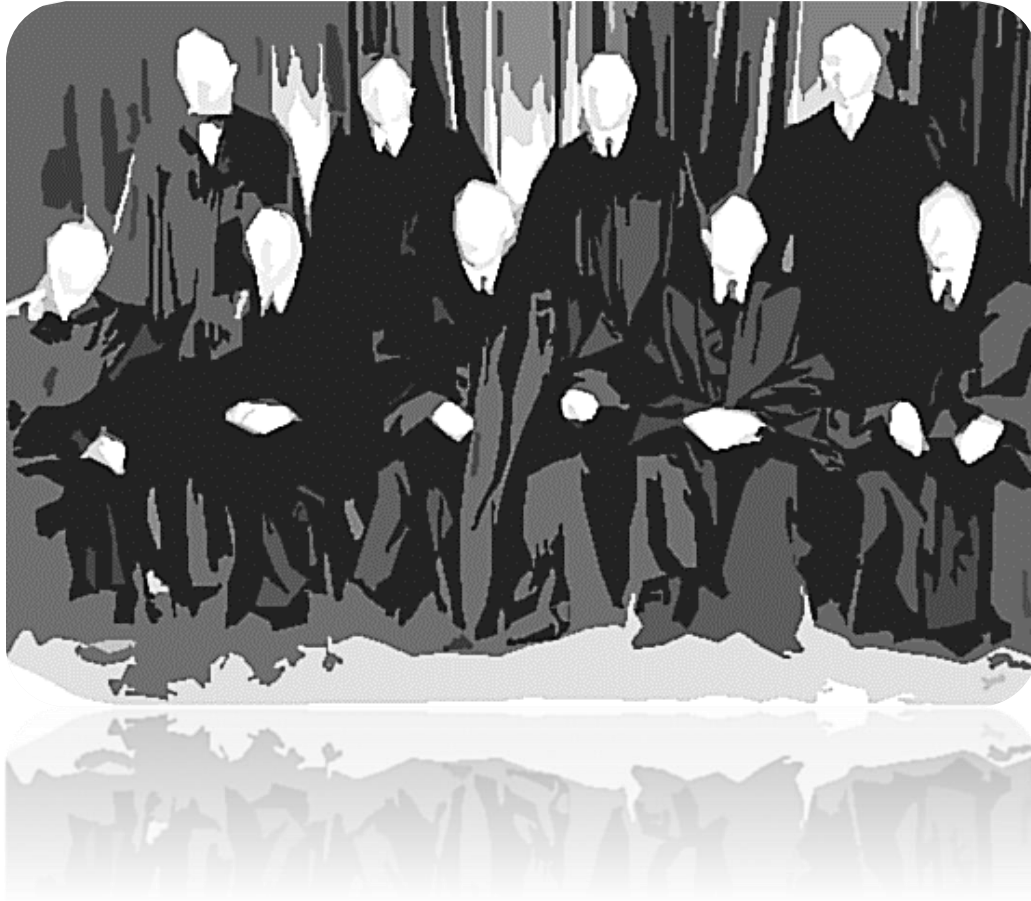


“Have To” History: Landmark Supreme Court Cases

Supplemental Questions

BCE@BlueCerealEducation.com



Introduction to *“Have To” History: Landmark Supreme Court Cases – Supplementals*

This entire project began largely for my own reference and classroom use. Even the most familiar cases merit a little research-and-refresh before covering them with students, but it seemed every time I started, I ended up distracted by some fascinating little facet of this case or that. I occasionally lost focus on the core essentials altogether. That’s the problem with history, of course – for every thread you pull, every question you pose, every rabbit you chase, there are something like a four-hundred and eleven new threads, questions, and rabbits begging to be pulled, posed, and chased – and not always in that order. This doesn’t require being particularly knowledgeable or profound; it’s a simple function of focusing on, well... *anything*, for any real length of time.

(In other words, as I tell my students, when history is “boring,” the problem isn’t the history. It’s *them*.)

At some point I began wondering if my efforts might prove useful to other educators in their various circumstances. I’m under no illusions about my own abilities, but there’s so much out there and so little time to really dig through it; you never really know what others might find helpful. At least, that’s long been my experience when posting classroom strategies and resources on BlueCerealEducation.com or sharing them at workshops. I originally put together 15 cases or so with excerpts from the Court’s written opinions, each with a list of questions related to the case and the opinions. A few topics seemed to merit simple graphic organizers, so I put together a few of those as well.

Eventually I realized that (a) not every class needs the same sorts of questions or guidelines, even if they are studying some of the same cases, and (b) if my goal was to share the final product (which over time seemed more and more likely), I was limiting its usefulness by formatting it as a “workbook” of some sort. I mean, I read all sorts of nerdy things from other subjects or fields, but I’m not sure I’d actually *pay* for something if I thought half of the cost was for “homework” I wasn’t going to do. I’m also in a one-to-one school and tend to assume students can easily look up any relevant information not explicitly covered in the content. That means my questions don’t tend to be limited to information already on the page.

My constant second-guessing became a bit silly.

Once *“Have To” History: Landmark Supreme Court Cases* was finally finished and [published](#), I started thinking that it might still be useful to a few teachers to have those questions and graphic organizers and whatnot – especially if they weren’t something they were expected to purchase. I added a few more to go with the expanded format of the book, and here we are. Do with them as you see fit – or don’t. I do, however, hope *some* of it’s useful.

Dallas Koehn, BCE@BlueCerealEducation.com

“If you haven’t studied history, you haven’t been taught; you’ve merely been trained.”

Name: _____ Class: _____

“Have To” History: *Marbury v. Madison* (1803)

1. Briefly explain what led to the “Midnight Judges” controversy at the root of *Marbury v. Madison* (1803).

2. What did William Marbury want? Did he (legally) deserve it? Why or why not? _____

3. What was the Judiciary Act of 1789? Why was it considered necessary by the very first Congress? _____

4. What was the Judiciary Act of 1801? Why was it passed when it was? _____

5. What is a “writ of mandamus”? _____

6. Briefly explain Chief Justice Marshall’s reasoning as to why the Supreme Court couldn’t help Marbury with his commissions. _____

7. Define/explain “judicial review.” _____

8. Supreme Court eras are labeled, fairly or not, by the terms of Chief Justices. When was the “Marshall Court,” and what is it most remembered for? _____

9. Should President Jefferson have been happy with the Court’s decision in this case? Why or why not? _____

10. If you only remember one thing about *Marbury vs. Madison* (1803), what should it be, and why? _____

Name: _____ Class: _____

Excerpts from *Marbury v. Madison* (1803), Majority Opinion by Chief Justice John Marshall

1-2. According to Marshall, why did Marbury deserve his commission, despite not receiving paperwork to that effect from the President? _____

3-4. How should this injustice have been rectified, according to Marshall? _____

5-6. Why wouldn't the Court help Marbury in this case? Explain Marshall's reasoning in plain, simple English.

