

Timeline Stories

1. FOUNDING DOCUMENTS

1789– U.S. Constitution legalizes slavery

yellow The Constitution was established by the authority of sovereign people to create a government to secure their rights. However, the Constitution did not recognize rights for the majority of people, counting slaves, tribal Indians, women, and children.

Southern states would not join the Union unless slavery was legalized. Slavery was built into the Constitution without using the word. Instead, in determining “who counts” for the purpose of establishing number of representatives for Congress or taxes, the Constitution refers to “the whole number of free Persons... and, excluding Indians..., three-fifths of all other Persons.” * Migration and importation of “such Persons as... existing States” thought “proper to admit” could not be prohibited until 1808.** The Constitution also required return of escaped “Laborers” (runaway or “fugitive” slaves) to their owners.***

* Article I, Section 2, Three-Fifths Clause changed by 14th Amendment, 1868

** See Article I, Section 9, Migration and Importation Clause. Legal importation of new slaves ended when Act Prohibiting Importation of Slaves went into effect in 1808. Domestic slavery was made illegal by 13th Amendment, 1865

*** Article IV, Section 2, Fugitive Slaves Clause changed by 13th Amendment, 1865

1791 – Bill of Rights recognizes fundamental rights

blue Congress adopted the Bill of Rights by amendment to the U.S. Constitution. These fundamental rights were meant to be used by citizens to limit the powers of a centralized government and to protect people against acts of oppression or tyranny by the federal government.

However, states decided the qualifications for citizenship such as age, gender, and how much property must be owned to qualify to vote or run for office – and most states only recognized some white men as citizens. In New Jersey, women who met property and residency requirements could vote when the Constitution was ratified, but the state revoked that right in 1807.

2. SOVEREIGNTY THREAT? BALANCE OF POWER SHIFTS

1803 – Supreme Court establishes judicial review

orange (*Marbury v. Madison*)

His last day in office, President Adams appointed over fifty new judges as Federalists sought to keep control of the judiciary after Thomas Jefferson and the Anti-Federalists took office. Appointments were made under two new acts, one of which extended the original authority of the Supreme Court under the Constitution in order for the president and judiciary to make the appointments. When William Marbury did not receive his new appointment under the new president, he sued.

This was the first test of what happens when an act of Congress conflicts with the Court’s interpretation of the Constitution. Supreme Court ruled it had the supreme power to interpret constitutional law and could overrule laws or policies made by Congress and the President. The Judiciary Act of 1801 was ruled unconstitutional. Judges appointed under it could not take office.

The Court’s new power of “judicial review” allowed it to make law at its pleasure

through creative interpretation. This posed a new danger. Thomas Jefferson warned: *"The Constitution on this hypothesis is a mere thing of wax in the hands of the judiciary, which they may twist and shape into any form they please."* (1819)

1819– Corporations gain standing in Constitution

orange (Dartmouth College v. Woodward)

Dartmouth College, a corporation, had a royal charter granted by the King of England in 1769. New Hampshire wanted to alter the charter to turn the private school into a public school.

In 1819, the Supreme Court gave corporations standing in the Constitution – the ability to claim rights and bring cases under it. In so doing, the Court created a new actor under the Constitution. When the Court recognized that a corporation's charter was a Contract under the Constitution, it created a new economic theory that courts could, and would, weigh against fundamental rights – against human dignity, freedom, and equality.

The Constitution forbids states from passing laws that interfere with a Contract.* The Court's new economic theory infringed the 10th Amendment police powers of states to control the corporations that they created. The ruling gave rise to the modern American business corporation and the "free enterprise" system – largely free of state control.

* Constitution, Article I, Section 10, Contracts Clause

3. FUNDAMENTAL RIGHTS: WHO IS A "PERSON"?

1857– African Americans are not citizens

yellow (Dred Scott v. Sandford) (sic)

A federal law, the Missouri Compromise of 1821, abolished slavery in U.S. territories—lands not yet states. Under Missouri law, if slaves entered free territory, they remained free for life. When Dred Scott, a slave, returned from free territory to Missouri, he sued for emancipation. Scott's case introduced "substantive due process" in U.S. law with its focus on protected liberties instead of procedure.

Supreme Court ruled that substantive due process protects the liberty of certain persons to own slaves. Court decides Americans of African descent are not citizens; they have no standing and could not sue in federal court; and Congress lacked authority to ban slavery in U.S. territories.* Instead of settling the slavery question, the ruling increased tensions.

Dred Scott and his family were emancipated in May 1857, when his owner's widow moved to Massachusetts and married an abolitionist.

* Court overruled by 13th, 14th, and 15th Amendments, 1865–1870

1865 – 13th Amendment: Abolishes slavery in the U.S.

blue

President Lincoln knew his Emancipation Proclamation would need a constitutional amendment to abolish slavery. The Senate passed it in April 1864. To ensure its passage by the House, Lincoln insisted it be added to the Republican Party platform for the next Presidential election. It was adopted in January 1865 before the southern States were restored to the Union. It was ratified in December.

