

This question requires you to compare a Supreme Court case you studied in class with one you have not studied in class. A summary of the Supreme Court case you did not study in class is presented below and provides all of the information you need to know about this case to answer the prompt.

United States v. Eichman (1990)

3. After the Supreme Court held that a state law in Texas that criminalized the desecration of the American flag was unconstitutional, Congress passed a national law, the Flag Protection Act of 1989, which criminalized the conduct of anyone who “knowingly mutilates, defaces, physically defiles, burns, maintains on the floor or ground, or tramples upon” a flag of the United States.

In response to this law, protest demonstrations took place in several locations across the country. Several people, including Shawn Eichman, burned flags on the steps of the United States Capitol building in Washington, D.C., before a crowd of reporters and photographers. Eichman and others were arrested for violating the Flag Protection Act.

In the ensuing cases, Eichman and others defended their actions as legitimate forms of political protest. Federal district judges dismissed the charges, but United States attorneys appealed the decisions directly to the Supreme Court. These cases were consolidated in *United States v. Eichman* (1990).

In *United States v. Eichman* (1990), the Supreme Court’s 5–4 decision held that the federal government cannot prosecute a person for desecration of the American flag because doing so would violate the First Amendment.

- A. Identify the civil liberty that is common to both *Citizens United v. Federal Election Commission* (2010) and *United States v. Eichman* (1990).
- B. Explain how the reasoning in *Citizens United v. Federal Election Commission* and *United States v. Eichman* led to a similar holding in both cases.
- C. Explain how those unhappy with the precedent established in *Eichman* can use a constitutional process to have it overturned.

Begin your response to this question at the top of a new page in the separate Free Response booklet and fill in the appropriate circle at the top of each page to indicate the question number.

4. In the United States, groups use different methods in order to achieve their policy goals. Take a position on whether legal challenges or social movements are the most effective means for changing federal policy in the area of civil rights.

Use at least one piece of evidence from one of the following foundational documents:

- *The Federalist 78*
- The First Amendment
- “Letter from Birmingham Jail”

In your response you should do the following:

- ✓ Respond to the prompt with a defensible claim or thesis that establishes a line of reasoning.
- ✓ Support your claim with at least TWO pieces of specific and relevant evidence.
 - One piece of evidence must come from one of the foundational documents listed above.
 - A second piece of evidence can come from any other foundational document not used as your first piece of evidence, or it may be from your knowledge of course concepts.
- ✓ Use reasoning to explain why your evidence supports your claim or thesis.
- ✓ Respond to an opposing or alternate perspective using refutation, concession, or rebuttal.

Begin your response to this question at the top of a new page in the separate Free Response booklet and fill in the appropriate circle at the top of each page to indicate the question number.

Question 3: SCOTUS Comparison

4 points

- A. Identify the civil liberty that is common to both *Citizens United v. Federal Election Commission* (2010) and *United States v. Eichman* (1990). **1 point**

- The civil liberty is freedom of speech or freedom of expression.

- B. Explain how the reasoning in *Citizens United v. Federal Election Commission* and *United States v. Eichman* led to a similar holding in both cases.

Acceptable responses include:

One point for describing relevant information about the reasoning in the required Supreme Court case. **1 point**

- In *Citizens United*, the reasoning of the court led it to hold that political advertisements and communications were a protected form of free speech.

OR

OR

Two points for correctly explaining how the reasoning in both cases led to a similar holding. **2 points**

- In *Citizens United*, the reasoning of the court led it to hold that political advertisements and communications were a protected form of free speech. In *Eichman*, the court reasoned that burning a flag in protest was symbolic speech. In both cases, the court held that the action was a form of speech that is protected by the First Amendment.

- C. Explain how those unhappy with the precedent established in *Eichman* can use a constitutional process to have it overturned. **1 point**

Acceptable explanations include the following:

- States can ratify an amendment that would invalidate the decision.
- A constitutional convention can be called to propose an amendment that would invalidate the decision and then state constitutional conventions can ratify it.

Total for question 3 4 points