7-8. There are at least two important elements to Marshall's argument which would shape subsequent decisions of the Supreme Court. The first involves the "supremacy" of the U.S. Constitution. Briefly explain what Marshall meant by this, using plain, simple English but retaining as many specifics as possible.

9-10. The other central element of Marshall's argument would become known as "judicial review." Briefly explain the meaning of "judicial review" and what made it so important in subsequent cases.

Name: _____ Class: _____

“Have To” History: *McCulloch v. Maryland* (1819)

1. Briefly explain several arguments in *favor* of the U.S. having a national bank: _____

2. Briefly explain several arguments *against* the U.S. having a national bank: _____

3. What did Hamilton apparently “trade away” in return for approval of his fiscal consolidation plans?

4. Why were several states opposed to the Second National Bank? _____

5. Briefly explain two arguments in favor of Maryland’s right to tax the National Bank: _____

6. The Majority Opinion, written by Chief Justice John Marshall, made four basic arguments in favor of the National Bank. Which of his arguments do you find the strongest, and why?

7. Which argument would you cut if assigned to narrow the opinion down to its three strongest points? Why?

8. What is the “Elastic Clause” and why is it called that? _____

9. If you only remember one thing about the Marshall Court, what should that be? _____

10. If you only remember one thing about *McCulloch v. Maryland*, what should it be, and why? _____

Name: _____ Class: _____

Excerpts from *McCulloch v. Maryland* (1819), Majority Opinion by Chief Justice John Marshall

1-2. Marshall framed this entire case in terms of two basic questions. What were they, and what was the Court's response to each? _____

Although legal reasoning can get a bit hairy, and judicial logic can easily become cumbersome, there are moments when written opinions capture quite a lot of "voice" – attitude, tone, or colorful language used in support of a point. Identify two examples of "voice" in this excerpt and explain the apparent intention of each.

3. _____

4. _____

5. What point was Marshall making in the section about the Constitution vs. the Articles of Confederation in terms of excluding (or not excluding) "incidental or implied powers"? _____

6. What did Marshall mean by "we must never forget that it is a Constitution we are expounding"? (HINT #1: You may wish to reference the rest of the paragraph from which this phrase was taken for context. HINT #2: It's *not* something meant to "partake in the prolixity of a legal code" – thank goodness.)

7-8. Marshall's opinion in *McCulloch* is considered by many to be his absolute finest, in part because of wonderful bits like this: "{The} Constitution {is} intended to endure for ages to come, and consequently to be adapted to the various crises of human affairs... It would have been an unwise attempt to provide by immutable rules for exigencies which, if foreseen at all, must have been seen dimly, and which can be best provided for as they occur." Paraphrase this statement (put it into modern, plain, simple-but-accurate English):

9-10. Finally, one more paraphrase for the most famous excerpt from this opinion: "Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the Constitution, are Constitutional..."

Name: _____ Class: _____

“Have To” History: *Gibbons v. Ogden* (1824)

1. From whence did Fulton-Livingston derive their claim to exclusive water navigation rights across the state of New York? _____

2. What about Thomas Gibbons – what made *him* think *he* had a right to those same waters? _____

3. The case is named *Gibbons v. Ogden* – so who was Ogden and where did he fit into the picture? _____

4. Although the case started with steamboats, its real importance goes way beyond that. Around which part of the U.S. Constitution did this case revolve? What does this little part *say*? _____

5. So what was the *real question* at the heart of this case? _____

6. What was the main argument made by Ogden’s representatives? _____

7. What did the Supreme Court decide, and what was their primary reasoning? _____

According to this article, what were THREE important impacts of *Gibbons v. Ogden* (1824)?

8. _____

9. _____

10. _____

Name: _____ Class: _____

Excerpts from *Gibbons v. Ogden* (1824), Majority Opinion by Chief Justice John Marshall

1. Marshall had some thoughts on “strict constructionism.” What does this term mean, at least in normal usage?

2. What did Marshall think of “strict constructionism” and how do you know? Explain. _____

3. What did it mean to say that the Constitution is “one of enumeration, and not of definition”? _____

4. In plain, simple English, how did Marshall define “commerce” as used in the Constitution? (Hint: You’ll have to come up with something more useful and accurate than “intercourse.”) _____

5. Why did Marshall spend so much time on the meaning of “among”? What point was he trying to make? _____

6. In plain, simple English, what did Marshall mean by “the sovereignty of Congress, though limited to specified objects, is plenary as to those objects”? (Hint: It was a favorite theme of his in other opinions as well.)

7. Here’s another good one: “The nullity of any act inconsistent with the Constitution is produced by the declaration that the Constitution is the supreme law...” In plain, simple English, what does this mean? (Hint: It’s another favorite theme of Marshall’s which he discusses at length in other opinions.)

8. So... who won this case? Explain. _____

9. The last paragraph of this excerpt – which is also the last paragraph of the Majority Opinion – is an unexpected bit of rhetorical flair. Marshall seems to have been accusing someone of something... warning us not to fall for some bit of dangerous manipulation. What danger or deception was Marshall warning against? Explain.

10. If you only remember one thing about *Gibbons v. Ogden*, what should it be, and why? _____

Name: _____ Class: _____

“Have To” History: *Cherokee v. Georgia* (1831) & *Worcester v. Georgia* (1832)

1. Although the term itself wouldn’t be used until a decade later, the concept of “manifest destiny” was central to the underlying conflict between the Cherokee and white homesteaders. Briefly explain “manifest destiny” and summarize its role in the identity and expansion of the U.S. in the first half of the 19th century.

2. Who were the “Five Civilized Tribes” and why were they called that? _____

3. What were some general reasons American homesteaders felt so strongly about securing the land occupied by the Cherokee and the rest of the “Five Civilized Tribes” in the southeast? _____

4. Briefly explain the central issue(s) of *Cherokee Nation v. State of Georgia* (1831). How did the Supreme Court decide, and why? _____

5. Who was “Worcester” in *Worcester v. Georgia* (1832)? What did he do that annoyed Georgia enough to arrest him and thus initiate this case? _____

6. Briefly explain the central issue(s) of *Worcester v. Georgia* (1832). How did the Court decide, and why? _____

7. Under what circumstances is it appropriate for the Executive Branch to dismiss or subvert decisions of the Judicial Branch? What are some likely outcomes – good or bad – of such a choice? _____

8. Why were President Jackson and the U.S. military able to ignore the Supreme Court’s ruling in *Worcester v. Georgia* (1832) without apparent consequences? _____

9. If you only remember one thing about *Cherokee v. Georgia* (1831), what should it be and why? _____

10. If you only remember one thing about *Worcester v. Georgia* (1832), what should it be and why? _____

Name: _____ Class: _____

Excerpts from *Cherokee Nation v. State of Georgia* (1831) & *Worcester v. Georgia* (1832) Majority Opinions

1. Based on this excerpt, what seemed to be Marshall's general opinion of the Cherokee? Explain. _____

2. Why didn't the usual constitutional guidelines regarding interactions with foreign nations apply in the case of the Cherokee, according to Marshall? _____

3. What did it mean to say that the relation of the Cherokee to the United States "resembles that of a ward to his guardian"? Beyond the literal assertion, what did this analogy imply? _____

4. Who did the Court say was in the right in the case of *Cherokee Nation v. State of Georgia*? Explain. _____

5. What was Worcester's basic argument as to why his conviction should be overturned? _____

6. The *Worcester v. Georgia* excerpt doesn't specifically reference one of Marshall's favorite parts of the Constitution, but his reasoning clearly relies on what clause? (HINT: It's in Article VI of the Constitution.)