The 13th Amendment abolished slavery and involuntary servitude in the U.S. and its states and U.S. territories, except as a punishment for a crime.*

The exception led to increased arrests of African Americans, due to state Jim Crow laws, and created slavery of another form – as prisoners of law – from Reconstruction to present. One legacy of Reconstruction was the determined struggle of black and white citizens to make the promise of the 13th, 14th, and 15th Amendments a reality.

* Changed U.S. Constitution, Article IV, Section 2, Fugitive Laborer Clause

1868 – 14th Amendment: Equal protection & due process

blue The original intent of the 14th Amendment was to grant citizenship to former slaves and to make the Bill of Rights binding upon the states.

The 14th Amendment recognized that all persons born or naturalized in the U.S. as citizens – except Indians who had tribal citizenship.* It recognized privileges or immunities so that citizens of one state could enjoy equality in another state. It recognized due process and most Bill of Rights protections apply against states. It recognized equal protection of persons under law, which became crucial to protection of civil rights during the mid 1900s when it was held to apply against the federal government. It changed the Three-Fifths Clause to whole persons and added a penalty if eligible male citizens were denied the vote – except for participating in crimes.** Internal wording – like exceptions for crime and state penalties for denying the vote to only male citizens – infringed these new rights.

*14th Amendment did not force U.S. citizenship upon tribal Indians (“excluding Indians not taxed). Dual citizenship in tribal Nations and the U.S. was allowed under the Indian Citizenship Act of 1924.

** Changed the U.S. Constitution, Article I, Section 2, Three-Fifths Clause

1870– 15th Amendment: Right to vote not denied by race

blue The 15th Amendment recognized voting as a constitutional right of certain classes of citizens in the United States. *“The right of citizens... to vote shall not be denied or abridged... on account of race, color, or previous condition of servitude.”*

But the exception for crimes and reference to only males in the 14th Amendment, and Jim Crow laws – like literacy tests for voting, exclusion of voting rights to those whose ancestors had not voted in the 1860s, poll taxes, and more – kept African Americans from exercising their voting rights from Reconstruction to present.

1866 – Civil Rights Acts (Enforcement Acts)

to Congress passed 5 acts in 10 years to enforce the Civil War amendments.

1875 Three acts – known as Ku Klux Klan Acts – placed all elections under federal control; gave federal courts enforcement power; and gave the president power to suppress state disorders with federal troops and detain in jail after trial members of the Ku Klux Klan and other white supremacy groups. As a result, the Ku Klux Klan was dismantled for over 40 years.

blue

1873 – 14th Amendment privileges & immunities do not apply to states*yellow (The Slaughter-house Cases)*

Waste products from slaughterhouses upstream of New Orleans were creating serious health problems for city residents. When the state consolidated upstream slaughter-houses to move them south of the city, other slaughter-houses sued, claiming the monopoly violated their privileges and immunities under the 14th Amendment.

This was the first test of the 14th Amendment. A split court ruled that the Privileges and Immunities Clause did not apply to states.

Ruling gutted the 14th Amendment Privileges and Immunities Clause and kept door open for Jim Crow laws in the South. To this day, this right is seldom used.

1875 – Women denied 14th Amendment protection*yellow (Minor v. Happersett)*

When a Missouri suffragist was denied the vote, she and her husband filed suit. They claimed the state's restrictive voting laws violated the privileges and immunities of citizenship guaranteed under the 14th Amendment.

States controlled the right to vote and the Court had decided in 1873 that the Privileges and Immunities Clause did not apply to states. Supreme Court ruled that allowing only male citizens to vote was not a violation of women's rights under the 14th Amendment. Privileges under 14th Amendment did not include the right to vote, because voting was not an inherent right of citizenship. States continued to deny women the right to vote.*

* Court overruled by 19th Amendment, 1920

1886 – Corporations gain 14th Amendment equal protection*orange (Santa Clara County v. Southern Pacific Railroad)*

Before hearing the case, Justice Morrison Waite said: *"The court does not wish to hear argument on the question whether the provision in the 14th Amendment to the Constitution... applies to these corporations. We are all of opinion that it does."*

This offhand comment by a single Justice was recorded in court documents and accepted as settled that corporate persons were equal to real persons under law. This ruling removed the basic separation of power between natural persons with constitutional (fundamental) rights and artificial persons with privileges.

It led to a new body of law on *"corporate personhood,"* artificial persons with human rights. It led to a new body of law on *"corporate personhood,"* artificial persons with human rights. Justices have since struck down hundreds of local, state and federal laws enacted to protect people from harm caused by corporations, based upon the theory of corporate personhood.

4. USURPATION OF FUNDAMENTAL RIGHTS**1893 – Corporations gain standing in Bill of Rights***orange (Noble v. Union River Logging)*

When the federal government took back land it had granted to a logging company, the company sued, claiming its 5th Amendment right to due process was violated. The federal government counter-sued. Noble was U.S. Secretary of Interior. Noble demanded to know why the government should not revoke the land, because the corporation had no such rights.

