives of the time, who asserted that employers took advantage of employees). This case is frequently cited alongside *Dred Scott* as one of the Court’s worst rulings.

11.4 *Muller v. Oregon* (1908)

Facts The state passed a law regulating female workers, granting a maximum hour limit for women.

Legal Questions Does this law violate “substantive due process”? Is the law constitutional?

Outcome The Court ruled 9-0 that the law is constitutional. One strain of thinking is that the Court thought women to be of a lesser class that could not negotiate contracts (i.e. they were property), while the other views it as a progressive ruling that helps women’s rights.

11.5 *Adkins v. Children’s Hospital* (1923)

Facts Congress, for the District of Columbia, a minimum wage and maximum hour law for women and children in 1918. This is not a contracts clause case.

Legal Questions Is the law constitutional?

Outcome 5-3, nope. The Court applied *Lochner* to this case, arguing that it’s a freedom of contract case, and that children and women have the exact same freedom of contract as employers do. This overturned *Muller*. The dissent argued the same bargaining power inequality that the dissent argued in *Lochner* too.

11.6 *West Cose Hotel v. Parish* (1937)

Facts Washington State had a minimum wage law for women.

Legal Questions Is the law constitutional?

Outcome 5-4, yes. Furthermore, the Court decided that it would not read liberty as substantive due process into the constitution. This is the last substantive due process case, and it overturned *Adkins* and *Lochner*.

11.7 *Williamson v. Lee Optical* (1955)

Facts There was a state regulation on various eye-related professionals that applied different licensing and educational requirements on different groups; optometrists can't prescribe drugs, and optician can fit glasses, optomologists (sp?) had to the M.D.'s, etc. A group sued, arguing that it was a violation of their right to free contract.

Legal Questions Is the regulation constitutional?

Outcome The Court ruled that the regulation is constitutional, and rejected the idea of substantive due process.

12 Takings

12.1 *US v. Causby* (1946)

Facts During World War II, there was a military airport in North Carolina that planes were flying in and out of at night. People were losing a lot of sleep to the planes, and Mr. Causby's chickens weren't happy (meaning they were producing fewer eggs). This was a civil lawsuit by the farmer against the federal government, not a criminal case.

Legal Questions Is it a taking to fly planes over someone else's private property?

Outcome In a 5-2 decision, the Court ruled that it is a taking, and that the owner deserves just compensation for economic loss. It was ruled that airspace was a public highway (in a sense), but the taking is economic loss, not seizure of airspace/property. The dissent argued that the majority's ruling was so broad that it crippled the government (see below).

Implications This case introduced the concept of a total taking (e.g. paving over someone's land to build a highway) verses a partial taking (e.g. this case). Government planning must include potential compensation for revenue lost as a result of their actions. This increases red tape, bureaucracy, etc. Additionally, planes don't have to pay the owners of the land they fly over in most cases (something like that anyways).

12.2 *Berman v. Parker* (1954)

Facts Washington D.C. passed a law saying that they could seize land in a state of urban decay, as part of the urban renewal idea. A store owner affected by the law objected.

Legal Questions Is this law a violation of the property owner's rights? Is this form of urban renewal a form of public use (which is the only purpose that allows takings)?

Outcome 8-0 the Court ruled that the law is constitutional. Congress defines what public use is, but they must still pay just compensation (this was never in question).

12.3 *Penn Central v. New York City* (1978)

Facts New York has a landmark preservation law where they designate buildings or even neighborhoods as landmarks/historical, so they cannot be visually modified without approval. Penn Central wanted to build a high rise on top of Grand Central Station, but were refused approval for it.

Legal Questions Is the historic preservation law a taking? If so, should Penn Central receive compensation for it?

Outcome The Court decided 6-3 that the historic preservation law is not a taking. They compared the law to zoning laws, which affect the type of buildings that can be built in certain areas, e.g. residential, commercial, and industrial zones. Thus, the decision of the city stands. The dissent argued that the government should still pay for potential revenue lost.

Implications This saved a lot of land regulations; if this was considered a taking, the government would owe a *lot* more money for anything involving zoning or historical preservations.

12.4 *Hawaii Housing Authority v. Midkoff* (1984)

Facts Under past native Hawaii laws, all property is owned by a small number of chiefdoms. After Hawaii became a state, the property never changed. Individuals would lease the land under their houses from the collective chiefdom, meaning the vast majority of homeowners didn't own the land under their house. The state of Hawaii decided that it was time to modernize, passing the Land Reform Act of 1967. In order to avoid a tax nightmare, the state flat-out seized all the land, paid just compensation to the chiefdoms, and sold the land to the homeowners.