7-8. In plain, simple English, what was Marshall's primary reasoning for siding with Worcester against the State of Georgia? _____

9-10. What did the Court's decision in *Worcester* suggest about Cherokee sovereignty and Indian Removal? Explain. _____

Name: _____ Class: _____

“Have To” History: *Scott v. Sandford* (1857)

1. The Missouri Compromise (1820) was only one of numerous compromises related to slavery made throughout the first century of U.S. history. Identify and briefly explain another from *before* 1820.

2. Identify and briefly explain one of these compromises *after* 1820.

3. What did Representative Clay and others hope would be accomplished by the Missouri Compromise, both short-term and thereafter? Did it work? _____

4-5. While Dred Scott’s primary legacy is the Supreme Court case bearing his name, his story is intriguing even without the ruling. What were some elements of Scott’s life which challenge our typical picture of slavery in the early 19th century and the interpersonal dynamics generally associated with the institution? Explain.

6-7. Assume for the sake of argument that Emerson was a “good” slaveowner, was slavery still “bad”? Explain.

8-9. What was the basic legal issue at the heart of the Dred Scott case? _____

10. What was Scott’s primary argument for why he and his family should be free? _____

11. Briefly explain, in plain, simple English, the Court’s reasoning as to why Scott didn’t have the right to bring this case before them (or any federal court) to begin with: _____

12. After explaining why they couldn't rule on the merits of the case, Taney proceeds to rule on the merits of the case. Briefly explain Taney's primary argument as to why living in "free territory" did not make Scott free:

13-14. People have disagreed with Supreme Court decisions before without it leading to civil war. How could a decision like *Scott v. Sandford* end up becoming a primary cause of something so big and violent and scary?

15-16. Assume for the sake of argument that slavery is always "bad" and that we all wish the Court had declared Scott free, what are some other reasons history considers this such a horrible decision? Explain.

17. What are some indications that the 14th Amendment may have been written with the Dred Scott decision in mind? Explain.

18. Here's a tough one – if you had to choose something in Taney's opinion that makes a little more sense than the rest of it, what part of his argument do you find *most* persuasive? (Don't worry, none of us think you wanted Scott to remain a slave; we're just practicing some critical thinking and stuff.)

19. Which of Taney's arguments, as summarized above, do you find *least* persuasive? Explain.

20. Taney and the rest of the majority may have hoped that by issuing such a comprehensive opinion, they'd promote stability in a time of brewing conflict and uncertainty. Identify and briefly explain another example from history in which someone's efforts to make everything calmer or better didn't exactly go as planned:

Name: _____ Class: _____

Excerpts from *Scott v. Sandford* (1857) Majority Opinion (Taney) and Dissenting Opinions (McLean, Curtis)

In plain, simple English, briefly explain THREE of Chief Justice Taney’s arguments as to why Scott could not bring his case to the Supreme Court or any other federal court:

1. _____

2. _____

3. _____

4. Taney says that “the men who framed this declaration {of independence} were great men... and incapable of asserting principles inconsistent with those on which they were acting.” Assuming for our purposes that the first part of this statement is true, what do you think about the second part? Is it possible to be a “great man” (or “person”) while failing to live up to your proclaimed beliefs or ideals? Explain your response.

5. Taney’s full opinion offered several reasons the Missouri Compromise and other acts of Congress restricting slavery in the territories were unconstitutional. Briefly explain of the reasons included in this excerpt.

In plain, simple English, briefly explain TWO of Justice McClean’s arguments against the majority opinion:

6. _____

7. _____

In plain, simple English, briefly explain ONE of Justice Curtis’s arguments against the majority opinion:

8. _____

Supreme Court justices often devote extensive time to explaining the history of certain laws or the decisions of earlier courts (although examples of the latter don’t tend to make it into the brief excerpts included here).

What are some reasons they might find these sorts of things important? Explain your response.

9. _____

10. _____

Name: _____ Class: _____

“Have To” History: *Plessy v. Ferguson* (1896)

1. Briefly explain several rights gained by Americans of color – at least on paper – after the Civil War:

2. Why were many of those rights still not fully realized a generation after the end of the war? Explain. _____

3. What does it mean to have “social capital” or “political capital”? Give examples if possible. _____

4. Why would groups who opposed laws like Louisiana’s Separate Car Act of 1890 want someone like Homer Plessy, who looked “white” and generally “passed” for such in his daily life, to be the focus of their “test case”?

5. In plain, simple English, make a brief argument for why the Fourteenth Amendment *should* have been interpreted to mean that the Separate Car Act was unconstitutional – in other words, that Plessy was *right*. _____

6. In plain, simple English, explain the Court’s reasoning as to why the Fourteenth Amendment did *not* guarantee Plessy the right to ride in whichever railroad car he wished – that Louisiana’s law was acceptable: _____

7. Briefly explain what was meant by the term “separate but equal”: _____

8. What were some problems with “separate but equal” as described by this article? _____

9. Speculate as to other possible problems with “separate but equal” not addressed in this summary: _____

10. If you only remember one thing about *Plessy v. Ferguson*, what should it be, and why? _____

Name: _____ Class: _____

Excerpts from *Plessy v. Ferguson* (1896), Written Opinions Excerpts

1. Justice Brown wrote that a “statute which implies merely a legal distinction between the white and colored races... has no tendency to destroy the legal equality of the two races, or reestablish a state of involuntary servitude.” In plain, simple English, what argument was he making?

2. In plain, simple English, briefly explain Justice Brown’s explanation as to why the Fourteenth Amendment should not be understood as requiring the states to enforce social equality: _____

The Majority asserted that “the underlying fallacy of the plaintiff’s argument [is] the assumption that the enforced separation of the two races stamps the colored race with a badge of inferiority. If this be so, it is not by reason of anything found in the act, but *solely because the colored race chooses to put that construction upon it*” [Italics added]. Despite this disclaimer, there are several indications in other sections of this written opinion that white superiority *was* a cultural norm. Identify and briefly discuss TWO of these:

3. _____

4. _____

“Legislation is powerless to eradicate racial instincts or to abolish distinctions based upon physical differences, and the attempt to do so can only result in accentuating the difficulties of the present situation. If the civil and political rights of both races be equal, one cannot be inferior to the other civilly or politically. If one race be inferior to the other socially, the Constitution of the United States cannot put them upon the same plane.”