Supreme Court ruled corporations, as “persons” under the 14th Amendment, were entitled to Bill of Rights protections. The Court granted 5th Amendment due process rights to artificial persons for protection against the federal government. This ruling *gave corporations standing in the Bill of Rights* and it set the stage for further usurpation of human rights by artificial persons.

1896 – Separate but equal

yellow (Plessy v. Ferguson)

In 1891, citizens in New Orleans, Louisiana, organized to test if “separate but equal” state laws were constitutional. A 30-year-old shoemaker who was seven-eighths Caucasian bought a first-class train ticket. He was arrested when he boarded the white only car.

In 1896, the Supreme Court ruled that Louisiana state law did not violate the 13th Amendment, because it did not require slavery. And it did not violate the 14th Amendment, because it dealt with political, not social, equality.

The Supreme Court held that state laws enforcing racial segregation are constitutional if separate accommodations are “equal.” African Americans effectively lost 14th Amendment rights and much access to the white world. This ruling legalized “Jim Crow” racial discrimination laws and practices.*

* Court overruled by *Brown v. Board of Education*, 1954

1897 – Corporations gain Bill of Rights against states

orange (Chicago, Burlington & Quincy Railroad Co. v. Chicago)

When Chicago decided to widen Rockwell Street, the city took land from adjacent private property owners. The city awarded fair compensation to human persons, but not to artificial persons. A railroad corporation sued, claiming its 14th Amendment right to just compensation was violated.

Supreme Court agreed and ruled corporations, as “persons” under the 14th Amendment, were entitled to Bill of Rights protections *against states*. This broadened the reach of corporations to other Bill of Rights’ protections to use *against states*, as well as federal government. It also further limited the power of states to control corporations.

1905 – “Freedom of contract” exploits poor and workers

orange (Lochner v. New York)

A New York bakery owner, Joseph Lochner, sued New York over a law that limited workers to 10 hours a day and 60 hours a week. The law protected workers’ health and safety, but new immigrants were desperate for work and willing to work long hours.

Supreme Court created a new right under 14th Amendment substantive due process: freedom of contract. Persons were free to form contracts without government restrictions. Ruling usurped 10th Amendment police power of states to regulate workers’ health and safety, and it allowed businesses to exploit the poor and workers.

“*Lochner*” became shorthand for using the Constitution to invalidate government regulation of corporations. From 1905 to 1930s, courts threw out some 200 government regulations that protected workers’ health and safety.

Justice Holmes dissents: “*A Constitution is not intended to embody a particular*

economic theory... After the Depression, Justice Holmes' dissent became the prevailing interpretation of the 14th Amendment's Due Process Clause and *Lochner* was overruled. See *West Coast Hotel Co. v. Parrish*.

1906 – Corporations gain 4th Amendment search and seizure protection

orange (*Hale v. Henkel*)

Edwin Hale was treasurer of one of six companies under federal investigation for fixing the price of tobacco in violation of anti-monopoly law. When served with a grand jury order, Hale pled the 5th and refused to turn over corporate records.

The Supreme Court ruled an officer of a corporation charged with a crime could plead immunity as a private citizen, but not a company. Because people, not corporations, are charged with crimes, this ruling acts to protect corporations from revealing illegal business practices.

The Court reasoned that, if the word "person" in the 14th Amendment includes corporations, it also includes corporations when used in the 4th and 5th Amendments. It ruled a corporation is entitled to protection under the 4th Amendment against unreasonable searches and seizures. It ruled the court order was too broad; it was unreasonable. The ruling limits the government's ability to enforce laws, as required under the Constitution.*

* Constitution, Take Care Clause, Article II, Section 3; 10th Amendment, State police powers

1907 – Municipal rights preempted by the state

yellow (*Hunter v. Pittsburgh*)

Supreme Court settles a public debate between federal Judge Dillon and Michigan Supreme Court Justice Cooley over powers of local government. The Court ruled municipalities have no rights that are not granted by state legislatures. Under this ruling, a Pennsylvania law giving political power to local governments was unconstitutional.

Known as "Dillon's Rule," this is used in 39 states to usurp citizens of local governing authority and to stop people from adopting laws to protect public health and welfare, workers, and the environment against harm from corporate activities permitted by the state.

Court: *"Municipal corporations are political subdivisions of the state, created as convenient agencies for exercising... governmental powers of the state... The number, nature, and duration of the powers conferred upon these corporations... rests in the absolute discretion of the state... The state, therefore, at its pleasure, may modify or withdraw all such powers..."*

Cooley (Home Rule) Doctrine: *"Local government is a matter of absolute right and the state cannot take it away."* Thomas Cooley, 1871

1913 – 17th Amendment: U.S. Senate elected by people

blue

By the mid-1850s, election of U.S. senators by state legislatures, as required by the Constitution, had become battles of intimidation, bribery, corruption, and control by special interests, dubbed the "Millionaires' Club" by progressive reformers. Deadlocks occurred in 20 states when different political parties controlled different state houses, and senate vacancies were not filled for months or years.