Legal Questions Is this type of seizure a public use? Is it a taking?

Outcome 8-0 the Court agreed with the state that it is a legitimate public use and that it is a taking. The owners got just compensation, so all is well. This case may have masked some of the ideological differences on the Court as it was a very unique case, specific to just Hawaii.

12.5 *Nolan v. California Coastal Commission* (1987)

Facts In California, a beachfront property owner wanted to build a new house between two public beaches. That requires a building permit, which the Coastal Commission would allow only if the owner allowed access between the two beaches (after all, if you're on a beach, there's no good way to tell if you're trespassing). In effect, the Commission was trying to allow as much public access to beaches as possible.

Legal Questions Is this restriction on the property owner's use of the land a taking?

Outcome The Court ruled that the restriction is a taking, 5-4 (the 5 conservatives against the 4 liberals on the Court). According to the Court, it's limiting the property owner and is thus a taking; the dissent argued that it's closest to zoning and should be allowed.

12.6 *Lucas v. South Carolina Coastal Commission* (1992)

Facts Lucas was a landowner on a small island in South Carolina, specifically a barrier island that helps to shelter the land from storms. The state denied his building permit on the grounds that the purpose of a barrier island is to protect the mainland, and putting buildings on it would reduce that ability. Furthermore, barrier islands change so frequently that it's practically impossible to get anything on them insured.

Legal Questions Can the state regulate the barrier islands? Is it a taking?

Outcome The Court ruled that the regulation was a taking, 6-3. Scalia's opinion was that a taking is when there is a physical invasion of the property or when a regulation denies all economic benefit of the property. Included in the ruling was a definition of a nuisance as a "harmful or noxious use" of private property. The dissent argued that the majority expanded takings to such a place that the government can't do anything, referring back to *Lochner*.

12.7 *Dolan v. City of Tigard* (1994)

Facts (Spelling of city name uncertain) In 1973, Oregon passed a very comprehensive land use program. The city required that 15% of the central business district must be open. They also required the building of bike paths and drainage routes. A store owner wanted to double the size of his store and provide parking lots, but the city required that he leave some of his space green and that he build bike paths. The store owner argued that all of the government regulations are takings, whereas the city argued that the regulations are necessary to preserve the nature of their city.

Legal Questions Are these land usage requirements takings?

Outcome The Court ruled 5-4 that the land usage requirements are takings. The requirements do not count as zoning or historical preservations. The dissent argued that the ruling puts too much burden on the cities (again referring to *Lochner*) and that the property owner must share some of that burden.

12.8 *Kelous v. City of New London* (2005)

Facts The city of New London had areas of severe wealth and areas of severe poverty. The city decided to take large amounts of land by eminent domain and sell it to private developers; in the city's view, this was the only way to revive a dying part of the city. The government argued that this was clearly in the name of public use, while the property owners argued that this wasn't public use and that the government sidestepped the negotiation process between landowners and private developers.

Legal Questions There's no question that this is a taking, but is this a public use?

Outcome 5-4, yes. This time the liberals on the court won out, even though it's the same court as it was in *Dolan* (one of the conservatives flipped. The majority argued that the legislature defines public use. The author of the opinion (Stevens) said that had he been a legislator, he would not have voted for the act, but as a judge he was required to defer to the legislature on this matter.

12.9 *Koontz v. St. John's River Waste Management* (2013)

Facts In exchange for developing other parts of their land, a company agreed not to develop another part of their land (wetlands), but were denied.

Legal Questions Is this a taking?

Outcome Yes.

12.10 *Horne v. Department of Agriculture* (2015)

Facts In 1937, the Agricultural Marketing Agreement act required that raisin growers give a substantial part of their crop to the government, up to 47%. If the government makes any profit off of them, the profits go back to the growers (this was a New Deal act that tried to raise prices). Somehow, this 1937 law became an issue in 2015, probably because a modern raisin grower's crops were seized.

Legal Questions Is this raisin seizure a taking?

Outcome Yes. A taking can be both personal property or real property (real estate), 8-1. Thus, the growers must be compensated for their losses. However, the government can still ban too much product without it being a taking. As a result, the raisin law quietly went away.

13 Contracts

13.1 *Fletcher v. Peck* (1810)

Facts This case concerns a land deal involving a river with a name that starts with a 'Y'. At the time, Georgia controlled the lands that are now owned by Mississippi and Alabama (as public lands). State legislatures were bribed to sell the land to a small group of landowners. The voters found out and promptly unelected all the legislators involved in the land deal. The newly elected legislators tried to reverse the deal on the grounds that the sale was illegal. The buyers, however, had already sold the land to third parties.