5-6. In plain, simple English, what was this excerpt from the Majority Opinion saying? What did it imply?

7-8. Based on your experiences and prior knowledge, was Justice Brown correct in his assertions about what legislation can and cannot do? Explain your response using as many specifics as reasonably possible.

9-10. The Court declined to rule on “the proportion of colored blood necessary to constitute a colored person,” leaving such matters to the states. Most of the South adhered to the “One-Drop Rule” when it came to race. What was the “One-Drop Rule” and what did it suggest about ancestry and/or race?

11-12. What did Justice Harlan take the Thirteenth and Fourteenth Amendments to mean when considered together?

13-14. Did Justice Harlan seem to believe all races were equal? Justify your response with specifics from his opinion.

15-16. To what previous case did Justice Harlan compare the Court’s decision in *Plessy*? What happened in that case and how did it relate to this one?

17-18. Were there any possible advantages to “separate but equal” for Black citizens as well as Whites? In other words, if you set aside racism, was it possible to rationally defend this policy in 1896? (Don’t get yourself all flustered – it’s just a “stretch-your-thinking” question; we’re not promoting the idea.)

19-20. Separate facilities were almost always unequal in all but name... but what if they weren’t? Is segregation still a bad idea even if the quality of restrooms, schools, trains, restaurants, etc., is exactly the same? Explain.

Name: _____ Class: _____

“Have To” History: The Lochner Era (1897-1937) & *Lochner v. New York* (1905)

1. Briefly explain several important features of life in the United States at the start of the 20th century: _____

2. The 14th Amendment doesn't actually mention bakers, or any sort of workplace. Nor does it address employment conditions or contracts. On what part of the amendment, then, did the Court build its opinion in *Lochner*? Explain.

3. The 5th Amendment includes language very similar to parts of the 14th. Why did the Court build its opinion on the 14th instead of the 5th Amendment? _____

4. Briefly explain “procedural due process” (in plain, simple English, please): _____

5. Briefly explain “substantive due process” (in plain, simple English, please): _____

6. Briefly explain “unenumerated rights” (in plain, simple-- well, you get the idea): _____

7. What two cases does this summary argue are the foundation of “unenumerated rights” jurisprudence, and what was the general subject of each? _____

8. One of the foundational assumptions of the Lochner Era was that any agreement between a business and an employee was a contract between two equal parties, both acting out of free will. To what extent was this a valid assumption, and why do you think so? _____

9. What ended the Lochner Era? Why? What changed? _____

10. Briefly explain 3 or 4 issues not obviously related to workers' rights or labor conditions which have nevertheless been impacted by the concept of “substantive due process” since the Lochner Era ended:

Name: _____ Class: _____

“Have To” History: The Japanese (-American?) Cases

1-2. The U.S. has a contradictory and at times confusing history when it comes to how it responds to immigrants, particularly when clear racial differences are involved. What are some general reasons those born and raised in the U.S. might resist opening their doors to others? _____

3-4. What determines why some groups are accepted relatively easily and others not so much? Explain. _____

5. What was the primary issue in *Takao Ozawa v. United States* (1922) and what was decided? _____

6. What motivated Executive Order 9066? _____

7. What was the practical impact of 9066? _____

8. What was the primary issue in *Hirabayashi v. United States* (1943)? _____

9. What was the Court’s decision in *Hirabayashi* and what was their basic reasoning? _____

10. What was the primary issue in *Korematsu v. United States* (1944)? _____

11. Korematsu’s lawyers wanted the Court to consider the entirety of 9066 and its practical impact. Why, after *Hirabayashi*, would they have taken this approach? What constitutional argument(s) did they have on their side?

12. The Court restricted its ruling to the military’s authority to evacuate an area in certain circumstances. Speculate as to why they might have chosen this approach to a case arguably involving much larger issues. _____

13. Based on the brief excerpts in the summary above, the dissents by Justices Roberts and Murphy shared a common theme. What issue did they both highlight? _____

14-15. Justice Jackson’s dissent contained a unique and poignant argument. In plain, simple English, briefly explain his concerns about this decision based on the excerpt above. _____

16-17. Assuming they were neither *evil* nor *insane*, why would the President and military leadership hide information suggesting Japanese Americans weren’t actually a threat to national security and push on with plans to round them up and incarcerate them for the duration of the war? What are some possible motivations for such actions?

18-20. It’s time to solve American’s mixed mindset towards immigration. What should determine who gets in and who doesn’t? Summarize your plan for keeping the nation safe, economically prosperous, and culturally coherent, while maintaining some deference towards our foundational principles and proclaimed values. (Easy, right?)

Name: _____ Class: _____

Excerpts from *Korematsu v. U.S.* (1944) Majority Opinion (Black), Concurring Opinion (Frankfurter), and Dissenting Opinions (Roberts, Murphy, Jackson)

1-2. Justice Black wrote that “all legal restrictions which curtail the civil rights of a single racial group are immediately suspect... Pressing public necessity may sometimes justify the existence of such restrictions; racial antagonism never can.” In plain, simple English, what did he seem to mean by this?

3. At its most basic, what was the Majority’s reasoning for why it was OK to round up Japanese Americans? _____

4. Justice Frankfurter, concurring with the majority, wrote that “[t]he provisions of the Constitution which confer on the Congress and the President powers to enable this country to wage war are as much part of the Constitution as provisions looking to a nation at peace.” In plain, simple English, what did he seem to mean by this?

5. What did Justice Roberts seem to consider an important difference between *Korematsu* and *Hirabayashi*? Why would this difference have mattered in determining the constitutionality of the legislation and orders involved?

6. Under what circumstances would Justice Murphy have granted the military the right to suspend certain freedoms or forego some legal protections, at least temporarily? Why? _____

7. Why did he not believe those exceptions apply in *Korematsu*? _____

8. Justice Jackson wrote that in the U.S., “guilt is personal and not inheritable.” What does this mean? _____

9-10. Jackson argued that “a judicial construction of the due process clause that will sustain this order is a far more subtle blow to liberty than the promulgation of the order itself.” In plain, simple English, what did he mean?

Name: _____ Class: _____

“Have To” History: *Brown v. Board of Education* (1954)

What were three things going on in the first half of the 20th century which arguably influenced the NAACP’s decision to take on *Brown v. Board* and may have impacted the Court’s decision as well? Briefly explain each.