By 1912, 29 states used the “Oregon system” of direct vote by the people during state primary elections with state legislatures pledging to honor the results. People demanded a constitutional amendment.

The first version passed by the House, but not the Senate, included a race rider to prevent federal intervention in state cases of racial discrimination among voters. The version that passed both houses did not include the race rider. It established that the U.S. Senate is elected by the people, instead of appointed by state legislatures.*

* Changed the U.S. Constitution, Article I, Section 3

1919 – Corporations exist to make money

orange (Dodge v. Ford Motor Co.)

Over the years, business tycoon Henry Ford cut the price of Model T Fords, while raising workers’ wages in an act of self-proclaimed charity to spread the benefits of the industrial system. Profits were used to expand operations, instead of shareholder dividends. Ford’s ulterior motive was to squeeze out competition from Dodge Motors. Two of Ford’s largest shareholders–the Dodge brothers–sued.

The Michigan Supreme Court ruled Ford Motor was in business for profit and Ford could not turn it into a charity: “*A business corporation is organized and carried on primarily for the profit of the stockholders. The powers of the directors are to be [used] for that end.*” This established the economic theory of “stockholder primacy.”

This is still the leading case on corporate purpose. It is used to claim economic harm from government regulations – like ones that protect public health, workers, and the environment, because it costs corporations money to obey laws that make products and work places safe. Ruling limits the ability of federal and state governments to enforce laws.*

* Constitution, Take Care Clause, Article II, Section 3; 10th Amendment, State police powers

1920 – 19th Amendment: Right to vote not denied by sex

blue

The amendment giving women the right to vote was first introduced in Congress in 1878. After the Supreme Court’s decision in *Minor v. Happersett*, Suffragists switched tactics from federal to state legal actions to pass suffragist acts in each state and to challenge male-only voting laws in state courts. By 1916, almost all of the suffragist organizations were focused on a constitutional amendment.

By 1920, Congress had passed the amendment and 35 of the required 36 states had ratified it. Tennessee called a special session in summer. Young state Senator Harry Burns changed his mind and broke the tie vote upon receiving a letter from his mother asking him to vote in favor of the amendment.

The 19th Amendment recognizes women’s right to vote 72 years after first women’s rights convention in Seneca Falls, New York, in 1848. However, states continued to restrict privileges and immunities of women of color to deny the vote for another 40 years until the 1960s. That’s when the Supreme Court started interpreting the 14th Amendment equal protection clause to include voting rights.

1922 – Corporations gain compensation for regulatory takings

orange (Pennsylvania Coal v. Mahon)

Pennsylvania Coal Company owned subsurface rights to a coalfield under some

homes. But a state law protected the coal in support pillars – the land that supported homes on the surface. The company sued a property owner when the owner tried to prevent the company from mining the support coal under his house. The corporation argued the state law was a “regulatory taking,” because obeying the law would cause the company economic harm. It would decrease the corporation’s future profit.

Supreme Court gave corporations the 5th Amendment right of just compensation for economic harm from regulatory takings to use against government actions that diminish value of private property or make land unusable. Under this economic theory, courts must weigh a corporation’s costs to comply with laws against the corporation’s loss of property value for obeying the law. Prior to this, courts applied the 5th Amendment Takings Clause only when the federal government physically seized property.

Ruling limited the ability of government to enforce laws, because it costs corporations money to obey laws.* This ruling set the stage for corporations to claim legal rights to protect future profits, as well as existing property.

* Constitution, Take Care Clause, Article II, Section 3; 10th Amendment, State police powers

1935 – National Labor Relations Act (NLRA)

blue A Congress sympathetic to labor unions passed the National Labor Relations (or Wagner’s) Act to restrain private employers who were using violent, unfair methods to disrupt and interfere with union formation and business. Confrontations between militant workers trying to form unions and police and private security forces often turned violent and were disrupting interstate and foreign commerce.

The law established the rights of workers to self-organization; to form, join, or assist labor organizations; to bargain collectively through representatives of their own choosing; and to engage in activities related to collective bargaining and protection. It created a federally-appointed board to arbitrate disputes, ensure democratic union elections, and penalize unfair labor practices by employers.

The act led to huge increases in union membership, including women, and made labor a vital economic and political force.

1937 – Minimum wage for women and children

blue (*West Coast Hotel Co. v. Parrish*)

Washington state established a minimum wage for women and minors in the late 1930s. When a hotel maid was paid less than the minimum wage, she sued her employer to recover what she was owed – and won. *West Coast Hotel Co.* appealed the ruling to the Supreme Court.

After the Depression, the Court reconsidered whether wage and hour laws violate due process under the Constitution. Court reasoned that certain workers (women and children) were economically disadvantaged in terms of bargaining power and that exploitation of these workers was not in the best interest of their health or the economic health of the community. Court upheld state law.*

Subsequently, the Fair Labor Standards Act of 1938 established the right to a minimum wage, “time-and-a-half” overtime pay for over 40-hours a week, and it prohibited most employment of minors.

* Ruling overturned *Lochner* decision.