Legal Questions Can state legislators nullify a contract between two external parties (in this case, the buyers and the new, innocent buyers)? The original contract was definitely void as it was illegal; this question concerns the *second* sale that didn't involve the state government.

Outcome 5-0 the Court ruled that the state legislature cannot undo what the previous legislature did if it hurts innocent third parties. Furthermore, the constitution prohibits the states from passing ex post facto laws (laws that make an activity illegal after it happens), especially for contracts. Since the contract between third parties was legal at the time it was signed, the state cannot do anything about it.

13.2 *Dartmouth College v. Woodward* (1819)

Facts Dartmouth College is a private college that was founded by royal charter from England, back when America was a colony. New Hampshire tried to abolish private education (like the French) in favor of public education, and thus wanted to take over Dartmouth.

Legal Questions Is the King's charter a contract that the post-colonial state New Hampshire must respect?

Outcome 5-1, the contracts clause prevents the state from seizing the college and making it public. Therefore, the New Hampshire law is constitutional. This didn't stop New Hampshire from establishing their own public schools, though, as that is an unrelated issue.

Implications States cannot retroactively void contracts that were valid at the time they were created.

13.3 *Charles River Bridge v. Warren Bridge* (1837)

Facts In the city of Austin (Massachusetts?), the state entered into a contract with the Charles River Bridge in 1785. The bridge was owned by the Charles River Bridge Co., which was given permission by the state to create the bridge. The state told them that they can charge tolls and that they have an exclusive contract. Later, the state created the Warren bridge, a free (i.e. no toll) bridge. Predictably, the Charles River Bridge Co. objected.

Legal Questions Does economic development outweigh contract rights?

Outcome 5-2, yes. The Charles River Bridge Co. loses. The purpose of the contracts clause is to protect commerce; since the bridge contract doesn't ultimately protect commerce (in this case it would inhibit it), there must be some flexibility.

13.4 *Stone v. Mississippi* (1880)

Facts In 1867, the reconstruction government created a private lottery from which the state gets a certain percentage of sales. In 1868, the state constitution prohibited lotteries. Nothing happened about it until 1874 where the state attorney general declared the lottery unconstitutional, in an effort to actually enforce the state constitution.

Legal Questions Is the 1867 charter a contract? If so, is it valid?

Outcome 9-0, state charters are not contracts, and this is a charter. Charters are licenses to do businesses, but are not quite as legally binding. States are perfectly free to change licensing laws to make previously legal activities illegal. Additionally, it was ruled that states cannot give away their police power (i.e. the right of the state to regulate everything within the state).

13.5 *Home Building & Loan v. Blaisdell* (1934)

Facts During the Great Depression, farmers were severely affected by the dust bowl in that they couldn't grow their crops and they couldn't make a profit due to dropping prices. However, they still had mortgages to pay off. The state of Minnesota declared the Depression to be an economic emergency, and so put a moratorium on bank foreclosures. This was an attempt to help affected farmers keep their land and their farms. The banks argued that the state violated the contract clause as it changed their ability to foreclose under the terms of their mortgages.

Legal Questions Do state powers over contracts increase during times of emergency?

Outcome The Court ruled 5-4 in favor of the state law. The economic emergency allows the state to halt foreclosures. The majority did not read this as a violation of the contracts clause as the state only halted foreclosures temporarily.

13.6 *US Trust v. New Jersey* (1977)

Facts The port authority of New York, an entity that deals with bridges, shipping, etc., was created jointly by New York and New Jersey. The authority took over a private railroad. The state charter for the railroad prohibited the expansion of mass transit (the railroad didn't want extra competition). Then, the states used state money to expand mass transit.

Legal Questions Is the charter to the railroad still a valid contract?

Outcome 4-3, the state loses. The contract clause was interpreted broadly, as the court argued that the existence of an important public need was not enough to overcome the limits of the contract clause. Instead, the states would just have to pay more for mass transit that was not directly controlled by the port authority.

13.7 *Allied Structural Steel v. Spannos* (1978)

Facts (spelling of second name unknown) Allied Structural-Steel had facilities in Minnesota, but wanted to leave. Minnesota passed a law requiring leaving companies to pay into a state fund that will in turn be used to pay the pensions of the former workers. This was a law that tried to protect workers, but it also made more difficult for companies to leave the state.

Legal Questions Can a state modify an existing contract between an employer and an employee?

Outcome 5-3 the Court ruled that the law was retroactive and violated the contracts clause. They also ruled that there was no economic emergency (in order to differentiate between this case and *Home Building & Loan*), so economic needs do not outweigh the contracts clause here.