1. _____

2. _____

3. _____

4. What was the NAACP’s general approach to desegregating education prior to *Brown*, and why? _____

5. What point did the NAACP hope to establish in *Brown* beyond what they’d been advocating for previously? _____

6. Briefly explain the significance of Vinson’s death and Warren’s subsequent appointment in terms of the impact on *Brown* and related cases. _____

7. Clearly the Fourteenth Amendment didn’t have public education in mind when written. How does Warren address this historical reality when applying it to public education nearly a century later? _____

8. Briefly summarize and explain the rationale for *Brown* as expressed in the Majority Opinion once the Fourteenth Amendment issue had been addressed. _____

9. Of the various arguments made by the majority in *Brown*, which do you find most persuasive? Are there any you find less persuasive, even if you’re fine with the overall result? Briefly explain your responses.

10. So, you’re a student. Are most schools of equal quality? Are they desegregated? Is there a correlation between the quality of a school and the color of most of its students? Explain your responses (in school-appropriate terms).

Name: _____ Class: _____

Excerpts from *Brown v. Board of Education* (1954), Majority Opinion by Chief Justice Earl Warren

Chief Justice Warren lists several functions or goals of public education, not all of which are the first things we might think of today when explaining why education is important. Choose any THREE and briefly discuss each in terms of both Warren’s argument and your experiences or thoughts.

1. _____

2. _____

3. _____

4. In your experience as a student, what are the most substantial benefits of attending school in a building with multiple other students in the room with you most of the time? (Assume there must be SOME!)

5-6. As educators and reformers continue to explore ways to “improve” public education, they’re trying all sorts of things outside the traditional model where you all show up together and move around in one-hour blocks. Some of these models involve gender-specific campuses (all boys or all girls). Others have experimented with blocks of time in which only Hispanic males are together, or only Black girls, etc. What potential advantages do you see to one or more of these ideas? What potential problems would you anticipate? Explain your responses.

7-8. Explain the Court’s statement that “Separate educational facilities are inherently unequal.” (HINT: They may have meant several different things by this at the same time.) _____

9-10. If you were going to make a case today for ONE major thing that needs to be changed (something which could be addressed through legislation or the courts) across the board in public education, what would that be, and why?

Name: _____ Class: _____

“Have To” History: The Warren Court (1953-1969)

1. *Brown v. Board* had already been heard by the Vinson Court. Why was it heard again after Warren joined?

2. When Earl Warren was appointed Chief Justice of the Supreme Court, he joined a Court somewhat split into two basic camps in terms of their judicial philosophy. In plain, simple English, what were these two camps?

3. This summary says that Chief Justice Warren was a pragmatist. What does it mean to be “pragmatic”?

4-5. What are some potential pros and cons of taking a “pragmatic” approach to constitutional issues? Explain.

6. Why might some observers happy with the results of the Warren Court nevertheless be troubled by its methods?

7-8. This summary lists of some of the Warren Court’s best-known decisions, Choose THREE which you consider the most important for your life and your future and briefly explain each and why you chose it.

9-10. If you could only remember one thing about the Warren Court, what should it be and why? _____

Name: _____ Class: _____

“Have To” History: *Engel v. Vitale* (1962)

1. *Engel v. Vitale* was the first Supreme Court case to address what? _____

2. What is “incorporation” (in relation to the judicial branch)? _____

3. What does it mean for the Supreme Court to “grant certiorari”? _____

4. Why had the lower courts been OK with New York’s schools opening each day with prayer? _____

5. What is an “amicus curiae brief”? (Don’t just translate it – explain *what it is*, in plain, simple English): _____

6-7. According to this summary, what does Justice Black argue were the primary purposes of the “wall of separation” built by the First Amendment? _____

8-9. What does it mean to say that “Americans don’t separate church and state because they’ve *forgotten* the role of faith in our creation; they separate them because they *remember*”? _____

10. If you only remember one thing about *Engel v. Vitale* (1962), what should it be, and why? _____

Bonus! There are actually TWO clauses in the First Amendment related to religion. What are they, and what does each one generally mean in plain, simple English? _____

Name: _____ Class: _____

Excerpts from *Engel v. Vitale* (1962), Majority Opinion by Justice Hugo Black and Dissent by Justice Potter Stewart

1. “The Board of Regents as amicus curiae, the respondents, and intervenors... seek to distinguish this prayer because it is based on our spiritual heritage...” Based on this excerpt, what argument was New York and its supporters making in defense of having daily prayer in the classroom?

2-3. Since supporters of school prayer were citing history as justification, Justice Black breaks out some history of his own. Summarize his argument for why the “wall of separation” was established in plain, simple English:

4-5. “Neither the fact that the prayer may be denominationally neutral nor the fact that its observance on the part of the students is voluntary can serve to free it from the limitations of the Establishment Clause, as it might from the Free Exercise Clause, of the First Amendment...” Justice Black distinguished between two different clauses in the First Amendment related to religion. What are these two clauses, and what does each one say in plain, simple English?

6-7. “Neither... can serve to free it from the limitations of the Establishment Clause, as it might from the Free Exercise Clause... both of which are operative against the States by virtue of the Fourteenth Amendment.” What, specifically, does the 14th Amendment say would apply the 1st Amendment to the States? Explain.

8. Why do you think Justice Black went to such lengths trying to prevent any suggestion that the Court was anti-religion or that their decision somehow weakens or insults faith? Explain. _____

9-10. Briefly summarize the primary points of Justice Potters dissent. Which of his arguments do you find most persuasive (whether you agree with them or not), and why? _____

Name: _____ Class: _____

“Have To” History: *Tinker v. Des Moines* (1969)

1-2. What form of protest did the Tinkers and the other teenagers involved choose to demonstrate their opposition to the Vietnam War? Why might they have chosen this particular expression over other options?

3-4. Assume the role of school officials in 1960s Des Moines. What sorts of things might you be worried about which would lead to a decision to ban black armbands or other expressions of war protest?

5-6. What is “symbolic speech”? Identify and briefly explain several examples not included in this article.

7-8. According to *Tinker*, under what sorts of circumstances do schools have the right to limit free speech or other personal expressions? What should students take into account if considering some sort of protest?

9-10. While students don’t “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate,” neither do they have the same rights on campus as they do outside of school. Why? What interest or responsibility of the state overrides (or at least limits) some of those rights?

BONUS: Do a little research on your own (no need to get too carried away). Identify and briefly explain a case after *Tinker* involving student expression or speech – what happened, what did the courts decide, and why?

How was the case you chose similar to *Tinker*, and how was it different? _____

Name: _____ Class: _____

Excerpts from *Tinker v. Des Moines* (1969) Majority Opinion (Fortas) and Dissenting Opinion (Black)

1. Justice Fortas quoted Justice Jackson: “That they are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes.” What exactly does this mean?

2. What sorts of assumptions or values are reflected in Fortas’s claim that “it is this sort of hazardous freedom -- this kind of openness -- that is the basis of our national strength and of the independence and vigor of Americans who grow up and live in this relatively permissive, often disputatious, society...”?