1947 – Taft-Hartley Act

orange Congress enacted this law over President Truman's veto in an anti-union climate, driven by fears of Communist infiltration of labor unions, growth and power of unions, and a series of large-scale strikes. The Act restricted the labor movement's ability to strike, prohibited labor unions and corporations from making direct contributions to federal elections, and required union officers to sign non-communist affidavits with government.

The law gave corporate employers the 1st Amendment right to free speech in the union certification process, which allowed employers to be present (and interfere) with union organizing. It greatly weakened the National Labor Relations Act of 1935, while still preserving rights of labor to organize and bargain collectively – but with the employers present.

5. FUNDAMENTAL RIGHTS & CIVIL RIGHTS

1954 – Separate is not equal

blue (*Brown v. Board of Education of Topeka*)

Supreme Court recognized separate is not equal and ruled public schools cannot be racially segregated. However, the Board did not say how to end racial discrimination.

In 1955, in *Brown II*, the Supreme Court ordered district courts to desegregate schools with "all deliberate speed." Southern states used this to resist desegregation of public schools for years. Prince Edward County, Virginia, closed public schools for 5 years, claiming lack of funds but funded white students to attend white-only private schools.

In 1964, the Supreme Court overturned *Brown II*, ruling "the time for mere 'deliberate speed' has run out." (*Griffin v. County School Board of Prince Edward County*)

In 1978, Oliver Brown's daughter, Linda, reopened *Brown III* to demand a plan for desegregating public schools. It wasn't until 1998 that Topeka schools finally met court standards of racial balance.

* Rulings overturned *Plessy* decision.

1964 – 24th Amendment: Abolished use of poll taxes to deny the vote

blue After the 15th Amendment passed, many southern states passed poll taxes – fees to qualify to vote. Poll taxes were used to prevent African Americans from voting, along with literacy tests and other restrictions, and physical harassment, intimidation, economic retaliation, and physical violence.

The 24th Amendment prohibited the practice of using failure to pay poll taxes as an excuse to deny African Americans and others the right to vote: "*The right... to vote ... shall not be denied... by reason of failure to pay any poll tax or other tax.*"

1964 – Civil Rights Act

blue In June 1963, President John Kennedy addressed the nation to urge people to take action toward guaranteeing equal treatment of every American regardless of race.

After Kennedy's assassination, the work begun by blacks and whites over a century earlier to end major forms of discrimination led to passage of the Civil

Rights Act over strong opposition in both houses of Congress. The law intended to end discrimination on the grounds of race, color, religion, or national origin.

It provided key enforcement measures. It authorized federal district courts to provide remedies against discrimination in public places. It authorized the Attorney General to bring lawsuits to protect constitutional rights in public education and public places. It authorized the Civil Rights Commission to prevent discrimination in federally assisted programs. And it created the Commission on Equal Employment Opportunity.

1965 – Voting Rights Act

blue 95 years after the 15th Amendment had passed, President Lyndon Johnson urged Congress to pass a bill to “make it impossible to thwart the 15th Amendment... (W)e cannot have government for all the people until we first make certain it is government of and by all the people.”

The Voting Rights Act abolished Jim Crow laws and authorized federal supervision of voter registration where necessary. The act had strong enforcement measures. The “coverage formula” determined which states had discriminatory voting practices. Those states were required to obtain “preclearance” – approval by federal judges – of any changes to voting laws before the changes could be enforced. These federal enforcement measures were key to reducing racial discrimination in state voting practices.

By the end of 1965, over a quarter million new black voters were registered, one-third with federal assistance. By the end of 1966, only 4 of 13 southern states had less than half of its African American residents registered to vote. The act was strengthened in 1970, 1975, and 1982.

1967 – Right interracial marriage

blue (*Loving v. Virginia*)

In 1958, childhood sweethearts Mildred and Richard Loving married in Washington, DC. Then, 24 states banned interracial marriages. When the couple returned to Virginia, they were arrested with unlawful cohabitation and jailed. They moved to Washington, DC, but were arrested 5 years later, while traveling together to visit family in Virginia. Mildred wrote to U.S. Attorney General Robert Kennedy for help and was referred to the American Civil Liberties Union.

Supreme Court invalidated state laws prohibiting interracial marriage under the 14th Amendment Equal Protection Clause. Virginia argued its state law, making interracial marriage a felony, equally punished both white and black people, and so it did not violate the Equal Protection Clause. Court held it is not possible for a state law to be valid, which makes the criminality of an act depend upon the race of the actor.*

* Court recognizes a new fundamental right.

1968 – Fair Housing Act

blue Pressure to pass this legislation through Congress was building from both black and white organizations and was fueled by discriminatory housing practices against families of African American soldiers who had been killed in Vietnam. The act was signed into law during the King assassination riots.

The law protects buyers and renters of housing from discrimination by sellers,

landlords, or financial institutions. It prohibited discrimination concerning the sale, rental, and financing of housing based on race, religion, national origin, family status, disability, or gender.

1971 – 26th Amendment: Right to vote at 18

blue During the Vietnam War, students (18–21) were being drafted into military service without a say – a vote – in their future. They took to the streets for months in mass demonstrations and protests.

Under this intense pressure, Congress was forced to realize that, if 18-year-olds could be drafted into military service, they should be allowed to vote.

The 26th Amendment recognizes a citizen's right to vote at 18 years of age. It was ratified in just over 2 months, a record time for any U.S. amendment.

1973 – Women's right to privacy & choice

blue (*Roe v. Wade*)

Supreme Court invalidated Texas law and other state laws that prohibited a woman's right of choice regarding her pregnancy.

This ruling recognized women's right to privacy under the 1st Amendment right to freedom of religion, the 4th Amendment right to protection against unreasonable search and seizure, the 5th Amendment right to due process, the 9th Amendment right to privacy, and 14th Amendment right to due process and equal protection.

* Court recognizes a new fundamental right; that is, women have rights concerning their own bodies.

1970s – Securing public health and worker health with environmental laws to

- 1980s**
- Environmental Protection Agency, formed 1970
 - Clean Air Act, passed in 1963, amended 1970
 - blue* • Clean Water Act, passed in 1948, redone 1972
 - National Environmental Policy Act, 1970
 - Occupational Safety & Health Act, 1970
 - Safe Drinking Water Act, 1974
 - Toxic Substances Control Act, 1976
 - Resource Conservation & Recovery Act, 1976
 - Surface Mining Control & Reclamation Act, 1977
 - First fuel economy standards for cars, 1975
 - + much more

6. USURPATION OF RIGHTS: WHAT IS "SPEECH"?

1976 – Political money is form of free speech

yellow (*Buckley v. Valeo*)

Supreme Court found: "The [voter's] increasing dependence on television, radio and... mass media for news and information has made these expensive modes of communication [essential] instruments of effective political speech."

The Court reasoned that "restrictions on spending during election campaigns reduce a person's amount of expression." Further, "The First Amendment denies government the power to determine that spending to promote one's political views is wasteful, excessive, or unwise."

The Court struck down limits on campaign spending as unconstitutional because they are direct limits on political speech – political money is speech under the 1st Amendment.

Supreme Court upheld limits on campaign contributions to protect election integrity – until 2010 *Citizens United* decision.

1978– Commercial money is form of free speech

orange (First National Bank of Boston v. Bellotti)

When several corporations were banned by state law from spending money on a citizens' ballot measure on tax policy, they sued, claiming the state law violated their right to free speech.

Supreme Court overturned state restrictions on corporate spending on citizens' ballot measures and made commercial advertising on them a form of free speech. Justice Powell wrote the opinion for the majority.

The ruling defined free speech as a right of corporations for the first time. It triggered a spending boom on citizens' ballot measures, as wealthy people and corporations sought to influence the public debate and pass their own laws through "citizen" initiatives.

Justices White, Brennan, and Marshall dissent: "...the special status of corporations has placed them in a position to control vast amounts of economic power which may, if not regulated, dominate not only our economy but the very heart of our democracy, the electoral process... The state need not allow its own creation to consume it."

Justice Rehnquist dissents: "The blessings of perpetual life and limited liability so beneficial in the economic sphere, pose special dangers in the political sphere."

1986 – Corporations gain protected right NOT to speak

orange (Pacific Gas & Electric Co. v. Public Utilities Commission of CA)

A California law required public utilities to allow consumer advocacy groups to publish messages to consumers in the extra space in utilities' billing envelopes. The logic was that the extra space belonged to the ratepayers, not the utility. PG&E sued, claiming the law violated its right to free speech.

The Supreme Court ruled the state law unconstitutional, as the right to speak includes the right not to carry messages that one disagrees with: "The choice to speak includes within it the choice of what not to say."

The case established the nearly absolute right of a publisher to choose not to carry messages it does not agree with.

1996 – Corporation's right NOT to speak extended

orange (International Dairy Foods Association v. Amestoy)

Corporations wanted to overturn a Vermont law that required GMO labeling of state dairy products containing bovine growth hormone. A U.S. Appeals Court ruled the state law violated a corporation's right not to speak and then extended the new right not to speak to apply to political and commercial speech and statements of fact and opinions.

This eliminates truth in labeling, ads and campaigns. This ruling grants corporations the right to silence people's right to know under the Emergency

Planning and Community Right-to-Know Act in Title III of the Superfund Amendment and Reauthorization Act of 1986.

Judge Altamari dissents: *"The... 1st Amendment, in its application to commercial speech, is to favor the flow of accurate, relevant information. The majority's [use] of the 1st Amendment to invalidate a state law requiring disclosure of information consumers reasonably desire stands the [1st] Amendment on its ear."*

Case represents conflicting claims under 1st Amendment: the human right to be informed versus the corporate right to remain silent and not provide accurate, factual information. Case highlights the immoral arrangement of granting human rights to artificial entities.