3. Why did it matter that the schools only banned one specific form of political speech? What *might* have been different, constitutionally, had the district prohibited campaign buttons and the Iron Cross along with armbands?

4. Fortas concludes that American students retain a degree of individuality and “person”-hood which must be respected by the State. What does his suggest may be reasonably expected of students in return? _____

5. What seems to be Justice Black’s primary concern with the outcome of *Tinker*? _____

6. What’s one critical role of public education, according to Black’s opinion, beyond conveying content knowledge?

7. What sorts of assumptions or values are reflected in Black’s claim that “sometimes the old and the tried and true are worth holding. The schools of this Nation have undoubtedly contributed to giving us tranquility and to making us a more law-abiding people. Uncontrolled and uncontrollable liberty is an enemy to domestic peace”?

Both of these opinions use colorful language and strong rhetoric (sometimes even an almost *snarky* tone) to emphasize their points. Give THREE examples and briefly explain each.

8. _____

9. _____

10. _____

Name: _____ Class: _____

“Have To” History: *Wisconsin v. Yoder* (1972)

1. What does this summary suggest is the common theme among most Amish and Mennonites? _____

2. Why didn't Yoder, Miller, and Yutzy want their children to remain in public school past 8th grade? _____

3. Based on this summary, what was the original court's primary consideration in deciding against the Amish? _____

4. The Wisconsin State Supreme Court sided with Yoder & co. based on a clause in the First Amendment that somehow hadn't come up very often in "wall of separation" cases prior to this one. What was the court's basic reasoning in overturning lower courts and finding in favor of the Amish? _____

5-7. Chief Justice Burger's written opinion addressed three basic issues. Briefly explain each and what the Court determined at each step: _____

8-9. Briefly explain "belief-action" theory and how it might impact cases involving religious beliefs: _____

10. If you only remember one thing about *Wisconsin v. Yoder* (1972), what should it be, and why? _____

Name: _____ Class: _____

“Have To” History: *Roe v. Wade* (1973)

1. Briefly explain the Majority’s finding that “Pregnancy provides a classic justification for a conclusion of nonmootness.” What does that mean, and how did it apply in this case? _____

2. Why might Justice Blackmun have felt it so important to include such an extensive “history lesson” in the majority opinion? (It’s several pages long; far more than this summary truly conveys.) Explain your reasoning.

3-4. Briefly identify and explain TWO examples of the “right to privacy” as discovered in cases prior to *Roe*. What does *Roe* have in common with each of them, and how is the situation (legally) different from each?

5. It’s sometimes suggested that one sign of effective compromise is that no one involved is particularly happy with the result. What’s one major thing “pro-choice” advocates might criticize (with some justification) in *Roe*?

6. What’s one major thing “pro-life” advocates might criticize (with some justification) in *Roe*? _____

7. What is it about this particular dispute that makes it such a personal, emotional issue for so many people on the “pro-choice” side? What makes it different than many other “progressive” issues? Explain.

8. What is it about this particular dispute that makes it such a personal, emotional issue for so many people on the “pro-life” side? What makes it different than many other “conservative” issues? Explain.

9-10. What are some other social and political issues currently being debated in the U.S. which seem to provoke similar emotions or reactions? What steps or changes would you suggest which might make it possible for opposite sides to at least discuss such differences productively? Explain your response.

Name: _____ Class: _____

Excerpts from *Roe v. Wade* (1973) Majority Opinion (Blackmun), Concurring Opinion (Stewart), and Dissenting Opinion (Rehnquist)

1. Justices may include anything in their written opinions that they choose, but typically they dive right into a summary of the facts before them, then transition into the major issues in play. An introduction like Blackmun's is a bit unusual. Speculate as to why he may have found it appropriate to open this written opinion the way he did.

2-3. What does Blackmun seem to be trying to establish or clarify with his extensive "history lesson" over the legal status of abortion throughout western culture? What were TWO of his main points by the time he's done?

4-5. According to Blackmun, what are the THREE primary reasons for abortion to have been legally prohibited throughout western history, and which of these were still relevant in 1973? _____

6-7. Briefly explain the legal reasoning behind the majority's finding of a "right to privacy" in the Constitution (which of course includes all Amendments up to that time). What other sorts of things were covered by this right?

8. Whether you agree with the Court's decision or not, briefly explain the "trimester system" they outlined in *Roe* and their basic justification for what was and wasn't permissible at each stage. (The goal is to understand their argument, not to persuade you either way.) _____

9-10. Justice Stewart, in his Concurring Opinion, quoted Justice Harlan from a Dissent of his over a decade before. Paraphrase the quote from Justice Harlan in plain, simple English, retaining as much of the meaning as you can while making it as clear as possible to the average reader.

11. Stewart wrote, “Several decisions of this Court make clear that freedom of personal choice in matters of marriage and family life is one of the liberties protected by the Due Process Clause of the Fourteenth Amendment.” What issue would you guess many of those same cases would be used to support nearly a half-century after *Roe*? Explain.

12. What was Justice Rehnquist’s primary contention with the majority’s interpretation of a “right to privacy” as applied in *Roe*?

13-14. Here’s a poignant passage from Rehnquist’s Dissent: “I agree with the statement of MR. JUSTICE STEWART in his concurring opinion that the “liberty,” against deprivation of which without due process the Fourteenth Amendment protects, embraces more than the rights found in the Bill of Rights. But that liberty is not guaranteed absolutely against deprivation, only against deprivation without due process of law.” Paraphrase this excerpt in plain, simple English, retaining as much of the meaning as you can while making it as clear as possible:

Briefly identify and explain THREE arguments Rehnquist made against the majority’s reasoning in *Roe* (NOT including what he wrote in the excerpt from the previous question – because dude, you’ve already covered that!)

15. _____

16. _____

17. _____

Choose any THREE examples from the *Roe* opinions excerpts of colorful phrasing, interesting choices of vocabulary, or other creative writing elements used to reinforce the author’s thinking and/or attitude about the issue discussed. Briefly identify each and explain the role it plays in the argument in which it was utilized.

18. _____

19. _____

20. _____

Name: _____ Class: _____

“Have To” History: *United States v. Nixon* (1974)

1. Today, President Nixon is primarily remembered for Watergate and his subsequent resignation. What were several indications prior to Watergate that he could have had a long, successful political career otherwise?

2-3. This summary suggests that when times are chaotic or frightening, people want security – even if it means giving up some degree of freedom. Select and describe several specific examples from your own experiences or observations which either support or refute this suggestion. Briefly explain each.