7. (MOSTLY) VIOLATIONS OF CIVIL LIBERTIES & CIVIL RIGHTS

2001 – PATRIOT Act: Approves spying on U.S. citizens

yellow Passed by Congress and enacted by President George W. Bush after September 11, 2001, this law violates civil liberties and privacy of individuals in trade for more security. The law allows government to monitor U.S. citizens by searching phones, financial records, and more to determine if someone is a terrorist. Also, the law authorizes indefinite detention without trial of non-U.S. citizens suspected of being terrorists until the "War on Terrorism" is finished.

Originally scheduled to expire, Congress renewed key provisions in 2011 under the Dept. of Defense budget bill.

The law infringes 1st Amendment rights of speech, assembly, and petition of grievances; 4th Amendment rights against unreasonable search and seizures; 5th Amendment right of due process; and 6th Amendment right to a speedy and public jury trial.

Benjamin Franklin, 1755: *"Those who would give up essential Liberty, to a little temporary Safety, deserve neither Liberty nor Safety."*

2005– Eminent domain use for private gain

orange (*Kelo v. City of New London*)

Landowners sue New London, Connecticut, claiming city misused its eminent domain power when it transferred land from one private owner to another private owner for economic development. The 5th Amendment Takings Clause restricts eminent domain seizures for public use.

Supreme Court ruled that a state government could delegate (assign) use of its eminent domain power to an artificial person under state laws. Court also ruled that taking land to serve a public purpose, such as creating new jobs and new revenues, qualified as public use.

Justice O'Connor dissents: *The decision eliminates "any distinction between private and public use of property – and thereby effectively delete[s] the words 'for public use' from the Takings Clause of the 5th Amendment."*

Justice Thomas dissents: *"Something has gone seriously awry with this Court's interpretation of the Constitution. Though citizens are safe from the government in their homes, the homes themselves are not.... (E)xtending the concept of public purpose to encompass... [economic goals], guarantees that these losses will fall disproportionately on poor communities. Those communities are not only systematically less likely to put their lands to the highest and best social use, but are also the least politically powerful."*

2005 – Energy Policy Act endangers public health

orange (Pacific Gas & Electric Co. v. Public Utilities Commission of CA)

Congress exempted oil and gas activities involving hydraulic fracturing from federal enforcement under key sections of 8 major laws protecting public health and the environment. These rollbacks led to a major increase in oil and gas drilling on federal lands.

The gas industry enjoys full or partial federal exemptions from the (1) Clean Water Act; (2) Clean Air Act; (3) U.S. Safe Drinking Water Act; (4) National Environmental Policy Act; (5) Resource Conservation and Recovery Act; (6) Toxic Release Inventory; and (7) Superfund or the Comprehensive Environmental Response, Compensation, and Liability Act, CERCLA. The gas industry is the only industry allowed to pump undisclosed chemicals directly into the ground, even when adjacent to underground sources of drinking water.

The law also increased coal leasing, created incentives to drill for oil in the Gulf of Mexico and to create more nuclear reactors, and authorized commercial programs for fracking public lands in Utah, Colorado and Wyoming. The law authorized ten billion dollars for development of unsafe, polluting energies and 4.5 billion dollars for safe, green energies.

2010 – Corporate right to unlimited spending to influence elections

orange (Citizens United v. Federal Election Commission)

A non-profit group wanted to air a film critical of a presidential candidate and to advertise the film in television broadcasts during election campaigns. Federal law prohibited corporations from advertising within a certain time before an election and from spending funds to support or defeat a political candidate. The group sued, claiming the federal law violated its right to free speech.

Supreme Court ruled law restricting spending for communications by non-profit and for-profit corporations and labor unions to influence political campaigns was unconstitutional. Ruling reverses a 100-year precedent of congressional authority to regulate spending in election campaigns and greatly compromises integrity of the election process. 85 percent of Americans disagreed with the court.

Justice Stevens dissents: *"At bottom, the Court's opinion is... a rejection of the common sense of the American people, who have recognized a need to prevent corporations from undermining self-government since the founding... While American democracy is imperfect, few outside the majority of this Court would have thought its flaws included a dearth of corporate money in politics."*

2010 – Corporate right to unlimited political contributions

orange (SpeechNow.org v. Federal Election Commission)

A nonprofit group wanted to accept contributions over the \$5,000 limit from individual donors, and it wanted to avoid the donor reporting requirements. SpeechNow claimed laws that required it to register, report, and restrict contribution limits for political spending violated its right to free speech.

The U.S. District Court of Appeals applied the precedent it had set 3 months earlier to SpeechNow. The Court ruled Super PACs or independent-expenditure Political Action Committees must register as any other PAC. However, it ruled that

Super PACs could accept unlimited contributions from individuals, as well as corporations and unions, without disclosing donor names.

This extended *Citizens United* and further compromises election integrity – and our democracy.

2011 – Allows gender and wage discrimination

yellow (Wal-Mart v. Dukes)

Wal-Mart worker Betty Dukes sought to file a class action lawsuit,* claiming gender discrimination in pay and career advancement. The case represented 1.6 million women, all former or current Wal-Mart employees from 1998 to 2001.