4. Explain the argument that “when the President does it, it’s not illegal.” Justify or refute this statement using as many specifics as possible. _____

5. What was the “Saturday Night Massacre,” and why was it (rather melodramatically) called that? _____

6. Briefly explain the White House’s argument why they shouldn’t be required to release the tapes: _____

7. Briefly explain the argument by U.S. attorneys that the President should be required to release the tapes: _____

8-9. Summarize the Supreme Court’s decision and the primary arguments they offered in support: _____

10. If you only remember one thing about *United States v. Nixon*, what should it be, and why? _____

Name: _____ Class: _____

Excerpts from *United States v. Nixon* (1974), Majority Opinion by Chief Justice Warren Burger

1. According to Burger, how had the Special Prosecutor cleared several essential “hurdles” in requesting release of the secret White House tapes? _____

2. In support of the President’s claim to “absolute privilege,” his attorneys used two basic arguments, one of which the Majority Opinion acknowledges “is common to all governments.” What is this argument and what gave it some legitimacy, not only in the case of the White House but among “all governments”?

3. The other argument for “absolute privilege” involves the Constitutional “separation of powers.” How did this supposedly protect the President from releasing the tapes, at least according to his legal representatives?

4. What was one fatal flaw in these arguments, according to Burger? _____

5-6. “[T]he allowance of the privilege to withhold evidence that is demonstrably relevant in a criminal trial would cut deeply into the guarantee of due process of law and gravely impair the basic function of the court. A President's acknowledged need for confidentiality in the communications of his office is general in nature, whereas the constitutional need for production of relevant evidence in a criminal proceeding is specific and central to the fair adjudication of a particular criminal case in the administration of justice.” Simplify and paraphrase this excerpt (put it into modern, plain, simple-but-accurate English):

7-8. Offer one argument not made in the case summary or opinion excerpts why the President should be given greater latitude in how he handles private communications, internal security, or other situations which would constitute crimes if committed by average citizens without the same responsibilities:

9-10. Offer one argument not made in the case summary or opinion excerpts why the President should be held to the same (or maybe higher) legal standards as other Americans, no matter their unique pressures or responsibilities:

Name: _____ Class: _____

“Have To” History: *Texas v. Johnson* (1989)

1. What sorts of things were Gregory Johnson and others protesting during the 1984 Republican Convention?

2. Why might flag-burning seem like an “appropriate” statement against these particular issues and entities?

3. Briefly explain the primary argument(s) in support of Johnson’s right to burn the flag on this occasion: _____

4. Briefly explain the position of the State of Texas as to why it was appropriate to ban this “desecration”: _____

5. What was the primary argument of the Court’s dissenting minority, according to this case summary? _____

6. What are some situations in which you think it’s acceptable or appropriate for government to limit certain types of expression or “free speech” (literal or symbolic)? Explain your reasoning. _____

7-8. Could Johnson have been just as effective (or more effective) had he chosen a different way of expressing his viewpoints? Give specific examples and justify your response. _____

9-10. This summary compares flag-burning to kneeling during the National Anthem. Is this a fair comparison? Are these two forms of protest similar enough for one to shed light on the other? Explain your response. _____

Name: _____ Class: _____

Excerpts from *Texas v. Johnson* (1989) Written Opinions (Majority and Dissents)

1. Why do you think Justice Brennan spends so much time recounting previous Court decisions related to speech?

2. According to the Majority Opinion, why was Johnson’s “symbolic speech” legally protected even though not all “symbolic speech” would automatically receive the same protection? _____

3. How many other people were arrested as a result of these protests and what impact did these have on the Court’s decision in Johnson’s case? _____

4. Paraphrase this statement (put it into modern, plain, simple-but-accurate English): “To conclude that the government may permit designated symbols to be used to communicate only a limited set of messages would be to enter territory having no discernible or defensible boundaries...”: _____

Briefly explain THREE reasons Chief Justice Rehnquist and Justices White and O’Connor believed it was appropriate and Constitutional to protect the flag to a degree other symbols could largely not be:

5. _____

6. _____

7. _____

8. Paraphrase this statement (put it into modern, plain, simple-but-accurate English): “The result of the Texas statute is obviously to deny one in Johnson’s frame of mind one of many means of ‘symbolic speech.’ Far from being a case of ‘one picture being worth a thousand words,’ flag burning is the equivalent of an inarticulate grunt or roar that, it seems fair to say, is most likely to be indulged in not to express any particular idea, but to antagonize others.”

9. In what way does Justice Stevens argue that the American Flag is more than just, you know... a national *flag*?

10. If you only remember one thing about *Texas vs. Johnson* (1803), what should it be, and why? _____

Name: _____ Class: _____

“Have To” History: *Bush v. Gore* (2000)

1. What was Gore’s basic strategy for winning the Election of 2000? What major advantages and what major challenges did he face? _____

2. What sort of platform was Bush hoping would secure him the White House in 2000? _____

3-4. Why were many beginning to mistrust “the process” before the outcome was even determined? _____

Choose any TWO problems identified during the Florida recounts and briefly explain each one:

5. _____

6. _____

7-8. How did the Florida Supreme Court want to handle the situation? Explain. _____

9. What was the Supreme Court trying to determine in *Bush v. Palm Beach County Canvassing Board*? _____

10. What was the Supreme Court’s decision in *Bush v. Palm Beach County Canvassing Board*? _____

There were essentially two decisions wrapped up in *Bush v. Gore* (one was decided 7-2 and the other 5-4). Briefly explain each, the reasoning behind it, and the impact on the election.

11-12. _____

13-14. _____

15. What was the reasoning of the minority (the 2 Justices who disagreed the whole way) in *Bush v. Gore*? _____

16-17. Under what circumstances should candidates and/or the public accept the results of an election even if they’re not entirely persuaded of its fairness? When should they dig in and keep fighting, and how? Explain.

18-20. Why is it essential to democracy that citizens “trust the system” when it comes to elections? Explain. _____

Name: _____ Class: _____

Excerpts from *Bush v. Gore* (2000), Per Curium (“Majority”) Opinion

1. In what way did Florida’s recount procedures violate the Equal Protection Clause, according to the Court?

2. The Court also considered the question of “whether the Florida Supreme Court established new standards for resolving Presidential election contests.” Even if everyone’s vote was counted, equally and fairly (thus not violating the Equal Protection Clause) what would still be the problem with the solution mandated by Florida’s highest court?

3-4. “Florida’s basic command for the count of legally cast votes is to consider the ‘intent of the voter.’ This is unobjectionable as an abstract proposition and a starting principle. The problem inheres in the absence of specific standards to ensure its equal application...” Paraphrase this passage (put it into plain, simple English):

5. What point was the Court trying to make by pointing out that ballots are inanimate objects, unlike, for example, human witnesses to an event? _____

6. Justice Stevens’s dissent argued that the Supreme Court shouldn’t even have been involved in this case. Why?

7. Even if the Supreme Court were involved, Justice Stevens didn’t accept the argument that Florida’s recount process could or should be declared unconstitutional. Why not? _____

8. Finally, Stevens argued that the deadlines referenced in the U.S. Code about handling elections never actually applied in this case to begin with. What was his reasoning for this claim? _____

9-10. “Although we may never know with complete certainty the identity of the winner of this year’s Presidential election, the identity of the loser is perfectly clear. It is the Nation’s confidence in the judge as an impartial guardian of the rule of law.” Paraphrase this passage (put it into plain, simple English):

Name: _____ Class: _____

“Have To” History: *Citizens United v. FEC* (2010)

1-3. Why has Congress felt the need in the past century to in some way limit or moderate political spending by corporations, labor unions, or other influential entities? What supposed dangers were they trying to address?

4-5. Briefly explain the origins and primary functions of the FEC: _____

6-7. Briefly explain the Bipartisan Campaign Reform Act (BCRA): _____

8-10. What did the District Court see as the primary difference between *Fahrenheit 9/11* and *Hillary: The Movie*? Do you find their reasoning persuasive? Why or why not?

11-12. Explain the Supreme Court’s primary reasoning in overturning *Austin vs. Michigan Chamber of Commerce* (1990) and partially overturning *McConnell v. Federal Election Commission* (2003):

13-15. Summarize Justice Stevens’s argument regarding the ways in which corporations are fundamentally different from individual citizens. Do you find his reasoning persuasive? Why or why not?

16-20. If you were appointed to devise a system by which all Americans – including rich ones – could freely express their social and political opinions and use their resources to persuade others, while attempting to assure some sort of balanced discussion and maybe even a degree of honesty and openness, what are some things you might try? Explain.

Name: _____ Class: _____

Excerpts from *Citizens United v. FEC* (2010), Written Opinions by Justices Kennedy and Stevens

1. In the second paragraph of the majority excerpt, Kennedy offers several hypothetical examples of speech which could be challenged or banned under then-existing laws, even though none of those things had actually happened yet. Why does he do this and what makes it potentially so effective?

2-3. Rewrite this passage in plain and simple modern English: “Speech is an essential mechanism of democracy, for it is the means to hold officials accountable to the people... The right of citizens to inquire, to hear, to speak, and to use information to reach consensus is a precondition to enlightened self-government and a necessary means to protect it. The First Amendment has its fullest and most urgent application to speech uttered during a campaign for political office.”

4. Which of Kennedy’s arguments do you find most persuasive, and why? Be as specific as possible in your response.

5. Which of Kennedy’s arguments do you find least persuasive, and why? Be as specific as possible in your response.

6. Does the emotion (and sarcasm) utilized by Justice Stevens strengthen or weaken his arguments? Explain.

7-8. Rewrite this passage in plain and simple modern English: “The Court’s blinkered and aphoristic approach to the First Amendment may well promote corporate power at the cost of the individual and collective self-expression the Amendment was meant to serve. It will undoubtedly cripple the ability of ordinary citizens, Congress, and the States to adopt even limited measures to protect against corporate domination of the electoral process.”

9. Which of Stevens’s arguments do you find most persuasive, and why? Be as specific as possible in your response.

10. Which of Stevens’s arguments do you find least persuasive, and why? Be as specific as possible in your response.

Name: _____ Class: _____

“Have To” History: *Obergefell v. Hodges* (2015)

1. What are some of the reasons a case might begin or end up in a federal court rather than a state court?

2. The Supreme Court isn’t usually in a hurry to tackle big social issues, even when they involve constitutional law. What was a major factor in its decision to hear *Obergefell v. Hodges* (2015)?

3. *Obergefell* was a ‘bundling’ of a half-dozen related cases. On what issues did the Court ask the various parties involved to focus their attention? Why do you think they did this, and why these specific questions?

4. When and why was the 14th Amendment initially ratified? _____

5. What phrase(s) in the 14th Amendment led, over time, to substantially expanded ideas of just what sorts of rights the Constitution protects?

6. Should it matter whether or not a specific set of rights was originally intended by the authors of an Amendment? Explain.

7-8. If you had to identify THREE cases from the list above which most strongly foreshadowed the outcome of *Obergefell v. Hodges* (2015), which THREE would you choose, and why?

9-10. Whether you agree with the Court’s decision or not, which of the majority arguments do you find most persuasive, and why? Which do you find least persuasive, and why?

Name: _____ Class: _____

Excerpts from *Obergefell v. Hodges* (2015) Majority Opinion (Kennedy) and Dissents (Roberts, Scalia, Alito)

1. Why might Kennedy have felt it appropriate to devote so much time in his Majority Opinion to the history of marriage in the U.S. and around the world? What point(s) is/are he trying to make by so doing?

2. What constitutional basis does the Majority cite for overturning state laws against same-sex marriage? Explain.

The Majority Opinion cites four “principles and traditions” which they argue “demonstrate that the reasons marriage is fundamental under the Constitution apply with equal force to same-sex couples.” In plain, simple English, briefly identify and explain each of these principles and traditions, according to Justice Kennedy.

- 3. _____
- 4. _____
- 5. _____
- 6. _____

7. One of the primary arguments against the Supreme Court making this sort of decision is that issues like same-sex marriage are better left to state or national legislatures. How does Kennedy refute this reasoning?

8. In plain, simple English, what is Chief Justice Roberts’s primary objection to the Court’s decision? _____

9. While the Majority Opinion insists same-sex couples are looking for comparable rights and benefits to those associated with traditional marriages, Roberts frames their expectations somewhat differently. What is his take on the demands being made by the various petitioners involved? Explain.

10. In what way(s) does Roberts suggest this decision might be a threat to others’ “religious liberty”? Why does he consider this a more appropriate concern than those brought by the same-sex couples involved in this case?

11. Justice Scalia insists that he’s not overly concerned with same-sex marriage one way or the other, but that he is very concerned about something else. In plain, simple English, what are his concerns with this decision?

12. What is Scalia’s primary argument as to why the majority’s use of the 14th Amendment to justify their decision is inappropriate? _____

13. Scalia gets rather colorful in how he uses language to not only explain his reasoning but to convey a distinct attitude along with his opinions. Explain his statement that “what really astounds is the hubris reflected in today’s judicial Putsch.” What does this literally mean, and what does Scalia mean by it in terms of the majority opinion?

14. Scalia concludes with this statement: “The Supreme Court of the United States has descended from the disciplined legal reasoning of John Marshall and Joseph Story to the mystical aphorisms of the fortune cookie.” Briefly decipher the statement itself and explain what Scalia means by it in reference to the majority opinion.

15. What seems to be Justice Alito’s primary concern, and why? _____

Whether you agree with the Court’s decision or not, which two specific elements of the Majority Opinion do you find most compelling or persuasive, and why?

16. _____

17. _____

Whether you agree with the Court’s decision or not, which two elements of the various Dissenting Opinions do you find most compelling or persuasive, and why?

18. _____

19. _____

20. The three dissents have very different styles and each makes distinct arguments of their own. Whether you agree with the overall decision or now, which dissent do you find most compelling or persuasive in terms of the approach and style as well as the arguments themselves? Explain.