Supreme Court ruled case did not meet class requirements. Plaintiffs needed “proof” that a company has a policy of paying less to women or people of color. “Proof” means actual paycheck stubs. Submitting “proof” subjects workers to harassment, intimidation, and job termination. Statistics that show a company’s female workers earn far less and get fewer promotions than men are not proof.

Ruling reversed 45 years of progress towards wage equity among gender and race and protects discriminatory practices.

* legal dispute in which a group of people claim the same or similar injuries were caused by the same product or action and they sue the defendant as a group

2011 – USA PATRIOT Act extended: Approves indefinite detention of U.S. citizens

yellow Every year Congress passes a National Defense Authorization Act to monitor the Department of Defense budget. However, the 2011 NDAA reauthorization extended the PATRIOT Act. It also extended indefinite detention measures for U.S. citizens. People spied on and suspected of being terrorists may be whisked away anywhere in the world and detained indefinitely without trial.

The law violates 1st Amendment rights of speech, assembly, and petition of grievances; 4th Amendment rights against unreasonable search and seizures; 5th Amendment right of due process; and 6th Amendment rights to a speedy and public jury trial.

In 2013, in response to Edward Snowden’s exposure of the government’s bulk collection of phone and internet records, the USA Freedom Act was enacted to limit, but not stop, government surveillance of private citizens.

2013 – Allows racial discrimination in voting

yellow (Shelby County v. Holder)

Supreme Court struck down the heart of the Voting Rights Act of 1965 – the strong enforcement measures to address entrenched racial discrimination in voting. Court ruled the “coverage formula” measure is unconstitutional under Amendment 10, as the measure exceeded Congress’ authority. Ruling makes the “preclearance requirement” inoperative and frees nine states, mostly in the south, to change election laws without advance federal approval.

Minority Justices dissent: *“For a half century, a concerted effort has been made to end racial discrimination in voting. Thanks to the Voting Rights Act, progress once the subject of a dream has been achieved and continues to be made... Throwing out preclearance when it has worked and is continuing to work to stop discriminatory changes is like throwing away your umbrella in a rainstorm because you are not getting wet.” (emphasis added)*

2014 – Eliminates overall limits on campaign contributions

orange *(McCutcheon V. Federal Elections Commission)*

The Federal Election Campaign Act was amended in 1974 after the Watergate Scandal to create overall limits on direct contributions from individuals to national political parties and federal candidates in a year. The U.S. District Court upheld limits as a way to prevent “corruption or the appearance of corruption...”

Supreme Court struck down limits on overall federal campaign contributions, claiming aggregate limits do not act to prevent corruption.

Justice Breyer dissents for minority: The decision “creates a loophole that will allow a single individual to contribute millions of dollars to a political party or to a candidate’s campaign. *Taken together with Citizens United... [this] decision eviscerates our Nation’s campaign finance laws, leaving a remnant incapable of dealing with the grave problems of democratic legitimacy...*”

2014 – Freedom of religion for some corporations

yellow *(Burwell v. Hobby Lobby)*

At issue was whether a provision in the Affordable Care Act could require closely-held* corporations to provide contraception coverage for employees without violating the owners’ religious freedom rights.

Supreme Court ruled family-owned corporations were entitled to religious freedoms under the 1st Amendment. The ruling allows closely-held corporations to assert religious rights of owners. This greatly expands power of stockholders at expense of workers’ 1st Amendment rights.

Justice Ginsburg dissents: “*For-profit corporations cannot be considered religious entities... Judicial precedent states that religious beliefs... must not impinge on the rights of third parties, as... this ruling would do to women seeking contraception...*”

* “closely-held” is a private, for-profit corporation owned either by nongovernmental organizations or a small number of shareholders and which owns or trades its stock privately (not on the stock market)

2015 – Right to same-sex marriage

blue *(Obergefell v. Hodges)*

This case consolidated six appeals court cases from Ohio, Michigan, Kentucky, and Tennessee. It originally involved 16 same-sex couples, 7 of their children, a widower, and others. A split between the four circuit courts led to a Supreme Court review.

Supreme Court ruled the fundamental right to marry is guaranteed by the 14th Amendment Due Process Clause and Equal Protection Clause.*

The majority held: “*(M)arriage is a keystone of our social order... There is no difference between same- and opposite-sex couples with respect to this principle.*”

* Court recognizes new fundamental right.

2016 - Legislative districts based on whole population

blue (Evenwel v. Abbott)

State constitutions require state legislatures to reapportion political district boundaries after every federal census (10 years). Political parties in power at the time of redrawing district boundaries often try to “gerrymander” or manipulate boundaries of a voting constituency to favor their party or class. This history predates the Constitution.

Sue Evenwel and others filed suit in U.S. District Court in Texas over boundaries of political districts. They argued their vote was diluted because of districting based on the total population. Critics claimed the case was gerrymandering to protect the white vote.

Supreme Court ruled unanimously the “one person, one vote” principle of the 14th Amendment Equal Protection Clause allows states to continue basing legislative districts on the whole population, counting kids, prisoners, and other persons who are not registered to vote, not just citizens eligible to vote.